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IMPLEMENTATION OF THE DOMINICAN REPUBLIC-CENTRAL AMERICA FREE TRADE AGREEMENT (DR–CAFTA)

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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IMPLEMENTATION OF THE DOMINICAN REPUBLIC-CENTRAL AMERICA FREE TRADE AGREEMENT (DR–CAFTA)

THURSDAY, APRIL 21, 2005

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., in room 1100, Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
April 01, 2005
FC–6

CONTACT: 202–225–1721

Thomas Announces Hearing on Implementation of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA)

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold two trade-related hearings in April: **1. United States-China Economic Relations and China's Role in the World Economy, and 2. Implementation of the Dominican Republic-Central America Free Trade Agreement (DR–CAFTA).**

1. UNITED STATES-CHINA ECONOMIC RELATIONS AND CHINA'S ROLE IN THE WORLD ECONOMY

The hearing on United States-China economic relations and China's role in the world economy will take place on Thursday, April 14, 2005, in the main Committee hearing room, 1100 Longworth House Office Building beginning at 10:00 a.m. Oral testimony at this hearing will be from both invited and public witnesses. 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 ON CHINA HEARING:

Since the United States and China established diplomatic relations in 1979, China has become an increasingly important trading partner of the United States and a major player in the global economy. Two-way trade between the two countries has increased since that time, growing from $4.8 billion in 1980 to $231.42 billion in 2004. In 2004, China was the United States' third largest trading partner, the second largest supplier of U.S. imports, and the fifth largest buyer of U.S. exports. The U.S. trade deficit with China was $162 billion in 2004. Ten percent of all U.S. trade is with China.

Reflecting its growing role in the world economy, China became a member of the World Trade Organization (WTO) on December 11, 2001, after many years of negotiations on its accession. Since its accession to the WTO, China's integration into the world economy has proceeded rapidly. As a result, Congress, the Administration, and the U.S. private sector have focused on China's compliance with its WTO commitments, its trade balance, the relationship between China's pegged currency and trade with the United States, and other macroeconomic policies.

The goal of this hearing is to discuss China's importance as an economic partner to the United States and the issues surrounding the United States-China economic relationship. In announcing the hearing, Chairman Thomas stated, "China is an important player in the U.S. and global economies. We have been able to resolve many disputes, but we face more challenges to ensure that China integrates itself into the rules-based trading system that governs all WTO members. During this hearing, we will focus on China's important economic role in the world, its progress in meeting its trade commitments, and its macroeconomic policies."

FOCUS OF THE CHINA HEARING:

The hearing will focus on United States-China economic relations and China's role in the world economy, with a narrower focus on the following: (1) China's progress and U.S. response in the implementation of China's WTO accession commitments (including issues relating to China's enforcement of intellectual property rights, use of subsidies, and the use of non-tariff barriers such as standards andimport licensing that affect imports); (2) trade relations between the United States and China; (3) China's currency management and other macroeconomic issues; and (4) the relationship between trade with China and the U.S. economy, particularly the manufacturing sector.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD AT THE CHINA HEARING:

Requests to be heard at the hearing must be made by telephone to Michael Morrow or Kevin Herms at (202) 225–1721 no later than the close of business Tuesday, April 5, 2005. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515, at (202) 225–2610. The staff of the Committee 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 Committee staff at (202) 225–1721.

In view of the limited time available to hear witnesses, the Committee 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 in lieu of a personal appearance. 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 Committee are required to submit 300 copies, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format*, of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the full Committee office, 1102 Longworth House Office Building, no later than close of business on Monday, April 11, 2005.** The 300 copies can be delivered to the Committee staff in one of two ways: (1) Government agency employees can deliver their copies to 1102 Longworth House Office Building in an open and searchable box, but must carry with them their respective government issued identification to show the U.S. Capitol Police, or (2) for non-government officials, the copies must be sent to the new Congressional Courier Acceptance Site at the location of 2nd and D Streets, N.E., **at least 48 hours prior to the hearing date. Please ensure that you have the address of the Committee, 1102 Longworth House Office Building, on your package, and contact the staff of the Committee at (202) 225–1721 of its impending arrival.** *Due to new House mailing procedures, please avoid using mail couriers such as the U.S. Postal Service, UPS, and FedEx.* When a couriered item arrives at this facility, it will be opened, screened, and then delivered to the Committee office, within one of the following two time frames: (1) expected or confirmed deliveries will be delivered in approximately 2 to 3 hours, and (2) unexpected items, or items not approved by the Committee office, will be delivered the morning of the next business day. The U.S. Capitol Police will refuse all non-governmental courier deliveries to all House Office Buildings.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE AT THE CHINA HEARING:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*109th Congress*" from the menu entitled, "*Hearing Archives*" (*http://waysandmeans.house.gov/Hearings.asp?congress=17*). Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record.*" Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You **MUST REPLY** to the email and **ATTACH** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Thursday, April 28, 2005. **Finally,** please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing can follow the same procedure listed above for those who are testifying and making an oral presentation. For questions, or if you encounter technical problems, please call (202) 225–1721.

2. IMPLEMENTATION OF THE DOMINICAN REPUBLIC-CENTRAL AMERICA FREE TRADE AGREEMENT

The hearing on implementation of the DR–CAFTA will take place on Thursday, April 21, 2005, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m. Oral testimony at this hearing will be from both invited and public witnesses. Invited witnesses will include Ambassador Peter F. Allgeier, Acting United States Trade Representative. Any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND ON DR–CAFTA HEARING:

On October 1, 2002, the President formally notified Congress that he would pursue a Free Trade Agreement (FTA) with Central America. Negotiations began in January 2003. Following nine rounds of negotiations, agreement was reached with El Salvador, Guatemala, Honduras, and Nicaragua on December 17, 2003, and with Costa Rica on January 25, 2004. Negotiations to include the Dominican Republic in CAFTA began in January 2004 and concluded on March 15, 2004. On May 28, 2004, Ambassador Robert Zoellick and ministers of five Central American countries signed the CAFTA. On August 5, 2004, Ambassador Zoellick, the Dominican Republic's Secretary for Industry and Commerce Sonia Guzman, and representatives of five Central American nations signed the DR–CAFTA.

The DR–CAFTA would immediately eliminate tariffs on more than 80 percent of U.S. exports of consumer and industrial products, phasing out the rest over 10 years, thereby opening DR–CAFTA's markets to U.S. goods, services, and farm products and leveling the playing field for U.S. workers and farmers. Because the Central American countries already enjoy duty free access to the United States for over 75 percent of their exports, the agreement is estimated by the International Trade Commission (ITC) to have minimal effect on imports to the United States. At the same time, U.S. agricultural exports to the Dominican Republic-Central American region are estimated to increase by nearly $900 million under the agreement. The ITC found that manufacturers would also benefit through increased exports, especially in sectors such as fabric and yarn, information technology products, agricultural and construction equipment, paper products, pharmaceuticals and medical and scientific equipment. The agreement includes a negative list for services with very few reservations. All agricultural and industrial products are covered by the agreement. The agreement also contains strong protections for U.S. investors.

The United States and the DR–CAFTA region had two-way trade of $33.4 billion in 2004. The DR–CAFTA countries combined make up the 2nd-largest U.S. market in Latin America, behind only Mexico. The United States exports more than $15 bil-

lion annually to the region, making it America's 13th-largest export market worldwide.

In announcing the hearing, Chairman Thomas stated, "I am very pleased not only about the potential commercial opportunities for our countries but also about the stability and development that the DR–CAFTA agreement brings to the region. This agreement will cement many of the democratic, legal, and economic reforms that these countries have struggled with in recent years, and it will do so while providing expansive trade opportunities for U.S. goods and services immediately. I look forward to moving this agreement quickly."

FOCUS OF THE DR–CAFTA HEARING:

The hearing will examine the DR–CAFTA and the benefits that the agreement will bring to American businesses, farmers, workers, consumers, and the U.S. economy.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD AT THE DR–CAFTA HEARING:

Requests to be heard at the hearing must be made by telephone to Michael Morrow or Kevin Herms at (202) 225–1721 no later than the close of business Tuesday, April 12, 2005. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515, at (202) 225–2610. The staff of the Committee 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 Committee staff at (202) 225–1721.

In view of the limited time available to hear witnesses, the Committee 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 in lieu of a personal appearance. 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.

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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 Committee are required to submit 300 copies, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format*, of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the full Committee office, 1102 Longworth House Office Building, no later than close of business on Monday, April 18, 2005.** The 300 copies can be delivered to the Committee staff in one of two ways: (1) Government agency employees can deliver their copies to 1102 Longworth House Office Building in an open and searchable box, but must carry with them their respective government issued identification to show the U.S. Capitol Police, or (2) for non-government officials, the copies must be sent to the new Congressional Courier Acceptance Site at the location of 2nd and D Streets, N.E., **at least 48 hours prior to the hearing date. Please ensure that you have the address of the Committee, 1102 Longworth House Office Building, on your package, and contact the staff of the Committee at (202) 225–1721 of its impending arrival.** *Due to new House mailing procedures, please avoid using mail couriers such as the U.S. Postal Service, UPS, and FedEx.* When a couriered item arrives at this facility, it will be opened, screened, and then delivered to the Committee office, within one of the following two time frames: (1) expected or confirmed deliveries will be delivered in approximately 2 to 3 hours, and (2) unexpected items, or items not approved by the Committee office, will be delivered the morning of the next business day. The U.S. Capitol Police will refuse all non-governmental courier deliveries to all House Office Buildings.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE AT THE DR–CAFTA HEARING:

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FORMATTING REQUIREMENTS FOR BOTH HEARINGS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item 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 submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies 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. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

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 THOMAS. The Chair wishes to announce that the Committee witness structure has been available for some time, and it has been brought to the Chair's attention that there are some Members who, notwithstanding prior notification, wish to testify, and the Chair believes that Members should be accommodated. However, the Chair believes that since there was no indication that Members wished to testify, the Chair wishes to provide a reason-

able period of notification to all Members that there will be a Member panel following the already-structured panels coming before the Committee, and that the Chair, along with the Ranking Member and other interested Members, will extend the hearing for any Member who wishes to testify following the currently structured panels. That is, anyone who is pro and anyone who is con, who is a Member, the Chair believes has a right to be heard. We have a structured arrangement and the Chair believes we should go forward with the structured arrangement; and then, with ample notice as to when the structured panels appear to be concluding, we will notify and carry on with a Members' panel. The Chair recognizes the gentleman from New York.

Mr. RANGEL. I want to thank the Chairman for accommodating the wishes of Members of both parties that have not been able to get involved in this bill because it is on a fast track. I wish that we had advanced notice that Members wanted to testify. I don't know whether our staffs invited them to testify. I do thank the Chair of this Committee for extending the courtesy to Members of Congress to be able to be heard on such vital legislation. Thank you.

Chairman THOMAS. I thank the gentleman. The Chair believes that "obligation" is a better word than "courtesy." We want to accommodate all Members. With that, the Chair would like to begin the opening statement and the hearing.

Mr. LEWIS OF GEORGIA. Mr. Chairman, is it ordinary and customary as a rule to recognize Members first, to give them the priorities?

Chairman THOMAS. Ordinarily, when there is a structured panel arrangement, the Members are placed first. The reason the Chair has decided to do it at the end of the panels is that since no Member officially structurally notified us, the Chair wants to make sure that knowing there is a Members' panel, any Member who wishes to testify may do so. That extraordinary structure, I believe, better accommodates all Members, and that is why the Ranking Member and the Chair decided to follow that procedure.

Mr. LEWIS OF GEORGIA. Thank you.

Chairman THOMAS. I thank the gentleman. Seeing no further Member inquiries, that will be the way the Committee proceeds. I would like to say to all of you, good morning. Today's hearing will examine the proposed Free Trade Agreement (FTA) with those countries of Central America and the Dominican Republic. This would immediately liberalize two-way trade. We currently have a one-way trade arrangement. This will liberalize two-way trade. The Chair wishes to thank and acknowledge the countries of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, along with the Dominican Republic, because there was a precondition that they agree as a region before the United States would negotiate with them. I do believe that the Ambassadors from those countries are here, in addition to the Minister and Ambassador from Oman who are currently negotiating a free trade area. We thank you for the final work product and we look forward to dealing with, in a positive way, the country of Oman.

I think it is important to know that in May of 2000, 309 House Members voted to give these same countries we have been men-

tioning unilateral preferential treatment by lowering tariffs on the products they export into the United States without any required reciprocal treatment. Pretty obviously, this amounts to a one-way trade deal benefiting those countries and not the United States. The Dominican Republic-Central American Free Trade Agreement (DR–CAFTA) would turn the relationship, as I said, into a positive two-way street. Specifically, the DR–CAFTA would eliminate tariffs on more than 80 percent of U.S. exports, with most remaining tariffs phased out over 10 years. What this means is that we would then open up markets to U.S. goods and services, so that it would be a level playingfield for the U.S. and Central American workers and farmers. The DR–CAFTA countries, combined, make up the second-largest U.S. market in Latin America. Enhanced trade with these nations, as we will hear in testimony from most of the witnesses—and we will examine in detail their arguments—will create new jobs for Americans and new partnerships in the region. The agreement covers all agricultural and industrial sectors and contains strong protections for U.S. investors.

In addition to the commercial opportunities, DR–CAFTA will help cement many of the recent democratic legal and economic reforms in these countries. The Chair is often amazed at the short memories of many people, and I do believe some testimony will point out that just a few short years ago, the U.S. interest in the region stemmed more in the concern of humanitarian, national security and other arguments, rather than the very positive question we have before us today. It is a little bewildering to the Chair to have previous FTAs supported by a number of people who are now opposing this one, because the concerns over labor protections really would apply, in the Chair's opinion, a double standard. In fact, the labor provisions in this agreement are stronger than in prior agreements, such as the Morocco (P.L. 108–302), the Chile (P.L. 108–77), and the Singapore (P.L. 108–78) agreements. The arguments of an absolutist nature in terms of the unfairness of this agreement are belied by the examination of agreements just in the last few years, let alone those of several years ago. This is one of the strongest FTAs to come before Congress, and I assume that we are going to move fairly quickly to agreement. There has been a major buildup, and the Chair hopes for a positive, informative, and enlightening discussion before the Committee today. The Chair will recognize the gentleman from New York, Mr. Rangel, after which the Chair will recognize the Subcommittee on Trade Chairman, Mr. Shaw, and the Ranking Member, the gentleman from Maryland, Mr. Cardin. Mr. Rangel?

[The opening statement of Chairman Thomas follows:]

Opening Statement of The Honorable Bill Thomas, Chairman, and a Representative in Congress from the State of California

Good morning. During today's hearing, we will examine the proposed Free Trade Agreement with those countries of Central America and the Dominican Republic. This would immediately liberalize two-way trade. We currently have a one-way trade arrangement; this will liberalize two-way trade. The Chair wishes to thank and acknowledge the countries of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, along with the Dominican Republic, because there was precondition that they agree as a region before the U.S. would negotiate with them.

It is important to note that in May of 2000, 309 House Members voted to give these same countries we've been mentioning *unilateral* preferential treatment by

lowering tariffs on the products they export into the United States, without any required reciprocal treatment. Pretty obviously, this amounts to a one-way trade deal benefiting those countries and not the United States. The DR–CAFTA agreement would turn the relationship into a positive two-way street. Specifically, the DR–CAFTA would eliminate tariffs on more than 80 percent of U.S. exports, with most remaining tariffs phased out over 10 years. What this means is, that we would then open markets to U.S. goods and services so that it would be a level playing field for U.S. and Central American workers and farmers.

The DR–CAFTA countries combined make up the 2nd-largest U.S. market in Latin America. Enhanced trade with these nations—as we'll hear in testimony from most of the witness and we will examine in detail their arguments—will create new jobs for Americans and new partnerships in the region. The agreement covers all agricultural and industrial sectors and contains strong protections for U.S. investors. In addition to the commercial opportunities, DR–CAFTA will help cement many of the recent democratic, legal and economic reforms in these countries.

The Chair is often amazed at the short memories of many people. I believe some testimony will point out that just a few short years ago, the U.S. interest in the region stemmed more from concerns of humanitarian, national security and other arguments, rather than the very positive question we have before us today.

It's a little bewildering to the Chair to have previous Free Trade Agreements supported by a number of people who are now opposing this one because the concerns over labor protections really would apply, in the Chair's opinion, a "double standard." In fact, the labor provisions in this agreement are stronger than in prior agreements, such as Morocco, Chile and Singapore. The arguments of an absolutist nature, in terms of the unfairness of this agreement, are belied by the examination of agreements just in the last few years, let alone those of several years ago.

This is one of the strongest Free Trade Agreements to come before Congress, and I assume that we're going to move fairly quickly to agreement. There has been a major build-up and the Chair hopes for a positive, informative and enlightening discussion before the Committee today.

Mr. RANGEL. Thank you, Mr. Chairman. This has to be one of the most awkward presentations that I have made in the 35 years that I have been in the Congress, because the Chair talks about the arguments that have been made, and I have polled the Democrats on this Committee and those that were at the caucus this morning had indicated, like me, no Republican has made any arguments for or against DR–CAFTA. I have spoken with more foreigners and business people about this most important piece of legislation, because I think it is not just important for the countries that are involved, but I think it is important for the United States of America. I really think if we are looking for liberty and freedom, that we have to do it through trade and not at the end of a rifle.

If we are looking for people that are going to reject dictatorships, we have to make certain that they are able to work and eat and have decent wages. All of these things are very, very important to me, and that is why I feel so good that I was a part of the building of the Caribbean Basin agreement, one of the original authors of the African FTA (P.L. 106–200), and it just seems to me that this is the time we should have been working with our friends in the Dominican Republic and in Central America. The embarrassment and awkwardness is that on international affairs, I really had hoped and thought that we would not be acting like Democrats and Republicans, but we would be Americans. How awkward it is for me to share with people of foreign governments the fact that we are not only not working together, we don't even argue together, we don't discuss anything together, and it is embarrassing to me as an American and as a Member of this Congress. For me to say, with all of my years of seniority and as long as I have been on this

Committee and my involvement with trade issues, that not one Republican on this Committee has discussed this, including the Chair and the Chair's staff I might add, is an embarrassing thing for me as a Member of Congress.

I might say to the U.S. Trade Representative (USTR), and I do hope that the new Member, the new Trade Representative that was a Member of this Committee, I have every reason to believe there will be a change of attitude, but I cannot think of anything that your office has done, Mr. Allgeier, to present to our foreign friends the fact that we were looking for a bipartisan agreement; that we cannot take the attitude that if you pick up one or two Democrats, that that is bipartisan. It would seem to me that the USTR represents all of the United States, and we feel very strongly that in the House of Representatives, that is a part of our responsibility. So, Mr. Chairman, I find it awkward to have to say this, but knowing that it cannot be contradicted, we don't have to argue this point publicly, since no one took advantage of the opportunity to discuss or argue it privately. Thank you.

Chairman THOMAS. The gentleman from Florida, the chairman of the Subcommittee on Trade, Mr. Shaw.

Mr. SHAW. Mr. Chairman, the trade agreement before us, DR–CAFTA, provides the United States access to one of the world's fastest growing markets. We will hear today from both sides of this particular agreement, but I firmly believe that DR–CAFTA provides equality in our bilateral trade with our Latin American partners. Some people might not understand that we don't have the luxury of merely maintaining the status quo if we don't pass DR–CAFTA. If we fail to act now, American companies and American workers will be worse off than they are today. The reason is because DR–CAFTA's main industry is textile and apparel production. Without DR–CAFTA, the apparel manufacturing industry in the Latin American region will not buy U.S. inputs like cotton, yarn, fabric, buttons and zippers.

We have heard also from people from our last hearing that we had on China, manufacturers of zippers and other by-products that go into apparel were very much in favor of this agreement. We certainly know that the Chinese won't buy those inputs. The National Association of Manufacturers estimates that we sell some $4 billion worth of U.S.-made inputs into the region and that we that will be jeopardized if we don't pass DR–CAFTA. However, if we do pass the agreement, then those U.S. input industries have a free market in which to sell. At the same time, we expect to generate an additional $1 billion in increased exports if we pass DR–CAFTA. So, we don't have a choice to merely sit back and not take action on this agreement. If we do, the world will leave us behind. I might say too that if we do, we will be turning our backs on some young democracies who are struggling in order to align themselves with the free market system and democracy in our own hemisphere.

Nor is the limited access for sugar given to DR–CAFTA a reason to oppose this agreement. I say this as a Member of the Florida congressional delegation, one of the country's largest producers of sugar. The increase in quota will account for just 1.1 percent of U.S. sugar consumption. The agreement also includes a compensation mechanism allowing the U.S. Government to pay to prevent

these sugar imports. Mr. Chairman, finally, DR–CAFTA is a tremendous opportunity for my State of Florida. In 2004, Florida exports to the region totaled $3.2 billion, making the DR–CAFTA region Florida's largest export market.

Mr. Chairman, just briefly in response to Mr. Rangel's comments, I would not only welcome but would enjoy the opportunity to talk to Mr. Rangel about any type of agreements that come under the jurisdiction of my Subcommittee, and I have spoken, although very briefly, with the Democrat Ranking Member with regard to DR–CAFTA, and I believe, too, that communication is a two-way street. Anyone on the minority side that wants to talk to someone on the majority side about these agreements not only should be listened to, but they also have an obligation to come forward and ask for such a meeting or agreement, whether it be public or private. So, Charlie Rangel, my friend, I will gladly discuss anything with you, at any time, and any place. Thank you.

Mr. RANGEL. I thank you for that.

Chairman THOMAS. The gentleman from Maryland.

Mr. CARDIN. Thank you, Mr. Chairman. Ambassador Allgeier, it is a pleasure to have you before our hearing. Mr. Chairman, I thank you for holding this hearing. As the Ambassador knows, I have concern about the overall direction of the U.S. trade policy. Every week we seem to get another fact that shows that we are moving in the wrong direction on international trade. Last year's trade imbalance was $617 billion, a record amount. We have a record imbalance with China at $162 billion. We are now negative on advanced technology products, and we have been since 2002. The United States is on its way to becoming a net importer of services by the year 2010. According to the U.S. Department of Agriculture (USDA), the U.S. trade surplus for farm products will disappear in 2005, for the first time in over 50 years.

Mr. Chairman, this direction is just not sustainable. Our highest priority should be to enforce our trade rights and expand our opportunities under the World Trade Organization (WTO). Yet this Administration appears to be timid in enforcing our trade rights and is well behind the schedule set out for the Doha Development Round. I must say that I was mystified by the statement of the Speaker that he would bring up a China trade bill in order to pass DR–CAFTA. I don't understand why we should hold these issues hostage to one another, why we just don't consider them on their own merits, and why our Republican friends are finally talking about serious trade policy problems with China just because they don't have the votes on DR–CAFTA.

Turning to DR–CAFTA for one moment, I believe we should have an FTA with Central America. I think it is in the interests of the United States and in the interests of our Central American friends. The problem is we should have the right agreement. Unfortunately, I think this is a missed opportunity. The process that was used, as pointed out by Mr. Rangel, was not one that had the consultation required by all the Members of Congress, but particularly those on both sides of the aisle, that support expanding trade opportunities for American producers, farmers, and manufacturers. This agreement was completed without the benefit of provisions that would

ensure that these countries observe the most basic standards of fairness and decency to working people.

As to labor standards, I don't understand why we move backward from the current U.S. law. Under the enhanced Caribbean Basin Initiative (CBI) program in effect for the last 5 years, the CBI countries are required to obtain the five basic standards of decency to working people. Under the basic CBI program for 15 years before that, nine countries were required to make progress toward those standards. In other words, we already have requirements from the Central American countries to make progress toward moving toward the internationally recognized labor standards and a mechanism to help them in that regard. The DR–CAFTA agreement would repeal that. It would only require the countries to enforce their current laws, and then the enforcement mechanism is not very strong, providing for monetary penalties primarily paid to the countries themselves rather than having enforcement, so the countries are able to stand up to the strong special interest forces in their own country that prevent the movement toward basic labor rights. So, I see this agreement as a real missed opportunity, a missed opportunity to build the kind of bipartisan support that the Australian (P.L. 108–286) and Chile and Singapore and Morocco agreements enjoyed, a missed opportunity to raise the bar in a reasonable way on issues important to U.S. workers, manufacturers, and farmers, a missed opportunity to continue to rebuild bipartisanship on U.S. trade policy.

Mr. Chairman, I hold out one hope, and that is implementing legislation has yet to be submitted to Congress, so therefore the clock has not started to run. I offer hope that we will be able to work and build the bipartisan support for expanding international trade which has been the hallmark of this Congress. I look forward to working with my Republican friends and working with my friends on both sides of the aisle that are interested in expanding trade opportunities to figure out a way that we can have a DR–CAFTA agreement that represents the best traditions of this country, that will be in the interests of the United States and the Central American countries and the Dominican Republic, and one that can enjoy broad bipartisan support. I thank you.

Chairman THOMAS. I thank the gentleman. One of the responsibilities of the Chairman of this Committee is to make sure that the record created by the Committee is as accurate as we can make it. There have been statements made which leave the impression that there have been no opportunities to have input into a product, as the gentleman from Maryland correctly stated, that is not yet before us, and the Chair wants to make sure that the record is clear. On October 1, 2002, under Trade Promotion Authority (TPA) (P.L. 107–210), which creates the greatest oversight role for Congress in the history of trade, there was formal notification by the President of the intent to negotiate this agreement. On January 7, 2003, there was the first organizational meeting, which would have been an opportunity to discuss any issue on the subject of trade.

I might indicate that the membership of the Congressional Oversight Group (COG) consists, as its core, the two key Committees: the Senate Committee on Finance and the House Committee on Ways and Means. The Chairman and the Ranking Member, indeed

three Republicans and two Democrats from this Committee, are permanent, full Members of the COG.

On April 11 we met, dealing with Chile, Singapore, and a general update, which would have been an opportunity to have input on this proposal. On July 24, 2003, the House COG sub-group and full Senate COG Committee discussed Bahrain and adding the Dominican Republic to the CAFTA (the Central American Free Trade Agreement). On November 6, 2003, the COG sub-group—and Members of the Committee on Ways and Means are Members of the core COG, so that any meeting of the COG consists of the Committee on Ways and Means, the Chairman, the Ranking Member, three Republicans and two Democrats. The November 6, 2003 discussion covered not only the Andean Nation question, but also a Miami ministerial meeting of the Free Trade Area of the Americas (FTAA) and a discussion of other trade agreements in the region. On May 6, 2004, there was a meeting of the sub-group, once again the core group—meaning the Members of this Committee—with USTR on three trade arrangements which had been concluded but not yet signed: Australia, Morocco and the Central American countries, plus the Dominican Republic. On September 8, 2004, there was another meeting of the sub-group of the House and the Senate COG with the Trade Representative, Mr. Zoellick. On February 2, 2005, there was an organizational meeting for this Congress with a general overview of trade subjects.

For the gentleman from New York to say that he has had no opportunity for input into this agreement is to indicate and enforce the statement the Chair made at the beginning. This appears to be an attempt to have politics triumph over policy, but when absolutely false statements are made about the inability to have any opportunity for input, the Chair feels it is absolutely essential that the record be accurate. That record consists of meeting after meeting after meeting, from the initial notification on October 1, 2002, until the hearing that we are holding today. If anyone chose not to participate or not to engage, that is their choice. It wasn't by exclusion, it was by choice. The Chair now recognizes the Honorable Peter Allgeier.

Mr. RANGEL. I really don't think so, and if we were in the House I would take down your words for attributing a false statement to me as a Member of this Committee.

Chairman THOMAS. The gentleman from New York is recognized.

Mr. RANGEL. Well, thank you so much. There is no indication in any record that the objections we have—we Democrats, and I as the Ranking Member, believe that this is a good agreement, and if we had been consulted and the issues that we had problems with were worked out, we would probably have almost unanimously voted for this. The fact that I am a Member of the House and have an opportunity to see you or have an opportunity to contact the USTR, has nothing to do as to the issue of having the International Labor Organization (ILO) standards included in these agreements. You know that is true and I know that is true. Bringing up dates saying we were alive and well in the Congress doesn't mean that I had an opportunity or any Member of this Committee has had an opportunity to try to work out the agreements, so, when it is pre-

sented to us we could support it. So, I would say that you have distorted the truth yourself, and we want to have a debate on this which I don't think we should have, it just shows the foreigners and Americans how far we are apart in trying to become a bipartisan unit. I don't think you add at all toward a climate of being bipartisan; your words and your tone dictate that.

Chairman THOMAS. The Chair will recognize the first panel, but will conclude this discussion with the fact that the dates are history. This is a hearing on a proposal not yet before the Committee. The Committee plans to have a hearing in which the Administration, under TPA, will come before this Congress, and this Committee will have ample opportunity to examine the specifics negotiated by the Administration and have their input on desired changes. That is the structure that was created under TPA.

So, for prospective purposes, the record needs to show the gentleman from New York and any other Member of this Committee will have a total, absolute opportunity to convey, based upon the presentation of the Administration's specific language, their agreement or disagreement with the language, offer amendments in a so-called informal markup in front of this Committee, and the Committee will work its will on the specific language presented by the Administration. Between now and the time of that markup, I invite any Member of the Committee to continue to discuss with the Trade Representative what the language will look like that will come before this Committee, for the Committee to work its will over that language, which the Administration will then present formally at a future date. The entire discussion the Chair just conducted is based upon prospective opportunities for Members to engage in this process. The Chair looks forward to Members engaging in the process in the near future. So, the next time we meet to comment on this work product, no one can create the appearance or the illusion that not only have they not had an opportunity to participate, but they will have a full opportunity to present amendments to the agreement, offer them for a vote, and the Committee will then work its will. The Chair wishes to recognize the Honorable Peter Allgeier, who is, we hope, temporarily continuing to be the acting USTR. I know the gentleman from Maryland is now leaving to go over to the Senate to observe and hopefully participate in the hearing in the Senate under the Senate's constitutional powers to assist the creation of the leadership in the process.

Chairman THOMAS. So, Mr. Allgeier, your written testimony will be made a part of the record. You can address this Committee in any way you see fit.

STATEMENT OF THE HONORABLE PETER F. ALLGEIER, ACTING U.S. TRADE REPRESENTATIVE

Ambassador ALLGEIER. Thank you, Mr. Chairman. I would like to thank you and Congressman Rangel and all the Members of this Committee for the opportunity today to present to you the FTA between the United States and the CAFTA countries and the Dominican Republic. We greatly appreciate the guidance that the Committee has provided throughout this negotiating process, and in particular we appreciate the leadership of you, Mr. Chairman, and Congressman Rangel. The DR–CAFTA marks the successful cul-

mination of a decades-long American policy, pursued by both Republican and Democrat Administrations, of promoting economic reform and democracy in Central America. This DR–CAFTA that we are presenting today, offers us the best interest to strengthen the economic ties that we already have with these countries but also, most importantly, to reinforce their progress toward economic, political and social reform.

The DR–CAFTA is not an act of unilateral altruism by the United States. We have much to gain by this agreement. Collectively, as you pointed out, Mr. Chairman, Central America and the Dominican Republic make up the second largest U.S. export market in Latin America. It is larger than our exports to Brazil, but, interestingly, on a global scale, the exports that we have to these countries exceeds the total exports that we have to Russia, India, and Indonesia combined. The American Farm Bureau Federation (AFBF) has estimated that U.S. farm exports under DR–CAFTA would increase by $1.5 billion a year. That is an effective doubling of the agricultural exports that we have at present, $1.8 billion. The interesting thing is that the agricultural exports, our agricultural exports, would grow at an 8 to 1 ratio compared to our agricultural imports from these countries. The U.S. Chamber of Commerce also has done an analysis of the DR–CAFTA and it estimates for all goods, our exports to that region would increase by $3 billion a year.

We currently face an unlevel playingfield. We do have free trade with Central America and the Dominican Republic in one direction. Nearly 80 percent of the imports into the United States from these countries enter the United States duty free. About 40 percent of our exports to those countries enter those countries duty free. In agriculture, it is even more dramatic. Approximately 99 percent of the agricultural products that we import from these countries enter our markets duty free. Now, more than half of current U.S. farm exports to Central America will become duty free on the first day of this agreement. That includes products such as high-quality cuts of beef, cotton, wheat, key fruits and vegetables, soybeans, and processed food products. There will be additional market opening for pork, dry beans, vegetable oil, poultry, rice, corn, and dairy products. That is the reason that every major agricultural organization, with one exception—that is more than 60 organizations—have already indicated their strong support for the DR–CAFTA. In services we also will be getting important new opportunities in this region covering the whole spectrum of services: telecommunications, banking, insurance, audio-visual services, transportation, engineering, express delivery, computer and related services, and on and on. This also is a trade agreement for the digital age. It provides strong protection for our intellectual property in the copyright areas of software, music, text and videos, but also in patents, trademarks, and trade secrets. The agreement provides strong anticorruption procedures and provisions in government contracting, government procurement, and in other areas of trade with these countries.

I would like to focus on three particular subjects: textiles, labor and the environment. Textiles and apparel is an important component of our trade with this region. It is our second-largest market

for U.S. fabric and yarns. The DR–CAFTA represents a critical element in our domestic industries' ability to compete with Asia. Without the tariff preferences and rules of origin of DR–CAFTA, apparel companies may well lose production to China, where they will be much more likely to use inputs from outside the United States. Just to put an order of magnitude on that, when we purchase apparel from China, on average 0.1 percent of that apparel, the value of that apparel, involves inputs from the United States. When we import, on the other hand, apparel from Central America, the Dominican Republic, 71 percent of the content of that is from the United States. The DR–CAFTA is essential for us to keep our customers for U.S. yarn and fabric and to maintain U.S. jobs in this sector.

With respect to labor, obviously there is considerable interest in this Committee with regard to worker rights and labor standards in Central America. We share that goal of seeing the continuation of real, meaningful improvements in worker rights in the region. In DR–CAFTA, within the agreement itself, we focus our attention and our efforts on the chief problem, which is the need to improve enforcement of domestic labor laws in these countries. The Central American countries, and later the Dominican Republic, requested a study by the ILO of the labor situation in their countries. The ILO study demonstrated that the labor laws on the books in Central America and the Dominican Republic are in line with the ILO core labor standards. However, let us be clear: The enforcement of labor laws in the region needs more attention and resources. The Central Americans and the Dominicans themselves acknowledge this. They, with the assistance of the Inter-American Development Bank, produced this white paper on the labor situation in their countries. It is a very candid, thorough, analysis of the labor situation in these countries. What it points out is that the most important issue to be addressed is the one of enforcement.

Within the DR–CAFTA we have a three-pronged strategy for dealing with this issue. First, the agreement requires that countries not fail to effectively enforce their labor laws. As the New York Times said in an editorial on November 24 of last year, "CAFTA actually goes further than the pact with Jordan, since penalty fines collected for not enforcing labor laws would be sent back to the offending country to fix the offense." Let me add, the use of those fines is subject to the agreement of the United States. The second part of our strategy is that the countries have already taken numerous concrete steps to improve labor law enforcement, even during the negotiations increasing labor inspectors, appointing special labor prosecutors, and making a number of other changes in their practices. Finally, we see the need to provide assistance to these countries to build the capacity to enforce their laws more effectively and to strengthen their enforcement infrastructure and institutions. The Department of Labor has committed $7.7 million to a multiyear effort. The Congress has appropriated $20 million for us to support capacity building in these countries in labor and the environment. The United States Agency for International Development (USAID) has obligated $2 million to launch a project on continuous improvement in the Central Amer-

ican workplace. There are other programs conducted by other agencies of the U.S. government and by the ILO.

Quickly on the environment, environment also breaks new ground. We have included several innovations in this agreement. Working with Senator Baucus, for example, we have developed a new public submissions mechanism that will allow the interested public in these countries, including Non-Governmental Organizations (NGO), to put forward, to challenge, a party's failure to enforce their environmental laws. This innovation has been recognized by environmentalists in Central America. Ten Central American environmental NGOs sent a letter to former Trade Representative Zoellick indicating their strong support for this agreement and particularly this public submission process that I mentioned. As with labor, there is a strong component of capacity building and also a strong component of cooperation in the form of an environmental cooperation agreement.

Mr. Chairman, the last 20 years has been a very difficult road to democracy for these countries, but today we have neighbors in Central America and the Dominican Republic who want to trade goods, not guns, across their border; who want to replace chaos with commerce. They want to use the DR–CAFTA as an important tool of reform; to help deepen and strengthen their democracies. Working closely with the Congress, we have negotiated a landmark FTA. We believe that the DR–CAFTA meets the objectives set by Congress in the Trade Act. It is strongly in the economic and national interests of the United States. We hope that the Congress will agree that America should not turn its back on these struggling democracies that want a closer economic relationship with us, that will benefit our citizens and their citizens. The DR–CAFTA makes imminent sense for America, for Central America, and for the Dominican Republic. Thank you very much, Mr. Chairman.

[The prepared statement of Ambassador Allgeier follows:]

Statement of The Honorable Peter F. Allgeier, Acting U.S. Trade Representative, Office of the U.S. Trade Representative

INTRODUCTION

Chairman Thomas, Congressman Rangel, and Members of the Committee, I am pleased to have the opportunity to testify before you today on the free trade agreement with Central America and the Dominican Republic, or CAFTA. As I have stated before in this room on several occasions, the Office of the U.S. Trade Representative greatly appreciates the hard work of this Committee, and I commend in particular Chairman Thomas and Congressman Rangel for their leadership on trade matters.

I would like to begin today with a bit of historical context. Twenty years ago, Congress held several hearings on the topic of Central America. But the Administration witnesses were not from USTR, and the topics had little to do with economics. In February 1985, the House Foreign Affairs Committee held a hearing about developments in Guatemala, where an undemocratic military government ruled and civil war raged. The following month, the House heard testimony from Pentagon and State Department officials about U.S. military assistance to El Salvador, which was then fighting an armed Communist insurgency. In 1985, to the extent that Congress or the American people paid attention to Central America, it was largely because of violence, dictatorships, and civil war.

It is an extraordinary sign of the progress made in Central America that we meet here today—twenty years later—to discuss a free trade agreement—an economic partnership with these countries. Today, the Dominican Republic and the nations of Central America are all democracies. Elected leaders are embracing freedom and economic reform, fighting corruption, strengthening the rule of law and battling crime, and supporting America in the war on terrorism. And they want to help ce-

ment their courageous moves toward democracy and free markets by signing a free trade agreement with their neighbor to the North, the United States.

CAFTA marks the successful culmination of a decades-long American policy of promoting economic reform and democracy in Central America. President Bush strongly believes that America should stand with those in our Hemisphere—and the world—who stand for economic freedom. CAFTA offers us the best opportunity to strengthen the economic ties we already have with these nations, and to reinforce their progress toward economic, political and social reform.

But CAFTA is not an act of unilateral altruism on the part of the United States. We have much to gain from this trade agreement: access to a large and growing market of 45 million consumers close to our border, an opportunity to level the playing field for American workers and farmers who today must cope with one-way free trade from Central America and the Dominican Republic without a reciprocal chance to compete.

The agreement that we are here to consider today is the result of over three years of hard work and close cooperation between the Administration and the Congress, which began when President Bush announced his intent to negotiate a free trade agreement with Central America in January 2002. Using guidance from Trade Promotion Authority, USTR formally consulted closely with committees of jurisdiction before and after every round of negotiations, shared proposed text of the agreement with staff and Members prior to presenting texts in the negotiations. Former USTR Robert Zoellick, myself, and our chief negotiators consulted with the Congressional Oversight Group and with Members on an individual basis. We took all views into consideration during each step of the negotiations, and greatly value the input provided by the Congress for this agreement. Our dialog with the Congress continues today, and I welcome this opportunity to talk with all Members about CAFTA.

In concluding this FTA, our objective, which we feel confident that we have met, was to follow the negotiating objectives laid out by Congress in the bipartisan Trade Act of 2002 to strike a comprehensive and commercially meaningful agreement that will benefit U.S. workers, businesses, farmers, investors and consumers. At the same time, these complex negotiations took careful consideration of import sensitivities of the United States, many of which were communicated to us by Members of Congress. We worked hard to take into account all concerns raised with us by Members of Congress, and believe that we struck careful balances to reflect these interests.

So today I would like to discuss the reasons why we believe CAFTA is strongly in the national interest of the United States, and why we want to work with Congress to pass this trade agreement into law.

Small Countries, Big Markets

Central America and the Dominican Republic are very large export markets for the United States. Collectively, these countries make up the second largest U.S. export market in Latin America, with more than $15.7 billion in U.S. exports in 2004. For some key states, for example Florida and North Carolina, the region is a top-three export destination for Made-in-USA products. Central America and the Dominican Republic form a larger export market than Brazil, a larger export market than Australia, and a larger export market than Russia, India and Indonesia combined.

While the Central America countries and the Dominican Republic are physically small, they are clearly large markets for U.S. products and services. The American Farm Bureau Federation estimates CAFTA could expand U.S. farm exports by $1.5 billion a year, which would represent nearly a doubling of our current agricultural exports to the region. Manufacturers would also benefit, especially in sectors such as information technology products, agricultural and construction equipment, paper products, pharmaceuticals, and medical and scientific equipment. The U.S. Chamber of Commerce has done a number of studies of the potential economic impact of CAFTA in just eight key U.S. states, and estimates that U.S. sales to the region would expand by more than $3 billion in the first year of CAFTA. From soft drinks to software, from pork to paper products, the region is a voracious consumer of U.S. products and services. In some areas, textile yarn and fabric for example, the region is second only to Mexico as a worldwide consumer of U.S. exports.

Leveling the Playing Field: New Opportunities for U.S. Workers, Farmers

But while these Central American countries and the Dominican Republic buy many goods and services from the United States, we currently face an unlevel playing field. Most Americans probably do not realize that we already have free trade with Central America and the Dominican Republic, but it is one-way free trade. Under unilateral preference programs begun by President Reagan and expanded

under President Clinton with broad bipartisan support, nearly 80 percent of imports from Central America and the Dominican Republic *already* enter the United States duty-free. In agriculture, that percentage is even higher: we estimate that 99% of Central America's and the Dominican Republic's farm exports to the United States are duty-free. For the countries of the region, CAFTA will lock in those benefits and expand on them, helping to promote U.S. investment in the region.

But more importantly, CAFTA will level the playing field for American workers and farmers. It will further open regional markets to *our* products and services, which currently face very high average tariffs or non-tariff barriers. For example, today the average Central American applied tariff on motor vehicles is 11.1%, while U.S. applied tariffs on imports from Central America are zero. The regional tariff on steel averages 16.3%, but the U.S. tariff is zero. The regional tariff on chemicals is 12.8%, but the U.S. tariff is zero. The same situation exists in agriculture: Central American and Dominican tariffs on U.S. vegetables faced a tariff ranging from 15 % to 47%; ours are zero. U.S. fruits and nuts faced a tariff as high as 25% while products in this same sector enter our market duty free. The chief effect of CAFTA is not to further open our market, but rather to tear down barriers to our products and services in Central America and the Dominican Republic.

CAFTA will create new opportunities for U.S. workers and manufacturers. More than 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately, with remaining tariffs phased out over 10 years.

The agreement will also expand markets for U.S. farmers and ranchers. More than half of current U.S. farm exports to Central America will become duty-free immediately, including high quality cuts of beef, cotton, wheat, soybeans, key fruits and vegetables, and processed food products among others. Tariffs on most remaining U.S. farm products will be phased out within 15 years. U.S. farm products that will benefit from improved market access include pork, dry beans, vegetable oil, poultry, rice, corn, and dairy products. It is significant that every major U.S. farm commodity group but one has stated its strong support for CAFTA.

In the important area of services, the Dominican Republic and the Central American countries will accord substantial market access across their entire services regime, offering new access in sectors such as telecommunications, express delivery, computer and related services, tourism, energy, transport, construction and engineering, financial services, insurance, audio/visual and entertainment, professional, environmental, and other sectors. The Dominican Republic and the Central Americancountries made significant commitments regarding their "dealer protection" regimes. These commitments will help ensure that U.S. firms are not locked into exclusive or uneconomical distributor arrangements.

This is also a trade agreement for the digital age, providing state-of-the-art protections and non-discriminatory treatment for digital products such as U.S. software, music, text, and videos. Protections for U.S. patents, trademarks and trade secrets are strengthened, and several are Chile-plus provisions, such as strong patent protection by 2007 for certain modified plant varieties.

And this agreement breaks new ground, providing strong anti-corruption measures in government contracting and other matters affecting international trade or investment. U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of Central American and Dominican Republic government entities. The agreement's dispute settlement mechanisms call for open public hearings, public access to documents, and the opportunity for third parties to submit views, with limited exceptions to protect confidential information. Transparency in customs operations will aid express delivery shipments and will require more open and public processes for customs rulings and administration.

Textiles

Textiles and apparel is an important component of our trade with the region and deserves special mention. The Administration strongly believes that CAFTA is not a threat to U.S. textile producers but in fact represents a critical element in our domestic industry's ability to compete with Asia.

Today, garment factories in Central America and the Dominican Republic are very large consumers of U.S.-made textile fabric and yarn. The extensive use of U.S. inputs in the regional apparel business means that Central America and the Dominican Republic actually constitute the second-largest world export market for U.S. textile yarn and fabric, behind only Mexico. For states like North Carolina, exports of textile fabric and yarn to garment makers in the region make a small country like Honduras that state's number one export market in the world. CAFTA will help keep it that way, by delivering tariff preference benefits for clothing made in the region that uses U.S. yarn and fabric.

Without CAFTA, our domestic yarn and textile industry would likely lose one of its biggest customers. Worldwide quotas on textiles and apparel expired at the end of last year, meaning that the hemispheric industry faces a new collective threat from Asia. Without the tariff preference benefits of CAFTA, apparel companies may well move production to China. Indeed, the uncertainty to date about CAFTA has already caused a number of apparel firms to shut down operations in Central America and move them to China; as many as 10,000 workers may already have already lost their jobs. In China, there are no special trade incentives for apparel producers to buy U.S. yarn and fabric. In fact, they are much more likely to buy inputs from Asian suppliers, rather than producers here Z in the United States. That's why a T-shirt that is Made in Honduras is likely to contain well over 50% U.S. content, while a T-shirt Made in China is likely to contain very little U.S. content at all.

To keep our customers for U.S. yarn and fabric, we need to keep them close to home. And to keep them close to home, we need to pass CAFTA soon.

Labor

I know that there is considerable interest on the Committee with regard to worker rights and labor standards in Central America and the Dominican Republic. We share that interest, and I believe we share the goal of seeing the continuation of real, meaningful improvements in worker rights in the region. I believe we should focus our strategy, and our attention and efforts, on the chief problem in these countries: the need to improve enforcement of domestic labor laws.

The Central American countries, and later the Dominican Republic, requested a study by the International Labor Organization (ILO) of the labor situation in their countries. The ILO study demonstrated that labor laws on the books in Central America and the Dominican Republic, are generally in line with ILO core labor standards. The Administration's own, more detailed analysis of the labor rights situation in these six countries confirms that their labor laws are generally ILO-consistent. Indeed, labor protections on the books in the region are broadly similar to labor laws in Morocco, and in some areas (e.g., child labor) are stronger. Congress gave broad bipartisan support to an FTA with Morocco in 2004.

But let's be clear: the *enforcement* of labor laws in the region needs more attention and resources. Our analysis shows this, and the Central Americans and Dominicans themselves acknowledge this, as the White Paper recently released by regional Labor and Trade Ministers clearly demonstrates. CAFTA is specifically designed to respond to the problem at hand by improving enforcement and expanding resources with a comprehensive, three-part strategy:

- First, the agreement requires that countries not fail to effectively enforce their labor laws. If they consistently fail to enforce those laws in a manner that affects our trade, then they face the prospect of monetary penalties that will be directed to solve the problem, or potentially face the loss of preferential trade benefits. As the New York Times said in an editorial on November 24, 2004, "Cafta actually goes further than the pact with Jordan, since penalty fines collected for not enforcing labor laws would be sent back to the offending country to fix the offense." Exactly right.
- Second, it's important to note that countries in the region have already taken numerous, concrete steps to improve labor law enforcement, including hiring more labor inspectors, appointing special labor prosecutors, prosecuting perpetrators of violence against trade unionists, and cutting the backlog of cases in their labor courts. There is much more to do, however. So we were pleased that Labor and Trade Ministers recently announced a series of additional and specific recommendations to further improve labor law enforcement.
- Finally, we need to provide assistance to build the capacity of these countries to enforce their laws more effectively and to strengthen their enforcement institutions and infrastructure. We're pleased that the Department of Labor committed $7.7 million to a multi-year technical assistance effort. Congress has now appropriated $20 million for FY05 for "labor cooperation, capacity building on fundamental labor rights and the elimination of child labor, and improvement in labor administration", as well as for important environmental cooperation activities in this region. The Administration intends to work with the Congress and with the CAFTA countries to target these funds toward the areas of greatest need, and we hope that the funds provided for FY05 are only a first step in an ongoing commitment by the Congress to fund labor capacity-building in this region.

Our comprehensive strategy does not attempt to minimize the challenges we faced: We negotiated a fully TPA-consistent labor chapter, we worked with the Dominican Republic and the Central American countries to make real worker rights

progress during the negotiations, and there is a strategy for long-term capacity building. This concrete, real-world effort is directed at where the problem lies: problems with the enforcement of existing laws in Central America and the Dominican Republic. By contrast, a strategy of defeating CAFTA would preserve the status quo, and very likely set back progress to date. Defeating CAFTA will do nothing to improve working conditions for a single worker in Central America or the Dominican Republic, and in fact will have the opposite effect, as tens of thousands of Central Americans and Dominicans stand to lose their jobs to China if the United States turns its back on CAFTA. We believe that one of the best ways to improve working conditions in Central America and the Dominican Republic is to have strong economic growth, combined with a comprehensive and targeted strategy to build the capacity of these countries to enforce their labor laws.

Environment

We have also broken new ground on the environment side. I believe that the CAFTA environmental provisions, and the associated Environmental Cooperation Agreement, are the most forward-leaning trade and environment package ever. We have worked closely with Congress in developing our approach and developing many of its unique features.

The CAFTA countries have come a long way in the last decade in putting in place good environmental laws as well as the beginning of a complete environmental legal regime, but enforcement in many cases remains a significant challenge. There is also the need for greater transparency and involvement of civil society in environmental decision-making. To address these concerns, in addition to continuing existing Administration efforts to help the CAFTA countries further develop their legal regimes, we have included several innovations in the environment package:

- First, we have developed a new public submissions mechanism that will allow the interested public, including NGOs, an opportunity to challenge a Party's failure to enforce its environmental laws and to obtain an independent review of their submissions. CAFTA is the first trade agreement ever to include this kind of mechanism in its core provisions, and it will give civil society in the region a new voice in working to improve environmental enforcement in the region. Just a few weeks ago, in a ceremony taking place at the Organization of American States, we and our Central American and Dominican Republic counterparts signed a landmark agreement that designates a new environmental unit within SIECA—the Organization for Central American Economic Integration—as the secretariat to implement these provisions.
- Second, the parallel environmental cooperation agreement (also signed at the OAS ceremony) builds on previous capacity-building efforts in the region, but breaks new ground in several ways. For the first time ever, the agreement provides for the establishment of short-, medium- and long-term benchmarks for measuring progress in meeting environmental goals. The agreement also provides for independent monitoring by outside organizations of success in meeting these benchmarks. Initial priority areas for cooperation include reinforcing capacity to implement and enforce environmental laws, including habitat conservation, trade in endangered species and treatment of hazardous wastes.
- Finally, we are taking steps to ensure that capacity building efforts are adequately funded. The Administration has initiated a Deputies process to oversee environmental cooperation efforts linked with all the FTAs and to organize an inter-agency budget process to promote coordination across interested federal agencies. The Administration also is considering how to allocate the $20 million in FY05 funding between labor and environment activities.

The response in the region is already gratifying. Last month ten Central American NGOs sent a letter to former U.S. Trade Representative Zoellick and the trade ministers of our Central American and Dominican Republic partners, expressing their support for the CAFTA and urging its passage. These groups praised the CAFTA environmental package and the opportunities it provides for them to have a new voice in pressing for environmental progress in the region. The governments are also doing their part to prepare the way for CAFTA's implementation. With our participation, they have held numerous public outreach sessions in the region, with more to follow. And just to take some of the most recent examples of concrete action: Nicaragua has created a new office on trade and environment within its environment ministry as the result of the CAFTA, while El Salvador has established a new advisory committee on trade and environment issues, with NGOs on the committee, very much like our own Trade and Environment Policy Advisory Committee (TEPAC). In fact, the Environment Chapter requires all of the CAFTA–DR countries to establish such advisory committees.

Thus, we are poised to make a real difference in strengthening civil society and environmental protection in Central America and the Dominican Republic. We should not let this historic opportunity pass.

Sugar: Handled with Care

We are aware that some Members of Congress have expressed concerns with U.S. sectors that are sensitive to import competition, such as sugar. If I had to describe in a phrase how we handled those issues in the agreement, it would be, "handled with care."

On sugar, it is important to remember that there will be *no change* in the above-quota U.S. duty on sugar. This was an important accomplishment that recognizes the sensitivity of this important sector of the U.S. farm economy. CAFTA will *not* have a destabilizing effect on the U.S. sugar program, because even with a modest increase under CAFTA, U.S. imports will still fall comfortably below levels set for sugar imports in the Farm Bill.

In other agreements, we have also been sensitive to this issue. In our FTA with Australia, sugar was excluded entirely. In our agreements with Chile and Morocco, we have provisions that effectively will result in no change in the levels of sugar imports from those nations.

For Central America and the Dominican Republic we agreed to a very small and very limited expansion of the quota for sugar imports from these countries.

The total increased quota amount is equivalent to only about one day's worth of U.S. sugar production. We produce more than 7 million metric tons of sugar in the United States annually. The increased amounts under CAFTA are only a little over 100,000 metric tons. Even after 15 years, increased sugar imports from Central America and the Dominican Republic will amount to only about 1.7% of U.S. consumption.

In addition, the Agreement includes a mechanism that allows the United States, at our option, to provide alternative compensation to CAFTA country exporters in place of imports of sugar.

To put sugar imports under CAFTA into perspective, the increased imports in the first year under CAFTA amount to about *a teaspoon and half per week* per American. That compares with average consumption of 10–20 teaspoons of added sugar *per day* for most Americans. The amount of sugar allowed into the United States under CAFTA is minuscule. Claims that the CAFTA will harm the U.S. sugar industry are simply wrong.

A Unique Chance to Strengthen Democracy

Mr. Chairman, the last twenty years has been a sometimes difficult road to democracy in El Salvador, Guatemala, Nicaragua, and other countries in the region. But today we have neighbors in Central America and the Dominican Republic who want to trade goods, not guns, across their borders. They want to replace chaos with commerce, and to use CAFTA as an important tool of reform that will help deepen and strengthen democracy.

Working closely with the Congress, we have negotiated a landmark free trade agreement that will open these large and growing markets to our goods and services. CAFTA will level the playing field, helping our workers and farmers sell to countries that already enjoy virtually unlimited access to the United States market. The agreement will help the U.S. textile industry unite with some of its largest world customers to better compete against imports from China and other Asian competitors. It contains a focused, results-oriented strategy that will—when combined with a strong Congressional commitment to capacity-building—produce real improvements in working conditions and environmental protection in the region. And it handles sensitive commodities with great care.

We believe CAFTA meets the objectives set by Congress in the Trade Act. It is strongly in the economic and national interests of the United States. We hope the Congress will agree that America should not turn its back on struggling democracies that want a closer economic relationship that will benefit workers in all our countries. CAFTA makes eminent sense for America, and for Central America and the Dominican Republic.

Thank you.

Chairman THOMAS. Thank you, Mr. Ambassador. The Chair's time will be utilized by the gentleman from Florida, the chairman of the Subcommittee on Trade.

Mr. SHAW. Thank you, Mr. Chairman. I would like to go back and just review the latter part of your testimony with regard to the environment provisions and with regard also to the labor provisions. As I understand your testimony, you said that these and the requirement for the enforcement of these provisions is the strongest that we have had in any other FTAs. Is that a correct statement?

Ambassador ALLGEIER. That is an accurate statement.

Mr. SHAW. So, if someone had voted for the prior agreements, it wouldn't make any logical sense for them to vote against this agreement on that basis; is that correct?

Ambassador ALLGEIER. It would be very mystifying if that were to happen.

Mr. SHAW. One other area that I want to get into with you is with regard to the sugar industry and the lobbying that they are waging against this particular bill. They have been picked out of this agreement, I believe, for special treatment. Is there any other commodity that is receiving special treatment under this agreement?

Ambassador ALLGEIER. There is no commodity in this agreement, or, for that matter, any other FTA that we have negotiated that has the treatment that sugar has in this agreement.

Mr. SHAW. Would you outline that briefly to us, please, sir?

Ambassador ALLGEIER. Yes, I would be happy to. First of all, there is a very small amount of sugar that would be permitted to enter the United States under this agreement. It is less than 110,000 metric tons. Just to put that in perspective, that would be equivalent to 1½ teaspoons a week for each American. We Americans have quite a sweet tooth. We tend to consume between 70 and 140 teaspoons a week of additional sugar.

Mr. SHAW. If this package is a teaspoon, and I can tell you I believe it is, it would be 1½ packets of sugar per week we are talking about.

Ambassador ALLGEIER. Yes.

Mr. SHAW. Proceed. I am sorry.

Ambassador ALLGEIER. That is first. It is a very small amount. I have a chart here that shows how much additional sugar would be provided. I am sure you can't see it, and that is the point; that it is such a small amount, that you can't see it. I can barely see it from here. We will be happy to circulate that to the Membership.

[The information was not received at the time of printing:]

Second, as you know, we have a quota on sugar. We have not changed the tariff, which is over 100 percent, 1 percentage point. We haven't changed it at all. The tariff that exists on sugar coming into the United States above the quota, that is the second element. The third element is the country has to be a net exporter of sugar to the world, other than the United States, for it to be able to send us additional sugar to the United States. Then, fourth, is the special compensation that you were talking about, the special compensation mechanism. What that is, it is an entirely unilateral provision which allows the United States at any point, with whatever criteria we want, to say no, we are not going to be able to let you send the sugar to us this year; we will provide you with some other form of compensation, which is also in our sole discretion to deter-

mine how we would do that compensation. So, that is the package for sugar. As I said, it is unique in this agreement, and it is unique in any other agreement that I am aware of.

Mr. SHAW. Briefly, I want to get into the question of Chinese investment in that part of the world. We have heard quite a bit about this at a previous hearing on China. The question is, what is their impact in that area of the world, into Central America? Where will, if we do not have an FTA with Central America, particularly with textiles, cotton, and other kinds of products that go into cut and sew shops, where will those goods come from if they don't come from the United States because of a lack of an FTA?

Ambassador ALLGEIER. Well, they will have to determine where they obtain these inputs, but very likely, most likely, they will come from Asia. They certainly won't continue to come from the United States.

Mr. SHAW. So, you think our textile industry will probably profit considerably from this agreement; is that correct?

Ambassador ALLGEIER. Actually, we think this agreement is an essential part of a strategy of maintaining competitiveness, both for our industry, and for industries in Central America.

Mr. SHAW. I want to congratulate you for your part in developing this, which is a very fair agreement; an agreement which will certainly strengthen our economy as well as strengthen the democracies and the economies in Central America. I yield back, Mr. Chairman.

Ambassador ALLGEIER. Thank you.

Chairman THOMAS. The Chair recognizes the gentleman from New York.

Mr. RANGEL. Thank you. Ambassador, in today's Daily Reports for Executives, Thursday, April 21, 2005, there is a report of a meeting that took place with the House Committee on Ways and Means, Chairman Bill Thomas, Republican from California, and he made remarks at a closed-door meeting with Ambassador Zoellick, business leaders, majority whip Roy Blunt, Subcommittee on Trade Chairman, E. Clay Shaw, Kevin Brady, Republicans of Texas, and others. Were you at that meeting, that closed-door meeting?

Ambassador ALLGEIER. No, I wasn't.

Mr. RANGEL. Have you attended other closed-door meetings with the Republicans?

Ambassador ALLGEIER. No.

Mr. RANGEL. To the best of your knowledge, did Ambassador Zoellick attend meetings, closed-door meetings, with the Republicans?

Ambassador ALLGEIER. I don't know Deputy Secretary Zoellick's schedule. I am not aware of it, whether he did or not.

Mr. RANGEL. Did the number of votes that this bill would get or not get, was that ever discussed in your presence? It is quoted here the Chairman said he intended—it is predicted the pact would pass the vote by a one or three vote margin. Have voting paterns ever been discussed in front of you or with you?

Ambassador ALLGEIER. We discuss it within USTR, but I have not been in a meeting with a Member of Congress.

Mr. RANGEL. In the meetings that you have had in USTR, have you discussed whether they were Republican votes or Democratic votes?

Ambassador ALLGEIER. Well, we are a two-party system. It is quite natural to talk about Republican votes and Democrat votes.

Mr. RANGEL. During the course of these discussions, did anyone say how they might try to get Democratic votes in order to make it a bipartisan pact?

Ambassador ALLGEIER. Yes, we have always talked about the attributes of this agreement, the positive characteristics of it, how it is overwhelmingly in the interests of the United States.

Mr. RANGEL. I know. My question, Ambassador, was, did you have any plan or strategy to talk in closed-door meetings with Democrats in order to get those votes?

Ambassador ALLGEIER. Yes. In fact, I have made a number of calls on Democrats, including Mr. Cardin, in recent weeks to talk about the advantages to the United States and to these countries of the DR–CAFTA.

Mr. RANGEL. This goes on further to say, "Mr. Thomas expressed confidence that the House could pass the pact before Memorial Day. 'Every time we have gone forward, we have never failed on a trade vote,' Thomas allegedly said. He indicated that he expected Members to offer amendments during the markup of the pact, but he had a hunch that they would not pass." I assume that is the markup that he has now offered the Committee Democrats an opportunity to participate in, but, as relates to these very strong enforcement provisions in DR–CAFTA, I have been advised that the stronger version says that the country is mandated to enforce its own laws. Is that true?

Ambassador ALLGEIER. Yes, that is an obligation within the DR–CAFTA agreement.

Mr. RANGEL. To enforce its own laws.

Ambassador ALLGEIER. Yes.

Mr. RANGEL. Well, would it mystify you if the country did not have laws to enforce? What would happen then? You would encourage them to enact laws, wouldn't you?

Ambassador ALLGEIER. Well, first of all, what I want to point out is that the ILO, which is the international institution responsible for labor issues, has done a very thorough study of the labor situation, including the laws in these countries.

Mr. RANGEL. Are the ILO provisions included in the pact that would be presented to us?

Ambassador ALLGEIER. What the ILO found is that——

Mr. RANGEL. Ambassador, I am trying to make this—I am talking about within the pact. The ILO study is not in the pact. I am asking you if the nation we are talking about has no laws to enforce, what is so strong about the labor provisions?

Ambassador ALLGEIER. Well, the point is that these countries do have laws and that the ILO, which is the best qualified institution for judging it, has concluded that these laws are in line with the core provisions of the ILO.

Mr. RANGEL. On the ILO basic minimum labor standards included in the pact that will be presented to this Committee and the Congress? Are they included?

Ambassador ALLGEIER. They are included in the laws of these countries, which the ILO has determined——

Mr. RANGEL. Ambassador, I am asking a basic question. I will just try again, and your answer will be very important to me. That is, are the ILO provisions that you refer to, are they included in the pact that will be presented to the House of Representatives?

Ambassador ALLGEIER. These countries with one exception, have ratified all of the conventions, the eight conventions for the basic core labor standards, and therefore, it is part of their law. To that degree, it is in the agreement, because all of those substantive provisions, are in their domestic law.

Mr. RANGEL. That you stated.

Chairman THOMAS. The gentleman's time has expired. The Chair recognizes the gentlewoman from Connecticut.

Mrs. JOHNSON. I just want to clarify that last point. My understanding is that no labor agreement ever included the specifics. They just looked at the country's law and enforcement capacity. Is that correct?

Ambassador ALLGEIER. That is correct. That is what we have in other agreements, and we have gone well beyond those other agreements in the total package that we provide here to improve the labor standards and the conditions of work in these countries.

Mrs. JOHNSON. Particularly to improve their enforcement?

Ambassador ALLGEIER. Absolutely. That is what the ILO found as the area, if we want to make a change, a real contribution on the ground in the lives of working people in these countries, that is where the ILO suggested that we put our effort.

Mrs. JOHNSON. We had a bipartisan meeting a couple of weeks ago with the leadership of these countries. They mentioned they have already hired more inspectors and begun to beef up their own infrastructure enforcement; is that correct?

Ambassador ALLGEIER. Yes, that is correct. All of the countries have taken various steps to improve the enforcement in their countries, even before the agreement goes into effect.

Mrs. JOHNSON. Then in your testimony, toward the end, you say it contains a focused, results-oriented strategy. To my knowledge, we have never had a really results-oriented strategy in other trade agreements. I would like you to enlarge on that a little bit and how that results-oriented strategy is stronger in this agreement than in others. One passage in which you referred to—it is in the environmental passage, where you say, "For the first time ever, the agreement provides for the establishment of short, medium, and long-term benchmarks for measuring progress in meeting environmental goals." The ability to do that has improved our own environmental law quite considerably, and that looks to me like one of the things you are referring to. Would you enlarge on that and any other provisions you would care to?

Ambassador ALLGEIER. Yes, thank you very much. Let me just say one thing about the labor and the environmental provisions. One thing that we will not hear at this hearing is the following: No one is going to say why didn't you do in this agreement what the Canadians did for labor and environment in their agreement with country X or country Y? And you will not hear, well, why didn't we do in this agreement what the Europeans did for labor

and environment in their agreement with country X or Y? The reason we will not hear that is because this agreement has the most advanced, the most results-oriented—it is internationally supported by the ILO, the support we have gotten from the Inter-American Development Bank—provisions and treatment for labor and the environment, of any agreement that anybody has negotiated.

Mrs. JOHNSON. Congratulations. That is really impressive.

Ambassador ALLGEIER. Let me just say why, briefly.

Mrs. JOHNSON. I want you to say why, but I want to get that congratulations in there, because that is such a big point. We have led the world and we are implementing new ways of enforcement that are still leading the world.

Ambassador ALLGEIER. Thank you. Just to summarize quickly, the package that we have done here that is different than any other agreement, and that is, first of all, it starts with the analysis that the countries themselves have done. I think many of you met with their labor and trade ministers when they were here, and you take that and the analysis that the ILO has done and you are able to put together a package. We have been able to put together a package that will make a difference in peoples' lives. So, for example, in the agreement which is not in any of our other agreements, there are procedural guarantees for people in these countries as they seek to ensure that they have effective rights in their own country when they approach tribunals dealing with alleged labor infractions. There is a whole list within this agreement of the procedural protections that we would normally take for granted in the United States in such a circumstance. Now, this is embedded in this agreement for them. Those are things such as open access to these tribunals, certain procedural guarantees that there will not be excessive fees or delays in hearing the challenges, that they will get a response in writing and that they will have a right to appeal the judgment of these tribunals. That is why the New York Times said that this agreement goes beyond any other agreement that we have had in this area.

Mrs. JOHNSON. Impressive. Thank you very much Mr. Chairman.

Chairman THOMAS. The gentlewoman's time has expired. The gentleman from California, Mr. Stark, wish to inquire.

Mr. STARK. Thank you, Mr. Chairman, yes I do. Mr. Ambassador, you are familiar, I am sure, with the test data provisions of the intellectual property section of this bill, and I am not sure that my colleagues are, but basically, we have had for many years—we have provided in trade agreements—the ability for countries who may have an epidemic or a health crisis, the Acquired Immunodeficiency Syndrome (AIDS) crisis, for instance, in Guatemala or in African countries, a way for them to declare an emergency and get a license to produce a drug without the restrictions of American patents. In this agreement, I know that the Pharmaceutical Research and Manufacturers of America (PHARMA) has objected to that and the Administration generally does anything that PHARMA wants. In March of this year, Guatemala was forced to repeal a law to limit the protection of test data, and it has the highest incidence of Human Immunodeficiency Virus (HIV)/AIDS in Central America. So, if a country had a flu epidemic from some of

these new strange flu things or something else, and they needed a drug, this limitation on test data would prohibit the Central American country or the Dominican Republic from getting low-cost drugs to their populace in an emergency. Why do we have to do this? Should that not be dropped from the agreement as a humanitarian issue?

Ambassador ALLGEIER. Okay. First of all, then, let's start with TPA.

Mr. STARK. No, let's just answer the question.

Ambassador ALLGEIER. That is the context in which we negotiate, and I just wanted to——

Mr. STARK. I just wanted to know about why it is that you have to give extra patent protection, in effect, to the pharmaceutical industry for these Central American countries who are the poorest of many. I know we tried it in Australia, and that got knocked out. Why can we not remove this test data issue and allow that? What is wrong with doing that?

Ambassador ALLGEIER. Number one, it would be in contradiction with the TPA guidance that we receive. Trade Promotion Authority struck a very wise balance between protecting intellectual property and allowing other——

Mr. STARK. We do not do it in other trade agreements. Why in this?

Ambassador ALLGEIER. Pardon me?

Mr. STARK. Why in this? Under Doha, there was a declaration in the WTO rules that there should not be in. Why is it in this one?

Ambassador ALLGEIER. Well, it is not accurate to say that the WTO ruled. We were a part—we were a leading part of negotiating that declaration in the WTO in Doha in November of 2001. We also were a leader in putting together a subsequent declaration by the WTO aimed at exactly this point, which is to ensure that countries have the opportunity to have access to medicine at prices that they can afford.

Mr. STARK. With this test data protection, they cannot. Why can't you take it out?

Ambassador ALLGEIER. In our negotiations we have already indicated in the agreement, in a side letter, that nothing in this agreement, nothing in this agreement, including the data protection procedures, will prevent a country from meeting.

Mr. STARK. Okay. In a side letter that has no force and effect at all. Why can't it be in the agreement? If you are telling me that it would have the force and effect of law, besides which TPA says nothing about test data. That is beside the point. Why can't it be in the agreement?

Ambassador ALLGEIER. The agreement itself indicates the obligations. Sometimes it is useful to have a clarification, so, if there is ever a dispute in the future, you know what the intent of the negotiators was at the time. That is the purpose of side letters.

Mr. STARK. The intent is to fulfill the—assistant trade rep for pharmaceuticals, the only U.S. trade rep. We do not have one for movies. We do not have one for the recording industry. We do not have one for software. We have a special assistant U.S. trade rep for pharmaceuticals. How do you suppose that got in there? From PHARMA maybe? Come on. If you are just dancing to the piper of

the pharmaceutical industry, be man enough to admit it. What the heck? If you want to harm a lot of poor people in Central America by denying them drugs in an emergency, you are doing a hell of a good job and you ought to be proud of yourself.

Ambassador ALLGEIER. Nothing in this agreement prevents a country from meeting the——

Mr. STARK. Baloney.

Chairman THOMAS. The gentleman's time has expired. The gentleman from California, Mr. Herger, wish to inquire?

Mrs. HERGER. Thank you, Mr. Chairman. Mr. Ambassador, I want to thank you for being here today on this incredibly important issue to American trade and particularly for the area I represent. I represent one of the richest agricultural districts in the Nation, growing a major percentage of our Nation's almonds, dried plums, rice, walnuts, pistachios, just to mention a few of the specialty crops. So, when I look at a pending trade agreement, I pay very close attention to how the agreement treats American agriculture.

The agriculture producers in the northern California district I represent depend on foreign markets. We cannot eat all the commodities that we grow. More than 60 percent of California's almonds are exported. About half of our dried plums are exported. Just under half of our rice is exported. When I travel around my district and meet with farmers, I consistently hear the refrain that trade must be a two-way street. I support this agreement because I believe it takes the current situation where our markets are open to other countries and yet Central American markets are basically less open to our commodities, and it turns the relationship into a two-way street. The average Central American and Dominican Republic tariff on agriculture ranges from 35 to 60 percent. By contrast, 99 percent of all U.S. imports from DR–CAFTA countries enter the United States duty free. This, Mr. Ambassador, is a one-way Street.

This agreement is the best chance to open markets for our agriculture producers and make our trade relationship for the first time a two-way street. Take rice for example, I represent one of the largest rice-producing districts in the Nation. Today, U.S. rice exports face DR–CAFTA duties of up to 60 percent. This agreement would bring down these duties over time and would allow for 400,000 metric tons of U.S. rice immediately. This is why the U.S. Rice Federation and U.S. Rice Producers Association are publicly supporting this agreement. The same is true for our California almonds, another large commodity in my district. Current duties can reach 20 percent in DR–CAFTA countries. Under the agreement, California almond, walnut, and pistachio producers benefit from immediate duty-free access from all DR–CAFTA countries. This is why Blue Diamond Growers is publicly supporting this agreement. I could go on and on how this agreement is a win-win for U.S. agriculture. So my message is this: We should not allow the very tiny minority of U.S. agriculture that believes it will be negatively impacted to derail this agreement that is so crucially important to so many. Ambassador, I would appreciate any thoughts you might have on this point.

Ambassador ALLGEIER. Thank you very much, Congressman. I think the point that you were making about the great disparity in the tariff treatment between our agricultural products going into Central America and their products here is really the central point of the agricultural side of this. You referred to rice, and you said that tariffs are as high as 60 percent for American rice going into this market. Well, that is the applied rates. Under the WTO, some of these countries would have the right to raise their rice tariffs to 90 percent. If you look at other products—and of course, we allow their rice to come in zero duty. If you look at other products, it is a very similar sort of thing. In soybeans and soy products, they have WTO rights that would allow to them charge up to 90 percent on our soybeans and soy products. We allow their products in at zero. If you look at vegetables, it is as high as 60 percent. We allow theirs in for zero. I could go on, as I am sure you could, and that is the reason that 60 agricultural organizations in the United States strongly support this agreement.

Mrs. HERGER. Ambassador, again, I thank you. Mr. Chairman, this agreement, again, should be bipartisan. We should have basically 100 percent support on this. This is a win-win for almost everyone in our Nation, and we should not allow a small group, a small minority to somehow be successful in throwing a monkey wrench into an agreement that is so crucially important to our economy and our Nation and so many of our citizens. Thank you.

Chairman THOMAS. The gentleman's time has expired. The gentleman from Michigan, Mr. Levin, wish to inquire.

Mr. LEVIN. Welcome, Mr. Allgeier. First, I want to put the issues here in perspective quickly. It is not whether there should be expanded trade. We here on this Committee on our side have a pretty clear record in most cases, if not all. The issue is not whether there should be a DR–CAFTA. The question is, is this one shaped appropriately? The issue is not protectionism versus free trade. Indeed, the basic argument here is among those who have very, very actively supported expanded trade. The basic issue is whether DR–CAFTA is negotiated. It is shaped so that the benefits will be widely shared or whether the notion is that that sharing, that spreading of the benefits will happen kind of automatically. That is especially critical as to Central America because in most countries the absence of a strong vibrant middle class and a major narrow distribution of income. In this agreement, there is a double standard. Only when it comes to labor and the environment is the standard, enforce your own laws. I do not think you can point to any other area whether it is intellectual property, whether it is investment, whatever it is, whether it is subsidies, whether it is tariff rates. We do not just say, enforce your own laws. So, there is a double standard here. You mention Morocco, Chile. There is agreement that their laws embodied the basic ILO standards. I will not argue with you now about Jordan, but you mischaracterize it. On November 6 of 2003, we wrote you a letter saying that you, USTR were mischaracterizing the ILO report. That was November 6 of 2003. We never got an answer from you. We spelled out how in 20 of the 24 cases, as I remember it, the ILO report indicated major flaws. You never answered it. We wrote you again on October 4 of this year. Yesterday, last night, we get a letter from you. So, you

have not responded to how you mischaracterize the ILO report. Look, the core labor standards issue involves this basic issue of how benefits will be spread and whether they will be or we should not worry about that. Are you aware of the 2000—I think it was 2001 authorization to the Department of Labor for a study of internationally recognized worker rights? Are you aware of that?

Ambassador ALLGEIER. I believe that you are talking about a study that was commissioned to the—let me get the name of this organization.

Mr. LEVIN. You are right. Do not take up my time. That is the study.

Chairman THOMAS. The Chair will protect the gentleman's time. The organization that the Ambassador was looking to cite is what? The study was commissioned by which organization?

Ambassador ALLGEIER. By the Department of Labor, the one that Congressman Levin is talking about I believe.

Mr. LEVIN. The International Labor Rights Fund (ILRF), is that correct? We wrote a letter on May 26, 2004 asking to receive copies of those reports under the Freedom of Information Act (FOIA) (5 U.S.C. 552). It is May 26 of 2004. We wrote saying—several weeks ago, I wrote to—this is to the secretary, requesting the documents described below, and we have been in touch with you. We never heard back. Then, on August 3, we wrote the letter, I guess we then heard at some point a denial, and then you said—she said that the reports are not final and are being reviewed. We then, on October 27, filed an appeal of that decision. When the secretary was here some weeks ago, we asked her about a response to that appeal. She said she would give us that response soon. We have never heard, and I just—you know of this report, right?

Ambassador ALLGEIER. I have been made aware of it. I have not seen it, but I am aware of it.

Mr. LEVIN. Have you asked for a copy of this?

Ambassador ALLGEIER. Yes, but I just got back from Geneva last night.

Mr. LEVIN. How old is the report?

Ambassador ALLGEIER. I do not know.

Mr. LEVIN. It is a year and a half, 2 years old. I just want you to know, and you can transmit this to the secretary, that I am going to file a privileged resolution demanding that those reports on labor standards in Central American countries be made available to this Congress. I would appreciate your conveying that, and I would hope that there would be a response, an appropriate response to our FOIA request. Will you convey that to her?

Ambassador ALLGEIER. I will be happy to convey it.

Mr. LEVIN. Will you read the reports?

Ambassador ALLGEIER. Yes, I will.

Chairman THOMAS. The gentleman's time has expired.

Ambassador ALLGEIER. Mr. Chairman, may I just make one point?

Chairman THOMAS. One brief point.

Ambassador ALLGEIER. Okay. The letter that was written by you and two other Members to Ambassador Zoellick in November of 2003 was answered in November of 2003. If you do not have a copy, I will be happy to provide it. The copy of the letter that I sent

last night was held because I was in Geneva, and I wanted to be sure to review it before sending it to you.

Chairman THOMAS. The Chair recognizes the gentleman from Louisiana, Mr. McCrery.

Mr. MCCRERY. Thank you, Mr. Chairman. Mr. Allgeier, you commented earlier that we will not hear at this hearing, "why don't you do what Canada did," or "why don't you do what some European country did in their bilateral trade agreement?" Expound on that a little bit. Why won't we hear that? Not because ours is the best, the furthest that anybody has ever gone, but don't those countries insist as a condition of entering into the trade agreement that the other country change their domestic laws or anything like that?

Ambassador ALLGEIER. No, sir. They do not insist.

Mr. MCCRERY. They do not?

Ambassador ALLGEIER. No.

Mr. MCCRERY. Why not?

Ambassador ALLGEIER. Well, you would have to ask them. They are the ones who are stating the objectives for their negotiations.

Mr. MCCRERY. Well, doesn't it strike you as being—the reason is apparent. If nobody does that, if no major industrial nations entering into trade agreements as a part of their trade agreement insist that the trading partner change their domestic laws, then what is the obvious reason for that if nobody does it?

Ambassador ALLGEIER. Well, the obvious reason—there may be several reasons for it. That is because people do not think that that is really where the focus needs to be. The focus needs to be on making improvements in people's lives, and frankly, whether one is incorporating certain particular wording in an agreement or not may not be as important as what sort of changes people are making through cooperation and through other mechanisms that are incorporated in the trade agreement

Chairman THOMAS. Will the gentleman yield briefly?

Mr. MCCRERY. Sure.

Chairman THOMAS. Might it not be another reason that, if you really wanted to enter into a trade agreement, a bilateral agreement or a regional agreement, your chances of concluding it with particular countries diminishes significantly if you require as part of the agreement that they change their domestic law in any number of areas to suit you, so that, in fact, they have to allow you to dictate the way in which their country operates? What would be the chances of concluding successful agreements with those preconditions?

Ambassador ALLGEIER. Well, that is, of course, part of the negotiating process, and it is—countries do not want to make those sorts of changes that are being suggested.

Mr. MCCRERY. Isn't that a fact?

Chairman THOMAS. Thank the gentleman for yielding.

Mr. MCCRERY. I thank the Chairman for citing the obvious. Countries——

Chairman THOMAS. The Chair always tries to please.

Ambassador ALLGEIER. We would not be willing to make those sorts of changes in our laws.

Mr. MCCRERY. Exactly. Countries would resist any dictate, mandate as a condition of entering into a trade agreement, particularly if they are the ones dropping their trade barriers. They would certainly resist, if not down right walk out of the room if you said, "well, we are not going to enter into this trade agreement unless you change your laws to suit us." Isn't that a fact?

Ambassador ALLGEIER. Yes, and their reciprocal agreements—we would have to make changes in our laws.

Mr. MCCRERY. That is why there is no country that does that because the object of trade agreements is trade. So, I hope that we can all get together and congratulate you and the USTR's office for, in fact, going further than anybody has ever gone in getting these countries to accept responsibilities outside of the trade arena as you have done. Now, just—I would like for you to expound a little bit on Central America and China. Is China presently trying to make inroads into Central America in terms of their markets?

Ambassador ALLGEIER. Certainly China is active in that area. They certainly look to make inroads into that market.

Mr. MCCRERY. Will this agreement help us to compete with China in those markets?

Ambassador ALLGEIER. Absolutely, because what it does is it gives us a permanent duty-free preference into those markets; whereas China will have to pay the normal Most Favored Nation tariff into those markets.

Mr. MCCRERY. So, if people are concerned about our competitive position with China, this is a step in the direction of making us, maybe giving us an edge in that competition, at least in this particular region of the world.

Ambassador ALLGEIER. Absolutely. It is much more than tariffs. All the other rules that are in this agreement are rules that American producers and exporters are familiar with. So, knowing what the rules are, being able to abide by rules, whether they are product standards or regulatory rules on telecommunications, gives our people an advantage. They are already used to these rules in other FTAs we have with Singapore, with Morocco and so forth. This is particularly important for small businesses who cannot, do not, have the resources to learn a whole new set of rules with every market that they try to penetrate.

Mr. MCCRERY. Thank you, Mr. Allgeier. Thank you, Mr. Chairman

Chairman THOMAS. Thank the gentleman. The gentleman from Maryland, the Ranking Member on the Subcommittee on Trade, wish to inquire?

Mr. CARDIN. I do, Mr. Chairman. Thank you very much. Mr. Ambassador. Both of us favor expanding trade opportunity, but I think we have a fundamental difference here as to how we should do that. This agreement will require the Central American countries to change many of their laws despite Mr. McCrery's comments about interfering with domestic law. The issue I want to really harp on or center on is a letter that you wrote back to Mr. Levin yesterday talking about the CBI rights that we currently have with the Central American countries where they have acknowledged their obligations to move toward international labor standards, and we have the ability to impose trade sanctions if they are not mak-

ing progress. You state that DR–CAFTA is likely to be more effective than blunt instruments of withdrawing preference program benefits. That line, and I think about that for a moment, and I think about how we act and how other countries act. I do not know why we are the only country in the world that does not think we should play tough when it comes to enforcing trade laws.

I give you many examples. This Congress changed our Tax Code, not because we thought it was the right thing to do. We did it because trade sanctions were imposed against us by the WTO. Now you are saying that we should not use trade sanctions to enforce rights that are important for American interests? How can you claim that it will be more effective to use the mechanisms of DR–CAFTA rather than having in your quill, having the ability to use effective mechanisms to get the attention of other countries? It is politically difficult for us to change our Tax Code. I disagree with the international community on that. We do it because of trade sanctions. It is going to be very difficult for the Central American countries to continue to make workers' progress. The commercial interests down there, the societal interests, work against workers, and we have got to be tough. So, I just do not understand why we want to be so timid, why you do not want to have more opportunities to make sure that these countries do the right thing with workers' rights. Can you explain that to me?

Ambassador ALLGEIER. Yes. First of all, we are focused on making progress in these countries rather than making a point. We want to change the circumstances of workers in these countries to their benefit.

Mr. CARDIN. Did we make progress under CBI?

Ambassador ALLGEIER. Not as much progress as we would like.

Mr. CARDIN. Did you impose sanctions against them?

Ambassador ALLGEIER. I do not believe that there were sanctions that were imposed.

Mr. CARDIN. Why didn't you? If you did not make the progress that you thought we were going to make, why didn't you use the rights that you had under the agreement?

Ambassador ALLGEIER. Well, we used the agreement to extract some improvement in the situation there across the range of criteria of the CBI. One of the things is to see whether—you will not want to hurt U.S. interests. One of the problems with sanctions, it sounds like it is a very easy thing to do, but typically——

Mr. CARDIN. Did Europe hurt European interests when they went to the WTO to have sanctions imposed against the United States for our tax structure?

Ambassador ALLGEIER. Yes.

Mr. CARDIN. They did not win on their FSC (Foreign Sales Corporation) changes. Won't that help European countries?

Ambassador ALLGEIER. I do not know how much it will help European interests, but I can say that there were a number of European economic interests that did not appreciate the fact that the Commission imposed those sanctions on us.

Mr. CARDIN. I did not hear from them, did not get a single letter.

Ambassador ALLGEIER. Well, they would have sent it to the European Commission because that was the one who was making

the decision about whether to impose the sanctions. With respect to labor in Central America, the question there is, what is going to be most effective in changing the situation? And we think that working with the ILO, working with the Inter-American Development Bank, working with countries—they want to have their workers have a better situation. They are not——

Mr. CARDIN. We could have helped them if you would have had stronger ability in this agreement to make sure that they carry out what they want to do because of the political opposition within their own countries. They told us that. Yet, we did not negotiate to get the strength to be able to bring about those changes in a more constructive way in Central America.

Ambassador ALLGEIER. I think the question is not what our objective is. We both share the objective of wanting to improve the labor standards and the labor rights of people in Central America and the Dominican Republic. We, obviously, have a difference on what would be the most effective way to do it. All I can say is that our judgment at this point is, particularly with the support of these other institutions, such as the ILO and the Inter-American Development Bank, that this is the best way to get the results that we both look for.

Mr. CARDIN. Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. The gentleman's inquiry reminded the Chair that the gentleman has just returned from the Senate. The Committee would be willing, I hope, by unanimous consent, to allow the gentleman from Maryland one minute to give us his impression of how the Senate hearing on our colleague, Mr. Portman, is going.

Mr. CARDIN. Thank you, Mr. Chairman. If the Senate hearing is any indication of how Rob Portman is proceeding, he should be confirmed by the end of the day. I know it will not be quite that easy, but it was strong support on both sides of the aisle for our colleague, and we all wish him well. My purpose for being there is to show that we are anxious get his confirmation process completed and get him confirmed by the U.S. Senate, and I think that is going to happen sooner rather than later.

Chairman THOMAS. Thank the gentleman. The Chair's head swims that the Senate would actually accomplish anything in one day. The Chairman recognizes the gentleman from Michigan.

Mr. CAMP. Thank you, Mr. Chairman. Mr. Ambassador, I obviously support the concept of duty-free access of American products to new markets and those trade opportunities that flow from that, and I have been a strong supporter of trade. Despite our trade agreements and promises of new markets, my concern is growing that these trade agreements are not adequately enforced. Years of non-tariff barriers for agricultural products in Mexico—some commodities I have worked on directly cannot get access to Asian markets for our auto parts and automobiles, cannot get China to stop dumping to counterfeit or to make the necessary currency changes. I know this agreement is heralded because of its import restrictions on certain commodities, particularly sugar. How can we be assured that these agreements will be enforced and that the import restrictions will actually be put into place?

Ambassador ALLGEIER. We take very, very seriously the responsibility to enforce our trade agreements, whether they are in the WTO or bilateral agreements. That is why we have such strong provisions for dispute settlement in all of our agreements. Thanks to the Congress, a few years ago we got additional resources at USTR to focus specifically on enforcement. I can assure you that we are very vigilant. Now, in the case of Central America, some people have criticized us for actions that we have taken with respect to some of the members of this agreement who were changing their laws in contradiction to what they had signed in this agreement. That was simply an example of us being vigilant and conscientious in making sure that, if we make an agreement with someone, both they and we need to abide by it. I can assure you that that will remain our approach to the DR–CAFTA.

Mr. CAMP. You contend often that this just adds a spoonful of sugar to the U.S. market, which ignores the fact that not everyone grows sugar, and the government's own ITC (International Trade Commission) report says that job losses in the sugar sector under DR–CAFTA will be 38 percent higher than the next highest sector. In Michigan, for example, that is $450 million in economic impact to the State and 2000 jobs that potentially could be lost. My concern is, why is there not a more worldwide approach to this issue, given the economic impact that this agreement potentially has on particular sectors? In the same sense, the growth in those areas is so modest, because the economies are so small that we are getting access to, that this agreement really becomes a symbol for some of the flaws in our trade policies in terms of not enforcing, and then having really disparate impacts on particular sectors.

Ambassador ALLGEIER. Well, just speaking about the agricultural sector, this agreement certainly levels the playing field for our agricultural exporters, and that is why so many of them, 60 of them, have indicated support for this agreement, including, of course, the American Soybean Association, the National Grain and Feed Association, the Oilseed Processors, all of whom I think are important for Michigan. Therefore, we see this agreement as actually setting a pattern of leveling the playingfield for our people and getting them the access that you and I both want them to have.

Mr. CAMP. All right. Thank you, Mr. Chairman.

Chairman THOMAS. Thank the gentleman. The gentleman from Washington, Mr. McDermott, wish to inquire?

Mr. MCDERMOTT. Yes. Thank you, Mr. Chairman. Mr. Allgeier, the symmetry between the American textile industry and the Central American garment industry is very important—you would agree to that, I believe—especially if we want to continue to increase economic opportunities in Central America and retain textile jobs here. That is part of your goal.

Ambassador ALLGEIER. Absolutely.

Mr. MCDERMOTT. Well, the first slide that I have put up on the screen shows that the U.S. market is the number one destination of Central American products.

[The information was not received at the time of printing.]

They are very tightly tied to us at this point in time. The second slide clearly shows that more than half of Central American exports are apparel. That is what they are exporting to us. I suspect

if we went around this room, everyone in this room is wearing a garment at some level made in Central America. The third slide shows that the importance of American products to Central America, we are the biggest source of imports for them by sending in our yarn and our fabric. Correct? Now, the fourth slide shows how important those American yarns and fabric and apparel are to Central America. This really, in my view, is a key point, because these Central American garments that we made, we wear, are largely made with American yarn and fabrics. That is by design. That is what CBI was designed to do. Isn't that correct?

Ambassador ALLGEIER. Yes.

Mr. MCDERMOTT. So, as I understand it, the apparel rules are generally the same that are found in other FTAs, many of which we have passed on a bipartisan basis. Is that true?

Ambassador ALLGEIER. Yes. They are, generally speaking, the same, although we have some stronger enforcement elements in this agreement.

Mr. MCDERMOTT. Okay. So, in what you trade technocrats call the yarn-forward rule, meaning that, in order for Central American apparel to qualify for the benefits under DR–CAFTA, that apparel must be made of yarn and fabric produced in the United States or Central America; is that correct?

Ambassador ALLGEIER. That is correct.

Mr. MCDERMOTT. I want to understand, and if I understand it correctly, that is the system we put in place, and it is actually working.

Ambassador ALLGEIER. Yes.

Mr. MCDERMOTT. To some benefit for Central America at the moment——

Ambassador ALLGEIER. For both of us——

Mr. MCDERMOTT. For our consumers?

Ambassador ALLGEIER. Correct.

Mr. MCDERMOTT. Now, this is my question. Would you assert that the yarn-forward rule enables American yarns and fabrics to continue to have a stable export market so DR–CAFTA could potentially be a win-win for Central America and the U.S?

Ambassador ALLGEIER. That is the intention, and we have worked very hard with our industry and their industry to ensure that that remains the case.

Mr. MCDERMOTT. Well, I would like to take you back in history a little bit to NAFTA (the North American Free Trade Agreement). NAFTA uses this same yarn-forward rule on Mexican apparel products. If you look at—in 2000, several years after NAFTA was in force, the American—the Mexican apparel industry had taken off, but we passed normal trade relations with China. One of the problems with looking at all these agreements is that we do one thing, and then we do another thing. You have got to see how they relate to one another. It is pretty interesting to see how China's share of the imports increased since we have had normal trading relations. That is a pretty steep climb. China's share has tripled in the last few years in United States, but as you can see, the apparel rules and the so-called FTAs are grossly onerous and inadequate.

Show the next slide. That is what happened to Mexico. They have had NAFTA through this same period when we had the in-

crease in Chinese imports. NAFTA has been going down in Mexico. So, they have witnessed a dramatic and precipitous decline in their market share, despite our protections. The fact of the matter really is that the yarn-forward rule is nothing but an old world approach to protectionism, and it is time—it has got to go. That red line is pretty stunning. China has emerged since January 1. I bet that is even steeper if we had the numbers in the apparel industry, and they are the world's largest cotton producer, so, why do they need the United States? They have low labor costs and that is the whole reason why they are very competitive. I would think that the tariff preference that we provide for our free trade partners would give them an advantage over China. We have tried to do that in the African Growth Opportunity Act and others. We have tried, but it is pretty clear that these rules are really not working very well. I think that we need to really sit down and talk about what is going to happen when we finally give up our subsidies on cotton so that our cotton rises in cost, which we demand that Central America use. Their prices are going to be out of sight. It will be all coming from China when this occurs, in my view. I do not see how this works in the long run.

Chairman THOMAS. Will the gentleman allow an inquiry by the Chair on his chart?

Mr. MCDERMOTT. Sure. Yes.

Chairman THOMAS. I believe the chart is accurate.

Mr. MCDERMOTT. I think so. It came from us.

Chairman THOMAS. The gentleman also indicated that we had created preferential arrangements with the Caribbean Nation countries. Does the gentleman have any data on the regional direction rather than just Mexican? The Chair believes that some of the activities that had been in Mexico have been shifted to the CBI countries by virtue of the preferential treatment that the CBI countries get vis-a-vis Mexico. So, a country's specific line may show a downturn, but the general region, since Mexico is not a member, the CBI may in fact be an upturn. Does the gentleman have any information on that?

Mr. MCDERMOTT. I am sorry. I did not put the slide in. My remembrance is that, in fact, the CBI line is also drifting down with this increase in the China line.

Chairman THOMAS. That is the kind of information on the regional basis we need to look at, and the Chair would like to look at that.

Mr. MCDERMOTT. I would welcome another hearing in which we could talk about this

Chairman THOMAS. The Chair thanks the gentleman. The gentleman from Minnesota wish to inquire?

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Ambassador, given the nature of our economy, which is becoming more and more knowledge-based literally every day, and given the nature of my district, which puts a high priority on intellectual property rights (IPR), I am concerned about protection of intellectual property rights overseas. We all know that intellectual property theft is rampant worldwide, and every item that is reproduced comes right out of the pocket of the American owner. It hurts the economy and certainly costs us jobs. My question is, how does this agreement

strengthen intellectual property rights so that American companies and workers receive just compensation for their work?

Ambassador ALLGEIER. As you know, Congressman, the international rules, the multilateral rules on protecting intellectual property are in the WTO, the so-called Trade Related Intellectual Property Rights (TRIPS) agreement. That agreement, at this point, is basically 10-years old. We all know the changes in technology that have occurred during that period. So, it is very important for our—precisely the reason that you were describing, the degree to which we depend upon the knowledge-based industries, that in our trade agreements we keep the level of protection at the same pace as all the technology changes.

That is the advantage of these FTAs and particularly the DR–CAFTA; if you look in the DR–CAFTA agreement, you have, as I said, state-of-the-art intellectual property protection that goes beyond what is in the TRIPS agreement. So, as a result, a number of these countries will join new copyright protection agreements that have been developed since the Uruguay round, and they will be making other changes in order to protect our intellectual property.

Mr. RAMSTAD. So, it is your position that if no intellectual property protections were in this agreement, that intellectual property theft would be even more rampant?

Ambassador ALLGEIER. Oh, absolutely, especially in the copyright area.

Mr. RAMSTAD. Which is very important, not only to Minnesota but to our entire Nation. I appreciate your important work on this agreement. Thank you for testifying. Certainly, we need this trade liberalization, because it means jobs. It means economic growth in all sectors, not just knowledge-based. So, I appreciate your good work on this important agreement and would yield back.

Ambassador ALLGEIER. Thank you very much.

Chairman THOMAS. I thank the gentleman. The gentleman from Pennsylvania wish to inquire?

Mr. ENGLISH. Thank you; I do indeed. Ambassador Allgeier, I am very grateful for the opportunity to pose to you some specifics. First of all, I read in your testimony that you have created a mechanism for promoting environmental standards through DR–CAFTA that would, among other things, allow the NGOs an opportunity to challenge a party's failure to enforce its environmental laws and to obtain an independent review of their submissions. You also indicate that the agreement provides for independent monitoring of environmental benchmarks by outside organizations. Let me ask you to briefly describe exactly how this process would work, and how would this process ultimately have more teeth in it than, say, the environmental side agreement that was created for NAFTA?

Ambassador ALLGEIER. First of all, the provisions on environment in the DR–CAFTA are exactly that; they are in the DR–CAFTA text itself. It is not a side agreement. The second point I would make, going to the point that you made, Congressman, about the submission process, I think that we all know that the best assurance that any obligation is going to be carried out, whether it is in domestic law or international, is to have light on the agreement. So, the submission process is an important way of providing

light on what is happening in these countries, whether it is on the labor side or the environmental side, so that groups that have a great interest, for example, in improving the level of environmental protection, ensuring that environmental laws are carried out, they can, on their own, submit a submission through a secretariat, an independent secretariat that has been set up, called the Organization for Central American Economic Integration (SIECA), who will then evaluate whether the challenge to the country's practice has some merit. Then they can determine whether to do a factual record, again, by an independent body, and then refer it to the parties of the agreement.

Mr. ENGLISH. If there is ultimately a finding that a country is not meeting appropriate benchmarks or is even, on a wholesale basis, violating environmental standards, what will be the consequences under this trade agreement?

Ambassador ALLGEIER. If a country were to be violating the agreement with respect to environment—it was not, let's say it was not enforcing its own law—then any other party—let's say the United States—could seek to consult with that other party. If the other party is not willing to make the changes to come into compliance with its obligations, then the United States could take them to dispute settlement, and there would be a panel that would determine whether that country was abiding by its obligations. If the panel were to determine that the country is not abiding by its obligations, then it would indicate, where it is falling short. It would then be up to the country, under the agreement, to make changes to come into compliance. If the country, at that point, refused to come into compliance, then a fine could be imposed upon that country and the proceeds from that fine, which is recurring—it is year after year after year until they fix the problem—there would be a joint determination. The United States would have to agree how those proceeds would be used to fix the problem. So, let's say that they were not enforcing their environmental law with respect to clean water; they would have to be using those resources to improve that situation.

Mr. ENGLISH. Thank you. My other question, Ambassador Allgeier, I frequently look to the record of countries that we are negotiating FTAs with in terms of their willingness to cooperate with us on policy. Several of the countries we have recently negotiated FTAs with have very much cooperated with the United States in a number of international forums, including the WTO. I was at Cancun, and I saw how the G21 organization went in very much at cross purposes with us and ultimately, I think, led to the failure of the Cancun opportunity. I have also noticed that we have—and I credit the Administration for this—aggressively argued that the WTO should not re-open the anti-dumping laws. Yet, I notice that at least a couple of the countries in DR–CAFTA participated in the G21, and one of them, Costa Rica, is currently involved in the so-called Friends of Anti-Dumping group that is trying to use the WTO to dismantle our trade laws. Do you feel that this is a significant problem, and have the countries responded to us on these points?

Ambassador ALLGEIER. First of all, as you know——

Chairman THOMAS. The Chair would request a very brief response but a more extensive response would be in writing to the gentleman from Pennsylvania and to the Committee because the Committee is interested in the thrust of the gentleman's question.

Ambassador ALLGEIER. I would be happy to provide a more expansive response. Let me just say that, in the DR–CAFTA itself, there is no change in U.S. law regarding anti-dumping that is required. I will note that Costa Rica and El Salvador left the G20 and have withdrawn from that. So, we are working with all of them in the WTO, but I think that our positions with respect to our trade remedy law is quite clear.

[The information follows:]

The written response from Ambassador Allgeier follows:

We enjoy a close and cooperative relationship with our FTA partners as we work in the WTO, and one of our common objectives is to complete the DDA negotiations successfully. There are many informal groups of representatives that meet together to focus on issues of concern in the negotiations, and while we don't necessarily agree with all their positions, discussions are useful in developing a fuller appreciation for the issues. In the case of the Group of Negotiations on Rules, membership in the so-called "Friends of Antidumping" informal group has varied from time to time depending on the issues in question. The 15 members of the Friends are: Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Taiwan, Thailand and Turkey. None of the U.S. bilateral free trade agreements include commitments on anti-dumping and countervailing duties. We have had limited discussion of these issues to the WTO.

Chairman THOMAS. Thank the gentleman. The Chair will indicate to Members and others that, following the inquiry of the gentleman from Georgia, the Chair will recess. There are three 15-minute votes on the floor. Parliamentary procedure does not allow us to stack at 5-minute intervals. I would ask the Ambassador if he would be willing to wait until we reconvene because, clearly, there are additional Members who wish to inquire. The Chair recognizes the gentleman—and the Chair will reconvene 5 minutes after the conclusion of the last vote in this sequence. The Chair recognizes the gentleman from Georgia.

Mr. LEWIS OF GEORGIA. Thank you very much, Mr. Chairman. Mr. Ambassador, thank you for being here. I will be very brief because of this vote. Mr. Ambassador, what I want to say from the outset is, we live in a different world. We live in a different time; this is the 21st century. So, I want to ask you a question or two about workers' rights under this agreement. Is there anything in this agreement to prevent workers from being paid below a living wage?

Ambassador ALLGEIER. Yes. All of these countries have various protections for workers and the conditions under which they work. So, those do have to be enforced under the agreement.

Mr. LEWIS OF GEORGIA. Is it possible that workers in these countries, some workers will be paid $0.75 an hour or maybe a dollar a day?

Ambassador ALLGEIER. The purpose of this agreement is to provide workers in these countries with more opportunities so that they can make more money, and I do not know the precise wage levels in these countries.

Mr. LEWIS OF GEORGIA. There is not anything in the agreement to prevent some of these countries, some of the companies from paying people starvation wages?

Ambassador ALLGEIER. No, they cannot pay starvation wages under this agreement.

Mr. LEWIS OF GEORGIA. Could people be forced to work without breaks? Is there anything in that agreement to prevent people from working 7 days a week?

Ambassador ALLGEIER. No. One thing I would like to point out is that these countries all have ratified the major ILO conventions. All but El Salvador have ratified all eight of them. El Salvador has ratified six of them. In the case of the United States, we have ratified two. Their labor laws—the problem is not with the labor laws. I think some of you may have met last week with the Archbishop of Guatemala, and I will not say he is certainly not a fan of DR–CAFTA but what he did say is they have an excellent labor law in Guatemala, but it needs to have better compliance.

Mr. LEWIS OF GEORGIA. That is maybe one country.

Ambassador ALLGEIER. No, but that is just symptomatic of the situation there, and that is what the ILO found, that that is where—if we want to make a difference in people's day-to-day lives, which we both want to do, the way to do it is to focus on enforcement of the existing laws in those countries—all of them.

Mr. LEWIS OF GEORGIA. Mr. Ambassador, someone said many years ago, if we do not stand for something, we will fall for anything. If you have the choice to open up a new factory in America, in our own country, or in Central America, where labor is cheap and people receive very little compensation for their work, where will you go if you want to make a big profit? Will you stay in America, or will you go to Central America?

Ambassador ALLGEIER. I think that decisions about where to locate production hinge on many, many factors. One part of the—one factor certainly is compensation for workers, but that also has to be related to productivity. I think if one tours the—or visits the factories in Central America that are run by American headquartered companies, one finds that those companies tend to be setting the highest standards for the treatment of their workers.

Mr. LEWIS OF GEORGIA. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. Ambassador, is there any indication that the workers' lot would improve in these countries if DR–CAFTA was not agreed to?

Ambassador ALLGEIER. No. There is no evidence that that would happen. I do not see how improvement would occur without assistance to them on the objectives that they themselves have set to improve their workers.

Chairman THOMAS. As the Chair indicated, the Committee will stand in recess until 5 minutes after the last vote. Ambassador, if it is possible, the Chair would request that you stick around because there are a number of other Members who wish to inquire. The Committee stands in recess.

[Recess 12:08 p.m.]

Chairman THOMAS. Could we ask our guests to find seats, please. The Committee will reconvene. The Chair recognizes the gentleman from Illinois, Mr. Weller.

Mr. WELLER. Well, thank you, Mr. Chairman; and I commend you for this particular hearing today as we look at the DR–CAFTA. I want to commend Ambassador Allgeier and former Special Trade Representative Bob Zoellick and Regina Vargo and the entire team that worked to put together over the last several years what I believe is a good, fair and balanced agreement with our friends in Central America and the Dominican Republic. With the subject being the Dominican Republic, I also want to thank my colleague, Mr. Rangel of New York, who I worked with to encourage the Dominican Republic to be included as part of what was originally known as CAFTA, and is now known as DR–CAFTA with the addition of the Dominican Republic. That was a bipartisan effort, and I appreciate the good relationship I have with my friend from New York.

I would also note, as we look at DR–CAFTA, that it changes, frankly, the situation we currently have. In the year 2000, an overwhelming bipartisan majority of this Committee and this House of Representatives, 309 Members—183 Republicans, 126 Democrats—voted to support our friends in the Dominican Republic and the Central American countries by expanding and creating the Caribbean Basin Trade Partnership Act (CBTPA). What was interesting about the CBTPA was that it was a unilateral opening of the U.S. markets, essentially creating a one-way opportunity for our friends without any reciprocity. I would note again, 309 Members, an overwhelming bipartisan majority, supported that legislation.

Now before us we have legislation which I believe deserves an equally high level of support, bipartisan support, but it does something different. Previous overwhelming bipartisan support created a one-way street when it came to trade; DR–CAFTA creates a two-way street on trade. Because of that, I am a very enthusiastic supporter of the DR–CAFTA. I believe it is fair; it is balanced. You can always find provisions you personally wish were a little better, but it is a compromise, and that is how treaties are, particularly when you have seven countries.

When folks back home ask what does it mean to Illinois, what does DR–CAFTA mean to Illinois manufacturing, what does DR–CAFTA mean to Illinois farmers, the good news is DR–CAFTA is good news for Illinois farmers and good news for Illinois manufacturing workers. In fact, it is a win-win for both manufacturing and agriculture. As I mentioned, Illinois is a big winner because, right now, Illinois agriculture faces high tariffs on Illinois farm products that go into Central America and Dominican Republic. Under this agreement, one-half of tariffs on U.S. agricultural exports are eliminated immediately. Think about that; immediately. While Illinois is the second largest exporter of soybeans, which face today a 20 percent tariff, it means a big difference, because, under this agreement, soybeans will immediately have duty free access. Think about that, a 20 percent tariff will be eliminated immediately for Illinois soybeans under DR–CAFTA. Illinois is also the second largest exporter of feed grains and will benefit from the immediate elimination of duty on yellow corn in Costa Rica and the Dominican

Republic and the phaseout of duties in the other countries. Pork—and Illinois is a major livestock State—currently faces duties as high as 47 percent, but all duties will be eliminated and phased out over 15 years. I would note from a livestock perspective that our friends in the Dominican Republic and the Central American countries are working to recognize U.S. meat inspection and certification systems to facilitate the ease of U.S. exports. That is why 50 Illinois farm organizations stand in strong support of DR–CAFTA.

Now, the district I represent and the State I represent is a major manufacturing State, heavily dependent on exports, heavily dependent on manufacturing, and by DR–CAFTA opening up a two-way street on trade, this agreement immediately eliminates tariffs on 80 percent of U.S. exports, 80 percent of Illinois exports. It eliminates all tariffs within 10 years, including the up to 15 percent tariffs on Illinois' exports on chemicals, electrical equipment, machinery, processed food and transportation equipment. That is good news for the small manufacturers that I represent in Illinois, both the little guys as well as the big guys, Caterpillar being my biggest employer. Eight thousand Caterpillar workers reside in my congressional district, and Caterpillar is one example of an Illinois company that will benefit significantly, meaning there will be more opportunities for Illinois workers to make the yellow trucks, the yellow bulldozers, the yellow construction equipment. With this agreement, the tariff on U.S.-produced off-highway trucks, for example, made by Caterpillar, which currently is 5 percent in Guatemala, 8 percent in the Dominican Republic, 14 percent in Costa Rica, they will be immediately—on the first day of implementation, those tariffs on manufactured goods will be eliminated; and that is good news for the thousands of manufacturing workers in Illinois and in the district that I represent. The bottom line is, DR–CAFTA is a win-win for Illinois workers, Illinois farmers, Illinois manufacturers; and I stand in strong support.

Ambassador Allgeier, can you, as we talk about the differences between the current status quo of a one-way street on trade, where we have essentially given full access to the U.S. marketplace for our friends from Central America and the Dominican Republic, but at the same time our products to go into their markets currently face duties and tariffs and barriers, what will this mean from the perspective of Illinois manufacturers, or just say U.S. manufacturers and U.S. farmers, having that two-way street now with the elimination of the barriers as a result of DR–CAFTA? What impact do you see as a result, particularly on exports of agricultural and manufacturing?

Chairman THOMAS. I will tell the ambassador that that is a question the entire Committee is interested in, and if you could submit that response in writing, we would appreciate it.

[The information follows:]

The written response of Ambassador Allgeier follows:

CAFTA–DR offers significant benefits for American workers, businesses, farmers, and ranchers. First, it's a growing market for our exports—Central America and the Dominican Republic rank as the second-largest U.S. export market in Latin America, behind only Mexico. This agreement offers opportunities for many sectors of the U.S. economy, including textiles, manufacturing, services, and agriculture. CAFTA will support U.S. textile jobs and help our industry compete against China and other

Asian countries by encouraging the use of U.S. yarn and fabric in the region's large apparel-making industry, which is why the National Council of Textile Organizations (NCTO) supports this agreement. The National Association of Manufactures projects that as a direct result of CAFTA–DR, U.S. manufacturers stand to gain $1 billion of additional goods exports, with approximately 12,000 related job opportunities for American workers. Moreover, CAFTA–DR could help to preserve up to four times that amount of existing U.S. exports in textiles. Factoring in manufacturing, agriculture and services trade, the Chamber of Commerce estimates a gain of $3 billion in U.S. exports.

U.S. farmers will also benefit significantly—CAFTA will open the Central American and Dominican Republic markets to U.S. wheat, rice, soybeans, beef, pork, poultry, dairy, and many other products. The American Farm Bureau estimates this agreement could mean $1.5 billion to the U.S. in additional farm exports.

You asked about the benefits of two-way versus one-way trade. Today, Central America and the Dominican Republic already export 80 percent of their goods duty-free to the U.S. market through preference programs and most favored nation rates. But many U.S. goods and agricultural products face high tariffs on exports to the region. CAFTA will remove those tariffs and open up the Central American and Dominican Republic markets to U.S. products to the benefit of American workers and farmers. Over 80 percent of tariffs on consumer and industrial goods will be eliminated immediately, with the remaining tariffs phased out over 10 years.

The U.S. ITC reported in its economy wide effects study of a CAFTA–DR that U.S. exports to the CAFTA–DR countries would increase annually by $2.7 billion.

Moreover, according to an independent study using the Michigan Model of World Production and Trade, the U.S.— CAFTA–DR FTA will boost U.S. exports to the region by $8 billion and increase U.S. welfare by $17.3 billion (or 0.17 percent of GNP).

It is also important to note that CAFTA will strengthen democracy and economic freedom in a region that has seen too little of both. President Bush believes we should stand with those in our neighborhood who stand for economic freedom.

Chairman THOMAS. The gentleman's time has expired. Does the gentleman from Massachusetts wish to inquire?

Mr. NEAL. I do. Thank you, Mr. Chairman. Mr. Allgeier, in 2003, the trade deficit was $500 billion, and in 2004 it grew to $617 billion. I think we would all agree it has impacted, in some shape or form, the dollar. Do you think we have a trade deficit problem?

Ambassador ALLGEIER. Congressman, we certainly have a trade deficit problem with certain countries where we are not getting the kind of access that we should. Obviously, the trade deficit depends upon many other factors, the principal one being differences in growth rates between the United States, which is a great consuming Nation, given our relatively high growth rate, and other countries, such as Japan and in Europe where they have not had the same growth rates.

With respect to this particular region, as Congressman Weller pointed out, they are a very important customer of the United States, and we very much want to keep them a good customer of the United States, and I would say particularly with respect to this textile situation. They are an important customer right now. If we do nothing, however, they will be losing jobs in their own textile sector, they will be buying, therefore, fewer inputs from us, and both of us will be big losers.

Mr. NEAL. If you argue, as you have, that access is a problem which has contributed to the deficit, what is the plan for doing something about it?

Ambassador ALLGEIER. The plan—well, there are a number of aspects. Obviously, the trade aspect is only one part of it. Trade negotiators can't reverse the deficit. As I said, relative economic

growth and other policies, monetary policies of some countries and so forth, play a role. What we can do is to ensure that we are getting as level a playingfield as possible for our producers, our farmers, our service suppliers, and that is what we are doing with this agreement and the other elements of the President's trade negotiating agenda.

Mr. NEAL. With the help of many of us here, these agreements have gone forward, but, in the last few years, five of the six trade agreements we have put together now reflect significant deficits.

Ambassador ALLGEIER. Actually, when one looks at the deficit situation country by country, something like 14 percent of the deficit, 15 percent of the deficit, is with countries with whom we have FTAs. The other 85 percent is with countries with whom we don't have FTAs.

Mr. NEAL. Five of the last six trade agreements have created significant deficits. Would you agree with that?

Ambassador ALLGEIER. No. As I said, the countries with whom we have FTAs are a small minority of the deficit.

Mr. NEAL. Let me take you to the next point then, DR–CAFTA. Will that create a deficit, in your judgment, a trade deficit in your judgment, or will that contribute to the trade deficit?

Ambassador ALLGEIER. According to the ITC study, the net effect worldwide of the DR–CAFTA will be to improve our trade balance by about three-quarters of a billion dollars.

Mr. NEAL. I hope to have you back so we can explore that possibility down the road, that possibility. Let me ask you another question which I think is important for those of us from New England, and the Northeast in particular, and that is retraining. Would you agree that retraining really, by and large, hasn't worked very well?

Ambassador ALLGEIER. I think there are always improvements we can have to help individuals make the adjustment.

Mr. NEAL. Let me try to reframe that question then. One of the reasons that we have such difficulty in America selling these FTAs, and there is so much resistance, is largely because the retraining programs really haven't worked very well. Until we gain some traction on retraining and what it comes to mean, other than lower wage, less job stability, you are going to have trouble forever and this Committee and the Members of Congress are going to have trouble for a long, long period of time in selling FTAs. The one thing I think we would all agree on here, on both sides of the aisle, retraining has not worked very well.

Ambassador ALLGEIER. I don't think, however, whatever one's views are on retraining, that the solution is to stop opening markets, to refrain from opening markets overseas. If we are going to have to have opportunities for our workers to have additional job opportunities in high-tech areas, for example, in agriculture, we are going to have to keep opening markets. So, I don't think that voting against the trade agreements that open markets is really an effective response to any concerns that one has about retraining.

Mr. NEAL. One of the more intriguing alliances in Congress is between people on the real left and people on the real right who generally oppose these trade agreements, and they come at that for different reasons. I think one thing they agree on is, when they go back home, it is the level of frustration that laid-off workers feel.

I think we have not been significantly mindful of that in Congress as it relates to how we restructure these training programs. Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Missouri, Mr. Hulshof, wish to inquire?

Mr. HULSHOF. I do, Mr. Chairman. Thank you. I appreciate the fact you allowed our colleague from Maryland to give us an update about our colleague from Ohio, Mr. Portman, who I think would be an exceptional Trade Representative. He has the talent and expertise, and I can assure you, Mr. Chairman, my wishing him well does nothing to do with my desire to ascend to the upper deck—maybe a little bit to do with it.

Nonetheless, some of the frustration, Mr. Ambassador, that you are hearing, and this is frustration, for example, we had in our hearing on China, especially from the agriculture point of view. I am going to pick up a thread that my colleague from Illinois has raised. The Japanese are excluding our beef, the Chinese have created some dubious sanitary and phytosanitary claims, even our trading partners in the European Union, we have pushed, prodded, cajoled as far as accepting our genetically enhanced foods. I do want to commend this Administration and particularly Mr. Johnson, a former colleague of ours. Wes Watkins and I introduced the legislation that created the permanent Chief Agriculture Negotiator for the Office of the USTR within your office, and Ambassador Johnson is doing a great job there.

We do have a positive trade balance globally as it reflects agriculture, but certainly as we now focus on the Central American countries, as a witness will tell us later this afternoon, we do, right now at least, face a $700 million trade deficit regarding agriculture in this part of the world. To echo what my friend Mr. Weller said, he mentioned soybeans and pork. Right now, American beef, our exports have a tariff as high as 30 percent. One in five rows of corn in Missouri are exported, and right now corn exporters face duties up to 35 percent. If you happen to be a dairy State, sometimes exports are as high as 60 percent. So, I see that this is a good, continuing step forward at least to create that positive trade balance for our farmers and ranchers here in America.

That was my comment. Let me shift though to a question and be sensitive to my time and allow you to answer the question. There have been some questions about the labor standards. So, let me ask you a very basic question I think I understand the answer to, but I will give you a chance to reiterate. Back in May of 2000, we had a vote in the House. There were 309 House Members, a very bipartisan vote—I think 126 Democrats joined 183 Republicans—and we supported some of the Central American countries, including the Dominican Republic, regarding the CBTPA. We increased the CBI preference in that particular area. Now, the question is maybe a little simplistic; were the labor protections in that initiative, are they more stringent or less stringent than what is being proposed in this agreement?

Ambassador ALLGEIER. The labor protections in this agreement are much more robust, because it is a package of cooperation and support for these countries. It starts with the ILO standards, which is what the CBI referred to. Then, rather than just kind of putting

it on paper and then walking away, we have been working with these countries in order to help them meet the very specific needs that they have, that, first of all, the ILO identified, and then the countries themselves in this country identified. They didn't just identify them, they went on to say these are the steps we need to take to improve our situation. There will be a donors conference on May 9 that the Inter-American Development Bank is organizing to respond to the needs that have been identified in this document. I met the other day with the Director General of the ILO to talk about the ongoing monitoring role that they will have. So, none of that is in the CBI.

Mr. HULSHOF. Let me ask you this final follow-up question, because, again, a later witness will tell us in his testimony, at least his written testimony, that not one country included in the DR–CAFTA comes close to meeting a minimum threshold of respect for the ILO's core labor standards. Since you won't have a chance to respond after that witness testifies, what response would you make to that claim or allegation?

Ambassador ALLGEIER. I would respond that the ILO is in the best position to judge compliance with its standards, and it has said in the report that it did, a very comprehensive report, that these countries' laws are compatible, comply by and large with the ILO convention standards. Now, they didn't do a review of the United States because we have not ratified as many of the ILO conventions as these countries have.

Mr. HULSHOF. Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Kentucky, Mr. Lewis, wish to inquire?

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Mr. Ambassador, I would like to address some of the questions that Mr. Neal asked a little while ago. NAFTA, since it was signed in 1993, how much have our exports increased to that region?

Ambassador ALLGEIER. Well, when you say NAFTA, you want the exports to Canada and Mexico? They have more than doubled in that period, and perhaps even more significant, is that our production at home, manufacturing production, has increased by one-third during the period of that agreement.

Mr. LEWIS OF KENTUCKY. What is the deficit, trade deficit, with Canada and Mexico right now?

Ambassador ALLGEIER. I would have to look up the exact number.

Mr. LEWIS OF KENTUCKY. What I am getting at is that, if we didn't have this trade agreement with the increase in exports, what would our deficits be?

Ambassador ALLGEIER. Obviously they would be much, much larger. As I said earlier, if you look at all of the FTAs that we have, they account for something like 15 percent of our overall world deficit. That includes, obviously, the NAFTA. So, 85 percent is with countries with whom we don't have agreements.

Mr. LEWIS OF KENTUCKY. The reality is that trade is going to go on. It is a matter of whether we are going to get the best deals we can possibly get in our trade agreements and be able to increase our exports. I know in Kentucky alone our exports increased to Canada and Mexico by 267 percent since NAFTA, and

that has created a lot of good, good jobs. So, I think it is a pretty bogus argument to argue that we are worse off by these trade agreements.

Ambassador ALLGEIER. It is hard to imagine how this could make things worse, when we are at the disadvantage that has been documented here already in terms of the relative tariff levels.

Mr. LEWIS OF KENTUCKY. Exactly. I would just like to address the issue of retraining. I have talked about this community several times in this Committee, but I have a perfect example in my district, Campbellsville, Kentucky, where they lost a Fruit of the Loom company a few years ago, 2,500 jobs. That was quite a significant negative impact on the community, but through retraining, through their local university, they were able to bounce back within a three or 4 year period with 13 new companies and expanded companies, several in-source companies from other countries. The employment now is greater than what it was before the Fruit of the Loom company closed. So, retraining does work. It takes a lot of effort on the part of the community to get involved and have the leadership to do what Campbellsville did. If a community the size of Campbellsville can do what they have done, then I don't think there should be a problem for any community.

Ambassador ALLGEIER. We have to keep opening markets in order to make the opportunities for those employees.

Mr. LEWIS OF KENTUCKY. Absolutely. Just one more question. I know Kentucky is a large exporter of fabric and yarn, at the tune of about $110 million in 2004, I think. The DR–CAFTA agreement, what kind of impact is that going to have on Kentucky? I am sure it is going to make it a lot better, but how much better, do you think?

Ambassador ALLGEIER. If I could just focus on the textile part of that for a minute, people should not be under the impression that if we do nothing we will still have all of those jobs in the textile and apparel area, because there is no such thing as the status quo in this world with the quotas of, and the competition from, China. So, it is a question of whether we prepare ourselves and make ourselves more competitive, to compete in that environment, or whether we stand by and watch jobs go across the Pacific to Asia. The National Association of Manufacturers has documented this quite clearly in the study they have done.

Mr. LEWIS OF KENTUCKY. Thank you. Just let me say, the jobs in Campbellsville are better paying, higher tech. Like I say, they certainly would have liked to have kept Fruit of the Loom, but they have been able to rebound very, very well.

Ambassador ALLGEIER. We are pleased to hear that.

Chairman THOMAS. Does the gentleman from Louisiana, Mr. Jefferson, wish to inquire?

Mr. JEFFERSON. Thank you, Mr. Chairman. I would like to begin by saying that I wish I could offer a defense for the Chairman or for USTR with respect to what Mr. Rangel said today about the lack of inclusion in decisionmaking by the Committee, the lack of consultation by USTR with respect to the entire Committee, with respect to both sides of the Committee, Republicans and Democrats. There is a lot of room for improvement there. Many of us struggled with the TPA to get it passed, and then we find ourselves

frustrated by the fact there are closed meetings, and that is unfortunate. So, I hope going forward, as we try to implement these provisions, we will find a way, you will find a way and our Chairman will, to include all of our Members in those discussions.

Having said that, I support this agreement for a lot of reasons. I am from New Orleans. We have been working for the last 4 years with DR–CAFTA ministers and the rest trying to get some points of agreement. We have had DR–CAFTA institutes created down there by universities. We have done a great deal with our port, but I have been as concerned as anyone about how it affects environmental and labor issues. From our research, what it looks like to me, and I want to see if you can confirm this, that unlike the United States, which is a common law system, the six DR–CAFTA countries are a civil law system, and when they adopt international conventions, as with the ILO standards, they become a part of their domestic law. Is that true or not? Is that what your reading shows?

Ambassador ALLGEIER. Yes, Congressman, that is accurate. When they ratify these agreements, at the moment that it is ratified it then becomes essentially incorporated in their law. It is domestic law.

Mr. JEFFERSON. If that is true, then when you require them to enforce their domestic laws, you require them to enforce all of the conventions that they have adopted as a part of the domestic law, is that not true?

Ambassador ALLGEIER. That is right, and that is why it is so useful to have within the agreement itself these procedural requirements, if someone in one of these countries challenges how they have been treated with respect to labor protections.

Mr. JEFFERSON. Now, many of these countries—in fact, all of them; I just looked at it—in their constitution also adopt the ILO core standards in each of the constitutions of these countries. Each of the countries, except for the Dominican Republic, has adopted all eight of the conventions, and the Dominican Republic has adopted all except one. Isn't that correct?

Ambassador ALLGEIER. I think El Salvador has ratified six of the eight. The others have done the eight, if I am not mistaken.

Mr. JEFFERSON. That is close.

Ambassador ALLGEIER. The point about the constitution is absolutely right. These rights, by and large, are embedded in their constitutions.

Mr. JEFFERSON. Now, there are ways to improve this agreement and to make it work. I don't know about making it work better, but make it work. I am concerned about the labor and trade capacity, the commitment there, and whether or not we will put money behind our efforts to help the countries fund their white paper suggestions. I am concerned about whether we might have a look-see in some biannual way with a report to the Congress about what happened with respect to the labor and environmental issues, something that might be an action-forcing event from our end of it. In the African bill, we required a meeting of ministers with the President about various issues. I would like to see one where DR–CAFTA labor ministers meet to discuss their efforts to afford workers workers' rights on an annual basis here in the country as we do under the African bill. Would any of these things

sound objectionable to you? Are these things we can work on as we work to implement the legislation?

Ambassador ALLGEIER. Actually, I think those ideas are completely compatible with the approach that we are taking and, frankly, with the approach that these other countries are taking. We are all in agreement that there should be benchmarks, there should be periodic review, and we would be happy to work with you and other Members of Congress to establish that kind of a system between us and the Congress.

Mr. JEFFERSON. There are probably a few other ideas out there about the subsistence farmers projects and that sort of thing to make sure that the smallest agricultural units down there are able to participate in this agreement and the small industries are able to participate in the agreement. Would that also be the kind of thing that you would see us working on as we move toward implementation?

Ambassador ALLGEIER. We would be happy to. We are very proud of this agreement, and we think that as we go through time, it will be evident how good it is. So, having scrutiny and monitoring is actually a positive for us.

Mr. JEFFERSON. Do we have your commitment—I know you won't be the man who decides all this in a few minutes, maybe by the end of the day, according to some reports, but do you support the notion that, as we move forward with implementation, that you will work hard or suggest that your agency work hard to make sure that Democrats and Republicans are brought to the table to work on implementing legislation?

Ambassador ALLGEIER. Yes, we certainly will work that way, and I appreciate the time you have taken for me to visit with you and other members of USTR to visit with you. We will work with you on that very hard.

Mr. JEFFERSON. Thank you very much.

Chairman THOMAS. I thank the gentleman. Does the gentleman from Arizona wish to inquire?

Mr. HAYWORTH. Mr. Chairman, I do, and I thank you very much for the time. Sir, thank you very much for both your stewardship on this interim basis in the USTR's office and your generous time today before our Committee to talk about this proposed FTA. It is interesting, we talk about the inter-related nature of decisions we make here in the Congress of the United States, and certainly there are classic pocketbook issues at stake, Mr. Chairman and my colleagues.

One item as familiar as the kitchen table is this rather hefty family sized bottle of ketchup. Interestingly enough, this particular brand in some quarters is a bone of contention in terms of branding in the recent election campaign, but I bring this up not on a political sense but really on a pocketbook issue. What is transpiring in terms of access for this product and others like it, as familiar on our kitchen tables, in our pantries and grocery stores, right now, before this FTA comes into being, with the circumstances that we confront for this American product in the countries to be affected in this proposed DR–CAFTA, right now, ketchup faces a 15 to 20 percent duty in this region. It is a sensitive product which will be subject to a 10 to 15 percent phaseout of the duty. Now, under-

stand these duties really are nothing more than penalty fees or, in essence, taxes, I guess you would call it, that restrict, literally, the consumption of American products and have an impact on our economy. I think it is something that we have to remind ourselves, especially given the tenor and tone of some of the discussion, though I welcome greatly the substantive question from my good friend from Louisiana who preceded me. Could you amplify, not only for food brands but for other products, and pardon the pun, from soup to nuts, including ketchup, what it means to have a repeal or a decrease in these duties in terms of American jobs and opportunity and market share for American products in the area affected?

Ambassador ALLGEIER. Yes. Well, that certainly is the point of the agreement, is to level those differences. You can go through the whole range of products. We have talked a lot today about agricultural products but also on industrial products, but we haven't talked very much about the other areas of commerce, about services and the openings that will be created for our services industries. After all, two-thirds of our economy is services, and we are the most competitive in the world in financial services, audio-visual services, telecommunication services, express delivery. All of these are areas that will be opened up through this agreement. So, all of these things should be looked at together. We have rightfully concentrated on the tariffs, but I don't want to have people miss the other opportunities. government procurement, for example, which has not been opened previously, will now be opened on a non-discriminatory basis for our suppliers. These create opportunities especially for smaller and medium-sized businesses, which are also extremely important to our economic health.

Mr. HAYWORTH. Let me move from the kitchen table. I mentioned earlier the geopolitical impact of what goes on in terms of trade, and it is no secret, indeed it is part of the public record, that I had serious concerns about our trade agreement with the People's Republic of China. Indeed, as we look at this new century, and having returned recently from a trip to China and given the challenges we confront there, it is worth noting that there is a significant presence of the People's Republic of China in Central America in the area to be affected. Now, I know that, certainly, this has impact on economics. To the extent you have seen evidence of Chinese entry into these markets and the presence of the Communist Chinese in this hemisphere, opening up trade opportunities would seem to serve us well as a counterbalance geopolitically to the rising influence of the Communist Chinese in this hemisphere.

Ambassador ALLGEIER. This agreement is a commercial agreement, but it is much, much more, in terms of, as I said earlier, supporting reform in these countries, but in terms of cementing our overall relations with these countries. This is something they badly want—the relationship with the United States. If we were to walk away from them by not passing this agreement, when would they ever trust us again? We have worked with them very, very hard to get to this agreement, and what would happen—I am actually in some ways less concerned about the Chinese influence than the influence of people like President Chavez of Venezuela. He would turn to them and he would say, I told you so. You trusted the

Americans. Bad choice. That is, I think, a greater risk, a consequence of rejecting this agreement, than the Chinese activities in that area.

Mr. HAYWORTH. Thank you.

Chairman THOMAS. The gentleman's time has expired. Does the gentleman from Florida, Mr. Foley, wish to inquire?

Mr. FOLEY. I thank you very much, Mr. Chairman. Earlier today we heard from you, among others, that we are only talking about a teaspoonful of sugar, and I know that was illustrative of the imports that may be allowed under this bill. It may be a teaspoon and a half for every American. I represent the region that grows it, so I didn't have a prop to bring in, because it would have been too big. It does have an impact on jobs in my district, it has an impact on businesses in my district, and so I don't want my concerns to be trivialized by anyone. By anyone. Members have a right to assert the importance of trade for their district. I keep my rights to protect the workers in my State.

The reason I ask that question is it seems specific to this, and we are trying to be cooperative. I am having discussions with our grower groups, because I think there are some compelling reasons to support DR–CAFTA, but if I am pushed in a corner, I will have no alternative. I have had conversations with the White House, and I will continue to have them with my colleagues, but I would like the respect of the USTR office in understanding, while it is important for the global look, Members do have political and individual concerns that at the end of the day they have to balance. So, I just ask for respect at least on that point of order. The question is, what is the opposition to elevating sugar, considering it is grown worldwide? We excluded it from Australia. I believe every FTA ever completed excludes import access mandates on sugar. We excluded it from the Canadian portion of NAFTA. The only one that was included was Mexico. I think South Africa, Japan, Mercosur all excluded the import access mandate. Obviously, this is reflective of the fact that so many countries grow it, and because of the imbalance of debate, they found ways to exclude it. Is there opposition to elevating all of the discussions relative to sugar to the WTO?

Ambassador ALLGEIER. Certainly not. Our view is that, in agriculture and in specific products such as sugar, the United States should not be out there unilaterally changing our programs if other countries are permitted to either subsidize their sugar or maintain other barriers to their markets in sugar. I do want to say, Congressman, that we are very respectful of the need to deal sensitively, very sensitively, with sugar, and we have tried very hard to do that in this agreement, in no sense trivializing it. When I say it is a teaspoon and a half, I understand, though, it is a very sensitive product, and that is exactly why we worked so hard to get the provisions in this agreement that we did. We will be happy to work with you on the global scale as to what should be the appropriate negotiating posture that we take in the WTO.

Mr. FOLEY. I urge my grower groups again to cooperate and participate and not throw around rhetoric. Let's have a reasonable discussion. Both sides may have had some foul here, so I am trying to bring balance to the debate.

Ambassador ALLGEIER. We appreciate that.

Mr. FOLEY. Let's start with professional attitudes. I think one of the things you have also heard from Members is concern about enforcement of existing treaties. I have heard a lot about China. Virtually everywhere we go we have some question. On Brazil, for instance, and intellectual property rights—a recent attempt, possibly by Brazil, to take an AIDS drug that is patent-protected, eliminate that patent, and just claim it is their own. So, we are all concerned about, as we negotiate trade agreements, will there be substantial ways to insist on compliance without some Nation just saying, oh, we are not so interested in intellectual property; we are just going to work on this other thing. Can you assure us as we continue on some of those agreements that there will be a look back to see where we failed and will we modify, or, at least intensify our efforts to have negotiations that are protected on both sides?

Ambassador ALLGEIER. Yes. We certainly take very, very seriously our responsibility to enforce the agreements that we negotiate, and that is one of the reasons that we take such care during the negotiation to be absolutely as clear as we possibly can as to what was the intent of any given provision, so that if there are disputes in the future, people know what the intent of the negotiators was. Beyond that, we are probably the most active, certainly one of the most active litigators in the WTO's dispute settlement. Similarly, in any of our bilateral agreements, if we see a country that is slipping away from compliance, we waste no time in seeking a correction of that.

Mr. FOLEY. Could you just share, and for the future, my time is up, could you share our victories in those tribunals? I would love to see a compilation of the victories so I can keep score.

Ambassador ALLGEIER. I would be glad to.

[The information follows:]

SNAPSHOT OF WTO CASES INVOLVING THE UNITED STATES

Updated: April 28, 2005

UNITED STATES AS COMPLAINING PARTY—of the total of 74 complaints (69) and compliance proceedings (5) the United States has filed so far, 50 (including 1 that is partially concluded) have been concluded; 3 were merged with other complaints; 5 are in the litigation stage (for one complaint, consultations continue on one of the products at issue); and 18 are either in the pre-litigation consultation stage or currently inactive, as follows:

23—resolved to U.S. satisfaction without completing litigation:	(1) Korea—shelf-life restrictions; (2) EU—grain imports; (3) Japan—protection of sound recordings; (4) Portugal—patent protection; (5) Pakistan—patent protection; (6) Turkey—tax on movies; (7) Hungary—agricultural subsidies; (8) Philippines—pork & poultry imports; (9) Brazil—auto regime; (10) Sweden—intellectual property protection; (11) Australia—salmon imports; (12) Greece—intellectual property protection; (13) Ireland—intellectual property protection; (14) Denmark—intellectual property protection; (15) Romania—customs valuation; (16) Philippines—auto regime; (17) Belgium—rice imports; (18) Brazil—patent law; (19) EU—corn gluten imports; (20) Mexico—hog imports; (21) Argentina—patent protection (partial); (22) China—VAT; (23) Egypt—apparel tariffs.
23—U.S. won on core issue(s)	(1) Japan—liquor taxes; (2) Canada—magazine imports; (3) EU—banana imports; (4) EU—banana imports (compliance proceedings); (5) EU—hormone-treated beef imports; (6) India—patent protection; (7) Argentina—textile imports; (8) Indonesia—auto regime; (9) Korea—liquor taxes; (10) Japan—fruit imports; (11) Canada—dairy sector; (12) Canada—dairy sector (compliance proceedings); (13) Australia—leather subsidies; (14) Australia—leather subsidies (compliance proceedings); (15) India—import licensing; (16) Mexico—antidumping duties on high—fructose corn syrup; (17) Mexico—antidumping duties on high-fructose corn syrup (compliance proceedings); (18) Canada—patent law; (19) Korea—beef imports; (20) India—auto regime; (21) Japan—apples (fire blight); (22) Mexico—telecom barriers; (23) EU—geographical indication protection (two complaints consolidated into one case).
4—U.S. did not prevail on core issue(s):	(1) Japan—film imports; (2) EU/Ireland/UK—tariff classification of computer equipment (three complaints consolidated into one case); (3) Korea—airport procurement; (4) Canada—wheat.
0—in appellate stage	
5—in panel stage:	(1) EU—biotech products; (2) Mexico—AD duties on beef and rice (rice); (3) Mexico—beverage tax; (4) Japan—apples (fire blight) (compliance proceedings); (5) EU—customs.
4—in consultations:	(1) Argentina—patent protection (partial); (2) Venezuela—import licensing; (3) Mexico—AD duties on beef and rice (beef); (4) EU—Aircraft.
14—monitoring progress or otherwise inactive:	(1) Korea—import clearance; (2) Japan—Large Stores Law; (3) Belgium—yellow pages; (4) EU—dairy subsidies; (5) Chile—liquor taxes; (6) Belgium—tax subsidies; (7) France—tax subsidies; (8) Greece—tax subsidies; (9) Ireland—tax subsidies; (10) Netherlands—tax subsidies; (11) EU/France—avionics subsidies; (12) Argentina—footwear imports; (13) Brazil—customs valuation; (14) EU—Steel safeguards.

UNITED STATES AS RESPONDING PARTY—of the total of 103 complaints (97) and compliance proceedings (6) filed against the United States so far, 50 have been concluded; 22 were merged with other complaints; 12 are in the litigation stage; and 19 are either in the pre-litigation consultation stage or currently inactive, as follows:

14—resolved without completing litigation:	(1) Autos (Japan); (2) Wool coats (India); (3) Various products (EU); (4) Tomatoes (Mexico); (5) Poultry (EU); (6) Urea (Germany); (7) Brooms (Colombia); (8) Helms-Burton Act (EU); (9) TVs (Korea); (10) Cattle, swine & grain (Canada); (11) Textiles (EU) (two complaints consolidated into one case); (12) Massachusetts government procurement (EU, Japan) (two complaints consolidated into one case); (13) Steel safeguards (Chinese-Taipei); (14) Orange juice (Brazil).
11—U.S. won on core issue(s):	(1) sections 301–310 of Trade Act 1974 (EU); (2) "Shrimp/turtle" law (India, et al.) (compliance proceedings); (3) CVD regulations (Canada); (4) AD—steel plate (India); (5) CVD—German steel (EU); (6) section 129 (Canada); (7) Rules of origin—textiles and apparel products (India); (8) AD—sunset review (Japan); (9) CVD—softwood lumber (final) (Canada); (10) AD—softwood lumber (final) (Canada); (11) Gambling and betting services (Antigua & Barbuda).
25—U.S. did not prevail on core issue(s):	(1) Gasoline (Venezuela, Brazil) (two complaints consolidated into one case); (2) Underwear (Costa Rica); (3) Wool shirts (India); (4) "Shrimp/turtle" law (India, et al.); (5) DRAMs (Korea); (6) UK leaded bars (EU); (7) Music licensing provision in U.S. copyright law (EU); (8) 1916 Revenue Act (EU, Japan; two complaints consolidated into one case); (9) Bonding requirements (EU); (10) Wheat gluten import safeguard (EU); (11) Stainless steel AD (Korea); (12) Lamb meat import safeguard (Australia, New Zealand; two complaints consolidated into one case); (13) Hot-rolled steel AD (Japan); (14) Cotton yarn (Pakistan); (15) section 211 of Omnibus Appropriations Act (EU); (16) Taxes on Foreign Sales Corporations (EU); (17) Taxes on Foreign Sales Corporations (EU) (compliance proceedings); (18) Line pipe safeguard (Korea); (19) CVD—steel products (EU); (20) CDSOA (Australia, et al.; eleven complaints consolidated into one case); (21) CVD—softwood lumber (prelim) (Canada); (22) Steel safeguards (EU, et al.; eight complaints consolidated into one case); (23) Injury-softwood lumber (Canada); (24) AD—sunset review (Argentina); (25) Cotton subsidies (Brazil).
1—in appellate stage:	(1) CVD—Semiconductors (Korea).
11—in panel stage:	(1) Safeguards on steel line pipe and wire rod (EU); (2) CVD—steel plate (Mexico); (3) AD—cement (Mexico); (4) AD—OCTG (Mexico); (5) "Zeroing" of AD margins (EU); (6) Privatization (compliance proceedings) (EU); (7) CVD—softwood lumber (final) (Canada) (compliance proceedings); (8) Injury—softwood lumber (Canada) (compliance proceedings); (9) Taxes on Foreign Sales Corporations (EU) (compliance proceedings II); (10) EU hormones sanctions; (11) "Zeroing" of AD margins (Japan).
10—in consultations:	(1) CVD—steel (Brazil); (2) AD—steel pipe (Italy); (3) AD—silicon metal (Brazil); (4) AD/CVD—sunset reviews (EU); (5) Wheat injury (Canada); (6) CVD—softwood lumber reviews (Canada); (7) Aircraft (EU); (8) AD—UK steel bar (EU);(9) AD—Shrimp (Thailand); (10) "Zeroing" of AD margins (Mexico).
9—monitoring progress or otherwise inactive:	(1) Salmon (Chile); (2) Peanuts (Argentina); (3) Harbor maintenance tax (EU); (4) Live cattle (Canada); (5) Sugar syrups (Canada); (6) section 337 of Tariff Act 1930 (EU); (7) amendment to section 306 of Trade Act 1974 (EU); (8) U.S. patent law (Brazil); (9) AD—softwood lumber (prelim) (Canada).

Chairman THOMAS. Does the gentleman from California, Mr. Becerra, wish to inquire?

Mr. BECERRA. Thank you, Mr. Chairman. Mr. Allgeier, good to see you again. Thank you for being with us. I wish I could start on a happy note, and perhaps maybe I can find a way by saying to you congratulations on the provisions on intellectual property. I appreciate that you continue to fight to make sure the interests with regard to intellectual property are protected. It is an industry that we helped create, and certainly we should continue to reap the benefits of it. For far too long, we have seen too many countries continue to pirate our goods. So, I thank you for being very vigorous, going out there with guns blazing when it came to protecting intellectual property.

I am disheartened that we missed an opportunity. It seems to me that this is an agreement that amounts to nothing more than bargain hunting at America's expense. It is going to lead to a race to the bottom. By that, I mean when Americans earn an average wage of about $21.50 an hour, including benefits, and you compare that to what China pays its average worker in wages, about 64 cents an hour, or if you look at Mexico, where one of every four workers earns the minimum wage, and that totals for a day's worth of work, not an hour, a day, $4 an hour. We know in Central America the wages are even less than that per day than in Mexico. What you do is set us up to engage in a race to the bottom, which ultimately we can't win as American workers and certainly as American companies, if we are going to be forced to have to compete at those lower and lower wages.

I wanted to go to a few of the points that you have raised. We have had this discussion about core labor standards, and no one has mentioned what they are. So, really quickly, what we are telling the American public is we don't want to see any country engage in trade with us if they are engaging in slave labor, child labor, the worst forms of child labor, discrimination in the workplace, where they can discriminate and hire whomever they wish and fire whomever they wish and where they prohibit people from collectively associating or collectively bargaining if they choose. Those are five basic ILO standards. That is it. We are not talking about having a U.S. minimum wage. We are not talking about having working conditions in this country. All we are saying is those five basic things around the world, which most countries agree with; and, as you have mentioned, the Central American countries in most cases have adopted most of those five conventions—not all, but most. Now, I hear you saying that satisfies you, that they have adopted most of those five ILO conventions. Am I hearing you correctly?

Ambassador ALLGEIER. Not entirely.

Mr. BECERRA. So you are not satisfied. I just want to know if you are satisfied or not?

Ambassador ALLGEIER. I am not satisfied that the overall working conditions——

Mr. BECERRA. If you are not satisfied, why would we have settled for that?

Ambassador ALLGEIER. We didn't settle for it. We put together a package——

Mr. BECERRA. Wait, let's make sure. If the only thing in the trade agreement that says DR–CAFTA countries, enforce your own laws, and now you are trying to say by association the fact you

didn't enforce your own laws and, by the way, because you adopted some of these ILO conventions, they now become self-executing within your rubric of laws, that now we have adopted them, why should that not satisfy you?

Ambassador ALLGEIER. There is the question of enforcing those standards, and that is exactly what the ILO identified as the area we should go to.

Mr. BECERRA. So, let me ask you a question. When we sent that letter back in October or November, 2003, identifying 25 different cases of violations by the Central American countries—not that we identified but that the State Department and the ILO itself had found—none of those has been taken care of, not with a change in law, to address what should have been taken care of if they adopted these conventions to begin with. What concerns me is, if you are satisfied that the Central American countries are moving forward with adopting these conventions, does that mean you are also satisfied with the way things are in China, Syria and Iran? Because they, too, have accepted more of these ILO conventions than the United States has.

Ambassador ALLGEIER. No, I am certainly not claiming that a simple count of how many conventions one has adopted is a proper indicator.

Mr. BECERRA. That is a concern that some of us have. I know, for example, that recently, a few months ago, there was an assassination of a labor leader in El Salvador who happened to be, by the way, an American citizen who was down in El Salvador. We are still trying to find out what happened to the gentleman, but we know it was an assassination of a labor leader. We also know in Guatemala not too long ago some of those labor reforms that I believe you have touted as being very successful were overturned and no longer can be implemented. To me, when you say that no country should change their laws to conform to what we would like, and that whole discussion that took place with, I think, Congressman McCrery, where you don't force any countries to change their laws and therefore in terms of labor we didn't do that, I urge you to take a look at the provisions that you helped push forward on intellectual property, where in section 7 of Article 15, I believe it is, you say each party shall provide for criminal procedures and penalties, so that if any of these Central American countries don't have criminal laws in place to prosecute people who violate our intellectual property rights, they must now under this agreement change their domestic laws.

I think most of us are just saying, if you are willing to force, contrary to what you just said earlier, force a country in Central America to change its laws so that it adopts new criminal penalties and procedures, at minimum we should be willing to say that these Central American countries should conform to basic ILO standards when it comes to labor rights. That is where we have this big disagreement. What we see on the ground is different from what we see on paper, and I hope that we can get to the point of seeing it in practice.

Ambassador ALLGEIER. Well, I think that is exactly the point, is that we want to see changes on the ground and not just changes on a piece of paper. That is why we are working with the ILO and

with the Inter-American Development Bank to change the situation on the ground in these countries. What everybody who looks at this situation agrees on is that enforcement is the place to put the emphasis, and that is exactly what we are doing.

Mr. BECERRA. Thank you, Mr. Chairman.

Chairman THOMAS. The Chair would indicate the gentleman was 1:30 over, and he continues to hope that Members will self-discipline themselves, rather than making it appear as though the Chairman forces the Member to stop, but if it continues, the Chairman will force the Members to stop. This is a long panel. I want all the Members to be able to inquire. Those who continue to push the red light really are denying their colleagues the opportunity to speak. The Chair will allow all Members who wish to participate to participate, but we have two other panels, plus Members who failed to notify timely, but have indicated that they want to address the Committee on this subject. Does the gentleman from Texas, Mr. Brady, wish to inquire?

Mr. BRADY. Yes, Mr. Chairman; and I would hope that Xavier's time doesn't come out of my own.

Mr. BECERRA. I don't think you should worry, because I think just about everybody had a red light.

Chairman THOMAS. The gentleman from Texas has the time.

Mr. BRADY. I would defy anyone in this room to argue that Central America hasn't made remarkable progress the past 15 years in labor rights, in environmental standards, in democracy and the rule of law. It has been simply remarkable. I agree with Mr. Becerra that adopting the conventions alone doesn't prove anything, but in Central America's case it proves a great deal. An objective assessment recently by the ILO said not only has Central America adopted these conventions, but these laws are compliant with the high standards of the ILO in each case. The point they made to us—and, by the way, they don't give that assessment to Syria or China or other countries—their point was, let's work on enforcement. To Central America's credit, their labor ministers came up here 2 weeks ago in a remarkable meeting where they not only laid out a plan for enforcement, but showed what steps they had already taken, how they would not only increase enforcement but would measure results, providing 6-month benchmarks on every one of these important labor provision. The DR–CAFTA is already making great progress, I think having great benefits in labor protection simply by its discussion.

I will make this point, too. People say this is not a bipartisan trade agreement, but, in truth, it is. I am looking at a letter from a bipartisan group of former Secretaries of Agriculture that include Dan Glickman and Mike Espy and others who say the failure to approve this trade agreement will have a devastating effect on U.S. efforts to negotiate trade agreements on behalf of U.S. agriculture. I am looking at an open letter to Democrats from some of the key leaders, from Henry Cisneros, to Stuart Eizenstat, to the former chairman of this Committee, Sam Gibbons, Robert Strauss, the former Chairman of the Democratic National Committee (DNC), that talk about Central America's progress as a legacy of congressional Democrats and how important this trade agreement is to

moving along with democracy and all the progress that members of this panel rightfully should be proud of having been a part of.

The truth is, while some will say Central America is too small and too poor, tell that to U.S. farmers who have the opportunity to sell $1.5 billion of their agriculture products at a time when much of the world has shut them out. Tell that to our U.S. manufacturing workers who have an opportunity to sell another $1 billion of products and risk losing $4 billion of products a year if we don't bring this to fruition. Tell that to our textile workers who today we have already lost, because of China's just swamping of the market, five textile plants in America already. The Dominican Republic has lost 19,000 jobs. You say that is not a big deal, but those were 19,000 of our customers for U.S. products. You look at jeans that come from China, where there is no American content at all. Look at jeans that come from Honduras, where the fabric is American, the thread, zippers and yarn is American, this is 70 to 80 percent American goods. We are losing those customers because of China.

This gives us a chance to not only find new customers for American products but to better compete against China in textiles. Perhaps as importantly as that, it gives us a chance to look at the remarkable progress that Central America has made. I think this is not only one of the most important trade agreements we have ever faced but one of the most important foreign relations policy decisions we have ever made. Are we going to turn our back on Central America? Are we going to keep our arm extended, bringing them forward, recognizing they have made remarkable progress in rule of law and democracy and labor rights and all those values we appreciate? They painfully pulled themselves up the ladder of democracy. Kicking them back down would be a terrible mistake.

I am still hopeful in the end we have a lot of discussions, and all of these are fair questions, Mr. Allgeier, I am just hopeful in the end perhaps as Republicans and Democrats we came together to help open our market to Central America. Let's come together to keep that open and to reopen it for American products and goods and services. I think this is one of those truly win-win trade agreements, and I would ask your comments on that.

Ambassador ALLGEIER. Well, first of all, Congressman Brady, thank you very much for the support you have been giving us throughout the negotiations. Let me pick up on the first thing that you said, and that was referring to the remarkable progress that has been made in these areas of labor and the environment. I have been working in this region since the original Summit of the Americas in 1994, and the United States hosted the first ministerial meeting of the FTAA. Almost that entire meeting was spent by then Ambassador Cantor trying to get the word "labor" and the word "environment" in the communique. There, we really were talking about things on paper.

To think the reason there was so much resistance in the hemisphere was because they were afraid this was going to become a new way of stifling their trade. Think about how far we have come to this agreement where we have the countries themselves advocating change in their own economies, in their own labor standards and environmental standards, and coming to us and saying will

you help us. The effect of us voting against, the Congress voting against, the DR–CAFTA, would be to say, no, we heard you, but we are not going to help you.

Chairman THOMAS. The gentleman's time has expired. Does the other gentleman from Texas, Mr. Doggett, wish to inquire?

Mr. DOGGETT. Thank you, Mr. Chairman. Ambassador, does the text of this agreement grant standing to subsidiaries of U.S. corporations in DR–CAFTA countries to bring investor state claims here in the United States? The wording appears to be slightly different than NAFTA.

Ambassador ALLGEIER. The investor state provisions are for our investors in these countries to bring a claim against a foreign country in which they are operating.

Mr. DOGGETT. Yes, sir, I understand how they are supposed to work. My question is very specific. Does the text of the agreement permit standing for subsidiaries of U.S. corporations to come here to the United States and bring investor state claims if they have some operation here in the United States?

Ambassador ALLGEIER. If they have an operation here in the United States. If it is a company that is based in one of the DR–CAFTA countries, and it has an investment here in the United States——

Mr. DOGGETT. It could bring an investor state claim against something that it considered inappropriate here in the United States, couldn't it?

Ambassador ALLGEIER. I believe that a company based in one of these countries, regardless of what the particular ownership of that company is, if it had an investment here. Typically subsidiaries of American companies in these countries are established to operate in these countries.

Mr. DOGGETT. I understand what they typically do. Under this agreement they would have that standing.

Ambassador ALLGEIER. They wouldn't have investment back here, though.

Mr. DOGGETT. They could. There is nothing in this agreement to prevent it, is there? If they had an investment, they would have standing to challenge, for example, a government action. Say, if a State were to ban the use of arsenic in mining. Wouldn't it be up—under this agreement, if there were a claim by any foreign company that that interfered and took—was a taking of its right to do business here, wouldn't that be up to a DR–CAFTA arbitration panel to resolve?

Ambassador ALLGEIER. No, because, first of all, we are assuming—I am assuming—that the State implements this ban on a nondiscriminatory basis.

Mr. DOGGETT. Yes.

Ambassador ALLGEIER. What we have done in this agreement, which wasn't in previous bilateral investment treaties in the past, is we have, first of all, put a provision in this agreement which says that if a government entity like a State government is exercising its normal, its legitimate powers to protect public health and safety and the environment, that that, except in rare circumstances——

Mr. DOGGETT. Yes, sir, and that is what I want to ask you about. I understand what the agreement says, but it would be up to an arbitration panel to determine what those rare circumstances would be, would it not?

Ambassador ALLGEIER. Yes, but we have another provision in here which helps to define what an indirect expropriation would be; and what it is, it is the language from the Penn Central case in the United States, which is the guiding legal principle on what——

Mr. DOGGETT. Ultimately, the interpretation of those principles, though, is left up to a DR–CAFTA arbitration panel, correct?

Ambassador ALLGEIER. That is the way arbitration works, but the panel is compelled to look at the treaty to see what the principals are.

Mr. DOGGETT. There is nothing to prevent someone from being a trade lawyer, bringing a claim to the panel 1 day and then being, or maybe the very same day, being on a different panel as an arbitrator?

Ambassador ALLGEIER. No, that would be a conflict of interest.

Mr. DOGGETT. I am not saying the same issue, on an entirely different issue. In other words, the people that serve on arbitration panels can also be attorneys bringing claims to other arbitration panels of which they have no direct interest.

Ambassador ALLGEIER. Well, number one, we are part of the procedure for selecting panelists. We would certainly not select such a panelist, or, frankly, if there were such a panelist who later had a conflict——

Mr. DOGGETT. We are not talking about a conflict; some may perceive it as a conflict. You can both practice trade law and bring claims to panels, and if you are not involved in a case, you could end up being one of the arbitrators in a different case involving different production and different issues, correct?

Ambassador ALLGEIER. It is conceivable, but I just want to emphasize how closely we pay attention to conflicts of interest.

Mr. DOGGETT. If, for example, a State had a requirement that on a large road or a water construction project that it was required that you pay the prevailing wage, that would be the type of regulation that a DR–CAFTA arbitration panel could consider and would be the ultimate arbiter on as to the validity of that regulation.

Ambassador ALLGEIER. No. Once again, if the requirement by the State is that one has to pay the prevailing wage, let's say on a construction project, that applies and stands whether it is a foreign company that is doing the construction, or an American company.

Mr. DOGGETT. It is one of these DR–CAFTA arbitration panels that will determine whether that is a proper regulation if challenged as a taking by a foreign company or a subsidiary of an American company.

Ambassador ALLGEIER. Let me just mention two other protections that we have.

Mr. DOGGETT. Let me request if you would do that in writing.

[The information follows:]

The written response of Ambassador Allgeier follows:

Thank you for your questions regarding the CAFTA investment chapter. You raised as a concern whether the fact that attorneys can both sit on arbitration panels and

serve as counsel in other matters in some way undermines the benefits that U.S. investors receive from the investor-state provisions. As a general matter, it is not uncommon for arbitrators to be lawyers. Indeed, parties to arbitration usually want lawyers to serve as arbitrators, as lawyers are likely to have the background necessary to resolve the parties' disputes. Prohibiting active lawyers from serving as arbitrators would diminish the attractiveness of arbitration. However, the United States is vigilant in its responsibility to ensure that no conflict of interest exists with a potential arbitrator and the matter being heard.

Separately, it is important to recognize the value that U.S. investors get from the protections afforded to them by the investment chapter in our free trade agreements, including the CAFTA. Millions of Americans have invested their personal wealth in the American and global economy. The U.S. legal system affords them and foreigners who invest in the U.S. access to fair, transparent, and rules-based legal systems. But for many U.S. investors, the playingfield is not level. Foreigners get access to the U.S. legal system, but U.S. investors overseas are often disadvantaged. CAFTA's investment chapter levels the playingfield by including fair and transparent arbitration procedures available to U.S. investors in the event that a government expropriates their property, discriminates against their investment, or violates one of the other investment obligations. U.S. companies abroad have successfully used NAFTA Chapter 11 and our BITs to redress unfair and discriminatory action against them by foreign governments.

Nothing in the CAFTA or any other FTA or BIT interferes with a state or local government's right to regulate. An investor cannot enjoin regulatory action through arbitration. That form of relief is not available under our FTAs and BITs. Even if arbitrators were to find that a state regulation discriminated against a foreign investor in some way, nothing in the CAFTA or our other agreements requires that the regulation be amended or repealed.

Moreover, in drafting these provisions, we were careful to follow the detailed guidance on investment negotiations that Congress provided in the Trade Promotion Authority Act (TPA) to ensure that there be a fair and level playingfield for U.S. investors. The Administration has taken care to ensure that the substantive rights accorded to foreign investors are no greater than the rights accorded to our own investors. For example, TPA sets as a negotiating objective the establishment of expropriation standards consistent with U.S. legal principles and practices. As with our other FTAs negotiated under TPA, CAFTA fully satisfies this standard. Consistent with U.S. law, for example, CAFTA clarifies that only property rights in an investment are entitled to protection under the expropriation provisions of the Agreement. It also clarifies, consistent with U.S. law, that nondiscriminatory regulatory actions designed and applied to protect the public welfare generally do not constitute indirect expropriations. In determining whether an indirect expropriation has occurred, CAFTA directs panels to examine the factors in Penn Central, the seminal U.S. Supreme Court case on regulatory expropriation.

Mr. DOGGETT. I think the spoonful of sugar that is referenced by several people in this discussion applies to the environment as well. You mentioned Senator Baucus. Seven of the eight recommendations he made were rejected in this agreement, and the investor state provisions still pose great concern. Have I additional time, Mr. Chairman?

Chairman THOMAS. If the gentleman understands the way the Committee works, that red light that is out there has been on for 1 minute.

Mr. DOGGETT. Then I yield back.

Chairman THOMAS. The gentleman has no time to yield back, and I will continue with the other Members, that if you don't have the courtesy toward the other members of the panel, at least have the courtesy toward your colleagues. The gentleman from Wisconsin wish to inquire?

Mr. RYAN. I do Mr. Chairman. Mr. Allgeier, a couple of questions, but first a point I want to make. I think it is important that as we look at trade agreements, we view them in their own context and on their own merits. For this agreement, when you can see

that measured to the status quo that we find ourselves in today, when 80 percent of their goods coming into our country come in duty free, yet we don't see reciprocal treatment toward our goods going into their countries and we are equalizing that, that is a step in the right direction. Particularly what is interesting to me is for my own State of Wisconsin. Our major industry is wood products, which is northern Wisconsin, our forest industry. We have 0 percent tariff on DR–CAFTA wood products coming into America, but they have a 10 percent tariff on our goods going there. Motor vehicle parts, which is a very big industry in my district, 0 percent tariff. Auto and auto parts coming into America, 11.1 percent tariff of American-made auto and auto parts going into the DR–CAFTA countries. Corn and soybeans, grains, which is a big area of Wisconsin's industry, 0 percent tariff; their grain products coming into America, 10.6 percent tariff of our products going there. Dairy products: Wisconsin—put the California advertising aside, Wisconsin is still America's dairy land, and the dairy tariff against our dairy products——

Chairman THOMAS. The gentleman's time has expired.

[Laughter.]

Mr. RYAN. Reclaiming my time, it is a 19.5 percent tariff on Wisconsin cheese going into the DR–CAFTA countries. We charge them 9.3 percent tariff. Meat products, 14.7 percent tariff of our products going into the DR–CAFTA countries, and a 3 percent tariff we charge them. So, I am very pleased with the fact that this levels the playingfield for our products to be able to—for us to sell into their markets.

Also of concern to constituents are the labor standards, and I just have a couple of quick questions. I would actually appreciate being copied on the letter you are going to send to Mr. Doggett on the project labor agreements. My understanding of the agreement, that this does nothing to affect in any way our project labor agreement and prevailing wages. If you could copy me on that interpretation as well, I would appreciate that. My question basically is this: 309 House Members voted in support of the CBI Unilateral Preference in 2000. Are the labor protections stronger in this agreement than they are in the status quo? If we do not pass this, how would that improve the labor protections in the enforcement of the labor protections that the DR–CAFTA countries have right now? We are kind of dancing around this issue. The question is, does this agreement help increase the enforcement of labor standards in the DR–CAFTA countries? Is this not a step in the right direction compared to the status quo, not just to mention the tariff rates but also on labor standards?

Ambassador ALLGEIER. I thank you. These are all very important issues. If I could just say one thing. The tariff examples that you gave and that others have been giving are the tariffs that we pay now going into these countries. They can tomorrow raise those tariffs, and in most cases very substantially, because their WTO rates are way up here, and we would have no recourse whatsoever. So, actually we are leveling the playingfield in even a greater way than these examples have given.

With respect to the CBI versus this agreement here, this agreement for labor and environment is immeasurably better and

stronger. What would happen if we don't pass it? Well, as I said earlier, if we don't pass it, we are not involved then in the cooperative efforts with these countries and providing them the support that they so desperately are asking so that they can improve the lot of their workers.

I think one thing we should be really clear on: These countries are not trying to keep workers at low wages or at—not have rights. They want to improve the welfare of their workers. That is why they are coming to us and the ILO and the Inter-American Development Bank and saying "please help us," and "please help us" now translates into passing the DR–CAFTA.

Mr. RYAN. Well, I see my red light is about to come on and I want to stick with the rules of the Committee, but a lot of people look at these trade agreements and let the perfect be the enemy of the good. If this is a trade agreement that raises labor and environmental standards and gives us the kind of access that they are already—that we are already now giving to them—and improves our ability to create more jobs here at home and sell more overseas, then to me this is a good agreement. I thank you for your time.

Ambassador ALLGEIER. Thank you

Mr. SHAW. [Presiding.] Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman. Frankly, from the Administration there seems to be a rather self-congratulatory tone, not with the witness before us, but throughout the presenters to the Committee on Ways and Means, which I find completely surprising in light of the circumstances we now find ourselves. We have the deepest trade deficit with the world we have had in the history of the country. Representing rural America, I am astounded that we are in a quarter-by-quarter foot race in terms of whether we are going to be a net importer of food or a net exporter. To think about the United States of America being a net importer of food shows what a sorry, sorry trend this has been.

We have on this chart the relationship of trading with China. You can see more than ever, we are at a deep, deep trade deficit circumstance with China, and that does not capture the first 3 months of this year. We have read just recently, a Wall Street Journal article on April 1, of the tremendous textile surges we have seen just in the first quarter: a 1,258 percent increase in cotton knit shirts; a 1,521-percent increase in cotton pants. Last week we had a panel before us that couldn't say they had done anything more to respond to this than refer it to some Committee.

In the face of this onslaught of imports, we have not seen the Administration take the action required to protect Americans. In many cases, terms for fair trade were put into the very agreements, but not enforced by the Administration themselves. So, small wonder we have some uncertainty as we approach this trade agreement. Just looking at what has happened with the NAFTA countries since the trade agreement was entered, 523 percent change to the detriment with Canada; 2,742 percent to the detriment with Mexico. Perhaps it is all a matter of perspective. When you get before us and talk about this sugar deal, it is just a spoonful a week, that may be your way of looking at it; but to us, what is in the DR–CAFTA agreement is going to impact adversely U.S. sugar to the tune of $180 million. I have heard my own growers try to pencil

this out in terms of what losing a penny on the price might be, 50 to $80 an acre; all of this coming when we are at the deepest trade deficit in the history of the country. I want to ask you, why wasn't sugar taken off the table when this trade agreement was negotiated?

Ambassador ALLGEIER. There are a number of things that you mention, and I do want to get back to the China point.

Mr. POMEROY. Actually, I wanted to talk about sugar, here, now. China just set the stage for why we are anxious, but let's now talk about sugar. Why was sugar not taken off the table?

Ambassador ALLGEIER. Sugar was handled very, very sensitively, more sensitively than any of the other agricultural products, I would say. However, once we say to a country we are not going to consider anything to do with a given product, they will come back to us and they will say, fine; we will not consider a particular product of yours, or a particular interest of yours.

Mr. POMEROY. If I might just then pursue this. There are 21 sugar-exporting countries lined up for future bilateral negotiations with the United States. Will sugar be on the table in those negotiations? Or can you assure us this afternoon, right here in this hearing, on the record, right now, that sugar will not be on the table in those future negotiations?

Ambassador ALLGEIER. Well, first of all, I am not sure what you mean when you say there are 21 countries lined up to do FTAs with us. We have not agreed to do any FTAs at this point other than the ones that are currently under negotiations.

Mr. POMEROY. Well, let's not quibble about the number. Let's just say as to future bilateral trade negotiations with countries that might be sugar exporters, will you commit right now that sugar is off the table in those cases?

Ambassador ALLGEIER. In all of these agreements, we are looking at the agreement itself and we are looking to be very sensitive to any product that is import-sensitive in the United States, whether it is an agricultural product or an industrial product.

Mr. POMEROY. Back where I come from, we may not be diplomats or trade negotiators, but that is definitely not a no. That is our problem with this. You put sugar on the table of DR–CAFTA and we lose $180 million of opportunity. That is why we are so terribly anxious with future trade agreements still pending. I yield back.

Mr. SHAW. The time of the gentleman has expired. Mr. Beauprez.

Mr. BEAUPREZ. Thank you, Mr. Chairman. Mr. Ambassador, good to have you in front of us today. Let me start out by mentioning that I too have some angst over the sugar portion of this trade agreement because we have got some sugar beet growers in my State. They are concerned, and I share their concern. I must tell you, on balance, and with far greater balance, I am very happy with the agreement you have put in front of us, especially given the rather monumental step forward we take, not only on our behalf, but on behalf of the people of Central America. I will talk about that in a minute.

In Colorado, some of our exporters would include the high-tech sector, and the high-tech sector took a pretty bad blow to the head

and other body parts in this recent downturn that they just went through. We have got companies like Storage Technology and IBM and Ball Aerospace and Lockheed Martin and Northrop Grumman and Raytheon, and they are not only anxious to compete more favorably and more openly in this expanding market, but they very much appreciate the progress you have made in protecting intellectual property rights. So, that is just a thank-you.

Colorado, after the fur traders and the silver miners came to Colorado, it was agriculture that built Colorado and still to a large degree maintains Colorado. Beef, pork, wheat, barley, chicken, poultry are all products that we not only participate in exporting now, but frankly, we want to get our piece of that projected $1.5 billion of additional exports that we think are coming from that trade agreement. In addition to raw agricultural products, we send a lot of processed food down that direction, especially dairy products and processed beef, poultry, and pork. Also something close to my heart, tea, believe it or not. Celestial Seasonings is a Colorado company that actually employs my son as their market manager. They do it both ways. They import some of their raw product, the raw tea from Central America, and send it back in those cute little packages with the nice designed boxes.

Here is my question to you, sir. One, two questions. One, it seems that a premise was just put forward to us that somehow by not approving this trade agreement, we improve our trade deficit. I find that just a completely upside-down argument. It seems to me the way to address our trade deficit is to open more markets to American companies not to keep them closed. I would like you to opine on that one. Second—and I will just give you both of them right now. I have found Mr. Becerra's statement about the race to the bottom relative to somehow pulling our laborers, employees, the working-class people of the United States down to the bottom of the bucket, if you will, a rather upside-down argument as well.

Illegal immigration is a concern in Colorado, as it is in a good bit of the country. I remember distinctly hearing the President say one time that, one element of resolving this problem—in addition to securing the border and dealing with the illegals that are here—the third element is to actually elevate the economic opportunity of the people that might be so motivated, inclined to come here legally or illegally, elevate their opportunities, their economic standards to the point where, guess what, they might like to stay home. Now, while all of us, I expect, would like to take multiple steps forward, not just one in this process of accomplishing that, this looks to me like with the cooperation, in fact, the invitation of the partners in this trade agreement, we are doing just exactly that, assisting these people in climbing that ladder.

Ambassador ALLGEIER. Thank you, Congressman. I guess that you and I both learned mathematics in the same school, which says that you are likely to improve your trading relationship if you get rid of tariffs and you get rid of other barriers. At least that is the way that I learned math, and I guess that probably you did to. In terms of the race to the bottom, the National Association of Manufacturers has done a very interesting study on textiles. It says that without the DR–CAFTA agreement, those countries would lose something like $10 billion of their apparel exports to the United

States to Asian competitors. What that means is they would have to cut their global imports from us because they use so many imports, and that would result in a 40 percent loss of those imports from the United States with an impact on 48,000 U.S. jobs. That is the kind of race to the bottom we want to avoid with the DR–CAFTA, by passing the DR–CAFTA.

Mr. BEAUPREZ. I thank the gentleman.

Chairman THOMAS. The gentlewoman from Ohio, Ms. Tubbs Jones, wish to inquire?

Ms. TUBBS JONES. Thank you, Mr. Chairman. Good afternoon, sir. How are you? You have been brave to sit through all of our questions. I am going to try and be quick, even though I am not usually very easy. I want to show you a chart. This chart happens to be a chart of my colleague, Marcy Kaptur, from Toledo. Now, you and Mr. Beauprez were talking about mathematics. This shows that our trade deficit has grown to close to $50 billion since we entered into NAFTA or NAFTA was signed. That is not good mathematics, is it?

Ambassador ALLGEIER. The deficit with Mexico has increased, but so have our exports, very dramatically.

Ms. TUBBS JONES. So, does that give us greater money? Does that decrease that $50 billion we are talking about?

Ambassador ALLGEIER. The export growth that we have had with Mexico, during that same period, we have had an increase of 20 million U.S. jobs, not all——

Ms. TUBBS JONES. We had an increase of how many; 20 million U.S. jobs?

Ambassador ALLGEIER. In the United States during the period of NAFTA.

Ms. TUBBS JONES. Can you provide that information to me, where they are? They couldn't be in Ohio; we have lost 200,000 jobs since 2001. So, where are these 20 million jobs?

Ambassador ALLGEIER. Well they are throughout the United States during the period, and I am not attributing them all to NAFTA. I am just saying that during the period of NAFTA——

Ms. TUBBS JONES. Well, what is the net number of jobs?

Ambassador ALLGEIER. Well, that is——

Ms. TUBBS JONES. The loss plus the gain. What is the net?

Ambassador ALLGEIER. Well, that is what—I believe that is the net; that we have got 20 million more jobs in the United States now than we had at the time of NAFTA.

Ms. TUBBS JONES. Sir, show me that information. If that were the case, I wouldn't believe we would be having the unemployment rates that we have. In Ohio, 202,000 jobs lost since January 2001. So, somewhere else in this country you have got 200,000 more jobs that we don't have in Ohio as a result of this manufacturing change. I see your people shouting, turning their heads, yes. I would love to see the information if you could provide it to me as quickly as you could.

Ambassador ALLGEIER. Fair enough.

[The information follows:]

NAFTA and U.S. Jobs

United States

U.S. employment rose from 112.2 million in December 1993 (the month before the beginning of NAFTA implementation) to 133.3 million in April 2005. This was an increase of 21.1 million jobs, or 18.8%.

Ohio

State of Ohio employment rose from 5.0 million in December 1993 to 5.4 million in March of 2005. This was an increase of 433,000 jobs, or 8.7%.

Imports from Mexico and U.S. employment

U.S. job growth does not fluctuate based on the growth of imports from Mexico. Consider:

- Substantially rising imports from Mexico from 1993 to 2000 occurred at the same time U.S. employment was growing. U.S. imports from Mexico grew from roughly $40 billion to $136 billion, and U.S. employment grew from 110.8 million to 129.0 million.
- Neither does stagnant import growth from Mexico correspond to periods of robust U.S. job growth. From 2000–2003, imports from Mexico barely move ($135 billion to $138 billion over 3 years) while employment growth in the U.S. slows sharply (2.6 million jobs a year added from 1993 to 2000; but not much over 300,000 added a year from 2000 to 2003).
- This pattern continued in 2003–2004, when imports from Mexico rose from $138.1 billion to $155.8 billion and employment grew by a much more robust 1.5 million on a year over year basis, or by 2.2 million from December 2003 to December 2004.

Since NAFTA was implemented, it has been true that when the U.S. economy is growing well, both U.S. employment and imports from Mexico rise rapidly; when U.S. growth is slow or even negative, both the growth of both imports and U.S. employment plummet.

Sources: U.S. Department of Labor/Bureau of Labor Statistics data for total nonfarm employment, seasonally adjusted, and U.S. Department of Commerce.

Ms. TUBBS JONES. Like today. Let me go on. Let's talk about Trade Adjustment Assistance (TAA). Under this Administration, instead of those dollars going up for the loss of jobs, the dollars going toward TAA are going down. Can you explain the rationale of that for me?

Ambassador ALLGEIER. Well, those—the TAA, obviously, depends on people who have been affected by changes in the trade regime of the United States. So, it depends on whether, in fact, the dislocation that they have been experiencing is attributable to——

Ms. TUBBS JONES. Have you assessed the dislocation of jobs in Ohio? Does that have anything to do with it? Are you saying it does or does not have anything to do with trade?

Ambassador ALLGEIER. Well, obviously, it has to do with trade, both the jobs that are created and the jobs that are lost.

Ms. TUBBS JONES. So assume, then, that Ohio adequately reflects other areas across the country. How do you explain the lowering of the dollars allocated for TAA?

Ambassador ALLGEIER. Well, there can be several reasons for that. First of all, it is dependent upon people applying for it and qualifying for it.

Ms. TUBBS JONES. Okay. Understood. That is a given. What else?

Ambassador ALLGEIER. Okay. I am not an expert in TAA.

Ms. TUBBS JONES. Okay. Well then, I won't tarry with you on that, then. I will ask you something else. Tell me, sir, under the agreements that we have with China, WTO, there are several en-

forcement tools that are necessary or available to the United States of America to enforce the agreement that we have, correct?

Ambassador ALLGEIER. Yes.

Ms. TUBBS JONES. Under these agreements, the DR–CAFTA agreements, there are several enforcement tools that are available to the United States to enforce those agreements, are there not, sir?

Ambassador ALLGEIER. Yes, there are, specific to the agreement.

Ms. TUBBS JONES. Do you, as to—well, you are acting, but I am assuming you are going to still be around, assuming a new person is appointed—commit to a vigorous use of the tools we have to enforce these trade agreements, much more vigorous than what we have seen with the WTO in China?

Ambassador ALLGEIER. We certainly are committed and will continue to be committed to use all of the tools available in whatever agreements we have, whether it is the Chinese accession to the WTO, the bilateral agreements that we have already negotiated and Congress has passed and, we hope, the DR–CAFTA agreement which we look forward to congressional passage. We will use all the tools. We will use them as aggressively as we can and we are constantly looking at ways to be more effective.

Ms. TUBBS JONES. I would love to have in writing at another time—I am running out of time—the enforcement that you have done against China with regard to the WTO: Stephanie Tubbs Jones, Ohio, 11th Congressional district. Thank you Mr. Chairman

Chairman THOMAS. The gentlewoman is welcome. The enforcement on the FTA vis-a-vis the WTO would, of course, be a different sheet.

Ms. TUBBS JONES. Understood.

Chairman THOMAS. I believe the Committee would like to have both. That helps us see the difference between the two.

Ms. TUBBS JONES. I agree. Thank you, Mr. Chairman.

[The information follows:]

The written response of Ambassador Allegeier follows:

China acceded to the WTO on December 11, 2001. In its accession agreement, China agreed to extensive, far-reaching and often complex commitments to change its trade regime, at all levels of government. China committed to implement a set of sweeping reforms that required it to lower trade barriers in virtually every sector of the economy, to provide national treatment and improved market access to goods and services imported from the United States and other WTO members, and to protect intellectual property rights. China also agreed to special rules regarding subsidies and the operation of state-owned enterprises, in light of the state's large role in China's economy. In accepting China as a fellow WTO member, the United States also secured a number of significant concessions from China that protect U.S. interests during China's WTO implementation stage. Implementation should be substantially completed—if China fully adheres to the agreed schedule—by December 11, 2007.

To date, while China's efforts to fulfill its WTO commitments are impressive, they are far from complete. At times, China's efforts have been unsatisfactory, and the Administration has responded with appropriate steps in such cases. The first year of China's WTO membership (2002) saw significant progress, as China took steps to repeal, revise or enact more than 1,000 laws, regulations and other measures to bring its trading system into compliance with WTO standards. In 2003, however, China's WTO implementation efforts lost momentum, and we identified numerous specific WTO-related problems.

In response, the Administration stepped up its efforts to engage China's senior leaders. In December 2003, President Bush and China's Premier, Wen Jiabao, committed to upgrade the level of economic interaction and to undertake an intensive

program of bilateral dialog with a view to resolving problems in the U.S.-China trade relationship. Premier Wen also committed to facilitate the increase of U.S. exports to China. This new approach was exemplified by the highly constructive Joint Commission on Commerce and Trade (JCCT) meeting in April 2004, with Vice Premier Wu Yi chairing the Chinese side and Secretary of Commerce Evans and United States Trade Representative Zoellick chairing the U.S. side.

At that meeting, which followed a series of frank exchanges covering a wide range of issues in late 2003 and early 2004, the two sides achieved the resolution of no fewer than seven potential disputes over China's WTO compliance. Those successes ranged across the economic spectrum, including the following:

- *China agreed to suspend indefinitely its proposed implementation of a unique Chinese standard (WAPI) as a mandatory wireless encryption standard, which would have disadvantaged our high-tech sector and required technology transfer to Chinese firms.*
- *China agreed to support technology neutrality with respect to 3G wireless phone standards, and telecom service providers will be allowed to make their own choices.*
- *China agreed to implement its WTO trading rights obligations ahead of schedule, allowing U.S. firms to ship U.S. products to China without using local middlemen.*

China also presented a detailed action plan to address the piracy and counterfeiting of American ideas and innovations, particularly through increased criminal penalties for violators. We have seen some, but insufficient, results from this plan, as IPR infringement is still at unacceptable levels. Following a comprehensive "out-of-cycle"(OCR) review of China's intellectual property rights (IPR) protection and enforcement under the Special 301 provisions of the Trade Act of 1974, USTR concluded on April 29 that while China has recently undertaken a number of serious efforts at the national level to address this situation, such as lowering the value thresholds that trigger criminal investigations and prosecutions, these steps have not significantly reduced IPR infringements across China. Therefore, USTR elevated China to the Priority Watch List, and announced that we would work closely with industry with an eye toward utilizing all available WTO procedures to address our serious concerns about China's compliance with its TRIPS obligations. USTR will also use rely on the transparency provisions in the TRIPS Agreement to obtain specific information from China on the operation of its IPR enforcement regime. Given the deficiencies in China's IPR enforcement system, the OCR report sets out tangible results that USTR expects of China to fulfill the commitment it made to the United States at the April 2004 JCCT meeting to substantially reduce IPR infringements throughout China. USTR will pursue benchmarks to gauge China's results.

In the last year, the Administration also filed, and successfully resolved, the first-ever dispute settlement case brought against China at the WTO. In that case, the Administration, with support from several other WTO members, challenged discriminatory value-added tax policies that favored Chinese-produced semiconductors over imported semiconductors. In July 2004, within 3 months of our initiating the case, China agreed to end its discriminatory policies, allowing U.S. manufacturers to preserve and expand their $2 billion export business to China.

Despite successes in a number of areas, important problems remain and new ones have emerged. At present, we are pressing China in a number of areas, with priorities being IPR enforcement; distribution services, including direct selling; industrial policies that limit market access by non-Chinese origin goods and that often aim to extract technology and intellectual property from foreign rights-holder;, restrictions in certain services sectors; and problematic sanitary and phytosanitary measures.

With respect to our trade remedy laws, the United States was the first WTO member to invoke the China-specific textile safeguard to address market disruption caused by a surge in Chinese imports and recently self-initiated investigations to consider limits on three additional product categories. The Administration has also continued to apply the anti-dumping laws with respect to unfairly traded imports from China. Indeed, since China's entry into the WTO, the Department of Commerce has imposed 22 antidumping orders on imports from China, representing one-third of total U.S. antidumping orders issued during that time period. In addition, the Administration has continued to utilize the special non-market economy methodologies in assessing dumping margins, as we negotiated the right to do when China joined the WTO.

*For further details on the Administration's efforts to enforce the commitments that China made in its WTO accession agreement, attached is the 2004 USTR Report to Congress on China's WTO Compliance (also available at http://www.ustr.gov/assets/Document*_Library/*Reports*_Publications/*2004/asset*_upload_file281_6986.pdf). This

report was issued in December 2004 and presents a comprehensive analysis of China's WTO commitments and compliance efforts, along with the efforts that the Administration has made to monitor and enforce the terms of China's WTO accession agreement.

Chairman THOMAS. Thank the gentlewoman very much. The gentlewoman from Pennsylvania, Ms. Hart, wish to inquire?

Ms. HART. Yes, I do, Mr. Chairman. Thank you, Mr. Chairman. Thank you, Mr. Ambassador, for joining us today. I am listening to the arguments and I need you to kind of go through this with me. My colleagues on the other side of the aisle keep mentioning our trade deficit, and they seem to somehow believe that our trade deficit will decrease if we prevent the DR–CAFTA agreement and other agreements to proceed. I must be missing something here, because currently our products are more expensive to the consumers in the DR–CAFTA nations. After DR–CAFTA would be accepted, our products would be less expensive to consumers in the DR–CAFTA nations; is that not correct?

Ambassador ALLGEIER. That is absolutely correct, significantly cheaper.

Ms. HART. From what we all know about consumer behavior, would it not then be true that our products are more likely to be purchased in the DR–CAFTA nations after DR–CAFTA is accepted than they are today?

Ambassador ALLGEIER. That is what I learned in economics, and I have noticed it in the grocery store quite consistently.

Ms. HART. I notice every time a sale sign goes up, crowds grow. It seems to me that if we look at the present situation—which is better for them, that means their products are cheaper here, but not particularly better for us—we would be crazy not to adopt this agreement, especially if we like sales. Okay. Thanks for that. I just needed a little bit of logic to prevail here, because I haven't been hearing a whole lot today and I think it was important to make that point.

My colleagues have been holding up a lot of food items, and I have a little bit of agriculture, but I want to touch on something that I think is also important. I exchanged an e-mail today with someone very close to me, who happens to be my brother, and he is in the chemical business. I was looking at the figures, and I understand that a significant number of our current exports to these countries are chemicals and industrial related. He is in industrial coatings manufacturing. Would it not then be true—and I am looking at the figures on the amount of duties that our companies' products currently have to endure, pretty high amounts, 5 percent, some even higher. Then wouldn't that then open up a pretty good market for a lot of our other manufacturers, our industrial manufacturers?

Ambassador ALLGEIER. Absolutely. That is the point of the agreement.

Ms. HART. Okay. That having been said, we have cheaper access to American products in these countries. We have some decent agreements regarding advancement in labor. Their employees would be treated much better. Mr. Beauprez was alluding to some issues I think are very important that we haven't looked at regard-

ing the likelihood of more people from those countries attempting to get into the United States illegally. Obviously, if they have more strength in their economy, they are more likely to stay. Have we seen in prior trade agreements like this the economy of the country we are making the agreement with get stronger?

Ambassador ALLGEIER. Absolutely. The economy—certainly the economy of Mexico has gotten stronger as a result of NAFTA, and they have made a number of other changes that have been very favorable to the United States.

Ms. HART. Okay. I think we have gotten a little bit of the logic forward. I want to thank you for coming to see us today. Just one final thing, and that is on industrial goods again, which are very important to the communities I represent. Is it true that after 10 years, that all the tariffs on those goods would be phased out?

Ambassador ALLGEIER. That is true, but actually, almost all of them, especially on the industrial side, will be done in the first year; the first day, actually.

Ms. HART. So, it would be a significant improvement, then, in the marketability of American products to Central America very quickly.

Ambassador ALLGEIER. It would be very significant. Eighty percent of our products will go to duty-free on the first day.

Ms. HART. Thank you. I appreciate your answers and I appreciate your logic, and I yield back to the chairman.

Chairman THOMAS. Thank the gentlewoman. Gentleman from California, Mr. Thompson, wish to inquire?

Mr. THOMPSON. Yes, I do. Thank you, Mr. Chairman. Mr. Ambassador, thank you for being here today. I want you to know that I believe strongly that, however we enhance our opportunities and our abilities to trade with our global neighbors is important to all of us, on both a micro and a macro level. A couple of things have been mentioned today that concern me, both the questions and the answers. There has been a lot of focus on the trade deficit issue, particularly how it relates to agriculture. If you look back at the past year since NAFTA has been enacted, the trade—agricultural trade deficit with the NAFTA countries has just about tripled. So, if you consider that the NAFTA countries, there are more consumers there, and they have much more purchasing power than the DR–CAFTA countries, can you explain to me how we are not going to have the same problems if we do DR–CAFTA that we had with NAFTA as it pertains to the agricultural trade deficit?

Ambassador ALLGEIER. Well, obviously, every market is different and the 60 agricultural organizations that support the DR–CAFTA are far better——

Mr. THOMPSON. I am not interested in who supports it. There are fewer people in the DR–CAFTA countries. They have less purchasing power than the NAFTA countries, and our agricultural trade deficit grew three times since NAFTA has been passed.

Ambassador ALLGEIER. Right, but what I was going to say is that these agricultural organizations, who are obviously out there marketing their products every day, are in a much better position than I to judge what the prospects are in their markets. They all have come to the conclusion that DR–CAFTA improves that.

Mr. THOMPSON. I know I have heard from one. The U.S. cattle folks are one of those groups, but I understand in this particular proposal, it only immediately opens the market for high-grade cuts of beef. Given the poverty situation in the DR–CAFTA countries, there is very little likelihood that they would be able to purchase those expensive high-grade cuts. So, I am not sure if everybody is working off the same set of numbers.

Ambassador ALLGEIER. Well, I think the thing here is what has been emphasized; that we already are open to their products. So, this is basically a one-way opening. That is why the AFBF has calculated that our exports of agricultural products will grow at an 8 to 1 ratio compared to the growth of our imports.

Mr. THOMPSON. If you could get to me—and do some sort of juxtaposition between DR–CAFTA and NAFTA—because if you go back and look at what happened, the very real numbers of NAFTA, your thesis does not prove out.

[The information follows:]

The written response of Ambassador Allgeier follows:

Since the implementation of NAFTA, Canada and Mexico have become our first and second largest markets for U.S. agricultural exports. U.S. agricultural exports to our NAFTA partners reached $18.2 billion in 2004, accounting for 30 percent of U.S. agricultural exports to the world. We have worked hard to actively monitor and enforce the NAFTA, to resolve issues where enforcement concerns have arisen, and we have a strong record of success in doing so with Mexico. For example, we negotiated compensation for Mexico's safeguard action on U.S. poultry leg quarters that has allowed continued export growth. Poultry exports hit a record in 2004 and have grown another 34 percent so far in 2005.

The CAFTA/DR offers significant opportunities for U.S. farmers and ranchers, and treats import sensitive products, like white corn grown by subsistence farmers in most Central American countries, with care. Currently, over 99% of agricultural exports from CAFTA/DR enter the United States duty free under MFN tariffs and trade preferences. Yet the average allowed agricultural tariff for the CAFTA/DR countries under their WTO commitments are 42% in Costa Rica, 41% in El Salvador, 49% in Guatemala, 35% in Honduras, 60% in Nicaragua, and over 40% in the Dominican Republic. The CAFTA/DR will level the playingfield for American farmers and ranchers. On day one, more than half of current U.S. farm exports to CAFTA/DR countries will be duty-free, including high quality cuts of beef, cotton, wheat, soybeans, key fruits and vegetables, processed food products, and wine. Tariffs on most remaining U.S. farm products will be phased out within 15 years. Benefiting from improved market access are: pork, dry beans, vegetable oil, poultry, rice, corn and dairy products.

The farm community is very supportive of this agreement. The American Farm Bureau estimates that the CAFTA/DR could mean $1.5 billion to U.S. farmers and ranchers, and nearly 60 agricultural trade associations have offered their public support of the CAFTA/DR (see attached).

U.S. industry identified exports of prime beef as a priority under this agreement. Immediate duty free access into the region will target the region's active hotel industry trade. Furthermore, the U.S., Central American and Dominican beef industries stand to benefit from increased trade as our beef is of different qualities, and therefore, does not compete directly.

April 4, 2005

Dear Member of Congress:

The undersigned groups representing the U.S. food and agricultural community urge your support for the Free Trade Agreement with Central American and the Dominican Republic (CAFTA–DR). CAFTA–DR is a home run for American agriculture. We are giving up very little to gain very much. Normally in trade agreements, each party expects the concessions it receives to balance the concessions it grants. Uniquely in CAFTA–DR, the agriculture agreement is tilted steeply in the direction of the United States.

Previous trade arrangements approved by Congress gave generous access to the U.S. market for food and agriculture exports from these six nations but provided no reciprocal benefits to U.S. food and agriculture exports to those same six markets. Between the Generalized System of Preferences, which has been in place since 1976, and the Caribbean Basin Economic Recovery Act, or Caribbean Basin Initiative (CBI), which has been in place since 1983, U.S. tariffs on most of the food and agricultural products imported from the CAFTA–DR countries are already zero.

On a trade-weighted basis, over 99 percent of the food and agriculture products we import from the region enter duty-free. On the other hand, the food and agriculture tariffs our products must overcome in the CAFTA–DR countries exceed 11 percent on average, but can range as high as 150 percent or more on sensitive products. This does not include the highly restrictive tariff-rate quotas many of our products face. The result is that we have an agriculture trade deficit with these six nations. In 2004, U.S. imports from these countries exceeded our exports to the region by over three quarters of a billion dollars.

So, a vote for CAFTA–DR is a vote to give American farmers trade reciprocity. It is also a vote to keep our food and agriculture exports competitive with products from other countries. Our market share in the CAFTA–DR nations has fallen from 54 percent in 1995 to around 40 percent because of preferential arrangements negotiated by these six countries with our competitors. The implementation of CAFTA–DR will remedy this problem.

Congress last voted to extend the unilateral benefits under GSP and CBI to these countries and others as part of the Trade Act of 2002. The most recent stand-alone vote on a CBI conference report in 2000 demonstrates the willingness of Congress to provide trade benefits to an important region of the world. In the Senate, CBI passed by a vote of 77–19 with 4 abstentions; in the House, it was approved by a vote of 309–110 with 16 abstentions. The undersigned organizations, representing the vast majority of U.S. agriculture, are simply requesting that Congress provide to American farmers what it has already provided to farmers in the CAFTA–DR countries—improved market access for their exports.

Sincerely,

Altria Group, Inc.
American Bakers Association
American Farm Bureau Federation
American Feed Industry Association
American Frozen Food Institute
American Meat Institute
American Potato Trade Alliance
American Soybean Association
Animal Health Institute
Biotechnology Industry Organization
Blue Diamond Growers
Bunge North America, Inc.
California Canning Peach Commission
California Table Grape Commission
Cargill, Incorporated
Corn Refiners Association
CropLife America
Elanco Food Products Association
Grocery Manufacturers of America
International Dairy Foods Association
Louis Dreyfus Corporation
National Association of Wheat Growers
National Cattlemen's Beef Association
National Chicken Council
National Confectioners Association
National Corn Growers Association
National Grain and Feed Association
National Grain Sorghum Producers
National Grain Trade Council
National Grange
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
National Potato Council
National Renderers Association
National Turkey Federation
North American Export Grain Association

North American Millers' Association
Northwest Horticultural Council
Pet Food Institute
Sweetener Users Association
The Distilled Spirits Council
The Fertilizer Institute
U.S. Dairy Export Council
United Egg Producers
United States Dry Bean Council
U.S. Apple Association
U.S. Hide, Skin, and Leather Association
U.S. Meat Export Federation
U.S. Wheat Associates
USA Poultry and Egg Export Council
USA Rice Federation
Washington State Potato Commission
Western Growers Association
Wheat Export Trade Education Committee

National Cotton Council
Industry Affirms Support for DR–CAFTA
May 10, 2005

MEMPHIS—The National Cotton Council's (NCC) board of directors announced May 9, following a special session, the NCC's support for the Dominican Republic-Central American Free Trade Agreement (DR–CAFTA).

NCC represents the U.S. cotton industry's seven segments-—producers, ginners, cottonseed handlers, warehousers, merchants, cooperatives and textile manufacturers.

The NCC board adopted a resolution that urges Congress to endorse the current DR–CAFTA and recognizes that the "agreement should provide the United States the best opportunity for supplying apparel manufacturers and other end-use manufacturing industries in the western hemisphere" with U.S. cotton fiber and U.S.-produced cotton textile products. In addition, the resolution urges the Administration to continue to address the trade priorities of the U.S. cotton industry, including taking appropriate action regarding increased competition for U.S.-produced textiles.

Earlier this year, during its annual meeting, the NCC reaffirmed its conviction that a good CAFTA is beneficial to the U.S. cotton and textile industries. The NCC stated its intent to recommend passage of the current agreement "—if benefits to all segments of the cotton and textile industries are achieved by effectively reducing the adverse effects of 3rd-country participation and the Administration continues to address other Council trade priorities."

"Our board reviewed developments over the past several months and concluded that the conditions specified in the late January resolution have been satisfied," said NCC Chairman Woods Eastland, a marketing cooperative official from Greenwood, Mississippi. "The agreement is essential for preserving our current trade with the DR–CAFTA countries, particularly in light of the elimination of all textile quotas effective January 1, 2005."

U.S. raw cotton exports to DR–CAFTA countries in 2004 totaled more than 200,000 bales, accounting for more than 90 percent of raw cotton consumption in those countries. U.S. exports of yarn and fabric totaled more than 2.5 million bale equivalents of cotton textile products accounting for more than 50 percent of total U.S. cotton textile exports in 2004.

American Cotton Producer Chairman John Pucheu, a Tranquility, CA, cotton producer, noted that, "It has been the longstanding view that a good Western Hemisphere trade agreement is vitally important to the U.S. cotton and textile industries. Already, some 80 percent of the cotton consumed by U.S. mills depends on cut-and-sew operations outside the U.S., primarily in Central America and Mexico, and that dependence will continue to grow. The DR–CAFTA agreement will certainly improve our competitiveness in the textile and apparel arena."

NCC President and CEO Mark Lange, said, "We believe the DR–CAFTA agreement will be approved by Congress in the weeks ahead. We look forward to working with Congress, the Administration and the National Council of Textile Organizations toward its adoption and appropriate implementation and to ensure that the potential benefits to U.S. cotton and textiles are not subsequently diminished as other trade agreements are negotiated."

Mr. THOMPSON. The other thing I wanted to ask you about was enforcement. We heard a lot about the lack of enforcement. We had a hearing last week about China. During that hearing I raised a concern, a very parochial concern that a wine company in Beijing is labeling their wine Napa Hongye wine, which means Napa Valley. If DR–CAFTA comes out and your enforcement practices remain the same, what is to stop the Valley de Napa label from cropping up in one of the DR–CAFTA countries?

Ambassador ALLGEIER. Okay. I certainly am not familiar with that particular—with the Chinese example, but what I will say to you is that we have a very good record of enforcing our agreements and particularly with respect to intellectual property, and we certainly——

Mr. THOMPSON. Well, I think you have a terrible record in enforcing your agreements when it comes to China. We were there just a couple of weeks ago and our Ambassador told us that he can't walk outside of his house without being offered a stack of Digital Versatile Discs (DVD) for less money than he can rent one for.

Last, I would like to revisit this issue of the ILO standards. When you are talking about freedom of association, elimination of discrimination in the workplace, elimination of forced labor, elimination of child labor, those all seem pretty fair and straightforward. I guess I have a real hard time understanding why we just don't put them in the agreement, or maybe we are going to put them in the bill. I don't know how we can vote for this without some assurance, other than it is going to morph into their law if we pass it, and rest assured all of this will be taken care of. Just put them in the bill, put them in the agreement.

Ambassador ALLGEIER. Well, if we put them in the agreement, we would be putting in the agreement elements that our Congress has not seen fit to ratify, and that seems to us to be a back-door way of doing this and not really the way we would want to do it in the United States. It should be a more up front decision by the Congress if they want the United States to ratify those conventions.

Mr. THOMPSON. Thank you, Mr. Chairman.

Chairman THOMAS. Thank the gentleman. Prior to calling on the last member for this panel, I do hope that Members who are discussing these Central American countries have had an opportunity to visit them. The version I am hearing from many Members about their inability to buy moderate or even high-priced cuts of beef sounds like they are countries of all peasants with a hoe, working on a half acre of maize. If you have gone there, you have a very sophisticated, cosmopolitan, European population in beautiful cities. There is a disparate distance between the low income and the high income. The opportunity to sell quality beef in these Central American countries is there. Cheaper-priced cuts will be even more anticipated. Given the change in the current cost versus the future cost, they will be happy consumers of quality beef. It is true, there is a difference, more significant in terms of the highest and the lowest, but to continue to stereotype these countries and their populations does no service to us or to them. They have the ability to buy quality cuts of beef. If any Member has not been down there, the Chair is anxious to assist any Member to go to our

neighbors and take a look at some of the most interesting historic areas in the Americas, north or south, in terms of the ability to interrelate and mix with a significant cross-section of ethnic and racial groups. The Chair recognizes the gentleman, Mr. Chocola, if he wishes to inquire.

Mr. CHOCOLA. I do Mr. Chairman, thank you. Mr. Ambassador, thank you for being here and thank you for your good work. Not long ago, before I was elected, I participated in this debate in the private sector generally by getting on an airplane and trying to go convince our customers to buy our products in places like Central America and over 100 countries. Following my colleague from Pennsylvania's logic, the lower we could offer the product's price, the more likely they were to buy. When we ran into tariffs we had more problems competing in a world economy. So, I know that there will be jobs created in little Milford, Indiana as a result of DR–CAFTA. I am sure that story can be told thousands and thousands of times.

We have talked about tariffs, and certainly they are important. We haven't talked about non-tariff barriers much today. One of the things we ran into, I think what is called in the agreement as dealer protection regimes, we called it lost sales. Could you talk a little more about non-tariff barriers and how they are reduced?

Ambassador ALLGEIER. Yes. That is a very important point. Someone can reduce, eliminate their tariffs, but there are lots of ways they can keep one out. Now, let me—I want to talk about the dealer protection laws that exist in many of the Latin American countries. Basically what it means, it has different forms, is if you are selling through an agent there, you have a distribution agreement, you get locked into these agreements in ways that if you are dissatisfied with a distributor, you can't just terminate the contract. Many of the companies that get into those arrangements end up being almost blackmailed in terms of having to pay an enormous amount to their inadequate distributor to get out of that arrangement.

Another non-tariff barrier is Customs, which is a place where you can end up paying an enormous amount of money, one way or the other, either across the counter, or your goods will stick there in the Customs area before they get through for a long, long time. One of the important areas of this agreement is the whole area of Customs measures and these countries taking on obligations to value goods at their proper value, to move the goods through Customs very efficiently. Part of this is they don't have the institutions and the resources to do it; that is also part of the capacity building in this agreement. So, the whole Customs area is one that is a, potentially big barrier, even when one eliminates tariffs and we address that in this agreement along with other barriers of standards and other non-tariff barriers; licensing, for example.

Mr. CHOCOLA. We have heard a lot of talk about labor and environmental standards and what this agreement—how it relates to it. Let me just ask a simple question. Are labor and environmental standards going to increase if we don't enact DR–CAFTA in these countries?

Ambassador ALLGEIER. No. They will lose one of their most important partners, the United States, in trying to raise the status and the conditions of their workers.

Mr. CHOCOLA. Finally, back when I was in college in the early eighties, there were some students from El Salvador and Nicaragua and they told horrible stories about what was going on in their countries at that time. How do you think that this relates, our trade, strengthening our trading relationship with these countries, will help their, maybe fragile, but growing democracies?

Ambassador ALLGEIER. It is absolutely essential, because there are so many elements within this trade agreement that involve making the kinds of reforms that are in the process of making in their own economies: openness, nondiscrimination, accountability of government, the rule of law. These trade agreements embed those principles into those economies, and it inevitably spreads to the rest of their society. This is one of the biggest contributions we can make.

Mr. CHOCOLA. So, you think that by enacting this agreement we would not only enhance trade but we could make the world a safer and more stable place as well.

Ambassador ALLGEIER. Absolutely, especially in this region.

Mr. CHOCOLA. Thank you. Thank you, Mr. Chairman.

Chairman THOMAS. Thank the gentleman. The Chair wishes to thank you, Ambassador Allgeier. We will not charge you for the in-service practice of negotiating with the Europeans, but hopefully this was some useful training for you. The Chair would now like the second panel to come forward. Members of the panel have been very patient. You also need to know that this is the only opportunity that Members have of asking questions in an open hearing format over this extremely important piece of legislation. As you have heard in terms of the Members' inquiries, putting down for the record the information that you have and will provide to us is extremely important. The second panel consists of Harold McGraw, III, Chairman, President, and CEO (chief executive officer) of the McGraw-Hill companies; James D. Fendell, Resident, Aeropost International, on behalf of the Association of American Chambers of Commerce in Latin America; Sheldon Presser who is the Senior Vice President, Warner Brothers Entertainment, behalf of the Entertainment Industry Coalition for Free Trade; Richard L. Trumka, Secretary-Treasurer, American Federation of Labor-Congress of Industrial Organizations, and David P. Schulingkamp, Vice President, M.G. Maher & Co., New Orleans, Louisiana. The Chair will start on the left. Prior to going across the panel, the gentleman from Louisiana wishes to be recognized.

Mr. JEFFERSON. Thank you Mr. Chairman. I appreciate your leave for just a moment——

Chairman THOMAS. This is a just-in-time hearing procedure here——

Mr. JEFFERSON. To recognize my friend Dave Schulingkamp, who has come to testify. He has been the chairman of our Port Authority back in New Orleans. He is a leading businessperson there, and he and I have had the luxury of traveling throughout Latin America, South America, particularly Brazil, to work on projects

for our port and for our city. So, I wanted to, with your leave, welcome him to our Committee. Thank you very much, Mr. Chairman.

Chairman THOMAS. Thank the gentleman. If he is as effective as you are, the Port of New Orleans is in good hands. Mr. McGraw, you have written testimony, in fact all of the witnesses who have written testimony, it will be made a part of the record and you can address us as you see fit in the time you have.

STATEMENT OF HAROLD McGRAW, III, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, THE McGRAW-HILL COMPANIES, NEW YORK, NY; CHAIRMAN, THE EMERGENCY COMMITTEE FOR AMERICAN TRADE; CHAIRMAN, THE INTERNATIONAL TRADE AND INVESTMENT TASK FORCE OF THE BUSINESS ROUNDTABLE; ON BEHALF OF BUSINESS COALITION FOR U.S.-CENTRAL AMERICA TRADE

Mr. MCGRAW. Thank you Mr. Chairman, Congressman Rangel, and Members of the Committee. Good afternoon. I am Terry McGraw, and I am Chairman, President, and CEO of McGraw-Hill companies. I am here today on behalf of the Business Roundtable, the Emergency Committee for American Trade and the Business Coalition for U.S.-Central America Trade. We strongly support the prompt congressional approval of DR–CAFTA, which will advance our economic, regional, and foreign policy interests. Now, given our time constraints this afternoon, let me quickly talk about five, just five different key benefits of DR–CAFTA.

First, DR–CAFTA countries represent an important and growing market. As we have been hearing, U.S. exports to the six DR–CAFTA countries in 2004 equaled $15.7 billion, making these countries the second-largest U.S. export market in Latin America, after Mexico; the 12th largest U.S. export market worldwide, larger than Russia, India, and Indonesia combined; and poised for growth, given DR–CAFTA's proximity and close partnership with our country. With overall trade of $33.4 billion in 2004, once implemented, DR–CAFTA will be the United States' second-largest FTA of overall trade flow after NAFTA.

My second point, Mr. Chairman, is that DR–CAFTA will obviously level the playingfield by opening markets for U.S. workers and farmers. Some 75 percent of the DR–CAFTA imports and 99 percent of DR–CAFTA agriculture products already enter the United States duty-free, and this is through the preference programs Congress approved on a bipartisan basis. This agreement will lock in and expand those benefits. The DR–CAFTA will make trade with our neighbors a two-way street. The DR–CAFTA will open their markets to our farm and industrial goods and our services, eliminating high tariffs, tariff rate quotas, and non-tariff barriers.

Third, DR–CAFTA will promote strong labor and environmental protection. Simply put, it is economic growth that is the single most important driver for improved labor and environmental conditions. The DR–CAFTA will promote economic growth, increase transparency and accountability, enhance the investment climate, and promote stability, creating new opportunities for workers and

increasing demand for better labor and environmental protection. This is particularly important given the textile and apparel sector, which is the second-largest employer overall in these six countries, providing some of the better-paying jobs in the region, where subsistence farming engages the largest segment of the working population. Without DR–CAFTA, these jobs will increasingly be lost, bringing increased poverty in a region where nearly half the population today lives in abject poverty.

Beyond the economic growth opportunities, DR–CAFTA promotes the labor and environmental objectives Congress called for in the Trade Act of 2002. It incorporates binding commitments subject to dispute settlement, and each of the countries will enforce its labor and environmental laws as well as the most robust labor and environmental capacity-building mechanisms of any U.S. FTA. Though some labor laws in some DR–CAFTA countries could be enhanced, what they have enacted includes many strong protections. We should recognize that the progress that they have made in a very short period of time is substantive and that the commitments they have recently made to go even further are welcome.

My fourth point, Mr. Chairman, is that DR–CAFTA will help promote economic growth, bolster democracy and the rule of law. The DR–CAFTA will play a positive role in promoting stability and the United States' own security in a region that we all know was wracked by violence and civil war only two decades ago. By promoting economic opportunity and growth, DR–CAFTA will help alleviate poverty, and promote stability in our own neighborhood.

Fifth and finally, DR–CAFTA is absolutely vital, vital to signaling continued U.S. support for global trade negotiations. Congressional approval of DR–CAFTA will bolster U.S. leadership on trade and create new partners in the developing world. Approval will also promote forward momentum on trade at a critical time in the WTO's Doha negotiations and will help to create much needed momentum for the FTAA negotiations. Failing to approve DR–CAFTA would be a particularly destructive message to our regional neighbors and would send a very negative signal to the world that the United States is retreating from its historic role as a leader in promoting liberalized international trade and investment policies and as a leader in a region that is strategically important to us.

In sum, DR–CAFTA is more than just another trade agreement. While it is not a panacea, it is the logical next step in America's historic commitment to promote economic growth, advance market-based reforms, promote stability, and improve standards of living. Approval of DR–CAFTA will also send a powerful message to the rest of the world that regional and multilateral trade agreements should be pursued and will promise a more open and fair system to promote commerce among nations. I urge the Committee to support the approval and the implementation of this agreement. I thank you, Mr. Chairman.

[The prepared statement of Mr. McGraw follows:]

Statement of Harold McGraw, III, Chairman, President, and Chief Executive Officer, The McGraw-Hill Companies, New York, NY; Chairman, the Emergency Committee for American Trade; Chairman, the International Trade and Investment Task Force of the Business Roundtable; on behalf of Business Coalition for U.S.-Central America Trade

Mr. Chairman, Congressman Rangel, Members of the Committee. Good morning. My name is Terry McGraw, Chairman, President and CEO of The McGraw-Hill Companies.

I welcome the opportunity to appear before you today to express strong support for the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA) not only on behalf of the McGraw-Hill companies, but also as Chairman of the Emergency Committee for American Trade (ECAT) and Chairman of the International Task Force of the Business Roundtable (Roundtable). I am also appearing before you today on behalf of the Business Coalition for U.S.-Central America Trade, for which ECAT serves as the secretariat and the BRT and others play a leading role.

The McGraw-Hill Companies is a global content provider headquartered in New York. We employ 18,000 people in 280 offices in 37 countries worldwide. You know us best through the McGraw-Hill imprint in education, Standard and Poor's, and *Business Week*.

We are members of ECAT, the Business Roundtable and the Business Coalition.

- Both ECAT and the BRT are associations of chief executives of major American companies with global operations who represent all principal sectors of the U.S. economy. They are strong champions of strong, commercially-meaningful and comprehensive bilateral, regional and global agreements, such as the NAFTA, the Uruguay Round and the recently-approved free trade agreements—FTAs—with Jordan, Chile, Singapore, Australia and Morocco.
- ECAT was founded more than three decades ago to promote economic growth through expansionary trade and investment policies. Today, the annual sales of ECAT companies total $2 trillion, and the companies employ approximately five and a half million people.
- The Business Roundtable is committed to advocating public policies that ensure vigorous economic growth, a dynamic global economy, and the well-trained and productive U.S. workforce essential for future competitiveness. Roundtable members employ more than 10 million workers in the United States.
- The Business Coalition for U.S.-Central America Trade comprises over 400 companies and associations representing all major sectors of the economy with members in all 50 states that have come together to support implementation of the CAFTA. The Business Coalition was formed to support the negotiation of a comprehensive and high standard agreement. Once those negotiations were completed, the Business Coalition has worked to support the implementation of the CAFTA by the U.S. Congress.

CAFTA represents a truly comprehensive, commercially meaningful and high standard agreement that has very important economic, development and foreign policy implications for the United States and the six countries involved—Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. It also has important implications for other negotiations that are critically important, from global Doha Development Agenda negotiations ongoing in the World Trade Organization to the negotiations to establish a Free Trade Area of the Americas, which have nearly stalled.

My testimony today will focus on five key issues that are critical to the broad-based support of the CAFTA within the U.S. business and agricultural community and the organizations that I represent today:

1. The commercial importance of the CAFTA countries to the United States.
2. How CAFTA will level the playing field for U.S. farmers, service providers, manufacturers and their workers by moving from a system of unilateral preferences to two-way free trade.
3. The importance of CAFTA in promoting improved working and environmental conditions in the region.
4. The importance of CAFTA for promoting economic growth and bolstering democracy and the rule of law in the region.
5. The importance of CAFTA more broadly in fostering U.S. objectives in global and other regional negotiations.

FIRST: The Six CAFTA Countries Represent a Very Important and Growing Market for the United States.

Despite their size and population, U.S. trade with the CAFTA countries is rather striking. In 2004, U.S. exports to the six CAFTA countries equaled $15.7 billion, making these countries:

- The second largest U.S. export market in Latin America, after Mexico.
- The 12th largest U.S. export market worldwide.
- A larger export market than Russia, India and Indonesia combined and larger even than our exports to Australia or Brazil.

With overall trade of $33.4 billion in 2004, once implemented, CAFTA will be the United States' second largest FTA in terms of overall trade flows, after NAFTA.

It is also a market of great potential given its proximity and close partnerships with the United States. U.S. goods appear throughout these countries, in grocery stores to shopping centers. Indeed, U.S. exports already represent about half of each of these countries' imports. As economic growth and new opportunities develop, the markets will attract even greater exports.

Without even figuring in such growth, the independent U.S. International Trade Commission concluded that U.S. imports would increase by $1.9 billion worldwide as a result of the CAFTA, more than with any other recent FTA partner. A recent report by the National Association of Manufacturers, one of the Business Coalition's members, predicts that CAFTA will help generate $1 billion in new U.S. manufacturing exports. For agriculture, the American Farm Bureau Federation has estimated that U.S. agricultural exports to the CAFTA countries will increase by nearly $900 million.

SECOND: The CAFTA Will Level the Playing Field by Opening Markets for U.S. Workers and Farmers.

Through unilateral preference programs overwhelmingly approved on a bipartisan basis by Congress since the 1980s, some 75 percent of CAFTA imports and 99 percent of CAFTA agricultural products already enter the United States duty-free. This agreement will lock in those benefits, making them permanent, and expand on them, particularly in the textile and apparel sector which I will discuss momentarily.

But from the point of view of many U.S. businesses, the CAFTA is about making trade with our neighbors more of a two-way street. CAFTA will open their markets to our farm and industrial goods and our services, eliminating high tariffs, tariff rate quotas and non-tariff barriers. Let me quickly identify some of the key areas where CAFTA eliminates barriers:

- **In the manufacturing sector, CAFTA will provide immediate and tangible benefits.** Many U.S. exports to the CAFTA countries currently face tariffs between 10 and 15 percent and, in some cases, more. Upon implementation of the agreement, 80 percent of all U.S. goods exports to the region will become permanently duty-free. In particular, CAFTA will eliminate tariffs immediately on such key products as information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment. By year 10, the CAFTA will eliminate all tariffs on all U.S. manufactured goods.

  CAFTA also eliminates other major non-tariff barriers to consumer and industrial goods, including discriminatory standards, licensing and other barriers. It also includes important provisions to improve customs administration through more transparent, predictable customs operations and processes. Most notably, perhaps, is that the CAFTA—for the first time ever in any free trade agreement—includes substantial commitments to reform and to open up distribution channels that have been restricted for decades by onerous dealer protection barriers. This is particularly important for many consumer goods and information technology producers.
- **Beyond manufactured goods, CAFTA expands market access throughout the services sector.** Each of the six countries is committed to provide national treatment to U.S. services companies, unless specifically exempted. This "negative list" approach goes far beyond these countries' commitments under the WTO's General Agreement on Trade in Services (GATS). As a result, CAFTA will provide important new opportunities for such key U.S. services as banking and other financial services, insurance, telecommunications, distribution, computer, audiovisual and entertainment, energy, transport, construction, and professional services. The six countries also have agreed to significant commitments on regulatory transparency and principles to guide independent regu-

latory authorities. Of particular importance are Costa Rica's commitments to open up key portions of its currently closed telecommunications and insurance markets, which are important areas of growth for U.S. companies abroad.

- **CAFTA also creates new opportunities for the U.S. information technology sector.** In particular, it requires all parties to eliminate information technology tariffs by joining the WTO's Information Technology Agreement (Costa Rica and El Salvador are already members), open up key information technology services, including telecommunications, include strong intellectual property rights protections and open up distribution channels. The agreement also incorporates important e-commerce provisions that ensure that electronically delivered goods and services receive the same treatment as traditional, physically delivered goods and services, setting an important precedent for global negotiations.
- **CAFTA ensures new access and transparency in growing government procurement markets.** While none of the six CAFTA countries are signatories to the WTO Government Procurement Agreement, CAFTA commits the parties to many of the same principles. Key commitments that will expand access for U.S. goods and services suppliers include the provision of fair and transparent procurement procedures and national treatment and anti-corruption rules.
- **Since 99 percent of CAFTA agricultural imports already enter the United States duty-free, this agreement is critical to provide reciprocity for U.S. farmers.** Upon implementation, over half of U.S. agriculture products will enter the Central American and Dominican Republic countries duty-free immediately, with most remaining duties on U.S. products phased out over 15 years. This is important access to a region where the United States is the single largest source of agricultural imports, but faces new competition as other countries enter into preferential arrangements in the region. The new access will be particularly important for:
  - Beef products with the immediate elimination of tariffs on high-quality cuts and full elimination over 15 years;
  - Pork products with an increase in duty-free quotas for sizeable amounts of U.S. pork over 15 years, after which all tariffs will be eliminated, as well as commitments to the U.S. meat inspection system and to accept pork from any USDA-inspected facility.
  - Dairy products with duty-free tariff rate quotas that will expand from over 10,000 tons in year one and out-of-quota tariffs eliminated over 20 years.
  - Corn, wheat and grain products with the immediate binding at zero of tariffs on wheat, barley, oats and rye, as well as for corn in Costa Rica and sorghum in the Dominican Republic and Guatemala. All remaining tariffs on feed grains will be eliminated over 15 years (except white corn in a few markets that will be gradually provided greater duty-free access).
  - Soybean products with the immediate binding of zero tariffs on all soybeans and soybean meal, except for Costa Rica, which will phase out its 5 to 6 percent soybean meal tariffs over 15 years.
  - Rice with an increasing duty-free quota and the elimination of up-to-60 percent tariffs on out-of quota rice over 18 years in El Salvador, Guatemala, Honduras, and Nicaragua and 20 years in Costa Rica and the Dominican Republic.
  - Cotton products by immediately binding tariffs at zero and by bolstering U.S.-CAFTA textile and apparel partnerships that create a significant demand for cotton in the region.
  - Processed food products with immediate duty-free treatment for key products, including breakfast cereals, soups, cookies and pet food and the complete elimination of tariffs over 15 years.

Beyond opening markets, CAFTA helps U.S. businesses and workers by improving the protections afforded by key international trade rules:

CAFTA incorporates strong protections for U.S. investors abroad, committing the six countries to rules derived from U.S. legal principles and practice, including, nondiscrimination; due process rights; prompt compensation for expropriation; free movement of capital; no performance requirements (such as local sourcing rules or export requirement); and the resolution of disputes in a neutral and objective forum. In accordance with Congress' directions in Trade Promotion Authority, enacted as part of the Trade Act of 2002, the CAFTA also ensures that key protections conform to U.S. legal principles and practice and that disputes are handled transparently, efficiently and with public input. Unlike any prior FTA, the CAFTA also provides a concrete mechanism for the development of an appellate or other review procedure to ensure the coherence of decisions.

CAFTA incorporates strong rules for the protection of intellectual property, building upon and enhancing WTO protections in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Such rules are critical to promote innovation and new research in some of America's strongest sectors, from information technology to chemical, pharmaceutical and other scientific industries, and to stimulate a rich and diverse marketplace for America's leading entertainment and publishing industries.

The McGraw-Hill Companies likely will expand our sales of print and on-line materials in the region, which will help us create jobs both in the region and in the United States.

THIRD: CAFTA Will Sustain and Expand Textile and Apparel Partnerships and Competitiveness.

The CAFTA countries are the United States' largest market for U.S. apparel and yarn exports, and the second largest market for U.S. fabric exports. CAFTA is critical to sustain and expand existing partnerships and to give U.S.-CAFTA goods a competitive edge, particularly with the elimination of global quotas and increased competition from Asia, and to help support approximately 500,000 jobs in Central America and the Dominican Republic and 700,000 workers in the U.S. cotton, yarn, textile, and apparel sectors. This piece of the agreement has much larger implications for labor and development as discussed further below.

As you will hear from others who focus entirely on this sector, the permanence, flexibilities, and reciprocity created by the CAFTA are critical to the future of their and our industries. The existing unilateral preference program—the Caribbean Basin Trade Partnership Act—is simply not sufficient and sufficient to provide the U.S.-regional textile and apparel trade partnership the competitive edge they need in a world without quotas.

FOURTH: CAFTA Promotes Strong Labor and Environmental Protections and New Opportunities to Improve Working and Environmental Conditions.

In addressing labor and environmental issues, I think it is important not to lose sight of two essential facts. First, the single most important driver for improved labor conditions and environmental protection in these countries is, economic growth and development. CAFTA, which will help promote new and improved economic opportunities and partnerships, increased transparency and accountability, a better investment climate and stability, is the best tool we have to promote the economic growth that will in turn help create new opportunities for workers and an increasing demand for better environmental protections.

As the World Bank and others have documented, it is precisely through increased trade and economic growth that developing countries are better able and increasingly motivated by a growing middle class to improve labor and environmental standards. Since World War II, the liberalization of trade has produced a six-fold growth in the world economy and a tripling of per capita income and enabled hundreds of millions of families to escape from poverty and enjoy higher living standards. The World Bank has also document that developing countries that participate actively in trade grow faster and reduce poverty faster than countries that isolate themselves. In the 1990s, per capita incomes grew 5.1 percent in developing countries with high trade and investment flows, while more isolated countries saw incomes decline by 1.1 percent.

This is a particularly important point for the CAFTA countries given that the textile and apparel sector is the second largest employer overall in these six countries, providing some of the better paying jobs in a region where subsistence agriculture occupies the largest segment of the working population. Without CAFTA, these jobs will increasingly be lost—as is already starting to occur in several countries—signaling increased poverty in a region where 47 percent—almost half—of the population lives in poverty today.

Beyond the economic growth opportunities, the agreement itself promotes labor and environment standards as Congress directed in the Trade Act of 2002. It incorporates binding commitments, subject to dispute settlement, that each of the countries will enforce its labor and environmental laws, as the Trade Act sought, as well as the most robust labor and environment capacity-building mechanisms of any U.S. FTA. I applaud Congress' action last year to appropriate $20 million specifically for labor and environmental capacity-building in these countries.

The International Labor Organization, in reports that these countries requested on their labor laws, identified constitutionalprotections in all six countries guaranteeing the right of freedom of association and prohibitions against labor discrimination, child labor and forced labor. The ILO report also identified key national law

protections in each of the core areas in each country. It is also notable that five of the six countries have ratified all eight of the ILO's core conventions, which, by operation of their own domestic laws (unlike the United States) actually become part of their domestic law.

Though the labor laws of some CAFTA countries could be enhanced, what they have enacted includes many strong protections—not just in their national law, but in their constitutions. An even greater concern is the capacity of these countries to implement fully their laws, as detailed in the recent report by the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic—The Labor Dimension in Central America and the Dominican Republic: Building on Progress: Strengthening Compliance and Enhancing Capacity. That report, which was endorsed by the Trade and Labor Ministers of these countries, details how each government has made and continues to seek progress in improving labor standards and working conditions. The report also identifies specific areas where the countries require technical assistance to improve working conditions.

Most of all, given the obvious work that went into preparing a document of that depth and unparalleled transparency, I believe this report demonstrates a new and substantial commitment at the highest levels of these democratically elected governments to continue to work to improve labor conditions in their countries.

FIFTH: CAFTA Will Help Promote Economic Growth and Bolster Democracy and the Rule of Law

CAFTA will also play a positive role in promoting stability and the United States' own security in a region that was racked by violence and civil wars only two decades ago. Indeed, many view it as the logical next step in the United States' relationship with these countries. Implementation of the CAFTA signals that the futures of the United States, Central America and the Dominican Republic will be linked more than ever. Key factors at work include:

- **Economic Opportunities and Growth for the Region:** Much of CAFTA's importance for the region is with regard to the economic growth opportunities it provides. Although the United States already provides duty-free treatment to most of the imports from the region, the unilateral preference programs—from the Generalized System of Preferences to the Caribbean Basin Trade Partnership Act—are temporary programs that need to be renewed periodically, creating uncertainty for purchasers and investors. CAFTA will change that dynamic by making permanent duty-free treatment for most of the CAFTA countries' exports to the United States.

  As I have previously discussed, CAFTA does create important new market-opening in the United States for perhaps the most vital sector of the region's economies—textiles and apparel. This access is critical to sustain the region's competitiveness in the post-global quota world and to sustain jobs for hundreds of thousands of Dominicans and Central Americans.

  Access to the U.S. market is not the only attraction. By creating a free trade area among the countries of Central America and the Dominican Republic, CAFTA eliminates barriers between these six countries, opening cross-border opportunities, while also providing additional incentives to investment as companies can now take advantage of economies of scale when investing in the region.

  Strong investment and intellectual property protections, improved customs administration, and fair and transparent government procurement rules will also promote additional investment to the region in a manner that further increases growth and opportunities for the region's own workers.
- **Alternatives to Illegal Activity:** By helping to alleviate poverty through new economic opportunities and growth, CAFTA will help promote stability and provide alternatives to illegal activity, such as narcotics trafficking and illegal immigration.
- **Rule of Law:** Strong commitments on transparency, accountability in government procurement and fair and enforceable investment rules, will also help foster respect for the rule of law.
- **Integration:** Through further integration, CAFTA will promote continued regional stability and cooperation.

SIXTH: Approval and Implementation of CAFTA Is Vital to Signaling Continued U.S. Support for Global and Hemispheric Negotiations

By implementing CAFTA, the United States Congress signals to our trading partners, and the rest of the world, that the United States continues to support liberal-

ized trade and will continue to negotiate and implement agreements that expand trade and stimulate economic growth and development. In particular:

- Approval of CAFTA bolsters U.S. leadership on trade, and creates new partners in the developing world, to promote forward momentum on liberalized trade at a critical time in the WTO's Doha Development Agenda negotiations.
- Approval of CAFTA will send a message to our trading partners in Latin America that the United States is serious about trade liberalization in the Western Hemisphere, even as negotiations to create a Free Trade Area of the Americas ("FTAA") have made little progress in recent years.
- CAFTA not only signals the United States' serious intentions with regard to Western Hemisphere trade, it will, like our very successful FTA with Chile, provide a concrete example in the hemisphere of the fruits of liberalization.

If we turn our backs on CAFTA of all agreements—one where these six countries have done the lion's share of work in opening their economies and adopting strong protections—we not only turn our backs on our trading partners in Central America and the Dominican Republic, we reject America's traditional role as the leader in the march toward liberalized hemispheric and global trade. We can ill afford to abdicate the role of leader at this critical time.

CAFTA will benefit the United States and our manufacturing, services and agricultural producers through the expansion of markets, renewed partnerships to advance the competitiveness of U.S.-Central American-Dominican industries, and the development of a stronger, more stabile hemisphere. It is also more than just another trade agreement—it is the logical next step in America's decades-long work to promote stability and democracy in this region and it is a symbol of continued U.S. support and engagement in open international markets. I urge the Committee to support the approval and implementation of this agreement as soon as possible.

Thank you again Mr. Chairman, Congressman Rangel, Members of the Committee. I appreciate this opportunity to express my views, and those of the Business Roundtable, ECAT and the Business Coalition for U.S.-Central America Trade about the importance of CAFTA for the broad-based business community that I represent today.

Chairman THOMAS. Thank you very much Mr. McGraw. Mr. Fendell.

STATEMENT OF JAMES D. FENDELL, PRESIDENT, AEROPOST INTERNATIONAL SERVICES, MIAMI, FL, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, AND THE ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE IN LATIN AMERICA

Mr. FENDELL. Chairman Thomas, please say hello to Congressman Rangel and the entire Committee. Thank you for your opportunity that you have given me to testify on DR–CAFTA. I appear for the U.S. Chamber of Commerce and the Association of American Chambers of Commerce throughout Latin America (ACLA). I am that organization's president and I report to you today that millions of U.S. businesses and their workers and thousands of American companies in Latin America staunchly support DR–CAFTA. A huge percentage of these businesses are small- and medium-sized companies like mine. This opportunity to testify is personally very meaningful.

I was born in Ohio, raised in Latin America, educated in the United States, and I have worked and lived in both hemispheres of the Americas all of my life. I am president of Aeropost International Services, a small company that operates in Miami, the Caribbean, and Latin America. We provide a convenient address in Miami for the receipt and forwarding of mail and parcels, which enables thousands of individuals and companies outside the United

States to buy goods and services as though they themselves had an office in Florida. We ship thousands of packages a week to our clients abroad, with a value of many millions of dollars a year.

So, I really understand what our neighbors in Central America and the DR want to buy from the United States. Our customers are hungry for a staggering array of American-made goods from high-tech to the mundane, but they suffer pocketbook indigestion when they have to pay high import duties and taxes in their countries. They don't buy as much as they would like to, or as many packages as I would like to see moving through my system.

We don't ship many farm products either, because of other barriers. The United States is unilaterally open to imports from DR–CAFTA countries, but their current tariffs will remain a significant barrier to our exports and our services until we approve this important agreement. This will give American companies, and especially small and middle sized ones which cannot afford to build factories abroad, market access. You will hear more today about how important DR–CAFTA is for exports of America's high value-added U.S. agricultural products and for our core textile industry, but let's look at U.S. exports and the opportunities that this will provide. In the first year post agreement, we conservatively expect $3.99 billion in new U.S. sales, mostly from small- and middle-sized companies. This means $866 million in new earnings for U.S. workers and more than 26,000 new jobs in just the 12 key States that we profiled. These are conservative numbers, folks. United States exports to Chile surged by 33 percent in the first year of that agreement.

Now, as one who has lived for many years in Central America, I am also convinced that the agreement will benefit the people and the workers of Central America and the Dominican Republic. I will be glad to answer any questions about my own personal labor relations experience if you so choose. Twenty years ago, many of our countries down there were torn by civil war and violence. The Central Americans and the Dominican Republic were handout States, receiving millions upon millions of dollars in U.S. aid, but very little of that trickled down to the working class. Contrast that with the peaceful and democratic elections and the other significant social and human advances we see today and that the DR–CAFTA agreement will strengthen.

I believe that a wise bipartisan change in policy that emanated from this House, the people's House, from this very Committee, made the difference. As the Chair noted, Congress chose to move from aid to trade. Members from both parties, some of whom, like Congressman Rangel, continue to lead today, created and approved the CBI and built upon its ensuing success by enhancing it again and again. These countries today are where they are because of this Committee, this House, that unilateral legislation. We opened our borders to the Central Americans and to the Dominican Republic to give them time to strengthen their economic bases, their democratic process and their human rights. These countries made some tough choices, and their people have been rewarded by economic growth and strengthened institutions. Now they are ready to open their borders to our goods and services. This is the crowning

piece of DR–CAFTA, of a very successful long-term policy for an important part of our third border neighbors.

It is also my duty as a U.S. citizen who knows Latin America well to advise you that if this agreement is defeated, not just Central America and the Dominican Republic, but all of Latin America will view that defeat as a real kick in the teeth by the United States. Messrs. Chavez and Castro will be dancing with glee. The Committee on Ways and Means can lead Congress to secure a win-win-win for our economies, for our institutions, and, above all, for our democratic principles and ideals. We appreciate and salute your leadership and vision. On behalf of our company members and their millions of workers and voters, please move expeditiously to bring DR–CAFTA to a successful vote. Thank you.

[The prepared statement of Mr. Fendell follows:]

Statement of James D. Fendell, President, Aeropost International Services, Miami, FL, on behalf of the Chamber of Commerce of the United States, and the Association of American Chambers of Commerce in Latin America

On behalf of the Chamber of Commerce of the United States of America (U.S. Chamber) and the Association of American Chambers of Commerce in Latin America (AACCLA), I am pleased to present the House of Representatives Committee on Ways and Means with this testimony regarding the U.S.-Dominican Republic-Central America Free Trade Agreement (DR–CAFTA). Our organizations strongly support Congressional approval of this landmark trade agreement, and we urge the House to do so as soon as possible.

The organizations I am representing today represent huge numbers of businesses that staunchly support this agreement. The U.S. Chamber is the world's largest business federation, representing more than three million businesses of every size, sector and region. AACCLA represents 23 American Chambers of Commerce in 21 Latin American and Caribbean nations, and its 20,000 member companies manage over 80% of all U.S. investment in the region. I am pleased to serve as AACCLA's President.

For personal reasons, this opportunity to testify before the House of Representatives is particularly meaningful for me. My father was from New Jersey, and my mother from Washington. They met and married in Latin America in the 1940s. I was born in Ohio, raised in Latin America, educated in the United States, and have worked and lived in both the United States and Latin America.

I am President of Aeropost International Services, a company that operates in Miami and a number of countries in Central and South America and the Caribbean. Aeropost provides a convenience address for mail and parcels in Miami so that many thousands of individuals and companies outside the United States can buy goods and services as though they themselves had an operation in Florida.

To give you an idea of what our neighbors want to buy from us, we ship thousands of packages a week to our offices and franchisees with a value of many millions of dollars a year. And that's without DR–CAFTA, an agreement that will give American companies such as mine a level playing field by eliminating the tariffs and other barriers that put U.S. goods and services at a disadvantage in the Central American and Dominican markets. Based on my personal experience, I can say that this agreement will boost U.S. exports to Central America and the Dominican Republic many times over.

International trade plays a vital part in the expansion of economic opportunities for American companies such as mine. As such, the U.S. Chamber and AACCLA have helped lead the business community's effort to make the case for new free trade agreements. We do so because U.S. businesses have the expertise and resources to compete globally—if they are allowed to do so on equal terms with our competitors.

From this perspective, DR–CAFTA is an outstanding trade agreement. It will slash trade barriers for U.S. exports, enhance protections for U.S. investment overseas, and strengthen the competitiveness of American companies—both big and small—throughout the world. We believe the agreement is worthy of your support.

Opening Trade, Generating Growth

America's international trade in goods and services accounts for nearly a fifth of our country's GDP. As such, it is difficult to exaggerate the importance of the leadership demonstrated by Congress in renewing Presidential Trade Promotion Authority (TPA) two and a half years ago. As we predicted, this action by Congress has helped reinvigorate the international trade agenda and has given a much-needed shot in the arm to American businesses, workers, and consumers.

When TPA lapsed in 1994, the United States was compelled to sit on the sidelines while other countries negotiated numerous preferential trade agreements that put American companies at a competitive disadvantage. As we pointed out to Congress during our aggressive advocacy campaign for approval of TPA, the United States was party to just three of the roughly 150 free trade agreements in force between nations at that time.

The passage of TPA allowed the United States to complete negotiations for bilateral free trade agreements with Chile, Singapore, Australia, and Morocco, all of which won bipartisan approval in Congress. These agreements are already bearing fruit; for example, the Department of Commerce reports that U.S. exports to Chile rose by an astonishing 33% in 2004, the first year of implementation of the U.S.-Chile Free Trade Agreement. Free trade agreements with roughly 20 additional countries are now in various stages of completion.

Why is DR–CAFTA so critical? First, the agreement is good for workers, consumers, and businesses in the United States. And second, the agreement is good for workers, consumers, and businesses in Central America and the Dominican Republic.

Big Markets, Big Opportunities

The commercial benefits of DR–CAFTA for the United States are expected to be highly significant. While these six democracies look small on a map, they are excellent customers for American business. Purchasing $15.7 billion in U.S. exports in 2004, Central America and the Dominican Republic buy more U.S. goods than Australia, Italy, or Sweden.

These existing trade flows make DR–CAFTA the largest free trade agreement in more than a decade. In fact, the 45 million citizens of Central America and the Dominican Republic purchase more U.S. goods than the 1.5 billion citizens of India, Indonesia, and Russia—combined.

What is the United States selling to these countries? About one-third of all U.S. exports to Central America and the Dominican Republic are made by the U.S. textile and apparel industries. Computers, electronics, and information technology products represent almost another third. And farm products, ranging from soup to nuts, account for a large share of American sales to the six countries.

This success story began 20 years ago, when a tremendous bipartisan coalition created the Caribbean Basin Initiative. By a vote of 392 to 18, the House of Representatives decided in July 1983 to do away with most tariffs on imports from Central America and the Caribbean in an effort to help the region with "trade, not aid." The Senate followed suit with a similarly significant favorable vote.

The Caribbean Basin Initiative eliminated tariffs on nearly all imports from Central American and the Caribbean. In 2003, 77% of Central American and Dominican industrial products (including 99% of non-apparel industrial products) and 99.5% of agricultural products entered the United States duty-free.

Making Trade a Two-Way Street

More than any previous free trade agreement, DR–CAFTA is about reciprocity. It will level the playing field for the thousands of U.S. workers and businesses that rely on exports to Central America and the Dominican Republic. It will provide immediate, duty-free access to the six-country market for more than 80% of U.S. consumer and industrial goods and more than half of all U.S. agricultural exports to the six countries, with further openings phased in.

To gauge the commercial value of the agreement, the U.S. Chamber of Commerce has released a series of state-by state economic impact studies that found substantial economic gains for American workers and the economy from DR–CAFTA. We used a widely respected input-output economic model known as RIMS II that has been used for years by economists at the U.S. Department of Commerce and elsewhere, and we proceeded with some very conservative assumptions about the growth of exports. For instance, we assumed that U.S. exports to the six countries would grow at only half the rate of growth of exports to Chile in 2004, the first year of implementation of the free trade agreement with that country.

The results are extremely promising. In the first year of DR–CAFTA's implementation, the agreement would generate $3.9 billion in new sales across all industries

and $866 million in new earnings for workers in the 12 states profiled. In would also create over 26,000 new jobs in its first year. This table summarizes our findings:

Summary of Findings of State-by-State Economic Impact Studies

The full studies are available at: www.uschamber.com/goto/drcafta

AFTER ONE YEAR	Increased salesin all industries	Increased earnings of employeesin all industries	New jobs createdin all industries
Alabama	190,000,000	40,000,000	1,490
California	221,000,000	51,000,000	1,287
Florida	985,000,000	232,000,000	7,008
Georgia	262,000,000	52,000,000	1,516
Illinois	79,000,000	24,000,000	693
Louisiana*	339,000,000	77,000,000	2,769
New Jersey	71,000,000	14,000,000	342
New York	149,000,000	32,000,000	794
North Carolina	736,000,000	163,000,000	5,404
Pennsylvania	94,000,000	20,000,000	608
South Carolina	167,000,000	27,000,000	912
Texas	683,000,000	134,000,000	3,326
TOTAL	**$3,976,000,000**	**$866,000,000**	**26,149**

*"CAFTA: Potential for Louisiana's Prosperity," by Dr. James A. Richardson, Alumni Professor of Economics, Louisiana State University, March 2004. This study used the U.S. Department of Commerce's Bureau of Economic Analysis Regional Input-Output Modeling System (RIMS II) in the same fashion as the U.S. Chamber studies. However, the figures cited in this table are based on a projected increase in exports from Louisiana to the other DR–CAFTA countries of 16%. The U.S. Chamber studies use a figure of 17% for the first year. For comparison, U.S. exports to Chile rose by 33% in 2004, the first year of implementation of the U.S.-Chile Free Trade Agreement.

Nine years after implementation, DR–CAFTA would boost sales by over $20 billion in the 11 states for which data are available. In the same period, the agreement would raise workers' earnings by $4.5 billion and create more than 130,000 new jobs in the 11 states.

AFTER NINE YEARS	Increased salesin all industries	Increased earnings of employeesin all industries	New jobs createdin all industries
Alabama	1,021,000,000	214,000,000	7,901
California	2,486,000,000	573,000,000	13,132
Florida	5,200,000,000	1,200,000,000	36,982
Georgia	1,405,000,000	283,000,000	8,691
Illinois	445,000,000	97,000,000	2,402
New Jersey	381,000,000	79,000,000	1,801
New York	802,000,000	173,000,000	4,215
North Carolina	3,900,000,000	876,000,000	28,913

AFTER NINE YEARS	Increased salesin all industries	Increased earnings of employeesin all industries	New jobs createdin all industries
Pennsylvania	504,000,000	107,000,000	3,062
South Carolina	701,000,000	144,000,000	6,273
Texas	3,600,000,000	718,000,000	17,127
TOTAL	**$20,445,000,000**	**$4,464,000,000**	**130,499**

As noted above, the vast majority of Central American and Dominican exports already enter the U.S. marketplace duty-free, so the risk of job losses due to enhanced competition from imports is extremely limited. In sectors where imports from Central America and the Dominican Republic are not entering the United States duty-free, the U.S. average tariff is significantly lower than that faced by our exports to these countries. While U.S. rates average 3.6%, Guatemala's average applied industrial tariff is 7.1%, Honduras's is 6.7%, El Salvador's is 6.5%, Nicaragua's is 4.9%, Costa Rica's is 4.6% and the Dominican Republic's is 10.7% (2001 figures).

Support from Farms to Factories

The Chamber is far from alone in recognizing the potential of DR–CAFTA; studies prepared by other organizations have also projected impressive gains. A study by the American Farm Bureau Federation, which is the nation's largest association of farmers and ranchers, projected that the agreement will boost U.S. agricultural exports by $1.5 billion, which explains why over 50 leading agricultural commodity groups have endorsed the agreement.

In the textile and apparel sectors, the agreement will promote even stronger partnerships between companies in the United States, Central America, and the Dominican Republic. This will enable this hemisphere to compete more effectively in the face of rising international competition in these sectors since the demise of the global system of quotas on textiles on January 1, 2005. Most experts predict that Asian textile and apparel manufacturers will be the principal beneficiaries of the end of quotas—at the expense of apparel producers in Central America and the Dominican Republic, and their textile suppliers in the United States.

For years, the U.S. textile industry has benefited from an integrated supply chain and market with the DR–CAFTA nations, which constitute a key sourcing location for U.S. apparel and retail companies. Unlike other garment production centers, Central America and the Dominican Republic have emerged as the dominant consumers of U.S. textile products. Since the passage of the U.S.-Caribbean Basin Trade Partnership Act in 2000, the region has become one of the largest and fastest growing export markets for U.S. cotton growers, yarn spinners, and fabric mills.

As a result, garments imported from Central America and the Dominican Republic have U.S. content exceeding 50% while garments imported from Asia typically have less than 1% U.S. content. Without DR–CAFTA, apparel operations in Central America and the Dominican Republic will not be able to compete with Asian manufacturers, who have been ramping up sales since the global quota regime on textiles ended in January. If apparel manufacturers in Central America and the Dominican Republic cannot compete with Asia, a domino effect will hit cotton growers, yarn spinners, and fabric mills in the United States as their best customers go under.

On a more general level, the evidence is overwhelming that trade is a powerful tool to strengthen the U.S. economy. As former U.S. Trade Representative Robert Zoellick has pointed out, the combined effects of the North American Free Trade Agreement (NAFTA) and the Uruguay Round trade agreement that created the World Trade Organization (WTO) have increased U.S. national income by $40 billion to $60 billion a year. This helped lead to the creation of millions of new American jobs in the past 15 years. Many of these jobs were created in the export sector where, on average, jobs pay 13 to 18% more.

In addition to the increased wages, the lower prices generated by NAFTA and the Uruguay Round on imported items mean that the average American family of four has gained between $1,000 to $1,300 in spending power—an impressive tax cut, indeed.

Benefits for Central America and the Dominican Republic

The U.S. Chamber and AACCLA are speaking in favor of DR–CAFTA to advance the interests of U.S. businesses, workers, and consumers. However, it's clear that

the agreement will also be beneficial for workers, consumers, and businesses in Central America and the Dominican Republic—some of our closest neighbors.

Consider what Central America and the Dominican Republic were like 20 years ago. Several of these countries were at war, internally, and with violence spilling across their borders. Contrast that with the peaceful and democratic elections we have just seen in the past 18 months in El Salvador, Guatemala, and the Dominican Republic. It's worth recognizing that the outgoing administrations all supported DR–CAFTA strongly—and so do the new ones. These countries made some tough choices, and they've been rewarded with economic growth and progress in the fight against poverty.

Consider the example of El Salvador, which in the 1990s brought inflation under control, fought corruption, and moved toward a more free market economy. As a result, per capita incomes in El Salvador grew 10 times faster in the 1990s than in the 1980s.

Again, if things are going so well, what do we need DR–CAFTA for? The agreement is strong medicine, and it represents an opportunity to make sure the progress of the past two decades doesn't slip away. The agreement will enhance democratic institutions, business transparency, and economic reform—all while locking in a strong partnership with the United States. Consider the following:

1. DR–CAFTA will guarantee transparency in government procurement, with competitive bidding for contracts and extensive information made available on the Internet—not just to well-connected insiders;
2. DR–CAFTA will ensure a level playing field in the regulatory environment for services, including telecoms, insurance, and express shipments; and
3. DR–CAFTA will shore up legal protections for copyrights, patents and trademarks, so that creative artists who produce movies and television shows, researchers who create new medicines, and companies that create software will be protected. Pirates and counterfeiters will be put on notice that these countries will protect intellectual property with the full force of the law.

Fighting Poverty, Helping Workers

Finally, DR–CAFTA will help in the fight against poverty. Despite significant progress in the past 20 years, many Central Americans continue to live on just a few dollars a day. By enhancing opportunities for economic growth, the agreement will help provide jobs at all levels of the Central American and Dominican economies, while providing governments with additional resources for much-needed education, health care, and basic infrastructure projects.

Some critics charge that the agreement doesn't do enough to protect workers' rights. Because I have worked in Central America for much of my professional life, I can address this matter in the first person. Speaking as both a former member of the United Auto Workers and a former manager in the U.S. offices of an airline whose workers were members of the International Brotherhood of Teamsters, my experience is that the laws on the books in these countries are more protective of workers' rights than union contracts in the United States today. The agreement builds on the fact that five of these countries have ratified all eight of the core conventions of the International Labor Organization; the sixth country, El Salvador, has ratified six of the conventions and is already upholding the final two based on provisions in its own constitution.

It is entirely appropriate that the U.S. negotiating team insisted that DR–CAFTA must contain tough, unwavering provisions requiring that the countries enforce their labor laws. It is also proper that new resources are being provided to guarantee such enforcement, and to provide for stiff penalties that actually provide additional resources for enforcement in the event of non-compliance.

The *Washington Post* summarized the situation in an editorial: "It is a bad idea to oppose trade deals on the grounds that labor protections are advancing, but not quite fast enough—This neglects the truth that the best way to boost workers' bargaining capacity is to boost job creation, so that labor is in strong demand. Trade deals that create jobs are good for workers' rights as well as workers' incomes." We agree.

What the Chamber and AACCLA Are Doing

The U.S. Chamber and AACCLA are conducting an ambitious educational strategy to build support for Congressional approval of DR–CAFTA. In concert with our partners in the Business Coalition for U.S.-Central America Trade, the Chamber and AACCLA have organized hundreds of face-to-face meetings with members of Congress to make the case for the agreement. We have also met with members of Congress in their districts throughout the country as part of our ongoing "TradeRoots" program to educate business people and workers about the benefits of

open trade. We have found broad support for the agreements, both in the Congress and in the business community.

As part of this "TradeRoots" effort, the U.S. Chamber and AACCLA have published a "Faces of Trade" book to highlight small businesses in the United States that are already benefiting from trade with Central America and the Dominican Republic—and that stand to benefit even more from free trade with these two markets. We invite you to review these success stories and see the face of American trade today (electronic copies of the book are available at www.traderoots.org). It isn't just about multinational corporations, which can usually find a way to access foreign markets, even where tariffs are high. DR–CAFTA will first assist the hundreds of thousands of small companies that are accessing international markets—and that are meeting their payroll, generating jobs, and growing the American economy.

The U.S. Chamber and AACCLA are also making the case for the agreement in a nationwide tour with the Central American and Dominican ambassadors to meet with local business people, farmers, and journalists in their home towns. We've organized major events in more than a dozen cities with the ambassadors, and people from all walks of life are excited to learn about how DR–CAFTA will create new opportunities for business and employment.

This is just the tip of the iceberg. We've generated a wealth of information about the potential benefits of these agreements and our efforts to make them a reality. In the interest of brevity, I would simply urge you to contact the Chamber if you need more information. Our websites are a good place to start: www.uschamber.com and www.aaccla.org. Another great source of information is the website of the Business Coalition for U.S.-Central America Trade at www.uscafta.org.

Conclusion

Trade expansion is an essential ingredient in any recipe for economic success in the 21st century. If U.S. companies, workers, and consumers are to thrive amidst rising competition, new trade agreements such as DR–CAFTA will be critical. In the end, U.S. business is quite capable of competing and winning against anyone in the world when markets are open and the playing field is level. I have no doubt that this agreement will bring very real benefits to the United States, and especially to exporters, the textile industries, farmers and ranchers, and the Hispanic and Latino communities of the United States. All we are asking for is the chance to get in the game.

The U.S. Chamber and AACCLA appreciate the leadership of the House Committee on Ways and Means in reviving the U.S. international trade agenda, and we ask you to move expeditiously to bring DR–CAFTA to a vote. Thank you.

Chairman THOMAS. Thank you Mr. Fendell. Mr. Presser.

STATEMENT OF SHELDON PRESSER, SENIOR VICE PRESIDENT, WARNER BROS., BURBANK, CA, ON BEHALF OF TIME WARNER, AND THE ENTERTAINMENT INDUSTRY COALITION FOR FREE TRADE

Mr. PRESSER. Mr. Chairman, Congressman Rangel, Committee Members, on behalf of Warner Brothers, our parent company, Time Warner, and the broader Entertainment Industry Coalition for Free Trade, thank you for the great opportunity to appear before you today to discuss the benefits of the DR–CAFTA. Our company, as well as the Entertainment Industry Coalition and the U.S. workers we represent strongly believe that this agreement will create important opportunities for our businesses to increase exports and create jobs and additional revenue in the United States. As an industry that will substantially benefit from this agreement, we ask Congress to act quickly to vote in favor of it. Warner Brothers, through Time Warner, is a member of the Entertainment Industry Coalition, which represents the interests of men and women who produce, distribute, and exhibit many forms of creative expression. This includes theatrical and TV motion pictures, home video enter-

tainment, recorded music and, video games. Our coalition members include multi-channel programmers and cinema owners, producers and distributors, trade associations, individual companies like Time Warner, and guilds and unions, which themselves include over 100,000 members.

The entertainment industries are among the U.S. economy's greatest assets. We represent approximately 6 percent of the Nation's GDP (gross domestic product). We have created jobs at three times the rate of the U.S. economy in recent years. We bring in more international revenue from exports than aircraft, agriculture, and auto parts. Our industries export between $90— $100 billion worth of goods per year. The movie industry alone has a surplus balance of trade with every single country in the world that exhibits our films. We know of no other American enterprise that can make that statement year after year. Following up on the five Congressmen and women who extensively discussed the trade deficit this morning, we are doing our part in connection with the trade balance. Unfortunately, America's creative industries are under attack. As Congress well knows, and as Congressman Ramstad mentioned earlier today, losses from physical and online piracy have reached staggering levels. Estimates are in excess of $25 billion for 2004 alone. Without strong protections and improved market access, our industry's ability to continue to expand U.S. jobs, revenue, and exports will be jeopardized. These troubling trends increase the importance of international trade agreements including the DR–CAFTA. More specifically, the DR–CAFTA countries have committed to reduce current tariffs that go as high as 20 percent, down to zero on all movies, music, consumer products, software books and magazines that Time Warner and others export into the region. We are in the same position as Congressman Hayworth mentioned in respect to catsup.

The agreement also includes a commitment to nondiscriminatory treatment of digital products and zero tariffs on electronic transmissions. This significant cut in our cost will enable us to bring more products to consumers in the region and more revenue back home. The DR–CAFTA agreement provides for improved market access for many services including audiovisual, computer, telecommunications, advertising, and distribution. The agreement also includes investment protections that will allow for future growth in the development of multiplex movie theaters in the DR–CAFTA countries, providing an important base for expanding U.S. entertainment exports to the region.

While breaking down market access barriers is critically important, the entertainment industry cannot survive without strong IPR protection and enforcement. The value of our products is undermined when piracy goes unchecked. Improving intellectual property rights protection has been an important part of past FTA's and the DR–CAFTA continues that success. The agreement includes copyright term extension, digital protections age IPR protections and strengthened IPR enforcement, which is the only way to maintain the integrity of an IPR system. We are already seeing benefits from the DR–CAFTA negotiation as illustrated by the August 5, 2004 side letter to the agreement, which provides a strong commitment to eliminate the longstanding and serious problem of broad-

cast piracy in the Dominican Republic. We thank Congressman Rangel for his help with this important advancement. Time Warner's top trade policy priorities are ensuring protection of our intellectual properties through strong enforcement measures and securing improved market access for our products and services around the world. The DR–CAFTA meets these deals. The agreement represents valuable opportunities. Thank you for your time and for the very positive comments made by a number of Members regarding intellectual property today.

[The prepared statement of Mr. Presser follows:]

Statement of Sheldon Presser, Senior Vice President, Warner Bros., Burbank, CA, on behalf of Time Warner, and the Entertainment Industry Coalition for Free Trade

Mr. Chairman, Congressman Rangel, and Committee Members, on behalf of Warner Bros., our parent company Time Warner, and the broader Entertainment Industry Coalition for Free Trade (EIC), thank you for the great honor and opportunity to appear before you today to discuss the benefits of the Dominican Republic-Central America Free Trade Agreement (DR–CAFTA).

Our company, the Entertainment Industry Coalition, and the U.S. workers we represent, strongly believe that this agreement will create important opportunities for our businesses to increase our exports, and create jobs and additional revenue in the United States, all of which will advance the economy of the United States. We also believe that passage of DR–CAFTA will be good for the economies of the Dominican Republic and the CAFTA countries. Strengthening the economies of the Dominican Republic and the CAFTA countries will create wealth in those countries, thereby providing greater opportunities for the legitimate distribution of our products. In addition, the high standard of commitments, particularly in the area of intellectual property and services, will hopefully lead to additional stronger commitments in other negotiations, such as the FTAA. As an industry that will substantially benefit from this agreement, we ask Congress to act quickly to vote in favor of the agreement.

Warner Bros., through Time Warner, is a member of the Entertainment Industry Coalition (EIC), which represents the interests of men and women who produce, distribute, and exhibit many forms of creative expression, including theatrical motion pictures, television programming, home video entertainment, recorded music, and video games. Our members are multi-channel programmers and cinema owners, producers and distributors, guilds and unions, trade associations, and individual companies.

Our members include BMG Music; The Directors Guild of America (DGA); EMI Recorded Music; the Entertainment Software Association (ESA); The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE); Independent Film and Television Alliance (IFTA); Motion Picture Association of America (MPAA); National Association of Theatre Owners (NATO); New Line Cinema; the News Corporation Limited; Paramount Pictures; Producers Guild of America (PGA); Recording Industry Association of America (RIAA); Sony Music Entertainment Inc.; Sony Pictures Entertainment Inc.; Television Association of Programmers (TAP) Latin America; Time Warner; Twentieth Century Fox Film Corporation; Universal Music Group; Viacom; Universal Studios; the Walt Disney Company; Warner Bros.; Warner Music Group; and The Writers Guild of America, west (WGAw).

The goal of the EIC is to work with policymakers to highlight the importance of free trade for the U.S. economy, the positive economic impact of international trade on the entertainment community, and the role of international trade negotiations in ensuring strong intellectual property protections and improved market access for our products and services.

The entertainment industries are one of the U.S. economy's greatest assets. Based on Department of Commerce statistics, the copyright industries represent more than 6% of the nation's GDP. We bring in more international revenues from exports than aircraft, agriculture, auto parts. We also are creating new jobs at three times the rate of the rest of the economy. The movie industry alone has a surplus balance of trade with every single country in the world that exhibits our films. No other American enterprise can make that statement.

Unfortunately, America's creative industries are under attack. As the Congress knows well, piracy of copyrighted materials has had a devastating impact, and the

impact has grown in recent years with the advance of digital technology. Losses from physical and online piracy in the industry have reached staggering levels, estimated in 2004 at well above $25 billion. While the digital revolution has created new ways for all of us to reach consumers with compelling content, and for consumers in turn to access it from almost anywhere, this same technology also has facilitated the efforts of those who steal the innovation and creativity of others. Without strong protections, our ability and the rest of the entertainment industry's ability to continue to expand U.S. jobs, revenue and exports will be jeopardized.

Market access barriers also plague the entertainment industries. High tariffs on our products, discriminatory customs valuation disciplines, quotas and discriminatory restrictions on the ability to produce and distribute our products prevent the entertainment industries from competing in many markets which pirates readily exploit.

These troubling trends increase the importance of international trade agreements. In addition to updating traditional copyright protections, our industry needs new agreements that otherwise keep pace with changes in technology. The Dominican Republic and Central America Free Trade Agreement is such an agreement.

Central America and the Dominican Republic are already important export markets for the United States. The U.S. exports more than $15 billion annually to the region, making it our 14th largest export market. It is the 2nd largest export market in Latin America for U.S. products, just behind Mexico. For our industry sector, it is a market that has tremendous growth potential, as we have seen our products sell well—but unfortunately mostly in the hands of pirates. Across the entertainment industry, we stand ready to fill the pirate void with legitimate product now that all of the Central American countries and the Dominican Republic have committed to strengthened IP protection, and elimination of tariffs and other market access barriers.

More specifically, from a Time Warner perspective, the DR–CAFTA countries have committed to reducing tariffs that currently go as high as 20%, down to zero on all movies, music, consumer products, software, books and magazines that Time Warner exports into the region. This significant cut in our costs will enable us to bring more high-quality, lower cost products to consumers in the region.

The agreement also contains several other important commitments that will reduce or ensure that the cost of exporting into these markets does not increase. For instance, the agreement reaffirms the concept that customs duties should be based on the value of the carrier media and not the value of the movie, music or software contained on the carrier media, in order to assist in efforts to create global consensus on this customs valuation standard. The DR–CAFTA also includes important commitments providing for non-discriminatory treatment of digital products, including DVDs and CDs, as well as an agreement not to impose customs duties on such products.

While the tariff reductions included in the agreement are important and will benefit the companies of Time Warner and the entire entertainment industry, the agreement also includes important services commitments and intellectual property rights protections. The DR–CAFTA builds on the successful record of past FTAs, such as Chile, Singapore, Morocco and Australia, in developing a high standard for trade commitments in the services sector, particularly in areas where countries have agreed to go beyond their services commitments in the WTO, strengthening and modernizing IP protections, and creating modern trade agreements aimed at the digital economy.

The agreement provides for improved market access for many services, including audiovisual, computer, telecommunications, advertising, and distribution services such as wholesaling and retailing. The agreement also demonstrates that a trade agreement can harmonize two important objectives—trade liberalization and the promotion of cultural diversity. It avoids the "cultural exceptions" approach while demonstrating that a trade agreement has sufficient flexibility to take into account countries' cultural promotion interests. The agreement also includes investment protections that will allow for further growth in the development of multiplex movie theaters in the DR–CAFTA countries, providing an important base for expanding U.S. entertainment exports to the region.

While breaking down market access barriers and creating a duty-free system of trade between our countries will present excellent opportunities for increased trade, the entertainment and media industries cannot survive without strong protections and enforcement of those protections. The value of our products is undermined with every case of piracy that goes unchecked. We believe that this FTA sets a high bar for IP protections that should be a part of any future trade agreements that the United States negotiates.

DR–CAFTA includes strong intellectual property rights provisions that will allow our industry to continue to grow and prosper, as well as recognizing emerging technologies and the impact that these technologies can have on our businesses. Improved intellectual property rights protection has been an important part of past FTAs and the DR–CAFTA continues that success.

Protecting intellectual property rights is at the heart of our business. In this regard, the DR–CAFTA has critically important provisions in it to safeguard our content from piracy. Specifically, DR–CAFTA includes TRIPs-plus provisions that will ensure that products in the digital economy receive world-class IP protection. The DR–CAFTA countries have agreed to implement the WIPO Internet Treaties, as well as to establish strong anti-circumvention provisions to prohibit tampering with technologies that are designed to prevent piracy and unauthorized distribution over the internet. In addition, the agreement includes provisions ensuring that copyright owners have the exclusive right to make their works available online and protects copyrighted works for extended terms, in line with current international trends.

Importantly, the FTA also strengthens IP enforcement, which is the only way to maintain the integrity of an IP system. The DR–CAFTA countries have agreed to increase criminal and civil remedies against the unlawful decoding of encrypted satellite TV signals and criminalize end-user piracy, providing strong deterrence against piracy and counterfeiting. The agreement also requires the DR–CAFTA countries to authorize the seizure, forfeiture and destruction of pirated products and the equipment used to produce them, as well as providing for enforcement against pirates of goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products. These strong measures will provide content providers, such as the companies of Time Warner, with the increased protection and enforcement needed to safeguard our investments and the U.S. jobs that are supported through the sales and distribution of our products. In fact, we are already seeing benefits from the DR–CAFTA negotiation as illustrated by the August 5, 2004 side letter to the agreement which provides a strong commitment to eliminate the longstanding and serious problem of broadcast piracy in the Dominican Republic. We thank you, Congressman Rangel, for your help with this important advancement.

Time Warner's top trade policy priority is ensuring protection of our intellectual property through strengthened laws and strong enforcement measures. In addition, Time Warner believes that all entertainment and high-tech products should have full market access, zero tariffs and that all electronic transmissions should enter all countries duty-free. The DR–CAFTA meets these goals, which is why Time Warner strongly supports the passage of the agreement. We believe that the agreement represents valuable opportunities for our businesses and our employees to continue to compete and prosper in the world economy.

Thank you.

Chairman THOMAS. Thank you, Mr. Presser. Mr. Trumka.

STATEMENT OF RICHARD L. TRUMKA, SECRETARY-TREASURER, AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. TRUMKA. Mr. Chairman, before I start my statement could I also submit for the record this report entitled, "The Real Record on Workers Rights in Central America." It is a compilation of information on each one of the Central American countries dealing with the workers rights in those countries.

Chairman THOMAS. Is it a work product of your organization?

Mr. TRUMKA. It is indeed.

Chairman THOMAS. Without objection.

[The information is being retained in Committee files.]

Mr. TRUMKA. Thank you very much, sir. Thank you, Mr. Chairman, and Members of the Committee. Thank you for holding this important hearing and inviting me to testify today on behalf of 13 million working Americans, men and women represented by the AFL–CIO (American Federation of Labor-Congress of Industrial Organizations). Given the composition of this panel, I have a great-

er appreciation for Custer at Little Big Horn. The American labor movement recognizes the urgent challenges of poverty and underdevelopment in Central America and the Dominican Republic. Many of our members come to the United States from this region. Many maintain close ties with family and friends there, send remittances home and return periodically to visit the lands of their birth. We work closely with unions and civil society organizations throughout the area. So, we too feel a special obligation to help these countries grow and to prosper. At the same time, we are acutely aware of the challenges that we face in our own economy and labor market.

Our trade deficit hit a record-shattering $617 billion last year. We have lost close to 3 million manufacturing jobs in the last 4 years, and average wages are barely keeping pace with inflation, despite healthy productivity growth. Together, record trade and budget deficits, unsustainable levels of consumer debt and stagnant wages, paint a picture of an economy living beyond its means, dangerously unstable in a volatile global economy. Unfortunately, DR–CAFTA is not the answer to the challenges faced in Central America or the United States. On the contrary, it represents a failed model that will likely exacerbate poverty and inequality in Central America, while further eroding good jobs and wages at home. At the same time, its excessive protections for multinational corporations would undermine the ability of governments to protect public health, strong communities and the environment. Mr. Chairman, Members of the Committee, we ask you to reject DR–CAFTA and urge the Administration to renegotiate this deeply flawed deal.

Some have argued that DR–CAFTA is the only way to lift Central America out of poverty. We need only examine NAFTA's dismal track record to dispel this myth. Since NAFTA was implemented 11 years ago, real wages in Mexico have actually fallen. The number of people in poverty has grown and the number of people migrating illegally to the United States to seek work has doubled. The DR–CAFTA is likely to have similar impacts on Central America. Furthermore, for industrial employment to be a reliable route out of poverty workers must earn decent wages, have the right to form independent unions and enjoy basic work protections and labor rights. Few workers in Central America today can exercise their internationally recognized rights to form unions and bargain collectively. Anti-union violence is common, and employers routinely fire workers attempting to exercise these rights, while governments fail to act. Far from addressing or rectifying these concerns, DR–CAFTA actually weakens the labor rights conditions included in current trade programs, leaving Central American and Dominican workers more vulnerable than ever.

Nor will DR–CAFTA improve U.S. competitiveness or create high-paying jobs at home. NAFTA was supposed to open markets for America's goods and services, creating high-paying jobs at home and prosperity abroad. Instead in 11 years the U.S. trade deficit with Canada and Mexico ballooned to 12 times its pre-NAFTA size, reaching $111 billion in 2004, and imports from NAFTA partners grew more than $100 billion faster than our exports to them, displacing workers in industries as diverse as aircraft, auto, apparel, and consumer electronics. Like NAFTA, the attraction of Central

America for multinational corporations is not its consumer market, but its low paid and very vulnerable work force.

Central America needs a trade regime that will improve compliance with fundamental workers rights. The DR–CAFTA fails this test. Rather than tie additional market access to required improvements in workers' rights, DR–CAFTA does exactly the opposite. While granting expanded and permanent market access to Central American countries, DR–CAFTA actually weakens the labor rights conditions these countries are required to fulfill under current trade agreements. This failure is particularly egregious in a Central American context. In countries where labor laws fall far short of minimum international standards, where governments have a record of indifference toward workers' rights and hostility toward trade unions, the only tool that has proven successful in improving workers' rights has been the threat of withdrawal of trade benefits.

Members of the Committee, I will close with these thoughts. The U.S. economy continues to break records, but not in ways that help working people. The all-time high U.S. trade deficit is not an abstract issue. It shows up every day as working men and women see their plants close, are asked to train their overseas replacements, or are asked to swallow wage and benefit cutbacks that affect their families' lives in hundreds of ways. Entire communities suffer the consequences of failed trade agreements. We urge Congress to reject DR–CAFTA and to begin work on just economic and social relationships with Central America and the Dominican Republic. Thank you, Mr. Chairman.

[The prepared statement of Mr. Trumka follows:]

Statement of Richard L. Trumka, Secretary-Treasurer, American Federation of Labor-Congress of Industrial Organizations

Mr. Chairman and members of the committee, thank you for holding this important hearing and for inviting me to testify today on behalf of the thirteen million working men and women represented by the AFL–CIO.

The American labor movement recognizes the urgent challenges of poverty and underdevelopment in Central America and the Dominican Republic. Many of our members came to the United States from this region. Many maintain close contact with family and friends there, send remittances home, and return periodically to visit the lands of their birth. We work closely with unions and civil society organizations throughout the area. So we too, feel a special obligation to help these countries grow and prosper.

At the same time, we are acutely aware of the challenges we face in our own economy and labor market. Our trade deficit hit a record-shattering $617 billion last year, we have lost close to three million manufacturing jobs in the last four years, and average wages are barely keeping pace with inflation—despite healthy productivity growth. Offshore outsourcing of white-collar jobs is increasingly impacting highly educated, highly skilled workers—leading to rising unemployment rates for engineers and college graduates. Together, record trade and budget deficits, unsustainable levels of consumer debt, and stagnant wages paint a picture of an economy living beyond its means, dangerously unstable in a volatile global environment.

Unfortunately, CAFTA is not the answer to the challenges faced in Central America or the United States. On the contrary, it represents a failed model that will likely exacerbate poverty and inequality in Central America, while further eroding good jobs and wages at home. At the same time, its excessive protections for multinational corporations would undermine the ability of governments to protect public health, strong communities, and the environment.

Mr. Chairman, members of the committee, we ask you to reject CAFTA and urge the Administration to renegotiate this deeply flawed deal.

CAFTA As Solution To Poverty?

To sell CAFTA to a skeptical Congress, some make the desperate argument that CAFTA is the only way to lift Central America out of poverty. We need only examine NAFTA's dismal track record to dispel this myth. Since NAFTA was implemented eleven years ago, real wages in Mexico have actually fallen, the number of people in poverty has grown, and the number of people migrating illegally to the United States to seek work has doubled. Trade liberalization in agriculture displaced nearly a million rural small farmers, swamping the fewer jobs created in the export processing sectors. Many in Mexico who supported NAFTA eleven years ago have now turned into ardent opponents.

CAFTA is likely to have similar impacts in Central America, especially since CAFTA does not dramatically increase access to the U.S. market for the Dominican Republic and Central America. The key impact on the rural poor—the majority of the population in many of the countries—will be increased competition with much more efficient U.S. agribusiness.

For industrial employment to be a reliable route out of poverty, workers must earn decent wages, have the right to form independent unions, and enjoy basic workplace protections and labor rights. Few workers in Central America today can exercise their internationally recognized rights to form unions and bargain collectively. Anti-union violence is common, and employers routinely fire workers attempting to exercise these rights, while governments fail to act. Far from addressing or rectifying these concerns, CAFTA actually weakens the labor rights conditions included in current U.S. trade programs, leaving Central American and Dominican workers more vulnerable than ever. I will address CAFTA's inadequate labor rights provisions in more detail later in this testimony.

CAFTA As A Boost to U.S. Competitiveness and Jobs?

During the debate over NAFTA, proponents argued that with the American market already more open to Mexican products, our workers and producers would come out on top if all trade barriers were eliminated. Today, the same argument is being used to sell CAFTA.

However, our experience under NAFTA demonstrates that the opposite is likely to occur. As Republican Senator Olympia Snowe said last week in the Senate Finance Committee hearing on CAFTA, NAFTA has cost U.S. workers nearly one million jobs and job opportunities (based on the deterioration in our trade balance with our NAFTA partners).

NAFTA was supposed to open markets for American goods and services, creating high-paying jobs at home and prosperity abroad. Instead, in eleven years, the U.S. trade deficit with Canada and Mexico ballooned to twelve times its pre-NAFTA size, reaching $111 billion in 2004. Imports from our NAFTA partners grew more than $100 billion faster than our exports to them, displacing workers in industries as diverse as aircraft, autos, apparel, and consumer electronics. This occurred because U.S. companies did not take advantage of the easier access to the Mexican market to export finished consumer goods to Mexico; instead, they shifted production out of the United States to Mexico, exporting parts and capital goods and importing finished products. The net impact of these production shifts was a loss of good jobs in the United States.

Those workers whose jobs were not eliminated also suffered. Employers used the leverage of their new mobility and rights under NAFTA to crush union organizing drives and win concessions at the bargaining table, driving down wages and working conditions for American workers. According to researchers at Cornell University, the incidence of employers' threats to close and relocate factories grew under NAFTA. And these intimidation tactics are very effective: workers are half as likely to succeed in organizing a union when their employers threaten to move jobs abroad.[1]

NAFTA simply did not deliver stronger net exports or a competitive advantage for U.S.-based companies and workers, and there is little reason to believe that CAFTA will be any different. Like NAFTA, the attraction of Central America for multinational corporations is not its consumer market, but its low-paid and very vulnerable workforce.

CAFTA Provisions Favor Multinational Corporations Over Workers, Communities, and National Governments

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[1] Kate Bronfenbrenner, "The Effects of Plant Closing or Threat of Plant Closing on the Right of Workers to Organize," Dallas, Texas: North American Commission for Labor Cooperation; 1997. Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility On Workers, Wages, and Union Organizing," Commissioned research paper for the U.S. Trade Deficit Review Commission; 2000.

CAFTA strengthens protections for multinational corporations, forcing changes in intellectual property protection regimes that threaten public health, giving corporations new rights to sue governments over regulations they deem too costly or inconvenient, and limiting the ability of future legislators to place conditions on government procurement. This hurts Central America's prospects for future development, just as it weakens state legislators and erodes wages and jobs here at home.

The lopsided tilt toward corporate interests helps to explain why CAFTA is so unpopular, both here in the United States and throughout Central America. A recent poll by Americans for Fair Trade found widespread opposition to CAFTA, with 74% of respondents saying they would oppose the pact if it caused job losses, even if it also reduced consumer prices. In Central America, tens of thousands of workers, farmers, small-business owners, and other activists have taken to the streets to voice their vehement opposition to the deal and to the lack of transparency in the negotiation process.

The Bush Administration and Central American governments have prioritized multinational corporate interests at the expense of ordinary citizens. Right now in Guatemala, the rights of people who need inexpensive medications are being traded away in favor of CAFTA's business interests. Pharmaceutical companies have already pressured Guatemala to stop allowing inexpensive drugs in stores. CAFTA imposes a five-to-ten year waiting period on generic drugs. The humanitarian organization, Doctors Without Borders, has said that these provisions in CAFTA could make newer medicines unaffordable.

CAFTA's Workers' Rights Provisions Unacceptably Weak

At the same time, despite the overwhelming evidence that Central America's workers are routinely abused, CAFTA spectacularly fails to address this problem. CAFTA's single enforceable workers' rights provision requires only that countries enforce their own labor laws—laws that Human Rights Watch, the International Labor Organization and even our own State Department have documented as failing to meet international standards. And CAFTA contains no enforceable provision preventing countries from weakening or even eliminating their labor laws entirely.

Not one country included in the CAFTA comes close to meeting a minimum threshold of respect for the ILO's core labor standards: freedom of association, the right to organize and bargain collectively, and freedom from child labor, forced labor, and discrimination. In Central America, maquiladora employers pay a workforce made up disproportionately of young women poverty wages to labor for long hours in unsafe conditions. When these workers try to organize to try to win a voice at work, they face intimidation, threats, dismissal, and blacklisting.

Labor laws in Central America uniformly fail to protect basic workers' rights, and deficiencies in the laws have been repeatedly criticized by the International Labor Organization (ILO), the U.S. State Department, and independent human rights organization for many years.[2] Despite this criticism, these flaws persist today. The ILO, in its 2003 and 2004 reports on Central American labor laws, identified no fewer than 27 key deficiencies in the laws with respect to freedom of association and the right to organize and bargain collectively. Amazingly, the U.S. Trade Representative and Central American countries continue to cite these reports as evidence that laws in the region largely meet ILO standards—a gross mischaracterization of the reports themselves. And even these reports, with all the deficiencies they identify, omit some flaws that the ILO itself had identified with regard to these countries in earlier observations because of the reports' limited scope.

A review of the ILO reports and other ILO observations, along with U.S. State Department reports and independent analyses by human rights groups, reveals a wide array of loopholes, gaps, and deficiencies in labor laws in the region. On issues including penalties for anti-union discrimination, employer interference with workers' organizations, obstacles to union registration, restrictions on the right to organize above the enterprise level, restrictions on the rights of temporary employees, onerous requirements for trade union leadership, limits on the activities of federations and confederations, and limits on the right to strike, labor laws throughout the region fail to meet the minimum standards enumerated by ILO core conven-

[2] Such reports include: "Fundamental Principles and Rights at Work: A Labour Law Study—Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua," International Labor Organization, 2003; "Fundamental Principles and Rights at Work: A Labour Law Study—Dominican Republic," International Labor Organization, 2004; "2004 Country Reports on Human Rights Practices," U.S. Department of State, 2005; "2004 Annual Survey of Violations of Trade Union Rights," International Confederation of Free Trade Unions, 2004; and "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," Human Rights Watch, 2003. A summary of these reports is available in "The Real Record on Workers' Rights in Central America," AFL–CIO, April 2005.

tions. The only country to actually reform any of its laws in these areas during the CAFTA negotiation process was Nicaragua; but some gaps in the law remain even there. In every other country major deficiencies identified by the ILO remain on the books today. In fact, some countries have actively weakened their labor laws during the CAFTA negotiations: Guatemala's Constitutional Court overturned key elements of major labor law reforms, while the Costa Rican government introduced legislation to weaken worker protections.

Employers take advantage of these weaknesses in the labor law to harass, intimidate, and fire workers who dare to organize an independent union. Employers refuse to bargain with legitimate worker representatives, and have most strikes declared illegal. Even where employers are flagrantly in violation of the law, they enjoy near total impunity in many of these countries. The result is a climate of fear, insecurity, and even physical danger for workers in the region who try to exercise their most basic rights on the job.

As violation after violation of workers' rights accumulate, and as governments refuse to improve their laws or enforce those that do exist, the very institutions of independent trade unions and collective bargaining founder. Trade union density in Central American countries is minimal: 7 percent in Honduras, 5 in El Salvador, 3 in Guatemala. In El Salvador, no independent trade unions have been registered in the past four years. The most recent denial came this year, when the Ministry of Labor found that port workers did not meet the legally required minimum number to form a union, as a result of the fact that their employer had fired most of the founding members of the union in direct retaliation for their organizing activities.

There are only two collective bargaining agreements in force in Guatemala's maquiladoras—zero in El Salvador's. In Costa Rica from 1999 to 2004, for every employer that negotiated a collective bargaining agreement with a legitimate trade union, more than fourteen employers negotiated direct arrangements with employer-dominated solidarity associations. In Guatemala, 45 incidents of threats against trade unionists were reported to the government in 2004—only one conviction was achieved.

In the face of these inadequate labor laws, CAFTA only requires that countries enforce the labor laws they happen to have. Obligations to improve one's labor laws, to meet ILO standards, and not to derogate from or waive laws in the future are all completely unenforceable under CAFTA. Thus a country can maintain its laws far below ILO standards, weaken its laws even further in the future, and face no consequences under CAFTA. As the discussion above demonstrates, this is not just a theoretical possibility in Central America—it is the reality that workers live with every day.

CAFTA Labor Provisions A Step Back From Jordan FTA and GSP

CAFTA's failure to include an enforceable requirement that labor laws meet ILO standards represents a step backwards from the labor rights provisions of the U.S.-Jordan Free Trade Agreement. The Jordan agreement enjoyed broad support from labor unions in the U.S. and Jordan, and passed the U.S. Congress unanimously in 2001. The Jordan agreement allows each one of its labor rights obligations to be brought up under the agreement's dispute settlement and enforcement mechanism, including provisions committing countries to meet ILO standards. In contrast, CAFTA excludes the vast majority of its labor rights obligations from the accord's dispute settlement and enforcement mechanisms, and only the requirement that countries enforce their own labor laws is subject to dispute settlement and enforcement.

CAFTA also backtracks from the Jordan agreement by giving labor rights second-class status within the agreement's dispute settlement and enforcement apparatus. In the Jordan FTA, the dispute settlement and enforcement measures that apply to the agreement's labor provisions are identical to those that apply to the agreement's commercial provisions, and can include fines or sanctions. Under CAFTA, only violations of the agreement's commercial provisions can lead to sanctions or punitive fines sufficient to compensate the harm caused by the violation. Violations of the agreement's labor obligation must be remedied through the assessment of a non-punitive fine, and that fine is capped at $15 million regardless of the harm caused by the violation.

Perhaps most disturbing is the fact that CAFTA's rules on workers' rights are actually weaker than the current labor conditions that apply to Central American countries under our unilateral trade preference programs, the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). CAFTA's labor chapter backtracks from the labor standards in GSP and CBI, and the agreement eliminates enforcement tools currently available in the unilateral programs.

- The GSP requires countries to have taken or be "taking steps to afford internationally recognized worker rights," while the CBI instructs the president to consider "the extent to which the country provides internationally recognized worker rights" when granting preferential market access under the program. These rules enable workers to complain about the inadequacy of national labor laws, not just about the government's failure to enforce the law. CAFTA, on the other hand, only requires countries to enforce the labor laws they happen to have, no matter how weak those laws are now or become in the future.
- The GSP includes a public petition process for the removal of trade benefits. The AFL–CIO and other labor rights advocates have used the process, in conjunction with unions in Central America, to bring public pressure on Central American governments to improve labor rights. Even when the U.S. government exercises its discretion to reject meritorious GSP petitions, the public forum provided by the petition process can help focus public attention on workers' rights abuses and pressure governments to reform. CAFTA contains no direct petition process for workers—enforcement can only happen through government-to-government disputes.
- The GSP and CBI directly condition market access on respect for international labor rights. While preferential benefits are rarely withdrawn under the programs, the credible threat of reduced trade benefits has successfully changed government behavior. In addition, petitioners have been able to tailor request for withdrawal to specific sectors and producers responsible for workers' rights violations, helping to create a specific incentive for employers to respect workers' rights. CAFTA, on the other hand, makes it extremely difficult to withdraw trade benefits for workers' right violations. Even if a government has been found in violation of CAFTA's labor provisions, it can continue to enjoy full market access under the agreement as long as it pays a small, capped fine to finance labor enforcement activities. The fine in no way penalizes producers for violations of workers' rights, and exerts little pressure on governments, who can reduce their labor budgets by an amount equal to the fine and avoid spending the fine on projects with political sensitivity such as labor law reform.

The only tool that has helped create the political will to reform labor laws in Central America in the past is our unilateral system of trade preferences. While the labor rights provisions of these programs are not perfect, they have led to some improvements in labor rights in the region. In fact, nearly every labor law reform that has taken place in Central America over the past fifteen years has been the direct result of a threat to withdraw trade benefits under our preference programs.

Even the United States Trade Representative (USTR) touts the reforms that have been made to Central American labor laws as a result of GSP petitions. USTR argues that the reforms demonstrate Central American governments' commitment to workers' rights, and thus argue for approval of CAFTA. Quite to the contrary, the reforms demonstrate that governments in the region rarely undertake labor law improvements without outside pressure—pressure that will no longer be applied if CAFTA is ratified.

- The U.S. government accepted a GSP workers' rights petition against Costa Rica for review in 1993, and Costa Rica reformed its labor laws later that year.
- The Dominican Republic reformed its labor laws in 1992 in response to a GSP petition on workers' rights.
- El Salvador was put on continuing GSP review for workers' rights violations in 1992, and the government reformed its labor laws in 1994.
- Guatemala reformed its labor laws in response to the acceptance of a 1992 GSP petition, and when their case was reopened for review in response to a 2000 petition they again reformed their labor laws in 2001.
- Nicaragua's GSP benefits were suspended in 1987 for workers' rights violations, and it reformed its labor laws in 1996.

The GSP process has also been helpful in addressing enforcement and rule-of-law problems in the region. Too often, these patterns of violation are the result not just of limited resources, but of insufficient political will on the part of Central American governments. GSP cases have helped create that political will. As the result of a 2004 petition on El Salvador, for example, the Salvadoran government finally enforced a reinstatement order for union activists that had been locked out for three years. All appeals to national mechanisms in the case had been fruitless, and the employer was in outright defiance of a reinstatement order from the nation's Supreme Court. The last independent union granted legal registration in El Salvador was only registered after appeals to the Salvadoran Supreme Court, the ILO, and a GSP petition.

Central American countries need a trade regime that will improve compliance with fundamental workers' rights. As long as independent trade unions are thwarted, collective bargaining avoided, and the right to strike repressed, workers will be unable to win a voice at work and negotiate with their employers for decent working conditions and wages that reflect the true value of their production. Trade rules must ensure that governments protect fundamental workers' rights, and require that the companies who take advantage of the new rights and mobility that trade agreements provide be held accountable for their treatment of workers.

CAFTA fails this test. Rather than tie the incentives that additional market access provides to required improvements in workers' rights, CAFTA does exactly the opposite. While granting expanded and permanent market access to Central American countries, CAFTA actually reduces the labor rights conditions those countries are required to fulfill under current trade programs. This failure is particularly egregious in the Central American context—in countries where labor laws fall far short of minimum international standards, where governments have a record of indifference towards workers' rights and hostility towards trade unions, and where the only tool that has proven successful in improving workers' rights has been the threat of the withdrawal of trade benefits.

It is time for policymakers to take an honest look at our trade policy and the impact it has had on workers and communities at home and abroad, and start revising the rules that govern trade. The American labor movement, along with our brothers and sisters in Central America, has made substantive and thoughtful proposals on what changes need to be made to our trade policies.[3] We recognize that trade has the potential to spur growth and create jobs—but to deliver on these promises, we need to get the rules right. Unfortunately, CAFTA negotiators ignored our proposals.

As a result, we are forced to oppose CAFTA. We are working together with unions, environmentalists, family farmers, bishops, women's groups and many others in the U.S. and Central America to stop CAFTA and to build a better way to trade. Only by rejecting CAFTA can we begin a real dialogue on the new kinds of trade rules we need to create good jobs, stimulate equitable and sustainable economic development, and support strong democratic institutions.

In sum, CAFTA grants multinational companies that ship U.S. jobs overseas the following rewards: greater access to the U.S. market, more freedom to violate workers' rights with impunity, and the ability to challenge government regulations enacted in the public interest. CAFTA's rules on investment, government procurement, intellectual property rights, and services create new rights for multinational corporations, but the agreement actually weakens existing protections for workers' rights, leaving the interests of ordinary working men and women out in the cold.

Members of the committee, I will close with these thoughts. The U.S. economy continues to break records, but not in ways that help working people. The all-time high U.S. trade deficit is not an abstract issue; it shows up every day as working men and women see their plants close, are asked to train their own overseas replacements or are asked to swallow wage and benefit cutbacks that affect their families' lives in hundreds of ways. Entire communities suffer the consequences of failed trade agreements. We urge the Congress to reject CAFTA and begin work on just economic and social relationships with Central America and the Dominican Republic.

Chairman THOMAS. I thank the gentleman. Mr. Schulingkamp.

[3] See "Labor Movement Declaration Concerning The United States-Central America Free Trade Agreement," San Jose, Costa Rica, November 18, 2002. This declaration was signed by the labor federations of the United States, Guatemala, Nicaragua, Costa Rica and El Salvador. It is reprinted in, "The Real Record on Workers' Rights in Central America," AFL–CIO, April 2005.

STATEMENT OF DAVID P. SCHULINGKAMP, PRESIDENT, BARGELINK, LLC AND MBLX, INC., VICE PRESIDENT, M.G. MAHER & CO., PAST CHAIRMAN OF THE BOARD OF COMMISSIONERS, PORT OF NEW ORLEANS, PAST PRESIDENT, NEW ORLEANS BOARD OF TRADE, ON BEHALF OF THE PORT OF NEW ORLEANS, WORLD TRADE CENTER OF NEW ORLEANS, GREATER NEW ORLEANS, INC., AND THE NEW ORLEANS BOARD OF TRADE

Mr. SCHULINGKAMP. Mr. Chairman, Members of the Committee, good afternoon. Thank you for the opportunity to speak before this group. I want to thank, particularly, Congressman William Jefferson and Congressman McCrery for their strong support, not only of this proposed DR–CAFTA but for FTAs in general. I am speaking on behalf of the Port of New Orleans, the World Trade Center, the New Orleans Board of Trade and Greater New Orleans, Inc., which is an economic engine group of our Chamber of Commerce. Our constituents are primarily people who are involved in the nuts and bolts of servicing customers who buy and sell products internationally. New Orleans is a gateway port for much of America. We are the humble servants of many of your constituents who manufacture American products throughout the Midwest and even throughout the East Coast, as far north as Minneapolis, Chicago, St. Louis, Pittsburgh, Kentucky, points in between. We are very attuned to what is going on in trade.

One of the, perhaps unintended, but beneficial benefits of DR–CAFTA, is something that those of us in the transportation industry have noticed. This is that, actually, the United States has a tremendous imbalance with Central America. There are a lot more products being imported than exported. That creates higher freight rates. It may surprise you to know that there are freight rates existing between Central America and Europe and Central America and the Far East which are cheaper than those to the United States. That is because of this tremendous imbalance. The more exports that we have to Central America, the more equality that we are going to have. We are at a geographic advantage, but at an economic transportation disadvantage, to the European Union, for example, and even to some places in the Far East.

Clearly, this bill will benefit American manufacturers. Unlike many other trade proposals, which have opened up the doors for producers in the foreign countries to sell in this country, this act undoubtedly creates tremendous opportunities for American manufacturers and producers throughout this country. We would urge that this Committee recommend and vote for approval of a DR–CAFTA.

[The prepared statement of Mr. Schulingkamp follows:]

Statement of David P. Schulingkamp, President of BargeLink, LLC and MBLX, Inc., Vice President, M.G. Maher & Co., Past Chairman of the Board of Commissioners, Port of New Orleans, Past President, New Orleans Board of Trade, on behalf of the Port of New Orleans, World Trade Center of New Orleans, Greater New Orleans, Inc., and the New Orleans Board of Trade

My name is David P. Schulingkamp and I am President of BargeLink, LLC and MBLX, Inc., Vice President of M.G. Maher & Co., the past Chairman of the Board of Commissioners of the Port of New Orleans and past President of the New Orleans Board of Trade. On behalf of the Port of New Orleans, the World Trade Center of

New Orleans, Greater New Orleans, Inc., and the New Orleans Board of Trade, I am honored to appear before you today to highlight the value and benefits that can and will be realized through the swift passage and implementation of the Dominican Republic-Central American Free Trade Agreement (DR–CAFTA).

The Port of New Orleans is a vital economic engine for Louisiana, and serves as a gateway for the import and export of products throughout the Gulf Coast region and inland waterways system. Maritime activity within the Port is responsible for more than 107,000 jobs, $2 billion in earnings, and $13 billion in spending in Louisiana. In 2003 alone, the Port handled more than $30.6 billion worth of exports to over 200 foreign markets. Through my involvement with the Port of New Orleans, the New Orleans Board of Trade, and other business and trade interests, I have seen first hand the significant benefits that free and fair trade provides for our national and regional economies.

It is with those benefits in mind that I strongly urge this Committee to support the immediate implementation of DR–CAFTA. Louisiana and other regions of the country already depend heavily on trade with our Central American neighbors. As reported by the U.S. Department of Commerce, Louisiana's shipments to DR–CAFTA countries of manufactured and non-manufactured merchandise, including chemical, petroleum, agricultural and other products, totaled $1.2 billion in 2004. These exports from Louisiana to the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua were the 4th largest among the 50 states. The DR–CAFTA region is Louisiana's 2nd largest export market for processed foods and its 5th largest market for agricultural crops. With implementation of DR–CAFTA, enhanced trade, employment and other opportunities in those markets will provide increased and significant benefits to the people of Louisiana and this Nation. Though sugar producers within Louisiana have concerns about DR–CAFTA, it is not my intention to debate such claims. Rather, my intention is to discuss the wide range of DR–CAFTA benefits that are attainable throughout Louisiana.

With the approval of DR–CAFTA, more than 80 percent of U.S. exports of consumer and industrial products and 50 percent of agricultural goods to Central America and the Dominican Republic will be duty-free immediately, followed by the full elimination of tariffs for most products within a few more years. With the elimination of such duties on U.S. exports, the markets for information technology, construction machinery, farm goods, and other products will certainly be enhanced throughout the DR–CAFTA region. What this specifically means for Louisiana is that:

- Louisiana's rice producers will benefit from an increasing duty-free quota and the eventual elimination of up-to-60 percent tariffs on out-of-quota rice.
- Louisiana is the 3rd largest rice-producing state in the U.S. Louisiana's cotton exports will be duty-free, thus helping to maintain a competitive textile industry in the U.S.
- Louisiana's soybean products will become duty-free except to Costa Rica where tariffs will be phased out over 15 years.
- Louisiana's service providers will enjoy the elimination of substantial trade barriers.
- Louisiana's manufacturers and producers of chemical, petroleum, coal, electrical equipment, paper, plastics, rubber, processed food, and transportation products will benefit from DR–CAFTA's elimination of tariffs on such goods. Approximately 24 percent of all jobs in Louisiana depend upon petroleum product exports; 1-in-5 jobs in Louisiana's chemical industry depend on exports.

Furthermore, as shown by a review of the DR–CAFTA agreement by the U.S. Trade Representative, nearly 80 percent of imports into the United States from the Dominican Republic and Central American countries already receive duty-free treatment, even though U.S. exports are currently subject to heavy tariffs. It is therefore clear to us that the United States has significantly more to gain through the approval of DR–CAFTA.

A recent study by Dr. James Richardson of Louisiana State University shows that—

> The estimated impact of CAFTA on the Louisiana economy varies from new business sales of $169.3 million to $338.6 million, household earnings of $38.6 million to $77.2 million . . . and . . . 1,375 to 2,769 new jobs. CAFTA will have a positive impact on business activity, household earnings, and jobs in Louisiana. . . .

Increased job opportunities—enhanced business development—improved household earnings—better export markets for U.S. goods. This is what CAFTA means for the United States.

Dr. Richardson also highlighted what could be lost without the approval of DR–CAFTA. U.S. exports would be placed at continuing disadvantage to those products manufactured or produced in countries that otherwise enjoy the benefits of free trade agreements with Central American and the Dominican Republic. We cannot afford to let slip away the American business and employment opportunities that will be derived from the implementation of DR–CAFTA.

Through my daily involvement on a practical basis with commerce to and from the New Orleans region, I closely monitor Central American trade issues. Passage of DR–CAFTA will ensure that this trade through Louisiana is more than just a one-way street.

Mr. Chairman, I strongly support your efforts to provide Congressional approval of the Dominican Republic-Central American Free Trade Agreement in order to level the playing field and enhance export opportunities for U.S. manufactured products. We are especially pleased that Congressmen Jim McCrery and William Jefferson of Louisiana, who have both worked closely and cooperatively with you over the years on free trade, fully support you in your efforts to implement DR–CAFTA.

Thank you, Mr. Chairman, for standing up for free and open trade to the benefit of Louisiana and this Nation. I look forward to responding to any questions that you or other Committee members may have.

Chairman THOMAS. I thank the gentleman. The gentleman from Florida, the Subcommittee on Trade chairman wish to inquire?

Mr. SHAW. Yes, sir, Mr. Chairman, I would. In your testimony you talk or you spoke that DR–CAFTA would erode labor standards in Central America and the Dominican Republic, and you also said it would affect workers rights. Would you cite me some specifics on that?

Mr. TRUMKA. Absolutely. In the DR–CAFTA, Article 16, Section 6, specifically excludes enforceable obligations to recognize and protect the ILO core standards and internationally recognized worker rights in domestic and labor laws. The current system of Generalized System of Preferences (GSP) and CBI require that. In addition, DR–CAFTA, Article 16, section 6, Subsection 7 excludes the enforceable obligation not to waive or to derogate from labor laws in a manner that weakens adherence to internationally recognized labor laws that is currently required by GSP and CBI.

Also, there is no—anti-discrimination laws are not included in the group of domestic laws that a country is obligated to enforce. So, commitments to the ILO core labor standards, including non-discrimination, are excluded from dispute, settlement, and enforcement procedures. You would have to read the fine labor laws in Article 16.8 to conclude that.

In addition, Mr. Chairman, there is no agreement in——

Mr. SHAW. Mr. Chairman. Would the witness give me some specific examples? I don't care if you sit there and read the agreement to me and take up my 5 minutes.

Mr. TRUMKA. Thank you, sir.

Mr. SHAW. Would you be specific?

Mr. TRUMKA. There are probably 400 or 500 examples that have been submitted for the record.

Mr. SHAW. You are representing to this Committee that we actually, in some way, through this legislation, require an adherence to the labor standards of the country; that we are eroding the standards, that we are changing the law in those particular countries?

Mr. TRUMKA. Yes, I am. This DR–CAFTA will weaken the labor standards conditionalities contained in CBI and GSP.

Mr. SHAW. You are saying that by entering into this agreement the Central American countries are agreeing to lower standards and they are changing their own law as to labor standards that are required to be——

Mr. TRUMKA. I am not saying they are required to lower them, I am saying they are not required to——

Mr. SHAW. Let me——

Mr. TRUMPKA: Or to keep them the same. They can reduce or eliminate any standard the minute after this is signed, and this agreement sanctions that.

Mr. SHAW. They can do that without DR–CAFTA.

Mr. TRUMKA. They can't do it under CBI or GSP.

Mr. SHAW. Just like we can.

Mr. TRUMKA. They can't do it under GSP or CBI because both of them require countries to adhere to ILO standards and gives us the right to make sure those are done.

Mr. SHAW. Mr. Trumka, on the second page of your testimony you said that DR–CAFTA does not dramatically increase access to U.S. markets or the Dominican Republic and Central America. How can you say that when we are dropping the tariffs?

Mr. TRUMKA. I am sorry?

Mr. SHAW. How can you say that when we are dropping the tariffs?

Mr. TRUMKA. Well, first of all, I think that most employers aren't interested in Central America's consumers. They are more interested in the wages, the low wages, that could be brought about by this. In addition to that, remember, the reduction of tariffs in Central America was a voluntary thing. Every section, every time that we have made progress in Central America, it was because we had the ability to threaten to take away that marketplace. The DR–CAFTA will make them a permanent fixture. We won't have that threat. They won't have labor laws that they can adhere to. They can reduce them at any time, and we will actually go backward when it comes to workers rights.

Mr. SHAW. They can do that anyway. I just don't understand where you are going with your testimony. We have heard witness after witness testify that this is going to create jobs in United States. We have also heard testimony coming from the other side that it was going to increase imports. Now you are telling me that it is not going to—that it is going to affect labor rights and the workers, and how it is going to increase poverty in that part of the world. You have got to go one way or the other with your testimony.

Mr. TRUMKA. Let me say this to you, sir. It will weaken labor rights. We were told the same exact thing when we signed NAFTA; that it would create jobs. In fact, it hasn't. It hasn't increased the standard of living for the Mexican worker. We have lost a lot of jobs. I have to say this to you, Mr. Chairman, even Woody Hayes, after seeing that running up the middle every time didn't work, changed his offense. What we are doing in trade doesn't work. We need to change. Yes, we need to have a trade agreement with Cen-

tral America, but this is the wrong set of rules. It will hurt workers on both sides of the border.

Mr. SHAW. What was your position on previous trade agreements, previous FTAs that we have entered into?

Mr. TRUMKA. We have opposed most of them. Some had fair workers rights in them, and we wouldn't oppose those. We opposed NAFTA because it was the same——

Mr. SHAW. You heard the Trade Representative testify before this Committee that these are the strongest labor requirements that we have had in any agreement. I think this is a good agreement for the United States, and it is a good agreement for Central America. I yield back.

Mr. TRUMKA. I take serious issue with that because the Jordanian agreement is much stronger. When it comes to workers rights, the GSP and the CBI are both stronger than this agreement.

Chairman THOMAS. The gentleman's time has expired. Does the gentleman from Michigan wish to inquire?

Mr. LEVIN. We have heard today, kind of an acceptance that labor standards are an important part of the trade equation, but there has been, I think, an effort to back off. Mr. Shaw, you asked Mr. Trumka a very relevant question, but the truth of the fact is that the GSP and the CBI standard incorporates the five ILO core labor standards, not enforce your own law. That is a fact. The fact is, in terms of enforcement, under CBI and GSP the United States can take unilateral action if that isn't occurring. I favor an agreement where there is no longer unilateral action possible, where it becomes a part of a dispute settlement system, but there should be no denial that the standard, enforce your own laws and they can go backward, is a weaker standard than CBI or GSP and the enforcement mechanism is more restricted. That is a fact. The Jordan agreement—Mr. Allgeier is just wrong, in terms of the provisions there.

Another argument that was used today earlier, and to you, Jim, and the Ambassador kind of accepted this at first, that we can't force other countries to change their domestic laws. That is—trade agreements force countries to change their laws. Mr. Presser, your testimony is eloquent on that. I just read from it again. The DR–CAFTA countries have agreed to increase criminal and civil remedies against the unlawful decoding of encrypted satellite TV signals and criminalize end user privacy. I support those provisions. They require the countries to change their laws. What is true of intellectual property rights is true of tariff by definition. They are changing their laws. The question is why a double standard when it comes to core labor standards and environmental standards. It is the only areas where enforce your laws is used as the standard.

So, look, we talked about this, income inequality in Latin America is the worst in the world in terms of the continent. It is. Four of the 10 most difficult examples are four of the Central American nations. The question is, it is not labor standards in terms of whose four is whom. Mr. Trumka knows he and I haven't agreed on every trade agreement, but we have had a basic belief that in order for trade to help move people up you cannot have agreements that let countries move down. So, while there may have been a disagree-

ment about Morocco or Singapore, there has been a basic strong feeling among all of us that you have to have, as trade expands, a basic standard relating to core labor standards and the environment. That is what is missing here and prevents our having the kind of bipartisan effort that there should be.

I just close with this, an article in the Chicago Tribune of April 17th from El Salvador, "Looking to resurrect their wages in this sad port town's happier days, Mr. Velazquez and 40 other dock workers tried to set up a labor union last December. Within days guards began blocking them from passing through the port gate. Soon a list of 41 names were circulated among employers at the port and a legal black list." That is not conforming with international core labor standards, and those workers will never become part of a middle class as long as they are suppressed. Our workers will not compete with people who are suppressed, and there will be no middle class on a sizeable dimension in those countries to buy the goods that we produce. That is the larger issue here.

Chairman THOMAS. The gentleman's time is consumed. The Chair understands hyperbole. In fact, if the gentleman from Michigan believes that the Central American countries have the greatest discrepancy between wealth at the top level and poverty at the bottom level, I invite the gentleman to visit the subcontinent of India which has a caste system which guarantees that there is separation rather than pure economic difference. There are a number of African nations, but I understand the point the gentleman is trying to make.

Mr. LEVIN. The largest income inequality of any continent is in Latin America. There are 100 million——

Chairman THOMAS. If the gentleman is describing Latin America as the concept of South America, Latin America is in North America.

Mr. LEVIN. No, no, that is Central America and North America. I said Latin America.

Chairman THOMAS. Okay.

Mr. LEVIN. That is, all of South America and Central America and part of the Caribbean. The income inequalities in Latin America are the worst in any place. The facts show that. That is why this is part of the larger issue.

Chairman THOMAS. The gentleman is on my time.

Mr. LEVIN. Okay.

Chairman THOMAS. For a country to agree to voluntarily accept changes in their law, to conclude a trade agreement with another country, is not the same thing as having language in the bill that changes their laws when they don't voluntarily want to have it. So, the gentleman continues to say that the only trade agreements that he apparently is willing to accept are those that force other countries to accept standards that they are willing to voluntarily accept.

Mr. LEVIN. May I——

Chairman THOMAS. No, not right now. Voluntary agreement to accept change and a forced structure to require change are two fundamentally different things.

Mr. LEVIN. Would the gentleman yield?

Chairman THOMAS. No. The bells have rung. The Chair has been patient with people a lot of other times. The Chair didn't take

time at the beginning, but based upon what has been said the Chair wants to make a couple of points. Mr. Trumka, I don't mean to say this with any disrespect to the labor union movement, but would it be unfair of me to ask you to answer the question, do you believe that the percentage decline of the AFL–CIO among the American work force is based upon corrupt leadership in the unions?

You don't have to answer that. There are a significant number of reasons why that occurs. On any point, there are significant number of reasons as to why a factor occurs. To point to a reduction, for example, in a cause or effect in a treaty such as NAFTA is to completely ignore reality and not examine the fact that, if NAFTA were not in place it wouldn't drop 5 percent, it would have dropped 15 or 20 percent. To choose a negative number as evidence that was based upon the circumstances that are there is about as fair as the question, I clearly indicated to you, I simply wanted to make a point with. I noticed your reaction to the question that I asked you. When you constantly use data and statistics to prove a point, when in fact it is far more sophisticated than that, it simply isn't very persuasive in making your points. I notice that you upheld the CBI as a model for what we perhaps should do in terms of labor, or did you support that?

Mr. TRUMKA. We didn't hold it up as a model. I said it is stronger than DR–CAFTA.

Chairman THOMAS. Okay.

Mr. TRUMKA. The DR–CAFTA actually takes away rights that are granted to us and corporations and workers there.

Chairman THOMAS. Has there been any trade agreement, any FTA with any country since the TPA agreement has been in place that the AFL–CIO has supported?

Mr. TRUMKA. I am not certain. I think perhaps the Jordanian agreement.

Chairman THOMAS. You don't know if your organization supported it?

Mr. TRUMKA. No, I don't recall. I really don't. Those provisions in that agreement were the strongest to date when it comes to labor rights; far stronger than we have right now in DR–CAFTA.

Chairman THOMAS. Were they in the agreement, or were they in a set of letters that were exchanged in association with the agreement?

Mr. TRUMKA. They are in the agreement and they require a commitment to meet ILO standards. This agreement does not require that. This agreement only requires countries to enforce their own laws. It doesn't even require them to maintain those laws.

Chairman THOMAS. I understand it. The question is, if that provision was in this agreement, would the AFL–CIO be supporting DR–CAFTA?

Mr. TRUMKA. We would have to see the agreement.

Chairman THOMAS. No, no. It is exactly the same as it is with that change that the gentleman outlined.

Mr. TRUMKA. Well, we would have to see the agreement.

Chairman THOMAS. All you have to do is take the agreement as it is and add your provision.

Mr. TRUMKA. We would find it far more agreeable.

Chairman THOMAS. I think the question was, would you support it?

Mr. TRUMKA. I don't know, you are asking me in theory what I support. I don't know that. I would have to see the rest of the agreement.

Chairman THOMAS. The gentleman has made my point. There is absolutely no agreement we can enter into unless there is an absolute——

Mr. TRUMKA. That is just an incredible statement.

Chairman THOMAS. May I please finish my position? What you have been asking consistently over the 27 years that I have been in Congress is that agreements must be in the bill which require other countries to accept outsiders dictating to them what their laws are, and how they may carry them out. If a country voluntarily agrees with it, I am in full support of that.

Mr. TRUMKA. Mr. Chairman, may I respond?

Chairman THOMAS. To set up a structure which absolutely requires them to be forced to accept standards means there will be no agreements with any country. I understand the gentleman's need, and in fact desperation, to attempt to maintain a position on union labor, but we are interested in all workers in all countries—making sure that all people are benefited.

Mr. TRUMKA. Mr. Chairman, this specific agreement——

Chairman THOMAS. The chairman's time has expired, and we are currently under a vote. There are going to be five votes. There is a 15-minute vote currently under way and there will be four 5-minute votes. The Chair, in an attempt to try to determine whether or not this panel should stay, is there any Member who is going to wish to inquire on this panel or should we dismiss this panel and be prepared to take up the next panel when the recess has ended?

Mr. BECERRA. Mr. Chairman, I would urge you to allow the panel to stay or at least give Mr. Trumka the opportunity to respond to your comments.

Chairman THOMAS. Does the gentleman from California wish to be recognized on this panel?

Mr. BECERRA. I certainly would like to.

Chairman THOMAS. The gentleman is recognized.

Mr. BECERRA. First let me offer the gentleman, Mr. Trumka, an opportunity to respond to the chairman's comments if you like.

Mr. TRUMKA. I very much would, because the chairman makes a point about not wanting to enforce agreements on people that don't agree to them voluntarily. First of all, this agreement does precisely that. The DR–CAFTA allows corporations to challenge laws that were duly passed in the United States and have them thrown out, or it allows corporations in the United States to challenge duly passed laws in any of those Central American countries and have them thrown out. In addition to that, I find the Chairman's point hard to believe. I have negotiated hundreds of agreements, literally hundreds. An agreement depends on a couple of things. One is the skill of the negotiator. I assume we have skilled negotiators negotiating for us. Two, it is the focus of the determination. Three, it is the leverage that one has. I refuse to believe that the leverage of the United States is ineffective in asking any Cen-

tral American country to change its labor laws to meet ILO standards and give us enforceable law to do that.

Mr. BECERRA. Let me ask a couple of questions of the panel, and I thank the chairman for extending the opportunity to ask the questions. First, thank you for your testimony. To Mr. Presser, I do agree with you that we need to have these strong enforcement mechanisms in place for intellectual property, because we have seen around the world how the rights of those who own those intellectual property interests have been violated. So, I agree with you. I hope we are able to implement them and we see opportunities around the world begin to enforce, especially those that enter into these agreements. In the case of the DR–CAFTA countries, let me ask this, sir, or any of the panel, would you be supporting DR–CAFTA if it didn't have those stronger protections for intellectual property? If we had a provision for DR–CAFTA that said, DR–CAFTA countries, enforce your own laws when it comes to intellectual property, would you be supporting the DR–CAFTA agreement?

Mr. PRESSER. It depends on a number of things.

Mr. BECERRA. You see, the same standard that the chairman used on Mr. Trumka: give me a yes or no. I told you the only change I would make; I changed the provisions with regard to intellectual property and said enforce your own domestic laws.

Mr. PRESSER. Well, I certainly studied the provisions that deal with intellectual property much more substantially than I have studied anything else.

Mr. BECERRA. I made it very simple, Mr. Presser. I made it very simple. The only disagreement would be with regard to intellectual property, not the provision that says you must have criminal penalty and criminal laws, not the provision that said you can have the whole spectrum of economic sanctions imposed on you. The only provision would be one that says count the countries in DR, enforce your own laws.

Mr. PRESSER. Well, two things——

Mr. BECERRA. Let me just ask you to do what the chairman asked Mr. Trumka to do. Answer just that question.

Chairman THOMAS. If the gentleman would yield briefly, I never got an answer.

Mr. BECERRA. Mr. Chairman, I am not sure if I am going to get one.

Chairman THOMAS. Well, then it will be the same, won't it?

Mr. BECERRA. Possibly. Mr. Presser, I apologize for putting you on the spot, but I think this points out the difficulties we have with the agreement.

Mr. PRESSER. Certainly, I would like to know in more detail what the laws and the DR——

Mr. BECERRA. Mr. Presser, you know I could say the same thing to you that the chairman jut said to Mr. Trumka. I think I got my answer.

Mr. PRESSER. No, I am sorry Congressman, but I think that it is quite—it is a little more complicated.

Mr. BECERRA. No, no, let us not make it complicated. Let us make it simple, forgive me for using what my City of Los Angeles thinks is so important. I am using this example of why many of us are dumfounded that our own government couldn't find a way

to have anything stronger than, enforce your own laws, in the provisions of this agreement, when we came out, as I said before, guns blazing, when it came to intellectual property. Somehow we are able to protect an intellectual property right better than we can protect our men and women who work in this country by saying, with regard to intellectual property, countries—count the countries—you can't sign this agreement; you can't be part of this, or you can certainly play through sanctions if you don't have criminal laws and criminal procedures in place.

Second, even if you do, we could still go after you and go after your bananas, your fruit, your vegetables if we find that you violated intellectual property rights, but when it comes to labor, the provisions for women, including the United States, all we say to the DR–CAFTA countries is, enforce your own laws. By the way, enforce your laws, as Mr. Trumka pointed out, could be that tomorrow you decide to reduce the protections in your labor laws. All we can do is say, hey, now enforce those laws. The question is quite simple. The reason you and Mr. Trumka wouldn't answer is because the devil is in the detail. Just as we would not expect any consumer to buy a home on a handshake with a realtor or owner of a property, we would not expect America to sell its assets and its interests on a handshake as well. I yield back.

Chairman THOMAS. The gentleman's time has expired. The gentleman from Louisiana.

Mr. MCCRERY. Thank you, Mr. Chairman. First of all, the World Bank did a study which confirms the chairman's assertion that, were it not for NAFTA the per capita GDP in Mexico, which is probably the best standard of measurement for living, would have been lower. So, I think that is more a point of whether it has gone up or down in a nominal sense. Second, I think I understand Mr. Becerra's point and Mr. Levin's point, but in my mind—and when I made the statement earlier that countries would resist the United States' insistence on changing their domestic laws, I added the phrase "outside the trade arena."

I see intellectual property rights as directly tied to trade; that is, protecting the property, protecting the products of people who want to shift those products into that country and sell them that property. If they don't have any protection in that regard, then we are going to be reluctant to take advantage of the trade. So, I see that tied directly to trade, whereas labor laws, I don't see directly tied to trade. I think that is the distinction, at least that I would make, although I understand the points you are trying to make. With that, I would yield to the chairman.

Chairman THOMAS. So that we can have a definitive understanding of the comparison between trade agreements, President Clinton, when he sent the Jordan agreement to Congress said "It is important to note that the FTA does not require either country to adopt any new laws in these areas, but, rather, includes commitments that each country enforce its own labor and environmental laws." That was the Jordanian FTA and DR–CAFTA incorporates President Clinton's statement. Jordan wasn't better than DR–CAFTA, and when you look at the binding dispute settlement mechanism, when you look at the monetary assessments in DR–CAFTA, and when you look at the robust capacity building mecha-

nism in DR–CAFTA, DR–CAFTA is better than the Jordanian FTA, and saying it isn't doesn't change the circumstances. The Committee will stand in recess. The chairman thanks the panel. We reconvene 5 minutes after the last vote in this series of votes.

Mr. TRUMKA. Is the panel held, sir?

Chairman THOMAS. The next panel will be ready to go when we reconvene.

The Committee stands in recess.

Mr. TRUMKA. Mr. Chairman, where should I submit this written submission?

Chairman THOMAS. Right there.

Mr. TRUMKA. Thank you, sir.

[Recess.]

Mr. SHAW. [Presiding.] The hearing will come to order. On this panel we have Larry Wooten, who is from Wooten Farming and Seed, Currie, North Carolina, President of the North Carolina Farm Bureau, Raleigh, North Carolina, here on behalf of the AFBF; Bruce Hafenfeld, Hafenfeld Ranch, Weldon, California, First Vice President of the California Cattlemen's Association; Jack Roney, the Director of Economics and Policy Analysis of the American Sugar Alliance; Salvatore Ferrara, President of the Ferrara Pan Candy Co., Chicago, Illinois, here on behalf of the National Confectioners Association; George Shuster, CEO, Cranston Print Works, Cranston, Rhode Island, Co-Chairman of AMTAC (the American Manufacturing Trade Action Coalition); and Jack Ouellette, the President and CEO of the American Textile Co., Pittsburgh, Pennsylvania, and member of the Board, American Apparel & Footwear Association. We have all of your full testimony. Due to the hour, we would appreciate your proceeding with your testimony as quickly as possible. We thank you for your patience and staying all day long. With that, I will recognize Mr. Wooten.

STATEMENT OF LARRY WOOTEN, WOOTEN FARMING AND SEED, CURRIE, NORTH CAROLINA, PRESIDENT, NORTH CAROLINA FARM BUREAU, RALEIGH, NORTH CAROLINA, ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION

Mr. WOOTEN. Thank you, Mr. Chairman. Chairman Thomas and distinguished Members of the Committee on Ways and Means, my name is Larry Wooten. I am President of the North Carolina Farm Bureau, and by virtue of this position I am also a member of the Board of Directors of the AFBF. As a general farm organization, the AFBF has studied the impact of the DR–CAFTA on all sectors of U.S. agriculture, and from our analysis, a copy of which accompanies my statement, we conclude that the agreement is a win-win opportunity for both U.S. agriculture and for North Carolina.

Currently, U.S. agriculture faces a $700 million trade deficit with this region of the world, and this is largely the result of the GSP trade provisions and the CBI, which together allow 99 percent of Central American and Dominican Republic agricultural products to enter U.S. markets duty free. However, our exports to the region are subject to applied tariffs that range from 15 to 43 percent. Mr. Chairman, because of these tariffs U.S. agriculture has already paid for this agreement. The DR–CAFTA will eliminate these trade

barriers and provide U.S. agriculture with the same duty free access that DR–CAFTA countries already enjoy in our markets. Many of our competitors in the region, like Chile, already receive preferential access from the DR–CAFTA countries. The AFBF analysis shows that U.S. agriculture would see increased exports of approximately $1.4 billion annually once the agreement is fully implemented. By evaluating our Nation's major export commodities, it is obvious that the United States will capitalize on Central American growth in import of grains, oilseed products, expanding regional demand for livestock imports, and on gains in demand for cotton exports and other products.

In North Carolina, DR–CAFTA is also a good deal for agriculture. In 2003, North Carolina's total farm cash receipts equaled $6.9 billion. Of that total, $1.3 billion, or about 19 percent, came from agricultural exports. If DR–CAFTA is enacted, the AFBF estimates that North Carolina will increase trade to this region by nearly $70 million per year by 2024. North Carolina is a major producer of pork, poultry and cotton, as well as a significant producer of soybeans. Under DR–CAFTA, North Carolina could expect to increase meat exports to DR–CAFTA nations by $24 million per year once the agreement is fully implemented. Poultry, our third largest agricultural export, will experience export increases of $42 million per year, exports of cotton will increase approximately $1 million per year, while soybeans and soybean product exports would grow by $770,000 per year.

While DR–CAFTA benefits U.S. agriculture overall, the U.S. sugar sector may see a less than positive impact. As part of the agreement, the United States will allow the DR–CAFTA countries to export an additional 164,000 tons of sugar annually above their current sugar quota to the United States. However, according to the AFBF analysis, these additional imports will only impact about 1.5 percent of domestic sugar production. Despite these negative impacts, our trade negotiators were able to secure several protections for the industry. Many of those have been outlined in previous testimony here today.

It is important to remember that trade is not just about selling. There must be give and there must be take. Our trade negotiators understand this fact and they work carefully to negotiate the best deal possible. If our negotiators had excluded sugar from this agreement, other U.S. commodities, including beef, rice, poultry, and pork would also have been excluded. Mr. Chairman and Members of the Committee, many farmers and agribusinesses in your congressional districts stand to gain from this important agreement, but congressional action regarding this matter will also greatly influence the global community. Rejecting this agreement will damage our credibility with the WTO and with other nations that wish to negotiate FTAs with us. The DR–CAFTA provides more gains for agriculture than it does losses. Clearly, a yes vote on DR–CAFTA is a yes vote for agriculture. On behalf of the AFBF and North Carolina farm families, I urge you to support the DR–CAFTA, and I thank you for providing me the opportunity to testify here today.

[The prepared statement of Mr. Wooten follows:]

Statement of Larry Wooten, Wooten Farming and Seed, Currie, NC, President, North Carolina Farm Bureau, Raleigh, NC, on behalf of the American Farm Bureau Federation

Good morning, I am Larry Wooten, President of North Carolina Farm Bureau and a diversified tobacco and grain producer in Pender County, North Carolina. By virtue of my position, I sit on the Board of Directors for the American Farm Bureau Federation.

As a general agriculture organization, American Farm Bureau Federation has studied the impact of this agreement on all sectors of U.S. agriculture, and we strongly support Central America-Dominican Republic Free Trade Agreement (CAFTA–DR). We have provided as an attachment to this statement a copy of our full economic analysis that describes how this agreement will impact our livestock, crop and specialty crop sectors as well its effects on our sugar industry. On balance, we believe that CAFTA–DR will overwhelmingly be a win-win opportunity for U.S. agriculture.

U.S. agriculture currently faces a $700 million trade deficit with this region of the world. While this market holds potential for U.S. agricultural exports, our products are faced with high tariffs. At the same time, agricultural products from the six Central American nations receive duty-free access to the United States. The General System of Preferences (GSP) trade preferences and the Caribbean Basin Initiative (CBI) allow 99 percent of agricultural products from the Central American countries and the Dominican Republic to enter the United States duty free. It is obvious that U.S. agriculture has already paid for the agreement.

Unless this agreement is passed, U.S. agriculture will continue to face applied tariffs of between 15 and 43 percent. These tariffs put U.S. producers at a disadvantage in a competitive market. The CAFTA–DR, if enacted, will eliminate these barriers. This agreement provides balance by allowing U.S. agriculture the same duty-free access that CAFTA–DR nations already have to our markets. In fact, many of our competitors in the region, such as Chile, already receive preferential access because of their own trade agreements with the Central American countries. When enacted, this agreement would give U.S. producers access equal to or greater than that of our competitors. American Farm Bureau Federation analysis shows that U.S. agriculture would see increased agricultural exports in the amount of $1.5 billion by the end of full implementation.

Table 2

Impact of CAFTA–DR on Member Countries' Imports of U.S. Agricultural Products

In $1,000

	1999–2001	2024 Imports from U.S.		
Selected Commodity	Imports from United States	**Without** CFTA–DR	**With** CAFTA–DR	CAFTA–DR Difference
Beef	10,050.4	27,258.2	74,332.7	47,074.5
Butter	709.6	1,793.7	3,091.5	1,297.8
Cheese	5,514.1	8,024.4	25,022.7	16,998.4
Corn	230,721.4	447,558.4	505,932.5	58,374.1
Cotton	50,558.4	87,729.8	115,331.9	27,602.1
Pork	11,008.1	95,438.1	203,388.9	107,950.8
Poultry	17,634.5	114,743.9	292,786.7	178,042.9
Rice	96,999.0	220,910.4	312,421.1	91,510.7
Soybean Meal	140,421.3	292,351.5	348,923.6	56,572.0
Soybean Oil	28,895.3	59,132.4	87,521.9	28,389.6
Wheat	121,821.0	218,977.3	281,164.2	62,186.9

Table 2—Continued
Impact of CAFTA–DR on Member Countries' Imports of U.S. Agricultural Products
In $1,000

	1999–2001	2024 Imports from U.S.		
Selected Commodity	Imports from United States	**Without** CFTA–DR	**With** CAFTA–DR	CAFTA–DR Difference
Subtotal	714,333.2	1,573,918.0	2,249,917.8	675,999.8
Other Selected Commodities				
Fruit	88,768.7	196,738.8	278,281.1	81,542.3
Sugar & Tropical Product	111,754.7	247,682.9	350,340.0	102,657.1
Tallow	62,489.3	138,495.7	195,898.0	57,402.3
Vegetables	69,560.7	154,168.0	218,065.9	63,898.0
All Other Commodities	587,601.5	1,302,306.9	1,842,073.7	539,766.8
Total	1,634,508.1	3,613,310.3	5,134,576.5	1,521,266.2

Note: Assumes constant 1999–2001 prices; hence, value estimates reflect changes in quantities only.

Looking at the major commodities of export interest to the United States, the agreement would put the United States in a strong position to capitalize on:

- Central American growth in imports of **grains and oilseed products,** which relates to both growing food demand for wheat, rice and vegetable oils and to growing livestock demand for feed grains and protein meals. With no wheat and limited rice and oilseed production capacity, the region's dependence on imports is likely to grow steadily. The free trade agreement puts the United States in a strong "preferred supplier" position to maintain/expand its high market share for items such as rice and soybean meal and to build on its lower market share for items such as wheat;
- Expanding regional import demand for **livestock products** related to growth in population and per capita incomes, combined with limited domestic production potential. Rapid growth in tourism should also help to stimulate demand for meats in the hotel and restaurant trade, which could be significant on its own. Growth in domestic demand for livestock products is likely to outpace production despite significantly larger imports of feed grains and protein meals. The CAFTA–DR would allow the United States to use its cost advantages and its wide variety of beef, pork and poultry products to fill a growing share of these markets;
- Gains in **cotton import** demand related to both increased domestic demand for textiles and apparel and import demand for textiles from the United States. The six countries' textile and apparel exports to the United States are duty-free and quota-free as of the start of 2004, so long as the products meet CAFTA–DR rules of origin. Under the agreement, these six countries will be required to make significant investment in manufacturing capacity over the first several years of the agreement to take full advantage of this demand, which may support the domestic cotton milling industry until such investments could be made. Should this added capacity come into being, and with domestic cotton production at virtually zero, all growth in the countries' demand for cotton would have to be met through imports. The CAFTA–DR would put the United States in a position to under price competitors and boost market share; and
- Gains in **other products.** The United States exports a diverse basket of farm products to the six Central American countries. The commodities noted above in the table account for approximately half of the United States total exports. Other commodities or commodity groupings of importance include fruits, vegetables, tallow, sugar, tropical products and other processed products. Data on production and trade in these products for the six countries is generally too limited to support detailed analysis. Assuming that the same pattern of growth likely for grains, fiber, oilseeds and livestock products holds for these other commodities, CAFTA–DR would allow the United States to capture a larger share of

these expanding markets as well. The added exports in these categories resulting from the agreement would likely exceed another $845 million by 2024. This is a conservative estimate of CAFTA–DR's impact because the six Central American countries generally have higher, escalating tariffs on the semi-processed and processed products that make up much of this other products category.

Additionally, CAFTA–DR is, on balance, a good deal for agriculture in my home state of North Carolina. In 2003, North Carolina's farm cash receipts were $6.9 billion, and agricultural exports were estimated to be $1.3 billion, putting its reliance on agricultural exports at 19 percent. If CAFTA–DR is enacted, the AFBF estimates that North Carolina will increase trade to this region by nearly $70 million per year by 2024.

North Carolina is a major producer of pork, poultry and cotton as well a significant producer of soybeans. As the top source of farm cash receipts in the state, pork sales rank second nationally. Under the agreement, North Carolina could expect to increase meat exports to the CAFTA–DR countries by $24 million per year by full implementation. Poultry, being our third largest agricultural export, would see increases in exports of $42 million per year. Exports of cotton would see increased sales of about $1 million per year for the state, while soybeans and soybean product exports from North Carolina are expected to increase by $770,000 per year by full implementation of the agreement.

Extimated Trade Impact of CAFTA–DR on North Carolina for Selected Commodities

(Values in Million Dollars)

Commodity	1999–2001 NC Exports		2024 Imports from NC		CAFTA–DR
	Total	CAFTA–DR	**Without CAFTA–DR**	**With CAFTA–DR**	Difference
Dairy	2.85	0.06	0.09	0.26	0.17
Cotton	113.13	2.26	3.85	5.00	1.15
Feed Grains	37.72	0.75	1.43	1.58	0.14
Fruits	12.38	0.25	0.54	0.76	0.22
Meats	158.93	3.18	18.44	42.40	23.97
Poultry	202.73	4.05	26.36	68.52	42.17
Soybean & Products	91.64	1.83	3.85	4.62	0.77
Sugar	N/A	N/A	N/A	N/A	0.00
Rice	0.00	0.00	0.00	0.00	0.00
Vegetables	17.62	0.35	0.78	1.09	0.31
Wheat	85.99	1.72	3.10	4.02	0.93
Total	722.99	14.46	58.43	128.26	**69.83**

While there are numerous overall benefits for U.S. agriculture in the agreement, the U.S. sugar sector may see a less than positive impact. As a part of the agreement, the United States will allow the CAFTA–DR countries to import an additional 164,000 short tons of sugar above their current sugar quota. This additional sugar will have a minimal impact on the industry as demonstrated in our economic analysis.

We expect the U.S. sugar industry to experience about an $80.5 million impact to an approximate $2.1 billion domestic industry. This additional sugar translates into about 1.5 percent of domestic sugar production. In light of the possible, yet minimal, negative effects on the sugar industry, our trade negotiators negotiated certain protects for the U.S. sugar industry.

First, the tariff on U.S. sugar is never decreased or eliminated. Any sugar that the CAFTA–DR countries would import to the United States above their new sugar

quotas would still be subject to a high tariff. This tariff would be set at an amount that would discourage these countries from shipping any additional sugar over their quota to the United States. Second, the countries involved agreed to a compensation provision that would allow the United States to shut off any additional imports of sugar from this region if those imports are significantly harming our U.S. sugar industry. If activated by the United States, the U.S. government would provide compensation for the lost sugar sales experienced by the CAFTA–DR countries. It is important to note that if sugar had been excluded from the agreement, it could have led to other U.S. commodities facing the same type of exclusions from the CAFTA–DR country negotiating side. The CAFTA–DR countries had a list of roughly a dozen commodities they wished to exclude from the agreement. These products included U.S. beef, pork, poultry and rice.

U.S. agriculture will benefit a great deal from this agreement. Indeed, the gains to U.S. agriculture certainly outweigh the losses. In looking at the variety of U.S. commodities that would experience positive outcomes because of a Central America-Dominican Republic Free Trade Agreement, one can only conclude that a "Yes" vote on CAFTA–DR is a vote for agriculture and agricultural exports.

Mr. SHAW. Thank you for sticking with us. Mr. Hafenfeld.

STATEMENT OF BRUCE HAFENFELD, HAFENFELD RANCH, WELDON, CALIFORNIA, FIRST VICE PRESIDENT, CALIFORNIA CATTLEMEN'S ASSOCIATION

Mr. HAFENFELD. Chairman Thomas, Ranking Member Rangel and Members, thank you for the opportunity to testify regarding the DR–CAFTA. My name is Bruce Hafenfeld. I am a family rancher from Weldon, California, and I am First Vice President of the California Cattlemen's Association and Director of the NCBA (National Cattlemen's Beef Association). We represent the beef cattle industry, which is the largest single segment of American agriculture today. We strongly believe the future of our industry depends on our ability to compete in a global marketplace. However, our trade position was seriously compromised by the December 23, 2003 discovery of BSE (Bovine Spongiform Encephalopathy) in a single imported dairy cow and the closure of 90 percent of our export markets. These prohibitions on the sale of U.S. beef, coupled with rising levels of beef imports, transformed what was a $1.2 billion trade surplus in 2003 to a $2.8 billion trade deficit in beef and beef products in 2004.

The U.S. cattle producers believe that the current situation, where unfounded trade barriers prevent us from competing on a level playingfield in the global marketplace, is absolutely unacceptable. Yet, as our industry works to normalize trade relations and reclaim our trade position in beef, we recognize that we must also continue efforts to craft and support new bilateral trade agreements which will immediately provide increased market access for U.S. beef cattle producers. We firmly believe DR–CAFTA will correct a longstanding inequity in beef trade policy between the United States and these six nations, offer additional export opportunities for U.S. beef and ultimately increase the value of the cattle raised on my ranch.

Previous trade agreements approved by Congress provided generous access to the U.S. beef marketplace to DR–CAFTA nations. Presently, beef from these countries enters the U.S. duty free. At the same time, U.S. beef exporters face applied tariffs ranging from 15 to 40 percent. In fact, WTO bound tariffs can be applied as high

as 79 percent. Due to these prohibitive tariffs, U.S. beef export opportunities to these countries are limited. This situation is fundamentally unfair to U.S. cattle producers. The DR–CAFTA moves us toward correcting this imbalance. We immediately gain duty-free, quota-free access for high quality U.S. beef destined for the tourism industry, with all remaining tariffs being eliminated within 15 years. NCBA's analysis of this agreement suggests that the United States could triple our beef exports to the region by 2015. This opportunity translates into a potential of $1.06 per head benefit to U.S. cattlemen.

The DR–CAFTA includes minimal country-specific increased access for some of the DR–CAFTA countries. However, this increase can only be assessed if the WTO tariff-rate quota is filled, plus an agricultural safeguard mechanism protects the U.S. beef industry against excessive import surges. Because we do not cede to an international body the authority over human and herd health issues, we can support this agreement while maintaining our sovereignty. Any trade agreement should include these additional measures.

Therefore, a vote in support of DR–CAFTA is an excellent opportunity for Congress to help level the uneven playingfield that currently exists in U.S. agriculture. It is a vote to provide my fellow U.S. cattle producers and I what has already been provided for, by Congress to agriculturists, in the DR–CAFTA countries: the ability to market agricultural commodities in export markets free of prohibitive trade barriers. Passage of DR–CAFTA will also send a positive signal to other trading partners around the world that the United States is serious about negotiating meaningful trade agreements which grant more export access for U.S. agriculture commodities than we can give in return. Again, on behalf of the California Cattlemen's Association, the National Cattlemen's Beef Association and 56 major agricultural organizations that make up the Agriculture Coalition for DR–CAFTA, I wish to thank you for your consideration of this agreement and express our appreciation for this Committee's commitment to open markets for U.S. beef cattle producers, and American agriculture. We urge swift passage. Thank you.

[The prepared statement of Mr. Hafenfeld follows:]

Statement of Bruce Hafenfeld, Hafenfeld Ranch, Weldon, CA, First Vice President, California Cattleman's Association

Chairman Thomas, Ranking Member Rangel, and members of the Committee, thank you for the opportunity to testify regarding the Central America—Dominican Republic free trade agreement, or CAFTA–DR. My name is Bruce Hafenfeld, and I am a rancher from Weldon, California, and the First Vice-President of the California Cattlemen's Association, a nonprofit, nonpartisan trade association representing our state's beef cattle producers in legislative and regulatory affairs. I also serve on the Board of Directors for the National Cattlemen's Beef Association, the trade association for U.S. beef cattle producers.

The California Cattlemen's Association (CCA) and the National Cattlemen's Beef Association (NCBA) strongly believe the future of our industry depends on our ability to compete in the global marketplace. Historically, the U.S. has been the world's top provider of high-quality, grain-fed beef, and our country tends to import lower-quality cuts of beef for use in the restaurant and foodservice industry sectors. Because of the different categories of beef which are imported and exported, and thanks to decades of cooperative efforts by the U.S. beef cattle industry and our government, the U.S. has been able to maintain trade surpluses in beef and beef products for many years. By way of example, in 2003 the U.S. imported $2.62 billion

in beef and beef products and exported $3.86 billion in beef and beef products. This trade surplus position contributes in a significant way to the prices received by beef cattle producers for their cattle and calves. Our industry economists estimate that in a normal year, international trade adds $175 to the value of a finished steer.

However, our trade surplus position in beef and beef products was seriously compromised by the December 23, 2003 identification of bovine spongiform encephalopathy (BSE) in a single imported dairy cow, and the subsequent closure of 90 percent of our export markets. These prohibitions on the sale of U.S. beef, coupled with rising levels of beef imports, transformed what was a $1.2 billion trade surplus in 2003 to a $2.8 billion trade deficit in beef and beef products in 2004.

U.S. cattle producers believe that the current situation, where unfounded trade barriers prevent us from competing on a level playing field in the global marketplace, is absolutely unacceptable. We are fully committed to removing these barriers to trade and regaining our position as the world's top supplier of high-quality, grain-fed beef. Yet as our industry works to normalize trade relations and reclaim our trade surplus position in beef and beef products, we recognize that we must also continue efforts to craft and support new bilateral trade agreements which will immediately provide increased market access for U.S. beef cattle producers.

CAFTA–DR is one such agreement. We firmly believe CAFTA–DR will correct a longstanding inequity in beef trade policy between the U.S. and these six nations, offer additional export opportunities for U.S. beef and beef products, and ultimately increase the value of the cattle raised on my ranch. Moreover, CAFTA–DR is unique in that America's beef cattle producers are granting few, if any, concessions in exchange for these increased export opportunities. In fact, we have already been paying for this agreement for several years, without getting the export market access we need in return.

Previous trade agreements approved by Congress provided generous access to the U.S. beef marketplace to CAFTA–DR nations. Between the Generalized System of Preferences, which has been in place since 1976, and the Caribbean Basin Economic Recovery Act, or Caribbean Basin Initiative, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic all currently enjoy duty-free access to the U.S. marketplace. While these imports are subject to a shared tariff rate quota (TRQ) of 64,805 metric tons, this TRQ has never come close to being filled.

At the same time, U.S. beef exporters face applied tariffs ranging from 15 to 40 percent when seeking to sell U.S. beef within the countries included in CAFTA–DR. In fact, WTO bound tariffs can be applied as high as 79 percent. Due to these prohibitive tariffs, U.S. beef export opportunities to these countries are limited, and not surprisingly we have a trade deficit in beef and beef products with these six nations. In 2003, the U.S. exported 4.71 thousand metric tons of beef and beef variety meat to these countries, valued at $12.36 million, while importing 27.19 thousand metric tons, valued at $62 million, according to USDA. It should be noted that all of the CAFTA–DR countries have fully reopened to U.S. beef and beef products since the closure of our export markets in December 2003.

This dynamic, in which beef exporters in CAFTA–DR nations have virtually unlimited access to the U.S. beef marketplace, while trade barriers prevent the entry of U.S. beef, is fundamentally unfair to U.S. cattle producers. Without any subsidies, we produce the highest-quality, safest beef in the world. Yet if we are to remain competitive in the increasingly global beef marketplace, we must have agricultural trade policies which promote U.S. cattlemen's export interests.

CAFTA–DR remedies the current imbalance in trade policy between the U.S. and these six nations by immediately providing duty-free, quota-free access for high-quality U.S. beef, with all remaining tariffs being eliminated over a period of fifteen years. The rapid growth of the tourism industry in CAFTA–DR countries will unquestionably spur increased demand for U.S. beef. Although the quantities traded will likely remain small for some period of time, and represent a fraction of total U.S. beef production, NCBA's analysis of this agreement suggests that the U.S. could *triple* our beef and beef product exports to the region by 2015, with only slight increases foreseen in beef imports from these six countries. This level of increased exports translates into a potential $1.06 per head benefit to U.S. cattlemen, and will immediately assist our industry in regaining our trade surplus position in beef and beef products. (See Appendix A for NCBA's economic analysis.)

The CAFTA–DR does include minimal country specific increased access for some of the CAFTA–DR countries. However, this increase can only be accessed if the WTO tariff rate quota of 64,805 metric tons is filled. This TRQ has never been filled. We believe that minimal country specific assurances are a small price to pay to gain immediate duty-free, quota-free access for our high-quality prime and choice cuts of beef.

While market access is always front of mind in these agreements, sanitary and phytosanitary issues are also important to beef cattle producers. If we gain market access through the agreement, but are then blocked from shipment, the market access negotiations would be in vain. In this agreement, as in the Chile, Australia, and Morocco free trade agreements, the CAFTA–DR countries have agreed to accept U.S. Department of Agriculture-Food Safety and Inspection Service (USDA–FSIS) certification as the qualification to export beef and beef products to the region. This is important because USDA–FSIS certification means certainty for exporters that federal approval of their plants means the ability to export. The alternative is costly and unpredictable re-inspection by each country. Acceptance of USDA–FSIS certification also means more of the cattle me and my neighbors raise will qualify for export. Already, parts of 90 percent of the cattle harvested in the U.S. are destined for export. The more cattle that qualify for export translates into increased profits for beef cattle producers in the form of higher prices received.

CAFTA–DR also contains an agricultural safeguard mechanism protecting the U.S. beef industry against import surges. While it is unlikely that such a scenario would present itself, the U.S. does have the ability to utilize these safeguards in the event of excessive surges in imports. We believe that any free trade agreement should include these additional measures.

Therefore, a vote in support of CAFTA–DR is a vote to give U.S. cattle producers trade reciprocity and a leveling of the playing field we have long desired with this region. It is a vote to provide me and my fellow U.S. beef cattle producers what has already been provided by Congress to agriculturalists in CAFTA–DR countries—the ability to market agricultural commodities in export markets free of prohibitive trade barriers. Passage of CAFTA–DR will also send a positive signal to other trading partners around the world that the U.S. is serious about negotiating meaningful trade agreements which grant more export access for U.S. agricultural commodities than we give in return.

Cattlemen and cattlewomen throughout the U.S. know that this is an excellent agreement for the U.S. beef cattle industry, and we look forward to the passage of this agreement by Congress. It is time for Congress to level the uneven playing field that currently exists for U.S. agriculture. Ninety-nine percent of the agricultural products the CAFTA–DR countries send to the U.S. currently enter duty-free. CAFTA–DR balances that trade relationship. Accordingly 56 major national agricultural organizations also support CAFTA–DR. On April 4, 2005 they sent a letter to members of Congress expressing their support. (See Appendix B.)

Again, on behalf of the California Cattlemen's Association and the National Cattlemen's Beef Association, I wish to thank you for your consideration of this agreement and express our appreciation for this committee's commitment to opening markets for U.S. beef cattle producers and American agriculture. We urge swift passage of this agreement by Congress. I would be happy to answer any questions you may have.

Appendix A:

What Is CAFTA–DR Likely to Mean for U.S. Beef Producers?

By Gregg Doud, NCBA Chief Economist

KEY POINTS

- Overall U.S. beef and BVM exports to CAFTA–DR nations could TRIPLE by 2015 to $41 million from the current $12.5 million.The agreement will eliminate tariffs on U.S. beef exports to these nations, which currently range anywhere from 15 to 40 percent, over a 15-year period, with immediate duty-free access for high-quality (prime and choice) U.S. beef.The details of this agreement basically level the playing field for U.S. beef producers.
- A KEY by-product of the required harmonization of regulations and sanitary-phytosanitary (SPS) standards between these countries prior to entering into these negotiations is that beef and cattle trade between these nations will likely increase in the coming years. Nicaragua, in particular, seems to be attempting to position itself as a dominant beef supplier to the region.
- CAFTA exports to the U.S. will be directed by U.S. demand for lean (non-fed) beef. Constraints will include the overall profitability and (lack of) growth of the beef sector in most of these countries. Beef from these countries coming into the U.S. marketplace are already subject to a quota and these countries have yet to fill this quota, despite current low tariffs on their beef products.
- A final aspect that is very important to note about this agreement is the inclusion of Foreign Direct Investment (FDI) provisions that will certainly help improve overall economic conditions in the region. In every society, increasing per

capita incomes result in movement away from other protein sources and toward more beef consumption.

SUMMARY

The Central American Free Trade Agreement (CAFTA–DR) is between the U.S. and Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua and the Dominican Republic. For beef, it will eliminate tariffs on U.S. beef exports to these nations, which currently range anywhere from 15 to 40 percent, over a 15-year period. Although the quantities traded will likely remain small for some time, this agreement levels the playing field for U.S. beef producers and sets a solid precedent, with *immediate* duty-free access for high-quality (prime and choice) U.S. beef.

BACKGROUND

Much of what is stated below is based upon assumptions and projections based on various data sources that include the U.S. Department of Agriculture (USDA) and the United Nations' Food and Agriculture Organization (FAO). A solid production and trade data collection history on the Central American beef industry has never been a priority simply because of their small size. As a result, the data appears to conflict at times and some macroeconomic measurements are difficult to corroborate.

Here is a country-by-country break down of key factors that will influence beef trade:

Costa Rica

Easily the country with the most potential for increased demand for "high value" U.S. beef because of its red hot tourism industry, Costa Rica is a very promising market for the following reasons:

- It boasts the highest per capita incomes in the region with a current PPP (Purchasing Power Parity) at $9100/person (Source: CIA World Fact Book). This figure is really only good for comparison purposes and it compares to a $9000/capita PPP for Mexico.
- A solid beef variety meat (BVM) demand base also appears to be developing with U.S. exports jumping from 170 metric tons (mt) in 2000 to 671 mt in 2002.
- It is already the highest per capita beef consumer among the CAFTA countries, and it appears to be at least double any other country, including Nicaragua.
- It will be adding another 700,000 citizens between 2005 and 2015 with four of Costa Rica's projected 5 million people residing in urban areas by 2015. (Globally, urban citizens and their generally higher per capita incomes tend to be bigger buyers of relatively higher value U.S. beef cuts.)
- The domestic cattle industry appears to be struggling possibly due to macroeconomic factors within the country.
- This may also be due to increased competition from its neighbors. Guatemala and Nicaragua are providing about half of Costa Rica's beef imports.
- However, the trade data suggests that the U.S. has the ability to compete on price.
- U.S. exports could go from the current $2.6 million to around $6.3 million by 2015. Additional growth in Costa Rica's tourism industry could certainly boost this projection considerably, not only through increased hotel and restaurant consumption but also because it would undoubtedly increase per capita incomes.
- The tariff reduction schedule is back-loaded suggesting we could see an additional surge in growth occur from 2015 to 2020.

Dominican Republic

The DR has the second highest PPP in the region at $6000/person.

- Its urban population will also grow considerably—up one million to 8.4 million urban citizens out of an expected 10.1 million by 2015.
- Possibly problematic is a much lower per capita beef consumption figure than Costa Rica. (They have more of a Caribbean style diet.)
- This low consumption figure may also be due, in part, to the DR's 40 percent tariff on beef imports.
- The DR market also appears to be very price sensitive. U.S. market share has struggled significantly recently as U.S. beef prices have risen. This is likely due to the price of U.S. beef relative to other sources of animal protein (poultry).
- A goal in this market would appear to be the ability to retain earlier success at this recent high(er) price plateau. As such, tariff reduction could be of significant assistance for U.S. beef in this market.

- Immediate help will come from a 1,100 mt tariff rate quota (TRQ) that will provide duty free access for Prime and Choice beef and a 220 mt TRQ for duty free beef trimmings.
- The DR does not export beef; in fact, very recently the domestic beef industry appears to be experiencing significant hardship.
- Like Costa Rica, its potential ability to draw U.S. tourists is tremendous but this potential is still largely undiscovered. The future for high quality U.S. beef demand is exciting but virtually impossible to forecast.
- U.S. exports have the potential to go from $4.3 to $6.0 million by 2015 but this figure could be significantly underestimated as tariff reduction in the "out" years (beyond 2015) enhances the competitive nature of U.S. beef in the Dominican Republic.

El Salvador

Continuing down the PPP ladder in the region, El Salvador's current PPP is $4800/capita. However, an unusual factor to consider is that there is a significant Salvadorian community in the U.S. that funnels U.S. dollars back into El Salvador. In fact, by one account, this apparently could amount to as much as 40 percent of the El Salvador annual GDP. This unusual influence and its ability to grow may be a key driver for beef consumption.

- Its urban population will jump by one million from 2005 to 2015 with 6.5 million of an estimated 7.56 million citizens projected to be living in El Salvador's cities by 2015.
- Per capita beef consumption is lower than Costa Rica and the DR and this decline would appear to be running in tandem with lower per capita incomes.
- The domestic beef industry appears very stagnant with little to no exports in recent years.
- El Salvador has not been a BVM (offal) market but tariffs on offal are phased out over five years. There is also a (duty-free) TRQ of 105 mt for "other" beef cuts.
- U.S. beef export potential appears fairly limited. It also looks like the cuts that have been exported are, relatively speaking, of very low value (approx. $1/lb). Currently, beef imports appear to be coming from neighboring CAFTA countries (Nicaragua, Guatemala and even a little from Honduras).
- El Salvador could well develop into a significant beef importer in the region but this beef is much more likely to come from its neighbors (mostly Nicaragua) rather than the U.S.
- This could be exacerbated if El Salvador struggles to improve its infrastructure (processing industries) relative to its neighbors. This infrastructure is believed to have the ability to be very competitive in the region, but extremely burdensome government oversight and regulation are severely restricting its ability to prosper at the present time.
- In terms of value, El Salvador is actually the fourth largest market in Central and South America for U.S. pork. This suggests that the U.S. could become a significant supplier of beef to El Salvador if U.S. pork exports to the country are used as an example.
- Furthermore, it is also important to note that the "dollarized" Salvadorian economy presents U.S. suppliers with an advantage.
- While the U.S. exports only about $0.25 million in beef to El Salvador today, this could be a market worth $16.5 million for the U.S. by 2015. This assumes that the reduction in El Salvador's tariff from the current 30 percent (one of the highest in the region) would make U.S. beef much more price competitive.

Guatemala

- PPP $4100/person.
- Its overall and urban population expected to grow tremendously from 13 million people to 16 million by 2015 with 10.2 of those 16 million living in cities versus only 7.5 million today.
- Guatemala is attempting to increase its tourism market. It has initiatives in place to promote tourism that highlight its cultural past and ecotourism. This will further increase its demand for quality meat products such as U.S. beef, which makes it a growing opportunity for the U.S. beef industry.
- The Guatemalan economy is showing signs of life as the effects of NAFTA finally trickle into southern Mexico and points south.
- Its domestic beef industry appears solid and its exports of live cattle to Southern Mexico have been growing (despite SPS issues that restrict this trade).
- One-half of Guatemala's beef imports are currently coming from Nicaragua and 25 percent from Costa Rica with Panama and Honduras also selling some beef

into Guatemala. Look for this to continue as historically, the value of U.S. cuts into Guatemala is significantly higher than that of other countries and the U.S. (downward) trend in exports reflects the price sensitivity of this market.
- On the other hand, tariff reduction by way of a (1,060 mt) tariff rate quota (TRQ) for "other" beef cuts should immediately facilitate a better competitive U.S. position in this market.
- Guatemala is also a significant market for U.S. BVM and it should continue to grow unabated with the immediate duty-free access CAFTA–DR provides.
- Competition from other sources of animal protein would appear to be fierce but per capita beef consumption is low. Improving per capita incomes over time should expand beef demand just as has occurred in Mexico over the last decade.
- The increase in Guatemala's population as well as its proximity to Mexico should spur economic growth and catapults them from a $3.9 to $8.8 million market for U.S. beef and beef variety meats by 2015.

Honduras

- In order for U.S. beef exports to have any significant chance of improvement in this market, the PPP for this economy must improve well beyond today's $2600/capita.
- Honduras will add about 1.5 million citizens between now and 2015 with about half of that increase headed to the city. Its current population is 7.3 million.
- Slightly encouraging is that per capita consumption appears to be similar to the Dominican Republic and higher than that of Guatemala and El Salvador.
- It looks like Honduras is exporting some beef to its neighbors but its production has apparently shrunk dramatically during the past 2–3 years, possibly putting the future of such exports in jeopardy.
- This has been a very good BVM market for the U.S. and this may be where a sizable chuck of the future growth occurs as all tariffs on offal are phased out over five years. Again, this is a market for relatively low value cuts from the U.S. possibly making it tough for the U.S. to gain a foothold versus CAFTA beef for the foreseeable future.
- Growth potential for U.S. beef/BVM by 2015: from $0.9 to $2.2 million.

Nicaragua

- On paper, the Nicaraguan beef industry has grown 35 percent in about six years and all indications are that they will become the dominant beef exporter to others in the region. They've also nearly doubled their beef exports to the U.S. between 2001 and 2004.
- While there is some speculation that they could also become an exporter of live cattle, there appears to be limited evidence of this despite tremendous economic incentives during the past couple of years to do just that. It appears that Nicaragua wants to become a beef exporter versus a cattle exporter.
- Holding them back is clearly their economy. Their PPP of only $2300/person is the lowest in Central America. Raising the standard of living in this mainly rural based economy would certainly create several benefits. For example, their per capita beef consumption appears to be only half of Costa Rica despite every indication that this is likely the least cost source of animal protein in the country.
- The U.S. isn't likely to find much success exporting high-value beef to Nicaragua but they appear to be importing an increasing amount of U.S. variety meats. Tariffs on offal are phased out over five years.
- The Nicaraguan population will jump from 5.7 to 7.0 million folks by 2015 with an additional 1.2 million headed for life in the city—for a total of 5.6 million urban dwellers by 2015.
- This is a country with tremendous potential for growth if it could ever get its economic house in order. The word "potential" applies mostly because its will be coming from such a long way back.

Appendix B:

April 4, 2005

Dear Representative:

The undersigned groups representing the U.S. food and agricultural community urge your support for the Free Trade Agreement with Central American and the Dominican Republic (CAFTA–DR). CAFTA–DR is a home run for American agriculture. We are giving up very little to gain very much. Normally in trade agreements, each party expects the concessions it receives to balance the concessions it grants. Uniquely in CAFTA–DR, the agriculture agreement is tilted steeply in the direction of the United States.

Previous trade arrangements approved by Congress gave generous access to the U.S. market for food and agriculture exports from these six nations but provided no reciprocal benefits to U.S. food and agriculture exports to those same six markets. Between the Generalized System of Preferences, which has been in place since 1976, and the Caribbean Basin Economic Recovery Act, or Caribbean Basin Initiative (CBI), which has been in place since 1983, U.S. tariffs on most of the food and agricultural products imported from the CAFTA–DR countries are already zero.

On a trade-weighted basis, over 99 percent of the food and agriculture products we import from the region enter duty-free. On the other hand, the food and agriculture tariffs our products must overcome in the CAFTA–DR countries exceed 11 percent on average, but can range as high as 150 percent or more on sensitive products. This does not include the highly restrictive tariff-rate quotas many of our products face. The result is that we have an agriculture trade deficit with these six nations. In 2004, U.S. imports from these countries exceeded our exports to the region by over three quarters of a billion dollars.

So, a vote for CAFTA–DR is a vote to give American farmers trade reciprocity. It is also a vote to keep our food and agriculture exports competitive with products from other countries. Our market share in the CAFTA–DR nations has fallen from 54 percent in 1995 to around 40 percent because of preferential arrangements negotiated by these six countries with our competitors. The implementation of CAFTA–DR will remedy this problem.

Congress last voted to extend the unilateral benefits under GSP and CBI to these countries and others as part of the Trade Act of 2002. The most recent stand-alone vote on a CBI conference report in 2000 demonstrates the willingness of Congress to provide trade benefits to an important region of the world. In the Senate, CBI passed by a vote of 77–19 with 4 abstentions; in the House, it was approved by a vote of 309–110 with 16 abstentions. The undersigned organizations, representing the vast majority of U.S. agriculture, are simply requesting that Congress provide to American farmers what it has already provided to farmers in the CAFTA–DR countries—improved market access for their exports.

Sincerely,

Altria Group, Inc.
American Bakers Association
American Farm Bureau Federation
American Feed Industry Association
American Frozen Food Institute
American Meat Institute
American Potato Trade Alliance
American Soybean Association
Animal Health Institute
Biotechnology Industry Organization
Blue Diamond Growers
Bunge North America, Inc.
California Canning Peach Commission
California Table Grape Commission
Cargill, Incorporated
Corn Refiners Association
CropLife America
Elanco
Food Products Association
Grocery Manufacturers of America
International Dairy Foods Association
Louis Dreyfus Corporation
National Association of Wheat Growers
National Cattlemen's Beef Association
National Chicken Council
National Confectioners Association
National Corn Growers Association
National Grain and Feed Association
National Grain Sorghum Producers
National Grain Trade Council
National Grange
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
National Potato Council
National Renderers Association
National Turkey Federation

North American Export Grain Association
North American Millers' Association
Northwest Horticultural Council
Pet Food Institute
Sweetener Users Association
The Distilled Spirits Council
The Fertilizer Institute
U.S. Dairy Export Council
United Egg Producers
United States Dry Bean Council
U.S. Apple Association
U.S. Hide, Skin and Leather Association
U.S. Meat Export Federation
U.S. Wheat Associates
USA Poultry and Egg Export Council
USA Rice Federation
Washington State Potato Commission
Western Growers Association
Wheat Export Trade Education Committee

Mr. SHAW. Thank you. Mr. Roney.

STATEMENT OF JACK RONEY, DIRECTOR OF ECONOMICS AND POLICY ANALYSIS, AMERICAN SUGAR ALLIANCE

Mr. RONEY. Thank you, Mr. Chairman. I am Jack Roney, Staff Economist for the American Sugar Alliance. I have the privilege of speaking today on behalf of 146,000 American farmers, workers, and their families who grow, process, and refine sugar beets and sugar cane in 19 States. The proposed DR–CAFTA threatens American sugar jobs in all 19 of these States. By the government's own estimates, sugar job losses from the DR–CAFTA would be far greater than in any other sectors. The same ITC study also questions the overall value of the DR–CAFTA to our economy. The ITC concluded that the DR–CAFTA will increase the U.S. trade deficit with that region, not reduce it. Our sugar growers and processors are among the most efficient in the world. Like other American farmers, we would welcome the opportunity to compete globally on a level playingfield, free of government intervention. Like other American farmers, we can compete against foreign farmers. We cannot compete against foreign government subsidies.

The world sugar market is the world's most distorted commodity market. A vast global array of subsidies encourages overproduction and dumping. We support correcting this distorted dump market through genuine global sugar trade globalization. There is a right way and a wrong way to attack global sugar subsidies. The right way is through the WTO, with all countries at the table, and all subsidies on the table. The wrong way is with bilateral and regional FTAs, where markets are wrenched open without addressing any foreign subsidies. Virtually every FTA ever completed around the world excludes import access mandates for sugar. Only the United States has ever guaranteed access to its sugar market in an FTA, in the NAFTA and the DR–CAFTA, and these agreements are mired in controversy. Sugar must be reserved for the WTO, where genuine trade liberalization can occur.

As Congressmen from sugar producing regions know, if the DR–CAFTA passes, it will have devastating effects on sugar jobs in

their States. Our farmers know their industry and their policy well. We have examined the DR–CAFTA provisions soberly and carefully. We regard the DR–CAFTA as a life or death issue. American farmers and workers who will lose their jobs are insulted by DR–CAFTA proponents who trivialize the potential harm from this agreement with cutesy, misleading depictions of additional access in teaspoons or packets per consumer per day. We are already one of the world's most open sugar markets. Past trade agreement concessions force us to import upward of 1.5 million tons of sugar per year from 41 countries duty-free. This makes us the world's fourth largest net importer. The DR–CAFTA countries are already our biggest duty free supplier, accounting for one-fourth of our imports. Unfortunately, our market is already oversupplied. Every additional ton of sugar we are forced to import from foreign countries is one ton less that struggling American sugar farmers will be able to sell in their own market. Import more foreign sugar, export more American jobs.

The DR–CAFTA poses serious short-term and long-term dangers to American sugar farmers and workers. In the short-term, the DR–CAFTA sugar market access concessions, on top of import commitments the U.S. has already made in the WTO and NAFTA, will prevent the USDA from administering a no-cost sugar policy as Congress directed it to in the 2002 farm bill. The DR–CAFTA will further oversupply the U.S. market. The additional concessions will trigger off the market allotment program that permits USDA to restrict domestic sugar sales and balance the market. U.S. sugar producers are currently holding more than half a million tons off the market and storing it at their own expense. Absent marketing allotments, this surplus sugar will cascade onto the market and destroy the price. Contrary to the misleading claims of DR–CAFTA proponents, there is no cushion, no additional share of the U.S. market, that Congress intended to make available in FTAs. The difference between recent actual imports and the 1.5 million ton marketing allotment trigger has already been allocated to Mexico under the NAFTA. The Administration is ignoring the NAFTA to promote the DR–CAFTA. In the long term, the DR–CAFTA is the tip of the FTA iceberg. Behind the DR–CAFTA countries, 21 other sugar exporting countries are lined up like planes on a tarmac waiting to do their deal with the United States. No doubt they expect no less than the concessions already granted to the DR–CAFTA countries. Combined, these 21 countries export over 25 million tons of sugar per year, nearly triple the U.S. sugar consumption. Obviously, the present DR–CAFTA concessions would make it impossible for the U.S. sugar industry to survive future agreements.

In conclusion, Mr. Chairman, the DR–CAFTA will cost thousands of American sugar farmers and workers their jobs. The certain dangers of the DR–CAFTA to the U.S. economy far outweigh the marginal possible benefits. We respectfully urge that this Committee reject the DR–CAFTA and focus U.S. trade liberalization efforts instead on the WTO, where there is genuine potential for progress. Thank you.

[The prepared statement of Mr. Roney follows:]

Statement of Jack Roney, Director of Economics and Policy Analysis, American Sugar Alliance

The American Sugar Alliance is grateful for the opportunity to provide testimony for this important hearing. The ASA represents the 146,000 American farmers, workers, and their families in 19 states, engaged directly and indirectly in the growing, processing and refining of sugarbeets and sugarcane. The U.S. sugar industry generates nearly $10 billion in annual economic activity.

Background on U.S. and World Sugar Markets

In some states, sugar is the most important cash crop, or among the most important. Sugar accounts for 44% of crop receipts in Louisiana, 37% in Wyoming, 24% in Hawaii, and 10–20% in Idaho, Minnesota, Florida, North Dakota, Montana, and Michigan.

American sugar growers and processors are among the most efficient in the world, and, like other American farmers, we would welcome the opportunity to compete globally on a level playing field, free of government intervention *(Chart 1)*. Like other American farmers, we *can* compete against foreign farmers, but we *cannot* compete against foreign government subsidies and predatory trading practices.

The world sugar market is the world's most distorted commodity market, because of a vast, global array of subsidies. Subsidized growers overproduce and dump their surpluses on the world market for whatever price it will bring. As a result of all this dumping, the so-called world sugar price has averaged barely half the world average cost of producing sugar for the past 20 years *(Chart 2)*. The ASA supports correcting this distorted dump market through genuine global sugar trade liberalization.

Only Path to Sugar Trade Liberalization: WTO

There is a right way and a wrong way to achieve global sugar trade liberalization.

- The right way: The World Trade Organization (WTO)—all countries at the table; all programs and all subsidies on the table. The ASA has supported sugar trade liberalization in the WTO since the initiation of the Uruguay Round of the GATT in 1986.
- The wrong way: Bilateral and regional free trade agreements (FTAs), where markets are wrenched open without addressing *any* foreign subsidies. The Administration has rightfully declared it will not address any support programs or subsidies in FTAs. Yet it has effectively negotiated away the U.S. sugar support program in the CAFTA.

Virtually every FTA ever completed around the world *excludes* import-access mandates for sugar. Sugar import mandates are excluded from the U.S.-Canada portion of the NAFTA; from the Mercosur agreement among four South American sugar producing countries, including Brazil; from the European Union's (EU) trade agreements with South Africa, with Japan, and now with Mercosur; from Mexico's FTAs with other Latin American countries and with Japan; from Japan's pending agreements with Thailand and with the Philippines. Sugar was excluded from the U.S.-Australia FTA, which USTR touted as a "state of the art" agreement that gained the U.S. immediate duty-free access for 99% of its exports to Australia, and which Congress passed easily.

The only exceptions: Sugar market-access mandates were included in the U.S.-Mexico portion of the NAFTA, and those provisions have been mired in controversy ever since, and in the CAFTA, whose fate in the Congress is highly uncertain.

The ASA's recommendation to the Administration has been long-standing and unambiguous: Reserve sugar negotiations for the WTO, where genuine trade liberalization can occur.

CAFTA Dangers to U.S. Sugar, U.S. Economy, WTP Process

The U.S. sugar industry adamantly opposes the CAFTA and respectfully suggests that this Committee do the same. The potential benefits for the U.S. economy simply do not outweigh the definite risks. The possible benefits are tiny: The entire GDP of the six countries is about the same as New Haven, Connecticut's. At serious risk are American jobs in sugar and a host of other sectors.

- The government's own analysis, by the International Trade Commission (ITC), predicts that at the end of the 15-year implementation period, the U.S. trade deficit with the CAFTA region will have increased, not fallen, to $2.4 billion. ("U.S.-Central America-DominicanRepublic Free Trade Agreement: Potential Economywide and Selected Sectoral Effects," Investigation No. TA–2104–13, August 2004.) Other ITC findings from the same study:

- Job losses in the sugar sector will be 38 times greater than job loss in the next most harmed sector, textiles. ITC also predicted American job losses in electronic equipment, transport equipment, oil, gas, coal and other minerals.
- The U.S. already has 100% duty-free access for wheat exports to the CAFTA countries.
- The U.S. already accounts for 94% of the small CAFTA market's grain imports; and 95% of soybean imports.
- The U.S. gets immediate tariff-free access only for prime and choice cuts of beef. With 40% of the CAFTA population earning less than $2 per day, the demand for such expensive cuts of beef cannot be great.

- FTAs such as the CAFTA distract from, and harm, the progress toward genuine trade liberalization in the WTO.

  For example, after the CAFTA countries have spent years negotiating special access to the United States, the world's biggest market, why should these countries cooperate in Geneva to provide the same access to the U.S. for the rest of the world?

  The FTA approach risks fragmenting the world economy into to a matrix of trading blocs, each with its own tariff wall around it to protect the subsidies within. Only in the WTO can we address both the tariff walls and the subsidies within.
- Opposition to the CAFTA is widespread.

  The American public correctly perceives that CAFTA dangers outweigh the risks. Polls indicate a majority of Americans opposes the CAFTA, including pluralities of Republicans, Democrats, and Hispanics.

  Opposition extends to labor, environmental, textile, human rights, and faith-based organizations, both here and in the CAFTA countries.

  Some national farm groups oppose CAFTA, some others are split. American farmers have grown understandably skeptical that the promises of trade agreements and other efforts to expand U.S. exports far exceed actual performance. In 1996, the U.S. achieved a record agricultural trade surplus of $27.3 billion. In 2004, 11 years into the NAFTA, 10 years into the Uruguay Round Agreement on Agriculture, and 9 years after the 1996 Freedom to Farm Bill reduced commodity prices to encourage more exports, our ag trade surplus has plummeted to zero *(Chart 3)* —despite the weaker dollar that made our exports more competitive. Our ag imports have skyrocketed under these agreements; our exports have been essentially flat.

  The CAFTA promises more of the same, particularly in the near term. U.S. import concessions are frontloaded—concentrated in the early years of the agreement—and CAFTA-country import concessions are backloaded, to the final stages of the 15-year implementation period.

As the Congressmen from sugar-producing states know, if the CAFTA passes, it will have devastating effects on the U.S. sugar industry. Our farmers know their industry and their policy well, and have examined the CAFTA provisions soberly and carefully. We regard the CAFTA as a fully genuine, life-or-death issue. Our farmers, whose livelihoods are at stake, are insulted when USTR trivializes the potential harm from this agreement with cutesy, misleading estimates such as the amount of additional access in teaspoons per consumer or production per day.

We are already one the world's most open sugar markets. Past trade-agreement concessions have made us the world's fourth largest net importer. We are required, under WTO concessions, to import 1.256 million short tons of sugar per year from 41 countries, essentially duty free, whether we need the sugar or not. *The six CAFTA countries are already our largest duty free supplier, accounting for 27% of our WTO-required imports.* In addition, we are required under the NAFTA to import up to 276,000 short tons per year of Mexican surplus sugar production, again, whether we need the sugar or not.

Unfortunately, U.S. sugar consumption has declined in recent years, rather than grown. As a result, every additional ton of sugar we are forced to import from foreign countries is one ton less that struggling American sugar farmers will be able to produce or sell in their own market.

U.S. sugar policy is unique. It is the only U.S. commodity policy designed to operate at no cost to taxpayers. During this time of enormous federal budget pressures, American sugar farmers are proud to have a program with no budgetary costs *(Chart 4)*.

Congress in the 2002 Farm Bill provided an inventory management approach for sugar and a mandate for the Administration to operate the program at no cost by avoiding sugar loan forfeitures. The Administration has two tools to balance the domestic market: the WTO-legal tariff-rate import quota and domestic marketing al-

lotments. Basically, USDA forecasts U.S. sugar consumption, subtracts required WTO and NAFTA imports, and sets the remainder as the American sugar producers' share of their own market. With a large part of our market guaranteed to foreign suppliers, American sugar farmers—taxpayers, businessmen, and cooperative owners—must line up behind the foreign farmers for access to their own U.S. market. If we produce more sugar than our marketing allotment, our producers store the excess *at their own expense*, not the government's expense, until that sugar is needed.

Congress stipulated that if imports exceed 1.532 million short tons—the sum of the WTO commitment of 1.256 million short tons and the NAFTA/Mexico commitment of up to 276,000 short tons—USDA would lose its authority to administer marketing allotments and sustain no-cost sugar-program operation. In effect, the Congress was saying: Though American sugar producers are among the world's most efficient, we have already ceded to foreign producers over 1.5 million short tons of the U.S. market. Let's reserve the remainder of the U.S. market for American farmers, rather than giving our market away, piecemeal, to foreign producers in FTAs *(Charts 5, 6)*.

American sugar producers are currently storing at their own expense about 600,000 tons of surplus sugar, and many are reducing acreage, idling or shutting down mills—many of them farmer owned—to absorb the oversupply. Sugar prices have been flat or depressed for some time—the raw cane sugar support price has been the same 18 cents per pound for 20 years now, since 1985; prices in 2004 averaged 11% lower than in 2003 *(Charts 7, 8)*. Unlike other program crops, sugar farmers receive *no* income support from the government to compensate for low market prices. This allows scarce federal dollars to be directed toward assisting farmers of export crops.

Sugar farmers, meanwhile, are making wrenching adjustments to survive, or just going out of business. Fully a third of all U.S. beet and cane mills and refineries have closed just since 1996, 30 plants in total *(Chart 9)*.

As independent beet processors and cane refiners have gone out of business, beet and cane farmers, desperate to retain outlets for their beets and raw cane sugar, have organized cooperatively to purchase those operations. Beet farmers now own 94% of U.S. beet processing capacity and cane farmers own 57% of U.S. cane refining capacity *(Chart 10)*.

This vertical integration has helped to increase efficiency, but growers have literally mortgaged the farm to stay afloat and are deeply in debt. Since sugar farmers derive 100% of their return from the marketplace and none from government payments, they are more dependent on, and more vulnerable to, market forces than other farmers. Sugar farmers are generally unable to switch to other crops because of their commitment to supplying beets and cane to the processing mills they now own. This makes sugar farmers all the more vulnerable to the type of market disruption the CAFTA would be likely to cause.

Sugar farmers based their investment decisions on the promise in the 2002 Farm Bill of volume and price levels that would enable them to remain in business and repay their loans. The CAFTA, and other FTAs, now threaten to break that promise.

Low, Steady U.S. Consumer Prices for Sugar

The low producer prices for sugar over the past several years have been a hardship for sugar farmers and caused considerable job loss as mills have closed. Unfortunately, consumers have seen no benefit from the low producer prices for sugar. Though wholesale sugar prices in 2004 averaged 11% lower than the previous year and 20% less than in 1996, consumer prices for sugar in the grocery store have risen modestly; and, sweetened product prices have continued a steady rise, at least with the overall rate of inflation *(Chart 11)*.

Nonetheless, American consumers are getting a great deal on the sugar they purchase, with low, steady prices. U.S. retail sugar prices are essentially unchanged since the early 1990's. And new figures from LMC International show that the foreign developed-country retail sugar price averages 30% higher than the United States.' EU average prices are 35% higher than the United States', and retail sugar prices in Australia and Canada, which claim to be exposed to world dump market sugar, are virtually the same as prices here *(Chart 13)*. *("Retail and Wholesale Prices of Sugar around the World,"* LMC International Ltd, Oxford, England, April 2005.)

Taking into account developing countries, and varying income levels, LMC discovered that sugar here is about the most affordable in the world. In terms of minutes of work to purchase one pound of sugar, only tiny Singapore is lower; the world average is four times higher than the U.S. And, our expenditure on sugar as a percent

of per capita income is the lowest in both the developed and the developing world *(Charts 13, 14).*

World Average Wholesale Prices are Double Dump Market Levels

In the same survey, LMC also examined wholesale refined prices and found that the global average is 22 cents per pound—double the world dump market average price for 2004—and about the same as the United States'. This reinforces the meaninglessness of the world dump price. Globally, the vast majority of sugar is sold in domestic markets at price levels that are, on average, double the world dump market price and similar to the United States' *(Chart 15).*

It is worth noting that LMC found wholesale prices in Mexico to be 5 cents higher than the United States' 23 cents per pound, and Canada's price to be just 2 cents lower. This contradicts notions that U.S. candy manufacturers are moving to these countries for lower sugar prices. Other factors are far more important in those decisions. For example, the same candy company that paid average wages in Chicago of more than $14 per hour now pays an average of 56 cents per hour in Juarez, Mexico *(Chart 16).*

CAFTA: Short and Long-term Dangers to U.S. Sugr Market

Despite the fact that our market is already oversupplied, and despite the fact that the six CAFTA countries already supply more than a fourth of our guaranteed duty-free imports, the proposed CAFTA more than doubles the five Central American countries' duty-free access to the U.S. market, an increase of 111%. With an additional, smaller concession to the Dominican Republic, additional imports would total 120,000 short tons in the first year, growing to 169,000 short tons per year in year 15, and an additional 2,910 short tons per year forever after *(Chart 17).*

The CAFTA poses serious short-term and long-term dangers to the U.S. sugar industry.

1. In the short term, the CAFTA sugar market-access concessions—on top of import commitments the U.S. has made already in the WTO, to 41 countries, and in the NAFTA, to Mexico—will prevent the USDA from administering a no-cost U.S. sugar policy, as Congress directed it to in the 2002 Farm Bill, and will badly further oversupply the U.S. sugar market.

   The additional concessions will trigger off the marketing allotment program that permits USDA to restrict domestic sugar sales and balance the market. Absent marketing allotments, surplus U.S. sugar—the 600,000 tons producers are currently holding off the market and storing it at their own expense—would cascade onto the market and destroy the price.

   - Contrary to USTR's misleading claims, there is no "cushion"—no amount of additional import access Congress intended to make available in FTAs. The difference between recent actual imports and the 1.532-million-ton trigger has already been allocated to Mexico under the NAFTA. Mexico has not recently had the surplus sugar available to send to the U.S. But surplus Mexican sugar may soon become available again, with improved crops and with the successful conclusion of sweetener-trade discussions with Mexico that Members of Congress from sugar and corn states strongly support.

   We find it disturbing that USTR would ignore commitments made in past agreements in order to promote new agreements.

2. In the longer term, the CAFTA is the tip of the FTA iceberg.

   Behind the CAFTA countries, 21 other sugar-exporting countries are lined up, like planes on a tarmac, waiting to do their deal with the U.S. and, no doubt, expecting no less access than already granted to the CAFTA countries. Combined, these 21 countries export over 25 million tons of sugar per year, nearly triple U.S. sugar consumption. Obviously, the precedent the CAFTA concession would set will make it impossible for the U.S. sugar industry to survive future agreements *(Charts 18, 19).*

   The U.S. is pushing to complete the Panama, the Andean, and the Thailand FTAs this year. The South Africa Customs Union FTA and the Free Trade Area of the Americas are on hold, but still very much on the Administration's FTA agenda. All these involve major sugar producers and exporters.

Conclusion

In conclusion, Mister Chairman, the dangers of the CAFTA to the U.S. economy outweigh the risks. We respectfully urge that this Committee reject the CAFTA, and focus U.S. trade liberalization efforts instead on the WTO, where there is a genuine potential for progress.

The CAFTA would devastate the U.S. sugar industry. We are, therefore, expending all possible resources and energy to urge Congress to defeat this ill-conceived agreement.

Thank you.

Chart 1

U.S. Cost of Production Rank Among World Sweetener Producers, 1997/98 – 2002/03

	U.S. Rank (Lowest = 1)	Number of Producing Countries/Regions
Beet Sugar	3	41
Cane Sugar	26	64

Source: "LMC Worldwide Survey of Sugar and Corn Sweetener Production Costs: 2003 Report," LMC International Ltd., Oxford, England, June 2004.

Chart 2

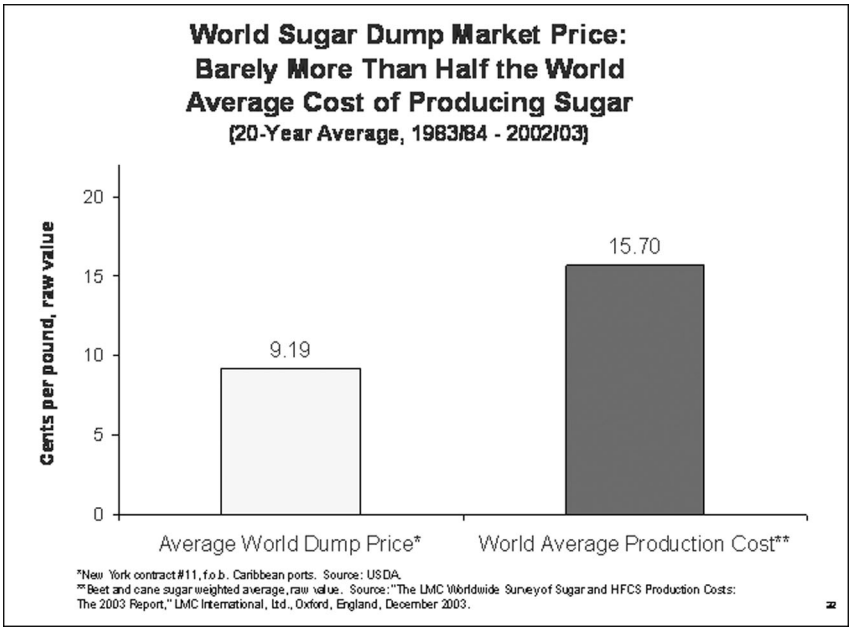


Chart 3

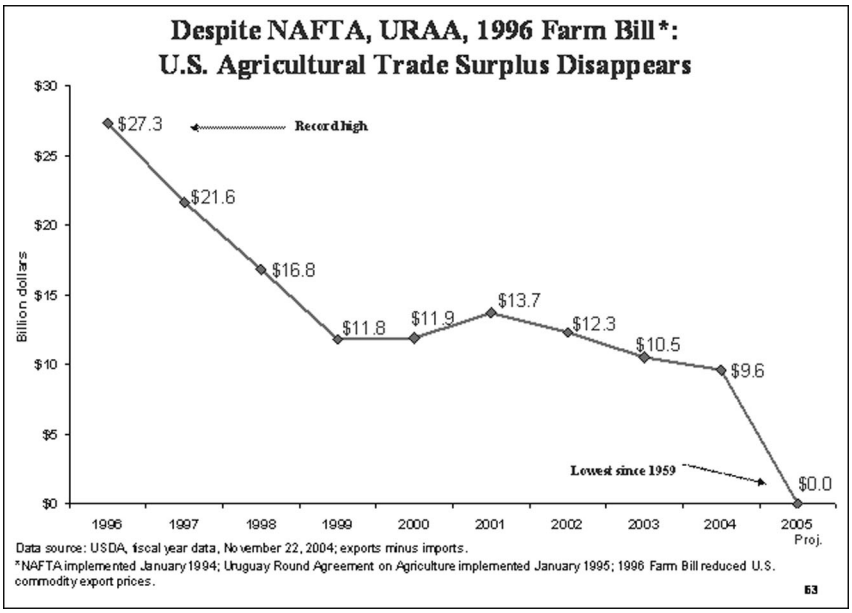


Chart 4

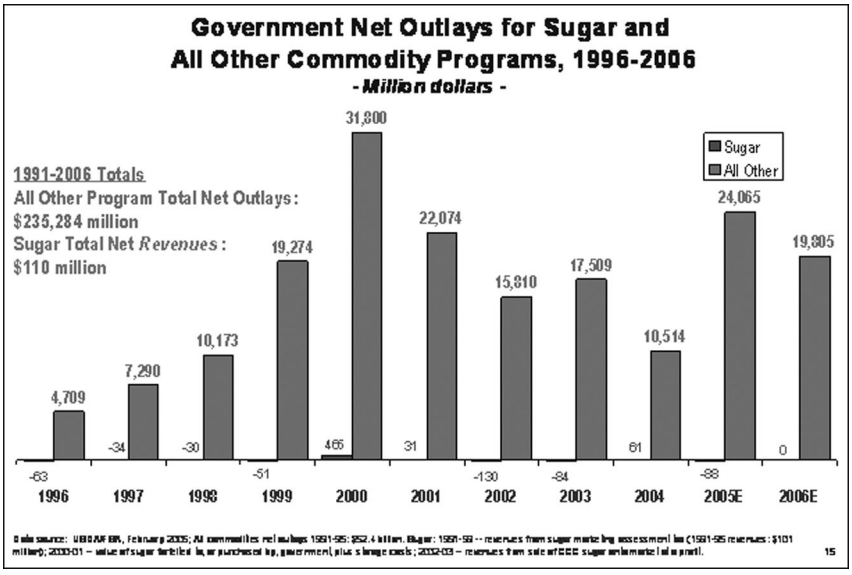
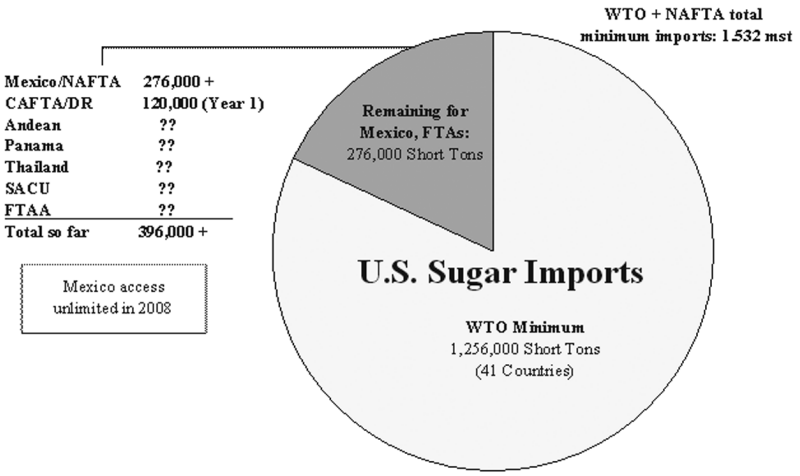


Chart 5

No-Cost US Sugar Policy Impossible if Imports Exceed 1.532 Million Short Tons*
-- Available for Mexico and all FTAs: 276,000 ST; Committed So Far: 396,000 ST



*** Marketing allotments triggered off; surplus sugar floods market; prices drop.**

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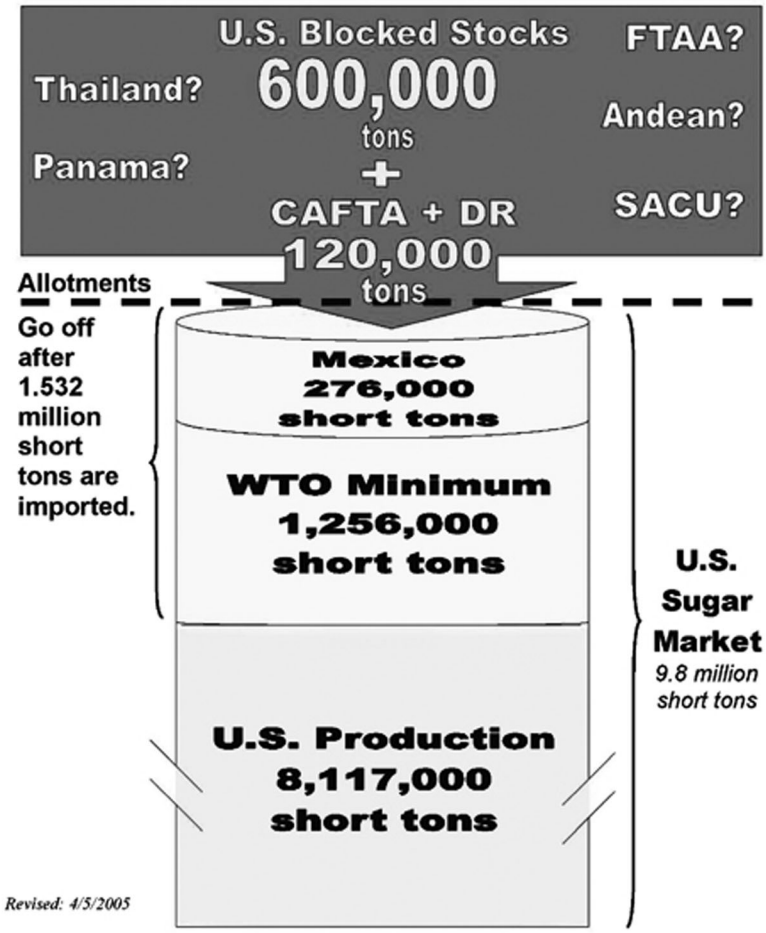
Chart 6


U.S. Blocked Stocks
600,000
tons
+
CAFTA + DR
120,000
tons
Thailand?
Panama?
FTAA?
Andean?
SACU?
Allotments
Go off after 1.532 million short tons are imported.
Mexico
276,000
short tons
WTO Minimum
1,256,000
short tons
U.S. Production
8,117,000
short tons
U.S. Sugar Market
9.8 million short tons
Revised: 4/5/2005

1

Chart 7

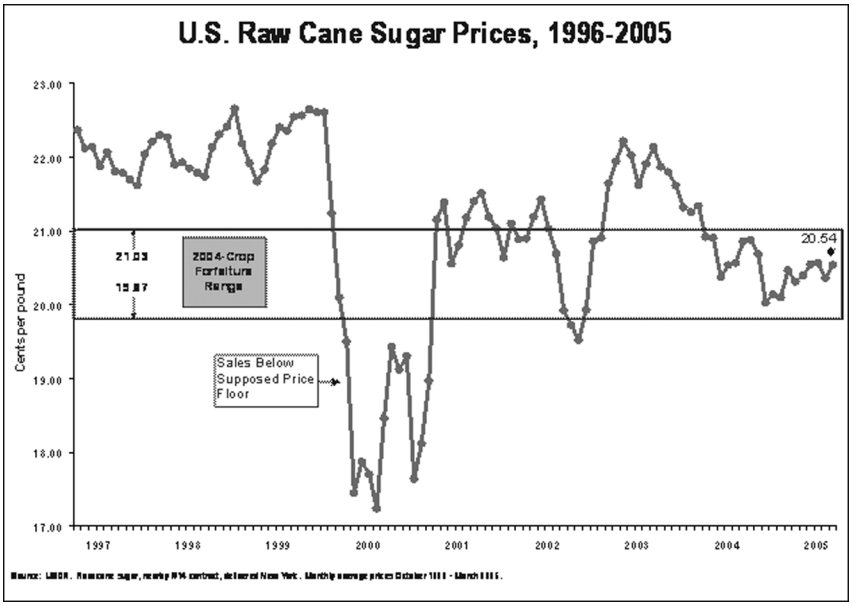


Chart 8

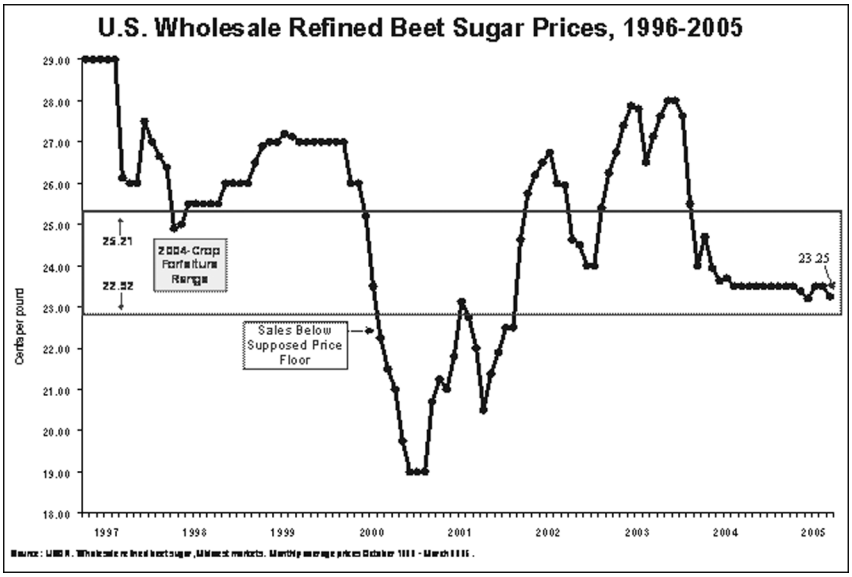


Chart 9

30 Sugar Mill and Refinery Closures Since 1996

BEET CLOSURES	CANE CLOSURES	
Spreckels Sugar, Manteca California, 1996	Ka'u Agribusiness Hawaii, 1996	Hawaiian Commercial & Sugar, Paia Hawaii, 2000
Holly Sugar, Hamilton City California, 1996	Waialua Sugar Hawaii, 1996	Evan Hall Sugar Cooperative Louisiana, 2001
Western Sugar, Mitchell Nebraska, 1996	McBryde Sugar Hawaii, 1996	Caldwell Sugar Cooperative Louisiana, 2001
Great Lakes Sugar, Fremont Ohio, 1996	Breaux Bridge Sugar Louisiana, 1998	Glenwood Sugar Cooperative Lousiana, 2003
Holly Sugar, Hereford Texas, 1998	Pioneer Mill Company Hawaii, 1999	New Iberia Sugar Cooperative Louisiana, 2005
Holly Sugar, Tracy California, 2000	Talisman Sugar Company Florida, 1999	Jeanerette Sugar Company Louisiana, 2005
Holly Sugar, Woodland California, 2000	Amfac Sugar, Kekaha Hawaii, 2000	U.S. Sugar, Bryant Florida, 2005*
Western Sugar, Bayard Nebraska, 2002	Amfac Sugar, Lihue Hawaii, 2000	
Pacific Northwest, Moses Lake Washington, 2003		
	CANE REFINERY CLOSURES	
Amalgamated Sugar, Nyssa Oregon, 2005**	**Aiea, C & H Hawaii, 1996**	**Sugarland, Imperial Texas, 2003**
Michigan Sugar, Carrollton Michigan, 2005**	**Everglades, Imperial Florida, 1999**	**Brooklyn, Domino New York, 2004**

Note: In 2005, 24 beet factories, 21 raw cane mills, and 7 cane refineries remain in operation.
*Phasing out operations, 2005-07. **Suspended operations for 2005.

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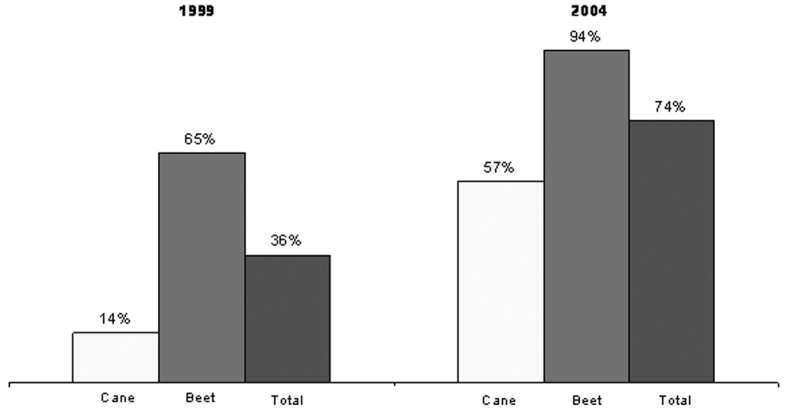
Chart 10

U.S. Refined Sugar Sellers: Grower-Owned Share More Than Doubled in Five Years

(% of production capacity)



Source: Production capacity estimates from McKeany-Favell Company, Inc. American Sugar Alliance, October 2004.

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Chart 11

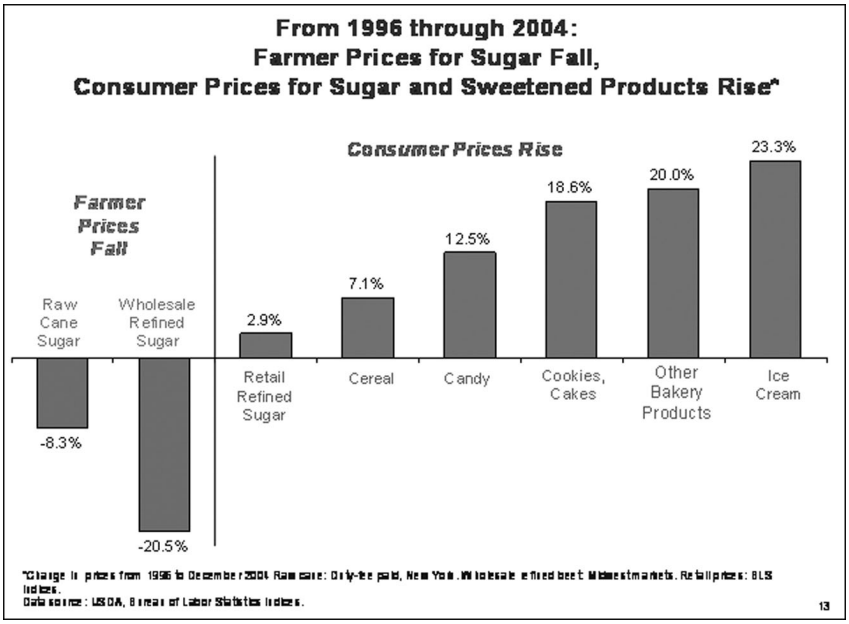

Chart 12

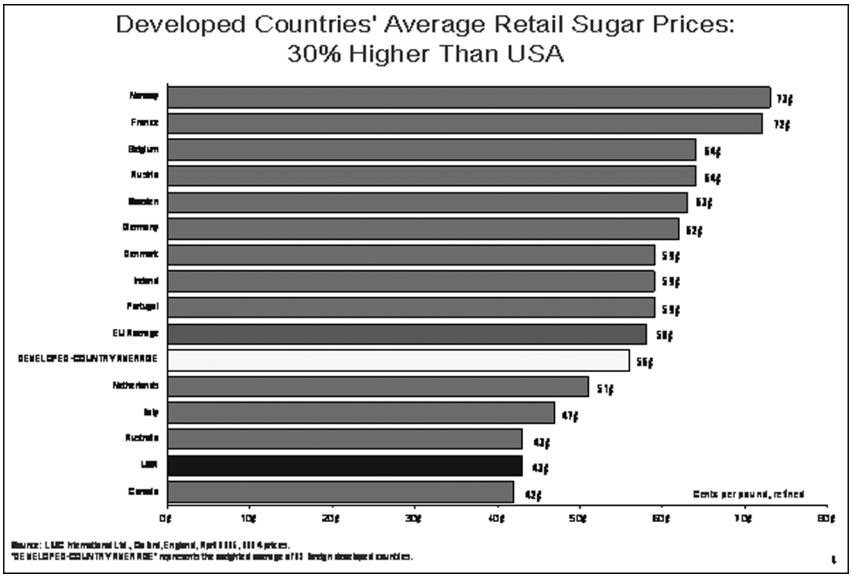

Chart 13

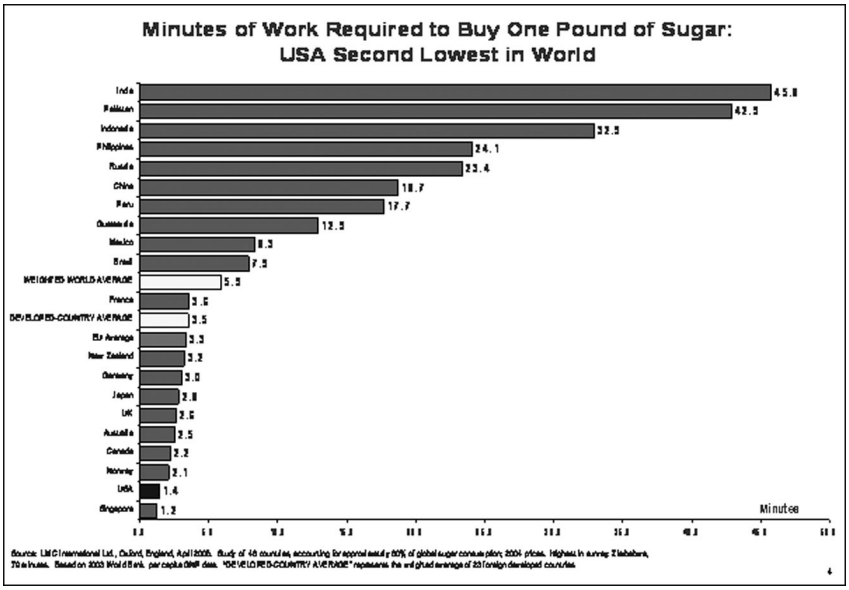

Chart 14

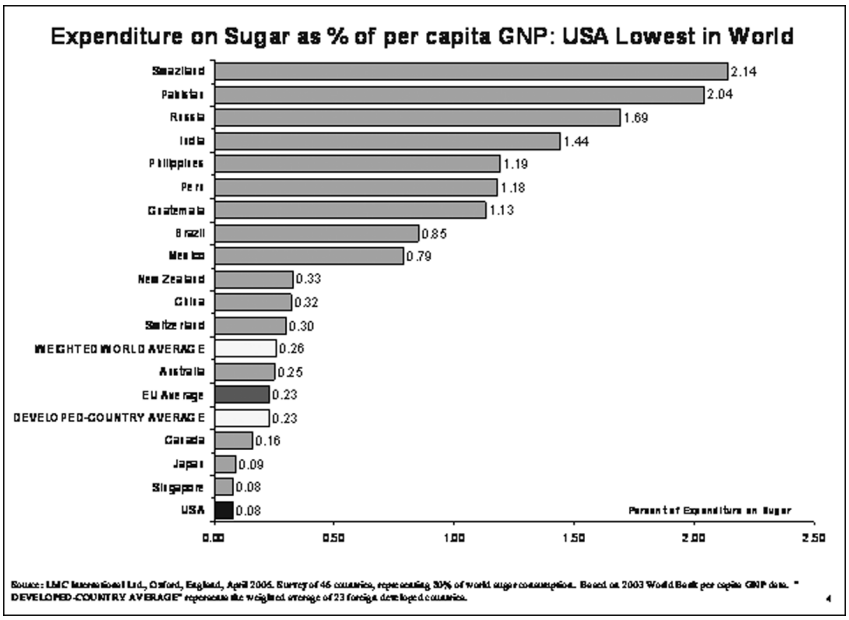

Chart 15

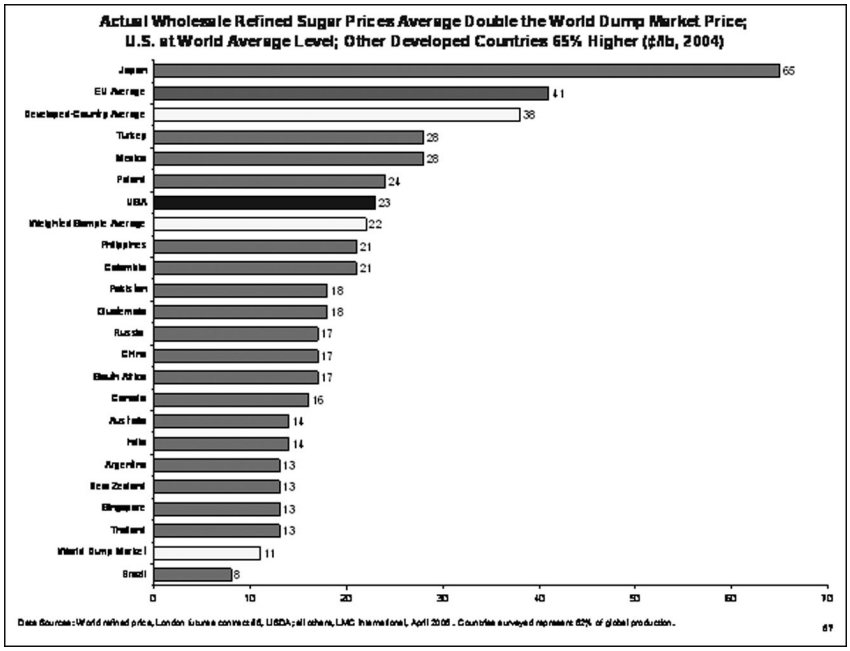

Chart 16

Candy companies don't flee America because of sugar

	U.S.	MEXICO	CANADA
Wages per hour	$14.04	$0.56	$12.50
Annual healthcare costs per worker	$2,400	$360	$605
Tax percentage	42%	9%	31%
Rent per square foot	$10.00	$4.00	$4.60
2004 wholesale sugar price per pound*	$0.23	$0.28	$0.21

Source: "North America's Confectionary Industries: Structure, Trade, and Costs and Trends in Sugar Demand," Peter Buzzanell & Associates, Inc., March 2003

*Source: "Retail and Wholesale Prices of Sugar Around the World in 2004," LMC International Ltd, April 2005

Chart 17

CAFTA & D.R.-FTA Sugar Import Access
(Metric Tons)

	2003/04 quota	Increase year 1	Increase year 15*	Total year 15	Annual increase year 16 onward
Guatemala	50,546	32,000	49,820	100,366	+ 940
El Salvador	27,379	24,000	36,040	63,419	+ 680
Nicaragua	22,114	22,000	28,160	50,274	+ 440
Honduras	10,530	8,000	10,240	20,770	+ 160
Costa Rica**	15,796	13,000	16,080	31,876	+ 220
TOTAL	**126,365**	**99,000**	**140,340**	**266,705**	**2,440**
Dominican Republic	185,335	10,000	12,800	198,135	+200

*CAFTA increases of varying increments during years 2-15; total CAFTA increase is 111% of 2003/04 quota share.
** Increase includes Costa Rica's additional TRQ of 2,000 mt of organic sugar.

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Chart 18

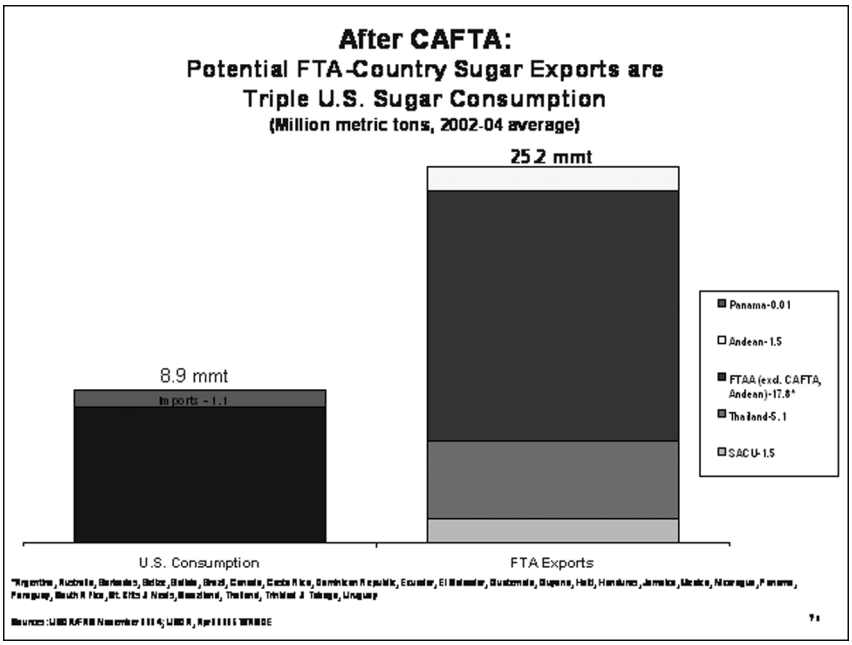


Chart 19

Potential U.S. Free Trade Agreement (FTA) Countries/Regions: Sugar Production and Exports, 2002/03 - 2004/05 Average, and Share of U.S. Raw Sugar Import Quota, 2004/05

Country	Production	Exports	U.S. TRQ Allocation
		-Metric Tons-	
North America			
Mexico	5,416,000	34,000	7,258
Canada	87,000	65,000	---
Caribbean[1]			
Barbados	40,000	40,000	7,371
Dominican Republic	503,000	186,000	185,335
Haiti	10,000	0	7,258
Jamaica	158,000	119,000	11,583
St.Kitts & Nevis	20,000	18,000	7,258
Trinidad & Tobago	83,000	55,000	7,371
Central America			
Costa Rica	393,000	167,000	15,796
El Salvador	497,000	275,000	27,379
Guatemala	1,970,000	1,368,000	50,546
Honduras	347,000	53,000	10,530
Nicaragua	370,000	194,000	22,114
CAFTA Total	**3,577,000**	**2,057,000**	**126,365**
Belize	109,000	96,000	11,583
Panama	172,000	45,000	30,538
North America Total[2]	10,175,000	2,715,000	401,920
South America			
Bolivia	390,000	135,000	8,424
Colombia	2,637,000	1,292,000	25,273
Ecuador	497,000	69,000	11,583
Peru	941,000	40,000	43,175
Andean Total	**4,465,000**	**1,536,000**	**88,455**
Argentina	1,772,000	255,000	45,281
Brazil	26,193,000	15,780,000	152,691
Guyana	324,000	300,000	12,636
Paraguay	118,000	20,000	7,258
Uruguay	142,000	27,000	7,258
South America Total	33,014,000	17,918,000	313,579
FTAA Total[2]	**43,189,000**	**20,633,000**	**715,499**
% of *U.S. TRQ*			**64.0%**
South Africa	2,621,000	1,222,000	24,221
Swaziland	583,000	263,000	16,850
SACU Total	**3,204,000**	**1,485,000**	**41,071**
Thailand	**6,939,000**	**5,080,000**	**14,743**
FTA Total[3]	**53,332,000**	**27,198,000**	**771,313**
% of *U.S. TRQ*			**69.0%**

1/ Excludes Cuba. 2/ North and South America, excluding United States and Cuba; includes CAFTA countries and Dominican Republic. 3/ FTA total less CAFTA and D.R.: production, 49.252 mmt; exports, 24.995 mmt.
Data Source: USDA/FAS, November 2004.

Mr. SHAW. Thank you for your testimony. Mr. Ferrara.

STATEMENT OF SALVATORE FERRARA, PRESIDENT, FERRARA PAN CANDY COMPANY, CHICAGO, ILLINOIS, ON BEHALF OF THE NATIONAL CONFECTIONERS ASSOCIATION

Mr. FERRARA. Chairman Shaw, Members, I am Salvatore Ferrara, II, President and CEO of Ferrara Pan Candy Co., headquartered in Chicago, Illinois. I am here today to ask Congress to approve the FTA between the Dominican Republic and the five Central American countries. This agreement deserves Congress' strongest support because it will deliver solid economic benefits to the United States. Almost $3 billion in increased export sales to the region are projected because it upholds the important principle that trade agreements negotiated by our country should be comprehensive. No product or sector should be excluded if we are to get the best deal for the American people. My grandfather came here from Italy in the late 1800s and started Ferrara Pan Candy Co. in Chicago in 1908. It remains family-owned today. We manufacture approximately 200 popular sugar and chocolate confectionery products. We employ approximately 1,000 people worldwide, 500 now in the United States, and generate employment for an estimated 1,500 additional people in the service and distribution sectors within the Chicago area. The greatest contemporary challenge in my industry has been the introduction of the U.S. Sugar Program in the eighties and the consequent increase in price of sugar, our principal raw material, to levels double and triple world prices.

It is estimated that as many as 26,500 jobs have been sacrificed in the food processing sector since 1997 owing to the high price of sugar imposed by the program. The New York Times reported that confectionery employment in Chicago alone declined from 13,600 in 1995 to 7,000 in 2004. My company went from about 1,000 U.S. employees to under 500 during this same time period. The loss of food processing and confectionery manufacturing does not happen in isolation. It has significant adverse consequences for U.S. farmers who supply key ingredients to the industry such as sugar, corn, dairy, peanuts and almonds, and for the industrial and service sectors that support the industry.

Congress and the Administration play an important role in keeping American business competitive. Trade agreements such as DR–CAFTA create millions of new customers. They remove tariffs and non-tariff barriers to U.S. exports, and in some cases create market access where none existed before. These agreements can also help lowerer the cost of raw materials available to domestic manufacturers. In this agreement, some 80 percent of the tariffs on U.S. exports of consumer and industrial goods, as well as 50 percent of the tariffs on agricultural exports to the region, will go to zero immediately. When DR–CAFTA is fully implemented, U.S. processed food exports to the region could increase by as much as 84 percent, with an estimated value of $662 million. Furthermore, according to a study just released by the National Association of Manufacturers, the elimination of tariffs will not only increase overall exports to the region, but will help U.S. exports remain competitive against China and other low cost Asian providers by eliminating tariffs on U.S. origin goods. As Congress is keenly aware, China is a major

challenger to the global and regional trade areas, including the Americas. If DR–CAFTA fails, other countries will very likely step up to the plate and negotiate agreements with these Central American countries.

Some would have you reject this agreement because a very small quantity of sugar is included, equivalent to 1 percent of the U.S. supply. They claim plunging prices will cause irrevocable damage. According to the ITC, the impact on domestic sugar would be less than one-quarter of one cent. The facts are that the U.S. sugar producers will not be harmed, and U.S. agriculture and manufacturing will benefit substantially. Sacrificing the American confectionery and food manufacturing industry in order to exempt one commodity is not a sustainable strategy, and will not result in increasing manufacturing jobs in America.

There are FTAs in the process of negotiation, and each one is an opportunity. The ongoing WTO negotiations will be our principal opportunity to open markets globally and address foreign governments' subsidy practices, which disadvantage U.S. farm exports. The DR–CAFTA is the first test of whether or not the United States is prepared to deal with everything on the table, and, in doing so, get the best results for the American economy. I urge you to not let us fail this test and to enact the DR–CAFTA agreement without any changes to the sugar provision. Thank you.

[The prepared statement of Mr. Ferrara follows:]

Statement of Sal Ferrara, President, Ferrara Pan Candy Company, Chicago, IL, on behalf of the National Confectioners Association

Chairman Thomas, Ranking Member Rangel, Members of the Committee.

I am Salvatore Ferrara, President of Ferrara Pan Candy Company based in Chicago, Illinois. I am here to represent my own Company and the United States confectionery industry; and to stand with the many companies and associations from business and agriculture who are asking Congress to approve the free trade agreement with the Dominican Republic and the five Central American countries. This Agreement deserves Congress's strong support because it will deliver solid economic benefits to the United States—almost $3 billion in increased export sales to the region are projected—and because it upholds the important principle that trade agreements negotiated by our country should be comprehensive. No product or sector should be excluded if we are to get the best deal for America.

My grandfather came from Italy to the United States in the late 1800's and started the Ferrara Pan Candy Company in Chicago in 1908. It remains family owned today. We manufacture approximately 200 popular sugar and chocolate confectionery products. We employ 1,000 people total worldwide—500 now in the U.S.—and generate employment for an estimated 1,500 additional people in the services and distribution sectors in the Chicago area.

Survival has not been easy. The greatest contemporary challenge has been the introduction of the U.S. sugar program in the 1980's and consequent increase in the price of sugar—our principle raw material—to levels double and triple the world price. It is difficult to remain competitive either domestically or globally under this circumstance. It is estimated that as many as 26,500 jobs have been sacrificed in the food processing sector since 1997 owing to the high price of sugar imposed by the program. The New York Times reported that confectionery employment in Chicago alone declined from 13,600 in 1995 to 7,000 in 2004. My own company went from over a thousand U.S. employees to under 500 during that same time period. The loss of food processing and confectionery manufacturing does not happen in isolation. It has significant adverse consequences for U.S. farmers who supply key ingredients to the industry such as sugar, corn, dairy, peanuts, and almonds; and for the industrial and service sectors that support the industry.

I have been involved in business all my life and fully understand the challenge of staying competitive. In the long term it means better products, better service, and keen attention to delivering value to the consumer. However, Congress and the Administration also play an important role in keeping American business competitive.

Trade agreements such as CAFTA–DR create millions of new customers. They remove tariff and non-tariff barriers to U.S. exports and in some cases create market access where none existed before. These agreements can also help make lower cost raw materials available to domestic manufacturers, including in the food industry, and this is vitally important in a price competitive global environment.

In this Agreement some 80% of the tariffs on U.S. exports of consumer and industrial goods, and 50% of the tariffs on agricultural exports to the region will go to zero immediately. The elimination of tariffs is important to business because high tariffs make products such as processed foods and confectionery unaffordable for consumers especially in developing countries. When the CAFTA–DR is fully implemented, U.S. processed food exports to the region could increase by as much as 84% with an estimated value of $662 million.

Furthermore, according to a study just released by the National Association of Manufacturers, the elimination of tariffs will not only increase overall exports to the region but will help U.S. exports remain competitive against China and other low cost Asian producers by eliminating tariffs on U.S. origin goods. As Congress is keenly aware, China is a major challenger in the global and regional trade arenas including the Americas.

The process of negotiating these agreements also provides a rare opportunity, and critical leverage, for eliminating non-tariff barriers in foreign markets. Non-tariff barriers are more subtle than tariffs but in some cases more damaging to U.S. exports. Trade agreements have shown themselves to be the most effective tools we have to dismantle long standing barriers.

Some would have you reject this agreement because a very small quantity of sugar is included equivalent to about 1% of the U.S. supply. They claim plunging prices and irrevocable damage. According to the International Trade Commission, the impact on the domestic sugar price would be less than one quarter of one cent. The facts are that U.S. sugar producers will not be harmed and U.S. agriculture and manufacturing will benefit substantially.

I respectfully encourage an offensive rather than defensive approach to all trade agreements. One that focuses on opening new markets, creating new customers, and helping make our domestic industries more competitive. Sacrificing the American confectionery and food manufacturing industry in order to exempt one commodity is not a sustainable strategy and will not result in increased manufacturing jobs in America.

There are more free trade agreements in the process of negotiation and each one is an opportunity. The ongoing World Trade Organization negotiations will be our principal opportunity to open markets globally and address foreign government subsidy practices which disadvantage U.S. farm exports. The CAFTA–DR is the first test of whether or not the United States is prepared to deal with everything on the table and in doing so get the best results for the overall U.S. economy. I urge you not to let us fail this test and to enact the CAFTA–DR Agreement without any changes to the sugar provision.

Thank you.

Mr. SHAW. Thank you. Mr. Shuster.

STATEMENT OF GEORGE SHUSTER, CHIEF EXECUTIVE OFFICER, CRANSTON PRINT WORKS, CRANSTON, RHODE ISLAND, AND CO-CHAIRMAN, AMERICAN MANUFACTURING TRADE ACTION COALITION

Mr. SHUSTER. Thank you. I am the CEO of Cranston Print Works, the Nation's oldest textile company. I am also Co-Chair of AMTAC. The American Manufacturing Trade Action Coalition was founded by domestic manufacturers who are committed to manufacturing here in the United States. We strongly opposes DR–CAFTA because it replicates and even worsens the flawed trade policy model of NAFTA. In fact, 85 percent of the language of DR–CAFTA is the same as NAFTA, and the other 15 percent is worse. This model involves the granting of free access to the U.S. market for producers that use low wage labor and poor environmental standards to undercut U.S. domestic manufacturers. In return,

U.S. domestic manufacturers gain access to markets that are a fraction of the U.S. market. The DR–CAFTA consumers only represent 1.86 percent of the U.S. economy. The results of this failed model are predictable. The DR–CAFTA, like NAFTA, will exacerbate the huge U.S. trade deficit. The United States has gone from a $1.6 billion surplus with Mexico in 1993 to a stunning $48 billion deficit last year. In addition, DR–CAFTA is riddled with loopholes that allow duty-free treatment for assembly of component parts from every corner of the globe. The textile provisions in DR–CAFTA are even worse than the NAFTA model. These loopholes include Tariff Preference Levels (TPL), accumulation and even suspension of rule of origin requirements altogether in certain key categories.

The DR–CAFTA loopholes allow countries such as China to ship 500 to 700 million square meters of fabric for assembly in Central America that then enters the United States duty free annually. These loopholes were included despite repeated requests by a united U.S. textile industry not to do so. One hundred and forty one Members of Congress echoed this message in a letter to the President dated September 17, 2003. Astonishingly, certain proponents of this agreement argue that the U.S. textile industry needs DR–CAFTA in order to compete with China. China possesses numerous cost advantages. The combination of these assets with China's rampant use of predatory trade practices only makes China more capable of exploiting the loopholes that DR–CAFTA will give it. Thus, China is going to be one of the largest beneficiaries of the agreement, while giving up nothing in return. Even if all these loopholes were closed, a U.S.-Central American production platform will not be the magic answer. Look at Mexico. When quotas were removed for 29 textile and apparel categories in 2002, Chinese exports to the United States surged dramatically and exports from Mexico fell sharply. Despite having an FTA and land bridge with the United States, Mexico lost 75 percent of its share of the U.S. market to the Chinese in categories released from quota. Meanwhile, China's share of the U.S. market increased almost tenfold. NAFTA did nothing to stop it. Consequently, if the United States does not confront China's predatory trade practices directly, DR–CAFTA will become a moot issue as China overruns the U.S. market. That is bad for the United States and bad for Central Americans and DR–CAFTA will only exacerbate the problem. Do not be misled: Voting for DR–CAFTA is a vote for China and a vote against American manufacturing.

Some proposed solutions: first and most important, we must reverse the current trade policy, by which all the governmentally imposed conditions of trade are designed to punish U.S. exports relative to imports. The average U.S. tariff is 1.6 percent, hardly protectionist, but our exports face an average of 40 percent. This distortion is replicated in all the other governmentally imposed conditions of trade, whether non-tariff barriers, regulation, subsidies, State sponsorship, currency manipulation, tax policy and so on. The cumulative impact of these components of our trade policy is devastating. It all goes back to the basic Econ-101 guns and butter lecture. If society taxes butter at 40 percent and guns at 1.6, a misallocation of societal resources will result; too many guns, not

enough butter. So, our enormous trade deficit is no surprise. To those who claim "it is the inevitable result of globalization," I say, no, no, no! It is a self-inflicted wound. U.S. trade policy is not free trade, which is a two-way concept. It is, rather, import maximization, and DR–CAFTA is yet another way to make sure we have more imports.

Second, the United States should focus only on trade agreements with countries that actually produce finished U.S. goods, such as Great Britain or Italy. Third, the United States must insist that all future trade agreements share the benefits only between the contracting parties and not give any more back-door avenues to the U.S. market through sieve-like trade deals. Fourth, the United States must tackle the China problem head on. My written testimony summarizes some of the necessary steps. Fifth, Congress must assert its constitutional authority over trade policy. Instead of embracing this responsibility, Congress has severely diluted it by passing laws designed to place trade policy in the hands of the executive branch. Finally, Congress should require an independent trade impact study prior to the consideration of all proposed trade legislation. Such a study should produce a trade deficit impact statement so that Congress would know in advance whether the proposed trade deal would lessen the strayed deficit or make it worse. Thank you.

[The prepared statement of Mr. Shuster follows:]

Statement of George Shuster, Chief Executive Officer, Cranston Print Works, Cranston, RI, and Co-Chairman, American Manufacturing Trade Action Coalition

Mr. Chairman and Members of the House Ways & Means committee:

Thank you for this opportunity to testify at this important hearing. My name is George Shuster, and I am the Chief Executive Officer of Cranston Print Works, located in Cranston, Rhode Island. Cranston Print Works is the oldest textile company in the United States, originally established in 1824 as cotton printing plant founded by Rhode Island governor, William Sprague. Today, Cranston Print Works is a high quality printer of all types of fabrics with various end-uses. We employ the most technologically advanced printing production techniques, which have earned Cranston Print Works the reputation of being one of the finest fabric printing companies in the world.

In addition, I serve as a Co-Chairman of the American Manufacturing Trade Action Coalition (AMTAC). AMTAC is a trade association founded by domestic manufacturers who are committed to manufacturing here in the United States. Our objective is to seek the establishment of trade policy and other measures designed to stabilize the U.S. industrial base and thus preserve and create American manufacturing jobs. AMTAC represents a wide range of industrial sectors including, tool and die, chemical, furniture, mold makers, metal products, packaging products, corrugated containers, lumber and luggage producers. Additionally, a significant component of AMTAC's membership consists of producers from the yarn, fabric, dyeing and finishing, and apparel sectors.

AMTAC strongly opposes the Central American Free Trade Agreement (CAFTA). Our opposition is based on the view that CAFTA replicates the flawed trade policy model of the NAFTA, Singapore, Chile and Morocco trade agreements. This model involves the granting of free access to the U.S. market for producers that use pennies-an-hour wages, low labor standards, and low environmental standards to undercut U.S. domestic manufacturers. In return, U.S. domestic manufacturers gain access to markets that are a fraction of the value of the U.S. market. CAFTA consumers, for example, only represent 1.86 percent of the U.S. economy and have virtually no ability to purchase finished goods made in countries that pay high wages and have strong environmental, labor, safety, and health standards.

The results of this failed model are clearly predictable. CAFTA will exacerbate the already astronomical U.S. trade deficit. One need only study the impact of NAFTA, which is virtually identical to CAFTA, to determine the outcome.

In the early 1990's, NAFTA was sold to the American public as a vehicle to substantially increase the minor U.S. trade surplus with Mexico which would in turn help to sustain and create millions of high-paying manufacturing jobs in our country. Assertions like the bold claim made below by the Institute for International Economics in October 1993 were common:

". . . with NAFTA, U.S. export will continue to outstrip Mexican exports to the United States, leading to a U.S. trade surplus with Mexico of about $7 billion annually by 1995 . . . rising to $9 billion to $2 billion between the years 200 and 2010."

Mr. Chairman, eleven years after adoption of NAFTA the facts demonstrate that nothing could be further from the truth. The U.S. has gone from a $1.6 billion surplus with Mexico in 1993 to a stunning $48 billion deficit last year. From surpluses before NAFTA, we have gone to continuous deficits since. Over this period, hundreds of U.S. factories have closed and relocated south of the border in order to take advantage of the low production costs in Mexico, while still enjoying free access to the valuable U.S. market. Even more troubling, the U.S. department of Labor reports that 1.8 million workers have filed for Trade Adjustment Assistance as result of NAFTA.

Today, proponents of CAFTA are purveying the same snake oil. The U.S. Chamber of Commerce claims substantial economic gains from CAFTA. But in the fine print of the study, the U.S. Chamber admits that it bases it conclusions on the assumption that exports from CAFTA countries will not increase to the United States! This assumption is preposterous, as U.S. imports have increased from all countries with which we have free trade agreements.

CAFTA's main purpose is clear: make it easier for U.S. companies to outsource high-paying manufacturing and service sector jobs offshore by guaranteeing investment rights and access to the U.S. import market. In addition, CAFTA rule-of-origin requirements are riddled with loopholes that allow U.S. duty free treatment for the assembly of component parts from every corner of the globe. The textile provisions in CAFTA illustrate this point perfectly and, in fact, to that extent, are even *worse* than the NAFTA model.

CAFTA LOOPHOLES

CAFTA destroys the existing incentives that have created the system where large amounts of American yarn, fabric and components are used in the production of apparel in CAFTA countries.

It does this in two ways. First of all, CAFTA changes the "rule of origin" from what is currently in use under the existing preferential trade agreement with the region—the Caribbean Basin Trade Partnership Act (CBTPA). CBTPA requires (with one exception) the use of **American** yarn, fabric and components in order for apparel from CBTPA countries to be imported into the U.S. tax-free. This requirement is why $4.2 billion in trade has developed between American textile firms and CAFTA apparel makers. It has become the key export market for U.S textile and apparel makers. However, **CAFTA eliminates the American only requirement** and allows for American **or Central American** yarn, fabric and components to be used in garments accorded tax-free importation into the U.S. This is not only a provision for legal non-U.S. inputs, but also a tempting invitation for illegal transshipments.

In addition to changing the rule of origin, *CAFTA also contains numerous loopholes* that will benefit countries that were not parties to the negotiation and did not have to give any type of concession in order to gain the benefits conferred under the CAFTA. The most likely beneficiary of this is the Chinese textile industry.

When the Central American Free Trade Agreement (CAFTA) was being negotiated, the U.S. textile and apparel industry adopted a unified platform urging the Administration to negotiate a CAFTA with NO loopholes that would allow for non-regional yarn and fabric.

The industry sent a letter to the President on July 7, 2003 urging him to reject any loopholes that would permit foreign suppliers to benefit at the expense of domestic manufacturers. Furthermore, 141 members of Congress echoed this message in a letter to the President dated September 17, 2003. However, the U.S. government agreed to a large number of loopholes in the yarn-forward rule of origin. *These loopholes will benefit Mexican, Canadian and Asian (likely* ***Chinese****) textile businesses and their workers at the expense of workers in the United States.*

Consequently, CAFTA is riddled with loopholes that will kill U.S. jobs. The chart below outlines these loopholes and the number of U.S. factories that will likely close as a result.

Loopholes	Amount
1. Cumulation—Mexican and Canadian fabrics may be used for woven trousers (a Mexican & Canadian TPL):—also contains a growth factor that is NOT dependent on growth of U.S. exports-also allows other FTA countries to latch on	100 million square meters-could go up to 200 million square meters.
2. Non-U.S. or CAFTA yarn and fabric allowed for brassieres, woven boxers and woven nightwear	In 2004, 937 million square meters of duty-free brassieres, underwear, and nightwear entered the U.S. under CBTPA.
3. Non-U.S. or CAFTA yarn and fabric for Nicaragua apparel.	100 million square meters.
4. De minimus level raised from 7 to 10 percent	25 million square meters.
5. Retroactive duty breaks to Jan. 2004 for importers and retailers	Encourages movement from U.S. yarns and fabric to regional or foreign yarns and fabric in 2004 and beyond.
6. Certain fabrics—pocketings, waistbands, interlinings and trim can be sourced form any country.	Eliminates incentive to use U.S. pocketing and other components. In 2004, 175 million square meters of these components were used under CBTPA.
Total damaged caused by loopholes/side deals	**Initial impact: 500–700+ million square meters**.

Especially noteworthy is the second loophole listed above which would allow **Chinese** and other third-party yarn and fabric for brassieres, woven boxer shorts and woven nightwear. *This renders useless the special China textile safeguard that the Administration imposed last year on these very products and is considering re-imposing this year!* Thus **Chinese** yarns and fabrics may legally displace U.S. yarns and fabrics in the production of garments in the CAFTA countries and those garments can still be imported into the U.S. duty-free!

To summarize, some 500 to 700 million square meters equivalent of yarn, fabric and components can be sourced from countries outside the CAFTA—U.S. region. Therefore, non-signatory countries like China gain duty-free access to the American market without giving up a reciprocal benefit. It will also mean lost contracts for U.S. businesses, closure of at least 10–15 U.S. textile facilities in the near term, and the loss of thousands of American jobs.

China and CAFTA

Certain proponents of this agreement argue that the U.S. textile industry needs CAFTA in order to compete with China. In other words, the only way to prevent a monopolization of the U.S. market by the onslaught of Chinese textile imports is to marry it with low-wage production platforms like those in the CAFTA countries. This will provide a "regional bulwark" against the Chinese.

I wish this were the case and that counteracting China was as simple as passing CAFTA. Unfortunately, believing that CAFTA will help this hemisphere combat China requires one to ignore the lessons of the past as well as current realities of trade.

In the previous section of my testimony, I clearly identified the various loopholes included in the agreement that enable China to ship components to the CAFTA countries for assembly. It is illogical to argue that CAFTA will keep China in check when China is going to be one of the largest beneficiaries of the agreement while giving up nothing in return.

But even if all these loopholes were closed, it is still nonsensical to purport that some formulation of a U.S./Central American production platform will be the magic combination of technology and low-wages to compete with the Chinese juggernaut.

Obviously, China possesses numerous advantages such as low labor costs, a large workforce, natural resources, etc. However, combining these inherent advantages with its rampant use of predatory trade practices is what really makes China unstoppable.

In its 2004 Report to Congress, the U.S.-China Economic and Security Review Commission stated:

China is continuing to attract massive levels of foreign direct investment (FDI), including $57 billion in 2003. Its policies to attract FDI have been supplemented by industrial policies aimed at developing national productive capacity in selected "pillar" industries. These policies support Chinese corporations through a wide range of measures that include tariffs, limitations on access to domestic marketing channels, requirements for technology transfer, government selection of partners for major international joint ventures, preferential loans from state banks, subsidized credit, privileged access to listings on national and international stock markets, discriminatory tax relief, privileged access to land, and direct support for R&D from the government budget. Such policies give Chinese industry an unfair competitive advantage, thereby contributing to erosion of the U.S. manufacturing base. Many of these policies are not permitted under World Trade Organization (WTO) and U.S. trade rules.[1]

We have already seen that China's absolute advantages outweigh preferential trading arrangements and close proximity once before with Mexico and NAFTA. We do not have to speculate about this.

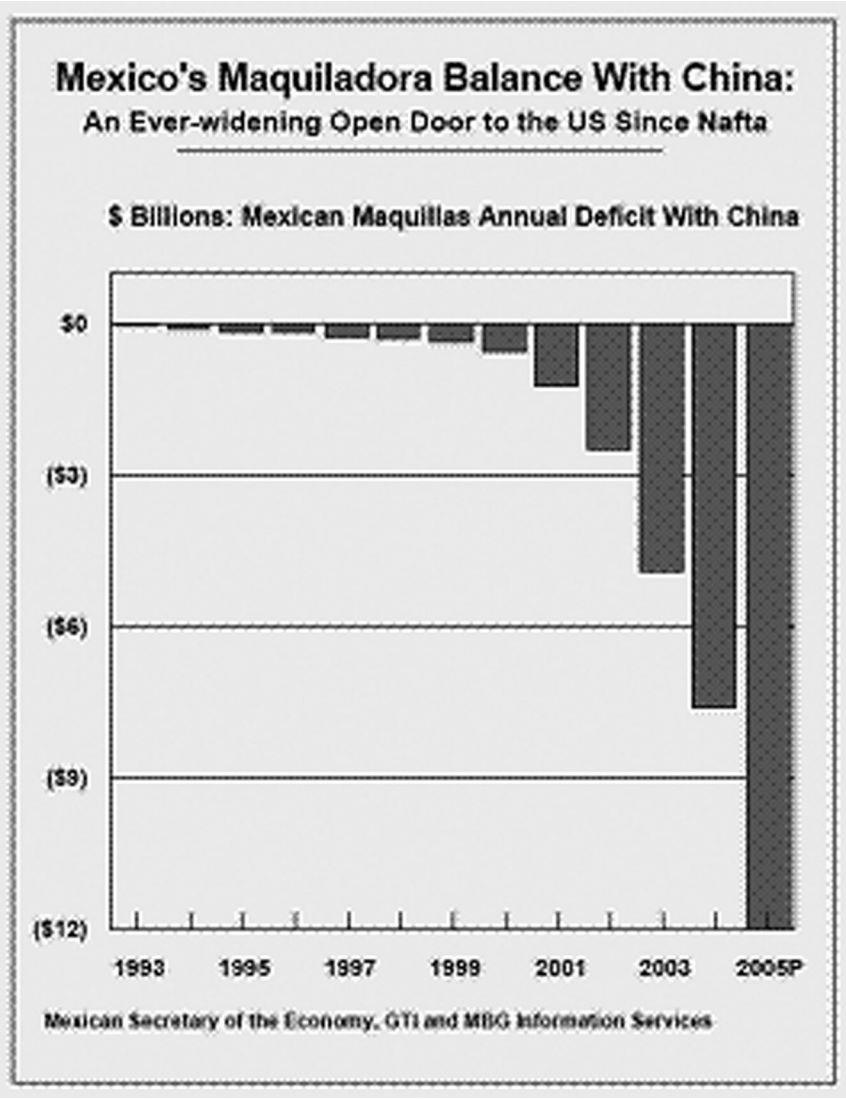
When quotas were removed under the Uruguay Round agreement for 29 textile and apparel categories in 2002, Chinese exports to the United States surged dramatically, and exports from Mexico fell sharply.

Exports from Mexico to the U.S. in these de-controlled categories have fallen by 45 million square meters over the last three years, with Mexican exports dropping from 85 million square meters to 40 million square meters. Mexican market share declined from 8 percent in 2001 to 2 percent in Nov. 2004. At the same time, China moved from a ten percent share to a 73 percent share.

Obviously, Mexico has a free trade agreement with the U.S. Mexico is in the position that the CAFTA countries will be in if CAFTA is approved. Yet despite having a free trade agreement and land bridge with the U.S., Mexico lost seventy-five percent of its share of the U.S. market to the Chinese in categories released from quota. China has clearly monopolized trade in those categories, and NAFTA did nothing to stop it.

Furthermore, since NAFTA, the Mexican total merchandize trade deficit with China has gone from $342 million in 1993, the year NAFTA was passed, to $14 billion in 2004. Over the same time period the U.S. merchandize trade deficit with China went from $23 billion to $162 billion. NAFTA has functioned as a back door for Chinese goods to enter the United States, as 98% of Mexico's maquiladora exports go to the U.S., and the maquiladora trade balance with China has gone from roughly even in 1993 to a $12 billion deficit in 2005.

[1] 2004 Report to Congress of the U.S.-China Economic and Security Review Commission, June 2004. The report is available online at http://www.uscc.gov/researchreports/2004/04annual.report.pdf.



NAFTA has left Mexico and the U.S. defenseless against China's massive economic growth. Why would CAFTA, a free trade agreement modeled after NAFTA, lead to a reversal of this trend?

So what is the answer to China?

In order to realistically address the China crisis, the U.S. must deal with China's pervasive and predatory trade practices directly. China's under valuation of its currency by approximately 40%, the $45 billion in non-performing loans it forgave in January of 2004, its subsidy in the form of lax intellectual property rights enforcement, and the countless other ways it subsidizes its industries need real solutions.

Consequently, if the U.S. does not confront China directly, CAFTA will become a moot issue as China overruns the U.S. market, taking business away from the U.S. and Central American industries. Allowing China to monopolize the U.S. market is bad for the U.S. and bad for Central Americans, and CAFTA will only exacerbate the problem.

Do not be misled. Voting FOR CAFTA is a vote FOR CHINA and a vote AGAINST American manufacturing!

CONCLUSION

In conclusion, it is clear that CAFTA replicates the flawed policy model that has lead to millions of job losses, crippled key manufacturing sectors such as the U.S. textile industry, and badly damaged the U.S. economy.

Instead of perpetuating this flawed model, Congress should insist on policies that prevent the outsourcing of high-paying jobs, the destruction of America's industrial base and the exporting of America's strongest long-term wealth creating assets.

In that regard, I would propose the following steps:

In order to get our exploding trade deficit under control, we should only focus on trade agreements with countries that can actually purchase finished U.S. goods, such as Great Britain or Italy. Accordingly, Congress should defeat CAFTA and any other proposed free trade agreements with countries that will simply serve as low cost export platforms to the U.S. market.

Second, the U.S. must insist that all future trade agreements share the benefits only between the contracting parties. This means precluding the inclusion of loopholes like TPLs, single transformation, and exemptions for so called "non-essential" fabrics or components. China's manufacturing sector already has enough advantages with the backing of its government's massive illegal subsidy schemes. Congress does not need to give China any more back-door avenues to the U.S. market through sieve-like trade deals such as CAFTA.

Third, the U.S. must tackle the China problem head on. Pass legislation making it easier to file anti-dumping and countervailing duty lawsuits against non-market economies. Halt any efforts to kill the Byrd Amendment. Pass legislation that directs the U.S. government to hire more officials to monitor and litigate violations of trade agreements and intellectual property agreements. Stop the exportation of critical military industrial sectors like electronics, soft ware production, textiles and machine tooling. Put pressure on the Administration to impose safeguards on Chinese imports of textile and apparel products.

Fourth, Congress must reassert its authority over trade policy. The Founding Fathers gave Congress the sole authority to regulate foreign trade for a reason. Congress, and specifically the U.S. House of Representatives is the branch of government designed to be closest, and therefore most responsive, to the people. Instead of embracing this responsibility, Congress has severely diluted it by passing Trade Promotion Authority (TPA), Permanent Normal Trade Relations (PNTR) status for China and other laws designed to consolidate authority to place trade policy in the hands of the Executive Branch. As a result, on critical issues such as CAFTA, the legislation cannot be amended and it is considered under an expedited timeframe that no other legislative policy initiatives enjoy. This leverage must be reversed. Congress should withdraw both TPA and PNTR for China and reassert its rightful authority over the Executive Branch in trade policy matters.

Finally, Congress should require an independent trade impact study prior to the consideration of all proposed trade agreements and major trade bills. Do we expect the Executive Branch, which authored the concept and the text of CAFTA to give an objective view of its projected benefits? Congress must have an independent source of information to determine basic issues such as whether a proposed agreement is going to benefit U.S. producers or whether it will increase or diminish the trade deficit.

While these are not all of the changes needed to rectify the flawed trade policies responsible for America our nearly $4 trillion trade deficit since 1990, they do represent a good start.

Thank you again for this opportunity to testify today and for your consideration of my views.

Mr. SHAW. Thank you. Mr. Ouellette.

STATEMENT OF JACK OUELLETTE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TEXTILE COMPANY, PITTSBURGH, PENNSYLVANIA, AND MEMBER OF THE BOARD, AMERICAN APPAREL FOOTWEAR ASSOCIATION

Mr. OUELLETTE. Mr. Shaw and Members of the Committee, thank you for your endurance today. My name is Jack Ouellette.

I am President and CEO of American Textile Co., and I am also a Board member of the American Apparel and Footwear Association. Our company is located in Pittsburgh, Pennsylvania, and we sell mattress protectors, pillow protectors and pillows to the largest retailers in this country. I would like to talk to you about two points today, the first one being how we were able to create U.S. jobs and still continue sourcing in El Salvador; and, second, to talk about why DR–CAFTA is important to American textile companies and companies like ours.

A little bit of background. We are an 80-year-old company. Seventy of those years we were a manufacturer in Pittsburgh and we wanted to remain a manufacturer. However, in the late eighties our market share began to erode, so we decided to really emphasize products crafted with pride in the USA. Unfortunately, our buyers and the consumers didn't respond, our prices were too high, so in the mid-nineties we started to look beyond Pittsburgh for another solution and we decided to have our cutting and sewing done in El Salvador. The results have been remarkable. Today, we are the largest supplier of mattress covers and pillow covers in this country. Our company is growing again. We have replaced sewing jobs with higher paying jobs in areas such as product development, warehouse management, production planning and marketing and sales analysis. Here is a great visible byproduct of what has happened: We built a $7 million office and distribution center on top of an old steel mill, a brownfield site. The land was owned by Andrew Carnegie, who conveyed it to J.P. Morgan. We are making it productive land again. We are also part of the economic redevelopment of that particular community.

Why is DR–CAFTA important to American textile? We prefer to manufacture in the USA. It is just a heck of a lot easier, but we also have to be very brutally honest with ourselves, and that model doesn't work anymore. We have a strong desire to remain in the Americas, and DR–CAFTA helps in several ways. First, duties on our products would be eliminated—and, by the way, we still pay duties on our products coming up from Central America. Our prices will be more competitive, and we are going to be able to keep our advantage of speed to market because of Central America's proximity to Pittsburgh. So, I ask, what happens if DR–CAFTA passes? How will we respond? We will buy more fabric made in the United States, or made from U.S. yarns, and that will preserve jobs in Alabama and North Carolina, for example. We will continue to do business in Central America and the duty savings that we realize will be re-invested in our business, and here is how that will work. We will take U.S. fabric, or fabric made from U.S. yarns, have them cut and sewn into pillow shells. Those pillow shells will be sent back up to the United States where they will be filled, sewn, packaged, warehoused and ultimately shipped from our Pittsburgh location. We have already invested half a million dollars in that effort, and we would like to see our Central American partners grow with us in that regard.

If DR–CAFTA does not pass, here is what we see. We will gradually move away from Central America. We will source fabrics, regardless of their origin. We know that there is India, Pakistan, China as possible resources. The infrastructure we created in Cen-

tral America will decline; that is, weavers, packagers, cutters, sewers. Those jobs will not come back to the United States; they are just going to go to other venues. I would like to ask for your support of DR–CAFTA for three primary reasons. The first one, it can preserve and create jobs in the United States. Second, it makes the Americas more globally competitive. Finally, it promotes democracy and economic development in countries just south of our border, and I think that is a very positive thing for our country. Thank you.

[The prepared statement of Mr. Ouellette follows:]

Statement of Jack Ouellette, President and Chief Executive Officer, American Textile Company, Pittsburgh, PA, and member of the Board, American Apparel & Footwear Association

Mr. Chairman, members of the Committee. Thank you for the opportunity to talk with you today. My name is Jack Ouellette, President and CEO of American Textile Company and a member of the Board of the American Apparel & Footwear Association (AAFA). Our textile business is located in the heart of the rust belt in Pittsburgh, PA. We supply mattress covers, pillow covers and pillows to the most of this country's largest retailers.

My comments will focus on two ideas:

1. How contracting in Central America has created jobs in the U.S.
2. Why CAFTA–DR is important to the future of our company and others like ours.

BACKGROUND

American Textile is an 80 year old, privately held business. The first 70 years of our history were devoted to cutting, sewing and packaging textile bedding products. One of our big initiatives in the 1980's was to emphasize products that were "Crafted With Pride in the USA". Neither our customers nor consumers responded positively. Our prices were too high and our products were viewed as a commodity. Others could produce similar products more cheaply. Our market share began to erode. In the early 1990's we forced ourselves to look beyond Pittsburgh and to adapt to changes in the world economy. We embarked on three important initiatives that saved our business from obscurity:

1. We began importing vinyl mattress covers and pillow covers from China, the worlds low cost producer of vinyl sheeting.
2. We began sewing cloth covers in El Salvador to take advantage of labor rates that were globally competitive in a country only a 4-day boat trip from the U.S.
3. We partnered with 3M Company to utilize a high tech fabric that we made into unique allergen barrier bedding.

A SUCCESS STORY

The results have been remarkable and representative of what is good for this country.

1. Today we are the largest supplier of mattress and pillow covers to U.S. retailers.
2. We are the largest U.S. importer of vinyl bedding products
3. Our company revenues have increased on average 11% per year over the last 5 years
4. U.S. sewing jobs have been replaced with higher paying U.S. jobs such as:
   a. product development
   b. computer programming
   c. marketing
   d. production planning
   e. purchasing
   f. sales analysis
   g. manufacturing controls
   h. warehouse management
5. Two years ago we built a new $7 million headquarters and distribution center just outside of Pittsburgh. And the new construction has a unique history.
   a. It is built on top of an old U.S. Steel plant.
   b. The first land owner on the deed was Andrew Carnegie who conveyed the property to JP Morgan.

c. We are part of the revitalization of brown field sites in Pittsburgh.
d. We are contributing to the economic redevelopment of an area once depressed from the loss of steel making jobs.

WHY IS CAFTA IMPORTANT?

We would prefer manufacturing in the USA because it is easier. However, being brutally honest with ourselves, we realize that sewing jobs will not come back to this country. We are part of a much larger global economy, one in which the government becomes our partner in making trade agreements. We are obviously not opposed to trading with China. But we do have a strong desire to keep as much trade in this hemisphere. CAFTA helps us accomplish that goal in several ways:

1. Duties ranging from 7% to 12 % will be eliminated
2 Our prices will be more competitive with those from Asia
3. We will keep our speed to market advantage vs.Asia
4. Our investments in this hemisphere will be maintained.

WHAT DOES CAFTA MEAN FOR THE TEXTILE AND APPAREL INDUSTRY IN GENERAL?

U.S. textile companies are already dependent upon CAFTA countries. In 2004, 25% of all U.S. fabric exports and 40% of all U.S. yarn exports went to CAFTA countries. Between 1999 and 2004, U.S. yarns and fabric exports to the region grew by $2 billion—accounting for nearly all of the $2.4 billion U.S. yarn and fabric export growth to all markets.

CAFTA creates fresh incentives to use U.S. yarn and U.S. fabric because the existing program will be made:

1. Permanent.
2. Reciprocal
3. Broader (to cover products such as the ones we make)
4. More flexible
5. Simpler.

WHAT WILL WE DO IF CAFTA PASSES?

1. We will buy more U.S. fabric made with U.S. yarns because the agreement incentivizes us to do so.
   a. his creates jobs for our textile suppliers in Alabama and North Carolina, and elsewhere.
2. Our business will grow in the U.S. and in Central America.
   a. This preserves and grows job opportunities in both areas.
3. We will reinvest duty savings into our latest initiative: making bed pillows in the U.S. Here is how that will work:
   a. Pillows are too expensive to import from Asia.
   b. We have already invested $500,000 in pillow making equipment.
   c. Pillow shells will be made in El Salvador generally from fabrics made from U.S. yarns.
   d. Pillows will be made in, and shipped from, Pittsburgh.
   e. Pillow sewing, filling, packaging and machine maintenance jobs will be created in the U.S.

WHAT WILL HAPPEN IF CAFTA DOES NOT PASS?

1. We will gradually move away from Central America and source from Asia and other low cost countries.
2. We will source fabric regardless of fabric and yarn origin.
3. Our infrastructure (investments) in Central America will begin to shrink. We purchase the following type goods and services in the United States and Central America today:
   a. Fabric woven in North Carolina and Alabama.
   b. Fabric woven in Guatemala from cotton, poly cotton and 100% polyester
   c. Zippers
   d. Thread
   e. Packaging supplies
   f. Cutting, sewing and packaging services
4. But please note, these jobs will not come back to the U.S., they will go to other parts of the world

CONCLUSION

On behalf of American Textile and other companies like ours, I ask for your support of CAFTA for the following reasons:

1. It will preserve and create jobs in the U.S.

2. Jobs will remain in this hemisphere. Strong free trade in this hemisphere creates security and social benefits of interest to the U.S.
3. In the process we will be improving the lives of thousands of people in Central America. We travel there often and have seen the difference we have made.

Mr. SHAW. Thank you. I want to thank all the panel members for their testimony. As can be expected, and as planned, we have different views, so, the study and the information that we have can be balanced coming to this Committee. Mr. Shuster, I assume you have been here all day, you were listening to the Trade Representative and his testimony, and the testimony, up until you started your testimony, was that the cut and sew shops and those in Central America that would develop as Mr. Ouellette has talked about is going to attract raw material textiles from the United States which otherwise would be coming from cut and sew shops in China, which would have no interest in buying American textiles. I am trying to close the gap between you and the information that we received from the gentlemen to your left as well as from the Trade Representative. Could you just sum up your observations there?

Mr. SHUSTER. Yes. It is a question of the net impact. The problem is that DR–CAFTA has so many loopholes in it, and if you combine that with the intelligence that I am sure that you see daily about what China is doing in the region, you realize that there is going to be a substitution effect. In other words, it is true that in the Caribbean area already, because of the CBI, there is a use of U.S. fabrics, but it is going to be less as a result of this agreement, because there weren't the loopholes before, and now there are the loopholes. That is why, basically earlier today there was some, of what I think, is somewhat sloppy math, or, let's call it plausible, but wrong conclusions. Just because tariffs will go down that doesn't mean that our textile exports will go up, because of the substitution effect. What we are going to find—we were told that NAFTA was going to be on net a major plus. It has turned out to be a major negative. So, I would be very leery of promises made in advance of these agreements. I would try to figure out what is really going to happen. I am telling you our analysis of what is going to happen is China will be the major beneficiary.

One other slight thing you should know, because it is often hidden, once you allow, as these loopholes do, fabrics from other countries to be used, it creates an incredibly different transshipment opportunity than before. In other words, China, if you say only U.S. fabric can be used, as the situation is now to get duty free treatment, it is much more difficult to hide transshipments. If you say other countries' fabric can be used, now you can allow things to start getting mixed up, and pretty soon you have developed large transshipment platforms so that China can have duty free access to the U.S. market. We are terribly afraid, in fact convinced, that is what is going to happen in fact. I hope that explains the history.

Mr. SHAW. Yes, but the history has a lot of speculation in it too, but we all speculate. We know that.

Mr. SHUSTER. Absolutely.

Mr. SHAW. Mr. Roney, I want to talk to you a little bit about sugar. I am having problems with your testimony as to the loss of

jobs. As you are aware, the agreement itself provides that the U.S. Government can buy the sugar rather than letting it come into this country. Now, the sugar that you sell, and in your testimony you said that you have an overproduction right now and there is a surplus, under the subsidy that your industry receives by way of price supports, the Federal Government has purchased a lot of sugar in the last few years, or has paid for a lot of sugar.

Mr. RONEY. No, sir.

Mr. SHAW. You have not?

Mr. RONEY. No, sir. We have been balancing the market by storing the sugar out of our own expense. The 2002 farm bill set up a no-cost policy for sugar farmers. We are deriving all of our income from the marketplace; we receive no income supports or subsidies. When we produce more sugar than the market needs, we store that at our own expense. The government is not storing that sugar.

Mr. SHAW. You haven't received any consideration for it, you say? It is still your sugar, it hasn't been purchased from you?

Mr. RONEY. We are holding about 600,000 tons off the market right now, just about 5 percent of the market, and storing that at our own expense.

Mr. SHAW. How long can you do that?

Mr. RONEY. It is expensive and it is difficult for us to do it, but what we fear with the DR–CAFTA is that an additional 100,000 tons that we need to bring in will trigger off the market allotment program that Congress set up and that 600,000 tons would then come onto the market. So, we are looking in the short run at a massive effect on our market. Of course, in the long run, the precedent this would set for all the FTAs lined up behind the DR–CAFTA would make us vulnerable to literally millions of tons of foreign sugar.

Mr. SHAW. You did mention that the ITC—and I understand the ITC determined that the worst case scenario for the domestic sugar industry is that the DR–CAFTA could cause a decrease in the price of sugar by one-fifth of one penny per pound. If sugar processors get price support loans from the government at 18 cents per pound for raw cane sugar and roughly 23 cents per pound for refined beet sugar, how can such a small drop in domestic price be so devastating to the domestic sugar industry and cause the wide unemployment that you spoke of in your testimony?

Mr. RONEY. The ITC study is an interesting one, Mr. Chairman, because they underestimated the effect on sugar. They forgot to take into account that we have already committed about a quarter of a million tons of access to Mexico, and they thought that the DR–CAFTA sugar could come in under this supposed cushion below the amount that would trigger off the marketing allotment. Even though they underestimated that effect enormously, they came up with a job loss for sugar that was 38 times greater than job losses in the next most harmed sector, and that was textiles.

The ITC, of course, also found, overall, after the 15-year implementation period, that the DR–CAFTA would increase our trade deficit with that region rather than decrease it, even though they far underestimated the effect on sugar.

Mr. SHAW. Mr. Ferrara, would you care to comment on the gentleman's answer?

Mr. FERRARA. Yes. First of all, I would like to state that the reality of the situation is that the jobs that are at risk, versus the jobs that are being protected by the sugar program, those jobs at risk outweigh those jobs by at least eight to one, by at least eight to one. So, if you talk about losing a farm job, I can tell you that in my small company, in the last 4 or 5 years, I have moved 500 of my employees over the borders simply because of the sugar program. It had nothing to do with labor, contrary to what sugar might tell you. The purely economic reason is sugar. Second, Americans are paying approximately $2 billion more for sugar than they should be and carrying the burden of the sugar program. Last, the non-sugar farmers as well as ranchers who really depend on a lot of exports can really be harmed, really be harmed if we begin to exclude certain commodities within trade agreements. We would be limiting their ability to have access to other markets simply because we exclude sugar, so let's exclude beef. I don't think the gentleman two seats to my right would like that.

I might note in Mr. Roney's presentation, I have a copy of it here, that he does state, and I have to find it, here it is, "In some States sugar is the most important cash crop or among the most. Sugar accounts for 44 percent of the receipts in Louisiana, 37 percent in Wyoming, 24 percent in Hawaii and 10 to 20 percent in Idaho, Minnesota, Florida, North Dakota, Montana and Michigan." My response to that, and I will take just the last group of States, Idaho, Minnesota, Florida, North Dakota, Montana and Michigan, that only tells me that 80 to 90 percent of the balance of crops are non-sugar, and I would think that we would want to give them the consideration of free trade and open markets by not protecting just sugar.

Mr. SHAW. Yes, I know that. We did find out, and this was asked, I specifically asked it—sugar does get special treatment in DR–CAFTA, and I think to expand this would be a terrible mistake. I think too, Mr. Roney, I would say if the sugar industry brings down this trade agreement, I think there could be a terrible backlash. I think that sugar has been more than treated fairly in this regard, and I am very disappointed. When I heard that the agreement had been made, I was somewhat stunned by the generosity shown. However, that being stunned was outweighed by how stunned I was when I found that sugar was working strongly against DR–CAFTA all over the Hill after receiving this special treatment. Mr. Rangel?

Mr. RANGEL. I pass.

Mr. SHAW. Mr. Rangel passes. Mr. Brady?

Mr. BRADY. Pass.

Mr. SHAW. Mr. Levin.

Mr. LEVIN. Maybe I should pass. Everybody has been so patient. Just very quickly, Mr. Roney, your position is that, if, through the WTO, all subsidies were eliminated, we could compete in sugar?

Mr. RONEY. Yes, sir.

Mr. LEVIN. Even though your chart shows, I think, that sugar cane, the cost of production was 26th, right?

Mr. RONEY. Our cost of production is below the world average. We have made some terrific gains through technology to get our costs down, despite the fact we are competing against developing countries which have much lower labor and environmental standards. Our view is that absent subsidies, that the world price would rise to reflect the actual cost of producing sugar, and since our costs are below the world average then we could compete on that level playing field. Of course, we can't get there; agreements like DR–CAFTA wrench our market open without addressing any subsidies anywhere.

Mr. LEVIN. Just quickly, Mr. Ouellette, under the apparel and textile agreement, the main advantage to you would be the elimination of the tariff?

Mr. OUELLETTE. Elimination of the tariff is important, but also the speed to market is very important to us.

Mr. LEVIN. Meaning?

Mr. OUELLETTE. The fact that Central America is close to us.

Mr. LEVIN. In terms of changes that DR–CAFTA would bring about, the main benefit would be the reduction of the tariff?

Mr. OUELLETTE. That is the main benefit, yes, sir.

Mr. LEVIN. There would be no benefit as to where you would source material?

Mr. OUELLETTE. I don't understand your question, sir.

Mr. LEVIN. Well, there are provisions within this agreement that would allow sourcing from outside of the United States. You would not take advantage of any of those provisions?

Mr. OUELLETTE. Yes, sir. What we would do is use, for example, Guatemalan weavers, but we would encourage them to use U.S. yarns.

Mr. LEVIN. You would not expect any change in your sourcing from the United States as a result of DR–CAFTA and shift it to any place in Asia?

Mr. OUELLETTE. No, sir. I think that it is going to encourage us to buy even more fabric from the United States.

Mr. LEVIN. All right. You have plants where?

Mr. OUELLETTE. In El Salvador.

Mr. LEVIN. Under what name?

Mr. OUELLETTE. Hilsal, H-I-L-S-A-L, located in San Salvador, just outside.

Mr. LEVIN. Thank you.

Mr. BRADY. [Presiding.] The gentleman from Wisconsin.

Mr. RYAN. I will pass, only just to say for one minute—I guess I won't pass—to the representative from the sugar industry that, I, too, am surprised at your opposition to this. The concessions that were made, I think, are very generous, and I think it is going to hurt your cause in the long run. I pass.

Mr. RONEY. May I comment, sir? I would just say the U.S. sugar industry did not invite this negotiation. We did not suggest to the government that we do a series of FTAs with sugar exporting countries. Since 1986, at the start of the Uruguay round of the WTO, we have asked for genuine global reduction of sugar subsidies around the world through the WTO system, and we have also noted that sugar has been excluded from virtually every bilateral FTA done around the world. It was excluded from the U.S.-

Canada portion of NAFTA, it was excluded from the U.S.-Australia FTA that was just done last year, and that the USTR touts as one of the best trade agreements we have ever done. They gave up nothing to achieve that. Many FTAs have been done this way. Now, that has been the rule rather than the exception, and all that we ask, and we testified repeatedly to this extent to the Administration, was that they treat sugar in the DR–CAFTA as it has been treated in virtually every FTA that has been done around the world, reserve sugar for negotiation in the WTO, because it is the most uniquely distorted market in the world. That is the unfortunate circumstance we are in. As I said to Mr. Levin, we are competitive by world standards, but the world market for sugar is extremely distorted and does not reflect the cost of producing sugar.

Mr. RYAN. I guess as a person who represents a State with another unique agricultural products, dairy, which is distorted in some sense all around the world, dairy was included in the Australia agreement. We got good concessions for dairy in the Australia agreement and dairy ended up supporting the Australian agreement because of it. I think you can make the point that other specialty commodities have been included and dealt with in these trade agreements. So, I think there is a difference of opinion on this issue. I will just yield back the balance of my time.

Mr. BRADY. Thank you. The gentleman from North Dakota.

Mr. POMEROY. I thank the chairman. Let's pursue this inquiry a little more, led off by my friend from Wisconsin, because I think as the Administration dismissively holds up a little sugar packet and says "This is all the consequence to U.S. sugar," they are being very dismissive about what is indeed a very serious threat to U.S. sugar. Mr. Roney, as an economist representing the sugar industry, perhaps you can help us understand the rather fragile nature of price today versus cost of production, which, literally, is the critical relationship in terms of determining whether we are going to have a U.S. sugar production capacity or not.

In our part of the world, say the gentleman from Chicago alluding to the fact that is of small consequence, perhaps, to the economic contribution made by candy makers, a 1998 North Dakota State University study found the total economic impact of sugar beet production and processing in North Dakota and Minnesota to make a $2.3 billion contribution just in that part of the country alone. So, I think that we are talking about something very significant indeed. If you take, Mr. Roney, the amount that DR–CAFTA would allow in and the exposure under NAFTA, where is your price going to be relative to cost of production? Give us the long answer in terms of how this all works.

Mr. RONEY. Well, Mr. Pomeroy, the U.S. sugar industry has been operating on the brink of bankruptcy for a number of years. Our prices last year, for example, were down 11 percent from the year before. Just since 1996, 30 of our beet and cane mills and refineries have shut down. That is one-third of all the mills and refineries that we had operating in 1996. We have been forced to close less efficient operations and concentrate production in the most efficient areas. Some areas have gone out of production completely, at tremendous job loss in those areas. So, we have been operating on the brink of survival for quite some time. That is why

we are so sensitive to an increase in supply. Our market has shown over time to be very sensitive to supply increases.

In the year 2000, before we had the market allotment program that we have now, our market was oversupplied by about 400,000 tons because of our import requirements, and that depressed our price by 30 percent that year. It was a complete disaster, and that began, really exacerbated, the exit of companies from our industry. So, that is why we are so sensitive on the price front.

Mr. POMEROY. A 400,000-ton increase knocked the price down a third?

Mr. RONEY. Yes.

Mr. POMEROY. You indicated DR–CAFTA is an additional 100,000 tons coming in.

Mr. RONEY. With the DR–CAFTA, what we are looking at is the 100,000 tons causing a cascade of sugar currently blocked from the market and held by the producers at their own expense. Given that we are holding back from the market now between 500,000 and 600,000 tons of sugar, that 100,000 tons of DR–CAFTA sugar quickly becomes a half a million tons, and that would be a price disaster for us in the near term. In the long term then, of course, we are looking at 21 sugar exporting companies lined up.

Mr. POMEROY. Even aside from that, because some would say that is just hypothetical, although as I questioned the gentleman from USTR, he refused to take sugar off the table in future bilateral rounds. They did not promise that this would not be under negotiation. Leave that as it may, what have we got out there with NAFTA which has already been negotiated?

Mr. RONEY. One thing that the Administration has somewhat ignored is that we have committed to import up to a quarter of a million tons from Mexico each year of Mexico's surplus sugar production, again whether we need that sugar or not. Now, it happens that in the last couple of years, Mexico has had some short crops; they haven't had the sugar to send to us. We understand they are having a better crop this year and it is likely they will have sugar surpluses to send to us again, and that will further exacerbate our sensitivity to the DR–CAFTA sugar.

Mr. POMEROY. Your own words, the Administration is ignoring the NAFTA to promote the DR–CAFTA. I would observe that gives us the shafta. A couple of things I want to put into evidence. I want in the record of this hearing the North Dakota Farm Bureau positions, which are absolutely, adamantly opposed to the agreement, and I would just offer that for evidence at this time. I yield back, Mr. Chairman. Thank you.

Mr. BRADY. Without objection.

[The information follows:]

North Dakota Farm Bureau
4023 State St.
P.O. Box 2793
Bismarck, ND 58502
December 9, 2003

Ambassador Robert B. Zoellick
U.S. Trade Representative
Office of the U.S. Trade Representative
Room 209–A
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Zoellick:

North Dakota Farm Bureau represents the interests of more than 26,000 farm families in the state of North Dakota. International trade is extremely important to our agricultural economy because more than 40 percent of our diverse production enters the export market. We have supported the current and past Administrations in their attempts to open world markets through negotiating bilateral, multilateral and worldwide trade agreements. We encourage international trade agreements that are balanced, open international markets to U.S. agricultural products, provide for minimal production distorting supports, while eliminating export subsidies and single desk exporters. We also believe U.S. negotiators must demand that other countries honor existing trade agreements prior to signing new trade agreements. We applaud the Bush Administration for defending these U.S. trading principals around the world.

We are concerned, however, with the direction the Administration is apparently taking on CAFTA and FT AA negotiations. Administration officials have stated that every commodity is on the table and that there will be no exclusions. Our trading partners have often demanded exclusions for market-sensitive products when negotiating trade agreements. By doing so, many U.S. agricultural products have been excluded from trade agreements, causing market distortions and managed— not free and fair— trade.

Our principle concern with the Administration's position involves sugar. Sugar contributes $21 billion a year to the economy of the United States. It is an extremely fragile commodity in that small import surges will have dire impacts on the domestic sugar industry. CAFTA countries, for example, account for nearly two million metric tons of available sugar for export. The Administration has announced its intent to negotiate FT As with several major sugar-producing and exporting countries that export a total of 27 million metric tons of sugar— three times the total U.S. consumption. Economic impacts to this sector of the economy could be potentially devastating.

We fully agree that reform of sugar policy is necessary. However, true reform of distortions presently occurring in the world sugar market must be addressed under the auspices of the WTO. Bilateral and multilateral trade agreements, such as CAFTA, do nothing to reform the subsidy or market distortions of the world sugar industry. Furthermore, FT As leave the U.S. and other bilateral trading partners vulnerable to subsidies from outside the trade agreement area. Nor do proposed bilateral and multilateral agreements encompass many of the major sugar-producing countries that have huge market and trade distorting policies and programs in place.

True reform of other countries' trade distorting policies should properly occur as part of the World Trade Organization. We respectfully request the Administration seriously consider the devastating consequences relatively minor changes in U.S. sugar import policy may have because of CAFTA and other FTAs. Not only will the sugar industry be negatively impacted, but other sectors of the economy such as the com production and sweetener industry, will be as well.

Sincerely,

Eric Aasmundstad
President

North Dakota Farm Bureau Focus: *May 1, 2004—Vol. 5, Issue 5*

NDFB supports state's sugar growers, not CAFTA

Despite the endorsement of American Farm Bureau Federation, North Dakota Farm Bureau cannot support the Central American Free Trade Agreement (CAFTA) because of the negative impact it will have on North Dakota sugar growers.

"The sugar industry is the economic cornerstone of several counties in North Dakota," said NDFB President Eric Aasmundstad. "We can't ignore the negative economic impact this agreement will have on our sugar-growing members and the state's economy."

The decision by the NDFB Board of Directors means the state organization has officially dissented from AFBF policy.

"North Dakota Farm Bureau has and will continue to be a loyal and vocal supporter of the policies of the American Farm Bureau Federation," Aasmundstad said. "Yet, we must dissent in this instance because it is in the best interest of our sugar-growing members and our state Farm Bureau."

A 1998 report by NDSU researchers Dean Bangsund and Larry Leistritz places the total economic impact of sugarbeet production and processing in North Dakota and Minnesota at $2.3 billion. The report also notes that for every dollar the sugarbeet industry spent in the two states, $1.79 in additional business activity was generated.

Sugar is also an extremely fragile commodity because small import surges can have a significant impact on the domestic sugar industry. Aasmundstad said economists have warned that increased foreign imports of less than 500,000 tons could collapse U.S. sugar prices.

An AFBF economic analysis of CAFTA's impact on each state projects North Dakota will see a zero net effect. Gains in wheat, soybean and feed grain trade, however, are offset by a single commodity—sugar.

"The analysis shows the negative impact to North Dakota's sugar producers at more than $7 million," Aasmundstad said. "Any way you look at it, that's too much for one commodity to bear."

Aasmundstad said reform of sugar policy is necessary, however, true reform of distortions occurring in the world sugar market must be addressed under the World Trade Organization. Bilateral and regional trade agreements like CAFTA leave the United States vulnerable to subsidies from those outside the trade agreement area.

Mr. BRADY. As long as you will sum up fasta, that will work fine. The gentlewoman from Pennsylvania is recognized.

Ms. HART. Okay. May I increase the quality now? No jokes. First, I want to ask Mr. Ferrara, I am from Pennsylvania and we make those [indicating a Hershey candy kiss]. We have heard from the folks, obviously, in that industry, in your industry, and unfortunately we have lost a number of jobs with some of the smaller confectionery companies in the last 10 years. I served in the State Senate, and it seemed every year another one was going out of business. Can you address for me, just a kind of little overview of what you think the policy, the current sugar policy, has done as far as the number of jobs lost in your industry versus how many jobs it saved?

Mr. FERRARA. I would like to start by adding that, in addition to my own products, I do contract manufacture for the largest manufacturers and distributors in our industry, some of which come from your State. I will say that, in recent years all, of the growth in that segment of my business has only come at my facilities outside of the United States. So, those are new job opportunities that might have gone to Pennsylvania, but instead are in Brampton, Ontario. I have not really picked up any new contract manufacturing business within the State, my State facilities, because the non-Ferrara Pan Candy Co. products that I make, they insisted I go over the borders to save on the price of sugar.

Ms. HART. Before you go on, that is the reason you said the new jobs are in Ontario, for one reason?

Mr. FERRARA. Sugar. It is purely sugar. The products I make over the borders are very high in sugar content. There is always

an argument that labor is the reason that candy manufacturers are going over the borders. That is absolutely false, absolutely false. Labor represents, of my cost of manufacturing, cost of goods, in the area of 4 to 5 to 6 percent, depending on the type of product it is. However, sugar can represent as much as 50 to 60 percent of that cost. I did not go over the borders to save on labor, I went over the borders to save on sugar. I used to use about 2.5 million to 3 million pounds of sugar a week in the United States. By moving about half of that production over the borders, if you simply multiply 10 to 15 cents, sometimes 20 cents a pound based on world price compared to U.S. price, the numbers are very, very significant. I don't like the fact that I have two work forces, multiple work forces, multiple overhead structures in different countries, but the sugar alone is what drives that. It is hard to put a number on the number of jobs that have been lost. I do know that statistics show that there are actually approximately 52,000 workers in the sugar industry as far as growers and refiners. In the related industries, there is a minimum, the lowest figure I see is 420,000 people, which again gets back to the 8 to 1 ratio. How many of those jobs have gone over the borders? I can guarantee you it is more than the entire employment of the sugar industry.

Ms. HART. Thank you for that, I appreciate that. I wanted to thank you, Jack Ouellette, for coming here. Jack is a constituent, and we have met on some of these issues before. Just another issue that I know a couple of my colleagues have touched on, but I think it is important because a lot my colleagues from the South especially, who have had very high numbers of jobs lost in the textile industry, are talking about their concerns about this particular issue and this particular agreement. Can you tell me—obviously markets have changed—could you tell me, we have lost a lot of these textile and apparel jobs; how might that loss have been avoided? What should we have done differently?

Mr. OUELLETTE. That is a fairly difficult question to answer. I can only tell you that the one thing we have learned is as we have taken a more global perspective on our business, that government definitely becomes an important partner in what we do, and certainly having trade legislation that benefits companies to make it easier to do business is probably the biggest thing.

Ms. HART. Is most of it access to markets, would you say, or is it a combination?

Mr. OUELLETTE. I think it is a combination.

Ms. HART. I yield back, Mr. Chairman.

Mr. BRADY. Thank you. The gentlewoman from Ohio is recognized for questions.

Ms. TUBBS JONES. Thank you, Mr. Chairman. I want to continue down that questionline with you, Mr. Ouellette. In order to have trade agreements that work, you have to have enforcement tools that are available to you, and that are in fact used in order for those trade agreements to really be successful. Would you agree with that, sir?

Mr. OUELLETTE. Yes.

Ms. TUBBS JONES. Okay. The gentleman from—I want to ask Mr. Ferrara, the manufacturer of candies, when did—I am assum-

ing back when your father or your grandfather was operating the candy company he was buying U.S. sugar?

Mr. FERRARA. My grandfather started the company in 1908. We have always bought U.S. sugar until I went over the borders.

Ms. TUBBS JONES. When was that?

Mr. FERRARA. It first opened up 10, 12 years ago.

Ms. TUBBS JONES. Mr. Roney, is that correct? When did the cost of sugar come to the level such that people, manufacturers of candy in America, decided they should go buy sugar somewhere else? What was the basic cause of that?

Mr. RONEY. Congresswoman, I don't really understand. I am not buying sugar the way Mr. Ferrara is, but we have looked at national average price data. We just saw work that was done in 2004 and found that, in Mexico, sugar prices, wholesale prices, that is, the price the candy makers pay for their sugar, averaged 28 cents per pound during the year. That is 5 cents higher than the U.S. price of 23 cents per pound. In Canada—Mr. Ferrara mentioned Canada—the sugar prices there were 21 cents a pound. That is just a couple of cents lower than U.S. prices. On the other hand, labor costs—and this comparison was Chicago with Juarez—labor costs at a candy plant in Chicago were over $14 per hour. That is just the wage per hour—no benefits—and Juarez was 56 cents an hour. Canada, the wage structure was a good 20 percent lower, plus health insurance was essentially free from the government. Energy costs were lower. There is quite a long list of other factors that we believe played a greater role in candy makers' decisions than sugar.

I would also note that we have never—even as these companies have relocated to these areas with lower labor costs and supposedly lower sugar costs—we have never noticed the price of the product to a consumer coming down. Candy prices have continued upward with the rate of inflation consistently over the last 20 years, while sugar prices have been flat or declining over most of that time.

Ms. TUBBS JONES. Mr. Shuster, is it a fair statement that AMTAC would be concerned about the labor environment of their workers, no matter what country they are in?

Mr. SHUSTER. Absolutely. As I mentioned, I think that the answer to our trade policy is that we have got to look at all the governmentally imposed conditions of trade, top to bottom, that give other countries the ability to undercut the United States. That definitely includes environmental standards, it includes labor standards, it includes tax policy, it includes tariffs, it includes non-tariff barriers, and so forth, and so forth, and so forth. We constantly get outnegotiated, outmaneuvered because we don't pay attention to these absolutely vital components of cost.

Ms. TUBBS JONES. What about you, Mr. Wooten? You have been kind of quiet. I guess we have been focused on sugar a little more. What is your position with regard to labor standards and other countries, as well as in the United States, as part of trade agreements?

Mr. WOOTEN. Well, I represent farmers. Our farmers have studied this issue extensively, and, on balance, this DR–CAFTA will be good for American farmers.

Ms. TUBBS JONES. I am not asking about whether DR–CAFTA is good. I am asking you about labor standards and the enforcement of them in any agreement, in countries, other countries, and in our own country.

Mr. WOOTEN. Well, I think—I don't think we can force our labor standards, or force a country to adopt labor standards as part of a trade agreement here.

Ms. TUBBS JONES. Well, what do you think we ought to force them to do in their own country? Maybe my question isn't clear. My question to you, sir, is that, within the trade agreements there are conditions and labor standards that countries are required to meet in order to be part of a trade agreement. You agree with that, sir, right?

Mr. WOOTEN. Yes.

Ms. TUBBS JONES. I am asking you, as part of that trade agreement, do you support that, in terms of improving the standard of work for people in other countries?

Mr. WOOTEN. I think we ought to improve the standard, but we can't control what happens in another country, Congresswoman. We can't dictate what——

Ms. TUBBS JONES. Well, people will disagree with on you that, Mr. Wooten. You are entitled to your position. Sir, Mr. Hafenfeld, is that it? Correct?

Mr. BRADY. Excuse me. The gentlelady's time has expired.

Ms. TUBBS JONES. Mr. Hafenfeld, I was trying to give you a chance to say something since you have been sitting here all afternoon. I apologize. My time is expired. Gentlemen, thank you so much for coming out this afternoon.

Mr. BRADY. Thank you. I would like to thank the panel for being here today. Trade agreements are complex. It is real helpful to get the input from folks on the ground rather than in theory, and we appreciate very much your testimony. Appreciate it. At this time, we would like to bring forward Members of Congress who have indicated an interest in testifying on the DR–CAFTA. On behalf of Chairman Thomas and the Ranking Member, we would like to welcome the Members of Congress to the final panel on the DR–CAFTA. I am pleased to—I would like to place in the record statements, testimony, from Chairman Mike Oxley and Chairman Debra Pryce in support of the DR–CAFTA trade agreement.

[The prepared statements of Mr. Oxley and Ms. Pryce follow:]

Chairman Thomas and Ranking Member Rangel, thank you for the opportunity to testify on the Central American Free Trade Agreement or CAFTA. This is an important agreement between the United States and six countries that are key to our economic and national security: El Salvador, Costa Rica, Honduras, Nicaragua, Guatemala, and the Dominican Republic. We know that this is a highly complex agreement and we want to commend this Committee for all of its hard work in fostering free trade around the world.

As Chairman of the Financial Services Committee and Chairman of the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Financial Services Committee, we submit this statement to support free trade in financial services. *U.S. firms often face restrictions in their ability to operate globally. The concept of national treatment, where foreign firms are treated like domestic firms, is not the norm in all Central American nations. As a result, U.S. banks, insurance providers, and securities dealers are often subject to non-transparent and discriminatory regulations which inhibit their ability to compete in these markets. The CAFTA agreement goes a long way to remedy many of these problems.*

Services industries account for nearly 80 percent of U.S. employment as well as GDP. This includes lawyers, architects, engineers, doctors and, of course, financial service providers. Over the past 10 years, U.S. services exports nearly doubled to $270 billion. Trade in financial services accounts for a high percentage of U.S. services exports.

We often hear about the trade deficit that the U.S. has with other nations. What we don't hear about is that in case of trade in services, we actually have a surplus. Our nation leads the world in financial services innovation. This agreement will help extend that surplus and promote state-of-the art financial services globally.

The CAFTA agreement will allow U.S. financial firms to access these countries on a fair footing with their local counterparts. It will promote transparency in the rules that govern how these enterprises are supervised. Without CAFTA, the financial services sector will be limited in its ability to enter these markets, will have restrictions on the ability to establish branch offices, and the regulations overseeing the operations of these institutions will be written behind closed doors.

CAFTA will require national treatment and MFN treatment, prohibit quantitative restrictions on market access of financial institutions, and bar restrictions on the nationality of senior management.

Now, we know that the financial services markets in the CAFTA countries are not going to be major revenue generators for U.S. financial firms in the short-run. However, these are long-term strategic growth markets for our financial firms. Our economic prosperity will be strengthened if trade barriers between our Nations are eliminated.

Economic prosperity in the region, which will foster economic security in the hemisphere, will also grow as competition in the financial services sector within CAFTA countries expands the availability of capital to fund new ventures. Over time, it will also yield a wide range of benefits, including more customers for our firms and more efficient markets within our hemisphere. Improved access to sophisticated financial services, backed by sound regulation, will enable these markets to grow to become buyers of other U.S. products. Without the development of these financial markets, manufacturers will be less likely to cultivate customers in this region.

The Financial Services Committee has taken a leadership role in ensuring strong financial services provisions in this agreement, as well as the Chile and Singapore agreements. In December of 2003, the Committee wrote Ambassador Zoellick urging him not to accept a trade agreement that permitted Costa Rica to retain the government's monopoly on insurance. The CAFTA agreement now includes provisions permitting U.S. firms to provide insurance products in Costa Rica. We would like to submit a copy of this letter for the record.

In closing, we strongly urge the Members of this Committee to support the CAFTA Agreement. It will foster economic security in our hemisphere and will promote the exchange of goods and services between our countries.

Mr. BRADY. We are going to go to Members in order, although Congressman Burton has asked for first time in order to catch an earlier commitment. So, I would like to recognize for 5 minutes the gentleman from Indiana, Mr. Burton.

STATEMENT OF THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. BURTON: Well, thank you, Mr. Chairman. I certainly won't take the full 5 minutes. I want to apologize to my good friend, Marcy Kaptur, because we have a difference of opinion on this particular piece of legislation than we have had in the past. I was an opponent of the NAFTA Agreement, and I was an opponent of the General Agreement on Tariffs and Trade (GATT). However, on the DR–CAFTA agreement and on the Andean FTA, I think there is additional circumstances that the Congress of the United States ought to weigh when they are making their decision, and I hope it will take these things into consideration as well.

President Ronald Reagan, when he was in the White House, came up with the Reagan doctrine, so to speak, and that was to push for democracy throughout the Western Hemisphere. He was very successful as President in stopping a lot of the tyrannical regimes that were running governments in our hemisphere, and he was a fighter for freedom, and he was taken to task many times for that. However, because of the Reagan doctrine, every single country in our hemisphere has democratically elected leaders, with the exception of Fidel Castro. One of the problems that we have now is we have in countries like Venezuela the possibility that you would see a return to some forms of government that might not be democratic in nature. I think that Central America and Latin America are—not a tinderbox, but close to that kind of a situation as far as the collapse of democracies. I think it is very, very important that we do whatever is necessary to make sure that those fledgling democracies in Central and Latin America continue to flourish. One of the ways to do it is to work with them in economic terms. We need to make sure that we have good trade agreements so that they can start moving away from poverty and into countries that have a middle class that will want to see democracies continue to flourish.

I am very concerned about it right now. I am the chairman of the Subcommittee on the Western Hemisphere of the Committee on International Relations. We have been looking at what is going on in Ecuador, where the President was removed from office just yesterday; in Venezuela, where we see the new leader down there buying 100,000 AK–47s and tanks and other forms of weaponry, which lead us to believe that he may have things in mind that aren't consistent with long-term democratic institutions. So, in addition to the economic ramifications of this FTA we are talking about, the DR–CAFTA and the Andean FTA, I think it is extremely important that we also weigh the long-term issues of democracy in our hemisphere, and what that means for the United States of America as far as our national security is concerned. We are concerned about terrorism. We are concerned about tyrants taking power in various countries throughout the world. This is our backyard. Latin America is our backyard. Central America is our backyard.

In addition to what I just stated, we also have the problem of a massive influx of illegal aliens should these countries not do well economically. So, I think it is extremely important that DR–CAFTA do pass. It is a stance that I have not taken in the past. I was concerned about the loss of jobs, loss of industry and all those sorts of things, but I think right now the most important thing that we have to deal with is stability in our hemisphere, and that is why I support the DR–CAFTA and the NAFTA Agreements. Thank you, Mr. Chairman.

Mr. BRADY. Thank you, sir. Appreciate your testimony. Chairman Dreier, the gentleman from California.

STATEMENT OF THE HONORABLE DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DREIER: Thank you very much, Chairman Brady and Mr. Rangel and Mr. Levin and Mr. Ryan, Mr. Larson, Ms. Tubbs Jones. Let me say that it is an honor to be here; and it is an honor to be here with my colleague, Dan Burton, who just spoke very eloquently about this issue. I was thinking about what he said in referring to the struggles that we have brought about, and so I immediately remembered back to November of 1979, when Ronald Reagan announced his candidacy for President. In that, he envisaged this accord where we can see the free flow of goods, services, ideas and capital among all the Americas. Mr. Brady, you have done an absolutely phenomenal job in providing leadership on this very important part of that goal as we get toward the FTAA.

We have done a wide range of bilateral agreements over the past several years. This opportunity to take Charlie's very dear Dominican Republic and link it up with the Central American nations to finally create an opportunity for us to have access to those markets is very important. We all know that these countries involved have access to the U.S. consumer market today. This agreement is about a chance for the U.S. workers to gain access into these markets. The U.S. economy today—the $11 trillion economy that we have today is as strong as it is in large part due to the fact that the world has access to our consumer market. I believe that if you look at the statements that have been made by the presidents of the countries affected here, their trade ministers, business leaders, people across the board in these countries, one of the things that they regularly tell us is that, if we want to lock in democratization, the building of the rule of law, which, frankly, is in jeopardy, and Mr. Burton was just alluding to a bit of that, in some of these countries, the single most important thing that we can do for people who are struggling to move up that economic ladder in these countries would be for us to make sure that we pass the DR–CAFTA.

For the life of me, I really have a difficult time understanding how anyone, anyone in the United States of America could oppose the DR–CAFTA. Why, again? These countries have access to us today, and we are simply seeking a chance to get into those markets. Along with that, Mr. Chairman, what is it that this agreement does? It focuses on some of the very important issues that are regularly raised as concerns here in the United States. Intellectual property is a key issue. Private property rights are very important under the rule of law. That is what we have got here. This agreement helps us address that issue. Worker and environmental rights, worker rights and environmental issues are also very, very important. We dramatically enhance that in this agreement. So, it seems to me that if we look at where we are today, the opportunity that exists for us to put into place a strong multilateral agreement and to build this strength in the hemisphere, we would be wise to pursue this goal.

China is a great competitor of ours. We are seeing competition with the European Union. If you look at the fact that we now already have, in yarn and fabric, this great rapport between the United States and the Central American countries and the Domini-

can Republic, I believe we are in a position where we will be able to—with the implementation of the DR–CAFTA agreement—we will be able to better compete with the Pacific rim and other parts of the world. So, I hope very much that you will report this out just as expeditiously as possible. I have the honor to serve on the House Committee on Rules. I look to welcome any of the Members of your Committee before the Committee on Rules when you come, and we will look forward to a great victory on the House floor for workers and businesses alike. Thank you very much, Mr. Chairman.

Mr. BRADY. Thank you, Chairman Dreier. Thank you for your comments and testimony. The Committee recognizes the gentlelady from Ohio, Ms. Kaptur.

STATEMENT OF THE HONORABLE MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. KAPTUR: Thank you, Chairman Brady and Ranking Member Rangel, especially to you for making this opportunity for the Members available. Congressmen Levin and Larson and my dear sister from Ohio, Stephanie Tubbs Jones, and Mr. Ryan, thank you for being here so very late in the day. Let me just say that I have full testimony I will submit for the record, along with a NAFTA at 10 Years report that was assembled by the Members and make that a full part of your hearing.

Mr. BRADY. Without objection.

Ms. KAPTUR: I thank you.

[The information is being retained in the Committee files.]

Ms. KAPTUR: I regret we only each have 5 minutes. I represent 680,000 people in a State of 11 million that have been adversely affected by NAFTA; and my fundamental question this afternoon is, if a trade agreement like NAFTA is not working in America's interests as promised, why replicate and expand it? Millions of ordinary people have been hurt. I am going to ask my capable associate, Jennifer Goedke, to put up the trade deficit numbers for our Nation as a whole first and then the—which, by the way, the deficit last year overall totaled nearly—well over a half a trillion dollars, and is getting worse every year. Then the Mexico and Canadian components of that, which are summarized very briefly in the handout that we have provided. This is when Mexico—Every year since NAFTA was signed, unlike its proponents claimed, we did not have surplus. We had deficits, growing deficits, and more job losses from the United States. My State of Ohio is one of the biggest losers, with over 40,000 jobs directly related to losses; the Canadian figures are similarly in the negative. So, my advice to the Committee is reevaluate what is really going on, and then renegotiate. Don't expand. It seems our Nation has been ignoring the millions of ordinary people who have been hurt, dislocated, unemployed and uprooted across the Americas due to this trade agreement. Our Nation seems to be willing to enforce anti-dumping provisions for goods but nothing to prevent the dumping of the peoples of the Americas when they lose their jobs, their farms and their hopes. Too often under these trade regimes workers and farmers have been treated like chattel, victims of great economic injustices

caused by powerful market forces unleashed by these trade agreements. One by one, we have seen our industries fall. Furniture is the latest one, and this year may be the first year in which America's agricultural imports exceed our exports. This has not happened before. This is the reality that we are living in.

This DR–CAFTA agreement is an expansion of NAFTA. Eighty-five percent of its provisions are directly from the NAFTA original accord. Let me just also give you a visual image of what has happened in one of the major industries in my region, the automotive industry. Here is a graph of what happened after NAFTA. Yes, there was trade, but it was backward. Mexico turned into the export platform we said it would be, with business after business, supplier after supplier relocating. This doesn't happen in the automotive arena only, but also in steel and in medicines. Every single sector has been heavily affected. Now I would like to submit for the record a report we did. Several Members went down to Mexico at NAFTA's 10th anniversary and met with the people of Mexico. We produced a comprehensive report, and I would like my associate to place up there just one of the photos of some of the villages that we went to. My testimony verifies that not only have we lost jobs but the Mexican people's incomes have been cut. Over a 1.5 million peasant farmers have been uprooted. It is the source of the immigration into this country. It is a continental sacrilege, what is going on. People have died at our border. They have died in trucks coming across the border.

What is the source of that? The source is what is happening inside of Mexico today. We were actually in La Scala, down in southeastern Mexico, meeting with these farmers, talking about how NAFTA had impacted them. What NAFTA has done to the continent and what DR–CAFTA will do, it will create more surplus pools of labor of people who are disenfranchised at home, who have nothing else to do but to flee north and to try to come somewhere where they can eke out a living. It is truly a cruel regimen. I know that my time is about expired, but let me just say that many of these families have very few options in regions like my own. Many of the people that we have met with there—we met with one villager who had come up—I never had an experience where I asked a man how old his children were and he couldn't answer me. Then I asked him the name of his youngest child, and the name of the child. The child was ill and had lived for about a month and a half. The child had no name because the family was illiterate. I had never had that experience in my life. We have to pay attention to what we are doing in the Americas. I would urge this Committee to re-evaluate and renegotiate. I thank you very much for receiving us.

[The prepared statement of Ms. Kaptur follows:]

Testimony of Congresswoman Marcy Kaptur On the Proposed Central American Free Trade Agreement NAFTA Expansion For the House Ways and Means Committee

Chairman Thomas, Ranking Member Rangel, and distinguished Members of the Committee:

My fundamental question is: if a trade agreement like NAFTA is not working in America's interests as promised, why replicate and expand it? Millions of ordinary people have been hurt, dislocated, unemployed and uprooted due to this trade agreement. Why then has our Nation been willing to enforce "anti-dumping provisions"

on goods, but nothing to prevent the "dumping of the people of the Americas" when they lose their jobs, their farms, their hopes? Too often workers and farmers are treated like chattel, victims of great economic injustices caused by powerful market forces unleashed by these trade regimes.

Americans watched as their jobs disappeared as formerly healthy industries—like auto, furniture, airline, textile, steel, high-tech, vegetable—fall one by one. As one auto plant worker from Mexico told me, " Poor countries are like crabs in a bucket. Every time one country starts to climb out of the bucket, another one pulls it back down." Or as Mexican Congressman Victor Suarez said, " We want good trade, not free trade."

The Central American Free Trade Agreement (CAFTA), signed in May 2004, would expand the economic model established in the North American Free Trade Agreement (NAFTA) to five Central American countries (Guatemala, El Salvador, Honduras, Costa Rica and Nicaragua) and the Dominican Republic. If approved, CAFTA, like NAFTA, would require its signatory countries to conform their domestic policies and practices to a broad array of non-trade dictates, for example

regarding the regulation of service sector companies and foreign investors' operations in other economic sectors operating within a signatory nation's territory. It would require signatories to provide certain patent medicine and seed protections that have been criticized by health and consumer groups worldwide as undermining consumers' access to these essential 'goods'—such as generic drugs. It even sets constraints on how countries and other political entities may spend their own tax revenues. In addition, CAFTA contains the same model of interconnected trade rules and foreign investor protections that together create incentives that motivate business operations seek out the most profitable sites and processes for production, even if these are often contrary to the public interest.

An analysis of CAFTA's provisions reveals that it replicated NAFTA's provisions to a high degree—often with identical language. Thus, there is much that we can learn from the 11-year record of NAFTA, which CAFTA would expand to additional nations.

1. CAFTA NAFTA Expansion is an Outsourcing Agreement and Expansion of the Export Platform: Eleven-Year Record Demonstrates that the NAFTA Model Lowered Living Standards on Both Sides of the Border

Figures don't lie: since 1994, the United States has lost nearly 1 million jobs on net due to NAFTA trade,[1] with one in six U.S. manufacturing jobs being eliminated during the NAFTA decade.[2] Ohio has been of the largest job losers with more than 46,000 good jobs lost due to NAFTA. U.S. income and wage inequality have gone up markedly, with the ratio of both income and wages of the top 5 percent of the income and wage distribution growing nearly 10 percent since NAFTA alone as compared with the bottom 20 percent.[3] The U.S. real median wage has scarcely risen above its 1970 level, resulting in declining or stagnant standards of living for the nearly 70 percent of the U.S. population that does not have a college degree.[4] During the NAFTA era, the U.S. trade deficit has risen to historic levels, and approaches 6 percent of national income—a figure widely agreed to be unsustainable, putting the U.S. economy at risk of lowered income growth.[5] Though we were promised a trade surplus by NAFTA's advocates the reverse is true. The U.S. trade balance with NAFTA countries alone went from a mild surplus with Mexico and mild deficit with Canada to a ballooning deficit with the two countries exceeding $110 billion in 2004.[6]

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[1] Robert E. Scott, "The High Price of 'Free' Trade: NAFTA's Failure has cost the United States jobs across the nation," Economic Policy Institute Briefing Paper, Nov. 2003.

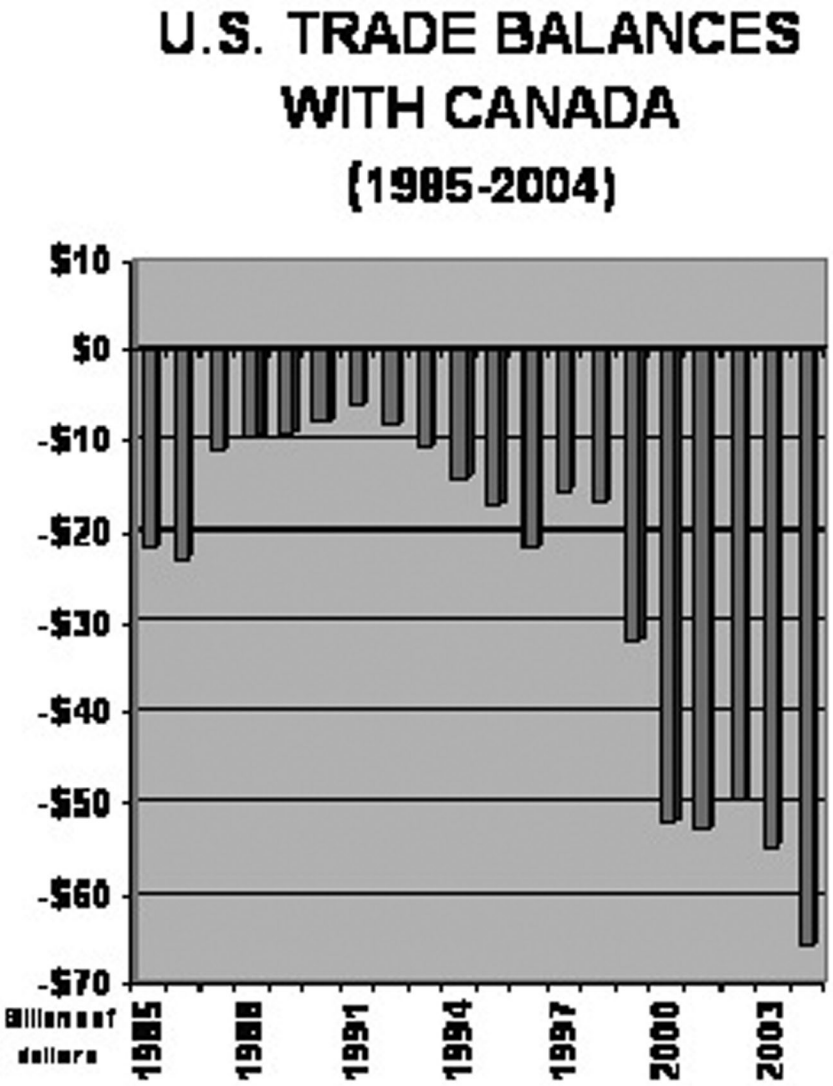
[2] This number refers to manufacturing job loss since the most recent manufacturing employment peak in 1998 of 17.6 million, relative to the 2003 number of 14.6 million. See Josh Bivens, Robert Scott, and Christian Weller, "Mending manufacturing:Reversing poor policy decisions is the only way to end current crisis," Economic Policy Institute Briefing Paper #144, Sept. 2003.

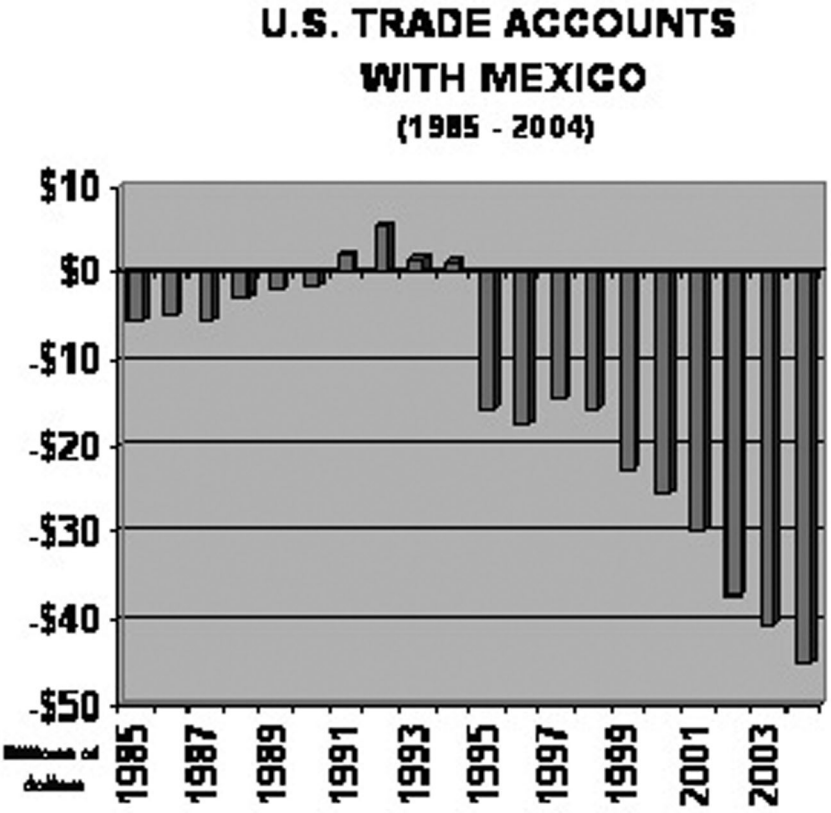
[3] Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, The State of Working America 2004/05, (Washington, DC: Cornell University Press, 2004), at 69 and 145.

[4] Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, The State of Working America 2004/05, (Washington, DC: Cornell University Press, 2004), at 154.

[5] Nouriel Roubini and Brad Setser, "The U.S. as a Net Debtor: The Sustainability of U.S. External Imbalances," New York University Briefing Paper, Nov. 2004.

[6] U.S. Census Numbers.


U.S. TRADE BALANCES
WITH CANADA
(1985-2004)
$10
$0
-$10
-$20
-$30
-$40
-$50
-$60
-$70
Billions of dollars
1985
1988
1991
1994
1997
2000
2003



$1 Billion in trade deficit = 20,000 lost jobs

For our neighbors in Mexico, the economic outcomes of eleven years of NAFTA are not brighter. Indeed, their sorry plight is a continental tragedy of sacrilegious proportion. Over 1.5 million Mexican *campesino* farmers lost their livelihoods to the dumping of commodities such as corn as a result of NAFTA's agricultural rules,[7] while the Mexican minimum wage has lost 20 percent of its value in real terms, and the median industrial wage 10 percent of its value.[8] The jobs that were temporarily created in the country's *maquiladora* sector in NAFTA's initial years, as plants relocated from the United States, are increasingly relocating and losing market share to lower wage countries such as China.[9] It is no surprise illegal immigrants are streaming across our border. With no agricultural adjustment promises in NAFTA, they have no options.

In both countries, the increased ability of companies to nearly effortlessly relocate production to lower wage countries—(as NAFTA's investor protections forbid the policies a country like Mexico might otherwise use to root foreign direct investment for development)—has tilted the playingfield against the majority of the working population who are finding it ever more difficult to obtain and maintain quality em-

[7] John Audley, Sandra Polaski, Demetrios G. Papademetriou, and Scott Vaughan, "NAFTA's Promise and Reality: Lessons from Mexico for the Hemisphere," Carnegie Endowment for International Peace Report, Nov. 19, 2003.

[8] Carlos Salas, "Highlights of Current Labor Market Conditions in Mexico," Global Policy Network Country Brief, April 2003.

[9] Sanjaya Lall, Manuel Albaladejo, Mauricio Mesquita Moreira, "Latin American Industrial Competetitveness and the Challenge of Globalization," Inter-American Development Bank Ocassional Paper SITI 05, June 2004.

ployment. Meanwhile, studies commissioned by the U.S. Government show that as many as 62 percent of U.S. union drives face employer threats to relocate, with over 10 percent of such threats specifically referring to a relocation to Mexico. The actual factory shut-down rate following successful union certifications tripled in the years after NAFTA relative to the years before.[10]

2. Contradicting Congress' Demand that Trade Pacts Give Foreign Investors "No Greater Rights" within the U.S. than Available to U.S. Citizens, CAFTA Extends NAFTA's Special Protections for Foreign Investors that Expose U.S. Taxpayer Funds to Claims in Closed Trade Tribunals

The changes described above in the NAFTA country labor markets are supported by the granting in NAFTA and CAFTA of special rights and privileges to foreign investors from one signatory country operating in another. In NAFTA, these rights are contained in Chapter 11, which also provides for foreign investors' private enforcement of these new privileges through so-called investor-state dispute resolution, a controversial mechanism also included in CAFTA. The investor-state system allows corporations to sue governments for cash compensation before closed trade tribunals for claims based on signatory countries' policies that may or may not have a demonstrable economic impact on their expected future earnings. The provisions afford foreign investors operating in the United States greater rights than those available to U.S. citizens and businesses under the U.S. Constitution as interpreted by the U.S. Supreme Court. Thus far, 42 cases have been brought before the NAFTA investor-state tribunals, 11 have been finalized, and some $35 million in taxpayer funds have been granted to five corporations that have succeeded with their claims. An additional $28 billion has been claimed from investors in all three NAFTA nations in cases attacking the most basic functions of government. The U.S. Government's legal costs for the defense of just such recent case topped $3 million, and seven cases against the United States are currently in active arbitration.

While ostensibly, NAFTA's investor protections were designed to ensure compensation if property is nationalized by a NAFTA government, only one of the 42 known NAFTA "Chapter 11" cases filed to date involve expropriation. Instead, investors have challenged domestic court rulings, water rights, local and state environmental policies, municipal contracts, tax policy, controlled substances rules, anti-gambling policies, emergency efforts to halt the spread of mad cow disease, and even provision of public postal services.

Given that these extraordinary investor rights and their private enforcement had not been part of any previous U.S. trade agreement, and that many Members of Congress did not understand these implications at the time when NAFTA was enacted in 1993, the record of NAFTA's Chapter 11 has generated enormous controversy. Thus in order to obtain a congressional delegation of Fast Track Trade Authority in 2002, the Administration offered to address Congress' concerns. Fast Track thus specified that in future U.S. trade agreements, foreign investors should not have "greater substantive rights with respect to investment protections than United States investors in the United States."[11]

Unfortunately, the executive branch negotiators failed to meet Congress' requirements. In CAFTA's Chapter 10 foreign investor protections and investor-state mechanism actually amplify many of the problems Congress identified with NAFTA.

- ***CAFTA Would Allow Compensation to Foreign Investors in "Regulatory Takings" and "Minimum Standard of Treatment" Cases not Permitted by U.S. Law:*** CAFTA includes the NAFTA language that requires foreign investors be compensated for "indirect expropriation." This provision has been the basis for an array of cases that would not be permitted under U.S. law, including regulatory takings cases. In one such case, Metalclad Corporation obtained $16 million from the Mexican Treasury after being denied a permit to expand a toxic waste facility until it cleaned up existing contamination.[12] Several additional CAFTA provisions promote regulatory takings cases not allowed under U.S. law. For instance, the Supreme Court has ruled that "mere diminution in the value of property, however serious, is insufficient to demonstrate a tak-

[10] Kate Bronfenbrenner, "The Effects of Plant Closing or Threat of Plant Closing on the Right of Workers to Organize," North American Commission for Labor Cooperation Report, 1997.

[11] 19 U.S.C. § 3802(3), Chapter 24, "Bipartisan Trade Promotion Authority: Trade Negotiating Objectives."

[12] Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, Metalclad Corporation v. the United Mexican States, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000.

ing"[13] and that the entire property must be affected permanently. In contrast, NAFTA Chapter 11 tribunals have found that a government action need only cause "significant" or "substantial" impairment of an investment's value to qualify as a taking.[14] For instance, the Metalclad tribunal held that "expropriation under NAFTA includes not only open, deliberate and acknowledged takings of property—but also covert or incidental interference with the use of property which has the effect of depriving the owners in whole or significantpart, of the use or reasonably to-be-expected economic benefit of property."[15] USTR failed to remedy this problem in CAFTA.

To make matters worse, CAFTA allows such claims regarding types of property not subject to takings action under U.S. law. U.S. law deems public interest policies governing personal property (property other than land) to be legitimate exercises of police powers and exempt from takings claims. In contrast, CAFTA's broad definition of what categories of property are subject to compensation claims includes an array of non-real estate property such as assumption of risk and also bonds, loans, stocks, and intellectual property rights.

In response to criticism that investment rules in CAFTA allow for broad regulatory takings claims, the USTR will likely point to CAFTA, Annex 10–C, which reads: "Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations."[16] Unfortunately, this language has precisely the opposite effect claimed. This language *enshrines* the right of foreign investors to challenge a wide array of public health and safety regulations not be subject to U.S. taking claims. U.S. law safeguards all public interest regulations governing personal property, yet this language reiterates that such policies are subject to CAFTA challenge. Moreover, the U.S. Government would have no capacity to affect whether such cases are brought only in "rare" circumstances. Foreign investors decide whether to file these cases. (And, the U.S. legal defense cost for just one such case, Methenex's attack on California's ban on the gasoline additive MTBE, has already cost $3 million in U.S. taxpayer funds.) Further, the ultimate decision whether or not to grant compensation in such challenges remains with investor-state tribunals on a case-by-case basis. Moreover, when deciding such cases, tribunals will reference other specific provisions of CAFTA that directly conflicts with the Annex's general language. There have been numerous NAFTA cases involving toxic substances, including Phillip Morris' threat against a proposed Canadian tobacco control law, and Canadian cattlemen's NAFTA challenge of U.S. actions to prevent entry into the U.S. of mad cow disease. To avoid future such cases and to bring CAFTA into conformity with U.S. takings law, the scope of property subject to such claims in CAFTA needed to have been limited to real estate and the "indirect expropriation" language needed to have been eliminated, or at least defined in the context of U.S. takings standards that require that virtually all of a property's value must be taken permanently to obtain compensation.

- ***CAFTA Would Allow Compensation to Foreign Investors in Cases in which U.S. Law Only Permits Injunctive Relief:*** Under U.S. law, both foreign and domestic firms can sue under the Due Process or Equal Protection Clauses of the Constitution for injunctive relief, but they are not allowed to sue for monetary relief. Under NAFTA's investment rules—and under CAFTA were it to be approved—foreign investors are empowered to sue for monetary relief on similar grounds. CAFTA extends this NAFTA problem by allowing foreign investors to obtain taxpayer compensation not only for claims of expropriation,

[13] Concrete Pipe and Products v. Construction Laborers Pension Trust, 508 U.S. 602, Jun. 14, 1993, at 615.

[14] Interim Award by Arbitral Tribunal, In the Matter of an Arbitration Under Chapter 11 of the North American Free Trade Agreement between Pope & Talbot Inc. and the government of Canada, United Nations Commission on International Trade Law, Jun. 26, 2000, at 37; Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, Metalclad Corporation v. the United Mexican States, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000, at 28. The Metalclad panel stated that expropriation under NAFTA "includes not only open, deliberate and acknowledged takings of property such as outright seizure or formal or obligatory transfer of title in favor of the host state, but also covert or incidental interference with the use of property which has the effect of depriving the owner in whole or in significant part of the reasonably to-be-expected economic benefit of the property."

[15] Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, Metalclad Corporation v. the United Mexican States, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000, at 33.

[16] Central America Free Trade Agreement, Final Version, Aug. 5, 2004, Annex 10–C, at 4(b).

but also based on national treatment (non-discrimination) and "fair and equitable treatment" claims—which are the trade agreement equivalent to Due Process or Equal Protection Clauses claims in U.S. law.

- ***CAFTA Would Eviscerate the Long-established Principle that governments Can Remedy a "Nuisance" without Compensating Polluters:*** The expansive definition in CAFTA of what sorts of foreign investments are subject to compensation covers government actions to prevent a public nuisance. Given the record of the related NAFTA provisions, this element of CAFTA is likely to generate further claims by chemical companies attempting to combat environmental regulation. Under NAFTA, foreign investors are demanding compensation for California's ban of the gasoline additive MTBE which has been found to be polluting scarce water resources in the state and for California's open pit mining reclamation law. Yet, under the U.S. Supreme Court holding in Lucas v. South Carolina Coastal Council, pollution that harms public or other properties is a nuisance that can be regulated by states without compensation.[17] USTR failed to remedy this problem in CAFTA.
- ***CAFTA Would Empower Foreign Investors to Overcome the Long-established Sovereign Immunity Shield to Pursue U.S. Taxpayer Compensation In Property Claims from which U.S. Residents and Companies Are Barred:*** NAFTA panels have explicitly refused to dismiss investor challenges when governments have raised sovereign immunity as a defense in investor-state challenges—apparently allowing firms to sue governments at any level regarding any issue for any amount of money. Indeed, in these cases, investor-state tribunals have accepted the argument raised by some foreign investors that Congress waived federal sovereign immunity when it passed NAFTA. USTR failed to remedy this problem in CAFTA with explicit language clarifying that sovereign immunity was not waived, thus providing an open door for future such challenges.

3. CAFTA Would Forbid Congressional, States' Anti-Offshoring Policies that Require government Contract Work be Done by U.S. Workers; Forbids Environmental, Other Procurement Rules

CAFTA's rules on government procurement apply to an array of federal government agencies as well as the states that are listed as "covered entities" in Chapter 9, Annex 9.12 (b) (i). In September 2003, the United States Trade Representative sent a letter to all 50 Governors, requesting that they commit their states to be bound by the procurement provisions in all bilateral and regional trade pacts under negotiation, including CAFTA. The letter touted the potential for U.S. suppliers to bid on foreign government contracts, but failed to mention the requirements the procurement chapters CAFTA and other agreements imposed on states. Initially, twenty-eight states were listed as bound in the CAFTA text. However, since then, state officials have become much more aware of the implications that binding state procurement policy to CAFTA's rules would have on their ability to determine what procurement policies are in the best interests of the state, including policies that use state purchasing power to further social, environmental, and economic development goals.

As a result, a majority of U.S. states (30) have rejected CAFTA's government procurement rules and decided it is not in their best interest to be bound. In 2004, seven Governors (from Iowa, Kansas, Maine, Minnesota, Missouri, Oregon, and Pennsylvania) rescinded their previous commitments on behalf of their states to be bound to CAFTA's procurement rules. Other states (Montana, Nevada, Wisconsin, and Virginia) declined the USTR's request outright. Governors of states that remain bound by CAFTA, including Texas and Washington, have requested that additional reservations be taken. (Only some of those requests have been incorporated into the CAFTA text. Washington's request was rejected in an August 13, 2004 letter from Ambassador Zoellick to Washington Governor Gary Locke.) In early 2005, the National Conference of State Legislatures wrote to the USTR, requesting that the USTR respond to the myriad concerns of state legislators. The Intergovernmental Policy Advisory Committee (IGPAC) issued recommendations in August 2004 that state legislative leaders be carbon copied on all requests sent to Governors, as state legislators to date have been cut out of the consultation process, despite the fact that in most states, the Legislative Branch has the authority to set state procurement policy. The USTR explicitly denied that request, and sent another letter to Governors requesting that they sign on to the procurement provisions of free trade agreements with Panama and Andean countries. Most recently, in April 2005, the Maryland General Assembly passed legislation over Governor Ehrlich's veto which

[17] Lucas v. South Carolina Coastal Council, 505 U.S. 1003, at 1015–19 (1992).

stipulated that it was the authority of the legislature, not the Governor, to sign on to the government procurement rules in trade pacts. The bill also declared invalid previous expressions of consent made by Governors, including Governor Ehrlich's letter offering to bind Maryland to CAFTA's procurement provisions.

State officials' concerns stem from the restrictions that CAFTA's rules impose on their ability to maintain existing and adopt new procurement policies in the public interest. CAFTA's procurement chapter prohibits many common purchasing policies, seriously weakening governments' flexibility to use procurement as policy tool to promote economic development, environmental sustainability, and human rights. These rules also apply to federal government procurement policies:

- ***Requirements that Government Work Be Performed in the United States by U.S. Workers Are Prohibited:*** If CAFTA were approved, Federal and state governments would be required to treat companies located in the six CAFTA countries identically to U.S. domestic companies when governments seek to procure goods and services. This means neither Congress nor state governments could give preference to domestic or local firms or require that to obtain government contracts, firms must employ U.S. workers (CAFTA Article 9.2).
- *SWEAT-FREE, RECYCLED CONTENT, RENEWABLE SOURCE AND OTHER LABOR AND ENVIRONMENTAL CRITERIA BANNED:* CAFTA requires that "a procuring entity shall not prepare, adopt or apply any technical specification describing a good or service with the purpose or the effect of creating unnecessary obstacles to trade" and that technical specifications are limited to "performance requirements rather than design or descriptive characteristics." These constraints mean that procurement policies that set criteria for *how* a good is made or *how* a service is provided are prohibited—putting preferences for recycled content or renewable energy, "green" building requirements, and bans on goods made with the worst forms of child or slave labor at risk as "barriers to trade" (CAFTA Article 9.7).
- ***Consideration of Bidding Firms' Labor, Tax, Environmental, Human Rights Records Forbidden:*** CAFTA limits what sorts of qualifications may be required of companies seeking to supply a good or service to a government. Conditions for participation in bidding are limited to "those that are essential to ensure that the supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the procurement." CAFTA's limits on the requirements that can be imposed on contractors prohibit conditions such as prevailing wage and living wage requirements, as well as consideration of suppliers' environmental or labor track records (CAFTA Article 9.8).

4. Opposition to CAFTA NAFTA Expansion Wide and Varied, Having Grown Since NAFTA

As successive Administrations have failed to reverse the damage and demonstrated, significant problems of NAFTA's foreign investor protection model, opposition has grown in all quarters. The Association of State Supreme Court Justices, U.S. League of Cities, National Conference of State Legislatures, National Association of Counties, and National Association of Towns and Townships all have expressed concerns about the investment provisions of CAFTA.

Concerns about CAFTA's foreign investor protection by these typically pro 'free trade' associations of state and local officials, groups that are concerned about our Nation's system of federalism and the integrity of our domestic courts, has been joined by outright opposition to CAFTA from other unexpected quarters, suggesting the degree to which this agreement signed a year ago is seen not to serve the U.S. national interest. The National Association of State Departments of Agriculture, for one, concerned about CAFTA's agricultural provisions called on Congress to oppose CAFTA.[18] These and other agricultural groups are concerned about declining farm revenue even as volumes of food trade increased under NAFTA, and that the United States is about to become a net food importer. Furthermore, these groups take to heart the claims of pro-CAFTA forces, who continually repeat that CAFTA is a stepping stone to a proposed broader Free Trade Area of the Americas (FTAA).[19] Many U.S. economic sectors views of CAFTA are tied to their analysis of how competition with Brazil in a NAFTA expansion from Alaska to Tierra del Fuego would affect their export capacity in beef, soy, citrus, sugar and ethanol.

Many other groups have also expressed opposition to CAFTA NAFTA expansion. Human Rights Watch has produced analyses of the failure of Central American labor law and enforcement practices to meet the minimal International Labor Orga-

[18] Alan Guebert, "State Ag Directors Whack CAFTA, White House," Aberdeen News, March 11, 2005.

[19] Jorge Arrizurieta, "A needed precursor to FTAA," Florida Sun Sentinel, March 11, 2005

nization core labor standards,[20] an analysis that has been confirmed by the U.S. Department of State's annual human rights reports.[21]

And U.S. Latino organizations who supported NAFTA, from the nation's largest and oldest Hispanic civil rights organization the League of United Latin American Citizens to an array of immigrant rights groups representing Central Americans in the United States, have also indicated their opposition the current terms of the agreement, concerned that trade-related job loss disproportionately affects U.S. Latinos and that CAFTA's negative repercussions for Central America are foretold by NAFTA's negative results in Mexico.[22]

5. Central American Public Opposition to CAFTA NAFTA Expansion Is Based on NAFTA's Record of Destroying the livelihoods of 1.5 Million Mexican Small Farmers and U.S. Heavy-Handed Tactics Forcing Price-Raising Medicine Policies, Essential Service Privatizations

Lawmakers concerned about the implications of the so-called "Arab Street" in the Middle East should also pay attention to the passionate CAFTA opposition on the "Latin Street" of Central America. Nearly one out of every 25 El Salvadorans have publicly rallied against CAFTA in the past several years, and polls indicate that a majority of citizens in Guatemala and elsewhere oppose the terms of CAFTA.[23] In Honduras, Guatemala and Nicaragua, massive protests have also occurred against CAFTA, while it is unclear if Costa Rica's congress will approve the deal.[24]

Officials from the U.S. Trade Representative's office have taken to threatening Costa Rica that if the democratically elected Congress there determines the pact is not in their nation's interest and rejects it, the United States will remove that nation's existing terms of access to the U.S. market provided under the Caribbean Basin Initiative (CBI). These threats continue today despite the March 2005 letter by Ways and Means Committee Ranking Member Charles Rangel (D–NY) calling upon the Administration to desist these misleading pronouncements. As Rep. Rangel's letter pointed out, CBI is a "congressionally mandated program [whose] benefits are guaranteed on a permanent basis, unless the Congress amends current U.S. law." The representative said he would oppose such an amendment of U.S. law, characterizing the Administration's remarks as "thinly veiled blackmail."[25]

Regardless of the Administration's bullying and disrespectful treatment of some CAFTA countries, certainly Congress would be concerned with the underlying cause of such passionate opposition to CAFTA in Central America—opposition whose protests have been met with increasing violence by governments. This includes the murder by military troops in Guatemala of two Mayan protestors—an act of military violence by the army explicitly forbidden in the 1996 peace accords.[26]

The causes of opposition include CAFTA's service sector rules, which would require these nations to privatize and deregulate numerous essential services such as energy and other utilities, health care and more, as well as foreign investor protections, which would create a new set of rights for foreign investors to acquire ownership over natural resources and land and pharmaceutical patent requirements, including extended data exclusion terms, which would hurt poor people's access to medicines and take Central American governments' abilities to respond to public health crises such as HIV–AIDS. Fury about these severe threats has been exacerbated by the Administration's heavy handed tactics, for instance in pressuring Gua-

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[20] Michael Bochenek, "Turning A Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation," Human Rights Watch Report, June 2004; "Pregnancy-Based Sex Discrimination in the Dominican Republic's Free Trade Zones: Implications for the U.S.-Central America Free Trade Agreement (CAFTA)," Human Rights Watch Briefing Paper, April 2004; Carol Pier, "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights—implications for CAFTA," Human Rights Watch Report, Dec. 2003; Judith Sunderland, "From The Household To The Factory: Sex Discrimination in the Guatemalan Labor Force," Human Rights Watch Report, Jan. 2002.

[21] U.S. Department of State, "Report on El Salvador," 2001 Country Reports on Human Rights Practices.

[22] "Another America is Possible: The Impact of NAFTA on the U.S. Latino Community and Lessons for Future Trade Agreements," LCLAA and Public Citizen, Aug. 2004

[23] Angus Reid Global Scan, "Guatemalans Decry CAFTA Deal With U.S.," April 2005

[24] Karen Hansen-Kuhn, "Central Americans Speak Out Against DR–CAFTA: Major Issues and Mobilizations," Alliance for Responsible Trade, Mar. 2005, at 10.

[25] Rep. Charles B. Rangel, "Rep. Rangel Reacts to Reported 'Threat' from Administration Official to CAFTA Countries," Press Statement, March 22, 2005.

[26] Sergio de Leon, "Police, protestors clash ahead of Guatemala-U.S. free trade vote," Associated Press, Mar. 9, 2005.

temala to rescind a law that would have improved access to generic, life-saving medicines or in threatening Costa Rica with removal of CBI benefits.[27]

Now major Central American political parties, Catholic bishops, the Central American Council of Churches and other mainstream, important Central American interests have come out against CAFTA as a threat to the region. In addition, eighteen of the most democratic, independent and representative union federations throughout Central America representing workers in the private and public sector, including in export-oriented manufacturing and agriculture, have demanded stronger workers rights than those provided under CAFTA.[28] They have noted that the existing CBI arrangement affords concerned citizens with the International Labor Organization core rights and with the greater ability to improve Central American labor law than the proposed CAFTA's rollback CBI labor provisions.

6. Given the NAFTA Record and Growing Central American Public Opposition, CAFTA Supporters Resort to Increasingly Dubious Arguments . . .

Given this broadscale U.S. and Central American opposition to a NAFTA expansion, pro-CAFTA forces have increasingly resorted to disconnected arguments and exaggerated and misrepresentative claims about the agreement. For instance, the U.S. Chamber of Commerce has produced a flawed study projecting U.S. economic gains from a Central America agreement. But to obtain that conclusion, the Chamber had to assume that—contrary to the history of every trade agreement the United States has signed—the United States would receive no new imports from the CAFTA countries if the pact went into effect.[29] The study's methodology additionally implies that over 80 percent of the Honduran economy would have to absorbed by U.S. exports by 2013, a potentially socially and economically destabilizing outcome if true.[30]

Despite this projection that Central American countries would not gain from a CAFTA, pro-CAFTA forces have simultaneously asserted that CAFTA would save the U.S. and Central American textile industries from the end of the global textile and apparel quota system.[31] Here too, their claims are wildly misleading, since experts from the U.S. International Trade Commission to the Organization for Economic Cooperation and Development (OECD) have demonstrated that China enjoys a significant technological, wage and input cost advantage over the Central American countries. This means that, with or without a CAFTA, the expiration of the Multi Fiber Arrangement quota system will result in Central America losing a great deal of its current production and employment in the textile and apparel industry.

The notion that CAFTA would affect this situation is beyond bizarre. Already under CBI, CAFTA countries' textile and apparel exports enter the United States duty free. CAFTA provides no additional benefit for entry. Indeed, CAFTA loosens the CBI rules of origin, meaning more Chinese goods could enter through CAFTA countries if CAFTA were implemented than are now permitted.

Already, apparel imports from China jumped amount in the first quarter, and by as much as 1,521 percent in some customs categories.[32] While Congress may seek to address this flood of cheap Chinese imports, this is a separate problem than CAFTA and would require a separate solution. The debate around CAFTA is not a question of "whether U.S. workers would rather lose their jobs to China or to Central America," as Carlos Sequeira, Nicaragua's chief CAFTA negotiator put it.[33] Congress should instead focus on the flaws of CAFTA, which would loosen CBI's requirement that U.S. inputs be used to enjoy duty-free access to the U.S. market and undermine CBI's labor rights protections, while still not proffering to the dying Central American industry any access benefits that they do not already enjoy through CBI.

Conclusion

The bottom line in Congress' consideration of CAFTA should be whether extending the seriously flawed NAFTA model will help us create a brighter future for our

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[27] Catherine Elton, "Activists Fear Free Trade Act Will Restrict Access to AIDS Drugs in Central America," Voice of America, April 2005.

[28] "The Real Record on Workers' Rights in Central America," AFL–CIO, Apr. 2005.

[29] U.S. Chamber of Commerce, "Chamber Hails Economic, Job Benefits of DR–CAFTA," Issue Briefing, Feb. 2005.

[30] Todd Tucker, "Fool Me Twice? Chamber of Commerce Distorts NAFTA Record, Hides CAFTA Costs," Public Citizen, Mar. 2005.

[31] Rossella Brevetti, "Ambassadors from Central America, Dominican Republic Urge Action on FTA," BNA No. 27, Feb. 10, 2004. See also, Martin Vaughan, "Pro-CAFTA Business Alliance Lobbying House Members," Congress Daily PM, Jan. 25, 2005.

[32] Kristi Ellis, "China's First Qtr Surge," Women's Wear Daily, April 4, 2005.

[33] Paul Magnusson, "This Trade Pact Won't Sail Through," Business Week, March 28, 2005.

children and grandchildren, and those of our continent. Even considering only the well-documented NAFTA record of huge middle-class job loss in the U.S. and growing trade deficits undermining the livelihoods of 1.5 million Mexican farmers, suppressing real median wages in the United States and Mexico, replacing living wage jobs with cheap wage jobs with no benefits—gutting the U.S. manufacturing base, coinciding with record-low prices paid farmers for the food they produce in all three countries even while consumer prices increased, and exposing some 42 domestic environmental, health, zoning and laws and regulations to attack in closed investor-state tribunals and the payment of some $35 million in taxpayer funds to foreign investors for the lost NAFTA-guaranteed profits they lost, it seems quite clear the answer is no. If one adds to the NAFTA evidence the problems caused by the CAFTA provisions that go beyond even what NAFTA requires—for instance in the foreign investor protections chapter or regarding drug patents—the answer becomes only clearer.

Congress should oppose this agreement simply on the basis of its intellectual property rules which are certain to undermine affordable access to essential medicines for poor consumers in the Central America. Scandalous provisions of CAFTA NAFTA expansion are life and death matters: generic versions of the cocktail of anti-retroviral drugs essential to extending the lives of those infected with HIV cost several hundred dollars for a yearlong course while the brand name patented version of the same drugs cost $5,000 per year. If the CAFTA drug patent rules would go into effect in the Central American countries and the Dominican Republic, many people now able to have access to these life saving HIV–AIDS medicines and also drugs vital to fighting tuberculosis and other diseases will not have access to these medicines—either because they cannot afford to purchase them or because their government health agencies cannot afford them to provide to their public.

Thus given CAFTA NAFTA expansion's potential extension of the failures of NAFTA to people in six additional nations and the damage to U.S. residents that further extension of this model would pose, we urge Congress to oppose NAFTA's expansion to Central America and beyond.

DR–CAFTA

Country	2004 Trade Deficit	Population	GDP	Per Capita Income	Top Sectors
Costa Rica	– $29 million	3,956,507	$35.34 billion	*$9,100*	*agriculture: 8.5%* *industry: 29.4%* *services: 62.1%*
Dominican Republic	– $185 million	8,833,634	$52.71 billion	*$6,000*	agriculture: 10.7% *industry: 31.5%* *services: 57.8%*
El Salvador	– $184 million	6,587,541	$30.99 billion	*$4,800*	*agriculture: 9.4%* *industry: 31.2%* *services: 59.3%*
Guatemala	– $606 million	14,280,596	$56.5 billion	$4,100	*agriculture: 22.5%* *industry: 18.9%* *services: 58.5%*
Honduras	– $564 million	6,823,568	$17.55 billion	$2,600	*agriculture: 12.8%* *industry: 31.9%* *services: 55.3%*
Nicaragua	– $398 million	5,359,759	$11.6 billion	$2,300	*agriculture: 28.9%* *industry: 25.4%* *services: 45.7%*

NAFTA

Country	2004 Trade Deficit	Population	GDP	Per Capita Income	Top Sectors
Canada	– $65 billion	32,507,874	$958.7 billion	$29,800	*agriculture: 2.2%* *industry: 29.2%* *services: 68.6%*

Country	2004 Trade Deficit	Population	GDP	Per Capita Income	Top Sectors
Mexico	−$45 billion	104,959,594	$941.2 billion	$9,000	*agriculture: 4%* *industry: 26.4%* *services: 69.6%*
United States	n/a	293,027,571	$10.99 trillion	$37,800	*agriculture: 1.4%* *industry: 26.2%* *services: 72.5%*

Mr. BRADY. Thank you very much. The Committee recognizes the gentleman from Oregon, Mr. DeFazio, for his remarks.

STATEMENT OF THE HONORABLE PETER DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO: I thank the Chair. I thank the Members of the Committee, particularly the Ranking Member, for facilitating this Members' panel on this very important subject which will have very constrained debate without amendment on the floor of the House, something that is vitally important to the American people. I would just like the Committee to reflect a bit on some of the testimony they have heard. Mr. Dreier, who, of course I am sorry he had to leave—I don't want to talk behind his back, but I remember he gave the same speech about NAFTA. It was going to bring great prosperity to America. It was going to give American companies access to the Mexican markets, and he predicted that we would run trade surpluses and we would create jobs in America. Well, he couldn't have been more wrong, could he? It has created a large and growing deficit with Mexico, and it has seen the export of hundreds of thousands of U.S. jobs to Mexico, U.S. capital to Mexico, and it has not improved the plight of the Mexican people who are working in sweatshops and unsafe conditions. I have been to the maquiladora area. The environmental degradation there and the human suffering and the exploitation is extraordinary.

So, what you have is losers on both sides of the border American workers and Mexican workers; a failed model which has provided an export platform for U.S. capital to access exploitable cheaper labor and lack of environmental enforcement. Now we want to replicate that further down into Latin America because perhaps we can find even cheaper labor and more exploitable people down there. Again, it is not about exporting goods to Central America. If the countries in question here devoted every penny of their economy to only consuming U.S. goods, they didn't buy a thing at home, didn't eat anything at home, nothing, everything came from the United States of America, it would constitute about 5 days of the American economy. Obviously that is not going to happen. We are already running a trade deficit with Central America. We know that this will accelerate that trade deficit.

Mr. Dreier talked about how great it will be if our textile companies could move their machines to Central America instead of having to ship them all the way to China or have to invest in new machines in China and how that would somehow be a benefit to the Americas or to America itself in its contest with China. The aver-

age hourly earning of U.S. production workers, $16.01. The average hourly wage for Honduran workers, 90 cents. They are going to be buying a lot of U.S.-manufactured goods from our country. The number of DR–CAFTA countries found to be in compliance with basic ILO standards, zero. There are no enforceable labor standards in this bill. It is just like the head feint we had with NAFTA which gave a bunch of our weak-kneed colleagues an opportunity to vote for it under pressure from the Clinton Administration. They said, oh, "we got labor, and we got the environment." They are just non-enforceable side agreements. We are going to have the same thing here, unenforceable labor standards; this will do nothing to improve the plight of exploited labor in that area.

This is not a partisan issue. It is a bipartisan failure. Bill Clinton delivered NAFTA, which would have been difficult for a Republican president to deliver with a Democratic Congress, much to his discredit. Those of us who opposed it predicted much of what has happened, but, in a sense, we were all wrong. It is even worse than we thought. Last month, the United States of America ran a $62 billion 1 month record trade deficit. That is going to be over $700 billion that we are going to borrow from overseas. The dollar continues to decline. We are hemorrhaging jobs in our economic base, and what are we going to do? More of the same with this agreement. How many times are we going to listen to the siren song of, all we want to do is open up these impoverished countries to become consumers of expensive, sophisticated, U.S.-manufactured products, when in reality it is all about making them a platform to export back into the United States of America, using their exploitable labor and their weaker standard.

So, I would hope that the Committee will not rubber-stamp this legislation and that we will begin to bring about a change in trade policy which will benefit all of the people of the United States of America. We can become a world leader. Instead of leading the race to the bottom in environmental and labor standards, let's set up a higher floor, and move it upward and bring the rest of the world up to our standards, instead of lowering ourselves and our workers to theirs. Thank you, Mr. Chairman.

Mr. BRADY. I would note the gentleman finished 5 minutes to the second. Well done. Well timed. The Committee recognizes the gentleman from Minnesota, Mr. Peterson.

STATEMENT OF THE HONORABLE COLLIN PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. PETERSON: Thank you, Mr. Chairman, and thank the Ranking Member and other Members for hanging in there today. While we are here today, the Secretary of Agriculture is visiting the Red River Valley of Minnesota and North Dakota, the largest sugar-producing place in the United States; he is trying to address their concerns about DR–CAFTA. The feedback that I have received so far from those farmers, they are telling me, he still doesn't seem to get it. As others have said, we have given all these glowing promises about what was going to happen, but the reality

of what is going on here, for the first time in 46 years, this year, we are going to be running an even balance in agriculture trade, or maybe even a deficit. Back in 1996, we had a $27 billion surplus in agriculture. This year, it is going to be zero. If we keep going in this direction, we are going to be in the hole big time.

During the NAFTA debate, the Administration official promised us that we were going to add all these jobs, 170,000. It has been said we lost, the first 10 years here, 880,000 jobs. This is not surprising if you consider the agriculture sector alone, the statistics show that our trade deficit with Canada and Mexico in agriculture has tripled from $5.2 billion to $14.6 billion. Now part of the problem, I think, and part of the reason that this agreement is in trouble—back in the old days, every agriculture Member of the Committee supported these trade agreements. Today, they don't have a majority; and the reason is they won't enforce these agreements after they—first of all, they are negotiating them in a bad way, and then they won't enforce them.

So, we have got the situation with Brazil and the cotton case. We had the side letter. We had NAFTA to get sugar support, and it turned out not to be worth the paper it was written on. So, they assured us in the NAFTA with the side letter that U.S. sugar growers would be protected because Mexico would remain to be a deficit sugar producer, as they had been in the 5 years leading up to NAFTA. When the Mexican market opened up, what happened? U.S. high fructose corn syrup went into Mexico, into the soft drink industry, and they substituted that for sugar, and Mexico began to export all that sugar into the United States. Now if any of you have examined the sugar market, it is not a real market. It is a dump market created by the Europeans and the Brazilians, to some extent. Nobody can produce sugar in the world for six and a half cents. We have gotten ourselves into a situation now where we are looking down the barrel of the gun in Mexico where in 2008, potentially, we could have 5 million tons of sugar come into the United States without any way to stop it. We have been trying to negotiate this thing out for the last 3 years, and we aren't, frankly, getting anyplace. We aren't getting any help.

Then you go up to Canada. We have got the potato situation that has been going on since way back when we had the U.S.-Canada FTA, where we have got a situation up there where the fresh potatoes from Canada—we can't export to Canada unless we get a special ministerial exemption, which basically makes it impossible. The long and the short of it is they have got a supply management system for potatoes in Canada. They keep our potatoes out. They can bring their potatoes in. What do we do about it? Nothing. We can't get our people to stand behind us and to get rid of this obvious distortion of what the trade agreement was supposed to be about. So, because we—and I could go on and on with other examples.

So, this DR–CAFTA is going to be the same as what we have got under NAFTA. There are a lot of us in agriculture that are very concerned about where this thing is heading. They told us, well, the problem is these trade agreements would work if we just—the value of the dollar is too strong, and once the value of the dollar comes down then everything is going to be fine. Well, what hap-

pened? The value of the dollar collapsed; and for the first time in the history of—well, in 50 years, we are probably going to run a trade deficit in agriculture in this country. I think people need to wake up, and I think we need to defeat this agreement. Send it back to the drawing board and come up with something that works for the American people.

Mr. BRADY. Thanks. Appreciate your testimony. The Committee recognizes the gentleman from California, Mr. Lungren.

STATEMENT OF THE HONORABLE DAN LUNGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LUNGREN: Thank you, Mr. Chairman, Ranking Member and other Members who are here. First of all, thank you for allowing me to appear before you, and all of us to appear before you. I am one of those lucky enough to be selected to go to Rome this weekend, and this puts me in the proper mood because this room has cathedral-like properties. As someone who has never been on the Committee on Ways and Means, it is a real pleasure to be able to appear before you in this august setting. When I was in Congress some years ago, I recall a Member saying something which wasn't original with him but which was important nonetheless, and it was something like this: If goods and services do not cross national boundaries, armies certainly will. The suggestion was that through history we have seen that tariffs and other trade barriers presented in certain ways caused instability in regions and instability in many places around the world. This was brought very closely home, to me, when I was visited by several representatives of the Central American countries with which we are negotiating this agreement. Because I have been absent from this body for 16 years—I was here 26—a period of time of 10 years between 26 and 16 years ago, and at that time we weren't talking about DR–CAFTA, we weren't talking about NAFTA, we weren't talking about trade, we weren't talking about agriculture. We were talking about guns and bullets.

We were talking about the effort the United States was sustaining to try and fight a Communist threat that was supported by the then existing Soviet Union, and I had to convey to the people that visited me that was a far greater joy that I engaged in that conversation with them today than 10 to 20 years ago when we were talking about unstable situations in Central America. This is a consequence of those actions that we took back then. This is a further development of our relationship with that part of our own hemisphere. This is an opportunity for us to try and engage in meaningful trade negotiations which allow not a perfect solution to our side but a reasonable opportunity for us to establish the trade relationship between ourselves and the countries involved. Does it solve every labor problem? No, it doesn't. I was trying to find out how I would be informed as to how this House should act, and so I looked up some material with respect to one of the most recent trade agreements approved by this Congress, and that was last

year, I believe, or the year 2004; that is, the Morocco-U.S. agreement.

I looked at the key labor issues. There it was: discrimination, or child labor, or forced labor, or the ILO core conventions, or the freedom of association, or the right to collective bargaining, or the right to strike. In every one of those categories the labor laws of the Central American countries and the Dominican Republic that are covered by DR–CAFTA are at least as good as if not superior to those of the Kingdom of Morocco. So, at least it gives me pause to believe that, upon reflection, that if the Congress believed that those were adequate protections that advanced the labor situations in that country, not perfectly, not to the total standards of the United States, but advanced from where they are, that it very well may be the case that that is what we find here. With respect to agriculture—and we have just heard from the gentleman to my right reflections on agriculture in his State, I might say that, as far as California agriculture is concerned, every representative of California agriculture that I have spoken with recommends the approval of this agreement. They specifically say that this would allow them an opportunity for a growing market and one that would be of benefit to California agriculture and, therefore, American agriculture.

So, Mr. Chairman and Members, I would just say—I was trying to give you at least a view of someone who has been away from here for a period of time to see the tremendous change we have in the relationship of the United States to the Central American countries that are signatories to this DR–CAFTA agreement. Thank you, Mr. Chairman.

Mr. BRADY. Thank you, sir. Appreciate the testimony. We will soon recognize the gentleman from Louisiana as the final testifier in a long 8-hour hearing. At this time—that was quite an entrance for the Cajun Congressman; that was a good one—the Committee recognizes the gentleman from Louisiana, Cajun Charlie Melancon.

STATEMENT OF THE HONORABLE CHARLIE MELANCON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. MELANCON: You are pretty good. I will give you credit. You have been practicing, apparently. Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to be here today. Let me start by saying, and somewhat reiterating, maybe in a different form, former Presidential Candidate Perot during the campaign that he unsuccessfully ran for president in made a statement that has come to be reality; NAFTA would be that great sucking sound from south of the border taking our jobs away. It has occurred, and it is occurring. To duplicate that with the DR–CAFTA would be wrong. It would be wrong for the people that have businesses, the people that have jobs. It is going, and it is not stopping.

If you have ever been to Guatemala in a sugar cane field, it is really an experience that will—I am not sure exactly how to explain seeing a 6-year-old boy cutting sugar cane with his father and has soot from head to toe and he makes several cents a day, but

he needs to because the household income in Guatemala—this was 4 years ago—was $675 a year. Surely, they are not going to buy a Dell computer. I doubt very seriously they are going to call Omaha Steaks and order any. I can't imagine anything else that they would need from this country that they could afford.

I come from a sugar background. On my father's side, I am a fourth generation person that has been involved in sugar; on my mother's side, three generations. Farmers, mill managers, overseers even, that have made their living in the sugar industry. My sisters and I owe our education and everything that we have that our parents were able to give us to an industry that has been in Louisiana for 225 years. Now people will talk about the benefits and do they outweigh the downsides. Well, during the NAFTA, the people at the Port of New Orleans spoke of the 45,000 new jobs that would come to that port; 2,200 arrived. During the DR–CAFTA, Mr. Zoellick talked about the 63,000 jobs that would be coming to the Port of New Orleans; and if it replicates what occurred during the NAFTA, we are going to be in sad shape. Yet in Louisiana alone, in the sugar industry, we have 27,000 people working. So, we are going to give that up on a hyper chance that we are going to get some more jobs? I don't think so.

When you look at the DR–CAFTA agreement in sugar alone and you realize what Mr. Zoellick negotiated by himself for this entire country and the fact that the circumvention allowed— because we, as Congressmen, who are able to represent our people in every way, shape and form domestically have no control over these negotiated agreements, other than to vote them up or to vote them down, that has taken away the rights of the people in this body to speak through their representatives in this body. When you look at this entire industry of sugar and you look at the NAFTA and you look at the bilateral agreements, you will find that in the NAFTA, contrary to what I have heard in the negotiations during DR–CAFTA or any other negotiated treaty, the Canadians had the option to not participate in the NAFTA. Explain that.

Yet sugar, which is very important to this country, was the first commodity that was rationed and the last one taken off the ration list. It is going to be a sad day for me if I have to go to the sugar people in my district and tell them and their bankers that the 500,000 acres is going to go to scrub brush or back to wetlands, that those sugar mills that they have invested in, and kept running for 225 years, they can dismantle and sell for a penny on a dollar to South America. There is a lot more I would like to say, but my time has run out. Thank you, sir.

Mr. BRADY. Thank you. We appreciate the testimony. We will finish our last round of questions. The Committee recognizes the Ranking Member from New York.

Mr. RANGEL. Thank you, Mr. Chairman. I was just thinking as I heard this eloquent testimony for and against, that the DR–CAFTA—wouldn't it be a wonderful thing if we all felt that Members of the House of Representatives understood the subject as well as you do and that they would not be forced for political reasons to vote yes or no or that the Chairman believes that this bill is ready for voting and promised the President that he will pass it by one or two votes. Wouldn't it be a wonderful thing if we understood

the complexities of the bill, the impacts it would have on our Congressional Districts, to know what is in it, to know what is not in it, and to be able to caucus as Democrats and Republicans to see what is best for our Nation as a whole. Tragically, Mr. Lungren, Democrats were excluded from participating in what the USTR was putting together. I don't feel that badly about it because I don't think many Republicans were involved in having input in the bill as well. As you have seen in the papers, they go in the back room, they decide what they want to do, and then there is the package.

I am convinced that you will not be able to find anything concerning labor laws in this package. They refer to it, the USTR and the Ambassador, saying that they have incorporated ILO language in it, but if they did—that is all we Democrats were asking for, to have an opportunity to put some basic minimum standards there. There is no American that believes that we should not be concerned about the welfare of the people in these countries. Communism and terrorism cannot thrive if the people are working, but there is no indication that anyone is concerned. We just had a witness that you probably heard on the previous panel saying we can't force people to have labor laws. We can't tell them what to do. Well, they—we darn sure tell them what to do with intellectual property, and they found some way to tell us what to do with our tax laws without having sanctions on us. So, the whole idea of forcing people to do anything, it is negotiation, it is working it out. As a matter of fact, most of the foreigners, trade ministers, they were anxious to have some standards in the agreement; and it was we who told them not to put it in.

So, I don't know what opportunity you are going to have to find out what is in the bill, or whether it is going to be just pressure to vote up or down. It is a sad day in the Congress when, on international issues, we no longer vote as Americans but we vote party line. I hope the day will come soon, when we have enough respect for each other, and feel so solid about our positions that we are not afraid to share our views. I regret that you have had to stay so long in order to share your views, and I regret even further that you may not have much more opportunity to have input with what is in this package. I assure you that whenever we are meeting, or wherever we are meeting, I will see that messages get out to Republicans and Democrats to share your views with us. We are on this Committee to do just that, to listen to Members and to try to bring to the floor something that is good for America and good for the Members. So, thank you, Mr. Chairman, for giving me this opportunity.

Mr. BRADY. Thank you, the gentleman from New York. At this time, I would like to thank the panelists for testifying. I would just share with you, I am a junior Member of this Committee, and on this trade agreement I had the opportunity to—was invited and able to attend each negotiating round—the opportunity to read the draft text, still have the opportunity during a mock makeup to make the points that I would like to make in this. I think it has been a very open process. These trade agreements are difficult, and I know we all have different views from our constituencies back home. I think these are—these agreements, you can get in as deep or as shallow as you choose. We still have an opportunity—because

of the law we passed in TPA, we still have an opportunity before this comes to us to have our voices known. With that, I would like to thank the panel for being here today; and this hearing is adjourned.

[Whereupon, at 6:23 p.m., the hearing was adjourned.]

[Questions submitted from the Honorable Lloyd Doggett to Ambassador Peter F. Allgeier, and his responses follow:]

Question: Under CAFTA–DR, can a subsidiary of a U.S. corporation bring an investor-state claim against the United States?

Answer:

- One of the purposes of the denial of benefits article is to protect against the situation you have outlined in your first question. It covers the situation in which a U.S. company establishes an affiliate in the territory of another CAFTA–DR Party but does not carry out substantial business activities there—that is, it establishes an affiliate that is merely a "shell".
- The denial of benefits article allows the United States to deny the benefits of the FTA to that shell enterprise in the event that it, in turn, establishes an investment in the United States.
- Equally important, because the shell enterprise has no rights against the United States under the FTA, it cannot force the United States to defend claims under the FT A's investor-State arbitration provisions. By contrast, the enterprise could force the United States to defend claims in a U.S. court. In that respect, the FT A grants fewer rights to the shell enterprise than does U.S. statutory law.
- It is possible for a U.S. enterprise to establish an affiliate in the territory of another CAFTA–DR Party and for the affiliate to engage/in substantial business activity there. If that affiliate in turn establishes an investment in the United. States, the United States may not deny the benefits of the CAFTA–DR Agreement to it.

Question: Are there clearly defined standards for determining whether, for the purposes of Article 10.12(2) of CAFTA–DR, a subsidiary of a United States corporation has "substantial business activities" in a CAFTA country?

Answer:

- The CAFTA–DR Agreement does not define the term "substantial business activities," because the meaning of that term is necessarily fact-dependent. It would be difficult, if not impossible, to come up with a generic definition suitable for all business arrangements in all sectors.
- The fact-dependent nature of an inquiry into the existence of substantial business activity is well recognized in U.S. corporate and tax law.
- The fact that "substantial business activities" is not explicitly defined in our free trade agreements likely discourages potentially costly efforts to circumvent the intended scope of the benefits afforded under those agreements.

[Submissions for the record follow:]

Statement of Meena Khandpur, Advanced Medical Technology Association

The members of AdvaMed join other companies in their strong endorsement of the U.S.-Dominican Republic-Central American Free Trade Agreement (CAFTA). This FTA will benefit the United States economy, the economies of our friends in the Dominican Republic and Central America, and our member companies that export and produce in this region.

AdvaMed represents over 1300 of the world's leading medical technology innovators and manufacturers of medical devices, diagnostic products and medical information systems. Our members manufacture nearly 90% of the $83.4 billion in health care technology products purchased annually in the U.S., and nearly 50% of the $175 billion in medical technology products purchased globally. Exports in medical devices and diagnostics totaled $22.4 billion in 2003, but imports have increased to $22 billion—indicating a new trend towards a negative trade balance for the first time in over 15 years.

The medical technology industry is fueled by intensive competition and the innovative energy of small companies—firms that drive very rapid innovation cycles

among products, in many cases leading new product iterations every 18 months. Accordingly, our U.S. industry succeeds most in fair, transparent, global markets where products can be adopted on their merits.

Global Challenges

Innovative medical technologies offer an important solution for nations that face serious health care budget constraints and the demands of aging populations. Advanced medical technology can not only save and improve patients' lives, but also lower health care costs, improve the efficiency of the health care delivery system, and improve productivity by allowing people to return to work sooner.

To deliver this value to patients, our industry invests heavily in research and development (R&D), and U.S. industry is a global leader in medical technology R&D. The level of R&D spending in the medical device and diagnostics industry, as a percentage of its sales, more than doubled during the 1990s, increasing from 5.4% in 1990, to 8.4% in 1995, to 12.9% in 1998. In absolute terms, R&D spending has increased 20% on a cumulative annual basis since 1990. This level of spending is on par with spending by the pharmaceutical industry and more than three times the overall U.S. average.

However, patients benefit little from this R&D investment when regulatory policies and payment systems for medical technology are complex, non-transparent, or overly burdensome, causing significantly delays in patient access. They can also serve as non-tariff barriers, preventing U.S. products from reaching patients in need of innovative health care treatments.

Utilize Regional Forums to Eliminate Taqriff and Nontariff Barriers to Trade that Unnecessarily Increase the Cost of Health Care

AdvaMed supports international trade initiatives, including bilateral, regional and global trade negotiations, such as the Free Trade Area of the Americas (FTAA) and the Doha Development Agenda in the World Trade Organization (WTO). We encourage Congressional and Administration efforts to eliminate significant tariff and non-tariff barriers to trade for medical technology maintained by many countries, particularly developing countries. Such barriers represent a self-imposed and unnecessary tax that substantially increases the cost of health care to their own citizens and delays the introduction of new, cost-effective, medically beneficial treatments. For example, the medical technology sector continues to face tariffs in Latin America of 15–20% in Mercosur countries and 9–12% in Peru and Colombia.

We strongly endorse the Administration's effort to gain Congressional approval for legislation implementing the CAFTA. Under this free trade agreement, our trading partners in the Dominican Republic and Central America will grant U.S. exports of medical devices duty-free treatment upon entry into force. This would immediately eliminate tariffs of around 10–15% applied to medical devices in these nations. Since the United States already grants imports of almost all products from these countries duty-free entry under the Caribbean Basin Initiative, we view the CAFTA as a way to level the playing field for U.S. exports.

Congressional approval of CAFTA legislation would pave the way for progress on other international trade agreements. Under the WTO negotiations, AdvaMed, working with other trade associations, is seeking the elimination of tariffs on medical devices and other related health-care products. The result would be substantially expanded access for our products in many developing countries, where tariffs are still quite high. Lowering tariffs on health-care related products would reduce the cost of those products to patients in developing countries and improve their access to products that enhance, prolong, and save lives.

International trade agreements, such as CAFTA, provide a vehicle for Administration negotiators to address other trade-related issues. FTAs create a council which generally allows the parties to raise a range of trade-related issues. AdvaMed believes the USTR, Department of Commerce and Congress should monitor regulatory, technology assessment and reimbursement policies in foreign health care systems and push for the creation or maintenance of transparent assessment processes and the opportunity for industry participation in decision making. We look to the Administration and Congress to actively oppose excessive regulation, government price controls and arbitrary, across-the-board reimbursement cuts imposed on foreign medical devices and diagnostics. The councils established by a free trade agreement could provide a forum to address these types of issues, which are usually not explicitly contained in the FTA themselves.

Conclusion

AdvaMed appreciates the shared commitment by the President and the Congress to expand international trade opportunities and encourage global trade liberalization. We look to the President and his Administration to aggressively combat bar-

riers to trade throughout the globe, and support the adoption of the U.S.-Dominican Republic-Central American Free Trade Agreement. AdvaMed is fully prepared to work with the President, the office of the USTR, the Department of Commerce, and the Congress to monitor, enforce and advance regional, multilateral, and bilateral trade agreements—including those with our current key trading partners.

Statement of Jack R. Ouellett, American Textile Company, Duquesne, Pennsylvania

INTRODUCTION

Mr. Chairman, members of the Committee. Thank you for the opportunity to talk with you today.

My name is Jack Ouellette, President and CEO of American Textile Company and a member of the Board of the American Apparel & Footwear Association (AAFA). Our textile business is located in the heart of the rust belt in Pittsburgh, PA. We supply mattress covers, pillow covers and pillows to the most of this country's largest retailers.

My comments will focus on two ideas:

1. How contracting in Central America has created jobs in the U.S.
2. Why CAFTA–DR is important to the future of our company and others like ours

BACKGROUND

American Textile is an 80 year old, privately held business. The first 70 years of our history were devoted to cutting, sewing and packaging textile bedding products. One of our big initiatives in the 1980's was to emphasize products that were "Crafted With Pride in the USA". Neither our customers nor consumers responded positively. Our prices were too high and our products were viewed as a commodity. Others could produce similar products more cheaply. Our market share began to erode. In the early 1990's we forced ourselves to look beyond Pittsburgh and to adapt to changes in the world economy. We embarked on three important initiatives that saved our business from obscurity:

1. We began importing vinyl mattress covers and pillow covers from China, the worlds low cost producer of vinyl sheeting.
2. We began sewing cloth covers in El Salvador to take advantage of labor rates that were globally competitive in a country only a 4-day boat trip from the U.S.
3. We partnered with 3M Company to utilize a high tech fabric that we made into unique allergen barrier bedding.

A SUCCESS STORY

The results have been remarkable and representative of what is good for this country.

1. Today we are the largest supplier of mattress and pillow covers to U.S. retailers.
2. We are the largest U.S. importer of vinyl bedding products
3. Our company revenues have increased on average 11% per year over the last 5 years
4. U.S. sewing jobs have been replaced with higher paying U.S. jobs such as:
   a. product development
   b. computer programming
   c. marketing
   d. production planning
   e. purchasing
   f. sales analysis
   g. manufacturing controls
   h. warehouse management
5. Two years ago we built a new $7 million headquarters and distribution center just outside of Pittsburgh. And the new construction has a unique history.
   a. It is built on top of an old U.S. Steel plant.The first land owner on the deed was Andrew Carnegie who conveyed the property to JP Morgan.
   b. We are part of the revitalization of brown field sites in Pittsburgh.
   c. We are contributing to the economic redevelopment of an area once depressed from the loss of steel making jobs.

WHY IS CAFTA IMPORTANT?

We would prefer manufacturing in the USA because it is easier. However, being brutally honest with ourselves, we realize that sewing jobs will not come back to this country. We are part of a much larger global economy, one in which the government becomes our partner in making trade agreements. We are obviously not opposed to trading with China. But we do have a strong desire to keep as much trade in this hemisphere. CAFTA helps us accomplish that goal in several ways:

1. Duties ranging from 7% to 12 % will be eliminated
2. Our prices will be more competitive with those from Asia
3. We will keep our speed to market advantage vs. Asia
4. Our investments in this hemisphere will be maintained.

WHAT DOES CAFTA MEAN FOR THE TEXTILE AND APPAREL INDUSTRY IN GENERAL?

U.S. textile companies are already dependent upon CAFTA countries. In 2004, 25% of all U.S. fabric exports and 40% of all U.S. yarn exports went to CAFTA countries. Between 1999 and 2004, U.S. yarns and fabric exports to the region grew by $2 billion—accounting for nearly all of the $2.4 billion U.S. yarn and fabric export growth to all markets.

CAFTA creates fresh incentives to use U.S. yarn and U.S. fabric because the existing program will be made:

1. Permanent.
2. Reciprocal
3. Broader (to cover products such as the ones we make)
4. More flexible
5. Simpler.

WHAT WILL WE DO IF CAFTA PASSES?

1. We will buy more U.S. fabric made with U.S. yarns because the agreement incentivizes us to do so.
   a. This creates jobs for our textile suppliers in Alabama and North Carolina, and elsewhere.
2. Our business will grow in the U.S. and in Central America
   a. This preserves and grows job opportunities in both areas.
3. We will reinvest duty savings into our latest initiative: making bed pillows in the U.S. Here is how that will work:
   a. Pillows are too expensive to import from Asia.
   b. We have already invested $500,000 in pillow making equipment.
   c. Pillow shells will be made in El Salvador generally from fabrics made from U.S. yarns.
   d. Pillows will be made in, and shipped from, Pittsburgh
   e. Pillow sewing, filling, packaging and machine maintenance jobs will be created in the U.S.

WHAT WILL HAPPEN IF CAFTA DOES NOT PASS?

1. We will gradually move away from Central America and source from Asia and other low cost countries.
2. We will source fabric regardless of fabric and yarn origin.
3. Our infrastructure (investments) in Central America will begin to shrink. We purchase the following type goods and services in the United States and Central America today:
   a. Fabric woven in North Carolina and Alabama.
   b. Fabric woven in Guatemala from cotton, poly cotton and 100% polyester
   c. Zippers
   d. Thread
   e. Packaging supplies
   f. Cutting, sewing and packaging services
   g. But please note, these jobs will not come back to the U.S., they will go to other parts of the world

CONCLUSION

On behalf of American Textile and other companies like ours, I ask for your support of CAFTA for the following reasons:

1. It will preserve and create jobs in the U.S.
2. Jobs will remain in this hemisphere. Strong free trade in this hemisphere creates security and social benefits of interest to the U.S.

3. In the process we will be improving the lives of thousands of people in Central America. We travel there often and have seen the difference we have made.

Statement of the Honorable Sherrod Brown, a Representative in Congress from the State of Ohio

Members who vote for CAFTA must accept responsibility for its impact on HIV/AIDS patients in CAFTA nations.

Many of these people are chronically ill now, but will be terminally ill if CAFTA is ratified. That's because CAFTA will dramatically reduce access to generic AIDS drugs.

Costa Rica alone faces AIDS drug costs so steep that available funds will provide medicine for only 18% of the patients who are being treated today.

Most people in CAFTA nations can't afford to pay brand-name drug prices for one day, much less for more than 20 years. Most CAFTA nations are struggling to fight AIDS, TB, and Malaria with resources stretched whisper thin.

But CAFTA responds by denying these struggling neighbors the benefits of competition in the prescription drug market.

Let me quickly run through the specific drug industry concessions.

Much like U.S. law, CAFTA provides for two forms of patent extension. The first one permits extensions based on delays in the patent examination process. The second one permits extensions based on delays in the drug approval process.

However, while U.S. law places limits on these extensions, CAFTA does not.

In the U.S., the extension only applies to the *active ingredient* of a new drug and only permits the extension of the term of a *single* patent, not multiple patents. In contrast, CAFTA allows extensions for any and all patents covering a drug, without any time limits.

Here's the second concession: Because both brand-name drugs and their generic alternatives can be assessed using the same safety and efficacy data, U.S. law permits generic manufacturers to draw from the brand company's data when they seek approval for a generic alternative.

However, to reward brand companies for compiling the data, U.S. law grants these companies a five-year window in which generic drug manufacturers cannot use the data to gain marketing approval.

CAFTA provides brand companies with "at least five years" of data exclusivity, opening the door to longer delays in access to affordable medicines.

Here's the third concession: Under NAFTA, when a drugmaker first gains approval for a new drug, the clock starts on a five-year period in which the drugmaker has exclusive rights to market that product.

The same five years applies regardless of when other countries approve the drug. If, for example, Mexico approves a drug two years after the U.S. does, then the drugmaker would receive three years of exclusivity in Mexico.

Under CAFTA, drugmakers receive five years of exclusivity in each country that approves a drug. In other words, under NAFTA, the five years of exclusivity starts for all trading partners when a drug is approved in *any* country, whereas under CAFTA it restarts in each country with approval in that country.

Finally, under U.S. law, a brand-name drug company can delay FDA approval of a generic alternative by asserting that one of its patents would be infringed if the generic is marketed.

Under CAFTA, a generic drug cannot be approved *unless* that country's FDA can prove that no patent is being infringed. How's that for bureaucracy?

You've got to hand it to the big drug companies. They did an end-run around U.S. laws and positioned themselves to rake in billions in windfall profits, and they used an unrelated trade agreement to do it.

But CAFTA proponents will also need to take responsibility for the agreement's impact on U.S. citizens, because CAFTA will not only inflate drug costs in Latin America—it will inflate U.S. drug prices, too.

Once the U.S. endorses additional drug industry favors in other countries, it's only a matter of time before we are forced to adopt those rules here. After all, how could we argue that pharmaceutical industry protections should be weaker here than in trading partner countries?

Competition from generic drugs saves U.S. consumers, businesses and governments more than $10 billion each year.

The greater the delay in generic competition, the more that employer-sponsored health plans, the federal government, and American consumers will pay.

Prescription drug costs are already unsustainable. Blocking competition in the drug market can only make them worse.

Let me conclude with a quick note on side agreements. As Acting USTR Allgeier noted earlier today, there is a side agreement on the signatories' right to fight AIDS, TB and Malaria epidemics.

But side agreements have no legal effect. And this particular side agreement is frankly ludicrous.

Its premise is that these nations will somehow be able to effectively respond to public health crises when CAFTA itself robs them of the most effective tools to respond.

For the side agreement to have any meaning, it would have to void CAFTA's pharmaceutical intellectual property protections. It doesn't do that. The side agreement isn't fooling anybody.

The drug industry concessions in CAFTA are indefensible.

They are also meaningless, because CAFTA is still just a piece of paper.

If enough members of Congress vote in the best interests of their constituents, or simply vote their conscience, that's all CAFTA ever will ever be.

Statement of Robert Holleyman, Business Software Alliance

Chairman Thomas, Congressman Rangel, and Members of the Committee, the Business Software Alliance (BSA) appreciates the opportunity to express the strong support of its members for Congressional implementation of the U.S.-Central America Free Trade Agreement (CAFTA).

BSA represents the world's leading developers of software, hardware and e-commerce technologies. As one of the leading contributors to the U.S. balance of trade, U.S. information technology (IT) and software makers have contributed a trade surplus of $24.3 billion in 2002. As a leading engine of global economic growth, the industry contributed a trillion dollars to the global economy in 2002. In the U.S. alone, the IT industry contributed $405 billion to the U.S. economy, creating 2.6 million jobs and generating $342 billion in tax revenues in 2002.

Exports account for over 50 percent of revenues for most of the leading commercial software makers in the U.S., including the majority of BSA members. If we are to continue the positive contributions of this industry to the U.S. economy, it is critical that free trade agreements (FTAs) establish the highest standards of intellectual property protection. It is also critical that FTAs provide an open trading environment that promotes barrier free e-commerce and growth of the information technology services sector, and require open, transparent, and merit-based government procurement.

The CAFTA accomplishes these goals, which is why BSA and its member companies strongly and unequivocally support the agreement. The CAFTA significantly advances the establishment of strong intellectual property protection and barrier free e-commerce in the region and we commend the Administration and Congress for these achievements.

The six trading partners covered by the CAFTA constitute the second largest export market in Latin America (behind Mexico), and the sixth largest growth market for exports of American goods and services in the world. The CAFTA will deliver tangible benefits to industries, like ours, that depend on export income. More importantly, the CAFTA fosters respect for the rule of law, a commitment to open markets, and protection of intellectual property in a region that just a short time ago was plagued by civil unrest. Today, the region is home to vibrant democracies, growing economies and an expanding middle class. We have the highest praise for Congress' leadership in making the negotiation of this agreement possible through the approval of Trade Promotion Authority, and for former USTR Robert Zoellick and his team for bringing the negotiation of this agreement to so successful a conclusion.

High Standards for Intellectual Property (IP) Protection

For the software industry, strong IP protection is essential in fostering continued innovation and investment. Copyright infringements and software piracy cost the industry more than $28 billion in lost revenues last year. To promote strong IP protection in a digital world, it is essential that our trading partners establish the level of copyright protection that complies with WTO Trade Related Intellectual Property Rights Agreement (TRIPS) and the WIPO Copyright Treaty (WCT). It is also essential that our trading partners fully enforce these obligations.

The CAFTA, like that Australia and Singapore FTAs before it, sets out one of the highest standards of intellectual property (IP) protection and enforcement for copyrights yet achieved in a bilateral or multilateral agreement. The agreement addresses the critical need for strong IP protections in a digital trade environment by incorporating the obligations set out in the WCT.

Some of the highlights of the IP provisions include:

- **Protection for temporary reproductions.** This treatment is critical in a networked world where copyrighted materials can be fully exploited without a user ever making a permanent copy.
- **Balanced ISP liability provisions.** As in the U.S. Digital Millennium Copyright Act, copyright owners retain their rights in an online environment, while Internet service providers enjoy limits on liability for infringement outside of their control.
- **Protection of technological measures.** Where technological measures are used to prevent copyright infringement, those who circumvent these measures will be liable for damages and penalties.
- **Detailed enforcement provisions.** The agreement details civil and criminal procedures and remedies designed to create a strong deterrence against piracy, including statutory damages to deter further infringement and civil ex-parte measures to preserve evidence of infringement. Critically, the agreement also provides strong criminal penalties against the most pervasive form of software piracy—corporate and enterprise end user piracy.
- **Government legalization of software.** The agreement requires that governments lead by example by using only legitimate and licensed software.

Barrier-Free E-Commerce

With Internet usage worldwide topping 900 million people in 2004, e-commerce represents an important and growing part of global trade. The promotion of barrier-free cross-border e-commerce is a critical element in expanding access to global markets. The trade treatment of software delivered electronically is one of the most important issues facing the software industry. It is essential that software delivered electronically receive the same benefits and concessions as software traded on a physical medium.

We are quickly moving to a world where online transmission is a predominant means by which software is delivered to customers. According to our CEOs, by the end of this year 66 percent of all software is expected to be distributed online. By eliminating the need to ship physical media, this will allow software providers to deliver the newest, most up-to-date software to consumers in all corners of the globe, more quickly and at lower cost than was ever conceived possible.

The e-commerce chapter in the CAFTA recognizes a category of "digital products" (which includes computer programs), and applies familiar trade concepts to this new category. This is critical as it recognizes the evolution and development of digital products during the last twenty years, and addresses the need for predictability in the trade treatment of digital products.

Among the specific provisions of the CAFTA e-commerce chapter are duty-free importation and exportation of digital products by means of cross-border transmissions, and broad national treatment for like digital products. These provisions promote nondiscriminatory and barrier free e-commerce that is so essential in promoting the growth and development of the IT industry.

With respect to the physical delivery of digital products customs duties are to be applied on the basis of the value of the carrier medium. This provision is essential as valuation on content results in highly subjective assessments of projected revenues.

The parties also agreed to cooperate in numerous policy areas related to e-commerce, further advancing the work on e-commerce with our trading partners.

Liberalized Trade in Information Technology (IT) Services

During the past decade, a vast array of new e-commerce and information technology services have been developed including data storage and management, web hosting, and software implementation services. Given the increasing trend for technology users to purchase information technology solutions as a combination of goods and services, full liberalization in this area is more important now then ever.

It is thus critical that our trading partners provide full market access and national treatment in information technology services including those that are delivered electronically. It is also important that no barriers are created for the new and evolving information technology services.

All parties to the CAFTA agreed to provide full market access and national treatment on services. The agreement adopted a negative list approach, which means

that new services will be covered by these obligations unless specific reservations were listed in an annex to the agreement. We commend this approach, and we are pleased to note that none of the six trading partners covered by the CAFTA have scheduled any commercially significant reservations affecting information technology services.

Opening of Government Procurement Markets

Around the world, governments are among the largest consumers of IT products and services. Opening government procurement markets to foreign trade, and ensuring that government procurement is conducted fairly and openly, is a priority for our industry.

The CAFTA chapter on government procurement applies national treatment rules to substantial numbers of government purchases both at the central and sub-central government level. It includes obligations to apply fair and transparent procedures in the procurement process. In addition, it requires that purchases be merit-based and technology-neutral. These elements are essential to IT industry access to important government procurement markets.

In conclusion, the CAFTA promotes strong intellectual property rights protection, barrier free e-commerce, full liberalization of trade in information technology services with and among our trading partners in the region, and fair and open government procurement. We commend these achievements, and we urge Congress to approve and implement the agreement.

Statement of Harley Shaiken, Center for Latin American Studies, Berkeley, California

Economic integration offers the possibility to expand trade, spur development, and strengthen democracy in the Dominican Republic and Central America. For the peoples of the region the stakes could not be higher. These countries have been trapped between anemic economic growth and corrosive inequality. The result has been a quagmire of poverty, social dislocation, and shattered dreams for millions. If these countries can break out of this trap, not only do their citizens look towards a better future, but the people of the United States benefit as well. At the very least, more prosperous economies translate into a higher demand for U.S.-produced goods and a healthier trading relationship.

The standard by which to judge this agreement is straightforward: does the Dominican Republic—Central America Free Trade Agreement (DR–CAFTA) promote development and democracy, or does it create a small circle of wealthy winners and a far larger group of impoverished losers? Expanded trade has the potential to propel the former, but this agreement delivers the later. The result threatens rather than benefits U.S. workers. It's not that the train is moving too slowly, it's that DR–CAFTA is running in the wrong direction.

Plaguing the agreement is an unfortunate, unnecessary tradeoff: DR–CAFTA opens trade while locking in the labor status quo or worse. For citizens of Central America and the Dominican Republic, the tradeoff represents a squandered opportunity; for U.S. workers and their communities, it means an assault on wages and working conditions; for firms it may mean easier access to markets tomorrow but diminished markets in the coming years. This is not an inherent problem of more open trade but rather the result of a poorly conceived managed trade agreement. DR–CAFTA provides strong language and tough penalties in all areas related to investment at times riding roughshod over the six countries but abandons labor rights largely to rhetoric and good intentions.

In other areas tough provisions favor special interests at the expense of the Central American countries and the Dominican Republic. Consider agriculture. The rural population ranges from 34 percent in the Dominican Republic to 60 percent in Guatemala.[1] How are small farmers supposed to compete with heavily subsidized U.S. exports? Due to subsidies for rice production, the U.S. exported paddy rice to Central America at a price that was 18–20 percent lower than its cost of production.[2] In pharmaceuticals, Professor Angelina Godoy has found that "the intellectual-property provisions in CAFTA actually extend the length of time during which

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[1] Ferranti, D., G. Perry, W. Foster, D. Lederman, A. Valdez, "Beyond the City: The Rural Contribution to Development," (Washinton D.C.:World Bank, 2005).

[2] Oxfam International, "A raw deal for rice under DR–CAFTA," November 2003, (5), http://www.oxfam.org.uk/what_we_do/issues/trade/downloads/bp68_rice.pdf

the major pharmaceutical companies' products are guaranteed sole access to markets" which, in her view as well as that of many other observers such as Amnesty International, "just may be a death sentence for many in the Dominican Republic and Central America."[3] Many Latin Americans are likely to view provisions such as these as indicating that the U.S. is more serious about strong-arming weaker neighbors than sustainable economic integration.

Let's be clear from the start. This is not a debate about "free trade" versus "protectionism." Instead, the challenge is defining free trade for the twenty-first century. The right trade agreement could both encourage growth and move towards a more broadly shared prosperity, defining what one might call "smart trade." To do this, comparative advantage must be defined by innovation rather than repression. Labor standards are vital for protecting workers, but they also can help expand purchasing power, build healthier markets, and lay the basis for more robust trade.

Why are labor rights so important? In Central America and the Dominican Republic working conditions range from bad to appalling. Workers face everything from rampant discrimination against older people and pregnant women to physical abuse, lack of bathroom breaks, and no overtime pay. "It makes me angry when they say we have good laws for workers' rights," said Marina del Carmen Leiva, a 32-year-old seamstress and mother. "In four years I won't have a job because factories don't want us after we turn 35 years of age and then what will I do?" In the meantime, the pressure on the job is so intense, she reports, that to avoid slowing production she and her co-workers are denied even a drink of water.[4] The employer lays down the law and impunity rules. Wages are determined by economic power not productivity, leaving many workers and their families anchored to the bottom. What options do workers have to break this cycle? One of the few is the ability to join a union and bargain collectively.

What then is wrong with the labor provisions in DR–CAFTA? They send a clear message to the governments involved: the current situation on labor rights is acceptable and even fewer rights for workers will do. The agreement lays out lofty labor rights goals and then backs them up with weak, convoluted language and meager resources. Moreover, these inadequate provisions replace language that has had a modest positive impact. Consequently, firms willing to travel the low road will define competitiveness, cutting off those who want to do the right thing.

The economic dimensions of this trade agreement are not large by U.S. standards. The combined economic output of the six DR–CAFTA countries is roughly equal to that of metropolitan San Jose, CA and these countries only accounted for about 1.5 percent of U.S. trade in 2003. Why then is this debate so important?

First, the region has geopolitical importance to the United States and the rest of the world. As we saw in the 1980's, extreme wealth combined with raw poverty is a volatile mixture.[5] Historically it has translated into a few exercising a monopoly over political power and cycles of social upheaval followed by violent repression. Strengthening worker rights builds civil society and supports democratic governance, reinforcing long-term stability.

Second, the shortcomings of this trade agreement could spur far more undocumented immigration. A lack of opportunity at home leaves few options for increasing numbers of people. Today, an estimated 11 million undocumented immigrants reside in the United States, nearly 81 percent of them from Latin America.[6] Some estimates place the number from Central America at 1.5 million.[7]

Third, healthier economies and improved conditions for Central American workers are in the immediate interest of U.S. workers. A free trade agreement puts workers in Tegucigalpa, Honduras, and in Charlotte, North Carolina in the same labor market. If textile workers in Tegucigalpa suffer today, textile workers in Charlotte will feel it tomorrow and so will others in the area. The challenge is to harmonize up-

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[3] Angelina Godoy, "What makes free trade free?" *Seattle Times,* April 14, 2005, http://seattletimes.nwsource.com/html/opinion/2002240604_nocafta14.html; and Amnesty International, "Guatemala, Memorandum to the Government of Guatemala: Amnesty International's concerns regarding the current human rights situation," (Washington, D.C.: Amnesty International, April 20, 2005), http://web.amnesty.org/library/Index/ENGAMR340142005

[4] Elizabeth Becker, "Amid a Trade Deal, A Debate Over Labor," *New York Times*, April 6, 2004.

[5] Perry, G., F. Ferreira, and M. Walton, "Different Lives, Inequality in Latin America and the Caribbean," in *Inequality in Latin America: Breaking with History*, 51 (Washington D.C.: World Bank, 2004),

[6] Jeffery Passel, "Estimates of the Size and Characteristics of the Undocumented Population," (Washington D.C.: Pew Hispanic Center, March 21, 2005), http://pewhispanic.org/files/reports/44.pdf

[7] Karen Brooks, "Migrant Plan Vital to Central America," *Star Telegram Border Bureau,* January 19, 2004.

wards rather than downwards and this requires strong language and enforcement in a trade agreement.

Finally, DR–CAFTA represents an important precedent in shaping future trade agreements. What happens here is the prelude to the Free Trade Agreement of the Americas and will prove influential in determining the ways in which countries integrate into the global economy. This agreement rewards narrow financial interests in the short term and sacrifices broader purchasing power in the long term.

In this testimony, I plan to explore five themes: contemporary labor issues, labor laws and their enforcement, the promotion of reform, the global context, and finally "smart trade."

Contemporary labor issues

For millions throughout Central America and the Dominican Republic, the issue of labor rights is not an abstraction, but an urgent need. Consider the larger political context of this agreement. Strong, unyielding oligarchies have defined most of these economies for centuries. Several of these countries remain in the shadow of vicious civil wars in which state-sponsored violence and impunity ruled supreme. The rule of law remains tenuous and civil society subject to threat. In its most recent report on Guatemala, the largest economy in the region, Amnesty International stated that "it remains concerned at the apparent lack of political will of the present government to take concrete and effective action to eliminate impunity and to ensure the rule of law prevails in Guatemala."[8] The report found that "clandestine and illegal armed groups still operate with impunity in Guatemala" and that these groups are linked not just to organized crime, but to the police, army, and state institutions.[9]

Although labor laws differ among these six countries, there is little serious debate among scholars as to the situation on the ground. The issue is not simply selective abuses but a systematic denial of the right to freely join a union or the right to bargain collectively. Numerous reports from the ILO, Human Rights Watch, the United Nations, and the United States Department of State confirm the seriousness of the problems.[10]

Why is it so important that workers have the right to join or reject a union without coercion? First, collective bargaining can address abuses on the job and link wages to productivity. Former Secretary of State George Schultz, who early in his career was a labor-management arbitrator, maintained that in "a healthy workplace, it is very important that there be some system of checks and balances."

Second, independent unions strengthen civil society, particularly important in a climate of impunity. George Schultz could not have been clearer when he said "unions and democracy go together."[11]

When it comes to making the choice on whether or not to join a union, however, workers currently risk dismissal, blacklist, violence, and even death. The results are readily apparent in the low union density. In Guatemala less than 3 percent of the workforce belongs to a union.[12] In El Salvador, no independent trade unions have been formed in the last four years.

The low trade union density is only the tip of the iceberg. The unions that do exist tend to be fragmented, weak, and isolated. Effective collective bargaining has become a rarity rather than the norm. Table 1 provides data on the percentage of workers covered by collective bargaining agreements in four of the six DR–CAFTA countries for which data is available. The coverage ranges from 1.4 percent in Nicaragua to 4.3 percent in El Salvador, not exactly a critical mass for effective collective bargaining.

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[8] Amnesty International, "Guatemala, Memorandum to the Government of Guatemala: Amnesty International's concerns regarding the current human rights situation," (Washington, D.C.: Amnesty International, April 20, 2005), http://web.amnesty.org/library/Index/ENGAMR340142005

[9] Ibid, 9.

[10] See: U.S. State Department Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices 2004," for Costa Rica, Dominican Republic, El Salvador, Guatemala and Nicaragua, February 29, 2005, http://www.state.gov/g/drl/rls/hrrpt/2004/c14138.htm; Human Rights Watch, "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," vol. 15, no. 5, December 2003, http://www.hrw.org/reports/2003/elsalvador1203/; Human Rights Watch, "CAFTA's Weak Labor Rights Protections: Why the Present Accord Should be Opposed," March 2004, http://hrw.org/english/docs/2004/03/09/cafta90days.pdf; ILO, "Fundamental Principals and Rights at Work: A Labour Law Study," (Geneva, International Labour Office, 2003), http://www.ilo.org/public/english/dialogue/download/cafta.pdf

[11] Leonard Silk, "Worrying Over Weakened Unions," *New York Times,* December 13, 1991.

[12] U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Guatemala Country Report on Human Rights Practices 2004," February 29, 2005, http://www.state.gov/g/drl/rls/hrrpt/2004/41762.htm

Table 1. Collective agreement coverage rate

Country	Year	Rate
		(%)
Costa Rica*	2001	2.4
El Salvador	2003	4.3
Honduras	2003	1.4
Nicaragua	2003	1.5

*Most recent data available
Source: International Labour Organization Decent Work Indicators Database http://www.oit.or.cr/estad/td/indexe.php

Labor laws and their enforcement

A trade agreement should stimulate positive change, not ratify the status quo or worse. What type of labor standards might be rigorous enough to improve the conditions of work yet flexible enough to recognize different levels of development? One model is the five core labor standards developed by the International Labor Organization (ILO).[13] Particularly critical are the first two: the right of association (Convention 87) and the right to organize and bargain collectively (Convention 98). The recognition and enforcement of these rights allows workers some say in their economic futures; their violation further marginalizes workers.

Although DR–CAFTA pays rhetorical homage to these standards, the approach it uses throws them overboard. The agreement calls for each country to enforce its existing labor codes, no matter how inadequate or distant from the ILO standards. The agreement recognizes "the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws." It then goes on to state that "each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights . . . and shall strive to improve those standards in that light."[14] "Strive to ensure" and "strive to improve"? This is the kind of language many would like to see on April 15 when they have to pay their taxes since it is virtually unenforceable. A standard based on effort is hardly a serious standard.

Instead of "striving to ensure" international standards are met, the agreement could commit to upholding them and provide clear penalties if they are not upheld.

The domestic laws often read as if they are designed to thwart the formation of unions, and slipshod enforcement hardly improves the situation. Companies wanting to avoid unions can do just about anything; workers seeking to join unions face threats and intimidation. Protection against anti-union bias is akin to snow in San Francisco; it happens but not frequently. "In practice, labor laws on the books in Central America are not sufficient to deter employers from violations," an International Labor Rights Fund (ILRF) study found.[15] Byzantine regulations tend to tie unions into knots, laying out registration procedures that are more maze than procedure. In Honduras, the ILRF found "obstacles and delays in union registration constitute a violation of ILO Convention 87 on the right to associate".[16] Laws encourage employer interference in union affairs, restrictions prohibit anything above an enterprise union, rights for temporary workers are truncated, and public workers often are prohibited from organizing. Finally, there are severe limits on the right to strike. Weak as labor rights are, the track record hardly inspires confidence that they won't be ratcheted downwards in response to globalization.

Consider El Salvador. The government-appointed Human Rights Ombudsman told the *Washington Post* in late 2004 that both industry and the government have "an

[13] International Labor Organization, "Fundamental ILO Conventions," http://www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm

[14] United States Trade Representative, "The Dominican Republic-Central America Free Trade Agreement," August, 5, 2004, http://www.ustr.gov/Trade_Agreements/Bilateral/DR-CAFTA/DR-CAFTA_Final_Texts/Section_Index.html

[15] International Labor Rights Fund, "An Examination of Six Basic Labor Rights—Executive Summary of Reports on Honduras, Costa Rica, Nicaragua, El Salvador and Guatemala," based on a study by Asociacion Servicios de Promocion Laboral (ASEPROLA), April 5, 2005, http://www.laborrights.org/

[16] Ibid.

explicit intent to destroy unions."[17] A recent Human Rights Watch report concluded that the country's laws "do not adequately protect workers against anti-union suspensions or dismissals, thereby undermining the right to freedom of association and to form and join trade unions."[18] The report documents that "employers routinely fire union affiliates and pay the small fine for ridding their facilities of trade unionists," a practice that is widespread in the other countries as well.[19]

Enforcement is squeezed by impunity and corruption; ineptitude and fear. In Guatemala, the U.S. State Department concluded in its 2005 human rights report that "Workers had little confidence that the responsible executive and judicial institutions would effectively protect or defend their rights if violated." The report stated that "the weakness of labor inspectors, the failures of the judicial system, poverty, the legacy of violent repression of labor activists during the internal conflict, the climate of impunity, and the long-standing hostility between the business establishment and independent and self-governing labor associations all constrained the exercise of worker rights."[20] The document also pointed out that "the prevailing business culture ignores labor contracts because, in practice, they are largely unenforceable due to the weak, cumbersome and corrupt legal system . . . [the system] perpetuates the violence that workers face if they attempt to exercise their rights." In Costa Rica, the International Federation of Free Trade Unions found diminished collective bargaining stemming from a lack of protection for union organizing.[21] The labor courts provide little remedy.

The promotion of reform

There is little dispute that labor conditions are bad today; the real question is will DR–CAFTA make them better? In fact, it will make them worse. What makes the DR–CAFTA approach particularly problematic is that it replaces the modest existing protections for labor rights embedded in two unilateral trade preference programs: the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). Much of the halting, modest reform that has taken place in the region over the last 15 years stems from the pressure brought through these programs. For example, El Salvador was put on GSP review for abusing worker rights in 1992 and labor law reform followed within two years.[22] More broadly, Kimberly Ann Elliott found that "the U.S. experience in applying worker rights conditionality to trade benefits under the GSP suggests that external pressure can be helpful in improving treatment of workers in developing countries and that linkage of trade and worker rights need not devolve into simple protectionism."[23] Without external pressure, it is very naive to expect any substantive change. Rather than learn from this experience, DR–CAFTA ignores it.

What impetus is supposed to change destructive practices this deeply rooted? The core problem is one of political will, not lack of technical resources. The most powerful incentive for change is conditioning U.S. ratification on domestic labor law reform. Unfortunately, that horse has already left the barn. Some proponents argue expanded trade will result in more democratic rights. Burgeoning trade does not seem to have done much in Mexico—especially in the export sector—in the first decade of NAFTA. Cross border trade between the U.S. and Mexico has tripled yet the number of independent unions remains in single digits. This approach certainly was not the path that the U.S. itself followed 70 years ago. Instead, the U.S. passed legislation such as the Wagner Act and the Fair Labor Standards Act in the midst of the Great Depression, hardly the most opportune moment, as a foundation for future progress. The rights workers won in the 1930s and 1940s propelled economic growth for decades to come and laid the basis for the middle class today.

Realistically, powerful elites retain a strong hold on the DR–CAFTA economies. If expanded trade simply translates to expanded income for these elites, a small

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[17] Kevin Sullivan, "Slaying of U.S. Labor Organizer Opens Old Wounds in El Salvador," *Washington Post,* December 2, 2004.

[18] Human Rights Watch, "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," vol. 15, no. 5 (2), December 2003, http://www.hrw.org/reports/2003/elsalvador1203/

[19] Ibid, 11.

[20] U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Guatemala Country Report on Human Rights Practices 2004," February 29, 2005, http://www.state.gov/g/drl/rls/hrrpt/2004/41762.htm

[21] International Federation of Free Trade Unions, "Annual Survey of Violations of Trade Union Rights 2003," (Brussels: IFCTU, 2003), 89.

[22] AFL–CIO, "The Real Record on Workers' Rights in Central America,"(Washington D.C.:AFL–CIO, April 2005), http://www.aflcio.org/issuespolitics/globaleconomy/upload/CAFTABook.pdf

[23] Kimberly Ann Elliot, "Preferences for Workers? Worker Rights and the U.S. Generalized System of Preferences," speech given at the conference on "Globalization and Inequality," Calvin College, Grand Rapids, Michigan, May 28–30, (9).

number of wealthy families may become wealthier and happier, but little will be passed along to the majority of the people of these countries. The growth of the middle class will be thwarted and, ironically, the potential market for U.S. goods dampened. By the same token, the pressure will correspondingly increases on the wages and working conditions for U.S. workers. The goal should be to harmonize standards upwards not the other way around.

Global context

Trade among the DR–CAFTA countries takes place in a tough global context. Are strong labor standards possible in a world in which China is emerging as a defining manufacturing power? Put differently, how can the countries of this region compete with China if they emphasize worker rights? This question itself highlights a central choice in the global economy: the high road versus the low road to competitiveness. For these six countries the high road would involve competing based on innovation, response time, efficiency, and geographical proximity to the U.S. Competitive success could translate into both higher profits and higher wages.

"Low cost labor," a Congressional Research Service (CRS) report maintained, "is not the only or even the most important factor driving competitiveness. Studies suggest that the economic and social networks that developed between U.S. and Central American firms effectively created a comparative advantage for the region in apparel exporting that has held up even with the entry of China in the market."[24] What is this comparative advantage based on? "This relationship was made possible by the proximity of production, operational efficiencies, and quick turn around times for meeting increasingly shortened deadlines demanded of large retailers." The CRS may be overly optimistic on how sustainable this advantage proves to be, but in conjunction with other policy measures it could contribute to a high road alternative.

The low road emphasizes the lowest possible wages and intensified working conditions. Over 60 percent of DR–CAFTA exports to the United States are in apparel, a sector known for *maquiladora* export plants, rock bottom wages, and fierce competitiveness.[25] Although tempting for many firms in the short run, the problem with the low road is that China already occupies most of the lanes. No amount of wage cutting will effectively compete with China, which is building a far better infrastructure and, has a far larger domestic market, and access to state-of-the-art technologies. Central America needs a long term strategy that provides its' labor force with more education, fosters effective innovation, and builds on its geographical proximity to the U.S. market. Instead, DR–CAFTA encourages wage cutting tomorrow, possibly boosting profits next quarter, but ensuring a frontal collision with China next year or the year after. Not only is the low road damaging; it won't work in the global economy today.

Smart trade

Ambassador Peter F. Allgeier, Acting United States Trade Representative, has referred to DR–CAFTA "as an important tool of reform that will help deepen and strengthen democracy."[26] While the goal is worthy, the reality falls far short. The pressures were such that the DR–CAFTA countries had little choice but to sign. As a consultant for the Nicaraguan government, himself a former trade official for Mexico, put it "I advised them to sign whatever the United States put in front of them."[27] This entire process has caused severe strains and protests in civil society throughout Central America. Alvaro Ramazzini Imeri, Bishop of the Dioceses of San Marcos (Guatemala's third poorest province) and president of the Episcopal secretariat of Central America (SEDAC), commented last May that "Guatemalan society is not suitably informed about the content and consequences of CAFTA. The negotiations that took place did not take into account the great majority of poor people in the country, who are represented in popular and rural organizations."[28] Reflecting the gap between the ratification process for DR–CAFTA and popular sentiment is the fact that legislatures often had to pass the agreement in the dead of night. The Honduran Congress ratified CAFTA in an early morning surprise vote specifi-

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[24] J.F. Hornbeck, "Report for Congress on the Dominican Republic-Central America-United States Free Trade Agreement (DR–CAFTA)," (Washington D.C.: Congressional Research Service, April 5, 2005), http://guatemala.usembassy.gov/wwwfcrscafta2e.pdf

[25] Daniel P. Erikson, "Central America"s Free Trade Gamble," *World Policy Journal*, Winter 2004/2005, 19.

[26] Ambassador Peter F. Allgeir, "Statement before the Committee on Finance, United States Senate—The U.S.-Central America-Dominican Republic Free Trade Agreement," Washington D.C., April 13, 2005.

[27] Bruce Stokes, "Will Free Trade Help Nicaragua?," *National Journal*, June, 5, 2004, 1790.

[28] Bishop Alvaro Ramazzini Imeri, letter to the Members of the United States Congress, Washington, D.C., May 28, 2004.

cally because protests were expected. The Guatemala Congress approved CAFTA in emergency session and under exceptional circumstances also because of anticipated protests. It passed by a lopsided vote of 126–12 on March 10; a Gallup poll carried out two weeks later (March 14–23) found that 65 percent of those polled felt that the agreement would harm the country.[29]

When it came to the issue of labor rights, tough negotiating dissolved into acceptance of the status quo. The danger, according to former President of Costa Rica Rodrigo Carazo Odio, is that "corporations take advantage of cheap labor, operating in enclaves with limited links to the national economy, trapping the region in a spiral of low salaries, low aggregate value and lack of compliance with basic labor standards, such as the freedom of association and the right to collective negotiation."[30]

The ability for citizens of any society to assemble freely and act collectively when they so desire is a fundamental democratic right. Without this right, you can have fair elections, but you do not have democracy. In fact, for democracy to flourish in this region so ravaged by social upheaval and war, one needs to strengthen, not weaken civil society. The ILO embeds these principles into its five core labor rights. For DR–CAFTA to work, labor rights need to be strengthened considerably in a fundamental arena: the decision an ordinary worker might take as to whether or not he or she chooses to join a union. The checks and balances that unions provide are essential in the workplace, but are even more central in sustaining fledgling democracies.

We need to reframe the debate on the issues of labor rights and development. It is not a question of free trade versus protectionism, but rather "smart trade" versus "polarizing trade." Smart trade recognizes rights, spurs economic growth with equity, and promotes democracy; polarizing trade might spur trade in the short run but the benefits go to the winners' circle while the number of losers grows far larger. Democracy itself could be a casualty.

Smart trade requires four provisions:

1. Upward harmonization of domestic labor law to match the core ILO conventions as the goal of a three-year phase-in period. The granting of trade and investment benefits would follow agreed upon reform in a country's labor law.[31]
2. The ILO five core labor rights embedded in the core agreement, subject to strong enforcement provisions and penalties.
3. A development fund targeted for infrastructure and education. This fund would reinforce competitiveness in the six countries and place them on the "high road."
4. Expanded adjustment assistance for U.S. workers negatively impacted by trade. This assistance should also be proactive in industries threatened by trade.

No trade agreement can solve all the problems of development and globalization, but it should point in the right direction. A trade agreement that fosters prosperity and promotes democracy is possible and essential for the region and for the United States. Smart trade lays the basis for growing incomes and markets in Central America and the Dominican Republic and expanded U.S. exports and jobs. It begins to define a better model for integrating into the global economy. Unfortunately, that model is not this DR–CAFTA.

Statement of Joseph E. Brenner and Ellen R. Shaffer, Center for Policy Analysis on Trade and Health, San Francisco, California

EXECUTIVE SUMMARY

The Intellectual Property (IP) provisions of the Dominican Republic—Central America Free Trade Agreement (CAFTA) would delay competition from generic medicines, helping to prop up high prices for brand name pharmaceuticals in the U.S., and effectively denying access to life-saving drugs in some of the poorest nations in the Americas. CAFTA IP provisions that would discourage generic competi-

[29] Matthew Kennis, "Despite Ratification Anti-CAFTA protests Continue in Guatemala," IRC Americas Program, (Silver City, NM: International Relations Center, April 13, 2005), http://www.americaspolicy.org/pdf/commentary/0504guatcafta.pdf

[30] Rodrigo Carazo Odio, letter to the Members of the United States Congress, Washington, D.C., May 27, 2004.

[31] Carol Pier, "The Right Way to Trade," *Washington Post*, August 1, 2003.

tion include extended terms for patents and for data exclusivity, and linkage, which are further discussed below. They also present barriers to compulsory licensing.

These provisions contradict Congress' objectives in the Trade Act of 2002 to balance its interest in strengthening intellectual property rules with its interest in assuring access to affordable drugs. They reflect the published views of the U.S. Trade Representative's Advisory Committee on Intellectual Property Rights. Seven of 15 members of this Committee are affiliated with the pharmaceutical industry. There are no representatives of organizations concerned with the effects of trade on health. Addenda to this testimony document the IP Committee's comments and membership.

CAFTA would establish rules for trade among seven nations: the U.S., Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. The rules apply to both the U.S. and to Central American countries. A side letter to the agreement on public health does not protect access to medicines.

How CAFTA Delays Affordable Prescription Drugs In The U.S. And Central America

CAFTA's IP rules extend two types of intellectual property rights that brand name companies now use to maintain monopoly control on the sale of prescription drugs: 1) Patents; and 2) Clinical trial test data. Generic competitors need to refer to these data to get regulatory approval for marketing. CAFTA's data exclusivity rules present an insurmountable barrier to a third key policy, compulsory licensing.

The rules increase pricing protections for brand-name drugs and delay competition by affordable generics. They would cause years of delay in providing access to affordable versions of new life-saving drugs by:

- Extending patent terms.
- Establishing periods of "marketing exclusivity" for brand name drugs, beyond current U.S. law. During this time, generic copies could not be approved for sale even if the brand name drug's patent has already expired.
- Requiring drug regulatory agencies to enforce the many independent patents claimed for each brand name drug.

The result would be to:

- Compromise access to affordable drugs in the U.S. if U.S. law is "harmonized" to match the drug regulatory rules in CAFTA and other agreements.
- Severely handicap the thriving generic industry in Guatemala and Costa Rica, and deter investment in new generics.
- Impede issuance of **"compulsory licenses"** that enable governments to authorize generic drug production, or compel lower prices by brand name drug companies. Countries can issue a compulsory license to compel generic production of a patented drug, in order to make the drug more widely available at an affordable price. In most cases, a government's credible threat to issue a compulsory license has induced brand-name companies to drastically lower their prices. Bayer lowered its price for Cipro after the U.S. threatened to issue a compulsory license for Cipro during the anthrax scare, for example. Under CAFTA, it is possible that countries could still overcome the originator company's patent right. But CAFTA's "data exclusivity" provisions present an insurmountable barrier to generic company access to the originator company's clinical trial data, and thus are a barrier to compulsory licensing.

Generic competition drastically reduces drug prices. According to Doctors Without Borders, generic competition led to a dramatic drop in cost for antiretroviral drugs for HIV/AIDS in Guatemala. In the first half of 2000, the lowest cost of treatment was $10,439 per year per person for brand-name drugs and $2,767 for generics. In less than a year, the price dropped to $727 for brand-name drugs and $201 for generics.

USTR Advisory Committees Are Dominated by the Pharmaceutical Industry, and Lack Public Health Views

The Trade Promotion Authority Act of 2002 (PL 107–210; 19 USC 3802, Sec. 2102.(b)(4)(C), Trade Negotiating Objectives) calls on the U.S. Trade Representative (USTR) to balance Congress' interests in strengthening intellectual property rules, and in assuring access to affordable drugs. It calls for the U.S. to respect the World Trade Organization's Doha Declaration, which recognizes that trade agreements must support a nation's "right to protect public health and, in particular, to promote access to medicines for all." The USTR's Advisory Committees are an important conduit for views from the concerned public, and could help balance these interests. However, there are no representatives for the public's health or for access to medi-

cines on any of the USTR's Advisory Committees, including those that address intellectual property negotiations. Seven of 15 members of the Industry Trade Advisory Committee on Intellectual Property Rights (ITAC 15) are affiliated with the pharmaceutical industry. There are no representatives of organizations concerned with the impact of trade agreements on the health of individuals, communities, and vulnerable populations.

These advisory committees routinely advocate intellectual property provisions that delay and deny access to affordable drugs in the U.S. and abroad, while extending pharmaceutical company rights beyond U.S. patent law and the WTO TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property). They are referred to as **"TRIPS–Plus"** rules. There has been opposition to these policies in the U.S. and in our trading partners. Because there is no public health representation on the advisory committees, and trade negotiations are secret until the agreements are completed, this opposition has been expressed only after it has been too late to influence the agreement. Better representation during the process would contribute to more effective outcomes.

CAFTA Side Letter Does Not Assure Access to Medicines

A side letter to CAFTA, "Understanding Regarding Certain Public Health Measures," does not protect access to affordable prescription drugs, including generics. As documented elsewhere by CPATH (www.cpath.org), the side letter's language leaves important loopholes about which government measures to provide medicines would be considered sufficiently "necessary" or urgent. Language that protects access to medicines should be unambiguous, should conform entirely with the spirit and letter of the World Trade Organization's Doha Declaration on the TRIPS Agreement and Public Health, and should be included in the main text of the agreement. IP provisions that could restrict access to affordable medicines should not be included in regional and bilateral trade agreements.

SPECIFIC CAFTA PROVISIONS THAT DELAY ACCESS TO AFFORDABLE MEDICINES

Extending Patents

1. CAFTA would cover plants as patentable. Patents of plants may directly impact the economic livelihood and health of local farmers who have traditionally depended on their knowledge of and access to medicinal and nutritional plants. Under CAFTA they may be required to pay transnational corporations that patent plants. Patenting of plants is not required by TRIPS.

CAFTA Provision: Article 15.9: 2. Nothing in this Chapter shall be construed to prevent a Party from excluding inventions from patentability as set out in Articles 27.2 and 27.3 of the TRIPS Agreement. Notwithstanding the foregoing, **any Party that does not provide patent protection for plants by the date of entry into force of this Agreement shall undertake all reasonable efforts to make such patent protection available. Any Party that provides patent protection for plants or animals on or after the date of entry into force of this Agreement shall maintain such protection.**

2. CAFTA gives very limited rights to provide exceptions to patents. The Bolar Amendment in the U.S. authorizes generic companies to prepare for marketing approval in advance of the expiration of a patent, so that generic products may be available when the patent expires. Under CAFTA's weak language, a country "may provide" exceptions, suggesting it also may not, particularly if there is continuing pressure from U.S. not to do so.

CAFTA Provision: Article 15.9: Patents.

15.9.3. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

3. Export of a generic appears to be prohibited, even if a patent has expired. U.S. law explicitly permits the export of a generic pharmaceutical product once the patent has expired regardless of the existence of marketing exclusivity.

CAFTA Provision: Article 15.9: Patents.

15.9.5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical or agricultural chemical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in the territory of that Party other than for purposes related to generating information to meet requirements for approval to market the product once the patent expires, and if the Party permits exportation, **the prod-**

uct shall only be exported outside the territory of that Party for purposes of meeting marketing approval requirements of that Party.

4. CAFTA extends patents by up to 5 years from the date of filing a patent application in a country (beyond the 20 year patent term) for unjustified delays that may occur during the process of granting a patent. This could extend patents after the patent has expired in U.S.

This provision is independent from and cumulative to a related provision that **requires extension of length of patent term for an indeterminate period, to compensate a patent holder for unreasonable reduction of patent term due to market approval process**. "Unreasonable" is not defined. No clear criteria exist for determining the extension. No maximum period for the patent extension is specified. The clock can start after the patent expires in U.S.

In current U.S. law, patent extensions attributable to delays in marketing approval of a drug cannot be greater than 5 years.

CAFTA Provisions. Article 15.96. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

15.9.6 (b) With respect to any pharmaceutical product that is covered by a patent, each Party shall make available a restoration of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the **marketing approval process related to the first commercial marketing of the product in that Party.**

Data Exclusivity/Marketing Exclusivity

Generics manufacturers must be able to refer to the originator company's clinical trial data, presented to regulatory authorities to establish that the drug is safe and effective. Once the originator's drug is approved, a generic company only needs to show that its product is biologically equivalent, meaning that it works the same way in the human body as the originator's drug. If it cannot refer to the approval of the originator drug, it cannot obtain approval for marketing. A combination of CAFTA rules delay generic companies' ability to rely on originators' approvals.

1. **No approval will be given to a generics manufacturer to use test data for marketing a generic product for *at least* 5 years for pharmaceutical products and 10 years for agricultural chemical products from the first approval of the patented drug *in that country*.**

Problems:

Delay in marketing. If generic companies cannot rely on approvals based on pharmaceutical data from the brand drugs, they will effectively be barred from the market for years. Repeating the safety and efficacy tests required to obtain marketing approval would be costly, and expose human subjects to unnecessary and therefore unethical risk.

Multiple delays for indeterminate times. CAFTA prohibits generic companies from preparing generic drugs for marketing until ***at least* 5 years—possibly an undefined longer term—**for pharmaceutical products after approval is given to the originator drug company *in the new country.* The clock can therefore start after the patent expires in the U.S. These provisions also apply even when there is no patent in effect in a country.

These provisions go beyond U.S. law. Market/data exclusivity provisions of Hatch-Waxman cannot exceed 5 years.

Under TRIPS 39.3, test data can be protected only when national authorities require their presentation as a condition of marketing approval. Countries must protect undisclosed pharmaceutical test data from "unfair" commercial use. If a country accepts reference to approval given in a foreign country, there is no obligation to protect test data.

De facto barrier to compulsory licensing. This is a *de facto* prohibition of compulsory licensing for at least 5 years for pharmaceutical products. This is because there is no provision for issuing a compulsory license (CL) to override data protection. Such a CL can only be issued to override a patent, which is a separate right.

Countries can issue a "compulsory license" to compel generic production of a patented drug, in order to make the drug more widely available at an affordable price.

In most cases, a government's credible threat to issue a compulsory license has induced brand-name companies to drastically lower their prices. Bayer lowered its price for Cipro after the U.S. threatened to issue a compulsory license for Cipro during the anthrax scare, for example. Under CAFTA, it is possible that countries could still overcome the originator company's patent right. **But CAFTA's "data exclusivity" provisions present an insurmountable barrier to a generic company's ability to refer to the originator company's clinical trial data for marketing approval, and thus are a barrier to compulsory licensing.**

CAFTA Provision: Article 15.10: Measures Related to Certain Regulated Products. 1. (a) If a Party requires, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, the submission of undisclosed data concerning safety or efficacy, the Party shall not permit third persons, without the consent of the person who provided the information, to market a product on the basis of (1) the information, or (2) the approval granted to theperson who submitted the information for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of approval in the Party.

Question for USTR: CAFTA would delay competition by generic drug companies by many years, and prevent governments from issuing or threatening to issue compulsory licenses. How does this benefit consumers of drugs in the U.S. and other CAFTA countries? Why does it contradict the Doha Declaration, which authorizes governments to protect public health and access to medicines?

2. CAFTA extends the protection of test data beyond the signatories to the CAFTA agreement. It prevents reliance on test data which was previously presented to any foreign country in the world ("another territory"). It prevents reliance on prior approval of a drug in any foreign country, for at least 5 years for pharmaceutical products and 10 years for agricultural chemical products. The protection starts from the date that the patent holder seeks approval of the drug in a CAFTA country.

For example, a brand name company may have a product on the market in the U.S., but not in Guatemala. Guatemala could not authorize generic versions of the product for at least 5 years from a future date when the brand name company seeks approval in Guatemala. A country can require that the innovator company request approval within 5 years after obtaining marketing approval in another country, but does not have to do so. If a brand name company seeks marketing approval in Guatemala, for example, in the fifth year, this would delay authorization of a generic product for 10 years total (5 years due to marketing approval in the U.S., plus an additional 5 years after marketing approval is sought in Guatemala).

These provisions may also apply even if the patent holder has no patent or marketing approval in a CAFTA country.

These provisions also create **barriers to compulsory licensing** during emergencies. As noted above, during the anthrax scare in the U.S., the threat by HHS to issue a compulsory license for the antibiotic Cipro induced Bayer, the manufacturer, to drastically reduce its price. Under CAFTA a generic licensee could not use the safety and efficacy data from Bayer or rely on its previous regulatory approval, but also would not have had time to repeat Bayer's clinical trials.

CAFTA Provision: 15.10.1(b) If a Party permits, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another ***territory***, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously obtained such approval in the other territory, to obtain authorization or to market a product on the basis of

(1) evidence of prior marketing approval in the other territory, or

(2) information concerning safety or efficacy that was previously submitted to obtain marketing approval in the other territory,

for *at least five years* for pharmaceutical products and ten years for agricultural chemical products *from the date approval was granted in the Party's territory to the person who received approval in the other territory.* In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.

3. **New Product.** A new product does not have to contain a new chemical entity. Under TRIPS, data protection applies to new chemical entity, not to an undefined new product.Test data protection does not apply to second uses, new formulations or changes in doses. Under TRIPS, a country can require a drug company seeking test data protection to prove that this is the result of a substantial investment.

CAFTA Provision. 15.10.1. (c) For purposes of this paragraph, a new product is one that does not contain a chemical entity that has been previously approved in the territory of the Party.

Linkage

CAFTA links the registration of drugs with the existence of a patent for a pharmaceutical product. The terms "shall implement measures . . . to prevent" requires the country's drug regulatory agency, which is responsible for ensuring safety and efficacy, to take on the additional responsibility of legal enforcement of existing patents. There are typically many patents associated with a single drug, administered by a patent office. Neither the U.S. nor Central American countries have the administrative capacity to coordinate patent office functions with drug regulatory authorities.

In the U.S., the FDA informs patent holders through the so-called "Orange Book" about requests made by third parties regarding the same drug. The patent holder bears the responsibility to ensure that its intellectual property right is not violated. The patent holder can take the case to court to stop an application for registering a generic drug.

CAFTA Provision: 15.10.2. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval in the territory of a Party or in another country, that Party:

15.10.2. (a) *shall implement measures* in its marketing approval process *to prevent such other persons from marketing a product* covered by a patent claiming the previously approved product or its approved use during the term of that patent, unless by consent or acquiescence of the patent owner; and (b) shall provide that the patent owner shall be informed of the request and the identity of any such other person who requests approval to enter the market during the term of a patent identified as claiming the approved product or its approved use.

CONCLUSION

CAFTA presents numerous new obstacles to competition by generic drug companies. These provisions in many cases exceed the requirements of TRIPS and U.S. law. CAFTA would delay access to life-saving generic drugs by many years, and contribute to additional deaths from HIV/AIDS and other conditions. The legal architecture established by CAFTA will maintain higher drug prices in the U.S.

CAFTA fails to respect Congress' negotiating objective to implement the Doha Declaration on public health and access to medicines. Instead, it advances monopoly rights for pharmaceutical companies that maintain high drug prices. It reflects the opinions of the USTR advisory committees, which include numerous pharmaceutical company representatives, and no representatives of public health.

ADDENDUM I: USTR ADVISORY COMMITTEE REPORTS ON CAFTA UNDERMINE ACCESS TO AFFORDABLE MEDICINES

The Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters (IFAC–3) was the predecessor to the present Industry Trade Advisory Committee on Intellectual Property (ITAC 15). Like ITAC–15, IFAC–3 had numerous pharmaceutical company representatives, and no representatives of public health. It consistently advised the USTR to advance negotiating positions that strengthen IP rights for pharmaceutical companies, beyond TRIPS rules.

The March 2004 Report of the Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters (IFAC–3) regarding Intellectual Property Provisions in the U.S.-Central America Free Trade Agreement stated:

"CAFTA takes into account the significant legal and technological developments that have taken place since the TRIPS and NAFTA agreements—to establish clear precedents in most key areas of IP protection for future FTA negotiations." (p.4)

"IFAC–3 views the TRIPS Agreement as reflecting minimum international norms of intellectual property protection that most countries should already have in place. **The role of the FTAs is to clarify, where necessary, those obligations and to improve upon them by enhancing the level of intellectual property protection in the negotiating partner."** (p.5)

"The patent section of CAFTA provides a number of clarifications and improvements to the protection standards articulated in the TRIPS Agreement. Once implemented, these standards will improve the effectiveness of patent protection in the CAFTA countries.

"IFAC–3 notes that CAFTA is the first to be completed with countries that are not among the more advanced developing countries, indeed some with relative low per capita incomes. That these countries found it in their interest to significantly increase their levels of IPR protection beyond that required by TRIPS is testament to the principle that high levels of protection benefit indigenous creators and inventors in the same manner as they do in developed countries." (p.4)

In fact, the TRIPS-Plus provisions of CAFTA do not represent U.S. policy, or the best interests of the people of the U.S., Central America and the Dominican Republic.

1. Central Americans cannot afford drugs now and CAFTA will make the problem worse. The vast majority of Salvadorans and Guatemalans cannot afford brand name drugs. Many people do not have health insurance and must pay for medicines out-of-pocket. Guatemala has one of the highest rates of HIV/AIDS in the region and the population suffers from many diseases, both those associated with poverty as well as those, such as cancer and diabetes, common in the developed world. Guatemala and Costa Rica have a relatively thriving generics industry for pharmaceuticals, the main source of medicines in those countries. The Guatemalan generic drug industry adamantly asserts that CAFTA will undermine their operations and deprive more Guatemalans of access to drugs.

2. Guatemalans did not willingly accept CAFTA provisions related to IP and health. Guatemalan law on data exclusivity (DE) has changed several times since 2000. Most recently, last November, law 9–2003 imposing DE was repealed, by vote of an overwhelming majority of the Guatemalan Congress, even though CAFTA requires such data exclusivity rules. In December 2004, a new law went into effect that is compliant with TRIPS and has a very limited protection of test data against commercial theft or fraud.

On January 9, the U.S. Embassy issued a statement suggesting that Guatemala's action on DE could mean that not one single member of the U.S. Congress would vote in favor of CAFTA. (This misleading statement was subsequently contradicted by several members of Congress.) The statement insisted that Guatemala revert to the CAFTA standard, which, again, exceeds what TRIPS requires. Guatemala subsequently passed yet another new law which the U.S. has declared is compliant with CAFTA.

3. Costa Rica did not willingly accept CAFTA provisions related to IP and health. The official Costa Rican position is that IP and health services should not be included in CAFTA. Costa Rica agreed to include these issues as a trade off for other perceived economic benefits.

4. When health deteriorates in Central America, the U.S. is affected. A high proportion of immigrants to the U.S. come from Central America. The vast majority of immigrants are young and healthy when they arrive in the U.S. They pay taxes that contribute in part to the expense of U.S. health services. Nevertheless, when their health deteriorates due to lack of medicines, they are more likely to experience illness while in the U.S.

ADDENDUM II: Members of the USTR Advisory Committee on Intellectual Property Rights

Industry Trade Advisory Committee on Intellectual Property Rights—ITAC 15

Chairman Mr. Eric H. Smith President International Intellectual Property Alliance	Ms. Mary A. Irace. Vice President, Trade and Export Finance. National Foreign Trade Council, Inc.
Vice-Chairman Mr. Jacques J. Gorlin President The Gorlin Group	Jeffrey P. Kushan, Esq.—**P**. Trade Counsel. Sidley, Austin, Brown & Wood LLP. Representing Biotechnology Industry Organization.
Ms. Catherine P. Bennett—**P** Vice President, Federal Tax and Trade Policy Pfizer, Inc.	Shira Perlmutter, Esq. Vice President and Associate General. Counsel, Intellectual Property Policy. Time Warner Inc.

Industry Trade Advisory Committee on Intellectual Property Rights—ITAC 15—Continued

Hope H. Camp, Jr., Esq.—**P** Consultant Law Offices of Hope H. Camp, Jr., P.C. Representing Eli Lilly and Company	Mr. Timothy P. Trainer. President. International AntiCounterfeiting Coalition.
Susan K. Finston, Esq.—**P** Associate Vice President for Intellectual Property Pharmaceutical Research and Manufacturers of America	Neil I. Turkewitz, Esq. Executive Vice President, International Recording Industry Association of America.
Morton David Goldberg, Esq.—**P** Partner Cowan, Liebowitz & Latman, P.C.	Mr. Herbert C. Wamsley—**P**. Executive Director. Intellectual Property Owners Association.
Mr. Francis (Frank) Z. Hellwig, Esq.—**A** Senior Associate, General Counsel Anheuser-Busch Companies, Inc.	Ms. Deborah E. Wiley. Senior Vice President, Corporate. Communications. John Wiley and Sons, Inc.. Association of American Publishers, Inc.
Dr. Joseph Anthony Imler—**P** Director, Public Policy Merck & Company, Inc.	
	Total Members = 15

Key: **P** = Associated with the Pharmaceutical Industry; **A** = Associated with the Alcohol Industry
Total Industry Representation Related to Public Health and Health Care: Pharmaceutical Industry, 7; Alcohol Industry, 1.

Statement of Kathleen McNeely, Center of Concern, on behalf of the U.S. Gender and Trade Network

The Center of Concern, on behalf of the U.S. Gender and Trade Network urges the House Ways and Means Committee to oppose CAFTA and not introduce implementing legislation. There is no good reason to support CAFTA at this time. It is an undemocratic agreement that was negotiated in secret and did not include the meaningful participation and support of a broad cross-section of civil society in the U.S. CAFTA does not promote fair trade and sustainable development policies designed to reduce poverty by benefiting women, who are the vast majority of the poor throughout the region, and enable them to lift themselves and their families out of poverty. CAFTA is largely a political agreement, a near identical replica of the flawed NAFTA, being used to build momentum for a Free Trade Area of the Americas. It does not represent any real economic benefit to U.S. business so what is the hurry in signing before we get it right? The push for an up/down vote without a long-term vision for sustainable development between the U.S., Central America and the Dominican Republic is particularly troubling given the following flaws in the agreement:

- CAFTA investment provisions replicate NAFTA Chapter 11 and will undermine national sovereignty and local democratic processes by allowing foreign corporations to challenge legitimate state regulation of the environment, economic development, etc.
- CAFTA fails to include adequate measures to ensure environmental improvement throughout the region and to correct the serious labor rights abuses existing in Central America, the Dominican Republic and the U.S, particularly with respect to women worker's rights.
- CAFTA's rules on government procurement could threaten the right and authority of state and local officials to decide the conditions under which state tax dollars as spent. Currently 16 U.S. states have committed, in varying degrees, to be bound by these rules. AFTA's rules on agriculture, like those in NAFTA,

privilege agribusinesses that promote export-led food production, threatening small farmers and rural economies across the region.
- CAFTA's chapter on intellectual-property rights [IPR] threatens the health and well-being of persons in the region by restricting production and access to generic, life-saving medicines.

Given that there is no role for Representatives to change the agreement, we urge the House Ways and Means Committee to oppose CAFTA and not introduce implementing legislation.

Dear Member of Congress in the United States and Central America:

We write to you as representatives of women's organizations and social movements in Central America and the United States to express our concerns about the U.S.-Central American Free Trade Agreement (CAFTA). We support fair trade and sustainable development policies. If trade is to succeed in reducing poverty, it must benefit women, who are the vast majority of the poor throughout the region, and enable them to lift themselves and their families out of poverty.

CAFTA does not do this. Experience with NAFTA has demonstrated that this model of free trade does not benefit poor women. Ten years of NAFTA has resulted in increased poverty, job loss, and loss of affordable services for women in the United States, Canada and Mexico. A recent study showed that in Mexico, poverty for female-headed households increased by 50 percent since NAFTA was implemented.[1] We oppose the extension of that model to Central America. Furthermore, we understand that the process for negotiating CAFTA has been undemocratic. The CAFTA text was not released until it was completed and there has been no meaningful national debate on this agreement in the United States or in Central America. We are specifically concerned with the content of CAFTA that would:

- **Promote the privatization of essential public goods and services.** Privatization often leads to price hikes. Women would have to make up for increases in prices of these services in order to ensure adequate health, education and food conditions for themselves and their families, increasing their workday within and outside of the home.
- **Increase unemployment in both Central America and the United States, especially that of women.** It is not true that CAFTA would generate socially sustainable jobs for women. In the United States, the NAFTA experience shows that job losses were concentrated among industries employing women and minorities.[2] In Mexico, while women gained new jobs in export-agriculture, these jobs did not lift women and their families out of poverty.

In Central America, the reductions in the State and the bankruptcy of small and medium-scale companies that would result from CAFTA would mean that women are thrown out of the formal labor force and forced to join the informal sector without any kind of labor protections.

- **Lead to a decrease in respect for labor laws.** CAFTA would consolidate a model of maquiladora development in Central America that treats women as cheap labor, without ensuring decent working conditions or protecting women's rights.
- **Not resolve the challenge of mass migration out of the region and the serious problems that immigrants face in host societies.** CAFTA deals exclusively with the free movement of goods and services, not persons. There is nothing in CAFTA that would resolve the grave labor conditions suffered by the hundreds of thousands of Central American women working in the United States.
- **Destroy local farm economies.** With its focus on production for export instead of farming for the local economy, CAFTA would destroy family farms, which supply domestic markets and which employ and support the majority of women throughout Central America. Poor farmers will also face an uphill battle competing with highly subsidized U.S. products.

We are not against trade or against development in Central America. The conditions and rules presented by CAFTA would, however, generate far-reaching negative impacts on economies and societies in both regions and further threaten the well

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[1] Women's Edge Coalition, 2003.

[2] Breaking Boundaries II—Women and the Free Trade Area of the Americas: Understanding the Connections, USGTN, September 2003, p. 5.

being of women, families, and communities across the region. Given that there is no role for Congress to change the agreement, we urge you to oppose this agreement should it come before Congress for approval.

Sincerely,

This letter was written by the Asociación de Mujeres por la Dignidad y la Vida, Las Dignas, together with members of the U.S. Gender and Trade Network (USGTN).

Additional Sign-ons in support of this letter:

B

U.S. Gender and Trade Network (USGTN)
AFL–CIO
Alliance for Responsible Trade (ART)
California Coalition for Fair Trade and Human Rights
Center of Concern
CISPES
Citizens Trade Campaign
Code Pink: Women for Peace
Congregation Justice Committee, Sisters of the Holy Cross, Notre Dame, IN
Congregation of St. Joseph, Cleveland
Congregation of St. Joseph Justice Office, Cleveland
Development Group for Alternative Policies (DGAP)
Ecumenical Program on Central America and the Caribbean (EPICA)
Global Exchange
Holy Cross International Justice Office
Institute Justice Team, Sisters of Mercy of the Americas
IntercommunityCenter for Justice and Peace
International Labor Rights Fund (ILRF)
Leadership Conference of Women Religious
OFM Justice, Peace and Integrity of Creation Council—English Speaking Conference (OFM–JPIC–ESC)
Maryknoll Office for Global Concerns
Medical Mission Sisters: Alliance for Justice
Mexico Solidarity Network
Migration and PolicyResourceCenter, OccidentalCollege
National Organization for Women (NOW)
NETWORK: A National Catholic Social Justice Lobby
Nicaragua Network
Quixote Center/Quest for Peace
SHARE
Sisters of Mercy Institute Team
STITCH
Sweatshop Watch
Tennessee Economic Renewal Network
United for a Fair Economy
Washington Office on Latin America (WOLA)
Women's Edge Coalition

El Salvador

Asociación de Mujeres por la Dignidad y la Vida (Las Dignas)
Asociación de Mujeres Mélida Anaya Montes (Las Mélidas)
Centro de Estudios sobre Inversion y Comercio de El Salvador (CEICOM)
Centro para la Defensa de Consumidores (CDC)
Concertación de Mujeres Salvadoreñas. Integrada por: FUNSALPRODESE, CRIPDES,
Fundación Redes entre otras.
Insituto de Desarrollo de la Mujer (IMU)
Marcha Mundial capítulo El Salvador. Integrada por: Comité 25 de noviembre, MSM, CORAMS
Movimiento Salvadoreño de Mujeres (MS)
Movimiento Salvadoreño de Mujeres (MSM)
Red de Acción Ciudadana frente al Comercio e Inversión (Sinti Techan)
Tiempos Nuevos Teatros (TNT)
Unión Nacional Ecológica Salvadoreña (UNES)

Honduras

Bloque Popular de Honduras
Centro de Derechos de Mujeres—CDM
Centro de Estudios de la Mujer de Honduras—CEM–H

Guatemala

Agrupación de Mujeres Tierra Viva de Guatemala
Coordinadora Nacional de Organizaciones Campesinas—CNOC—de Guatemala

Nicaragua

Centro de Estudios Internacionales (CEI)
Mujer y Comunidad (COMPA) de Nicaragua

Costa Rica

Agenda Cantonal de Mujeres Desamparadeñas (ACAMUDE)
Alianza de Mujeres Costarricenses
Asociacín de Servicios de Promoción Laboral (ASEPROLA)
Consejo de los 12 Puntos de Costa Rica
Encuentro Popular

México

Coordinadora Diocesana de Mujeres (CODIMUJ)
Red Nacional de Género y Economía

Peru

Red Latinoamericana de Mujeres Transformando la Economia (REMTE)
Grupo Genero y Economia—Peru

Statement of Robert Vastine, Coalition of Service Industries

INTRODUCTION

The Coalition of Service Industries (CSI) is pleased to have this opportunity to submit comments for the record on the U.S.-DR–CAFTA Free Trade Agreement.

CSI strongly supports the U.S.-DR–CAFTA trade agreement, and we hope that Congress will approve it promptly. The Agreement provides for meaningful liberalization of trade and investment in services between the United States and the DR–CAFTA countries, and will open up new markets and opportunities for U.S. companies across a range of service industries. It will also demonstrate to other developing countries, in this hemisphere and elsewhere, that commitments to liberalization and internal economic reform are necessary for economic development, higher standards of living, and global competitiveness.

The Agreement does not meet industry objectives in all respects; for example, the lack of temporary entry provisions. Notwithstanding, both the United States and the Central American nations stand to gain significantly from this Agreement, and it unquestionably merits Congressional approval.

BACKGROUND: THE IMPORTANCE OF SERVICES TO THE U.S. ECONOMY

The DR–CAFTA Agreement and its merits should be viewed against the role services play in the U.S. economy. Services account for the overwhelming share of U.S. employment and economic output, and a large and growing share of our foreign trade. As Congressmen Kolbe and Cardin pointed out in a March 18, 2005 Dear Colleague letter, services "are key to the future growth of the American Economy."

Services jobs represent approximately 80% of all non-farm, non-government workers in the U.S. Between 1993 and the 2003, the service sector added 17 million new U.S. jobs, and of the 19.2 million new American jobs forecast to be created by 2012, 90% will be in the service sector. Moreover, the service sector generates 78% of U.S. private sector GDP. Efficient, high-quality services are crucial inputs into the production of virtually all products. The price and quality of services influences the costs and productivity of all sectors, including manufacturing and agriculture.

The magnitude of U.S. services trade is under-appreciated. Last year, U.S. crossborder exports of services were $338 billion, up from $307 billion the previous year, and represented about 40% of the value of U.S. merchandise exports. The $49 billion services trade surplus that the U.S. ran last year partially offset our merchandise trade deficit. An even larger share of U.S. services trade is delivered through the foreign affiliates of U.S. parent companies. In 2002, the services sales of U.S. foreign affiliates worldwide reached slightly over $400 billion. These foreign operations are crucial to U.S. companies' competitiveness in global markets. Thus, expanded market access under DR–CAFTA will help U.S. companies become even more competitive in the global marketplace.

The U.S. is extremely competitive across the range of services sectors, from banking and financial services to insurance, computer and related services, entertainment and audio visual services, express delivery, architecture and engineering, and others. The liberalization of these areas, as provided for in the Agreement, thus plays to a U.S. strong suit.

During negotiations, every effort was made to ensure that CAFTA's services coverage was comprehensive, with minimal reservations taken. Under CAFTA, services trade and investment will be liberalized on a "negative list" basis, which requires that a country list in detail the activities which will be excluded from liberalization. This approach is absolutely crucial to ensuring truly comprehensive coverage. The negative list has the further major advantage that new services are automatically free, which is particularly important in the services sector where new services are regularly being created. This was a significant achievement on the part of U.S. negotiators, given the reluctance of the CAFTA countries to negotiate on that basis at the outset of the talks. Moreover, important concessions have been obtained in the context of political controversy in some of the CAFTA countries. For example, the liberalization of insurance and telecommunications services in Costa Rica were particularly sensitive issues in that country.

The agreement contains important provisions for services-related investment, regulatory transparency, and for trade in key service sectors. These are discussed below.

CSI represents the interests of the dynamic American service economy, which employs 80% of the U.S. workforce and generates a similar proportion of national economic output. CSI was formed in 1982 to ensure that U.S. trade in services, once considered outside the scope of U.S. trade negotiations, would become a central goal of future trade liberalization initiatives. CSI has been actively engaged in, and a strong supporter of, services negotiations in the WTO, as well as in our regional and bilateral free trade agreements, including the DR–CAFTA Agreement.

The broad range and diversity of the U.S. service economy is reflected in CSI's membership, which includes major international companies from the banking, insurance, telecommunications, information technology, travel and tourism, transportation, and diversified management service sectors. CSI members conduct business in more than 100 countries, have global sales of about $800 billion, and employment of about 2.3 million.

INVESTMENT

The Agreement will help promote a secure and predictable legal framework for U.S. investors in Central America and the Dominican Republic. Such provisions are particularly important to service providers, for whom a local presence is often required to supply services.

The Agreement reduces barriers to U.S. investment. It assures U.S. investors greater opportunities to establish, acquire and operate investments in each of the Central American countries in all sectors. Such investors are to be accorded equal treatment with local investors and may not be subjected to special or discriminatory requirements for the use of local inputs, export obligations, or to extend licenses to local companies. Rights to manage and direct such investments with personnel other than from the host country are also provided.

The Agreement ensures the protection of U.S. investment. It includes a broad definition of investment, the guarantee of prompt, adequate and effective compensation for expropriation, fair and equitable treatment, full protection and security, the free transfer of capital, no performance requirements, as well as the national treatment and most-favored nation provisions. Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford U.S. investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions.

At the same time, the Agreement protects the legitimate exercise of each government's regulatory authority to protect "public welfare objectives, such as public health, safety, and the environment."

TRANSPARENCY

The Agreement provides for a high standard of transparency in administrative, licensing, and adjudicatory proceedings. Transparency in regulatory processes is absolutely essential for services industries, because they generally are the most highly regulated. A government's regulations governing financial services, energy services, and professional services, for example, can vitiate or nullify trade agreements that would otherwise provide full market access and national treatment.

The overarching provisions in the introductory chapter on transparency require the essentials: the designation of a contact point for inquiries, the requirement for

prompt publication; the requirement that "to the extent possible" measures that each Party proposes to adopt are published in advance, and that persons of both Parties have a reasonable opportunity to comment. Further, the chapter provides that parties at interest to proceedings receive reasonable notice of such proceedings, and that they are allowed to present their case prior to final administrative actions. Each Party must establish independent tribunals or procedures for prompt review of administrative actions, and has the right to a decision based on evidence. The provisions in the cross border services chapter provide further assurance that administrative decisions related to licensing are prompt and fair. This chapter also provides for the Parties to reach agreements mutually recognizing their qualifications and standards for professional practice. The transparency provisions set out in the financial services chapter are consistent with the other transparency provisions in the Agreement but are tailored to the needs of this sector.

BENEFITS FOR KEY SERVICE SECTORS

The CAFTA–DR Agreement is comprehensive and provides for new liberalization and market access across a broad range of service industries. Some of Agreement's benefits for key sectors are listed below.

Dealer Protection: The Agreement addresses restrictions on distribution in Central America created through restrictive dealer protection regimes. Such regimes have placed substantial burdens on the distribution of U.S. exports to the region by locking U.S. companies into inefficient, exclusive and effectively permanent relationships, oftentimes regardless of the performance of the local dealer. The Agreement will allow U.S. exporters and their dealers freedom to contract the terms of their relationships. These provisions will substantially help promote more efficient and improved distribution for U.S. companies within the region.

Accounting Services: The Agreement provides for U.S. accountants to obtain local qualifications and licenses on a reciprocal basis.

Architecture: The Agreement's provisions on the development of professional standards, and temporary licensing and review, provide for equity and reciprocity in this sector. Further provisions provide access to the Central American markets while promoting capacity building within the profession.

Asset Management Services The Agreement provides legal certainty that U.S. asset management firms will be afforded national treatment, non-discrimination and the right of establishment. It also permits cross-border provision of portfolio management services by asset managers of mutual funds. The financial services transparency commitments in the agreement also would benefit the asset management industry.

Audiovisual Services: The Agreement provides for strong intellectual property protections, and strengthened enforcement. The FTA demonstrates that a trade agreement can harmonize two important objectives—trade liberalization and the promotion of cultural diversity. It avoids the "cultural exceptions" approach, while demonstrating that a trade agreement has sufficient flexibility to take into account countries' cultural promotion interests. The Agreement includes important provisions to ensure market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. It provides for zero tariffs on audio visual products, reaffirms that customs duties are based on the value of carrier media and not the value of the movie or other content. It provides commitments to non-discriminatory treatment of digital products including DVDs and CDs, and agreement not to impose customs duties on such products.

Computer and Related Services: The Agreement ensures full market access and national treatment for computer and related services. The Agreement covers all modes of delivery, including electronic delivery. The "negative list" approach ensures that rapidly evolving computer services, driven by continual advances in technology, will automatically be covered by the Agreement.

Electronic Commerce: The Agreement includes important language on electronic commerce. As with previous FTAs, the Agreement establishes the concept of "digital products"; prevents the application of customs duties on electronically-delivered digital products; assures the non-discriminatory treatment of digital products; addresses the valuation of physically delivered digital products; and provides commitments to cooperate on electronic commerce policy.

Energy Services: The Agreement's provisions on regulatory transparency and investment provide a framework that can provide opportunities for U.S. energy services firms and facilitate the provision of energy services between the United States and Central America.

Express Delivery Services: The Agreement includes important provisions for the sector, including an appropriate definition of express delivery services (EDS). The Agreement recognizes EDS as a unique service sector and contains important com-

mitments to maintain market access for the industry and to facilitate customs clearance, which is critical to the efficient operation of express carriers. The Agreement includes significant language proscribing monopoly abuse by postal administrations when they compete in the supply of express delivery services.

Financial Services (other than insurance and asset management): The Agreement contains important provisions relating to branching, pension management and regulatory transparency.

Healthcare Services: the Agreement breaks new ground concerning the temporary licensing of physicians and surgeons that will be helpful for U.S. hospitals engaged in international medical care to gain market presence.

Insurance: The Agreement's insurance commitments are comprehensive and provide good treatment for insurance. While these countries already have fairly open insurance markets, in most cases these insurance commitments are significant improvements over current WTO obligations. Perhaps most significantly, Costa Rica's insurance sector, which is currently dominated by a monopoly, will be opened for the first time under this agreement. All major aspects of insurance are covered, including life, non-life, reinsurance, intermediation and services auxiliary to insurance. Similarly, key cross border insurance products and services are covered (marine, aviation and transport (MAT), reinsurance and intermediation).

Legal Services: The Agreement preserves the ability of U.S. lawyers to serve as foreign legal consultants or otherwise to provide advice and assistance respecting the law they are authorized to practice in the United States.

Telecommunications: The Agreement includes new international cost-oriented interconnection obligations for fixed traffic (although mobile services, unfortunately, are excluded from this obligation). The Agreement also contains commitments to provide access to and use of telecommunications networks, and commitments for fixed services, including competitive safeguards, interconnection, universal service, licensing, independent regulator, and allocation of scarce resources. "WTO–Plus" obligations are incurred for major suppliers with respect to resale, provisioning of leased circuits and collocation. The Agreement includes new market access commitments, including cross-border obligations.

Vessel Repair: the Agreement provides for the elimination of the 50% U.S. tariff on vessel repairs performed in the Central American countries, thus eliminating a significant burden on U.S. shipping companies that require repair work when servicing foreign markets.

CONCLUSION

The DR–CAFTA Agreement provides for substantial new market access for a broad range of U.S. services industries to a growing market of nearly 45 million consumers. It thus opens up significant new opportunities for U.S. services trade and investment, and deserves prompt approval by the Congress.

Statement of Rachel Cohen, Doctors Without Borders/Médecins Sans Frontierès, New York, New York

Introduction

Doctors Without Borders/Médecins Sans Frontierès (MSF) is pleased to submit this testimony to the Committee on Ways and Means of the House of Representatives about the potential negative consequences of intellectual property (IP) provisions in the United States-Dominican Republic-Central America Free Trade Agreement (DR–CAFTA) on access to essential medicines in the concerned countries.

MSF is deeply concerned that provisions in the Chapter on Intellectual Property in DR–CAFTA[1] will lead to devastating consequences in terms of access to medicines for millions of people in the region with HIV/AIDS and other diseases. MSF is also concerned that this trade agreement, among others already signed or currently being negotiated, undermines the right and obligation of countries to protect public health and promote access to medicines for all, in accordance with the World Trade Organization (WTO) Ministerial Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and Public Health ("Doha Declaration"), which the U.S. adopted along with all other WTO members in November

[1] Chapter 15, available at http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/Section_Index.html

2001.[2] The Doha Declaration clearly recognized concerns about the effects of patents on prices and stated unambiguously that TRIPS can and should be interpreted and implemented in a manner "supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."[3]

MSF has called repeatedly on the Office of the United States Trade Representative (USTR) to ensure that the Doha Declaration remains a ceiling for trade negotiations on IP as they relate to public health technologies. Because of the clearly stated negotiating objectives of the U.S., however, we have been forced to go one step further in recommending that IP be excluded from bilateral and regional trade agreements altogether. The WTO TRIPS Agreement already establishes more than sufficient standards for IP protection in WTO member states.

Specifically, MSF has raised concerns about the following IP provisions in various FTAs:

- New obstacles related to pharmaceutical test data, which will delay the registration of generic medicines ("data exclusivity") and render compulsory licensing ineffective;
- Rules that will confer abusive powers to regulatory authorities to enforce patents ("linkage"); and
- Extensions of patent terms on pharmaceuticals beyond the 20-years required in TRIPS.

Each of these provisions, which are elaborated upon below, appear in DR–CAFTA and threaten to hamper generic competition—the only reliable mechanism for ensuring lower drug prices—and therefore restrict access to affordable medicines in the Central American region.[4]

We urge members of this Committee in the strongest possible terms to take every necessary measure to ensure that the health and lives of millions of people in the Central American region are not jeopardized because of DR–CAFTA.

Background: MSF

Doctors Without Borders/Médecins Sans Frontierès (MSF) is an international independent medical humanitarian organization that delivers emergency aid to people affected by armed conflict, epidemics, natural and man-made disasters, and exclusion from health care in more than 70 countries. Through longer-term programs, MSF treats patients with infectious diseases such as HIV/AIDS, tuberculosis, malaria, and other neglected diseases, and provides medical and psychological care to marginalized groups such as street children. The organization was awarded the 1999 Nobel Peace Prize. MSF currently has field operations in two of the countries affected by DR–CAFTA—Guatemala and Honduras.

In Guatemala, MSF provides antiretroviral (ARV) treatment for more than 1,600 people with HIV/AIDS in Guatemala City, Coatepeque, and Puerto Barrios, as well as psychological support and medical care for street children in Guatemala City. In Honduras, MSF is providing ARV treatment for approximately 300 people with HIV/AIDS in Tela, as well as care for street children and victims of urban violence in Tegucigalpa.

Spotlight on "data exclusivity" and HIV/AIDS in Guatemala

Brief Summary of "Data Exclusivity" in Guatemala

There are many troubling IP provisions in DR–CAFTA, but of particular concern is the U.S. Administration's attempt to push countries to accept new obstacles related to pharmaceutical test data (so called "data exclusivity"), which will delay the availability of generic medicines.

Guatemala is a case in point.

Under extreme pressure from the U.S. Administration, Guatemala went back and forth from 2003 to 2005 between proposed legislation that guarantees multinational pharmaceutical companies monopoly-like exclusivity on the Guatemalan market and amendments that would have maintained some degree of public health protection.

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[2] Paragraph 4 of the Declaration states "We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."

[3] To view the full Declaration, see *http://www.wto.org/english/thewto_e/mWhinist_e/min01_e/mindecl_*trips_e.htm

[4] It is important to note that USTR "side letters" about DR–CAFTA and public health—which are not legally enforceable and do not supercede the (contradictory) language in DR–CAFTA—make dangerous attempts to restrict the scope of diseases and cannot be seen as providing any assurance for countries to make use of TRIPS safeguards.

In March 2005, despite strong opposition from civil society groups in Guatemala, the Guatemalan Congress eventually passed an amendment that provides at minimum of five years of data exclusivity and cleared the way for ratification of DR–CAFTA.

MSF is concerned that the new law, which is considered a first step in the implementation of DR–CAFTA in Guatemala, will prevent the Department of Regulation and Control of Pharmaceutical Products from granting marketing approval to generic medicines in Guatemala for five to 10 years,[5] thereby giving a market monopoly to originator drug manufacturers and preventing access to affordable medicines for five to 10 years in the country (see below for a more lengthy explanation of data exclusivity).

In a worst case scenario, the new legislation will prevent generic medicines from entering the Guatemalan market during the period of exclusivity even if the originator medicine is not marketed in Guatemala. This means that patients may have no access at all to some medicines for five years—even exorbitantly priced originator versions. While this provision is, for the moment, only in place in Guatemala, DR–CAFTA would force all parties to the agreement to implement similar laws at the national level.

HIV/AIDS in Guatemala

According to the World Health Organization (WHO) and UNAIDS, more than 78,000 Guatemalans are currently living with HIV/AIDS, and annual AIDS-related deaths totaled 5,800 in 2003. Approximately 13,500 of all those living with HIV/AIDS now are in urgent need of antiretroviral (ARV) treatment. Yet only 3,600 Guatemalans were receiving it as of December 2004.

MSF has been providing ARVs to Guatemalans since 2001 and is currently treating more than 1,600 people living with HIV/AIDS in hospitals and clinics in Guatemala City, Coatepeque, and Puerto Barrios. Our clinical outcomes parallel those found in the U.S. and other industrialized countries.

Most of the patients in MSF's treatment programs are receiving generic medicines, which allows MSF to treat the largest possible number of people. MSF currently pays as little as $350 per person per year for the most commonly prescribed World Health Organization-recommended first-line regimens. Generic competition on the Guatemalan market has brought down the prices of originator ARVs, and the Guatemalan government is slowly moving from purchasing only originator ARVs to including generic suppliers in the national tender.

Still, Guatemala's social security system has spent significantly more on ARVs—in some cases more than 20 times more than MSF—because it has procured mostly originator drugs. For example, whereas MSF pays $216 per person per year for a generic version of the "back-bone" double combination of AZT+3TC, Guatemala's social security system paid $4,818 (open tender 2004) for the same combination from the originator, GlaxoSmithKline. This is 22 times more than what MSF pays.

Guatemala has the opportunity to expand access to ARV treatment significantly, particularly because of a $40 million grant from the Global Fund to Fight AIDS, Tuberculosis and Malaria. In fact, there is no reason that Guatemalan authorities should not be able to ensure universal access to ARV treatment. But if the government is paying 20 times more—or even two times more—for ARVs, only a small fraction of those in need will be treated. Treating fewer people means condemning others to premature death.

If current data exclusivity provisions had been in effect prior to 2001, generic ARVs would not have been marketed in Guatemala and MSF would not have been able to access generics. This would have limited our ability to expand access to treatment and demonstrate the feasibility of delivering ARV treatment. In order for the Guatemalan government to expand access to ARV treatment for all those in need, it will need to retain the right to procure affordable generic AIDS medicines.

DR–CAFTA threatens the ability of Guatemala to do so.

The Example of Atazanavir

In November 2004, the Congress of Guatemala repealed Decree 9–2003, which provided for five-year data exclusivity. In December, the Congress replaced Decree 9–2003 with Decree 34–2004, which passed by an important majority. This was seen by Guatemalan civil society groups, MSF, and others as a positive step forward, and a critical moment for the government to commit to ensuring treatment for greater numbers of people with HIV/AIDS in Guatemala. (As explained above, data exclusivity was again enacted in Guatemala in March 2005.) In the roughly 18 months

[5] Because the originator has five years of data exclusivity from the first date of approval in another country, and then receives another five years of protection from the date of approval in Guatemala, for a total of up to 10 years.

during which Decree 9–2003 was in effect in Guatemala, 25 medicines received "data exclusivity" protection under the law. Among those medicines affected is the ARV atazananir. Atazanavir is a protease inhibitor, which is a key part of second-line therapy for people with HIV/AIDS once they experience treatment failure on their first-line regimen, and is used widely, in the U.S., Europe, and Brazil.

Today, the U.S. price of atazanavir is more than US$10,000 per person per year—there is no differential price for developing countries and it must be combined with at least two additional ARVs. There is no generic version of atazanavir available on the world market because it is a relatively new drug, but based on experience with other ARVs, it is possible that the price could drop by approximately 95% with robust generic competition.[6]

If a more affordable generic version of atazanavir is developed, however, it will not be able to enter the Guatemalan market until 2009 (given that the original atazanavir of Bristol-Myers Squibb was registered in Guatemala in February 2004). This means that BMS will have a monopoly during the entire period of exclusivity (at least five years) and, free from competition, will be able to charge whatever the market will bear—far more than what the average Guatemalan will be able to afford. It is therefore unlikely that the vast majority of Guatemalans who will need this medicine will be able to access it.

This is just one example of what could happen to all new medicines entering the Guatemalan market—not only AIDS drugs—now that a U.S.-style data exclusivity law has been implemented. If DR–CAFTA is fully enacted in all countries, similar problems will be encountered in Costa Rica, El Salvador, Honduras, Nicaragua, and Dominican Republic. Newer medicines will be crucial to the longer-term survival of people with HIV/AIDS and other illnesses.

Brief analysis of IP provisions in DR–CAFTA & implications for access to medicines

1. *Exclusive rights over pharmaceutical test data ("data exclusivity")*

Even when a drug is not under patent, "data exclusivity" will create a new patent-like monopoly by blocking the registration of generic medicines. Data exclusivity prevents a national drug regulatory authority from using data provided by an originator company to authorize the use of an equivalent generic version of the same drug, thereby providing a *de facto* monopoly for the original manufacturer.

At present: To register a medicine with a national drug regulatory authority (NDRA), an applicant has to show that its medicine is safe, effective and of quality. It is the first applicant who must show clinical trial data to prove the drug's safety and efficacy.

When generic manufacturers seek registration (or "marketing approval") of generic versions of medicines, they only have to show that the drugs are of quality and therapeutically equivalent to the original version—in other words, they function the same way as the original medicine. The generic company does not have to submit new safety and efficacy data.

The NDRA can rely on the safety and efficacy data submitted by the originator producer to register the generic medicine. Under these conditions, the introduction of generics to the market is accelerated and facilitated.

In DR–CAFTA: Provisions in DR–CAFTA establish and expand "exclusive rights" over pharmaceutical test data provided by originator companies to prevent an NDRA from using that data to register a therapeutically equivalent generic version of the drug. The exclusivity would last for at least five years from the time the originator drug is first registered in the country. During this period, if another company wants to register a generic version of the drug, it would have to generate and submit its own test data.

Further, provisions in DR–CAFTA provide for what could be described as "data exclusivity-plus": if the original manufacturer has not registered the drug in the country, then the data exclusivity period would start running from the date of approval in the other country (ie. usually the United States).

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[6] In some countries, a WHO-recommended first-line fixed-dose combination (e.g. d4T/3TC/NVP) is now available for as little as $140 per patient per year (Clinton Foundation price) because of robust international generic competition. The same combination is available in Western countries as originator companies' separate products at $8,773 per patient per year (the only country for which prices are publicly available is Australia and this price was calculated based on the schedule of Pharmaceutical Benefits for Approved Pharmacists and Medical Practitioners, May 2004; exchange rate used for conversion 1 Australian $ = 0.72213 U.S. $). This means that the price in developing countries for WHO-recommended first-line therapy is 98% lower than what the same combination costs in Western countries.

If accepted, "data exclusivity" provisions apply regardless of whether or not a drug is patented.

Likely impact: These provisions will keep generic versions of originator drugs that have already been registered out of a country during the period of data exclusivity (ie. five to 10 years). The requirement for a company to generate its own test data will likely discourage generic manufacturers from seeking registration for their drugs. It may even make it impossible, especially for domestic firms in developing countries, given the costs of test data and low margins of generics production.

The main effect of this provision will be on drugs which are not under patent, as the generic manufacturer will still be unable to use the originator's test data to obtain registration. In such an instance, data exclusivity acts as a *de facto* patent, preventing competition.

This impact is heightened since the data exclusivity applies from the date of approval in the U.S. as it means that a brand-name originator drug does not even have to be registered (and thus available) in the country for generic competitors to be blocked from entry. This could lead to a complete lack of availability of essential medicines (either generic *or* originator versions) if originator companies decide for whatever reason not to market a drug in a given country.

The requirement to re-test a drug already proven to be safe and effective is medically unethical, because it forces a number of patients to take part in clinical trials which are not necessary, and requires some to take placebos in order to compare outcomes with the actual drug and therefore forego a proven treatment. It will also increase the cost of the generic medicine.

Whereas patent barriers can be overcome through compulsory licensing or government use, there is no legal "remedy" for data exclusivity. Further, data exclusivity could effectively block compulsory licenses. Even if a company is given authority to produce a generic drug under a compulsory license, it still needs to register the drug with the NDRA. Data exclusivity would prevent such registration for the period of exclusivity, and thereby prevent the use of a compulsory license during that time.

TRIPS compatibility: Nowhere does TRIPS state that countries should provide exclusive rights to the originator of the data for a given period. Rather, TRIPS simply refers generally to the need to protect "undisclosed test or other data" from "unfair commercial use" and "disclosure" (Art. 39.3), without answering the question of how such protection should occur. The language in the TRIPS Agreement makes it clear that countries can determine what constitutes "unfair" and that there are multiple approaches that countries can take to satisfy this mandate. Indeed, during negotiations on the TRIPS Agreement, prior to 1994, negotiators rejected the option to include stronger "data exclusivity" provisions in the TRIPS Agreement, as originally proposed by the United States.

2. *Abusive powers to national drug regulatory authorities (NDRAs) to enforce patents*

The U.S. has devised a new role for national drug regulatory authorities in DR–CAFTA through negotiating provisions that require these NDRAs to act as "enforcers" of drug patents. They will be prevented from registering a generic version of a drug that is under patent in the country unless the patent holder gives consent—even if the generic has been proved to be safe, effective, and of quality. Linking a drug's registration (also known as its "marketing approval") to its patent status is an underhanded way of preventing generic competition.

At present: A drug's patent status and its registration status are two separate things. In principle, two different bodies look after the two different areas of competency: patent offices assess whether a drug is innovative and novel enough to be patented, and NDRAs assess whether a drug is of quality, safe and effective enough to be used by the population they are responsible for.

When assessing whether a generic drug should be registered, a NDRA pays no attention to whether or not a patent may be infringed, as this is simply not their job—just as it is not the job of the patent office to assess the quality, safety and efficacy of a drug. It is up to the patent owner itself to sue an infringer before a court—a practice which ensures that the validity of a patent can be publicly questioned and held up to scrutiny before it is enforced.

In DR–CAFTA; Provisions in DR–CAFTA will prevent NDRAs from registering a generic version of a drug that is under patent. Under these conditions, registration would not be granted to a generic manufacturer before the patent expires. If a drug is not registered, it cannot be legally used in a country.

Likely impacta: These provisions amount to an outright ban on generic versions of patented medicines, by preventing their registration if there is a patent in force. The NDRA becomes the enforcer of a company's private patent rights.

This is of considerable advantage to the patent holder. Rather than the company having to sue through the courts to enforce its patent, the job is done behind the scenes and without publicity by the NDRA.

It is also more likely that patents that have been awarded improperly will be wrongfully enforced. The NDRA will be obliged to enforce a patent monopoly, even though it does not have the power of a court to judge whether a patent has been properly awarded or not.[7]

Further, the linking of patent status and drug registration could undermine the possible use of compulsory licences. A company given authority to produce a generic drug under compulsory licence (ie. without the patent holder's consent) still needs to register that drug with the NDRA. But if the NDRA is not allowed to register generics until the patent expires, the compulsory licence is effectively useless.

TRIPS compatibility: Nowhere in the WTO's Agreement on Trade-Related Intellectual Property Rights (or TRIPS Agreement) is there any reference to an obligation to link patent protection and drug registration. On the contrary, the Preamble recognises that intellectual property rights are "private rights"—meaning that it is up to patent holders to enforce their rights, *not* NDRAs.

3. *Extensions of patent terms beyond the 20-year TRIPS requirement*

There is no more straight-forward way to extend a company's monopoly over a drug than to extend the life of the drug's patent—but the impact on patients' access to that drug could be dire.

At present: Patents on drugs in most countries last for 20 years from the date of filing. The originator company usually applies for a patent at the stage of basic research, well before the company even applies for drug registration. The process of drug registration usually takes two-three years. The process of patent granting can also take two-three years.

In DR–CAFTA: Provisions in DR–CAFTA seek to "compensate" drug companies for any "unreasonable" time a national drug regulatory authority takes to examine an application for registration, or a patent office takes to examine a patent application. The life of the patent would be extended by the length of "unreasonable" time the authority takes to approve the respective applications.

Likely impact: The extra years added to the patent are extra years in which the patent holder can maintain a monopoly position and continue to charge artificially high prices for the drug, free from generic competition. There would be considerable questions over what is considered "reasonable", especially given the resource constraints on NDRAs and patent offices in developing countries.

TRIPS compatibility: Nowhere in the TRIPS Agreement is any reference made to an obligation to extend patent life to "compensate" for "unreasonable" delays in granting registration or patent approval. Indeed, countries rejected such proposals when originally negotiating the TRIPS Agreement.

Conclusion

Over three years ago, 142 countries, including the U.S., negotiated and adopted the Doha Declaration, firmly placing public health needs above commercial interests and offering much needed clarifications about key flexibilities in the TRIPS Agreement related to public health. Today, these flexibilities are being threatened by bilateral and regional trade agreements such as DR–CAFTA.

The WTO TRIPS Agreement already establishes more than sufficient standards for IP protection in WTO member states. The promise of Doha is that the TRIPS Agreement can and should be interpreted and implemented in a manner "supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."[8] DR–CAFTA threatens to make it impossible for the concerned countries to exercise the rights reaffirmed in Doha.

If DR–CAFTA is fully enacted, IP provisions may block the use of affordable generic medicines, which will be a catastrophe for our patients and millions of others in the region with HIV/AIDS and other diseases.

As a medical humanitarian organization, we cannot accept the subordination of the health needs of our patients and millions of others to U.S. trade interests.

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[7] NDRAs could also enforce patents in other ways that could threaten public health: for example, a patent on a salt or a polymorph of a given product may also be used to block registration even if the active ingredient is off-patent.

[8] To view the full Declaration, see *http://www.wto.org/english/thewto_e/mWhinist_e/min01_e/mindecl*_trips_e.htm

[BY PERMISSION OF THE CHAIRMAN:]

Statement of Farabundo Martí National Liberation Party, San Salvador, El Salvador

The Farabundo Martí National Liberation Party (FMLN) of El Salvador, Central America, as the majority party in Congress, we write to you respectfully at this time to inform you about our position on the ratification of the Free Trade Agreement between El Salvador and the United States (DR–CAFTA).

Free trade agreements contain many aspects that go beyond import-export issues to include a wide variety of topics such as investment, intellectual property rights, governmental purchases, services, competition policies, telecommunications, and the financial sector, worker rights, environmental issues among others.

For small countries who subscribe to them, these agreements end up defining the framework for public policies. Regulations established in the chapters on intellectual property rights and investments, government purchases, and trade in services, which infringe on the sovereign jurisdiction of the State, by promoting the privatization of public services through concessions.

If States are unable to define national economic policy and control strategic services, they will

face serious limitations in their ability to assure the economic, social, and cultural rights of the great majority of the population of which 80% of households are in different levels of poverty.

With the ratification of these agreements by our countries' legislative branches, the agreements become the law of the land. El Salvador is then faced with an all-encompassing instrument that legalizes the privileges of transnational corporations and turns them into rights. As this occurs the basic rights of workers, women, children and elders will be lost.

The FMLN rejects the mercantilist logic of the "free trade" agreements. A critical analysis of the CAFTA texts reveals the many negative impacts of the agreement, which would have on the daily life of the people and ecosystems of our countries—especially on women and impoverished families—as national sovereignty is eroded, legal frameworks are corrupted, and the neo-liberal nature of public policy is reinforced.

Defining free trade agreements as a synonym for economic growth, job creation, environmental protection, and wellbeing of the people is nothing but demagoguery aimed at generating a favorable opinion and the acceptance of neo-liberal policies. In fact, these policies cause a greater concentration of income and the wealth into the hands of transnational corporations and the wealthiest people of our lands. At this time, only 1 out of 3 people in El Salvador are permanently salaried employees. Given the projections from the United States, DR–CAFTA will massively increase the exportation in agriculture products which implies only for El Salvador, that in the first fourteen years of the agreement we will lose 400,000 permanent jobs only in the agricultural and textile industry.[1] This will further increase poverty in El Salvador and all Central America and the Dominican Republic, therefore, democracy and political stability will continue to weaken and at the same time the migration will augment profusely from El Salvador and Central America. This has been proven with Nafta.

The following is a summary of the principle reasons why we reject DR–CAFTA and why we ask the representatives of the United States Congress to do the same.

1. **The Mirage of Free Trade.** Free trade is not possible within a context where a country like the United States relies on subsidized and protectionist measures for its own economy (especially to protect against imported agricultural products) while at the same time forcing other countries to open their economies indiscriminately to U.S. exports and capital.
2. **Unrecognized Asymmetries.** There is an unwillingness to recognize the asymmetries that exist in our economies and businesses—especially micro, small, and medium-sized businesses—that operate at low levels of efficiency and are unable to compete. These asymmetries exist because of the lack of an effective policy of incentives, innovations, training, and access to financial services. They are heightened by deteriorating infrastructure and by constant and

[1] United States International Trade Commission, Investigations No. TA 2104–13. USITC Publication 3717, August 2004.

substantial increases in the rates of telephone and electric services provided by transnational monopolies.[2]

3. **Impediments to Migration.** DR–CAFTA facilitates only the movement of "business people" who work in large corporations, yet it does not incorporate or recognize the fundamental labor rights in El Salvador and Central America. This is a direct violation of the Salvador Constitution.
4. **Weakening of the State's Social Obligations.** The State is increasingly abandoning its obligation to assure the economic and social wellbeing of all of its inhabitants, favoring instead the interests of transnational corporations and foreign investment in new laws on tariffs, competition, labor rights, environment, quality of services and taxes, among others.
5. *Exclusionary and Anti-democratic Negotiations.* Negotiations for these agreements are carried out in quasi-secret conditions, outside the control of citizens. The ratification of DR–CAFTA in El Salvador was done without the consensus of the Salvadoran people. Refusal to contemplate a serious debate within Congress lead to the lack of substantial research and evaluation on DR–CAFTA and it's effect on the political, social, and economic impact in the country. Sectors that represent micro, small, and medium-sized businesses have been excluded from trade negotiations, as have workers, consumers, professionals, and other representatives of civil society. In the case of the uprising in Guatemala the population opposed openly DR–CAFTA and the response of the government was a repressive answer which concluded in violence. The similarity in the approval of DR–CAFTA in Guatemala, Honduras and El Salvador goes to show the anti democratic process to impose DR–CAFTA in Central America.
6. **No Assessment of Real Impact.** None of the Central American countries has undertaken studies to evaluate the economic, social, environmental, and cultural impacts of CAFTA, to forecast the net balance in terms of jobs created and lost in the various sectors of the economy, or to measure the environmental, social, and cultural impacts of new investments.
7. **The Privatization of Public Goods and Services.** This agreement creates ideal conditions for transnational corporations to become the owners of the remaining public enterprises and opens the door for services like water, security, health, education, museums, parks, highways, ports, and airports to become private monopolies or oligopolies.
8. **The Consolidation of the *Maquila* Development Model.** *Maquilas* generate miserable and unjust conditions of employment, especially for young women, and corporations that take advantage of permissive legislation to abuse the rights of workers. Within the maquila model, the ability to compete depends on cheap labor and the use of contaminating and extractive technologies that help to lower production costs even further. So, even this sector has not adequately incorporated in DR–CAFTA the protection of Maquilas permanent future within the countries of Central America. The projections of the CBI countries will lose a market equivalent of 6.3 billion dollars with a massive loss of employment that only for El Salvador will imply 60,000 losses of permanent jobs. This is the result of the open market of the textile and garment industry from China.
9. **The Legalization of Bio-piracy and the Looting of Natural Resources.** A permissive framework is established for transnational companies that work in biogenetics, biotechnology, the food industry, or chemicals and pharmaceuticals. Doors are further opened for our people to be victimized once again by the extraction of their natural resources, which now include plant species, micro-organisms, and traditional knowledge that could be "patented" by transnational corporations.
10. ***A Coup de Grace* to Agriculture and a Threat to Food Security.** The elimination of tariffs as well as the invasion of agricultural goods subsidized in the United States will bankrupt local producers and cause irreversible damage to our capacity to produce our own food. The region will then become simply a market that trades basic goods for commercial reasons, even as the quality of the imported food (genetically modified) may seriously threaten the health of consumers.
11. **A Violation of the Constitution.** Constitutionally established jurisdictions of the executive, legislative and judicial branches are being undermined in order to pass laws and policies compatible with DR–CAFTA. National territory is also undermined, as sovereignty up to 200 miles from shore would not be recognized. The Legislative Assembly has also been forced to ratify the agreements without the due deliberation required of this body. Finally, cor-

[2] For concise clarity in the Asymmetries, refer to the graph annexed at the end of document

porations are given the right to sue governments if government actions damage in some way their ability to make a profit. Citizens of our countries do not even have this right.

12. **Lack of access to Generic Medicine.** There is a duplicitous conflict which results in the protection of the interest of the large biochemical corporations and the denial and lack of healthcare of the population in El Salvador and Central America.

For these reasons, we oppose the passage of the Dominican Republic—Central America Free Trade Agreement (DR–CAFTA), and manifest the following:

First: We call on the Salvadoran population and the people of Central America to increase their struggle against the governments' willingness to turn the country over to powerful corporations. We call on them to strengthen the articulation of their organizing efforts and to present alternative proposals elaborated by civil society, with the participation of actors from various territories and sectors, in order to promote a true process of social integration among our peoples.

Second: We propose the participatory construction of an alternative Central American integration plan (including Belize and Panama) that would promote unity; improve the quality of life of our peoples; guarantee full respect for human rights; guarantee sustainability in harmony with the ecosystem and with our multicultural, multi-lingual societies; and strengthen the sovereignty of our country. We stand firmly in favor of the integration of Central America with all of the peoples of the Caribbean and Latin America which DR–CAFTA denies.

Third: We invite social and labor organizations of the United States—where more than two million of our brothers and sisters reside—to work with us to create an agreement an agreement for development which includes technical cooperation and a positive social and economic integration with the United States that emphasizes full respect for human rights; the free migration of persons; socio-environmental sustainability; fair trade; investments that transfer clean technologies and production processes; the cancellation of the foreign debt; and the payment of the ecological debt, in order to achieve a democratic, sustainable, and just society in Central America.

Fourth: We ask all legislators to vote NO on DR–CAFTA and to work instead for the rights and interests of all people and for a regional integration that is just, sustainable, and mutually supportive.

Fifth: In El Salvador DR–CAFTA was approved without any respect for our judicial process which violates our constitution. DR–CAFTA clearly violates the countries constitution and we have presented a law suit to the Supreme Court in El Salvador to declare DR–CAFTA unconstitutional. Congress Representatives were not allowed to debate the contents of DR–CAFTA and the President of the National Congress declared "although he wasn't knowledgeable about DR–CAFTA he was going to allow approval of DR–CAFTA".

San Salvador, April 11, 2005

Diputado Salvador Arias, member of the Ad—Hoc DR–CAFTA Commission; Permanent Economic and Agricultural Commission and Permanent Finance Commission Member of the Steering Committee of the FMLN Fraccion

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Statement of Maria Riley, Interfaith Working Group on Trade and Investment

CAFTA Does Not Measure Up!

Fair trade agreements are possible, and if accompanied with aid and investment, can play n important role in promoting development within the context of a more just society. Based on the following analysis the final CAFTA text, we join with American Friends Service Committee (AFSC) in concluding that, on balance, the CAFTA agreement does not serve the interests of justice and the common good.

This document measures the proposed Central American Free Trade Agreement (CAFTA)[1] against the principles that are central to the *Interfaith Statement on International Trade and Investment* by the Interfaith Working Group in Trade and

[1] The complete CAFTA text is available at http://www.interaction.org/library/detail.php?id=2605

Investment (IWG).[2] Critical provisions in the content of the final CAFTA text reveal that it does not advance the goals of a more just, sustainable and prosperous human society.

BACKGROUND

AFSC and other organizations in the IWG have worked for many decades in Central America and in the U.S. on issues that concern this region. Our work has been that of witness and listening to those with whom we work, providing them with the opportunity to speak to a wider audience and being present on their behalf when they cannot. In this work, we regularly provide information and analysis of complex economic justice issues and advocate with our partners for just economic policies.

Given the failure of World Trade Organization (WTO) Ministerial talks in Seattle (1999) and Cancun (2003) to come to agreement, the U.S. government is now actively pursuing regional and bilateral trade agreements modeled on the North American Free Trade Agreement (NAFTA). After ten years, the accumulated evidence surrounding the NAFTA demonstrates that many dire predictions made by its opponents were not borne out. But on the other hand, it was clearly not the panacea some thought it would be. A growing number of experts are questioning whether the NAFTA model is the best template for future trade and investment agreements as many negative impacts are uncovered—most severely felt by small farmers and the poor. Since the CAFTA extends the harmful aspects of

NAFTA rather than correcting them, the chances for fair, sustainable development in the region will be diminished.

Even in the face of the emerging criticism of this model, U.S. policy has been to attempt to expand NAFTA to all 34 countries in the Western Hemisphere, excluding Cuba, in the Free Trade Area of the Americas (FTAA) agreement. But their efforts have met severe resistance. Brazil, Argentina, Venezuela and Bolivia are unwilling to accept the U.S. demand for a comprehensive FTAA agreement like NAFTA, and have instead been negotiating for a more flexible model that allows countries to opt in or out of different parts of the agreement. Not at all pleased with this strategy, the U.S. is now focused on passing the CAFTA in hopes of isolating Brazil and pressuring them to change their tactics.

The CAFTA text was released to the public for the first time on January 28, 2004, two years after the start of negotiations. Although CAFTA has been ready to go to Congress since President Bush signed the agreement on May 28, 2004, supporters have held back due to a lack of votes needed to get it passed.

Thanks to "Fast Track", Congress can only vote yes or no without amending the trade agreement. If CAFTA passes Congress in its current form, it will harm the most vulnerable in Central America, will be more comprehensive and intrusive upon national sovereignty than the NAFTA agreement, and if ratified, will become the model for future U.S. regional trade agreements.

Visit www.afsc.org/trade-matters or www.tradejusticeusa.org for more resources on CAFTA

EVALUATING CAFTA AGAINST THE INTERFAITH PRINCIPLES

Below is an evaluation of the new CAFTA text against the principles from the *Interfaith Statement on International Trade and Investment* by the IWG and adopted by the AFSC Board in 2001. For each principle, one or two examples are provided to demonstrate how the CAFTA agreement is in violation.

1) International trade and investment systems should respect and support the dignity of the human person, the integrity of creation, and our common humanity.

We observe:

In order to attract manufacturing jobs from multinational corporations, the human person and integrity of creation has been systematically violated as Central American countries allow practices that breach internationally recognized labor and environmental standards. A recent report by Human Rights Watch found workers in El Salvador export processing factories are often denied overtime pay, deprived by employers of their social security contributions, and systematically denied their right to freedom of association.[3] CAFTA's chapter 16 on labor only requires countries to effectively enforce their own labor laws, regardless of the fact that many

[2] Full text available at: http://www.tradejusticeusa.org/about/eng-prin.htm

[3] Human Rights Watch. (2003) El Salvador: Government Ignores Widespread Labor Abuse CAFTA Must Include Strong Protection for Workers' Rights. Dec. http://www.hrw.org/press/2003/12/elsalvador120403.htm

are far below the International Labor Organization (ILO) core labor standards.[4] Fines are the penalty mechanism used when parties cannot resolve the dispute over a country that failed to enforce its own labor laws.[5] But this is likely to be ineffective because penalties are levied on governments of the countries where the violations occur, not the companies that violate. In fact, the fines that the governments pay would actually be paid back to themselves to fund "appropriate" labor initiatives. And nothing stops governments from shifting the amount equal to the fine out of the labor budget into the budget that paid the fine, effectively canceling out the fine.

Also a threat to common humanity, CAFTA's Intellectual Property Rights rules in Chapter 15 would grant exclusivity on medical test data to pharmaceutical companies for five years. This would have the effect of establishing a five-year patent monopoly and a ban on generic production of certain medicines.[6] This would be the case even if the patent term have expired and even if countries have issued compulsory licenses that would otherwise allow them to produce and sell generics while a product is patented—making it difficult for Central American governments to obtain cheaper drugs to meet their public health needs.

2) International trade and investment activities should advance the common good and be evaluated in the light of their impact on those who are most vulnerable.

We observe:

The final CAFTA agreement is closely modeled after the NAFTA and will have similar impacts on the poor and vulnerable. Although the agreement helped provide employment opportunities and improved standards of living for some, NAFTA has not fully measured up to the principle of advancing the common good. Nobel Laureate economist Joseph Stiglitz has described NAFTA's impact on Mexico since the agreement passed ten years ago: poor Mexican farmers have faced an uphill battle in their effort to compete with highly subsidized American corn, local small-sized enterprises have lost access to credit from foreign-owned banks, growth has slowed, income disparities between the U.S. and Mexico grew and real wages have fallen.[7] In an analysis of the CAFTA text by Oxfam International,[8] they found that many Central American producers of basic grains, such as corn, rice, beans and sorghum, as well as poultry, pig, cow and dairy farmers, will be forced out of business by the flood of cheap subsidized goods coming from the U.S. The only products that will continue to receive protection under CAFTA are white corn in Central America, fresh onions and potatoes in Costa Rica, and sugar in the U.S. Because of the importation of highly subsidized U.S. yellow corn, prices in the region will likely suffer a dramatic drop, seriously affecting producers. As happened in Mexico, subsistence and small farmers will migrate off their lands to the already overcrowded urban centers experiencing high levels of unemployment.

3) International trade and investment policies and decisions should be transparent and should involve the meaningful participation of the most vulnerable stakeholders.

We observe:

The negotiating text of CAFTA was never available to civil society until the negotiations were completed. Without creating negotiating mechanisms that include the participation of all who are affected, we cannot expect the outcomes to benefit them. In the U.S., Congress approved Trade Promotion Authority (TPA) also known as 'fast track'. This legislation gives the executive branch the power to negotiate trade agreements and leaves Congress with two options: vote yes or no. As a result, Congress cannot respond to constituents and influence or amend the agreement.

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[4] The ILO core labor standards include the rights to freedom of association, collective bargaining, the elimination of forced labor, the abolition of child labor, and the elimination of discrimination.

[5] U.S. Central American Free Trade Agreement, Art. 20.17.

[6] This analysis came in part from Weissman, Robert. (2004) *Dying for Drugs: How CAFTA Will Undermine Access to Essential Medicines.* Essential Action, March.

[7] Growth has slowed to 1% on a per capita basis (from 3.2% during 1948–73), income disparities between the U.S. and Mexico has grown by 10.6%, and real wages have been falling at a rate of 0.2% a year. Stiglitz, Joseph. (2004) The Broken Promise of NAFTA. The New York Times, Op-Ed. Jan. 6

[8] Galian, Carlos. (2004) CAFTA: The Nail in the Coffin of Central American Agriculture. Oxfam International, March.

4) International trade and investment systems should respect the legitimate role of government, in collaboration with divil society, to set policies regarding the development and welfare of its people.

We observe:

The CAFTA would prevent government procurement processes that give preferences to local firms in granting contracts—making criteria other than price and quality 'unnecessary barriers to trade'. This means that the use of government contracts to promote gender equity, social justice and respect for human rights would be prohibited. For example, living wage legislation, which mandates that a municipality can only hire suppliers that pay their employees a living wage—higher than minimum wage and determined locally—would be undermined. Although the U.S. negotiated an exception for procurement policies on behalf of its own small and minority businesses—and Costa Rica and Nicaragua did the same for small, medium and micro enterprises—El Salvador, Guatemala and Honduras filed no such exceptions.[9]

The U.S. pushed for an investment agreement in the CAFTA that prohibits performance requirements intended to influence the behavior of foreign investors. As a result, governments cannot mandate that a foreign company buy a certain percentage of its inputs from a domestic producer or hire a certain percentage of local people. Historically, this was a common tool used by now developed countries to spur the growth of local industries.

5) International trade and investment systems should safeguard the global commons and respect the right of local communities to protect and sustainably development their natural resources.

We observe:

The CAFTA rules in Chapter 15 on Intellectual Property Rights could be used to weaken national or international health and environmental standards. According to an analysis of the text done by the Institute for Agriculture and Trade Policy[10] CAFTA would require Central American countries to adopt the U.S. model of corporate patenting rights including ratification of the Union for the Protection of New Varieties of Plants (UPOV) of 1991.[11] The UPOV allows for patents on plants that trump farmers' traditional rights to save their own seeds. This would essentially permit multinational biotech corporations to sue farmers for patent violations, even when using their own seeds if crops become contaminated by pollen drift or distribution systems.

CONCLUSION

Guided by the principles of the *Interfaith Statement on International Trade and Investment*, fair trade in the Western Hemisphere is an achievable goal. With these principles incorporated into trade agreements, they could foster a more just, sustainable, and prosperous human society. In its current form, the CAFTA does not measure up to the principles articulated by the Interfaith Working Group on Trade and Investment (IWG) and adopted by the board of AFSC in 2001. For this reason, the IWG and AFSC take a stance against the CAFTA agreement in its current form.

The following members of the Interfaith Working Group on Trade and Investment submit the attached testimony to the House Way and Means Committee Hearing on the Implementation of the Dominican Republic-Central America Free Trade Agreement (DR–CAFTA):

American Friends Service Committee
Africa Faith and Justice Network
Center of Concern
Church World Service
Columban Missionaries Justice, Peace and Integrity of Creation Office
Congregation of St. Joseph, Cleveland
Congregation Sisters of St. Agnes Leadership Team
EPICA—Ecumenical Program in Central America
International Jesuit Network for Development
Leadership Conference of Women Religious
Maryknoll Office for Global Concerns

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[9] U.S. Central American Free Trade Agreement, Annex 9.1 Section G

[10] Olson, Dennis. (2004) *Central America Free Trade Agreement: Implications for Farmers in Both the U.S. and Central America.* Institute for Agriculture and Trade Policy/ART, March.

[11] U.S. Central American Free Trade Agreement, Art. 15.1

Maryknoll Affiliates
Medical Mission Sisters: Alliance for Justice
Mennonite Central Committee U.S. Washington Office
Missionary Oblates of Mary Immaculate
Presbyterian Church USA, Washington Office
Sisters of Charity of Saint Augustine
Sisters of the Holy Cross Congregation Justice Committee
United Church of Christ—Justice and Witness Office
United Methodist Church, General Board of Church and Society
Women's Division, Global Ministries, United Methodist Church
Washington Office on Africa
Witness for Peace

Statement of Trina Tocco, International Labor Rights Fund

The International Labor Rights Fund (ILRF) would like to thank the Committee on Ways and Means, U.S. House of Representatives for the opportunity to present testimony related to the Central America Free Trade Agreement (CAFTA). ILRF is deeply concerned about ongoing labor rights violations in Central America. We believe the agreement will force the developing nations of Central America to compete against one another to attract limited new U.S. investment by offering low wages and foregoing enforcement of labor and environmental laws.

A strong and enforceable labor chapter might have served to mitigate this "race to the bottom." However, as currently written, the CAFTA labor chapter will not serve to deter labor rights abuses, nor will it effectively deter national governments from downgrading their existing labor laws. Thus, as currently written, CAFTA can only lead to further degeneration of the labor rights situation in Central America, with no effective mechanism available to counteract downward pressures.

Analysis of the CAFTA Labor Chapter Enforcement Mechanisms

Although the CAFTA labor chapter refers to the ILO Declaration on Fundamental Principles and Rights at Work, the agreement does not bind any of its Parties to ensuring that internationally recognized worker rights are incorporated into national laws, or that they are properly enforced. The language of the agreement is merely aspirational, directing parties to strive to improve their laws, but providing no effective reward or sanction for countries in this regard. Indeed there is no language in the agreement that would prevent or sanction countries from reforming their laws in such a manner as to abrogate the internationally recognized worker rights.

The agreement is thus a step backward from the earlier trade arrangements with each country under the Generalized System of Preferences (GSP) program. While imperfect, at least the GSP program does require beneficiaries to be able to demonstrate that they are taking steps to ensure that workers enjoy the internationally recognized rights to associate and bargain collectively, to abolish child labor, to abolish forced labor and to provide the right to decent wages and working conditions. In contrast, CAFTA merely requires countries to be enforcing their existing laws, however inadequate those laws may be.

Given the history of the Central America region, we find it disingenous to suggest that these countries can be entrusted with enforcement of their own labor laws. ILRF and its partners throughout the region have conducted extensive research on labor law implementation in Central America, dating back to the late 1980s. During the past two decades ILRF has used this research to support GSP petitions related to Honduras, El Salvador, Costa Rica and Guatemala. ILRF and its partners conducted new research on labor law enforcement in the region in 2003 and 2004, and found evidence of systematic failures to enforce labor laws in all Central American countries. The systematic problems identified included a lack of political will at the highest levels, corrupt and inefficient labor ministries and courts, and intimidation and harassment of workers who attempted to utilize legal channels to protect their rights. The language of the CAFTA labor chapter, which, as we have mentioned, is largely aspirational, ignores the realities of legal enforcement in these countries.

The single enforceable provision of the chapter, on labor law enforcement, does not give us reason to believe that governments will improve in this regard. The process for invoking a review of a country's compliance is too weak, opaque and limited to create real change in labor law enforcement. The CAFTA labor chapter effectively sets the fox to guard the henhouse, by creating a review process that can only

be invoked by another government that is party to the agreement. Specifically, a review of one country's labor law enforcement can only be triggered if another CAFTA country files a request for such a review. Given that there is an extremely poor pattern of law enforcement throughout the region, it is extremely unlikely that any one country would file a complaint against another, for fear of retaliation. In short the very mechanism of the CAFTA labor chapter creates the preconditions for a conspiracy of silence among all parties to the agreement on the issue of labor law enforcement.

Civil society actors, in particular workers and their representative organizations have no means by which to affect this process. The process can only be triggered by a national government, and there is no mechanism created by which a civil society organization can petition its government to initiate such a review. Moreover, the agreement does not even provide the general public with information about the outcome of a review, should one ever take place. Thus there is no way that the general public in any of the CAFTA countries can ever know whether or not the review process, if ever invoked, actually resulted in any meaningful dialogue on the issues identified.

In contrast, the existing GSP provides for a public review process. Any individual or organization can utilize this process, which is comparatively transparent and accessible, by filing a submission to the Office of the U.S. Trade Representative. Throughout the past two decades a handful of organizations, including ILRF, the AFL–CIO, and Human Rights Watch have researched and filed lengthy petitions documenting labor rights abuses in GSP recipient countries. Although not all of these cases were successful, nevertheless, the cases obliged both the U.S. Administration and regimes in the targeted countries to respond, point by point, to allegations of abuse. In Malaysia in 1991, an ILRF petition succeeded in convincing the Malaysian government to recognize union rights in the electronics sector. A 1996 AFL–CIO petition on Thailand succeeded in pushing the Thai government to recognize the right of state enterprise workers to form trade unions. A 1997 petition against Cambodia, filed separately by both the AFL–CIO and ILRF, persuaded the Cambodian government to ratify a new Labor Code. This process, while admittedly limited in effectiveness, is at least superior to the CAFTA process in its relative public accessibility and transparency. The fact that the existing GSP process will be replaced by the weaker CAFTA review mechanism will create further disincentives for the CAFTA governments regarding improvement of their labor laws and labor law implementation.

Failure to Guarantee Non-Discrimination

While the CAFTA labor chapter references the ILO Declaration on Fundamental Principles and Rights at Work, it fails to include any obligation of governments, even aspirational, with regard to the right to a workplace free from discrimination. This right is universally recognized as a core labor right and defined in ILO Conventions No. 100 and 111. We note that a large percentage of the workers expected to find employment in export-oriented sectors, such as the maquila industry, are women. Our research and that of our allies has found that these women workers are subject to discrimination through, among other problems, pregnancy testing as a precondition for employment, sexual harassment on the job, and non-provision of maternity leave benefits. In most instances they have limited legal recourse, and often are subject to social and economic pressures that make it in reality impossible to claim what legal protections they may have on paper.

We urge Congress to insist that CAFTA and any future trade agreements reference the essential right to a workplace free from discrimination. Such a clause would help bring the attention of developing countries throughout the world to the plight and problems of vulnerable women workers.

Downward Pressure on Labor Laws and Legal Enforcement in Central America

In December 2004, ILRF and ASEPROLA, a Costa Rican labor rights NGO, co-filed GSP petitions against five Central American countries. We found that, despite the U.S. Trade Representative's public claims to the contrary, even during the period of CAFTA negotiations, Central American countries, preparing for competition with one another for limited U.S. investment, were taking steps to downgrade their labor laws. USTR has not yet responded to the request for review of these countries' GSP privileges, and if CAFTA is ratified, then no such review will ever take place. We note below some instances, documented in these petitions, of legal reforms that would weaken worker protections in the region.

Costa Rica: During the CAFTA negotiations, the Costa Rican government has taken steps to weaken existing national labor protections. In early 2004 the govern-

ment introduced a project to reform the country's labor code. In particular, proposed legislation would modify working hours through a year-long calendar of work shifts and the weekly accumulation of working hours, eliminating the standard eight-hour workday. The proposed legislation would also eliminate the rights to mixed and absolute overtime hours, as it would allow employers to increase work hours at times of high demand, and lessen work hours in times of low demand. When introducing this legislation to the Costa Rican parliament, the government argued that such flexibilization of working hours and overtime rules was necessary in order to allow Costa Rica to remain competitive with the other Central American countries once the CAFTA was ratified. Public pressure on the Costa Rican government resulted in some modifications to the proposed legislation, which has not yet been introduced to the legislature.

El Salvador: The emergency law for economic reactivation (LERE), which was introduced to the Assembly in 1999, has continued during the period of CAFTA negotiations to work its way through the legislative process in El Salvador. If approved, LERE would modify salaries and working shifts, and increase the allowed length of a trial period for new workers and the use of fixed-term contracts. These changes affect benefits currently guaranteed by labor law, including vacations and social security. The current Labor Code includes indefinite contracts and a 30-day test period (during which time the contract can be terminated). LERE would make fixed-term contracts and 180-day test periods the norm, which means that the social security payments for these workers are not made for almost 6 months. This drastically increases job instability, making it easier for employers to make workers work overtime without extra pay, and to dismiss workers without paying penalties or benefits. El Salvador is also considering new legislative measures that would weaken existing health and safety regulations.

Panama: There is some evidence that Panama has continued to weaken its labor law regime during the past two years when it has been involved with trade negotiations with the U.S. (While not a CAFTA country, Panama has been negotiating a separate bilateral agreement with the U.S., with discussions regarding the possibility that Panama would 'dock on' to CAFTA). In February 2002, a new regulation was passed that provides incentives to companies to hire "young workers" between the ages of 18 and 25. The incentives include temporary exoneration from certain legal protections for these workers. In particular, the regulations suspend the protections of certain articles of the Labor Code for such workers, in particular the protections for maternity benefits. Other reforms are in progress, although they have not yet been presented to the Panamanian parliament. These include an initiative to modify the Labor Code to eliminate minimum wages altogether, and a proposal to reform the country's social security benefits to increase the retirement age, quotas, and years of contribution to the system. The proposed social security reforms are expected to be presented to the Panamanian parliament in early 2005.

Honduras: In its petition, ILRF and ASEPROLA noted that the USTR has failed to implement the terms of a Memorandum of Understanding negotiated with the Honduran government as a result of a 1995 GSP complaint. The MOU, if implemented would have resulted in important changes to Honduran labor law and its labor inspections system. Rather, the CAFTA negotiations have tacitly discouraged the Honduran government from implementing those commitments and created perverse incentives for labor law reform. Currently, the Honduran Ministry of Labor, working with employers' groups, is promoting a project to modify the labor law with reforms that would generalize fixed-term contracts. It would also make the payment for severance payable only on an annual basis so that it would not be possible to create special funds with these monies. A policy of freezing salaries continues, and Honduran employers are increasingly delaying negotiations with workers.

Guatemala: In 2003, USTR accepted for review GSP petitions filed by ILRF and by the AFL–CIO to review Guatemala's country eligibility based on its failure to uphold internationally recognized worker rights. These petitions cited the judicial impunity with regard to threats and violence against trade unionists in Guatemala, the systematic failure of the government to enforce existing labor laws, and the need for further reforms to the country's labor laws in order to bring it into full compliance with international standards. The new ILRF/ASEPROLA petition states that the review has failed to bring about meaningful progress in these three areas. The labor code reforms passed in 2001 did not bring Guatemala's labor practices up to acceptable standards, and some of these reforms have been reversed by Guatemala's Constitutional Courts. A number of promised legislative reforms have never materialized.

A Better Alternative

ILRF strongly urges that any new trade agreement with Central America contain a strong, transparent and enforceable labor rights mechanism. Sustained economic development will elude a vast majority of the populations of the Central American countries without such a mechanism.

The key elements of a workable enforcement mechanism to apply upon the failure of a national enforcement system can be easily stated. First and foremost, any enforcement process must be democratic and transparent. A major criticism of the WTO enforcement panels is that they are closed to the public and operate in secrecy. CAFTA replicates this secretive model. All processes involving enforcement must be fully transparent, including a written public record of all proceedings and open hearings. There also needs to be a clear appeals process.

Second, access to the enforcement process must be available to all interested parties, not just the government signatories to the trade agreement. The key constituency here is the workers themselves, most of whom are not currently represented by a trade union. They must have direct access to an enforcement process. Also, other stakeholders, such as NGOs and labor organisations, must have access to the process.

Third, the enforcement process must make a distinction between violations that are attributable to private actors, including multinationals, and therefore require remedies more in the line of penalties, and those that are attributable to governments, and might be better addressed by trade sanctions. Penalties directed at companies, with the cooperation of the host government, will resolve most problems. This also leaves problem solving within the firm control of the individual governments and allows them to act to prevent any protectionist use of the enforcement process. If a country ultimately refuses to enforce its own laws, as per the commitment made in its own laws and the international standards, there must be a system of penalties to encourage compliance, with the ultimate sanction being exclusion from the benefits of the trade agreement.

Finally, in keeping with the ILO standards, a model labor clause in CAFTA or any other trade agreement must include language recognizing the right of workers to a workplace free from discrimination, as defined by ILO Conventions No. 100 and 111.

Statement of Mark Berlind, Kraft Foods, Inc., Northfield, Illinois

Mr. Chairman, Members of the Committee, I am Mark Berlind, Executive Vice President, Global Corporate Affairs, Kraft Foods, Inc. Thank you for allowing me to submit this statement on the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA–DR). Trade is an issue of vital importance to Kraft, our 50,000 U.S.-based employees, our stakeholders, other U.S. food manufacturers, and thousands of American farmers who supply high quality raw materials to the U.S. food processing industry.

Kraft Foods, which recently celebrated its one hundredth anniversary, traces its origin back to the days when James L. Kraft rented a horse and wagon and started selling cheese in Chicago. The company he founded and built is now the largest branded food company in the U.S. and the second largest in the world. Last year, Kraft reported net revenues of over $32 billion from sales in 155 countries.

The Chicago area is still our home, and America remains our biggest market. Kraft products can be found in 99% of American households. In addition to our flagship cheese brands, we take pride in producing and marketing many other iconic food and beverage brands, including *Ritz* crackers, *Post* cereals, *Maxwell House* coffee, *DiGiorno* pizza, *Oreo* cookies, *Planters* nuts, and *Oscar Mayer* meat products.

Kraft is essentially in the business of transforming raw or semi-processed farm commodities into consumer-ready products. On a global basis, Kraft buys $7 billion worth of agricultural commodities annually. We are one of the world's largest buyers of dairy products, sugar, meats, coffee, oils, and nuts. We also purchase large quantities of wheat, rice, corn, and soy and other crops.

Last year, for use in our U.S. manufacturing facilities, we bought $3.6 billion worth of farm commodities. This included $1.3 billion worth of dairy products, nearly half a billion dollars worth of pork, and almost one quarter of a billion dollars worth of sugar.

We believe that the growth and success of Kraft and the strength of our brands is directly linked to the emphasis we place on providing consumers with high qual-

ity, good-tasting, convenient and fun products at the right price. This involves a constant challenge to provide better products to our customers at the best value.

The 50 U.S. states are currently Kraft's largest market. Given U.S. demographic realities, however, future growth for Kraft—as well as for the entire U.S. food and agriculture complex—is inextricably tied to our ability to access export markets. Mr. Chairman, as you and most other farm state Members know, 95 percent of the world's consumers live outside the U.S. That is where future growth will take place.

Kraft and Entire U.S. Food Industry Would Benefit from Access to CAFTA–DR Markets

There are about 46 million consumers living in the six CAFTA–DR countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic). With moderate population growth, rising incomes, and improved diets, demand for U.S. processed foods is expanding.

For U.S. food and agricultural producers, in particular, population age and growth are among important indicators of market potential. For comparison purposes, the median age of the U.S. population is 36 years, and rising. Median ages for our six prospective CAFTA–DR partners are dramatically younger, ranging from 18.4 years in Guatemala to 25.7 years in Costa Rica. And, while the U.S. population is growing at a rate of less than one percent (.92%) annually, rates for the six countries range from 1.33 percent for the Dominican Republic to 2.61 percent for Guatemala. These numbers have striking implications for projected levels of food consumption inside the U.S. vs. within the six CAFTA–DR countries over the foreseeable future.

In general, U.S. exports of processed food products already capture roughly one quarter of total food imports into the six countries, and U.S. brands—including a number of well-known Kraft brands—are popular throughout the region. Already, exports of many processed food products are growing faster than other agricultural products. We are convinced CAFTA–DR would make Kraft products even more competitive, and more popular, in the region.

Cereals, Cookies, Soups, Pet Food Would Benefit from Immediate Tariff Relief

Food, beverages, and consumer products currently face an average *ad valorem* tariff of 15 percent in the five CAFTA countries and 20 percent in the Dominican Republic (DR). Some food products like processed cheese and cream cheese—products of special interest to Kraft—face tariffs that range up to 66 percent in some CAFTA countries. Under the Agreement, tariffs on U.S. exports of most food and beverage products would be reduced to zero over fifteen years. Certain products, such as breakfast cereals, cookies, and pet food products would receive immediate duty free treatment. This means Kraft would benefit immediately on products like our *Post* breakfast cereals, *Oreo* cookies, and *Milk Bone* pet foods.

The DR is currently the largest market of the six for Kraft products. And, that market could be much larger if it were not constrained by the most daunting tariffs we face in the region. During 2004, Kraft shipped nearly 700 tons of food products, worth $1.7 million, to the DR. This included 192 tons of *Kraft Mayonnaise*, 65 tons of *Oreos* and *Chips Ahoy* cookies, and 62 tons of *Kraft Macaroni and Cheese*. While the DR technically maintains a tariff of 20 percent on most food products, other added import charges lift the total effective rate to 33 percent. Consequently, it cost Kraft over a half million dollars in tariffs to enter the products we shipped to the DR in 2004. Much of this cost would be passed forward to the DR consumer. Because it is fundamental that the higher the price, the less the consumer buys, there is no question that the present 33 percent effective DR tariff retards sales of Kraft and other imported U.S. food products. Elimination of tariffs would boost sales and could encourage the introduction of new product lines.

Others have already stressed that the U.S. charges no tariffs on nearly all of the food and agriculture products received from the CAFTA–DR countries. From Kraft's perspective, CAFTA–DR would simply level the playing field, and create a more equitable trading relationship.

Solid Prospects for Export Growth in Processed Foods

A recent study by the Grocery Manufacturers of America (GMA) estimated that the potential savings to the processed food industry from the tariff reductions and tariff-rate quota expansions provided for under CAFTA–DR would be nearly $8.8 million in the first year of the Agreement. This figure grows to nearly $28 million annually upon full implementation of the Agreement. Upon elimination of tariffs, food exports could, according to this study, increase from $359 million to $662 million—an 84% increase over current exports to the region, according to the GMA study.

During 2004, the value of shipments of Kraft consumer products from the U.S. into the six CAFTA–DR countries totaled $10.6 million. Well over $2 million in tar-

iffs were paid to enter these goods. Full implementation of the Agreement would, of course, eliminate tariffs on all of our sales to the region. While we expect significantly increased sales associated with implementation of the Agreement, we have not projected expected growth in sales of Kraft products. Ultimately, the greatest benefits to Kraft may come in cheese categories—a sector of the CAFTA–DR market where we now often face insurmountable barriers. The GMA growth forecast could very well be conservative.

Agreement Should Remain Comprehensive—No Exclusions

One of the most important features of the Agreement for Kraft and for the entire U.S. processed food industry is its comprehensiveness. All products are included in the Agreement, including sugar, a key ingredient for Kraft and for many food and beverage manufacturers. The Agreement provides for increased access to lower-priced Central American and DR sugar, but in a very modest way that fully recognizes the sensitivity of this commodity in our country.

Kraft is a strong supporter of trade liberalization and a vigorous advocate for this and most other trade agreements. We believe such agreements create opportunity and are good for our employees, our stakeholders, our industry, and our country.

The food industry believes that no products should be excluded from FTA's negotiated between the U.S. and other countries. We—and most of the U.S. food industry—did not support the U.S.-Australia FTA because sugar was excluded. We're convinced that—as the Australian experience proved—the exclusion of any single commodity from free trade agreements because of our import sensitivities provides our trading partners with an excuse to take their import sensitive issues off the table as well. This downward spiral in ambition jeopardizes the very benefits that our economy derives from free trade. In the case of CAFTA, we would expect that an attempt to re-negotiate sugar would, at a minimum, erode benefits for other U.S. agricultural commodities, possibly dairy and poultry, but more likely this would cause the entire delicately balanced Agreement to unravel.

As a country that enjoys the world's strongest economy, our message to other countries simply can't be that we're only interested in free trade in those goods and services for which we maintain a competitive advantage. I am here today to express Kraft's strong endorsement of this Agreement in its entirety, even though some benefits for U.S. exporters will literally take years to be realized. However, if there were to be a decision subsequent to this hearing that upsets the delicate balance that the negotiators reached in order to forge an agreement by taking specific commodities off the table—including nullification of the current sugar provisions—Kraft would have a very difficult time continuing to support this pact.

As I noted earlier, Kraft is a major buyer and user of sugar. Since a penny change in the U.S. per pound price of sugar means $8 million annually to Kraft, we regard ourselves as a major stakeholder in the sugar program debate. We recognize the need to preserve a viable domestic sugar industry. The current support scheme, however, essentially imposes a regressive tax on U.S. consumers of sugar-containing products. According to U.S. submissions to the WTO, the tax transfers a trade-distorting subsidy of over $1 billion annually to U.S. sugar growers. This is money that comes directly out of consumers' pockets.

Kraft favors safety net assistance to agricultural producers, including sugar. There is broad agreement that CAFTA–DR, provides more protection for sugar than for any other commodity, while at the same time adhering to the principle that every commodity needs to be addressed—even if minimally—in free trade agreements. The overall compromise that the negotiators reached on these difficult issues needs to be preserved.

CAFTA–DR, like all trade agreements, is fundamentally a political agreement. As all of you know, political agreements involve compromise and are rarely perfect from all perspectives. While Kraft supports this Agreement, there are elements of the pact we, too, wish were different. For example, it would take 20 years for CAFTA tariffs on cheese and other dairy goods—products of keen interest to Kraft—to reach zero. Twenty years is the longest tariff phase-out period in the entire Agreement and the longest tariff phase-out the U.S. has accepted in any trade agreement. On the import side, the increases for sugar are very small and the over-quota tariff on sugar is never eliminated—another feature of this Agreement unique to sugar. Though not perfect, we regard this as a good Agreement for us on balance, and we are determined to do all we can to advocate that it is implemented as negotiated.

Critical Non-Commercial Considerations

While we believe that there are adequate commercial reasons to approve this agreement, there are additional factors that should be considered in evaluating this issue. As I noted earlier, Kraft is already active in these countries. Not only do we

have customers in these markets, we have employees and shareholders in the region. We are aware that business and industry leaders in these countries are eagerly looking forward to forging a new and stronger trade relationship with the U.S. Kraft believes that CAFTA–DR would strengthen our mutual competitiveness, enhance political stability and contribute to the security of the entire North American continent.

Leaders of these six nations appear to be fully committed to economic development, including the dismantlement of trade barriers. If the United States is unwilling to support and partner with them, the reality is that they would find other eager partners, ceding these key and growing markets to others and further disadvantaging U.S. businesses, employees, ranchers and farmers.

Finally, we believe that Congress should seriously consider the effect of its decision regarding CAFTA–DR on the credibility of U.S. negotiators. Failure of Congress to approve legislation to implement CAFTA–DR would dash the credibility of our trade negotiators and cast a chill over all ongoing U.S. trade negotiations. The perception of our trading partners would be that commitments made by U.S. negotiators cannot be trusted and that the U.S. is abandoning the leadership position it has held on trade since the end of World War II.

Kraft strongly supports CAFTA–DR. We urge the Committee and the Congress to vote for legislation that would implement this critically important agreement.

Statement of Gabriela Lemus, League of United Latin American Citizens

Thank you for the opportunity to share my organization's views on the proposed Central America Free Trade Agreement (CAFTA). I submit my statement for the record.

With approximately 115,000 members throughout the United States and Puerto Rico, the League of United Latin American Citizens (LULAC) is the largest and oldest Hispanic Organization in the United States. LULAC advances the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans through community-based programs operating at more than 700 LULAC councils nationwide. The organization involves and serves all Hispanic nationality groups.

LULAC strongly supports enhanced economic opportunities for Hispanic Americans, and we have been supporters of trade agreements in the past, including the North American Free Trade Agreement (NAFTA) over a decade ago. Today, however, we oppose the expansion of NAFTA to five additional Central American countries and the Dominican Republic through CAFTA.

Eleven years ago, we were promised that NAFTA would offer economic gains for U.S. Latinos and development for Mexico, that NAFTA side agreements would help raise labor and environmental standards on both sides of the border, and that substantial funds would be provided for U.S.-Mexico border clean-up efforts.

None of these promises have been kept. Instead, Hispanics have been disproportionately negatively impacted by these trade agreements. All told, nearly a million U.S. jobs have been lost in the United States due to NAFTA trade. The tragedy for Hispanics is that, according to a Government Accountability Office study, in some years as many as half of the workers displaced by NAFTA trade have been Hispanics, as Hispanics have consistently accounted for more of the Trade Adjustment Assistance certifications than their share of the U.S. population. Moreover, Hispanics have shared in the experience of most U.S. working families in seeing the median real wage scarcely grow since the 1970s, while productivity has grown over 80 percent and income inequality has skyrocketed.

The deterioration of economic opportunity has extended to the other side of the border as well. In Mexico, 1.5 million farmers have been thrown off of their land as a result of NAFTA trade, while the Mexican minimum wage has lost nearly a fifth of its value and industrial wages a tenth of theirs. Mexicans' income growth has been particularly disappointing, not even a third of what they had prior to their period of trade liberalization. The real tragedy for development is that if the Mexican economy had continued to grow at its historic pace, Mexicans would have doubled their living standard by now and enjoyed near European living standards. CAFTA would replicate the same anti-development model.

At a minimum, LULAC and others that supported NAFTA were promised that any damage that might come about as a result of the agreement would be mitigated by the pact's labor and environmental side agreements. But these side agreements were left severely under funded and were never given real enforcement power. In

short, they lacked the teeth to truly help improve and ensure the quality of life on both sides of the border.

The results of the San Diego-Tijuana Environmental Health Coalition's (EHC) landmark case concerning the Mexican government's refusal to clean up toxic waste left by an abandoned Tijuana factory, *Metales y Derivados*, is instructive. EHC's claim was processed and won through the adjudication procedures of the North American Commission for Environmental Cooperation (NACEC), which was created by NAFTA's environmental side agreement.However, despite the ruling, the NAFTA side agreement commission could not compel the cleanup of the more than 7,000 tons of toxic waste, which still lie exposed to the elements just a mile from the U.S. border. There have been a series of cases under NAFTA's investment rules in which corporations have been awarded cash compensation from governments based on claims of violations of their NAFTA-granted investor rights. In contrast, the only outcome of EHC's citizens-claim was a report from the commission acknowledging that there had been a violation, with no other result or penalty.

Other examples of NAFTA failure abound. The North American Commission on Labor Cooperation (NACLC), the tri-national NAFTA body that was supposed to ensure that countries enforced their own labor laws, never received its full funding. In fact, out of the $2 million a year in U.S. contributions that was authorized to be appropriated in the NAFTA implementing legislation, only a third was ever actually disbursed. This is a real tragedy given that even the authorized amount was woefully insufficient. Furthermore, the labor side agreement had such a cumbersome process for getting a review of labor rights violations that, as of today, 30 submissions has been made under the labor agreement, none of which have made it past the earliest stages of review, report and intergovernmental consultation. Not a single illegally fired worker has been reinstated, not a single independent union has been established and bargained collectively, and not a single workplace hazard has been corrected as a result of NAFTA and the NACLC.

Things were not much better for the NAFTA promises made for the border environment. Estimates for clean-up on the U.S.-Mexico border range from $8 to 21 billion, or six times the entire capital of the North American Development Bank (NADBank), established as a part of the NAFTA implementing legislation. But even the minimal promise was not kept. In fact, the U.S. Treasury Department reports that the NADBank had only directly loaned $23.5 million in low-interest loans to finance projects over its first seven years of operation, and disbursed only $11 million of that money—or less than 0.4 percent of its lending capacity— in large part because of the inability of impoverished border communities to afford the high interest rates and user fees.

The promise that NADBank would dedicate ten percent of its capital to helping communities adjust to trade was also dramatically broken, as the bank's domestic adjustment window has made direct loans totaling only $7.84 million, or just over two percent of the $300 million envisaged.

It is this history of failure to achieve the minimum of what was promised that informs LULAC's opposition to CAFTA. These unsuccessful policies have led to a doubling of undocumented migration to the United States from Mexico since NAFTA was enacted, and increased U.S. border policing and militarization that have led to more than 2,700 deaths from failed border crossings in desperate attempts to seek the American dream. We are concerned that CAFTA will preclude and prevent real and much needed economic and social development.

In this regard, one ought to notice CAFTA's enhanced monopoly protection for brand name pharmaceuticals, a provision which led the U.S. Administration to directly pressure Guatemala to rescind a public health law expanding access to generic, low cost medicines. For many of the Central American countries, who experience relatively high rates of infant mortality and exposure to infectious diseases, such a provision is morally unacceptable.

We are also concerned that the welfare of women, children and their families will be worsened under a CAFTA. Human Rights Watch has amply documented the labor standards of Central American countries, which fail to meet ILO standards and include instances of child labor on sugar plantations and the abuse of pregnant women in the export processing zones. LULAC has consistently spoken out against the abuses against women in the *maquila* industry on the U.S.-Mexico border, where violence and even disappearances of women have soared since NAFTA has taken place. The toothless labor provisions of CAFTA—like those of NAFTA before them—will hinder the efforts of civil and human rights groups to seek meaningful solutions to these problems.

In short, LULAC believes that what Hispanics need is economic opportunity, and what Latin America needs is development. There is no evidence that this model of trade agreement, nor its side accords, have contributed in any way towards attain-

ing this goal in the past, and there is no reason to think it would do so in the future with Central America. The track record is clear: the NAFTA/ CAFTA model has failed.

Finally, much has been made about CAFTA serving as a lifeboat for the Central American textile and apparel industry in the face of enhanced Chinese competition in following the global quota expiration. We know that the U.S., Mexican and Central American industries have indeed already lost much production to Asia. This loss will continue due to China's cost advantage—even after one accounts for shipping and tariff costs—over other regions. The NAFTA/ CAFTA model does nothing to change this reality. It offers a promise which it can never fulfill.

Central America already has duty-free access to the U.S. market under the Caribbean Basin Initiative (CBI), and in CBI there are stronger incentives to use the U.S. inputs that Hispanics in the U.S. textile industry help produce, along with stronger mechanisms to force labor standards improvements in Central American countries. While some have suggested that the ability of the United States to impose safeguards on Chinese imports offers a relative advantage to the Central American apparel industry, U.S. law allows these to be applied only until 2008. The anti-development bias in the NAFTA/ CAFTA model, however, would last forever.

After three lost decades in terms of real gains in U.S. family incomes and Latin American growth rates, the cause of economic development and civil rights are best served without more of the same under CAFTA.

Statement of Dan Glickman, Motion Picture Association of America

On behalf of the Motion Picture Association of America (MPAA) and the Entertainment Industry Coalition (EIC), of which MPAA is a member, I would like to take this opportunity to thank the committee for holding this hearing on the U.S.-Dominican Republic Central America Free Trade Agreement (DR–CAFTA). The DR–CAFTA creates new opportunities for America's entertainment industries and workers in terms of U.S. jobs and exports. This agreement also establishes important precedents for future Free Trade Agreements (FTAs) to be negotiated with other countries.

The MPAA is a trade association representing the interests of seven of the largest producers and distributors of films, home video entertainment and television programs. Its members are Buena Vista Pictures Distribution; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal Studios from Universal City Studios; and Warner Bros. Entertainment Inc.

The EIC is a coalition representing trade associations, guilds, a labor union and companies that produce, distribute and exhibit films, recorded music and video games. The coalition's members include the MPAA, the Recording Industry Association of America, the National Association of Theater Owners, Independent Film & Television Alliance and the Electronic Software Association.

Importance of the Copyright Industries to the U.S. Economy

The copyright industries reach across all fifty states and into almost every corner of the globe. The innovation and creative works they produce not only entertain us and make our lives easier; they represent an enormous engine of economic growth, prosperity and job opportunity. In 2002, the U.S. "core" copyright industries [1] accounted for an estimated 6% of the U.S. gross domestic product ($626.6 billion), and employed 4% of U.S. workers in 2002 (5.48 million workers). Between 1997–2002, the core copyright industries added workers at an annual rate of 1.33%, exceeding that of the U.S. economy as a whole (1.05%) by 27%. Factoring out the difficult economic year of 2002, between 1997–2001, employment in the core copyright industries grew at an annual growth rate of 3.19% per year, a rate more than double the annual employment rate achieved by the U.S. economy as a whole (1.39%).

In 2002, the U.S. "total" copyright industries [2] accounted for an estimated 12% of the U.S. gross domestic product ($1.25 trillion) and employed 8.41% of U.S. workers

[1] The "core" industries are those industries whose primary purpose is to produce or distribute copyright materials. These industries include newspapers, book publishing, recording, music, and periodicals, motion pictures, radio and television broadcasting, and computer software (including business application and entertainment software).

[2] The "total" industries are composed of four groups called the core, partial, non-dedicated support, and interdependent sectors.

(11.47 million workers). This level approaches the total employment levels of the entire health care and social assistance sector (15.3 million) and the entire U.S. manufacturing sector (14.5 million workers in 21 manufacturing industries).

In 2002, the U.S. copyright industries achieved foreign sales and exports estimated at $89.26 billion, leading other major industry sectors such as: chemicals and related products, food and live animals, motor vehicles, parts, and accessories, and aircraft and associated equipment sectors.

Protecting the copyright industries and the intellectual property they are based upon goes hand in hand with protecting the U.S. economy and job market. To that end, the DR–CAFTA provides for better intellectual property (IP) protections and more improved market access than the industry has seen in previous agreements. Central America and the Dominican Republic are currently pirate markets for the MPAA's member companies; this agreement would go a long way toward establishing legitimate markets and will help set the stage for effective enforcement of intellectual property laws. Moreover, the DR–CAFTA will set higher standards of IP protections and market access in future trade agreements.

TRIPS Plus Provisions For IP Protections In The Digital Economy

The DR–CAFTA builds on the framework of copyright protections provided by the World Trade Organization's agreement on trade related intellectual property. The signatories of the DR–CAFTA agree to implement the WIPO Internet Treaties, which provide world-class IP standards on treatment of digital copyrighted material, upon entry into force of the Free Trade Agreement. This establishes strong anti-circumvention provisions to prohibit tampering with technologies that are designed to prevent piracy and unauthorized distribution over the Internet. It also ensures that copyright owners have the exclusive right to make their works available online, and it provides an expeditious process that allows for copyright owners to engage with Internet Service Providers and subscribers to deal with allegedly infringing copyright material on the Internet. In addition, DR–CAFTA protects copyrighted works for extended terms, in line with emerging international trends.

Strengthened IP Enforcement

The DR–CAFTA offers strengthened intellectual property enforcement in several ways. The agreement increases in criminal and civil protection against the unlawful decoding and distribution of encrypted satellite TV signals, and it criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting. It requires both parties to authorize the seizure, forfeit, and destruction of pirated products and the equipment used to produce them and also provides for enforcement against goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products. In addition, it includes agreed criminal standards for copyright infringement and stronger remedies and penalties.

Broadcast Policy

The members of the MPAA have had a long-standing and serious problem with broadcast piracy—the unlicensed and illegal retransmission of broadcast signals—in the Dominican Republic. However, an August 5, 2004 side letter to the DR–CAFTA agreement *already* provides a strong commitment to eliminate broadcast piracy by the Government of the Dominican Republic. One favorable judgment against a notorious pirate broadcaster was received late last year.

Zero Tariffs On Entertainment Products

The Agreement committed to zero tariffs on all movies, music, consumer products, software, books and magazines that our companies export into the countries. It also reaffirmed that customs duties are based on the value of carrier media and not the value of the movie, music, or software contained on the carrier media in order to assist in efforts to create global consensus on this customs valuation standard.

Improved Market Access For Audiovisual Services

DR–CAFTA demonstrates that a trade agreement can harmonize two important objectives—trade liberalization and the promotion of cultural diversity. It avoids the "cultural exceptions" approach, while demonstrating that a trade agreement has sufficient flexibility to take into account countries' cultural promotion interests. This agreement includes important provisions to ensure market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. It also has strong investment protections that will benefit theater chains. U.S. cinemas are building new multiplexes in Central American countries and the investment protections that they receive in DR–CAFTA will help to protect and promote their growth. These multiplexes in turn provide an important base for expanding the filmed entertainment market.

The Agreement also has broad commitments to open services markets (with few exceptions) across a range of sectors important to the entertainment industries, including but not limited to computer and related services, telecommunications services, audiovisual services, advertising, and distribution services, such as wholesaling and retailing. In addition, there are disciplines that ensure a more competitive telecommunications market including disciplines that require cost-based Internet access (through leased circuit services). Such disciplines will be particularly important in safeguarding competition against Costa Rican state-owned telecomm company.

Free Trade In Digital Downloads/E–Commerce

The Agreement contains groundbreaking commitments on e-commerce, which will help stimulate development of advanced telecommunications infrastructure in these countries. These commitments will in turn ensure benefits for the filmed entertainment industry under this Agreement far into the future. The DR–CAFTA also includes a commitment to non-discriminatory treatment of digital products including DVDs and CDs; and agreement not to impose customs duties on such products.

Agriculture

The Chief Executive Officer of the Motion Picture Association of America would not generally be expected to opine on issues involving trade in agriculture. But, as a former Secretary of Agriculture, I was honored to join five other former Secretaries of Agriculture: Ann Veneman, Mike Espy, Clayton Yeutter, John Block and Bob Bergland in a letter released on April 19, 2005, in recognizing the significant benefits this Agreement will bring to U.S. farmers, ranches, food and agriculture organizations and in urging members of congress to support this Agreement. A copy of our letter is attached.

Conclusion

In conclusion, the Motion Picture Association of America has long been appreciative of the leadership shown by the Office of the U.S. Trade Representative in negotiating important provisions for good market access and intellectual property rights protections in previous FTAs, and we thank them again for their hard work on the DR–CAFTA. In turn, Congress has in the past and should again recognize the importance of these agreements to the U.S. economy and job market by approving them. On behalf of the MPAA, its member companies, and the members of the Entertainment Industry Coalition, I hope that Congress will vote in favor of the U.S.-Dominican Republic Free Trade Agreement and the job opportunities, market expansion, and strong intellectual property and investment protections it provides to the entertainment industry. Thank you.

Letter from Former Secretaries of Agriculture

To Members of the U.S. House of Representatives and the U.S. Senate

Dear Member of Congress:

As former secretaries of agriculture, we understand the importance of negotiating trade deals that minimize the costs and maximize the benefits to U.S. farmers, ranchers, and food and agriculture organizations. We support the Free Trade Agreement with Central America and the Dominican Republic (CAFTA–DR) because the benefits are very significant and the costs are minimal. We urge you to pass CAFTA–DR quickly and without amendment.

A vote for CAFTA–DR is a vote for fairness and for reciprocal market access. Under CAFTA–DR all of our food and farm products will receive duty free treatment when the agreement is fully implemented.

A vote against CAFTA–DR is a vote for one-way trade. Virtually all of what we import from the six CAFTA countries now enters the U.S. duty free as a result of the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). Yet, our food and agricultural exports to these six nations are restricted significantly because of high tariffs. As a result of the current one-way trade deal, we are running an agricultural trade deficit with these six countries.

In addition, a formal trade agreement with the United States will help ensure the economic stability and growth that the region needs to avoid a return to the civil wars, insurgencies, and dictatorships of the recent past. As economic freedom and democracy take deeper root, incomes will increase and demand for our food and agriculture products will expand.

Failure to approve CAFTA–DR will have a devastating effect on U.S. efforts to negotiate trade agreements on behalf of U.S. agriculture. The World Trade Organi-

zation Doha Development Round would be dealt a serious blow. Other countries would be less willing to negotiate with the United States knowing that CAFTA–DR, a trade agreement so clearly beneficial to U.S. interests, could be rejected by the U.S. Congress.

The future of American agriculture continues to lay in expanding opportunities for our exports in the global marketplace, where 96 percent of the world's population lives. We must not forego these opportunities, especially when the benefits to our nation are so unmistakable.

Ann M. Veneman
Dan Glickman
Mike Espy
Clayton Yeutter
John Block
Bob Bergland

Statement of the Honorable Pete du Pont, National Center for Policy Analysis

Congress is considering the most significant trade liberalization agreement since passage of the North American Free Trade Agreement (NAFTA) more than 10 years ago. The Central America Free Trade Agreement (CAFTA) was signed last year by the United States and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic. These six nations make up the second largest market for U.S. goods exports in Latin America, behind only Mexico. They purchased $15.1 billion worth of U.S. exports in 2003, an increase of 11 percent from 2000. Meanwhile, U.S. imports from the region totaled $16.8 billion in 2003, up 4 percent from 2000, making it the 15th-largest supplier to U.S. consumers and businesses.[1]

CAFTA is the first major test of the Trade Promotion Authority sought by President Clinton and finally granted to President Bush. It would eliminate tariffs on most goods and services and substantially reduce other trade barriers.

Unfortunately, passage of CAFTA is in doubt. Its defeat would be a setback for wider efforts to expand trade and thereby improve economic conditions in poor developing countries. More than 100 Democrats voted for NAFTA, but apparently CAFTA does not enjoy similar bipartisan support. There is also weakness among some Republicans.

Both opponents and supporters of freer trade have complaints about CAFTA: Free traders are disappointed that it exempts two domestic industries that are protected from overseas competition—sugar and textiles—and delays the elimination of some trade barriers by a decade or more. Opponents of liberalized trade claim that increasing imports will harm U.S. workers, and some of them claim (somewhat contradictorily) that increased exports from the region will harm workers in those countries.

Mutual Gains from Trade. Setting aside the objections of rent-seeking economic interests that support trade barriers simply because tariffs and regulations limit their competitors, opposition to trade liberalization is based on a fundamental misunderstanding about the nature of trade. Both buyer and seller benefit from any exchange, whether it is a purchase from a local convenience store or a worker exchanging his or her labor for a wage. In fact, exchange is the principal way in which humans create wealth and raise their living standards. Similarly, the economies of both importing and exporting countries benefit from the international exchange of goods and services.

None of us asks of prices charged at the 7-Eleven: "Is it fair? Is it just?" We ask: "Is it too high?" Or, "Is it a bargain?" And of course, if the price is lower than that charged by competing stores, we don't ask, "Shouldn't I pay more?" Yet there is a presumption among misguided opponents of international trade that unless trade is "fair" or "just," someone loses out. None of us says to the clerk at 7-Eleven: "I will not buy your products unless you patronize my business." Yet with respect to international trade, some claim we should only buy from other countries exactly as much as they purchase from ours.

The gains from trade are mutual, but they are seldom equal. In the case of CAFTA, because the six developing countries that have entered into the agreement with United States are poorer and have more protectionist trade policies than we do, they have more at stake. It is true that U.S. producers and workers will benefit

[1] CIA World Fact Book.

from lower trade barriers in these six countries, and U.S. consumers will benefit from their imports. But it is the poor in developing countries who will benefit the most.

Benefits of Economic Growth. The reduction in trade barriers in the six CAFTA countries will benefit the poor in those countries by raising rates of economic growth. Empirical economic research has established that nations that trade more enjoy higher rates of economic growth and hence higher living standards, measured in per capita gross domestic product.

Tariff rates in most of the CAFTA partners are two to three times higher than in the United States. They already have duty-free access to the U.S. market under the Caribbean Basin Trade Partnership Act (CBTPA) program. In fact, most of the products on which U.S. tariffs fall to zero immediately under CAFTA are already afforded duty-free access under the provisions of the CBTPA. Under CAFTA, however, there will be fewer restrictions and lower compliance costs to qualify for preferential access. The difference between the CBTPA and CAFTA is that CAFTA will grant American goods that are currently subject to tariffs duty-free access to Central American markets. On average, 75 percent of the tariff product categories will be duty-free for U.S. exports to the region upon enactment of the agreement.

There is a link between openness to trade and economic growth. According to the World Bank, tariff rates in almost all of the CAFTA countries are significantly higher than United States' average of 2.6 percent.[2] Specifically, the most recent data available show weighted average tariffs of 10.1 percent in the Dominican Republic, 5.8 percent in Costa Rica, 6.1 percent in El Salvador, 5.8 percent in Guatemala, 7.3 percent in Honduras and 2.3 percent in Nicaragua. These countries are also relatively poor, with per capita GDPs (in terms of local purchasing power) ranging from $2,200 in Nicaragua to $9,000 in Costa Rica, compared to about $38,000 in the United States.

Larger nations with bigger economies have faster growth than smaller ones because larger economies experience higher growth. This puts smaller economies at a disadvantage. However, smaller economies can tap into the economic robustness of larger economies through trade. According to economists Alberto F. Ades and Edward L. Glaeser, the initial size of the economy in open, or trading, nations has a minimal role in determining the rate of GDP growth.[3] The initial size of the economy has a larger role for a relatively closed economy, in which trade accounts for less than 22 percent of GDP. Thus, they conclude that contrary to protectionists' beliefs, free trade benefits poorer nations.

The CAFTA countries have already made progress due to trade liberalization spurred by CBTPA and the democratization that has occurred in these countries. Between 1991 and 2001 the average ratio of imports to GDP for the six countries rose from 33 percent to 49 percent. Moreover, on a range of social indicators, all six countries have made progress.

According to the World Bank, literacy rates for men and women 15 and older have risen significantly in every one of the CAFTA-plus countries since 1980.[4] In fact, between 1980 and 2001, the average literacy rate in the region increased from 67 percent to above 80 percent; the percentage of children aged 10 to 14 in the workforce has steadily declined; and the average share of children in the labor force has dropped from 17.4 percent in 1980 to 10.0 percent in 2002. Expanding trade with the United States would accelerate this progress.

Conclusion. CAFTA would substantially liberalize trade and investment and encourage further economic liberalization among America's trade partners. It would open economic opportunities for the United States, Central America, and the Dominican Republic and set the stage for economic growth and social development.

Statement of Craig Updyke, National Electrical Manufacturers Association, Arlington, Virginia

Chairman Thomas, Ranking Member Rangel, Distinguished Members of the Committee,

Thank you very much for the opportunity to provide this statement in support of the Free Trade Agreement with Central America and the Dominican Republic. On

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[2] World Development Indicators 2004, World Bank.

[3] Alberto F. Ades and Edward L. Glaeser, "Evidence on Growth, Increasing Returns, and the Extent of the Market," *Quarterly Journal of Economics,* August 1999.

[4] World Development Indicators 2004, World Bank.

behalf of the U.S. electrical equipment industry, NEMA calls on the Committee to favorably report implementing legislation for the Agreement to the full House of Representatives, and strongly urges the full House to approve the legislation as soon as possible.

NEMA is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products exceed $130 billion. Our more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRI, CT, x-ray, ultrasound and nuclear products.

This Agreement is essentially a one-way, favorable deal for the United States. Since these six countries already enjoy ready U.S. market access for items in our Association's product scope, it levels the playing field for manufacturers in our sector by featuring foreign tariff elimination, much of it immediate. In fact, based on current annual trade levels, over $1 billion worth of tariffs applied on U.S. exports in our sector will be eliminated when the Agreement takes effect. This Agreement also promises to reduce non-tariff barriers and benefit joint efforts to eliminate counterfeit products.

NEMA members already enjoy surprising levels of commerce with these nations despite their frequently high duties, and our exports stand to expand even further under the Agreement:

- The Dominican Republic is already the U.S. electrical equipment industry's number three export market and trading partner in Latin America and the Caribbean after Mexico and Brazil.
- The five participating Central American nations (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) combined already constitute a larger export market and trading partner for the U.S. electrical equipment industry than Brazil.

In short, NEMA members believe this Agreement should be allowed to take effect as soon as possible and prompt approval of implementing legislation by the House is essential. Thank you for your support of this important legislation.

Statement of Stephanie Weinberg, Oxfam America

Oxfam is an international development and humanitarian relief agency committed to developing lasting solutions to poverty, hunger and social injustice. We work in over 120 countries around the globe, including the five Central American countries and the Dominican Republic that are party to the free trade agreement with the United States, known as DR–CAFTA.

Oxfam believes that trade can be an important means to achieving sustainable development and poverty reduction. Trade and development are intimately linked. A global system that has fair trade rules and practices has the potential to lift millions of people out of poverty. For this reason, Oxfam has focused on making global trade rules fair and consistent with development goals, as an integral part of our work to improve livelihoods and reduce poverty in developing countries.

Trade agreements present both opportunities and risks, especially when they involve developed and developing countries. The DR–CAFTA is the first such agreement the U.S. has negotiated with some of the poorest countries in the hemisphere, two of which have annual per capita incomes below $1,000. The U.S. trading partners in the DR–CAFTA, with a population of 42.5 million, have high levels of poverty and very unequal distributions of income and wealth. They depend heavily on agriculture for the livelihood of significant portions of their populations. These countries are ravaged by curable diseases due to poverty and inadequate health-care coverage. They sorely lack public infrastructure and, in several cases, are highly indebted.

In order for a trade agreement to be fair for these countries and promote their development, it must ensure that governments are able to provide for the food security needs of their people. And for an agreement to contribute to their poverty reduction, it must not prevent citizens from being able to access life-saving drugs they desperately need to effectively combat contagious diseases like HIV/AIDS or prevalent illnesses like diabetes. Trade agreements inevitably have winners and losers. Oxfam believes that those who stand to lose in the DR–CAFTA are the ones who

are already disadvantaged in these highly unequal societies, where the majority of poor people live in rural areas, rely on income from agriculture and must pay for medicines out-of-pocket.

There has been much public debate about what the passage or rejection of the DR–CAFTA will mean for the U.S. trade agenda. Oxfam, however, believes that the DR–CAFTA must be judged only on the basis of what this particular agreement will mean specifically for the seven countries involved. Congress should look carefully at the terms of the DR–CAFTA to understand their implications in a region of high geo-political importance to our country. On balance, Oxfam believes the agreement, in its current form, will do more harm than good. It will threaten the livelihoods of millions in Central America and the Dominican Republic and may contribute to increased insecurity and instability in that region.

Oxfam wishes to focus attention on provisions in the DR–CAFTA involving agriculture, intellectual property and investment. As a result of our analysis in these areas, Oxfam believes the DR–CAFTA is a bad deal for millions of farmers, workers, and consumers in Central America and the Dominican Republic and should therefore be rejected.

Agriculture

Agriculture currently comprises between 10 to 23 percent of GDP in the six DR–CAFTA trading partners, while it represents less than two percent of GDP in the U.S. Nearly a third of employment in these six countries depends on agriculture, much of which involves food essentials for consumption in the region, and most of these workers are poor and low skilled.

There are two major reasons why Oxfam believes many farmers in Central America and the Dominican Republic are at significant risk of losing their livelihood under DR–CAFTA. Market access rules for agriculture in the agreement deny developing country governments the ability to adopt measures to ensure domestic food security and promote rural livelihoods. Under DR–CAFTA, countries must eliminate import tariffs on virtually all agricultural goods, including those food essentials that are most important for small farmers' incomes—rice, yellow corn, beans and dairy products.

At the same time, the agreement requires Central American countries and the Dominican Republic to open the door for dumping of highly subsidized U.S. agricultural exports at prices below their cost of production. This situation is not only profoundly unfair, but it risks creating poverty and economic dislocations among the 5.5 million farmers and farmworkers in the region.

Although DR–CAFTA provides for longer tariff elimination periods for some basic commodities in Central America and the Dominican Republic, duty-free quotas are immediately created or expanded beginning in the first year of the agreement. These duty-free quotas are nearly equal to current U.S. exports to these markets (quotas begin to surpass current U.S. export levels starting in the second year of DR–CAFTA) and will immediately drive down prices for local producers. The region's small farmers—who receive no subsidies, lack access to credit and depend on the income from each year's harvest for their subsistence—will be unable to compete with subsidized U.S. exports. And as more local farmers go out of business each year, the region's grain imports in following years are likely to surpass the annual quota increases, as occurred in Mexico under NAFTA, making the longer tariff phase-out periods irrelevant.

The case of corn in Mexico under NAFTA is illustrative. An extended 15-year period for tariff elimination was instead reduced to little more than 30 months, and real corn prices in Mexico fell more than 70 percent in the first eight years under NAFTA, without benefiting Mexican consumers. It is estimated that since NAFTA's passage, 1.7 million Mexican peasants working in the agricultural sector have lost their jobs. In addition, 15 million small farmers have lost significant income because they could not compete with subsidized U.S. exports, such as corn. Many left their land and fled to urban areas. It is no coincidence that the number of Mexicans crossing the U.S. border without authorization seeking employment and a better life more than doubled between 1990 and 2000—with most of that growth occurring after NAFTA went into effect in 1994—and has continued to increase in this decade.

A similar outcome can be expected under the DR–CAFTA for producers of basic grains such as rice. In fact, the experience of the rice sector in Honduras in the 1990s offers a case study of the likely impact on small farmers in the region. In 1991, the Honduran government cut tariffs on rice imports to make up for a shortage due to drought, and a flood of imports at harvest time equivalent to the country's annual consumption left local producers without a market. Rice prices fell by more than 28 percent in one year and, as a result, areas under rice cultivation decreased by 35 percent the following year. Over a decade, the number of rice pro-

ducers dropped from 25,000 to fewer than 2,000, and the jobs generated from rice production fell from 150,000 to 11,200. As a result, rice production was reduced by 86 percent between 1991 and 2002, and the amount of foreign exchange spent on rice imports increased 20-fold (from $1 million in 1989 to $20 million in 2003). At the same time, the price of rice to consumers rose 140 percent in nominal terms, or 12 percent in dollar terms, over the decade.

The market access rules for agriculture in the DR–CAFTA deny developing country governments the policy flexibilities necessary to promote rural development, protect livelihoods, and provide food security to their citizens. The agreement negates the principle governing multilateral trade negotiations for the past 50 years that developing countries are not required to make reciprocal commitments to reduce trade barriers if these are inconsistent with their individual development needs. Instead, the DR–CAFTA does not incorporate pro-development concepts, such as special and differential treatment, and precludes use of flexibilities available to developing countries at the WTO. It does not allow developing countries to use differentiated tariff reduction formulae or designate special products eligible for more flexible treatment. It prohibits the use of the WTO safeguard, and the safeguard mechanism provided under DR–CAFTA is weak and temporary: a price drop could render it useless since it is linked to volume instead of prices of imports, and it can only be applied until the tariff is completely phased out.

This will have a devastating impact on the 5.5 million Central Americans who depend on agriculture for their livelihoods. What will the U.S. gain at the expense of the loss of livelihoods of small farmers in Central America and the Dominican Republic? According to the U.S. International Trade Commission, U.S. grain exports can be expected to expand by 1.2 percent annually once tariffs are fully eliminated under DR–CAFTA. Overall, the market access provisions are expected to increase U.S. GDP by less than 0.01 percent annually. Considering the cost in terms of increased poverty and social problems for our neighbors, not to mention the potential increase in immigration to our borders, the DR–CAFTA is not only a bad deal for development in the region, but it provides no appreciable benefits to U.S. citizens.

Intellectual Property

The rules on intellectual property in DR–CAFTA are another serious area of concern for Oxfam. All of the Central American countries and the Dominican Republic are WTO members and are therefore bound to implement the intellectual property provisions in the WTO's Agreement on Trade-Related Intellectual Property Rights, known as "TRIPS". But the DR–CAFTA goes well beyond the existing TRIPS provisions, imposing new so-called TRIPS-plus provisions related to pharmaceuticals. Most of these provisions are aimed at delaying the introduction of generic competition, thereby prolonging a patent holder's monopoly over the marketing of a medicine. When generic drugs cannot enter the market to compete with brand-named products, drug prices are higher and fewer people have access to medicines.

At the heart of intellectual property rights systems is a balance between the rights of patent holders and the public interest. In particular, determining the appropriate balance between protections related to pharmaceuticals and public health is a complex task still being debated in the United States—for example, the "drug re-importation" debate in Congress. Oxfam does not believe that there is one "size" of intellectual property protection that fits all, however. The appropriate balance depends upon a variety of factors, such as the level of poverty in a country, the likelihood that protections will generate innovation, and the real-world effects from higher medicine prices resulting from protections.

Many public health and intellectual property experts have warned that TRIPS-plus provisions may undermine public health in poor countries, without generating any appreciable gains in innovation. This concern became a major issue at the WTO, and the importance of preserving public health was affirmed in the 2001 Doha Declaration on TRIPS and Public Health in 2001 by all WTO members, including the United States. The Doha Declaration confirmed that WTO members may use "flexibilities" built into TRIPS to modify intellectual property rules to address public health needs, and constitutes a commitment to favor public health over intellectual property rights.

In 2002, Congress endorsed this commitment as part of Trade Promotion Authority, under which DR–CAFTA was negotiated, by instructing the U.S. Trade Representative to respect the Doha Declaration in trade negotiations (Section 2102(b)(4)(C) of the Trade Act of 2002). Yet USTR has ignored the direction of both the WTO and Congress by forcing the governments of Central America and the Dominican Republic to adopt some of the highest levels of intellectual property protections for drugs in the world. This completely undermines the protections for public health laid out in the Doha Declaration. Oxfam believes that many of these provi-

sions are not suitable for the small, poor developing economies in Central America and will result in reduced access to needed medicines and therapies, with no appreciable benefit in innovation or research and development spending.

Many of the intellectual property provisions in DR–CAFTA tip the balance of intellectual property protections in favor of the short-term commercial interests of U.S. pharmaceutical companies, at the expense of public health. These provisions:

- Extend patent protection beyond the 20-year period required under TRIPS. Contrary to U.S. law, no upper limit is placed on such extensions. Twenty years of patent protection is more than an adequate monopoly for patent holders to recover investments and generate profits. Extending this monopoly period unfairly favors patent holders to the detriment of the broader public interest in accessing affordable medicines.
- Require test data protection for periods of up to 10 years. These rules will delay for up to 10 years the introduction of generic medicines, even in the absence of patent barriers.
- Effectively eliminate the ability of Central American countries and the Dominican Republic to use compulsory licensing, a key tool available to governments to meet their citizens' public health needs. Compulsory licenses provide an important safeguard to governments to counterbalance the monopoly rights granted to patent holders. Both developing and developed countries—including the United States—have used compulsory licenses or the threat of them to bring down medicine prices.
- Force national drug registration authorities to serve as patent police, which prevents these authorities from granting marketing approval for generic versions of drugs until after the patent expires. This could prevent or delay access to affordable generic versions of new medicines, as well as undermine the use of compulsory licenses. Furthermore, this goes beyond U.S. law, which places the burden on the patent owner to enforce its own rights. DR–CAFTA forces the government to bear the cost, expense, and delay of enforcing private patent rights.

When the DR–CAFTA was signed on August 5, 2004, a side letter or "understanding" on intellectual property and public health was included in response to criticism that the intellectual property restrictions in the agreement could undermine public health. However, this "understanding" does nothing to allay Oxfam's concerns with these provisions. In reality, it merely states that CAFTA provisions "do not affect a Party's ability to take necessary measures to protect public health by promoting access to medicines for all" or from "effective utilization" of the WTO decision on TRIPS. This clause is virtually meaningless from a legal standpoint because it is just a declaratory statement, similar to a preamble or an objective. It is not a legally binding exception to the very clear obligations in the Agreement but at best has interpretive value. USTR has studiously avoided describing the "understanding" as a legally binding exception.

Oxfam believes that TRIPS-plus provisions relating to pharmaceuticals should not be included in a trade agreement with Central America and the Dominican Republic. Central America has the second highest death rate from communicable diseases in Latin America. Over 165,000 people are living with HIV/AIDS and more than 30,000 cases of full-blown AIDS have been reported in the region. Resources for public health in the DR–CAFTA countries are extremely limited. Medicines sold at monopoly prices are too costly for these countries to provide through their public health systems and too expensive for poor people to pay for out-of-pocket. These countries should be able to use the TRIPS public-health safeguards to the fullest to protect public health and promote access to medicines for all, as affirmed by the Doha Declaration.

DR–CAFTA is often described as a "cutting-edge" trade agreement that will serve as a model for future trade agreements. Oxfam feels this is a grim prospect. Imposing new intellectual property burdens on developing countries that increase the cost of medicines for poor people is a very bad model indeed, particularly looking towards the other countries with which the U.S. is currently negotiating trade agreements.

Investment

Investment rules in the DR–CAFTA are another important concern for Oxfam in this trade agreement. These rules are clear and strong on the rights of foreign investors, but say little about the rights and obligations of governments to ensure that investors behave responsibly and that investment serves the public good. Specifically, DR–CAFTA restricts governments' ability to regulate foreign investment through the use of measures such as performance requirements, technology transfers, and capital controls. Oxfam believes that prohibiting pro-development meas-

ures such as these will reduce the positive impact that investment in the region can have and may create large new financial and policy burdens for already overstretched governments.

In Central America and the Dominican Republic, increased investment is critical to achieving sustainable development. Yet several recent studies show that trade and investment agreements themselves do not stimulate additional foreign investment. Rather, macroeconomic and political stability, as well as market size, are determining factors. Furthermore, Oxfam believes that the quality—not just quantity—of investment is key in promoting development. Positive incentives to direct investment can help distribute wealth and promote economic growth, which can result in improved livelihoods. By setting performance requirements, governments can ensure the use of local inputs, which helps create backward linkages to the domestic economy. Through technology transfers, governments can help establish valuable linkages between foreign and domestic producers.

However, DR–CAFTA will forbid governments from using local content rules and technology transfers. Without the flexibility to utilize these measures, governments are powerless to direct investment so that it benefits the rest of the domestic economy. This will lead to a scenario in which a limited number of investors may prosper without contributing more broadly to sustainable growth in the countries where they operate. This defies the spirit of the DR–CAFTA agreement, which claims to have the development of Central America and the Dominican Republic as one of its goals.

Much of the foreign direct investment recently flowing into the region has been directed towards *maquiladora* factories or export processing zones, mostly for garments manufacturing. While these factories do provide some badly needed jobs, they usually contribute little to the overall economy because of the enclave nature of their production. Moreover, jobs in these factories are increasingly at risk with the removal of global quotas for textiles and apparel.

Oxfam is also concerned that DR–CAFTA forbids restrictions on the repatriation of profits and limits governments' ability to impose controls on highly speculative investments. This means that foreign investors in the region will have unrestricted ability to bring capital into and out of countries, while governments will have little recourse to deal with economic instability, should investors suddenly pull their money out of the country. While a stable business climate is important, so too is ensuring that investment contributes to domestic growth and broad-based sustainable development. Unregulated capital flight can have devastating consequences, especially in case of a financial meltdown, such as occurred in Argentina in 2001.

Also of serious concern is the investor-state dispute settlement mechanism in the DR–CAFTA, which, similar to NAFTA, will enable foreign investors to bring suits before international arbitral tribunals when they believe their business interests have been impaired by government regulatory actions. Investment rules in the DR–CAFTA broadly define what constitutes an expropriation and leave open the possibility that these ad-hoc tribunals will interpret social and environmental regulations as an "indirect expropriation." Thus, foreign investors will be able to challenge laws or regulations at the national, state or local levels, even if these are enacted for legitimate public interest objectives, including public health, safety, and environmental protection.

These special international tribunals are neither open to the public nor accountable to democratic processes. They lack the transparency generally afforded by normal judicial proceedings, yet are empowered to order governments to directly compensate investors for regulations that hurt them, regardless of the public good that the regulations might serve. Claimants are not required to exhaust domestic judicial remedies before bringing investment claims to these international tribunals, thus allowing foreign investors to bypass domestic legal systems. Although the DR–CAFTA was intended to strengthen and support democratic institutions in Central America and the Dominican Republic, it may actually undermine the judiciaries in the region.

This dispute settlement mechanism has been used to challenge important regulations that are expressly designed to protect public health, safety, the environment, and other public interest objectives that enhance social welfare. To date, over 40 suits have been filed by corporations under NAFTA's investment rules in special tribunals, seeking $28 billion in claims from the U.S., Canadian and Mexican governments. If NAFTA is any indication, the investment provisions of DR–CAFTA could create large new liabilities for the governments of Central America and the Dominican Republic. Perhaps more problematic is the chilling effect the threat of litigation by investors could create on policy-makers interested in generating new environmental, public-health, and pro-development safeguards.

Highlighting this problem is a bitter dispute between Canadian-owned Glamis Gold, Ltd., which is seeking to construct a mine in San Miguel, Guatemala, and the local citizens who oppose the project. Backed by the Catholic Church, local residents fear that the mining project will wreak havoc on the local environment. They successfully pressured the Guatemalan government to agree to freeze issuance of future mining permits. However, under DR–CAFTA, foreign investors will be able to challenge local measures like this one, claiming discrimination as foreign investors. At risk will be governments' ability to provide effective regulation to protect workers, health and safety, and the environment. Any agreement that contains investment rules that limits governments' ability to protect the health and well-being of its citizens should be opposed.

Conclusion

CAFTA is likely to increase inequality and exacerbate poverty in a region that is still struggling to recover from the devastation of wars, hurricanes and droughts. Under the Caribbean Basin Initiative (CBI), Congress established trade preferences to facilitate the economic development and export diversification of the CaribbeanBasin economies. These benefits were permanently extended in 1990, and in 2000 the list of products eligible for duty-free access to the U.S. market was expanded, in part in response to the devastation wrought by Hurricane Mitch. Nevertheless, the region continues to suffer from serious problems of poverty and inequality.

Oxfam believes it is in the interest of the United States to promote economic development in the region, including increased development assistance, institution-building, and increased trade. However, the DR–CAFTA is, at best, a mixed bag. The agreement provides very modest and incremental trading opportunities for our poorer neighbors, while it imposes major new obligations and restrictions in the process.

In general, Oxfam believes that the U.S. trade negotiation strategy has set the wrong priorities. With limited resources, the USTR has pursued numerous smaller bilateral and regional trade agreements even while a much bigger, and more important, trade agreement has stalled. For both the U.S. and the world, the WTO Doha Round offers potential benefits that are orders of magnitude larger than those in free trade agreements with small countries such as DR–CAFTA. While negotiating trade agreements at the global level is certainly a messy and cumbersome process, the alternative is a very scattered and asymmetrical trading scheme that adds complexity and increases entry costs. This is not good for the U.S., but it is far worse for developing countries, many of which are already very marginal players in global trade. And while the U.S. is likely to have to make more concessions—particularly in agriculture—at the multilateral level, than in bilateral agreements, this is where the U.S. can demand concessions from other rich countries like Europe and Japan. Investing in, rather than neglecting, the WTO and the Doha Round, will help build a more common, rules-based system that provides more opportunity and stability for both the U.S. and developing countries.

The rules set forth in the DR–CAFTA on agriculture, intellectual property, and investment add up to a bad deal for farmers, workers, and consumers in Central America and the Dominican Republic. Rather than setting out provisions that will foster broad-based economic growth and sustainable development, DR–CAFTA will put millions of poor people at risk of losing their livelihood. The U.S. should do better if it wants to promote peace, political stability, and economic security in this region that has struggled with poverty and inequality, and the resulting instability, for so long. Unfortunately, the DR–CAFTA is wrong way to achieve these goals, which is why Oxfam urges Congress to vote no.

Statement of Hon. Michael G. Oxley, a Representative in Congress from the State of Ohio, and Hon. Deborah Pryce, a Representative in Congress from the State of Ohio

Chairman Thomas and Ranking Member Rangel, thank you for the opportunity to testify on the Central American Free Trade Agreement or CAFTA. This is an important agreement between the United States and six countries that are key to our economic and national security: El Salvador, Costa Rica, Honduras, Nicaragua, Guatemala, and the Dominican Republic. We know that this is a highly complex agreement and we want to commend this Committee for all of its hard work in fostering free trade around the world.

As Chairman of the Financial Services Committee and Chairman of the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Financial Services Committee, we submit this statement to support free trade in financial services. U.S. firms often face restrictions in their ability to operate globally. The concept of national treatment, where foreign firms are treated like domestic firms, is not the norm in all Central American nations. As a result, U.S. banks, insurance providers, and securities dealers are often subject to non-transparent and discriminatory regulations which inhibit their ability to compete in these markets. The CAFTA agreement goes a long way to remedy many of these problems.

Services industries account for nearly 80 percent of U.S. employment as well as GDP. This includes lawyers, architects, engineers, doctors and, of course, financial service providers. Over the past 10 years, U.S. services exports nearly doubled to $270 billion. Trade in financial services accounts for a high percentage of U.S. services exports.

We often hear about the trade deficit that the U.S. has with other nations. What we don't hear about is that in case of trade in services, *we actually have a surplus*. Our nation leads the world in financial services innovation. This agreement will help extend that surplus and promote state-of-the art financial services globally.

The CAFTA agreement will allow U.S. financial firms to access these countries on a fair footing with their local counterparts. It will promote transparency in the rules that govern how these enterprises are supervised. Without CAFTA, the financial services sector will be limited in its ability to enter these markets, will have restrictions on the ability to establish branch offices, and the regulations overseeing the operations of these institutions will be written behind closed doors. CAFTA will require national treatment and MFN treatment, prohibit quantitative restrictions on market access of financial institutions, and bar restrictions on the nationality of senior management.

Now, we know that the financial services markets in the CAFTA countries are not going to be major revenue generators for U.S. financial firms in the short-run. However, these are long-term strategic growth markets for our financial firms. Our economic prosperity will be strengthened if trade barriers between our nations are eliminated.

Economic prosperity in the region, which will foster economic security in the hemisphere, will also grow as competition in the financial services sector within CAFTA countries expands the availability of capital to fund new ventures. Over time, it will also yield a wide range of benefits, including more customers for our firms and more efficient markets within our hemisphere. Improved access to sophisticated financial services, backed by sound regulation, will enable these markets to grow to become buyers of other U.S. products. Without the development of these financial markets, manufacturers will be less likely to cultivate customers in this region.

The Financial Services Committee has taken a leadership role in ensuring strong financial services provisions in this agreement, as well as the Chile and Singapore agreements. In December of 2003, the Committee wrote Ambassador Zoellick urging him not to accept a trade agreement that permitted Costa Rica to retain the government's monopoly on insurance. The CAFTA agreement now includes provisions permitting U.S. firms to provide insurance products in Costa Rica. We would like to submit a copy of this letter for the record.

In closing, we strongly urge the Members of this Committee to support the CAFTA Agreement. It will foster economic security in our hemisphere and will promote the exchange of goods and services between our countries.

Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515
December 16, 2003

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Zoellick:

I want to commend you for entering into negotiations with the Central American countries of Honduras, Guatemala, Nicaragua, El Salvador, and Costa Rica. These countries are important allies and trading partners of the United States. As you know, I serve on the Congressional Oversight Group on trade which was created through the landmark Trade Promotion Authority legislation in the 107th Congress.

In this capacity I have been closely following the Central American Free Trade Agreement (CAFTA) negotiations as they relate to trade in financial services.

I am encouraged that you and your counterparts in the CAFTA countries have negotiated several good faith offers to allow access for U.S. financial institutions into these markets. Commitments on improved regulatory transparency, as well as improved branching rights and the ability to offer multiple business lines, when combined with the market access provisions, will increase the availability of capital in the CAFTA countries and will foster economic growth.

I am writing today, however, to express concern regarding the position Costa Rica is taking regarding access to its insurance market. Specifically, I understand that Costa Rica has been reluctant to include within the CAFTA commitments to provide U.S. firms with meaningful access to its insurance sector. I have been briefed on the most recent U.S. offer to Costa Rica. I believe that this offer, while quite minimal compared to other offers that have been approved by Costa Rica's neighbors, is an acceptable compromise. This offer will enable Costa Rica to maintain components of its insurance monopoly, including its compulsory business lines which constitute nearly 70% of its total premium volume, through 2015. As a strong advocate of free trade, I would prefer full establishment of rights and immediate access to all lines of business. I believe that the Costa Rican insurance monopoly goes against the very spirit of these trade negotiations. However, I understand that it is important to show flexibility in order to obtain an agreement with this important trading partner.

I am particularly concerned about the situation regarding these financial services issues since I understand that Costa Rica may grant access to its telecom monopoly, but may not grant the same access to its insurance monopoly. I strongly urge you and your negotiating team to ensure that no monopolies are permitted to endure in this age of open borders and free trade. I also strongly urge you and your negotiating team to devote equal importance to the financial services matters that remain on the table. I would be deeply disappointed if it seemed that elimination of the telecommunications monopoly were achieved only by sacrificing similar progress in a key component of the financial services market.

It is my hope that the CAFTA negotiations would generate a unified agreement between the United States and the five Central American countries instead of five bilateral agreements, or even worse, excluding one of the countries because it was unwilling to open its protected markets. Although I understand that each country has a unique position in the global economy and concessions must be made accordingly, I do not believe that maintenance of an insurance monopoly in Costa Rica qualifies as a unique economic position that must be maintained. Increased access to affordable insurance products will allow Costa Rican businesses to develop and expand while reducing risk.

In a global financial services marketplace, ring-fencing a domestic market is at best a misplaced protectionist strategy that will only undermine the local market. Without the kind of market access for insurance activities currently under negotiation in the CAFTA, Cost Rica may find itself in a position where its neighbors become the preferred countries for U.S. financial firms to establish and expand their businesses. Continued commitment to the insurance monopoly in Costa Rica could thus undermine the local economy. It could also undermine Costa Rica's ability to exercise appropriate local prudential supervision of insurance activities as access to other insurance providers in nearby countries within the CAFTA could create incentives for local companies and individuals to seek coverage outside the borders of Costa Rica. I trust you an your negotiating team will be able to impress these points upon your counterparts in Costa Rica.

Thank you for your hard work on this agreement and I look forward to your reply.

Yours truly,

Michael G. Oxley
Chairman

Statement of Lori Wallach, Public Citizen's Global Trade Watch

On behalf of Public Citizen's 200,000 members, I thank the Committee for the opportunity to share my organization's views on the proposed Central America Free Trade Agreement (CAFTA) NAFTA expansion. Public Citizen is a nonprofit citizen research, lobbying and litigation group based in Washington, D.C. with offices Austin, TX and Oakland, CA. Public Citizen, founded in 1971, accepts no government nor corporate funds. Global Trade Watch is the division of Public Citizen founded

in 1995 that focuses on government and corporate accountability in the globalization and trade arena.

CAFTA, signed in May 2004, would expand the economic model established in the North American Free Trade Agreement (NAFTA) to five Central American countries and the Dominican Republic. If approved, CAFTA, like NAFTA, would require its signatory countries to conform their domestic policies and practices to a broad array of non-trade dictates, for example regarding the regulation of service sector companies and foreign investors' operations in other economic sectors operating within a signatory nation's territory. It would require signatories to provide certain patent medicine and seed protections that have been criticized by health and consumer groups worldwide as undermining consumers' access to these essential 'goods.' It even sets constraints on how countries and other political entities may spend their own tax revenues. In addition, CAFTA contains the same model of interconnected trade rules and foreign investor protections that together create incentives that motivate business operations seek out the most profitable sites and processes for production, even if these are often contrary to the public interest.

An analysis of CAFTA's provisions reveals that it replicated NAFTA's provisions to a high degree—often with identical language. Thus, there is much that we can learn from the 11-year record of NAFTA, which CAFTA would expand to additional nations.

1. CAFTA NAFTA Expansion is an Outsourcing Agreement: Eleven-Year Record Demonstrates that the NFATA Model Lowered Living Standards on Both Sides of the Border

Since 1994, the United States has lost nearly 1 million jobs on net due to NAFTA trade,[1] with one in six U.S. manufacturing jobs being eliminated during the NAFTA decade.[2] U.S. income and wage inequality have gone up markedly, with the ratio of both income and wages of the top five percent of the income and wage distribution growing nearly 10 percent since NAFTA alone as compared with the bottom 20 percent.[3] The U.S. real median wage has scarcely risen above its 1970 level, resulting in declining or stagnant standards of living for the nearly 70 percent of the U.S. population that does not have a college degree.[4] During the NAFTA era, the U.S. trade deficit has risen to historic levels, and approaches six percent of national income—a figure widely agreed to be unsustainable, putting the U.S. economy at risk of lowered income growth.[5] The U.S. trade balance with NAFTA countries alone went from a mild surplus with Mexico and mild deficit with Canada to a ballooning deficit with the two countries exceeding $110 billion in 2004.[6]

For our neighbors in Mexico, the economic outcomes of eleven years of NAFTA are not brighter. Over 1.5 million Mexican *campesino* farmers lost their livelihoods to the dumping of commodities such as corn as a result of NAFTA's agricultural rules,[7] while the Mexican minimum wage has lost 20 percent of its value in real terms, and the median industrial wage 10 percent of its value[8] The jobs that were temporarily created in the country's *maquiladora* sector in NAFTA's initial years, as plants relocated from the United States, are increasingly relocating and losing market share to lower wage countries such as China.[9]

In both countries, the increased ability of companies to nearly effortlessly relocate production to lower wage countries—(as NAFTA's investor protections forbid the policies a country like Mexico might otherwise use to root foreign direct investment for development)—has tilted the playing field against the majority of the working

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[1] Robert E. Scott, "The High Price of 'Free' Trade: NAFTA's Failure has cost the United States jobs across the nation," Economic Policy Institute Briefing Paper, Nov. 2003.

[2] This number refers to manufacturing job loss since the most recent manufacturing employment peak in 1998 of 17.6 million, relative to the 2003 number of 14.6 million. *See* Josh Bivens, Robert Scott, and Christian Weller, " Mending manufacturing:Reversing poor policy decisions is the only way to end current crisis," Economic Policy Institute Briefing Paper #144, Sept. 2003.

[3] Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2004/05,* (Washington, DC: Cornell University Press, 2004), at 69 and 145.

[4] Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2004*/05, (Washington, DC: Cornell University Press, 2004), at 154.

[5] Nouriel Roubini and Brad Setser, "The U.S. as a Net Debtor: The Sustainability of U.S. External Imbalances," New York University Briefing Paper, Nov. 2004.

[6] U.S. Census Numbers.

[7] John Audley, Sandra Polaski, Demetrios G. Papademetriou, and Scott Vaughan, "NAFTA's Promise and Reality: Lessons from Mexico for the Hemisphere," Carnegie Endowment for International Peace Report, Nov. 19, 2003.

[8] Carlos Salas, "Highlights of Current Labor Market Conditions in Mexico," Global Policy Network Country Brief, April 2003.

[9] Sanjaya Lall, Manuel Albaladejo, Mauricio Mesquita Moreira, "Latin American Industrial Competetitveness and the Challenge of Globalization," Inter-American Development Bank OCassional Paper SITI 05, June 2004.

population who are finding it ever more difficult to obtain and maintain quality employment. Meanwhile, studies commissioned by the U.S. government show that as many as 62 percent of U.S. union drives face employer threats to relocate, with over 10 percent of such threats specifically referring to a relocation to Mexico. The actual factory shut-down rate following successful union certifications tripled in the years after NAFTA relative to the years before.[10]

2. Contradicting Congress' Demand that Trade Pacts Give Foreign Investors "No Greater Rights" within the U.S. than Available to U.S. Citizens, CAFTA Extends NAFTA's Special Protections for Foreign Investors that Expose U.S. Taxpayer Funds to Claims in Closed Trade Tribunals

The changes described above in the NAFTA country labor markets are supported by the granting in NAFTA and CAFTA of special rights and privileges to foreign investors from one signatory country operating in another. In NAFTA, these rights are contained in Chapter 11, which also provides for foreign investors' private enforcement of these new privileges through so-called investor-state dispute resolution, a controversial mechanism also included in CAFTA. The investor-state system allows corporations to sue governments for cash compensation before closed trade tribunals for claims based on signatory countries' policies that may or may not have a demonstrable economic impact on their expected future earnings. The provisions afford foreign investors operating in the United States greater rights than those available to U.S. citizens and businesses under the U.S. Constitution as interpreted by the U.S. Supreme Court. Thus far, 42 cases have been brought before the NAFTA investor-state tribunals, 11 have been finalized, and some $35 million in taxpayer funds have been granted to five corporations that have succeeded with their claims. An additional $28 billion has been claimed from investors in all three NAFTA nations in cases attacking the most basic functions of government. The U.S. government's legal costs for the defense of just such recent case topped $3 million, and seven cases against the United States are currently in active arbitration.

While ostensibly, NAFTA's investor protections were designed to ensure compensation if property is nationalized by a NAFTA government, only one of the 42 known NAFTA "Chapter 11" cases filed to date involve expropriation. Instead, investors have challenged domestic court rulings, water rights, local and state environmental policies, municipal contracts, tax policy, controlled substances rules, anti-gambling policies, emergency efforts to halt the spread of mad cow disease, and even provision of public postal services.

Given that these extraordinary investor rights and their private enforcement had not been part of any previous U.S. trade agreement, and that many Members of Congress did not understand these implications at the time when NAFTA was enacted in 1993, the record of NAFTA's Chapter 11 has generated enormous controversy. Thus in order to obtain a congressional delegation of Fast Track Trade Authority in 2002, the Administration offered to address Congress' concerns. Fast Track thus specified that in future U.S. trade agreements, foreign investors should not have "greater substantive rights with respect to investment protections than United States investors in the United States."[11]

Unfortunately, the Executive Branch negotiators failed to meet Congress' requirements. In CAFTA's Chapter 10 foreign investor protections and investor-state mechanism actually amplify many of the problems Congress identified with NAFTA.

- ***CAFTA Would Allow Compensation to Foreign Investors in "Regulatory Takings" and "Minimum Standard of Treatment" Cases not Permitted by U.S. Law:*** CAFTA includes the NAFTA language that requires foreign investors be compensated for "indirect expropriation." This provision has been the basis for an array of cases that would not be permitted under U.S. law, including regulatory takings cases. In one such case, Metalclad Corporation obtained $16 million from the Mexican Treasury after being denied a permit to expand a toxic waste facility until it cleaned up existing contamination.[12] Several additional CAFTA provisions promote regulatory takings cases not allowed under U.S. law. For instance, the Supreme Court has ruled that "mere diminution in the value of property, however serious, is insufficient to demonstrate a tak-

[10] Kate Bronfenbrenner, "The Effects of Plant Closing or Threat of Plant Closing on the Right of Workers to Organize," North American Commission for Labor Cooperation Report, 1997.

[11] 19 U.S.C. § 3802(3), Chapter 24, "Bipartisan Trade Promotion Authority: Trade Negotiating Objectives."

[12] Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, *Metalclad Corporation v. the United Mexican States*, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000.

ing"[13] and that the entire property must be affected permanently. In contrast, NAFTA Chapter 11 tribunals have found that a government action need only cause "significant" or "substantial" impairment of an investment's value to qualify as a taking.[14] For instance, the Metalclad tribunal held that "expropriation under NAFTA includes not only open, deliberate and acknowledged takings of property—but also covert or incidental interference with the use of property which has the effect of depriving the owners in whole or significantpart, of the use or reasonably-to-be-expected economic benefit of property."[15] USTR failed to remedy this problem in CAFTA.

To make matters worse, CAFTA allows such claims regarding types of property not subject to takings action under U.S. law. U.S. law deems public interest policies governing personal property (property other than land) to be legitimate exercises of police powers and exempt from takings claims. In contrast, CAFTA's broad definition of what categories of property are subject to compensation claims includes an array of non-real estate property such as assumption of risk and also bonds, loans, stocks, and intellectual property rights.

In response to criticism that investment rules in CAFTA allow for broad regulatory takings claims, the USTR will likely point to CAFTA, Annex 10–C, which reads: "Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations."[16] Unfortunately, this language has precisely the opposite effect claimed. This language *enshrines* the right of foreign investors to challenge a wide array of public health and safety regulations not be subject to U.S. taking claims. U.S. law safeguards all public interest regulations governing personal property, yet this language reiterates that such policies are subject to CAFTA challenge. Moreover, the U.S. government would have no capacity to affect whether such cases are brought only in "rare" circumstances. Foreign investors decide whether to file these cases. (And, the U.S. legal defense cost for just one such case, Methenex's attack on California's ban on the gasoline additive MTBE, has already cost $3 million in U.S. taxpayer funds.) Further, the ultimate decision whether or not to grant compensation in such challenges remains with investor-state tribunals on a case-by-case basis. Moreover, when deciding such cases, tribunals will reference other specific provisions of CAFTA that directly conflicts with the Annex's general language. There have been numerous NAFTA cases involving toxic substances, including Phillip Morris' threat against a proposed Canadian tobacco control law, and Canadian cattlemen's NAFTA challenge of U.S. actions to prevent entry into the U.S. of mad cow disease. To avoid future such cases and to bring CAFTA into conformity with U.S. takings law, the scope of property subject to such claims in CAFTA needed to have been limited to real estate and the "indirect expropriation" language needed to have been eliminated, or at least defined in the context of U.S. takings standards that require that virtually all of a property's value must be taken permanently to obtain compensation.

- ***CAFTA Would Allow Compensation to Foreign Investors in Cases in which U.S. Law Only Permits Injunctive Relief:*** Under U.S. law, both foreign and domestic firms can sue under the Due Process or Equal Protection Clauses of the Constitution for injunctive relief, but they are not allowed to sue for monetary relief. Under NAFTA's investment rules—and under CAFTA were it to be approved—foreign investors are empowered to sue for monetary relief on similar grounds. CAFTA extends this NAFTA problem by allowing foreign

[13] Concrete Pipe and Products v. Construction Laborers Pension Trust, 508 U.S. 602, Jun. 14, 1993, at 615.

[14] Interim Award by Arbitral Tribunal, In the Matter of an Arbitration Under Chapter 11 of the North American Free Trade Agreement between Pope & Talbot Inc. and the Government of Canada, United Nations Commission on International Trade Law, Jun. 26, 2000, at 37; Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, *Metalclad Corporation v. the United Mexican States*, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000, at 28. The Metalclad panel stated that expropriation under NAFTA "includes not only open, deliberate and acknowledged takings of property such as outright seizure or formal or obligatory transfer of title in favor of the host state, but also covert or incidental interference with the use of property which has the effect of depriving the owner in whole or in significant part of the reasonably-to-be-expected economic benefit of the property."

[15] Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, *Metalclad Corporation v. the United Mexican States*, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000, at 33.

[16] Central America Free Trade Agreement, Final Version, Aug. 5, 2004, Annex 10–C, at 4(b).

investors to obtain taxpayer compensation not only for claims of expropriation, but also based on national treatment (non-discrimination) and "fair and equitable treatment" claims—which are the trade agreement equivalent to Due Process or Equal Protection Clauses claims in U.S. law.

- ***CAFTA Would Eviscerate the Long-established Principle that Governments Can Remedy a "Nuisance" without Compensating Polluters:*** The expansive definition in CAFTA of what sorts of foreign investments are subject to compensation covers government actions to prevent a public nuisance. Given the record of the related NAFTA provisions, this element of CAFTA is likely to generate further claims by chemical companies attempting to combat environmental regulation. Under NAFTA, foreign investors are demanding compensation for California's ban of the gasoline additive MTBE which has been found to be polluting scarce water resources in the state and for California's open pit mining reclamation law. Yet, under the U.S. Supreme Court holding in *Lucas v. South Carolina Coastal Council,* pollution that harms public or other properties is a nuisance that can be regulated by states without compensation.[17] USTR failed to remedy this problem in CAFTA.
- ***CAFTA Would Empower Foreign Investors to Overcome the Long-established Sovereign Immunity Shield to Pursue U.S. Taxpayer Compensation In Property Claims from which U.S. Residents and Companies Are Barred:*** NAFTA panels have explicitly refused to dismiss investor challenges when governments have raised sovereign immunity as a defense in investor-state challenges—apparently allowing firms to sue governments at any level regarding any issue for any amount of money. Indeed, in these cases, investor-state tribunals have accepted the argument raised by some foreign investors that Congress waived federal sovereign immunity when it passed NAFTA. USTR failed to remedy this problem in CAFTA with explicit language clarifying that sovereign immunity was not waived, thus providing an open door for future such challenges.

3. CAFTA Would Forbid Congressional, States' Anti-Offshoring Policies that Require Government Contract Work be Done by U.S. Workers; Forbids Environmental, Other Procurement Rules

CAFTA's rules on government procurement apply to an array of federal government agencies as well as the states that are listed as "covered entities" in Chapter 9, Annex 9.12 (b) (i). In September 2003, the United States Trade Representative sent a letter to all 50 governors, requesting that they commit their states to be bound by the procurement provisions in all bilateral and regional trade pacts under negotiation, including CAFTA. The letter touted the potential for U.S. suppliers to bid on foreign government contracts, but failed to mention the requirements the procurement chapters CAFTA and other agreements imposed on states. Initially, twenty eight states were listed as bound in the CAFTA text. However, since then, state officials have become much more aware of the implications that binding state procurement policy to CAFTA's rules would have on their ability to determine what procurement policies are in the best interests of the state, including policies that use state purchasing power to further social, environmental, and economic development goals.

As a result, a majority of U.S. states (30) have rejected CAFTA's government procurement rules and decided it is not in their best interest to be bound. In 2004, seven governors (from Iowa, Kansas, Maine, Minnesota, Missouri, Oregon, and Pennsylvania) rescinded their previous commitments on behalf of their states to be bound to CAFTA's procurement rules. Other states (Montana, Nevada, Wisconsin, and Virginia) declined the USTR's request outright. Governors of states that remain bound by CAFTA, including Texas and Washington, have requested that additional reservations be taken. (Only some of those requests have been incorporated into the CAFTA text. Washington's request was rejected in an August 13, 2004 letter from Ambassador Zoellick to Washington Governor Gary Locke.) In early 2005, the National Conference of State Legislatures wrote to the USTR, requesting that the USTR respond to the myriad concerns of state legislators. The Intergovernmental Policy Advisory Committee (IGPAC) issued recommendations in August 2004 that state legislative leaders be carbon copied on all requests sent to governors, as state legislators to date have been cut out of the consultation process, despite the fact that in most states, the Legislative Branch has the authority to set state procurement policy. The USTR explicitly denied that request, and sent another letter to governors requesting that they sign on to the procurement provisions of free trade agreements with Panama and Andean countries. Most recently, in April 2005, the

[17] Lucas v. South Carolina Coastal Council, 505 U.S. 1003, at 1015–19 (1992).

Maryland General Assembly passed legislation over Governor Ehrlich's veto which stipulated that it was the authority of the legislature, not the Governor, to sign on to the government procurement rules in trade pacts. The bill also declared invalid previous expressions of consent made by governors, including Governor Ehrlich's letter offering to bind Maryland to CAFTA's procurement provisions.

State officials' concerns stem from the restrictions that CAFTA's rules impose on their ability to maintain existing and adopt new procurement policies in the public interest. CAFTA's procurement chapter prohibits many common purchasing policies, seriously weakening governments' flexibility to use procurement as policy tool to promote economic development, environmental sustainability, and human rights. These rules also apply to federal government procurement policies:

- ***Requirements that Government Work Be Performed in the United States by U.S. Workers Are Prohibited:*** If CAFTA were approved, federal and state governments would be required to treat companies located in the six CAFTA countries identically to U.S. domestic companies when governments seek to procure goods and services. This means neither Congress nor state governments could give preference to domestic or local firms or require that to obtain government contracts, firms must employ U.S. workers (CAFTA Article 9.2).
- ***Sweat-Free, Recycled Content, Renewable Source and Other Labor and Environmental Criteria Banned:*** CAFTA requires that "a procuring entity shall not prepare, adopt or apply any technical specification describing a good or service with the purpose or the effect of creating unnecessary obstacles to trade" and that technical specifications are limited to "performance requirements rather than design or descriptive characteristics." These constraints mean that procurement policies that set criteria for how a good is made or how a service is provided are prohibited—putting preferences for recycled content or renewable energy, "green" building requirements, and bans on goods made with the worst forms of child or slave labor at risk as "barriers to trade" (CAFTA Article 9.7).
- ***Consideration of Bidding Firms' Labor, Tax, Environmental, Human Rights Records Forbidden:*** CAFTA limits what sorts of qualifications may be required of companies seeking to supply a good or service to a government. Conditions for participation in bidding are limited to "those that are essential to ensure that the supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the procurement." CAFTA's limits on the requirements that can be imposed on contractors prohibit conditions such as prevailing wage and living wage requirements, as well as consideration of suppliers' environmental or labor track records (CAFTA Article 9.8).

4. Opposition to CAFTA NAFTA Expansion Wide and Varied, Having Grown Since NAFTA

As successive Administrations have failed to reverse the damage and demonstrated, significant problems of NAFTA's foreign investor protection model, opposition has grown in all quarters. The Association of State Supreme Court Justices, U.S. League of Cities, National Conference of State Legislatures, National Association of Counties, and National Association of Towns and Townships all have expressed concerns about the investment provisions of CAFTA.

Concerns about CAFTA's foreign investor protection by these typically pro 'free trade' associations of state and local officials, groups that are concerned about our nation's system of federalism and the integrity of our domestic courts, has been joined by outright opposition to CAFTA from other unexpected quarters, suggesting the degree to which this agreement signed a year ago is seen not to serve the U.S. national interest. The National Association of State Departments of Agriculture, for one, concerned about CAFTA's agricultural provisions called on Congress to oppose CAFTA.[18] These and other agricultural groups are concerned about declining farm revenue even as volumes of food trade increased under NAFTA, and that the United States is about to become a net food importer. Furthermore, these groups take to heart the claims of pro-CAFTA forces, who continually repeat that CAFTA is a stepping stone to a proposed broader Free Trade Area of the Americas (FTAA).[19] Many U.S. economic sectors views of CAFTA are tied to their analysis of how competition with Brazil in a NAFTA expansion from Alaska to Tierra del Fuego would affect their export capacity in beef, soy, citrus, sugar and ethanol.

Many other groups have also expressed opposition to CAFTA NAFTA expansion. Human Rights Watch has produced analyses of the failure of Central American

[18] Alan Guebert, "State Ag Directors Whack CAFTA, White House," *Aberdeen News,* March 11, 2005.

[19] Jorge Arrizurieta, "A needed precursor to FTAA," Florida Sun Sentinel, March 11, 2005

labor law and enforcement practices to meet the minimal International Labor Organization core labor standards,[20] an analysis that has been confirmed by the U.S. Department of State's annual human rights reports.[21]

And U.S. Latino organizations who supported NAFTA, from the nation's largest and oldest Hispanic civil rights organization the League of United Latin American Citizens to an array of immigrant rights groups representing Central Americans in the United States, have also indicated their opposition the current terms of the agreement, concerned that trade-related job loss disproportionately affects U.S. Latinos and that CAFTA's negative repercussions for Central America are foretold by NAFTA's negative results in Mexico.[22]

5. Central American Public Opposition to CAFTA NAFTA Expansion Is Based on NAFTA;s Record of Destroying the livelihoods of 1.5 Million Mexican Small Farmers and U.S. Heavy-Handed Tactics Forcing Price-Raising Medicine Policies, Essential Service Privatizations

Lawmakers concerned about the implications of the so-called "Arab Street" in the Middle East should also pay attention to the passionate CAFTA opposition on the "Latin Street" of Central America. Nearly one out of every 25 El Salvadorans have publicly rallied against CAFTA in the past several years, and polls indicate that a majority of citizens in Guatemala and elsewhere oppose the terms of CAFTA.[23] In Honduras, Guatemala and Nicaragua, massive protests have also occurred against CAFTA, while it is unclear if Costa Rica's congress will approve the deal.[24]

Officials from the U.S. Trade Representative's office have taken to threatening Costa Rica that if the democratically-elected Congress there determines the pact is not in their nation's interest and rejects it, the United States will remove that nation's existing terms of access to the U.S. market provided under the Caribbean Basin Initiative (CBI). These threats continue today despite the March 2005 letter by Ways and Means Committee Ranking Member Charles Rangel (D–NY) calling upon the Administration to desist these misleading pronouncements. As Rep. Rangel's letter pointed out, CBI is a "congressionally mandated program [whose] benefits are guaranteed on a permanent basis, unless the Congress amends current U.S. law." The representative said he would oppose such an amendement of U.S. law, characterizing the Administration's remarks as "thinly veiled blackmail." [25]

Regardless of the Administration's bullying and disrespectful treatment of some CAFTA countries, certainly Congress would be concerned with the underlying cause of such passionate opposition to CAFTA in Central America—opposition whose protests have been met with increasing violence by governments. This includes the murder by military troops in Guatemala of two Mayan protestors—an act of military violence by the army explicitly forbidden in the 1996 peace accords.[26]

The causes of opposition include CAFTA's service sector rules, which would require these nations to privatize and deregulate numerous essential services such as energy and other utilities, health care and more, as well as foreign investor protections, which would create a new set of rights for foreign investors to acquire ownership over natural resources and land and pharmaceutical patent requirements, including extended data exclusion terms, which would hurt poor people's access to medicines and take Central American governments' abilities to respond to public health crises such as HIV–AIDS. Fury about these severe threats has been exacerbated by the Administration's heavy handed tactics, for instance in pressuring Gua-

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[20] Michael Bochenek, "Turning A Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation," Human Rights Watch Report, June 2004; " Pregnancy-Based Sex Discrimination in the Dominican Republic's Free Trade Zones: Implications for the U.S.-Central America Free Trade Agreement (CAFTA)," Human Rights Watch Briefing Paper, April 2004; Carol Pier, "**Deliberate Indifference:** El Salvador's Failure to Protect Workers' Rights—implications for CAFTA," Human Rights Watch Report, Dec. 2003; Judith Sunderland, "From The Household To The Factory: Sex Discrimination in the Guatemalan Labor Force," Human Rights Watch Report, Jan. 2002.

[21] U.S. Department of State, "Report on El Salvador," *2001 Country Reports on Human Rights Practices*.

[22] "Another America is Possible: The Impact of NAFTA on the U.S. Latino Community and Lessons for Future Trade Agreements," LCLAA and Public Citizen, Aug. 2004

[23] Angus Reid Global Scan, "Guatemalans Decry CAFTA Deal With U.S.," April 2005

[24] Karen Hansen-Kuhn, "Central Americans Speak Out Against DR–CAFTA: Major Issues and Mobilizations," Alliance for Responsible Trade, Mar. 2005, at 10.

[25] Rep. Charles B. Rangel, "Rep. Rangel Reacts to Reported 'Threat' from Administration Official to CAFTA Countries," Press Statement, March 22, 2005.

[26] Sergio de Leon, "Police, protestors clash ahead of Guatemala-U.S. free trade vote," *Associated Press*, Mar. 9, 2005.

temala to rescind a law that would have improved access to generic, life-saving medicines or in threatening Costa Rica with removal of CBI benefits.[27]

Now major Central American political parties, Catholic bishops, the Central American Council of Churches and other mainstream, important Central American interests have come out against CAFTA as a threat to the region. In addition, eighteen of the most democratic, independent and representative union federations throughout Central America representing workers in the private and public sector, including in export-oriented manufacturing and agriculture, have demanded stronger workers rights than those provided under CAFTA.[28] They have noted that the existing CBI arrangement affords concerned citizens with the International Labor Organization core rights and with the greater ability to improve Central American labor law than the proposed CAFTA's roll-back CBI labor provisions.

6. Given the NAFTA Record and Growing Central American Public Opposition, CAFTA Supporters Resort to Increasingly Dubious Arguments . . .

Given this broadscale U.S. and Central American opposition to a NAFTA expansion, pro-CAFTA forces have increasingly resorted to disconnected arguments and exaggerated and misrepresentative claims about the agreement. For instance, the U.S. Chamber of Commerce has produced a flawed study projecting U.S. economic gains from a Central America agreement. But to obtain that conclusion, the Chamber had to assume that—contrary to the history of every trade agreement the United States has signed—the United States would receive no new imports from the CAFTA countries if the pact went into effect.[29] The study's methodology additionally implies that over 80 percent of the Honduran economy would have to absorbed by U.S. exports by 2013, a potentially socially and economically destabilizing outcome if true.[30]

Despite this projection that Central American countries would not gain from a CAFTA, pro-CAFTA forces have simultaneously asserted that CAFTA would save the U.S. and Central American textile industries from the end of the global textile and apparel quota system.[31] Here too, their claims are wildly misleading, since experts from the U.S. International Trade Commission to the Organization for Economic Cooperation and Development (OECD) have demonstrated that China enjoys a significant technological, wage and input cost advantage over the Central American countries. This means that, with or without a CAFTA, the expiration of the Multi Fiber Arrangement quota system will result in Central America losing a great deal of its current production and employment in the textile and apparel industry.

The notion that CAFTA would affect this situation is beyond bizarre. Already under CBI, CAFTA countries' textile and apparel exports enter the United States duty free. CAFTA provides no additional benefit for entry. Indeed, CAFTA loosens the CBI rules of origin, meaning more Chinese goods could enter through CAFTA countries if CAFTA were implemented than are now permitted.

Already, apparel imports from China jumped amount in the first quarter, and by as much as 1,521 percent in some customs categories.[32] While Congress may seek to address this flood of cheap Chinese imports, this is a separate problem than CAFTA and would require a separate solution. The debate around CAFTA is not a question of "whether U.S. workers would rather lose their jobs to China or to Central America," as Carlos Sequeira, Nicaragua's chief CAFTA negotiator put it.[33] Congress should instead focus on the flaws of CAFTA, which would loosen CBI's requirement that U.S. inputs be used to enjoy duty-free access to the U.S. market and undermine CBI's labor rights protections, while still not proffering to the dying Central American industry any access benefits that they do not already enjoy through CBI.

Conclusion

The bottomline in Congress' consideration of CAFTA should be whether extending the NAFTA model will help us create a brighter future for our children and grand-

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[27] Catherine Elton, "Activists Fear Free Trade Act Will Restrict Access to AIDS Drugs in Central America," *Voice of America*, April 2005.

[28] "The Real Record on Workers' Rights in Central America," AFL–CIO, Apr. 2005.

[29] U.S. Chamber of Commerce, "Chamber Hails Economic, Job Benefits of DR–CAFTA," Issue Briefing, Feb. 2005.

[30] Todd Tucker, "Fool Me Twice? Chamber of Commerce Distorts NAFTA Record, Hides CAFTA Costs," Public Citizen, Mar. 2005.

[31] Rossella Brevetti, "Ambassadors from Central America, Dominican Republic Urge Action on FTA," *BNA No. 27*, Feb. 10, 2004. See also, Martin Vaughan, "Pro-CAFTA Business Alliance Lobbying House Members," *Congress Daily PM*, Jan. 25, 2005.

[32] Kristi Ellis, "China's First Qtr Surge," *Women's Wear Daily*, April 4, 2005.

[33] Paul Magnusson, "This Trade Pact Won't Sail Through," *Business Week*, March 28, 2005.

children. Even considering only the well-documented NAFTA record of undermining the livelihoods of 1.5 million Mexican farmers, suppressing real median wages in the United States and Mexico, gutting the U.S. manufacturing base, coinciding with record-low prices paid farmers for the food they produce in all three countries even while consumer prices increased, and exposing some 42 domestic environmental, health, zoning and laws and regulations to attack in closed investor-state tribunals and the payment of some $35 million in taxpayer funds to foreign investors for the lost NAFTA-guaranteed profits they lost, it seems quite clear the answer is no. If one adds to the NAFTA evidence the problems caused by the CAFTA provisions that go *beyond* even what NAFTA requires—for instance in the foreign investor protections chapter or regarding drug patents—the answer becomes only clearer.

As a group that works with consumer organizations around the world, we would urge Congress to oppose this agreement simply on the basis of its intellectual property rules which are certain to undermine affordable access to essential medicines for poor consumers in the Central America. Many other organizations are submitted testimony about these scandalous provisions of CAFTA NAFTA expansion. At issue are life or death matters: generic versions of the cocktail of anti-retroviral drugs essential to extending the lives of those infected with HIV cost several hundred dollars for a yearlong course while the brand name patented version of the same drugs cost $5,000 per year. If the CAFTA drug patent rules would go into effect in the Central American countries and the Dominican Republic, many people now able to have access to these life saving HIV–AIDS medicines and also drugs vital to fighting tuberculosis and other deseases will not have access to these medicines—either because they cannot afford to purchase them or because their government health agencies cannot afford them to provide to their public.

Thus given CAFTA NAFTA expansion's potential extension of the failures of NAFTA to people in six additional nations and the damage to U.S. residents that further extension of this model would pose, we urge Congress to oppose NAFTA's expansion to Central America and beyond.

Statement of Lori L. Denham, Retail Industry Leaders Association, Arlington, Virginia

On behalf of the Retail Industry Leaders Association, we welcome the opportunity to submit written comments for the record for this important hearing on the United States-Dominican Republic-Central American Free Trade Agreement (DR–CAFTA), now coming before the Congress for implementation. We strongly support the DR–CAFTA agreement and urge swift Congressional passage of the implementing legislation.

By way of background, the Retail Industry Leaders Association (RILA) represents the nation's most successful and innovative retailer and supplier companies—the leaders of the retail industry. (As a sector, retail is the second largest industry in the U.S., employing 12 percent of the nation's total workforce and conducting $3.8 trillion in annual sales. RILA's retail and product supplier companies operate 100,000 stores, manufacturing facilities and distribution centers in every congressional district in every state, as well as internationally. They pay billions in federal, state and local taxes and collect and remit billions more in sales taxes. They are also leading corporate citizens with some of the nation's most far-reaching community outreach and corporate social responsibility initiatives.

RILA fully believes that passage of this agreement will:

- *benefit* the U.S. economy—producers and consumers alike;
- *strengthen* freedom and security in our Hemisphere;
- *improve* **working conditions;**
- ***activate*** **critically important** textile-apparel-footwear provisions; and
- *enhance the legal framework for retail and distribution services.*

The DR–CAFTA Will Benefit the U.S. Economy—Producers and Consumers Alike

Central America and the Dominican Republic make up the second-largest U.S. export market in Latin America, behind only Mexico. U.S. sales in the region exceed $15 billion annually—more than is sold toRussia, India and Indonesia combined—a result achieved in the *absence* of reciprocal trade liberalization. Upon full implementation of the agreement, U.S. goods will be able to enter the participating countries duty free. In fact, 80% of the commercial goods will become duty free once the agreement is implemented, with the rest phased out over a ten-year period. This

will help to significantly increase U.S. exports of farm products, manufactured goods and services to the region. According to a report by the International Trade Commission on the economic impact of the agreement, once the agreement is fully implemented, exports will grow by nearly $2.7 billion.

In addition to increased benefits for U.S. exporters, U.S. importers and their customers will benefit from implementation of the DR–CAFTA as well. Most Central American products already enter the United States duty-free, under preference programs such as the Caribbean Basin Trade Partnership Act (CBTPA). Enshrining this treatment in an international agreement with reciprocal obligations will provide added commercial security as well as a firmer legal basis under WTO rules. This aspect of the FTA is in effect a tax cut targeted to those consumers who need it most.

The DR–CAFTA Will Strengthen Freedom and Security in Our Hemisphere

Within recent memory, conditions in Central America have featured civil war, chaos, dictators, and Communist insurgencies. Today, the region is one of fragile democracies that need U.S. support. Elected leaders are embracing freedom and economic reform, fighting corruption, and supporting U.S. anti-narcotics and anti-terrorism efforts. But this positive momentum cannot be taken for granted. Opponents of reform in the region remain strong.

By implementing the DR–CAFTA, the United States can demonstrate its support for freedom, democracy, the rule of law, and economic reform in Central America. Doing so will bolster U.S. security in various ways. The new economic opportunities will reduce the pressures that help produce illegal narcotics activity and illegal immigration.

The DR–CAFTA Takes the Right Approach on Working Conditions

America's retailers are committed to careful supply chain management and high ethical standards of corporate conduct in international sourcing. This applies to products sourced in not just in Central America, but around the world. Our experience with the DR–CAFTA countries has shown that they share these values and high standards, including the field of labor rights. Their constitutions and national laws generally provide strong labor protections consistent with the International Labor Organization's four "core principles." Indeed, labor protections in these countries are largely in line with those in Morocco and Jordan, whose accession to the status of "FTA partner" gained overwhelming Congressional approval in recent years.

The DR–CAFTA will promote economic opportunities and growth that are likely to become powerful catalysts for improved working conditions in the region. Through capacity-building and dispute settlement, the DR–CAFTA will also address those circumstances where better enforcement of existing labor laws proves necessary.

The DR–CAFTA's Textile-Apparel-Footwear Provisions Will Benefit Consumers and Producers Throughout the Value Chain

The textile and apparel product category is a hugely important component of U.S.-Central American trade, and retailers are committed to finding the best available combination of speed-to-market, product price, and quality of products for their consumers. U.S. consumers will benefit from several innovative DR–CAFTA provisions promoted by retailers to add needed flexibility to the outdated "yarn forward" rule of origin. Moreover, qualifying textile and apparel products are to be afforded immediate U.S. duty free treatment.

Retailers are also quite interested in the health of regional textile and apparel producers—our valued suppliers. The DR–CAFTA is strategically designed to improve their competitive situation at a time when, following the expiration of global textile and apparel quotas, they face a formidable challenge from outside the hemisphere, most notably China. The DR–CAFTA will provide regional garment-makers—and their U.S. suppliers of fabric, yarn and other components—a boost in competing with Asian producers and will support an estimated 400,000 jobs in the DR–CAFTA countries and 700,000 jobs in the U.S. cotton, yarn, textile and apparel sectors.

In addition to benefits for textiles and apparel, there are significant benefits for footwear imports in the DR–CAFTA. A solid consensus in all segments of footwear manufacturing and retailing favors immediate duty-free treatment for footwear traded among the DR–CAFTA countries, excluding a few import-sensitive tariff lines. By delivering this outcome, the DR–CAFTA lays the groundwork for increased trade and investment in the footwear sector, supports retailer strategies designed to maintain geographically diverse sourcing options, provides substantial benefits to consumers, and poses no risk to U.S. footwear production.

The DR–CAFTA Enhances the Legal Framework for Retail/Distribution Services

For the first time in a trade agreement, the DR–CAFTA addresses restrictions on distribution created through restrictive dealer protection regimes. Such regimes are prevalent in Central America today and have locked U.S. companies and products into inefficient, exclusive and effectively permanent relationships with local dealers regardless of performance. DR–CAFTA rules would require dealer distribution agreements to permit parties to terminate at the end of the contract or renewal period without indemnification. These rules will promote more efficient distribution for U.S. companies and products in the DR–CAFTA region.

The DR–CAFTA, Once Implemented, Can Be Improved Over Time

No FTA is perfect, and as with other FTAs, experience under the DR–CAFTA may reveal opportunities for useful adjustments in areas like rules of origin, accelerated tariff phase-out, etc. Some improvements may require the negotiated approval of all the DR–CAFTA parties; others may be of the type the United States can make unilaterally. The implementing legislation should establish a flexible and streamlined framework for making such adjustments over time, using available tools such as proclamation authority and consultation/layover.

RILA congratulates the Ways and Means Committee for turning its attention to this important agreement, and stands ready to assist as the implementation process moves forward. If you have any questions, please contact Lori Denham, Senior Vice President Policy and Planning or Jonathan Gold, Vice President Global Supply Chain Policy.

Statement of the Honorable Hilda L. Solis, a Representative in Congress from the State of California

Mr. Chairman, thank you for the opportunity to offer my concerns regarding this important issue. I strongly oppose the Dominican Republic-Central American Free Trade Agreement (DR–CAFTA).

DR–CAFTA is largely based on the North American Free Trade Agreement (NAFTA). By signing DR–CAFTA, the Bush Administration has ignored the mistakes of NAFTA. Ten years ago, NAFTA proponents promised increased wages and economic development in the United States, Mexico, and Canada and decreased migration. The agreement has failed on all accounts.

As in Mexico with NAFTA, DR–CAFTA would cause the loss of family farms and lure more workers, most of them women. DR–CAFTA may create jobs of women, but the working conditions are unimaginable to the American public. The bulk of these jobs are in the Export-Processing Zones, also known as *maquiladoras*.

I have visited Mexico and seen firsthand the devastating consequences of NAFTA. In the *maquiladora* zone in Ciudad Juarez and other border cities, wages are low, union organizing is suppressed, and industrial pollution jeopardizes the health of workers and residents.

Women that work in the *maquiladoras* have reported forced pregnancy testing, sexual harassment, and physical abuse. DR–CAFTA does not require compliance with international labor rights and does not protect women from discrimination. Inadequate free trade agreements, such as NAFTA, not only hurt our women workers, but also hurt American workers.

Over 750,000 jobs in the United States have been lost due to NAFTA and immigration to the United States has only increased. DR–CAFTA will mean more job loss and wage decline for American workers. U.S. Latino workers have been disproportionately hurt by NAFTA because they tend to be concentrated in industries such as textiles and other manufacturing sectors.

While Latinos represent 12.6% of the total U.S. workforce, they account for 26% of textile and apparel industry workers. In California, Latinos make up an estimated 80% of the California garment industry, which has been especially hard-hit by NAFTA's impact. As a result, Latino workers have been significantly hurt by NAFTA. According to the Department of Labor, 47% of individuals that applied for NAFTA's Trade Adjustment Assistance (TAA) program due to lay offs were Latino.

Americans believe that we should NOT peruse future free trade agreements similar to NAFTA. In fact, the League of United Latin American Citizens, LULAC, the oldest and largest Latino organization in the U.S. publicly opposes DR–CAFTA. LULAC claims that DR–CAFTA "falls short of being acceptable" and fear that

CAFTA will unleash enormous loses for all workers, in the U.S. and Central America.

As the only Member of Congress of Central American descent, I understand the importance of supporting efforts to promote sustainable development and preservation of the agricultural sector in that region. However, U.S. policy towards Latin America should go beyond free trade policies that do little to raise wages and working conditions for the poor.

Those who oppose DR–CAFTA do so because of the irreparable harm it will have to the economy and workers of Central America and the United States. We can not allow the failures of NAFTA be reproduced through DR–CAFTA.

Statement of Jeff Vogt, Washington Office on Latin America

On May 28, 2004, the United States and the Central American countries (Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica) signed the U.S.-Central America Free Trade Agreement (CAFTA) in the Hall of Americas in the Organization of American States. Upon signing the agreement, U.S. Trade Representative Robert Zoellick suggested that "CAFTA will put the U.S. relationship with Central America on a more solid, mutual foundation, firmly grounded in our shared commitment to democracy, free markets, free people, and hope." The Washington Office on Latin America (WOLA), however, is deeply concerned that DR–CAFTA will only result in free markets without the anticipated freedom and hope for the millions of people in the region. In particular, WOLA believes that DR–CAFTA's provisions on agriculture, labor and intellectual property will frustrate, rather than promote development in the region. WOLA therefore urges all members of congress to reject DR–CAFTA.

1. DR–CAFTA Will Increase Rural Unemployment and Jeopardize Food Security

DR–CAFTA's likely impact on the Central American rural sector is a cause for concern. Under the agreement, the Central American countries will eliminate over time tariffs on basic grains, such as rice, beans and corn, products on which the lives of millions of people now depend. With ever-greater access to the Central American market, U.S. agro-export corporations, which produce and export grains at artificially low prices due to government supports, will undercut their Central American counterparts, mostly small and family farmers. Dumping cheaper, subsidized grains into the Central American market could lead to a significant loss of agricultural jobs, creating greater poverty, hunger and rural emigration. Indeed, a 2004 U.S. International Trade Commission report on DR–CAFTA projects that Central America will significantly increase imports of basic grains upon implementation of the agreement.[1] In a region where roughly half of all employment is in agriculture, this will have devastating long-term effects.

a. The Face of the Central America Rural Sector

Agriculture still remains the largest source of employment in many Central American countries. In Guatemala, Honduras and Nicaragua, agriculture still remains the largest source of employment, engaging 52.5, 43.9 and 43.2% of the economically active population respectively. In the U.S., by comparison, only 2% of the labor force is employed in the rural sector. In addition, the region is dependent on a few, key export crops, which are highly vulnerable to the volatility of international markets. In Central America, poverty is concentrated in the rural sector. According to the International Fund for Agricultural Development, 64% of Latin America's rural population lives in poverty, compared to 59.9% in 1980. Official support for the rural sector has also declined significantly over the last two decades, and structural adjustment programs in the 1980s and '90s have resulted in minimal investment in rural infrastructure, financial services and human capital in the region. Not only has productivity of Central American farms suffered as a result, but lack of overall employment opportunities has been the impetus of outward migration to the U.S.

b. Potential Impacts and Lessons Learned

The U.S. steadfastly refused to discuss the issue of subsidies to its own agricultural producers, preferring to discuss this issue at the level of the WTO. In response, the Central American negotiators and producer federations demanded that

[1] U.S. International Trade Commission, *U.S.-CentralAmerica-DominicanRepublic Free Trade Agreement: Potential Economy-Wide and Selected Sectoral Effects*, August 2004 at pp. 59–72.

sensitive agricultural crops such as basic grains, dairy and pork be exempt from the negotiations until the U.S. eliminates its unfair agricultural subsidies. Again, the U.S. refused any exemptions for these products. This forced the Central American governments to offer a weaker proposal for special and differential treatment; they called for increased market access for some products and the maintenance of high tariffs and longer liberalization periods for sensitive agricultural products. Once again, the U.S. refused.

According to the Mesoamerican Initiative for Trade Integration, Central Americans conceded much more than they received in agriculture. By the end of the negotiations, the four remaining Central American countries received a small amount of new market access for certain products such as sugar, and a 15 to 20 year liberalization period for several sensitive crops. Farmers, analysts and government negotiators alike recognize that these are very small gains, compared to the blows the agricultural sector will sustain under CAFTA. On December 31, 2003 the lead Guatemalan Negotiator Guido Rodas, stated, "Rice, pork, corn, beer, telecommunications and generic medicines are among the losers who will pick up the tab of the CAFTA negotiation."

Some proponents of CAFTA have argued that small-scale farming in Central America is a dying industry, and that subsistence farmers are becoming obsolete in the global economy. However, far from obsolescence, small and medium-scale agriculture plays multiple, important roles in Central America. Small and medium farms create significant rural employment, with backward and forward linkages in the rural economy. Local food production is also important for food security and nutrition. Small farmers play an important role as environmental stewards, caring for the land, just as agriculture plays an important cultural and historical role in the social fabric of Central America. Finally, rural development and opportunities in agriculture help to decrease migratory pressure on cities and the U.S.

It has been said that trade agreements create winners and losers; there are people who benefit from trade liberalization, and those who do not. NAFTA has demonstrated, as will DR–CAFTA if it passes, that the biggest losers in these trade deals are in the agricultural sector, especially small and medium farmers and day laborers. The experience of NAFTA in the Mexican agricultural sector is illustrative. At least 1.5 million Mexican farmers lost their livelihoods to NAFTA. According to a Carnegie Endowment for International Peace report published in 2004, approximately 8 million of Mexico's active labor force worked in the agriculture sector in 1993; by 2003, it was roughly 6.5 million. The report states, "Agricultural trade liberalization linked to NAFTA is the signal most significant factor in the loss of agricultural jobs in Mexico." Similarly, a recent report by Oxfam International, entitled "A Raw Deal for Rice," predicts that 1.5 million jobs directly and indirectly related to the rice sector could be lost upon full implementation of DR–CAFTA.

As proponents of NAFTA then argued, displaced farmers will simply move to new industries, but job creation—particularly in the export processing sector—is being eroded as jobs move to new markets in Asia. The situation is even worse now with the expiation of the Multi-Fiber Agreement. Without quotas, many small and medium sized producers are likely to close. A 2004 report issued by U.S. AID on the garment industry in the Dominican Republic, for example, projects that the garment exports to the U.S. will decrease by 25% even after DR–CAFTA is implemented. Although the impact of the phase-out is expected to be softened slightly by CAFTA, the agreement is by no means a salvation.

Congress must view trade agreements and the impact of trade through the lens of poverty reduction, and measure the agreements by the extent to which people are able to exercise their economic and social rights. Trade is an important factor in any economy, but, as studies such as the Carnegie report demonstrate, agricultural liberalization is not good for developing countries that have huge trade asymmetries vis-&-vis their trading partners. Like their Mexican counterparts, Central American farmers will be unable to compete against highly subsidized production in the U.S. and elsewhere in the developed world. This will result in increased poverty, greater levels of rural unemployment and more migration—further violating Central Americans economic and social rights. Simply put, CAFTA is not the development strategy that the region needs.

2. The CAFTA Labor Chapter Is Insufficient to Address Systematic Labor Violations

The labor laws of the Central American countries fail in many respects to meet the minimum standards set forth in international instruments such as the ILO's Fundamental Declaration of Rights at Work. Moreover, enforcement of labor rights is seriously deficient. In some cases, for example, labor ministry personnel encourage or participate in employer abuses of workers' rights by acting upon illegal re-

quests that harm workers. In other cases, labor ministry officials use obstructionist tactics to avoid granting recognition to unions. The action or inaction of labor courts also deny workers their rights, as long delays in court proceedings, at times due to judicial collusion with employers or simple incompetence, and non-enforcement of court orders result in the effective denial of justice to workers

The situation of impunity with regard to workers' exercise of freedom of association and collective bargaining is a serious problem that undermines the rule of law and the prospects for social and economic justice throughout Central America. This situation can only be addressed by policies that promote democratic, equitable, and sustainable development, based on respect for fundamental labor and human rights. As explained below, the CAFTA does not contain adequate mechanisms that encourage positive labor law reform or, indeed, discourage retrenchments in existing laws. Indeed, the labor chapter does little to even ensure that existing laws are adequately enforced. Because the CAFTA will not encourage social and economic development, as it does not adequately promote respect for the fundamental human rights of the people of Central America, CAFTA must be opposed.

a. DR–CAFTA Does Little to Protect Worker Rights

At a February 9, 2005 conference hosted by the Center for Strategic and International Studies (CSIS), former U.S. Trade Representative Mickey Kantor rejected the DR–CAFTA for its lack of an adequate, enforceable labor clause. "I think it should go back to negotiating table," said Kantor, who found several shortcomings with the labor clauses negotiated in various free trade agreements by the current USTR. Upon reading Chapter 16, the labor chapter, and with an understanding of the labor laws of the region, it is obvious why Mr. Kantor concluded that the DR–CAFTA as "a major step backwards on this issue."

Under Chapter 16, member states are under absolutely no obligation to meet the core labor standards articulated by the International Labor Organization (ILO), or the international worker rights standards incorporated into previous, unilateral U.S. trade laws. Rather, member states have committed only to "strive to ensure" that these principles are protected by local law. Incredibly, member states do not have to strive to eliminate discrimination in employment, as that right is explicitly beyond the scope of the agreement. Thus, only a "fail[ure] to effective enforce [] labor laws, through a sustained or recurring course of action or inaction, in a manner effecting trade between the Parties" could ever subject a country to a fine. Even then, Article 16.2(a) excuses the action or inaction of member state if it is deemed "a reasonable exercise of discretion" or a "bona fide decision regarding the allocation of resources." Thus, the negative "failure to enforce" standard may be denied any force of law if a member state can satisfy the ambiguous test of "reasonableness" or show that their under-funded Ministries of Labor allocated resources toward some other reasonable objective.

Because local labor laws in many respects fall short of international minimum standards, the CAFTA language does nothing more than requires that existing, inadequate practices be continued. Moreover, a member state is under no enforceable obligation to maintain those inadequate laws and could weaken those laws further to gain an unfair trade advantage. As such, a country may violate international labor law and continue to enjoy all of the market access benefits of the trade agreement. The procedures and remedies for addressing violations that do exist under CAFTA are completely also inadequate. The labor enforcement procedures cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines to themselves with little oversight. These provisions not only make the labor chapter's one limited obligation virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes.

b. DR–CAFTA is Weaker Than Previous Agreements

The texts of previous free trade agreements demonstrate that the USTR is capable of negotiating a more rigorous labor clause when it so decides. The labor clause negotiated in the U.S.-Jordan Free Trade Agreement is one such example. The USTR's "fact sheets" aside, the U.S.-Jordan Agreement is far superior to DR–CAFTA on the issue of labor rights. Under U.S.-Jordan, all labor right obligations, not simply the obligation to enforce domestic laws, may be brought under the dispute resolution and enforcement mechanisms. For example, a claim that a state party relaxed its laws to attract trade or that it failed to ensure that its domestic laws provided protections consistent with international labor standards could be brought under Jordan, but not DR–CAFTA. This is a critical distinction. Moreover, the dispute resolution mechanism in U.S.-Jordan is the same as the commercial mechanism; the same is not true of DR–CAFTA.

The CAFTA labor chapter is also a step backwards from the Generalized System of Preferences (GSP), the only tool that has generated the political leverage to demand the reform of labor laws in Central America. U.S. unilateral trade preference programs provide for the withdrawal of trade benefits if steps are not taken to meet international labor standards, including steps to reform weak domestic laws. Almost every labor law reform that has taken place in Central America over the past fifteen years has been the result of the threat to withdraw trade benefits under our preference programs. Indeed, on the merits of petitions submitted by the AFL–CIO and the International Labor Rights Fund, Guatemala was put under GSP review in 2002 for its failure to amend its labor code consistent with international standards, its failure to effectively enforce its existing labor code and its failure to investigate the murder of numerous trade unionists. This important tool will be lost once the CAFTA is enacted.

c. The White Book Should Not Assuage Concerns

The much anticipated "white book," entitled "The Labor Dimension in Central America and the Dominican Republic," does little to assuage WOLA's well founded fear that the governments of Central America and the Dominican Republic will fail to adopt, implement and/or enforce internationally recognized worker rights. Indeed, the book demonstrates that the Labor Ministers are in denial about their labor laws. The white book repeats the often stated myth that the reports authored by the International Labor Organization (ILO) in 2003 and 2004 held that the constitutions and labor codes of Central America incorporate ILO fundamental rights and principles. This is simply not true. For example, a letter from the House Committee of Ways and Means to the U.S. Trade Representative, dated April 5, 2005 identifies over twenty instances where, according to reports from the ILO and the State Department, Central American labor laws still fail to comply with international norms relating to freedom of association and collective bargaining. Far from being technical violations, these substandard laws prevent workers from exercising their basic rights.

Also, while the white book acknowledges some of the most serious problems on the issue of enforcement and makes several recommendations to correct them, it is worth noting that a number of those reforms have been promised for years and have yet to materialize. In other cases, Legislation to reform some of these laws has been languishing in the legislature for years for lack of political will. Moreover, it does not appear that there are any new funds currently allocated to act upon the report's recommendations. The authors call for a conference of donors to be held within 30 days to obtain commitments on funding the recommendations and further funding for management of the technical assistance. Given the deep cuts in the U.S. international labor affairs budget, it is unlikely that sufficient funds will be allocated.

d. The Case of Guatemala

As firmly established by the International Labor Organization, Guatemalan labor law simply fails to meet international labor standards. These shortcomings have been elaborated numerous times by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), by local and international trade unions, and by GSP petitioners. Although Guatemala did approve labor reforms in April 2001 (Decree 18–2001), these reforms did not take into account many of the ILO's observations. Moreover, key aspects of those reforms were recently challenged and deemed unconstitutional by the Constitutional Court of Guatemala in August 2004. The much-needed additional reforms to the Labor Code, promised by the Berger Administration, have still not been enacted.

Most troubling is that the Constitutional Court divested the General Inspector of Labor of its authority to levy administrative fines against labor-law violators in August 2004. Until the labor code is reformed, labor inspectors will be essentially powerless to punish violations of labor rights in Guatemala. Given that the only enforceable clause in the DR–CAFTA is that a country enforced its own laws, Guatemala is simply unable to comply with this basic requirement.

These and other concerns, including continuing violence against trade unionists, were raised in a recent GSP petition, filed with the USTR on December 13, 2004. The USTR has yet to determine whether to accept the petition. The full petition is available at: http://www.wola.org/economic/cafta_gsp_petition_press_release.htm. A letter from over 30 members of congress to the U.S. Trade Representative, in support of the GSP petition, is available at: http://www.wola.org/guatemala/gsp_dear_colleague_letter.pdf.

3. The Intellectual Property Chapter Goes Beyond TRIPS, Threatening Access to Affordable, Generic Medicines

International conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognize that access to health care is a fundamental human right. For example, Article 12 of the ICESCR obliges states to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Of course, access to affordable medicine is an integral part of the right to health care. In the trade context, the TRIPS Agreement, together with the Doha Declaration, requires that intellectual property rules will not interfere with promoting access to medicines. DR–CAFTA does not embody the letter or the spirit of these international obligations, frustrating access to affordable medicines to millions of people in Central America.

For example, Chapter 15 of DR–CAFTA appears to set up barriers to compulsory licenses, which allow governments to obtain cheaper generic drugs by temporarily overriding a pharmaceutical patent. The agreement does so by prohibiting generic suppliers of patented drugs from obtaining marketing approval during the lifetime of the patent. Thus, governments would be unable to make affordable generic equivalents of patented medicines available to its citizens. Also troubling is the requirement that governments recognize exclusivity on test data, which is used by drug companies to demonstrate the safety and efficacy of drugs, for five years on new pharmaceuticals. This would deny the manufacturers of generic drugs of the information necessary to prove the safety or efficacy of their products.

The USTR's insistence that Guatemala revoke legislation that sought to ensure access to generic medicines—and which was TRIPS consistent—is just one more example where the development needs of Central America were frustrated by overreaching by the USTR. In December 2004, Guatemala had passed a law to increase access to affordable, generic medicines. Under that law, local manufacturers of generic medicines could obtain market registration by relying on the tests conducted by brand-name manufacturers if they could demonstrate that their drug was equivalent to the brand-name product. The U.S. insisted, however, that the law was inconsistent with DR–CAFTA and demanded that Guatemala revoke the law if it wished to remain a party to the agreement. After intense U.S pressure, Guatemala repealed the law just days before ratifying DR–CAFTA, effectively putting new, affordable generic drugs out of reach.

4. Conclusion

The Washington Office on Latin America recognizes that trade can be mutually beneficial for the nations, communities and individuals involved by creating new economic opportunities. However, we are concerned that, on balance, this agreement does not promote the best interests of Central America, the Dominican Republic or, in the long run, the United States. We believe that a bilateral trade relationship that promotes economic opportunity and respects fundamental human rights is possible. WOLA therefore urges the U.S. Congress to reject the DR–CAFTA and instead to work to support far trade and development initiatives that will stimulate sustainable, equitable economic growth in the region.

Statement of Reed Kelley, Western Organization of Resource Councils, Meeker, Colorado

WORC is a regional network of seven grassroots community organizations that include 9,500 members and 50 local chapters. WORC helps its member groups succeed by providing training and coordinating issue work.

In the West, farming and ranching is a way of life. The trade of livestock, sugar and grain fuels rural communities and provides American families with safe, high quality food.

The proposed Central American Free Trade Agreement (CAFTA) would hurt rural America by outsourcing American farmers and ranchers and their way of life. CAFTA would clear the way to import foreign food produced under standards that do not protect the public health, safety and the environment. The import of these cheaply produced, poor quality foods makes it harder for American farmers and ranchers to provide safe, high quality food for our families.

CAFTA would give foreign corporations the ability to challenge local, state, and national laws in closed tribunals that are unaccountable to U.S. law.

CAFTA Chapter 10 contains the same language of the North American Free Trade Agreement (NAFTA) Chapter 11. This chapter includes "investor to state"

provisions allowing foreign companies to sue local, state and federal governments over laws protecting the health and safety of your constituents' families. Under this provision, three unelected bureaucrats determine if corporate profits should take precedence over the health and safety of U.S. citizens, preempting the U.S. judicial system. CAFTA would open the way for more investor-to-state cases from six more countries. The U.S. Trade Representative should not be allowed to negotiate trade agreements that undermine your right and ability to enforce the very laws you pass to protect human health and safety.

A recent NAFTA Chapter 11 case directly challenges our ability to protect U.S. food safety and to prevent cattle disease in the U.S. cattle herd. A Canadian cattlemen's organization has sued the U.S. Department of Agriculture (USDA) under NAFTA Chapter 11 provisions. The Canadian group claims they are due payment for loss of profits because of USDA's regulations Canadian cattle imports. This case is being brought even though the USDA regulations are a direct result of mad cow disease in Canada, even though the regulations were put in place to protect the health of U.S. consumers and cattle markets.

U.S. trade agreements should not deny farmers and ranchers access to tools that provide American consumers access to safe, high quality food. Trade agreements must honor local, state and national governments' right to protect the public health and safety of their citizens.

WORC calls on the Senate Finance Committee to enact trade policies that expand markets for American farmers and ranchers while providing consumers with good food choices.

Relaxing import restrictions is unwise until we implement mandatory country-of-origin labeling. Until then, consumers will not have the opportunity to choose food grown and processed in the U.S. over imported food from Central America and the Dominican Republic. Mandatory labeling provides a set of comprehensive standards that ensure all food is labeled consistently, in a way that is easy for the consumer to identify and access. This is also vital for livestock producers who want to differentiate their high quality product from products of other countries. Without implementation of the U.S. mandatory country of origin labeling law for meat and produce, these trade agreements short-change our consumers and our producers.

Congress has a clear choice. You can continue to approve trade agreements that undermine U.S. laws and chip away at rural America, or you can enact trade policies that provide more opportunities for our farmers and ranchers, keep high quality, safe food for our families, and honor laws that protect Americans.

WORC urges the House Ways and Means Committee to choose policies that strengthen rural America by rejectingthe Central American Free Trade Agreement. Instead, this country should enact trade policies that expand markets for American farmers and ranchers while providing consumers with good food choices.

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