# FAST TRACK ISSUES

# JOINT HEARING

BEFORE THE

## SUBCOMMITTEE ON TRADE

OF THE

## COMMITTEE ON WAYS AND MEANS

AND THE

## SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE

OF THE

## COMMITTEE ON RULES

## HOUSE OF REPRESENTATIVES

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# FAST TRACK ISSUES

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**THURSDAY, MAY 11, 1995**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
JOINT WITH COMMITTEE ON RULES,
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE,
*Washington, D.C.*

The subcommittees met, pursuant to notice, at 10:08 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane, chairman of the Subcommittee on Trade, and Hon. David Dreier, chairman of the Subcommittee on Rules and Organization of the House, presiding.

[The advisory announcing the hearings follows:]

# *ADVISORY*

## FROM THE COMMITTEES ON WAYS AND MEANS AND RULES

FOR IMMEDIATE RELEASE CONTACT: (202) 225-1721
April 7, 1995
No. TR-6

**CHAIRMAN CRANE AND CHAIRMAN DREIER ANNOUNCE JOINT HEARINGS ON FAST TRACK ISSUES**

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, and Congressman David Dreier, Chairman of the Subcommittee on Rules and Organization of the House of the Committee on Rules, today announced that the Subcommittees will hold joint hearings on extension of so-called "fast track" negotiating authority to the Administration for use in negotiating trade agreements. The first hearing, concerning policy, conditions, and negotiating objectives of fast track, will take place on Thursday, May 11, 1995. The second hearing, concerning fast track procedures, will be held on Wednesday, May 17, 1995. **Both hearings will begin at 10:00 a.m. and will be held in the main Committee hearing room, Room 1100 of the Longworth House Office Building.**

Oral testimony at these hearings will be heard from both invited and public witnesses. Invited witnesses will include United States Trade Representative Michael Kantor. Also, any individual or organization may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

Certain trade agreements cannot enter into force as a matter of U.S. law unless implementing legislation approving the agreement and any changes to U.S. law is enacted into law. In order to implement a number of trade agreements, including most recently the Uruguay Round Agreements and the North American Free Trade Agreement (NAFTA), Congress enacted certain "fast track" procedures.

Now expired with respect to any new trade agreements, these provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, the President was required to give Congress at least 90 calendar days advance notice of his intent to enter into an agreement. After entering into the agreement, the President was required to submit the draft agreement, implementing legislation, and a statement of administrative action. After that point, the House committees of jurisdiction had 45 days to report the bill, and the House voted on the bill within 15 legislative days after the measure was received from the committees. Fifteen additional days were provided for Senate consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction is 90 days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

The purpose of the fast track approval process was to preserve the constitutional role and fulfill the legislative responsibility of Congress with respect to trade agreements. At the same time, the process was designed to ensure certain and expeditious action on the results of the negotiation and on the implementing bill with no amendments.

The Administration is beginning negotiations with Chile as to possible accession to the NAFTA. Because the fast track authority used for the Uruguay Round Agreements and the NAFTA has expired, the Committees are now considering the extension of additional fast track authority.

In announcing these hearings, Crane said: "Because the benefits to the economy achieved by opening new markets to U.S. exports and reducing foreign trade barriers to U.S. goods and services through trade agreements are dramatic and proven, we must do all we can to give the Administration the expedited authority it needs to negotiate and conclude these agreements. However, fast track authority should be limited to trade legislation, and it is not appropriate to use fast track authorization for legislation involving issues not directly related to trade or not necessary to implement the trade agreement."

Dreier said, "Fast track procedures have been instrumental in permitting Congress to implement landmark legislation that reduces trade barriers, promotes private sector job creation, and raises living standards for American families. At the same time, there are increasing concerns that provisions not closely related to trade agreements are being attached to implementing legislation in order to receive expedited consideration. We must improve the fast track procedures in order to maintain a consensus in Congress behind this critically important grant of trade negotiation authority."

**DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:**

Requests to be heard at the hearings must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Thursday, April 27, 1995. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

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

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

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing at which they will testify. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Tuesday, May 9, 1995 for the first hearing and 1:00 p.m., Monday, May 15, 1995, for the second hearing. Failure to do so may result in the witness being denied the opportunity to testify in person.

## WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Thursday, May 25, 1995, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

## FORMATTING REQUIREMENTS:

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

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.

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. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.

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

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

* * * * *

Chairman CRANE. Good morning. Welcome to this joint hearing of the Subcommittee on Trade of the Ways and Means Committee and the Subcommittee on Rules and Organization of the House, the Committee on Rules. Today is the first of two hearings these subcommittees will hold concerning fast track issues. The second hearing is scheduled for May 17.

During these hearings, we intend to address the policy, conditions, and negotiating objectives of fast track, as well as fast track rules and procedures. Over the course of these hearings, we will receive testimony from Ambassador Kantor, the U.S. Trade Representative, on May 17. Both today and on May 17, we will hear from Members of Congress and representatives from business and industry groups and academic/think tank institutions, as well as other individuals with expertise concerning the issue of fast track.

The Trade Subcommittee intends to hold separate hearings concerning Chile and accession to the NAFTA, North American Free Trade Agreement, as well as implementation of the NAFTA in the period since the NAFTA was enacted. At that time, accordingly, there will be an opportunity for witnesses to present testimony and for Trade Subcommittee members to ask questions concerning these issues.

Let me begin by saying that I am a strong supporter of fast track authority. Fast track has enabled us to implement a number of significant trade agreements over the last 20 years, including the Tokyo round, the United States-Israel free trade agreement, the United States-Canada free trade agreement, the NAFTA, and the Uruguay round. Because of these agreements, we have been able to make substantial progress in opening markets, lowering tariffs, and regulating and ending nontariff barriers to trade. These agreements are extremely beneficial in creating much-needed jobs, stimulating the economy, raising the standard of living for American families, and reducing the deficit.

I believe that the only way we can continue to develop these beneficial agreements is through the well-proven tool of fast track. Fast track ensures certain and expeditious consideration of trade legislation. At the same time, it gives Congress a strong role to play in negotiating trade agreements. In addition, fast track gives our trade negotiators and our trading partners confidence that the United States is earnest in negotiating a trade agreement.

This does not mean that we should not consider carefully the manner in which we craft fast track authority. Even as important as fast track is, it is just as important to make it as narrow and tailored as possible so as not to unnecessarily intrude on normal legislative procedures. Fast track is an exception to the rule that we permit only because we recognize the compelling need to consider quickly and efficiently legislation to implement trade agreements. The exception should not be so broad as to follow the rule.

The reason for limiting fast track to trade issues only is historically and constitutionally based. The President and the Congress both have important powers with respect to trade and foreign affairs issues. Therefore, trade agreements, in a sense, do not readily fit the legislative model that we use to consider other types of legislation. That is why we have developed fast track, to assure that our trade relations with other countries are handled expeditiously and

efficiently with the involvement of the executive and legislative branches.

There have been serious questions raised about the relationship between worker rights, environmental issues, and trade agreements. As important as these issues are, no consensus has been reached, either domestically or internationally, on the linkage of these issues to trade agreements.

In my view, it is inappropriate to include these issues within fast track. My reasons are simple: If we consider these issues under fast track, we usurp a vast range of congressional authority and prerogatives to make laws in these areas. In addition, the overall benefits of trade agreements serve to improve labor and environmental conditions.

Our leadership in the House is committed to passing a clean, narrow fast track bill designed to streamline and expedite the process of negotiating, concluding, and implementing trade agreements. Speaker Gingrich today stated that he supports fast track because it will create more good jobs and reduce the deficit.

I look forward to hearing from our witnesses today and in working with the administration to develop a fast track limited to trade issues only.

Now, I would like to yield to my distinguished colleague from the Rules Committee, Mr. Dreier, to make an opening statement.

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

Let me join in welcoming our five panels of witnesses we will be hearing this morning.

I would also like to associate myself with your statement of strong support for fast track and for promoting a more open and fair international trade regime. Namely, they contribute to a stronger and more vibrant U.S. economy, raise the standard of living for American families, and help create private sector jobs right here at home.

I note, as we begin these joint hearings, that it is a real step forward for this institution that on a matter of joint jurisdiction between committees such as the fast track statute, that we have cooperation rather than turf battles, which is what we have often witnessed in the past. I think the process and the eventual product will benefit.

The fast track procedures for trade agreements were developed in 1974 and have largely remained in their original form. We will be joined by a panel of witnesses at our hearing next Wednesday to discuss some of that history.

However, I would note that times have changed procedurally since 1974, especially due to the PAY–GO budget rules instituted in 1990. I think the effect of PAY–GO has been profound and very detrimental to fast track because completely nontrade provisions have been added to unamendable bills considered in an expedited fashion solely to meet budget requirements.

I am interested in finding a way to modify fast track to implement trade agreements while maintaining as open a process as possible for nontrade funding provisions.

Again, I want to express my appreciation to Chairman Crane and will say that, on behalf of the Rules Committee, I anxiously look forward to working very closely with all of the members of the subcommittees and full committees to bring about what we hope will be a very strong fast track agreement.

[The prepared statement follows:]

DAVID DREIER, California
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**Subcommittee on Rules and Organization of the House**

**Committee on Rules**
**U.S. House of Representatives**
**Washington, DC 20515–6270**

# Opening Statement of The Hon. David Dreier Chairman, Subcommittee on Rules and Organization of the House

## Hearing on Fast Track May 17, 1995

Good morning and welcome to the members of the Subcommittee on Trade and the Subcommittee on Rules and Organization of the House, our distinguished witnesses, especially the United States Trade Representative, Ambassador Mickey Kantor, and the members of the public attending our hearing today.

These public hearings are intended to provide the two subcommittees with an opportunity to address issues relating to fast track procedures and rules, trade goals, negotiating objectives, and conditions associated with an extension of fast track authority.

Congress has recognized for decades the critical role the President must play to further a top national economic priority -- promoting an open and fair trade regime. This clearly contributes to a stronger and more vibrant U.S. economy.

U.S. exports have more than doubled over the last ten years. We are the world's top exporter. Exports directly account for one-in-ten U.S. jobs. Nearly a quarter of our economy is tied to international commerce. Reducing our import barriers have made our economy more efficient. Free trade also benefits middle income families by cutting taxes, increasing buying power, and raising living standards. I would note that fully implementing the GATT Uruguay Round promises the equivalent of a $500 tax cut for every American family.

Despite the overwhelming benefits of lower trade barriers, some have questioned the merits of the fast track process. Fast track has been called secretive, hasty, and even unconstitutional. I disagree with this view. I hope this hearing will help in fostering greater understanding of the history and purpose of fast track.

I would point out that fast track is only the most recent congressional-executive agreement to lower trade barriers. As early as 1890, Congress delegated tariff bargaining authority to the President. In 1934, following the economic disaster caused by Smoot-Hawley protectionism, Congress authorized the President to proclaim U.S. tariff reductions as part of trade agreements. This ability to reduce tariff barriers helped fuel this country's economy in the post-war era, creating economic growth in free-market democracies around the world.

By the early 1970's, tariff reductions were no longer the singular goal of U.S. trade policy. In 1974, Congress developed the fast track procedures to provide the President with credibility in negotiations to eliminate non-tariff trade barriers. Fast track ensures that Congress carries out its constitutional responsibilities regarding legislative implementation of those agreements.

Promoting free trade has been a successful national policy for 60 years. Fast track has contributed to that success for two decades. While the goal of improving the lives of American families by fostering greater international commerce has not changed, fast track can be fine-tuned to maximize its positive impact on the process.

Fast track procedures must foster ongoing and substantive consultations between the Executive Branch and the Congress in order to maintain its viability as a bond between the two branches with a role in international commercial policy. Fast track must be focussed on matters directly related to trade in order to avoid a critical procedural tool being undermined through overly broad application. Finally, the fast track process must be updated to account for changes in other congressional procedures, such as the "Pay Go" budget rules instituted in 1990.

I look forward to hearing from our witnesses today on how to improve the fast track process. I also welcome the opportunity to work with you, Ambassador Kantor, to send to the President trade negotiating authority in a timely manner so that we can build on the impressive trade accomplishments of the past two years.

Chairman CRANE. I thank the gentleman for his statement and would like to yield now to our distinguished ranking minority member, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman, and chairman of this joint subcommittee.

I welcome this opportunity to get together as we start the consideration of the central issue of U.S. trade policy; namely, the nature and the terms of authority which the Congress delegates to the President for future trade agreements and the role of the executive and the Congress in their approval and implementation.

This so-called fast track authority for trade agreements has been successful in the past for approving the most important and comprehensive multilateral and free trade agreements in our history for two reasons.

First, there was always bipartisan cooperation and broad support in the Congress with Democratic and Republican administrations, as well as a general consensus within the private sector, on the needs and the objective for trade negotiations and on the procedures that would apply for their approval.

Second, Congress and the private sector were consulted and advised throughout the negotiation, and congressional committees of jurisdiction drafted the implementing legislation in consultation with the administration in an informal process which ensured that congressional constitutional prerogatives were still preserved.

The principles of broad bipartisan consensus and the executive-congressional partnership continue to be essential to successful trade negotiation and support for implementing the results. There are a number of important issues which need to be considered in formulating a trade agreement authority that will address the ever-evolving issues from a global economy.

I believe we must maintain an open mind and not rule out in advance any particular trade related objectives or issues, including labor and environmental standards, which some Members believe should be addressed in the trade agreement context.

On a very personal note, I believe that foreign cooperation in our efforts to stop illegal narcotic trade is also a very appropriate issue to raise in the trade negotiation context.

But, finally, we need to fully consider these important matters and proceed in a deliberate nonpartisan way if we are to deliver a successful legislative approach that has broad support. I look forward to working with my colleagues on both sides of the aisle toward this end.

Thank you, Mr. Chairman.

[The prepared statement follows:]

**OPENING STATEMENT OF**
**CONGRESSMAN CHARLES B. RANGEL**
**JOINT SUBCOMMITTEE HEARING ON**
**FAST TRACK AUTHORITY**
May 11, 1995

I welcome these joint hearings to begin the consideration of a central issue of U.S. trade policy, namely the nature and terms of authority which the Congress delegates to the President for future trade agreements and the role of the Executive and the Congress in their approval and implementation.

So-called "fast track" authority for trade agreement implementation has been successful in the past for approving the most important and comprehensive multilateral and free trade agreements in our history for two main reasons: First, there was bipartisan cooperation and broad support in the Congress and with Democrat and Republican Administrations, as well as general consensus within the private sector, on the need and objectives for trade negotiations and on the procedures that would apply for their approval. Second, Congress and the private sector were consulted and advised throughout the negotiations and Congressional committees of jurisdiction drafted the implementing legislation in consultation with the Administration in an informal process which ensured that Congressional constitutional prerogatives were preserved.

The principles of broad bipartisan consensus and Executive-Congressional partnership continue to be essential to successful trade negotiations and support for implementing the results. There are a number of important issues which need to be considered in formulating a trade agreement authority that will address the ever-evolving issues from a global economy. I believe we must maintain an open mind and not rule out in advance any particular trade-related objectives or issues, including labor and environmental standards, which some Members believe should be addressed in the trade agreement context. On a personal note, I believe that foreign cooperation in our efforts to stop illegal narcotics trade is also an appropriate issue to raise in the trade negotiation context. Finally, we need to fully consider these important matters and proceed in a deliberate manner if we are to develop a successful legislative approach that has broad bipartisan support.

I look forward to working with my colleagues on both sides of the aisle toward this end.

Chairman CRANE. Thank you, Mr. Rangel.

Now I would like to yield to Mr. Beilenson, the ranking minority member on the Subcommittee on Rules and Organization of the House, the Rules Committee.

Mr. BEILENSON. Thank you, Mr. Chairman.

Because we do have so many excellent witnesses to hear from today, I will forgo making a statement, if that is all right with the Members. My opening statement is submitted for the record, if I may, Mr. Chairman.

Chairman CRANE. It shall be.

Mr. BEILENSON. I say only at the outset that I, too, have been and continue to be a strong supporter of fast track. I agree with my friend, Mr. Dreier's comments about PAY–GO and the problems that, unnecessarily, we believe, it causes us with respect to fast track.

I must say I also strongly agree with my friend, Mr. Rangel, with respect to environmental standards and matters regarding labor, too, and hope that we can discuss those in the hours ahead.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

OPENING STATEMENT OF CONGRESSMAN ANTHONY C. BEILENSON
JOINT HEARING OF THE SUBCOMMITTEE ON TRADE
AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
HEARING ON FAST-TRACK TRADE AUTHORITY
May 11, 1995

I appreciate having the opportunity to join with our colleagues on the Subcommittee on Trade to begin considering the issues involved in the renewal of fast-track trade agreement authority.

Since 1974, this authority has been an essential feature of U.S. trade policy. It provides the Executive and foreign countries with the assurance that the House of Representatives and the Senate will vote on implementing legislation for a trade agreement within a specific time frame, and without amendment. At the same time, it guarantees that Congress will have an advisory role during negotiations on the content of agreements and in the development of the implementing bill.

Without fast-track trade authority, it is highly unlikely that the United States would have been as successful as it has been in recent years in negotiating more open trade arrangements with other nations--arrangements that are providing new markets for U.S. goods and promoting economic growth both here at home and abroad. If we fail to renew this authority, we face the real likelihood that the progress we have been making through the expansion of trade opportunities will come to a halt.

It is essential that we renew this authority but, in doing so, we must also seek to include environmental and labor issues as negotiating objectives in that authority, since both are inextricably linked to our trade interests. We cannot responsibly negotiate rules for the flow of goods and services across borders without considering the ecological consequences or the effects on workers that will result from those rules.

I am looking forward to hearing from our distinguished witnesses, from whom we are seeking guidance in shaping the new fast-track trade authority legislation our committees will be developing in the coming weeks. I join in welcoming them and thanking them for taking the time to be here today.

Chairman CRANE. Today, we will hear from a number of distinguished witnesses, and in the interest of time, I ask that you keep your oral testimony to 5 minutes. Of course, we are happy to include any longer written statements for the record.

On our first panel are two of our distinguished colleagues from the House, the Honorable Jim Kolbe and the Honorable Bill Richardson, if you two gentlemen will take to the dais. We will commence with Mr. Richardson first.

## STATEMENT OF HON. BILL RICHARDSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. RICHARDSON. Mr. Chairman, thank you very much for holding this very timely hearing, and to all the members of the subcommittees, especially Mr. Rangel in his new role as ranking member of this subcommittee.

Mr. Chairman, I have eight quick points to make as you consider fast track authority. No. 1, it is important to keep the momentum going for the United States engaged in trade negotiations. This hearing is very timely. It is important that you move fast on whatever decision you make on fast track authority. I believe the peso crisis has subsided. That, obviously, had dimmed a lot of the luster for quick movement on any arrangement in Latin America, any arrangement related to trade. I think your timing is good and I urge you to move to keep the momentum, to send a signal to the world that the United States is engaged, is international, and is not in a period of retrenchment, as some have suggested.

No. 2, I think it is important that we keep trade issues bipartisan. I think we have. NAFTA and GATT, General Agreement on Tariffs and Trade, passed with strong bipartisan support. It is important to recognize that this is key to getting any agreement or any fast track authority passed.

Mr. Chairman, I think we should also bear in mind that this administration has done a good job on trade. They have negotiated agreements. They have negotiated serious concerns of the American people, like in NAFTA, the side agreements on trade, the environment, and worker rights. I think they are doing a good job with Japan right now. I would hope that we do not have a trade war, and I would hope that we end up without a damaging situation where the U.S. bilateral relationship with Japan, which is very important, is damaged. But I think they are moving in the right direction, and as you consider fast track authority, I think this administration deserves some flexibility, but not a blank check.

No. 3, Mr. Chairman, I think these subcommittees should increase their oversight of the side agreements on NAFTA, including environmental provisions, worker rights, NAD, North American Development Bank, and on some of the other issues that were negotiated separately from the treaty. I have a sense that they are not going as well as they should, that some of these entities that involve oversight of environment and worker rights and many other issues are not getting the proper funding and oversight, and I would urge you to do that. Despite these challenges, I think these side agreements are a model to what you might consider doing in the days ahead with fast track.

No. 4, I think it is critically important that you address Chile. Chile has been waiting now for 4 years without any agreement. They have been promised negotiations. I know this is going on. But I think to renew fast track authority without a special cognizance of this country, which is key in the Southern cone, which is a friend, which has a market economy, and yet has been deferred by two bipartisan administrations, is a mistake.

In the same vein, as part of the NAFTA commitment, I urge you to deal quickly with Caribbean parity. I think that is part of a NAFTA promise that we need to fulfill.

Mr. Chairman, also, let us not forget the impetus that the Summit of the Americas had on trade, on the American presence in South America. If we delay, if we hold back, all of those promises made at the Miami summit will not be taken seriously, so I hope we move ahead very soon. There is movement in free trade going on everywhere in our hemisphere, including MERCOSUR countries which we should encourage.

Mr. Chairman, worker rights and environmental concerns are important. I think that you should report language that gives the administration flexibility to deal with these concerns. I do not believe that they have to be part of the fast track law, but the precedents set by the side agreements on NAFTA are the way we should go in any future agreement.

You might consider putting language in the legislation that the United States, not just in bilateral agreements but at the WTO, World Trade Organization, and other international forums, to signal that we consider these issues extremely important. They will be included with Chile. Perhaps the only concern I would have with Chile now is that they need to be further along on an environmental infrastructure to enforce their laws.

Mr. Chairman, my final point is that it is critically important that Congress have a role. We should not give the administration a blank check; we should give them flexibility. We represent the people, and I think it is important that it be a joint effort, a partnership. This has not entirely been the case in the past.

But I do think that we need to move soon. I think to not move on a swift basis is going to send a negative signal to the international trade community. I do think that it is important that we move with Chile. It would be very damaging to the hemispheric and bilateral relationship if we do not.

We should urge the administration to work in partnership with us. I am a little distressed that they do not appear yet to have a strategy for fast track. They should. It is important to do this on a bipartisan basis. I remain encouraged.

Let me close, again, Mr. Chairman, by thanking you for this effort and commending everyone on this panel for the excellent role they have had on trade on a bipartisan basis. I am not going to name everybody, but they obviously know. But to both of you members of the majority that have moved aggressively on this front, I commend you. I urge you to keep the momentum going and move very soon.

Chairman CRANE. Thank you, Mr. Richardson.

Mr. Kolbe.

## STATEMENT OF HON. JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you very much, Mr. Chairman, and I will echo much of what my colleague said, though we will differ somewhat on some issues.

I have a fuller statement, which I have submitted for the record. I will make my remarks brief.

I also want to commend both of you for holding this historic meeting. To have this joint session of the two subcommittees on this subject certainly bodes well for the prospects of getting this kind of legislation through, to be working cooperatively rather than sometimes at cross purposes.

I think it is important for the Congress to promptly grant the President fast track negotiating authority. Our immediate goal is to enable Chile to gain quick accession to NAFTA and to take the next step toward the development of a hemispheric fast track community. That is the promise of the hemispheric historic Summit of the Americas meeting in Miami last December.

Let me first say a word about trade as a goal, a bit about Chile and South America, and then about the issue of other objectives in trade negotiations.

Increased trade is imperative if we are going to improve the American standard of living and create high-wage jobs. Our economy is increasingly reliant on the world economy as a source of economic growth, of job creation and rising national income. In fact, in the last 5 years, U.S. export growth has accounted for 50 percent of total U.S. economic growth. The United States is the largest exporter in the world, $512 billion in U.S. exports last year. In fact, one-third of our GDP now depends entirely on our ability to do business with other nations. We can ill afford to ignore the increasing importance of trade to our economic future.

Now, a word about Latin America and Chile. Failing to proceed with Chile's membership in NAFTA in a timely fashion would, I think, be unfortunate for Chile. It has so long been qualified for partnership in a free trading relationship with the United States. Moreover, because of the commitments that we have made to Chile, failure to move ahead would damage our credibility in the hemisphere and deal, certainly, a very sharp setback to prospects for meeting the timetable of hemispheric free trade that was contemplated by the Miami summit.

Such a result would be, I think, disastrous, economically as well as politically. If the dream of hemispheric free trade evaporates, the United States risks losing much of the market that is open to us in Latin America. Countries in Latin America are already forming overlapping regional alliances. Trade within these groups has grown at a staggering rate. Latin American exports to other destinations in the region have increased nearly 100 percent in real terms since 1982.

As might be expected, the relative importance of the U.S. market to Latin America has declined slightly, given the growth rate of both global as well as regional trade. If we do not pursue the hemispheric free trade in a timely fashion, we could find that by the time we do act, Chile and other Latin American countries may

have little desire or little need to feel they should negotiate with the United States.

Importantly, Chile's membership in NAFTA would also be a very visible acknowledgement of the dramatic way it has restructured both its economy and its political system by entrenching democracy. In the early eighties, the midpoint of the Pinochet era, Chile was hit by a 90-percent devaluation of the currency over 12 months, a collapse in international copper prices, and the failure of its domestic banking system. Chile went through an economic recession, more intense in relative terms than our own Great Depression.

Chile responded by decisively overhauling its economy, sweeping deregulations and tax cuts, tax simplifications that ease market entry for thousands of small and midsize firms, the process that rapidly broadened Chile's economic pace. A low uniform tariff was introduced. No industry—no industry—was kept under a strategic umbrella, deserving of special protection from international competition. Economic liberty led, as it always will, to demands for political reform. Political opposition to General Pinochet was energized and eventually overturned his rule at the ballot box.

Over the past decade, Chile's gross domestic product has grown by an average of 6 percent a year, and in the most recent 3 years, posted an average annual growth rate of 7.1 percent. During this period, it achieved an annual savings rate of 25 percent, far above all OECD, Organization for Economic Cooperation and Development, countries. Chile, of course, has privatized its Social Security system. As a result, the assets of Chile's private pension plans are equivalent to 50 percent of the country's annual GDP, a fiscal result certainly preferable to the precarious condition of our own Social Security system.

We ought to give some thought to rewarding Chile for these economic and political reforms, and membership in NAFTA would be a highlight to all of Latin America for the discipline and the tough choices that Chile has made to get it where it is today.

Last, on the issue of environmental and labor objectives, granting fast track authority to a President requires shared commitment to certain trade goals between the President and Congress. Since 1974, there has been bipartisan support for the President of either party to have broad authority to negotiate international trade agreements.

However, given this administration's repeated statements that they want to include labor and environmental issues in trade negotiations, it is my view that the fast track authority should be written by these subcommittees in a way that is fairly narrow and precludes the possibility of actually having negotiations on these issues that are part of the trade negotiations.

Environmental protection and protection of labor rights are certainly important foreign and social policy objectives for this country, but they should be pursued in alternate negotiations. I do not believe they should be tied to trade. Just as it devalues trade to tie it to peripheral issues, it denigrates the importance of efforts to protect the global environment, to wrap them around tariff schedules.

The benefits of free trade are clear. Because of the strides we have made in opening markets around the world and opening our own market, American companies have more opportunities to sell their products and American consumers are better off. Free trade serves the crucial function of consolidating economic and political liberalization.

Chile is almost certainly going to continue on that course. However, other nations that aspire to free trade relationships with the United States may rest on less stable political foundations. Admitting Chile to NAFTA and then moving purposely to expand free trade to other countries in the hemisphere would make conditions increasingly more hospitable for political and economic liberalization. Passage of fast track negotiating authority is critical to continuing that process.

Thank you, Mr. Chairman, for the opportunity to testify.

[The prepared statement follows:]

**Testimony of the Honorable Jim Kolbe**
**Subcommittee on Trade of Committee on Ways and Means**
**Subcommittee on Rules and Organization of the House of Committee on Rules**
**May 11, 1994**

**Introduction**

Thank you very much for the opportunity to testify today. I want to commend Chairmen Crane and Dreier for their leadership on this very important piece of legislation.

I believe it is important for Congress to act promptly to grant the President fast track negotiating authority. Our immediate goal is to enable Chile to gain quick accession to the North American Free Trade Agreement (NAFTA) and take the next step toward development of a hemispheric free trade community. This was the clear mandate of the historic Summit of the Americas meeting in Miami last December. But we are not seeking this legislation simply to pursue a foreign policy objective, enhanced trading opportunities are critical to the economic future of our own country.

We must stay focused on our objective -- to promote trade. We must not allow our trade policy to become a vehicle for non-trade related foreign policy objectives, such as labor and the environment. This is a prescription for ill-will, mistrust, and failure. Protection of the environment and labor are certainly worthy and important foreign policy objectives. But, they should be pursued in separate negotiations, not tied directly to trade agreements. The history of such agreements -- from international labor Conventions stretching back over a half century to the more recent Montreal Protocol on CFCs -- bear out the validity of this approach.

Simply stated, trade is a goal to be valued in and of itself; to make it conditional on constantly changing political and cultural circumstances only devalues it.

**Importance of Enhanced Trading Opportunities**

Increased trade is imperative if we are going to improve the American standard of living and create high-wage jobs. Though we have never had a self-contained economy, there was a time when we were more self-reliant. Now, our economy is increasingly reliant on the world economy as a source of economic growth, job creation, and rising national income. In fact, in the last five years, U.S. export growth has accounted for about 50 percent of total U.S. economic growth. The United States is the largest exporter in the world, with nearly $512 billion in U.S. exports last year. In 1970, the value of all trade -- both goods, services, and investment earnings and payments abroad -- amounted to 14 percent of our Gross Domestic Product (GDP); by 1994, that figure had doubled to 28 percent of GDP. Moreover, the U.S. Trade Representative's office has estimated that trade will continue to grow in importance and account for 36 percent of

GDP by 2010. That means that, in 15 years, more than one-third of our standard of living will depend entirely on our ability to do business with other nations. We can ill afford to ignore the increasing importance of trade to our economic future.

**Importance of Latin America**

Let me speak briefly about Latin America and Chile. Failing to proceed with Chile's membership in a timely fashion would be unfortunate for the country that has long been qualified for partnership in a free trading relationship with the United States. Moreover, because of past commitments we have made to Chile, failure to move ahead would damage U.S. credibility and leadership in the hemisphere and deal a sharp setback to prospects for the hemispheric free trade contemplated by the Miami Summit.

Such a result could be economically disastrous. If the dream of hemispheric free trade evaporates, the U.S. risks losing as much as Latin America. Countries in Latin America already are forming overlapping regional alliances. Trade within these groups has grown at a staggering rate. Latin American exports to other destinations in the region have increased nearly 100 percent in real terms since 1982. As might be expected, the relative importance of the U.S. market to Latin America has declined slightly given the growth rate of both global and regional trade. If we do not pursue hemispheric free trade in a timely way, we could find that by the time we do act, Chile and other Latin American countries may have little desire, or need, to negotiate with the United States.

**Chile**

Importantly, Chile's membership in NAFTA would also be a very visible acknowledgement of the dramatic way it has restructured its economy and entrenched democracy. We should reward such changes.

In the early 1980s -- the midpoint of the Pinochet era -- Chile was hit by a 90% devaluation of the currency over 12 months, a collapse in international copper prices, and the failure of the domestic banking system. Chile went through an economic recession more intense in relative terms than our own Great Depression.

Chile responded by decisively overhauling its economy. Sweeping deregulations and tax cuts and tax simplifications eased market entry for thousands of small and mid-sized firms, a process that rapidly broadened Chile's economic base. A low, uniform tariff was introduced. No industry was kept under a "strategic" umbrella, deserving of special protection from international competition. Economic liberty led, as it always will, to demands for political reform. The political opposition to General Pinochet was energized and eventually overturned his rule at the ballot box.

Over the past decade, Chile's gross domestic product has grown by an

average of six percent a year, and in the most recent three years, posted an average annual growth rate of 7.1%. During this period, it achieved an annual savings rate of 25% -- a rate far above most OECD countries Chile has even privatized its social security system. As a result, the assets of Chile's private pension plans are equivalent to 50 percent of the country's annual GDP of slightly more than $40 billion -- a fiscal result certainly preferable to the precarious condition of our own Social Security system.

I think we should reward Chile for its economic and political reforms. Chile's membership in NAFTA would highlight for all of Latin America the discipline and tough choices that have been required to put Chile where it is today.

**Regarding NAFTA and Mexico's Recent Problems**

A word of caution. NAFTA's opponents will use the Chile debate to fight the NAFTA war all over again. They will cite Mexico's devalued peso, a costly assistance package, and a worsening U.S. trade balance. Well, the fact is, the financial near-meltdown in Mexico had nothing to do with NAFTA; the benefits of free trade with that country remain as important as ever. Indeed, one could argue they are more important today than before.

Mexico's financial crisis was caused by an overdependence on foreign capital and protracted overvaluation of the peso. When a bungled devaluation caused investors to flee and the peso began to free fall, the government needed outside assistance to prevent a default. Far from worsening the crisis, NAFTA prevented Mexico from resorting to the standard solution of developing countries in crisis: imposing import barriers, restricting capital movements, and limiting economic activity. Instead, Mexico has adopted an austerity program that, while reducing short-term living standards in Mexico, avoids the catastrophic long-term economic consequences of closing its economy to international competition. The recent example of Mexico, if anything, makes the case for institutionalizing hemispheric free trade.

Now, Mexico's economy is showing some early, hopeful signs of improvement. The peso has risen from a low of nearly eight to the dollar to just under six, suggesting that inflation will not deepen. By cutting domestic demand so drastically, Mexico has cleared a path for a more stable economy and a return to growth in 1996. One obvious implication of this projected growth is that this year's likely trade deficit with Mexico of $12-15 billion is unlikely to persist and that our exporters will again enjoy the opportunities which we sought from NAFTA.

To repeat: to use Mexico's woes as an argument against free trade, and in particular, free trade with Chile, is simply wrong and irresponsible.

**Use of Trade Policy to Achieve Environmental and Labor Objectives**

Granting fast track authority to a president requires shared commitment to

certain trade goals between the president and Congress. Since 1974, there has been bipartisan support for the president of either party to have broad authority to negotiate international trade agreements. However, given this Administration's repeated statements that they want to include labor and environment issues in subsequent trade negotiations, I believe fast track authority should be narrowly written to explicitly preclude this possibility.

As I said at the outset of my testimony, environmental and labor protection may be important foreign policy objectives but they should be pursued in alternate negotiations, not tied to trade. Just as it devalues trade to tie it to peripheral issues, it denigrates the importance of efforts to protect the global environment to wrap them around tariff schedules.

**Conclusion**

The benefits of free trade lie in the increased opportunities to seek markets for goods and services, and in improved economic efficiency. Because of the strides we have made in opening new markets around the world and in opening our own market, American companies have more opportunities around the world to sell their products and they are becoming increasingly more competitive. American consumers are also better off. Enhanced trade translates into higher national income, higher real wages for American workers, and lower prices for American consumers.

Finally, free trade serves a crucial function of consolidating economic and political liberalization. Chile will almost certainly continue on that course. However, other nations that aspire to free trade relationships with the United States may rest on less stable political foundations. Admitting Chile and then moving purposefully to expand free trade to other countries in the hemisphere would make conditions increasingly more hospitable for political and economic liberalization. Simply stated, prompt passage of fast track negotiating authority is critical to continuing that process.

Thank you again for the opportunity to testify today.

Chairman CRANE. Thank you for your testimony.

Now we will proceed with questions, starting with Mr. Dreier.

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

Thank you, gentlemen, for your very fine testimony. I appreciate the opportunity to continue to work with you on trade issues, as we have in the past, on the NAFTA and China, the Uruguay round, and a wide range of other issues.

Let me step beyond Chile for a moment and ask you about the timeframe that you would envisage for other countries in Latin America to become part of the NAFTA, for either of you to comment on. Bill.

Mr. RICHARDSON. I would say that, this year, this calendar year, I would hope that negotiations are completed on Chile and on NAFTA, and that we can vote on the agreement perhaps early next year. I think that is possible. I think the Chile negotiations can be wrapped up rather quickly. I do not see many areas of difference.

Caribbean parity may be something that is determined more by the schedule of the Congress, because of the overload we have here. I think we need to do those, too.

Then, I would say that over the next 5 years, the administration should have enough flexibility to start other agreements. In the Southern cone, Argentina, Uruguay, and Brazil are now taking some constructive stances, even though last year they did not appear to be very helpful. There is recognition that Latin American countries are moving on their own, also.

I would say that the Central American countries, as a block, might be considered next. I also think consideration should be given to a bilateral agreement with Argentina.

I think to get into a situation where you are picking and choosing and rewarding rather than allowing the hemispheric leaders to come to a conclusion is not the way to go. What I think we need to do is encourage the leaders of the hemisphere to adopt a strategic plan. While they have not done that, I think many of them are waiting for us to get our fast track movement settled here.

But I just think, Mr. Dreier, that it is best that we move soon. Otherwise, this impetus, this opportunity that we have, is going to be lost.

Let me just close by saying there is talk that we will have free trade agreements in the future, possibly with Europe. Now, because of agricultural subsidies and other problems, this looks like it is not feasible at this very moment. I remember when Jim Kolbe and I and others talked about NAFTA 5 years ago and people would laugh at us, but it is possible, too, that we may move into free trade arrangements with Europe.

My point is that we should give some flexibility, but I guess where I would only disagree with my colleague is that I think worker and environmental rights should be part of some kind of signal that you send to the negotiators. Whether it is in the body of the law or not, they should be encouraged to pursue side agreements on these issues.

Chairman DREIER. The only reason that I pursued this timeframe issue is that there is a sense with MERCOSUR and other potential arrangements made in South America, that we conceivably could see some competition that would exist between North

and South America on that route, and that is why I was just wondering about that.

Mr. RICHARDSON. Mr. Dreier, if I might respond, I think it is probably a little bit premature to pick out the exact timetable. The foreign ministers and trade ministers will be gathering in Denver in June of this year to try to do the next step after the Miami summit, which is to lay out the specific game plan of timetables as to how we are going to proceed, and I think we need to wait for that meeting to take place.

But, certainly, looking down the road to the other MERCOSUR countries is probably the next likely area that we would be wanting to focus on.

Chairman DREIER. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. It seems to be one of the areas that we are going after as to what authority in the area of environmental and labor cases will be included in the fast track. The chairman has just shared with me that he has no objection to these issues if they are directly related to trade, and, of course, I added in my opening statement narcotic trafficking, because notwithstanding the diplomatic resistance to this, I do not see how you can expand trade without thinking that the traffickers are going to take advantage of the increase in commercial trafficking for their own ends.

Jim Kolbe, at what point do you think that labor issues and environmental issues are directly related to a trade agreement, if at all?

Mr. KOLBE. I think your question is certainly a fair one, and it is true that if a provision is being used, either a labor provision or an environmental provision in the law is being used as a direct impediment to trade, in other words, if it is being erected as a barrier by a country, then that is an issue that needs to be addressed.

But I think it is inappropriate to try to take the larger, broader environmental standards or labor standards, and as you know, Mr. Rangel, the United States does not adhere to nearly as many of the ILO, international labor organization, conventions because of our own Federal system, we do not adhere to many of the ILO conventions that other countries do adhere to, and there is a logical reason, as I said, for that, because of our Federal system.

So I think it is just inappropriate for us to say that trade has to be tied to a certain degree, a certain passage, or a certain level of performance in protection of child legislation——

Mr. RANGEL. Let us take it all off the table and just suggest to me——

Mr. KOLBE. I am sorry?

Mr. RANGEL. Let us take it off the table, it is not relevant, but then suggest to me, where could it possibly be directly related to trade agreements?

Mr. KOLBE. Again, I would just put it in the more general terms, Mr. Rangel, and that is if a country enacts either an environmental or a labor standard as a direct barrier to closing their market, as a direct means of closing their market, a direct barrier to trade, that is appropriate for us to address in a trade negotiation.

Mr. RANGEL. The question of narcotic trafficking, as we increase trade with a country, should that ever be on the table?

Mr. KOLBE. I think narcotic trafficking should always be on the table. However, I am not sure in the context of inside of a trade agreement that it makes any sense.

Mr. RANGEL. I am talking about the people who are drafting a trade agreement. Of course, it should always be on the table. We are talking about fast track in a trade agreement.

Mr. KOLBE. I am not sure I can envision how a specific narcotic arrangement or provision on drug trafficking would be a part of a trade agreement.

Mr. RANGEL. Mr. Richardson.

Mr. RICHARDSON. Mr. Chairman, I think there could be instructions that at a time that we are negotiating a simultaneous trade agreement, a fast track authority, that we have parallel negotiations on narcotics. I think your work in this area is recognized. Having seen what happened in Mexico, we probably should have dealt with the narcotics issue a little stronger than we did.

My point is that I think this administration has been adept enough in dealing with these issues in side agreements. Now, these were side agreements to the treaty. That is how we voted on it. I think this can be done in the future.

The World Trade Organization, by the way, does have a strong link between trade and the environment. They have an entity that is supposed to, for all nations, deal with linkages between trade and the environment.

But I think you can do it on a parallel basis. That is my answer.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Hancock.

Mr. HANCOCK. No questions.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. No questions.

Chairman CRANE. Mr. Beilenson.

Mr. BEILENSON. No questions.

Chairman CRANE. Mr. Zimmer.

[No response.]

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

Gentlemen, I had hoped to have a chance to ask Mr. Gephardt these questions, and I would hope that, at some point, Mr. Chairman, we would have a chance to talk directly with representatives of the administration about their views.

But I would, gentlemen, like to address a question to you. If you would give me your point of view, it would be very helpful. During the NAFTA debate, the administration dismissed suggestions that the environmental side agreements and the supernational bureaucracy established to enforce it might impinge on U.S. sovereignty. This is an issue I run into a lot at home.

The recent threat by a coalition of environmental groups to bring suit against the United States if the President fails to veto certain rescissions in the environmental spending area appears to confirm the worst fears regarding the extent to which these agreements could be used to thwart U.S. domestic political processes. At the

same time, another environmental coalition is seeking a review of U.S. logging practices by the North American Commission for Environmental Cooperation.

In light of these two developments, what is your sense about a more detailed answer to the questions that have been raised regarding U.S. sovereignty, and do you have any sense about what the administration's plans are to ensure that the agreements cannot be used in any way to undermine the sovereignty of the United States?

Mr. KOLBE. I would have to defer to the administration to answer the part of the question as to what they intend to do about it. You have absolutely highlighted the danger. That is true of any agreement that you have, that a country or a group can use it if they choose, or they can try to use it as a tool to try to change the policy here in the United States or to undermine the agreement. It is my view that those kinds of attacks on U.S. labor or environmental laws should go nowhere because of what I would regard as some spurious attempts to undermine it.

It is true, also, you mentioned, too, in the environmental area, and it has also been true in the labor area, where labor unions have filed claims against U.S. companies doing business in Mexico for violation of labor laws when, of course, they are complying fully with Mexican labor laws. It is up to Mexico to decide whether they are or not, not up to a NAFTA panel group to make that decision.

There is going to be some testing of the waters initially, and I think that is what we are seeing. I would hope that these would get taken care of very quickly and not become a serious impediment to NAFTA implementation.

Mr. RICHARDSON. Ms. Dunn, I would think the sovereignty issue is manageable, although, as we all know, in the World Trade Organization, that became an issue as we debated GATT. I think we strongly can retain our sovereignty. I think we have enough people in the administration that can ensure that.

But I think the positive side is that you do have labor unions and environmental groups wanting to enforce what was agreed upon. But I have to be honest with you. On these environmental side agreements, I hope we are doing a good job, but I am not sure what we are doing. We have offices in Canada, Mexico, and the United States to enforce the environment. We have this North American Development Bank. My understanding is that they are underfunded, they have not started yet. I do not know what all these commissions are doing. I just hope that they are doing their job of respecting the environmental views, and others, like yourself, that want to make sure we are doing the right thing.

While I am not saying these lawsuits necessarily are all healthy, proper oversight needs to take place on these agreements that we have reached.

Ms. DUNN. Thank you, gentlemen.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. I want to thank both witnesses for their testimony.

I would like to ask you, Jim, a couple of questions, and I think both of you have indicated you want bipartisan support of any fast

track extension, and I think everybody on both panels here would like to see that as well.

Obviously, the administration has the position, and I understand Ambassador Kantor will testify next week—he was not able to this week because of the Japan discussions and what is going on there. I think the key to getting a bipartisan agreement will be in the area of negotiating objections, obviously. Labor and environment hung it up last year and we were not able to attach it to the GATT legislation.

You believe it is wise, and I know your testimony indicated you support that, but to specifically prohibit the executive branch of government from negotiating labor and environment. Should it not be just kind of a clean bill, perhaps with negotiating objectives but not with specific mandates one way or the other? If you prohibit labor and the environment, then you can get into human rights, say we prohibit discussions on human rights, drug trafficking.

Should not that be conditioned upon the nature of the times, the proximity of the country? In Mexico, perhaps labor and environment were critical issues. Perhaps in Chile, Brazil, they would not be such critical issues because they are not contiguous with the United States. So do you think it should be perhaps a provision that has no conditions or no prohibitions, particularly, on the administration?

Mr. KOLBE. Mr. Chairman, I think by the very thrust of your question, Mr. Matsui, you have demonstrated why you are such a skillful legislator and negotiator, as you talk about the nuances and how we would finesse this issue. You are much more skillful than I am at that.

I think you are probably correct. There may be a way to do it that satisfies both sides, but I think there has to be an understanding on the administration's part that there will be on our side, and I really cannot speak for the Republican side, but I think that I probably capture the sentiment of most of the Republicans, and that is that an attempt to really tie those into an agreement would cause real problems for us, and, I think, sink the agreement from the outset.

So whether or not you write it in or whether there is a verbal understanding of this, I think we need to proceed on that basis.

I did not say earlier, but I do think that the fast track authority should be broad, geographically. It should be broad in terms of the issues, not just related to bilateral negotiations with Chile but also to deal with the unfinished things of the Uruguay round of GATT, such as investment, financial services, some loose ends to tie up on intellectual property rights. It should be of enough length of time to go beyond this term of this President, to go certainly more than 1 year of time, because some of these negotiations are going to take more time than that.

So I am for a very broad authority to the President. I just would like to keep it to trade negotiations.

Mr. MATSUI. I appreciate your comments, but if there is a skilled legislator in this room, it is you, Mr. Kolbe, and I want to congratulate you for all your efforts over the years, and particularly in the last couple of years. I appreciate it very much.

One thing that I know the subcommittees will not be able to deal with because of the politics, but do you feel that sometime in the future we are going to have to eventually look at fast track authority permanently for the executive branch, Democrat or Republican? It seems to me that it is almost weakening the Presidency internationally by having us come here every 3, 4 or 7 years and seek new authority. It seems like this should be part of the executive branch's authority——

Mr. KOLBE. I would certainly favor that. I mean, as long as you have the process where the negotiation has to take place simultaneously with whomever the countries you are negotiating or the groups you are negotiating with and Congress at the same time, so they are completely involved with it, I see no reason why we have to come back each time to get this approval to go on to one phase or one particular negotiation.

Yes, I would favor something, certainly, perhaps with a sunset to it, that every 5 years it must be renewed or something like that, but there has to be something that is a broader kind of authority.

Mr. MATSUI. Thank you. I thank both of you.

Chairman CRANE. Ms. Waldholtz.

Ms. WALDHOLTZ. Thank you, Mr. Chairman.

Gentlemen, I think it is very clear that we need to come up with some sort of mechanism to allow the United States to compete effectively in the world marketplace so that nations dealing with us know that the President has the authority to do what he is doing and that we will act promptly.

My concern is that the recent economic problems experienced by Mexico after signing NAFTA has eroded some of the public's confidence. Perhaps in the process, not simply in that particular agreement. It has raised concerns about whether we really know what we are doing as we enter into these agreements. Even the name "fast track" gives the public some concern that we are doing things in a way that, perhaps, does not reflect the care that they expect of the deliberative process.

Leaving aside the argument as to what happened in Mexico, I do not want to get into that at this point, are there some procedural safeguards that we can structure into fast track authority on which the public can rely in having confidence that this procedure, instead of being a quick procedure, as the name implies, actually gives the public confidence that we are doing the necessary review to know exactly what we are entering into at the time the Congress approves it?

Mr. RICHARDSON. Let me say that I think that is an excellent suggestion. I think you are absolutely right. There has been an erosion of public confidence in trade, the internationalist process, and the peso crisis was the reason for this. This is why, before you arrived, I commended the subcommittees for holding this hearing at this time, in effect, waiting for the peso issue to subside a bit. Although, I am not sure it is totally over; I hope so.

But I think we must move on, and what I would endorse is that the subcommittees include some of the language you just said, that reflects public input.

We do not have a bipartisan international support for trade. You try to build support for GATT and NAFTA in the country and peo-

ple yawn. It is not there. There is a nativist movement in this country that is going the other way. So I would think we need stronger public education, but at the same time, there is no reason why, in your legislation, you cannot say things like that and find ways to implement them.

I would also want the Congress to be involved. Jim and I agree on a lot of things, but giving the executive branch unlimited authority forever, I think, is not the answer. That totally cuts us out. I think some of the reflections that you have made need to be brought in, and the way we bring them in is by considering these agreements.

I would say a 5-year agreement might not be too long, but an unlimited agreement is the kind of blank check that I do not think we want to give any administration, because we, as representatives of the people, I do believe, have a say.

Mr. KOLBE. Your question is a superb one, and it really bears a lot of thinking about by the subcommittees.

But I do disagree with my colleague. The very nature of fast track does involve Congress, and I think that is what is misunderstood. First of all, you clearly understand that fast track means anything but fast. It can be very slow, indeed. We probably need to come up with a different name for it. It only implies that once the agreement is made, it is held together as a whole and voted on as an entity. As you understand, the reason for that is that nobody wants to negotiate if it gets picked apart in Congress. So when you are negotiating with another country, they have to know that what is finally done is going to be yes or no in the end by Congress.

The idea of bringing some additional public hearings, additional public input into it, I think, is very wise. We do have an education process, and I hope you ask the people who are behind us when they get up here about that, because I do not think we are doing enough to build grassroots support for trade. As I mentioned, one-third of our entire wealth of this country now depends on it, and it is growing. It is going to be 37, 38 percent after the turn of the century. I mean, an enormous part of our wealth depends on doing business with other countries. We need to continue to move forward in that area, not stand still.

So I do not really have the answer to your question, except that I do think the process does involve Congress. We are involved every step of the way. People just need to understand the perception is sometimes not accurate.

I wish I had time to answer the part about Mexico, go back to Mexico, but we will come back to that some other time.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. No questions, Mr. Chairman. I just want to pay tribute to the two gentlemen who are sitting out there. I think they are the finest example of two Members of Congress working together. They have worked together for a long time, long before NAFTA, on these trade matters. They have trained themselves and become experts in the technicalities of all of it and they have become wonderful, enthusiastic leaders. I salute them and wish we had more like you in Congress. Thank you.

Mr. KOLBE. Thank you.

Mr. RICHARDSON. Thank you.

Chairman CRANE. Mr. Neal.

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

I have a question for our two panelists. When you speak of perception and reality in trade talks, yesterday, Mr. Kantor, who has enjoyed pretty good bipartisan support in this House, he said yesterday in a meeting with the Trade Subcommittee that 25 percent of America's world trade deficit focuses directly on our relationship with the Japanese over autos and auto imports.

Let me ask you this. Do the American people have a legitimate gripe anywhere when we keep talking about the perception, and Mr. Kolbe states a fascinating statistic when he says one-third of our economy is now dependent upon international trade agreements. But do the American people not have a legitimate gripe somewhere along the lines when American goods cannot be sold in places like Japan and places like China?

We talk about how well-served we are by trade, and I acknowledge that Mr. Kolbe is correct, that expanding markets are good for our economy. But at the same time, it seems to me that there are an awful lot of people out there in the hinterlands and in middle America, in particular, that have some legitimate gripes about American trade practices.

I mean, we talk about human rights in China today, and the Chinese have demonstrated no more inclination to address those human rights concerns as they have to try to bring down the size of the deficit that they enjoy, or that we have with them.

My point is that I think sometimes when we talk about being in touch with mainstream America, the truth is that, overwhelmingly—the American people believe we have been ill-served by trade practices. Now, that may be a problem of perception catching up with reality, but I will tell you something. It is out there and it is strong.

When you hear statistics offered like the ones that Mr. Kantor offered yesterday, who is a man of great patience and an individual who, I think, has been largely successful, but there is a compelling truth today, and that is that when you go home and you try to talk about how important international trade is, there is a sense that we have been ill-served by the final product.

Mr. KOLBE. If I might just respond to that, you are correct. We, as elected Members of Congress, I think, have some responsibility to lead in this area. I think the perception is that we are ill-served, that the United States does not get a fair shake.

Let me make it clear that I do not believe that the United States is not without justification in complaining about the trade practices of other countries. I have never suggested that, and Japan is one very good example of that. I will be happy to send you some articles and speeches that I have given on this subject.

I have a difference over the prescription for solving the problem. I think we focus too narrowly on the numbers, the percentages, the access to particular market parts in Japan rather than the systematic deregulation of the Japanese economy that needs to take place. The fundamental problem in Japan is the lack of a direct foreign investment, 1 percent versus the OECD average of 16 percent. Our country is around that average, of 16 percent. There is less direct

foreign investment in Japan today than there was when they eliminated the law that prohibited foreign investment in 1970.

That is the fundamental problem that we have, and that is what we have to address in order to gain access to the Japanese market. It is a very systemic problem, and my frustration with the Japanese is no less than yours or Mr. Kantor's or anybody else. I don't really have the solution to it here, except that there are going to have to be some changes within Japan on that.

Mr. RICHARDSON. Mr. Neal, I will be brief. I support the administration's efforts and actions on Japan. I think they reflect the views of many bipartisan Members of Congress and the American people. I also would hope that our American automakers, if we do get into a trade war, show some restraint in the prices of American cars if we are totally trying to protect the American consumer, that is the victim in a trade war.

I just hope, though, that the administration, which has been very skillful in going to the brink and threatening, in many cases, China and others, can resolve this issue with Japan, because Japan is a very valuable ally. I think they have to recognize that they have to give on this issue and that we may have to give a little. I think it is the worst possible outcome if we get into a trade war. Everybody loses.

But I do think you are reflecting a lot of perception and reality on this subject. There is wide concern about market access that we have in Japan, but let us resolve this through the 301 tools. I hope we do not have to put forth some sanctions, but again, the administration, I think, has to be given credit for going to the brink with several countries and, at the last minute, at midnight, they resolve it. I hope this is what happens with Japan.

Chairman CRANE. I thank the gentlemen for their testimony and look forward to working with them both on a bipartisan basis toward our mutual objectives.

Mr. RICHARDSON. Thank you.

Mr. KOLBE. Thank you.

Chairman DREIER. Mr. Chairman.

Chairman CRANE. Yes?

Chairman DREIER. I would like to ask, it is now 11 o'clock, and as I look at the fact that we have scheduled four more panels ahead of us, if it would be appropriate, Mr. Chairman, if Mr. Bergsten and Ms. Stern could testify together, and then we have panels of four witnesses following that. Would that be appropriate, Mr. Chairman?

Chairman CRANE. I have no problem with that. Are there any concerns Members have?

[No response.]

Chairman CRANE. Then I would like to welcome Dr. Fred Bergsten, director, the Institute for International Economics, as one of our witnesses. Dr. Bergsten is the U.S. representative on and chairman of the Eminent Persons Group created by APEC, Asia-Pacific Economic Cooperation. He is also chairman of the Competitiveness Policy Council and he has served as Assistant Secretary of the Treasury for International Affairs under the Secretary of the Treasury for Monetary Affairs, and Assistant for International Economic Affairs to Dr. Henry Kissinger at the National

Security Council. He has authored 22 books on international economic issues.

Seated next to him is the Honorable Paula Stern, president, the Stern Group, Inc., and former chairwoman of the U.S. International Trade Commission. Dr. Stern is a member of the President's Advisory Committee for Trade Policy and Negotiations and the Advisory Committee of the U.S. and Foreign Commercial Service. She is a senior fellow at the Progressive Policy Institute.

We will proceed first with Dr. Bergsten.

## STATEMENT OF C. FRED BERGSTEN, PH.D., DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

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

I am mindful that you have a large agenda today, and I will try to go quickly through my prepared comments.

I start by suggesting that it is imperative that you renew fast track authority. Building on the major successes of recent trade policy that have already been referred to, the future opportunities for U.S. trade policy are immense. The United States can build on the free trade commitments that were made late last year to eliminate barriers in the Asia Pacific region through APEC, in the Western Hemisphere through the Miami summit commitments, and it can pursue unfinished negotiations in the Uruguay round using the new World Trade Organization.

I think all these agreements will promote the interests of the United States for a very simple reason. Although we in the United States have already eliminated most of our trade barriers, most of our trading partners still have very large barriers—particularly the big ones in the Asia Pacific region and in Latin America, those that are growing fastest. So if we can implement these free trade agreements fully, it will clearly help promote U.S. economic interest.

Picking up on the point Mr. Neal just made a moment ago, quite rightly, we have to continue pushing very hard to get rid of barriers, be it in Japan or elsewhere, to pursue our economic objectives. Renewed fast track authority is essential to enable the United States to do so.

Let me quickly tick off several recommendations for alterations in the earlier versions of fast track and try to go directly to some of the questions raised by Mr. Dreier, Mr. Matsui, Mr. Kolbe, and Mr. Richardson when they were here.

First, on the Matsui/Kolbe colloquy that Bill Richardson also chimed in on, I would suggest the following time sequencing for your fast track authority in the future. First, I believe, with Mr. Matsui, that fast track authority should be extended on a permanent basis. The reason is that the United States will need to be negotiating almost constantly with countries around the world, and any administration will be hamstrung in its ability to pursue U.S. economic and foreign policy interests without such authority.

Second, the Congress should be asked to explicitly authorize any major negotiation undertaken under the fast track authority. In other words, give the administration authority permanently but require it to come back to the Congress and get explicit approval to implement that authority in any major given case, such as the APEC, the Western Hemisphere, or a new round in the GATT.

The United States has already begun the effort to eliminate barriers in the Asia Pacific and the Americas. All these arrangements will have big effects on the economy. They, obviously, need to be approved by the Congress. If you put fast track in place permanently, as I suggest, then each approval for a specific negotiation should include its own termination date in order to provide an effective deadline for concluding the authorized initiative.

My third recommendation goes specifically to a point raised by Mr. Dreier. I believe that the new trade legislation should be exempted from the current pay-as-you-go budget rules. I yield to few Americans, as members of the subcommittees know, in my zeal to deal with the budget deficit. I supported the balanced budget amendment, which was not popular in all quarters. I support very strongly the efforts by the Senate and House Budget Committees, announced in the last couple of days, to finally get rid of our budget deficit. But I do not see any inconsistency between zealous support for budget prudence and exempting trade legislation from the PAY–GO rules. There are three reasons.

First of all, every analysis shows that trade liberalization strengthens our economy and strengthens the budget. My colleague, William Cline at the Institute, did a paper on that last year. I would be happy to share it with you.

Second, we know that requiring budget offsets in trade legislation fundamentally conflicts with the purpose of fast track. Fast track intends to assure America's trading partners that the trade deals negotiated in good faith will be considered promptly and on their merits without procedural impediments, but as we saw in both the NAFTA and Uruguay round experiences, that the PAY–GO requirements clearly create such impediments. So I believe any new trade legislation should take the occasion to break the linkage with the PAY–GO rules.

Third, trade negotiations lead to generous legislation dealing with international factors and the role of other countries. Such an exemption, therefore, does not set unhappy or unfavorable precedents for dealing with the budget problem more broadly.

I would quickly add three or four things I think you should not do in the new legislation. First, I think it would be a mistake to explicitly link fast track authority to negotiations on environmental and labor standards. Both issues are extremely important and need to be addressed in their own rights. At my institute, we have either published or will shortly be publishing studies on both of those issues.

But current law already recognizes the importance of linking trade to labor standards and to environmental protection, so no new mandates on the topic are required. Moreover, trade agendas change over time. It would be inappropriate to condition the implementation of fast track, particularly if you do it permanently, as I recommend, on any set of contemporary issues, no matter how significant they may seem at a given moment.

At the same time, a la Congressman Matsui, I agree that it would be wrong to explicitly reject covering any important issues. Leave it as it is now. They are referenced in current legislation. The administration of whatever stripe, I think, will be prepared to pursue those issues, given their importance.

Second, we should not pursue any further trade negotiations without fast track authority. Congress could in fact authorize a negotiation, with Chile or another country, without fast track. The administration could try to negotiate without it. But I do not think it could conceivably succeed. Other governments would simply not negotiate if they did not know what the story was.

If a foreign government proceeded without fast track in place, it would know it could face a second bite from the U.S. Congress. If its officials in fact did a deal with the administration, I think they would hold back. They would not put their best offers on the table because they would fear Congress would then come along and ask for more. That means Congress would de facto become the trade negotiator. That is certainly a bad idea. I think, therefore, that the whole notion of operating without fast track should be avoided.

You can see what that would mean in the current pending Chilean negotiation. If you had amendable legislation, some of the protectionist interests would come in and try to carve their sectors out. But because Chile is small, it would be hard to mobilize the Business Roundtable, the gentlemen behind me, to make a strong push on the other side. As a result, you might not faithfully implement the deal done with the Chileans and you might set some very unfavorable precedents for future negotiations.

Therefore, my bottom line is to stick with fast track. It is a proven entity. It works very well.

Third, it would be a mistake to limit the renewal of fast track to Chile or any single country or any limited group, because then, again, you would have the narrow interests who did not like particular aspects of such a deal coming in and opposing it. It would be harder to mobilize the broad national economic interests to counter and get a broadly favorable outcome from the standpoint of the national interest. I would recommend, if that were the choice, further delay on Chile rather than to move ahead either without fast track or with fast track limited to the single case.

One final point. I think, as you renew fast track, it would be prudent to renew the previous procedure whereby the President starts the fast track clock ticking when he submits the legislation under the authority of fast track. There has been some suggestion of shifting that authority, perhaps to the Congress itself or elsewhere. I think that would be a big mistake. The Presidential submission of legislation to start the clock ticking, and, therefore, implement the fast track, is an integral part of that whole system and should not be undercut.

The bottom line is that we have a unique congressional system of government. It poses unique problems for our international economic relationships. The Congress obviously has to play a central role in all these issues, but our trading partners also have a legitimate right for expeditious address of international agreements.

Fast track is the creative solution to this problem that was worked out on a bipartisan basis over 20 years ago. As Congressman Rangel suggested, it has been successfully implemented on a bipartisan basis ever since. It is a proven success. Its renewal is essential. I urge the Congress to do so along the lines suggested as soon as possible.

[The prepared statement follows:]

# RENEWING FAST TRACK

Statement by

C. Fred Bergsten*
Director
Institute for International Economics

Before the
Subcommittee on Trade
Committee on Ways and Means
US House of Representatives

May 11, 1995

## The Imperative of Renewal

The past two years were the most successful in the history of American trade policy. The "triple play of 1993" comprised Congressional passage of NAFTA, the launching of a "Pacific economic community" via the APEC summit hosted by President Clinton in Seattle, and conclusion of the Uruguay Round negotiations in the GATT. The "triple play of 1994" included the APEC commitment in Indonesia to achieve free trade and investment by 2010/2020 among countries making up half the world economy, Congressional ratification of the Uruguay Round and the Miami summit's commitment to negotiate a Free Trade Area of the Americas by 2005.

These developments represent enormous achievements for American trade policy, the American economy and our overall foreign policy. The fast track legislative procedure worked out in 1974 made these agreements possible. It was employed explicitly in the NAFTA and Uruguay Round votes. Its presence assured the 17 other APEC countries and 33 other Western Hemisphere countries that they could pursue trade arrangements with the US Administration without facing a "second bite" from separate Congressional efforts.

It is now imperative that fast track be renewed. The future opportunities for US trade policy are immense: implementing the free trade commitments in the Asia Pacific region[1] and the Western Hemisphere, pursuing the several unfinished negotiations from the Uruguay Round, and using the new World Trade Organization to further reduce barriers on a global basis. All these agreements will promote the interests of the United States for a very simple reason: we have already eliminated virtually all of our trade barriers whereas most of our trading partners, particularly the large and rapidly growing markets in East Asia and Latin America, still maintain considerable protection.[2]

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* The views expressed in this statement are those of the author and do not necessarily reflect the views of individual members of the Institute's Board of Directors or Advisory Committee. It draws extensively on the third edition of I. M. Destler, *American Trade Politics*, Washington: Institute for International Economics and Twentieth Century Fund, April 1995.

[1] For an analysis see C. Fred Bergsten, *APEC: The Bogor Declaration and the Path Ahead*, Asia Pacific Economic Cooperation Working Paper Series 95-1, Washington: Institute for International Economics, January 1995.

[2] See the dramatic contrast between the findings of Gary Clyde Hufbauer and Kimberly Ann Elliott, *Measuring the Costs of Protection in the United States*, Washington: Institute for International Economics, January 1994, and those of Yoko Sazanami, Shujiro Urata, and Hiroki Kawai, *Measuring the Costs of Protection in Japan*, Washington: Institute for International Economics,

More broadly, it is essential to sustain the momentum of trade liberalization to avoid backsliding that could close foreign markets to US exports (the "bicycle theory"). Renewed fast track authority is essential to enable the United States to pursue all these objectives.

Amending the Authority

At the same time, experience with fast track over the past twenty years suggests the desirability of several alterations from its previous provisions.

First, fast track authority should be extended on a permanent basis. Given the continuing increase in international economic interdependence, the United States will need to be negotiating almost constantly with its trading partners around the world. Any Administration will be severely hamstrung in its ability to pursue American economic and foreign policy interests without such authority.

Second, the Congress should be required to explicitly authorize any major trade agreement pursued by the Administration. As noted above, the United States has already begun an effort to eliminate barriers to our exports in the Asia Pacific region and in the Americas, and to achieve a wide range of access agreements in the new WTO. All these arrangements will have important effects on the American economy and thus need to be approved by the Congress. If fast track is available permanently, as recommended here, each approval should include its own termination date in order to provide an effective deadline for concluding the authorized initiative.

Third, trade legislation should be exempted from the current "pay-as-you-go" budget rules.[3] Many developing countries still derive an important part of their fiscal revenues from tariffs and are reluctant to liberalize as a result. But it is ludicrous for a highly industrialized country like the United States to resist trade liberalization for budget reasons.

I yield to few Americans in my zeal for eliminating the budget deficit, indeed converting it into a modest budget surplus, and am a supporter of the Balanced Budget Amendment.[4] But there is no conflict between budgetary prudence and trade liberalization: we all know that the latter strengthens our economy and thus promotes the former. We should stop wielding a budgetary gun to shoot ourselves in the trade foot.[5]

Moreover, requiring budgetary offsets in trade legislation raises a fundamental conflict with the purpose of fast track. Its goal is to assure America's trading partners that trade pacts negotiated in good faith will be considered promptly by the Congress without procedural impediments. As demonstrated by both the NAFTA and Uruguay Round experiences, the "pay-go" budget requirements clearly create such an impediment.

Some of the objections to renewal of fast track clearly relate to the inclusion of nonamendable budgetary offsets in the

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January 1995.

[3] The case is elaborated in Steve Charnovitz, "Budget Rules and the GATT," *Journal of Commerce*, March 7, 1994.

[4] See my most recent testimony "Raising the American Standard of Living Through a Balanced Budget Amendment" before the Committee on the Judiciary, United States Senate, January 5, 1995.

[5] See William R. Cline, "Impact of the Uruguay Round on US Fiscal Policy," Institute for International Economics, March 1994.

recent NAFTA and Uruguay Round bills. Some objected to the concept of requiring such offsets. Some objected to specific elements of the individual fiscal packages. Any new trade legislation should take the occasion to break the linkage.

Amendments to Avoid

Past experience also counsels rejection of several other alterations that have been proposed from the previous fast track authority.

Fourth, it would be a mistake to explicitly link fast track authority to negotiations on environmental and labor standards. Both issues are extremely important and need to be addressed in their own rights. Indeed, I believe that we need an entire new international environmental regime and hope that the upcoming G-7 summit in Halifax will take initial steps in that direction.[6]

But current law already recognizes the importance of linking trade to labor standards, and to environmental protection, and no new mandates on the topic are required.[7] Moreover trade policy agendas change over time. It would be inappropriate to condition the implementation of permanent fast track on any set of contemporary issues, no matter how significant they may seem at a given moment. At the same time, it would be an error to explicitly reject the coverage of any important issues under fast track (as some tried to do with the environmental and labor topics last year).

Pragmatically, it is clear that an effort to include environmental and trade issues in this Congress would block any prospect of renewing fast track. The Administration was unable to obtain such legislation last year when its party controlled both Houses. It would obviously be impossible to do so now. Renewal of the legislation is simply too important to be held hostage to any such specific topics.

Fifth, it would be a mistake to pursue any further trade negotiations without fast track authority. Congress could of course authorize a specific negotiation without fast track, or the Administration could try to negotiate without prior authority. Neither course would be likely to succeed, however, because no country would expose itself to sequential negotiations with our executive and legislative branches. Any country that did proceed on such a basis would hold back its best offers from the Administration, knowing that the Congress would reopen the talks; the Congress would then in essence become America's chief trade negotiator, a distinctly undesirable (and probably unconstitutional) outcome.

This issue arises currently in the context of possible Chilean accession to NAFTA. Some observers have expressed the view that a relatively small agreement of this type could be concluded without fast track. But the case illustrates the perils to which I refer:

- amendable legislation to implement a trade accord with Chile would almost certainly attract amendments to bar liberalization in sectors where Chilean exports can compete in the United States, such as wine;

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[6] As proposed in Daniel Esty, *Greening the GATT: Trade, Environment and the Future*, Washington: Institute for International Economics, July 1994.

[7] See Steve Charnovitz, "How 'Fast Track' Got Derailed," *Journal of Commerce*, September 19, 1994.

- given Chile's size, it would be extremely difficult to mobilize major business groups and others to fight such amendments and faithfully implement the negotiated agreement; and

- provisions linked to Chile in such a context could then become either precedents for future and much larger agreements or, more likely, deterrents to our achieving such agreements because other more important trading partners would realize that such precedents had been set.

To its credit, Chile has indicated publicly that it will insist that the Administration possess fast track authority before it will complete any negotiation with the United States. The Chileans are correct and the Congress should avoid any temptation to authorize, or even encourage, any negotiation to reach fruition without fast track.

It would also be a mistake to limit the renewal of fast track to Chile (or any other single country or limited group of countries). The debate over such authority would inevitably encompass all the issues that would attend its extension for much broader purposes, as proponents of particular positions sought to establish precedents for implementing their views more broadly later. The same asymmetry noted above would prevail: narrow protectionist interests would work hard to incorporate their views whereas it would be difficult to mobilize the broader coalitions that accurately reflect overall US economic interests. Hence unfortunate precedents could be set that would severely hamper constructive US trade policy in the future. It would be better to delay the Chilean negotiation than to pursue it under "Chile only" fast track authority (or, as noted above, without any fast track authority at all).

Finally, it would be prudent to renew the established procedure whereby the President starts the fast track clock ticking by submitting trade legislation under its authority. Proposals to shift that authority to the Congress could substantially undercut the fundamental purpose of fast track: assuring our negotiating partners abroad of expeditious Congressional consideration of trade agreements they have concluded with the United States in good faith. Any shift in the power to initiate the timetable would be almost as serious as rejecting fast track itself.

Conclusion

The unique Congressional system of government in the United States poses unique problems for our international economic policy. The Congress obviously has a legitimate right to fully consider, and approve, all international agreements that significantly affect the American economy. At the same time, our negotiating partners abroad have a legitimate right to expect that their agreements with the Executive will be addressed expeditiously, and presumably approved, by the legislative branch.

Fast track is the creative solution to this problem that was worked out on a bipartisan basis over twenty years ago. It has been successfully implemented on a bipartisan basis ever since, providing the vehicle for approving at least four major US trade negotiations (the Tokyo Round, United States-Canada Free Trade Agreement, NAFTA and Uruguay Round). It is a proven success and its renewal is essential to pursue essential American economic and foreign policy interests. I urge the Congress to do so along the lines suggested as soon as possible.

Chairman CRANE. Thank you very much, Dr. Bergsten.
Ms. Stern.

## STATEMENT OF HON. PAULA STERN, PH.D., PRESIDENT, STERN GROUP, INC., AND FORMER CHAIRWOMAN, U.S. INTERNATIONAL TRADE COMMISSION

Ms. STERN. Thank you, Mr. Chairman and members of the subcommittees.

I appreciate the chance to present my views on fast track and how it will facilitate executive/legislative branch cooperation and foster American trade objectives. Also, I appreciate the chance to discuss why I believe fast track, with an expansive negotiating objective, is a worthy expression of this Nation's bipartisan determination to continue as the world's economic and geostrategic leader.

Appropriately, you are launching these hearings in the wake of the 50th anniversary of V–E Day. Today's hearings will lay the path for the next half-century of strong U.S. leadership. At the end of World War II, we, as victors, chose to incorporate our adversaries into a world economy that made the whole world better and stronger, and to build on these successes, we need new, long-term strategies for the post-cold war international economy.

I do not intend to talk much about the procedures. I would be happy to answer some of that in the questions. I am here today to discuss the long-term aspects of this issue, not the short-term calculations, whether tactical or political. My objective is to explore the optimal policy positions for this Nation, which I think will be, ultimately, politically realistic and sustainable in the long term. It will stand the test of time, the test of economic benefit, and the test of the electorate.

The trade objectives I outline today build on the successes of the NAFTA and expand on them to include other countries. Although important features of the NAFTA have been obscured lately by the hyperbole of both the proponents and the critics, there are many positive features of the NAFTA model. These include the high economic and legal standards and the broad coverage of areas of great importance to the United States, such as intellectual property rights, investment services, labor, and the environment. They can be expanded beyond North America to enrich our relations with our trading partners all over the world.

There are numerous topics that conceivably will be considered at these hearings. Already, we have heard about constitutional and procedural questions, and on this question that came up in the colloquy earlier with Congressman Matsui, I can envision at least, if not an unlimited grant of congressional authority to negotiate, at least, perhaps, 9 years that spans a full administration plus. That is how long International Trade Commissioners, like myself, were appointed, and that was worked out by the Ways and Means Committee and the Finance Committee so as to have a long-term grant of authority but not an unlimited one. It may be a useful number to look at.

Also, there will be other concerns about timing of when the fast track begins. The fact that the Mexican peso crisis has over-

shadowed some of these discussions is a concern. There are broader concerns involving labor and the environment.

But the most important issue I would like to discuss is the role of fast track in enhancing American economic prosperity and maintaining America's global economic leadership role.

The grant of and broadening of our trade relations over the past 50 years, based on a bipartisan consensus, has meant, to some extent, a shrinking of our global economic dominance. That has been a byproduct. But that has enhanced all of our prosperity, globally and here at home.

Such a relative shrinking of our dominance, however, should not lead to the marginalization of American business, nor to the supplanting of American influence in important areas. That is the reason why, as we fashion the fast track, it is important that we do not shrink the role of the Congress and the executive branch to stand together in speaking with one voice with other sovereign nations.

The point that I would like to make is not only that it is important that we grant this authority, but what it is that we are going after. There are alternative strategies in negotiating with other countries, multilaterally, regionally, unilaterally. I think it is too soon to gauge the changes NAFTA has wrought, but I would simply say that the best answer for the strategies for dealing with other countries lies right here at home, and that is building on the NAFTA.

Clearly, we have enjoyed great gains here at home over the past two generations from global expansion of trade. While I say it is too soon to gauge what NAFTA has wrought, it is clear that, overall, this strategy has been a win-win for American workers and American families and has increased higher skilled, higher paying jobs in firms serving fast-growing overseas markets.

The point is that the NAFTA model has the advantages of being both more comprehensive and deeper than the World Trade Organization rules in any of the areas that we have negotiated.

I think we should take NAFTA globally, ultimately. The Clinton administration inherited the Bush administration's regionalist approach to follow Mexico with Chile, and I support this initiative. But as a global power, the United States should be thinking of how to broaden the NAFTA model and apply it beyond Latin America to capitalize on the economic opportunities which I spell out in greater detail in my longer testimony.

The United States should welcome to NAFTA all nations, regardless of their geographic location, that wish to open their markets reciprocally to trade and to investment, and to undertake the NAFTA labor and environmental standards. These commitments, made by a growing number of nations, could eventually become the basis for broader multilateral agreements.

The most serious current obstacles to discussion about a broader U.S. trade strategy for global leadership were examined in this morning's discussion about labor and the environment. We should resist allowing this very legitimate difference of views among labor and business and the environmental communities to become either a theological dispute or a political football that endangers the country's national interest in expanding trade.

Some object to the renewal of fast track because they do not want to permit the administration to negotiate labor and environmental objectives as part of a trade package, but this objection is puzzling. If you look at the fast track laws passed in 1974 and 1988, as I cite in my longer testimony, including labor rights among the negotiating objectives was very much there. Also, in May 1991, when Congressman Gephardt, who is sitting behind me now, signed and exchanged letters with President Bush and with Congressman Rostenkowski, environmental issues were also dealt with on a bipartisan basis. I urge you to look at my testimony for an expansion of this point.

So, in sum, ultimately, I believe expanding NAFTA to include many, if not all, of America's other trading partners will result in an improved world trading model, and ultimately a World Trade Organization at a higher level. NAFTA has higher economic and legal standards than the WTO; greater coverage than the WTO, such as with regard to intellectual property rights, investment, and services; and more coverage than the WTO to tackle labor and environmental issues that particularly arise when creating trade pacts between developed and developing nations.

In the short term, the United States should work, at a minimum, toward finalizing Chile's accession to NAFTA, a goal that is jeopardized by delaying reauthorization of fast track.

In the last Congress, the President and the Congress spoke with one voice. In spite of the battles—and they were very divisive—we did come together in approving the NAFTA and GATT agreements. Despite all of the pulling and shoving, the United States demonstrated that it understood the requirements of national success in the global economy.

Our postwar experience shows that if we do not lead the way, we put American business, workers, and consumers, indeed, American leadership in a secure world, at risk. The passage of fast track will be a reassertion that America intends to lead and knows where it is going. Thank you.

[The prepared statement follows:]

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## NAFTA PLUS: KEEPING TRADE ON TRACK TO HELP AMERICANS PROSPER

**Written Statement of**
**Honorable Paula Stern[1]**
**Subcommittee on Trade of the Committee on Ways and Means**
**and the Subcommittee on Rules and Organization**
**of the House Committee on Rules**
**of the U.S. House of Representatives**

**May 11, 1995**

Chairmen, members of the Committees. Thank you very much for inviting me to testify before you today. I appreciate the chance to present my views on why fast track legislation will facilitate executive/legislative branch cooperation and foster American trade objectives, and also to set forth why I believe fast track with expansive negotiating objectives will be a worthy expression of this nation's bipartisan determination to continue as the world's economic and geo-strategic leader. Appropriately, you are launching these hearings in the wake of the fiftieth anniversary of V-E Day. Today's hearings will help lay the path for a next half century of strong U.S. leadership. At the end of World War II, we as victors chose to incorporate our adversaries into a world economy that made the whole world better and stronger. To build on these successes, we now need new long-term strategies for the post-Cold War international economy.

At the outset, I want to make clear that I am here to discuss long-term aspects of this issue, not short-term calculations, whether tactical or political. My objective is to explore the optimal policy position for the nation, which I believe will also be the most practical, politically sustainable formula in the long term. My intention is to suggest long-range, politically realistic policies that will stand the test of time, the test of economic benefit, and the test of the electorate -- not to suggest approaches that will work only for this year, this Congress, or this President. And I am here to explore bold policy options and sketch out their domestic political ramifications, not to provide specific legislative language.

In a nutshell, the trade objectives that I will outline today build on the successes of the North American Free Trade Agreement (NAFTA), and expand on them to include other countries. Although important features of the NAFTA have been obscured lately by the hyperbole of both proponents and critics, there are many positive and helpful features of the NAFTA template. These include high economic and legal standards and broad coverage of areas of great importance to the United States such as intellectual property rights, investment, services, labor, and the environment. They can be expanded beyond North America to enrich our relations with our trading partners all over the world, and this should be our objective.

My testimony today draws on 16 years of government experience in the trade policy area, including six years working in Congress. I am also speaking as a long-time student of the relationship between the legislative and executive branches in the area of foreign and trade

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[1]Paula Stern, President of the Stern Group, Inc., an international advisory firm, and senior fellow of the Progressive Policy Institute, is a former Chairwoman of the U.S. International Trade Commission and a member of the President's Advisory Committee on Trade Policy and Negotiations (ACTPN). She acknowledges Raymond P. Paretzky of the law firm of Kaye, Scholer, Fierman, Hays & Handler for assisting in preparation of this text.

policy, a topic that was the subject of my doctoral research and book Water's Edge.[2] I see my theme today as a synthesis of these two areas, since I believe that it is very important that Congress and the Executive Branch speak with one non-partisan voice in the area of trade relations with our overseas trading partners.

## I. Getting and Staying on the Fast Track

There are numerous topics that conceivably will be considered at these hearings on whether to extend fast track negotiating authority to the President.

* *There are constitutional issues, both substantive and procedural. They relate not only to the Executive-Congressional checks and balances over the regulation of foreign commerce and the Executive Branch competency to negotiate treaties and agreements, but also to the prerogatives of Congressional committees and the rules governing debate of amendments. For example, one proposed procedural reform is to require that implementing legislation of any fast track trade agreement be limited to provisions required by the trade agreement. A related proposal is one that would exempt international trade agreements from budget rules that require tariff cuts to be offset in the implementing legislation.*

* *There are also timing and diplomatic and partisan tactical issues, especially in light of the recent crisis involving the Mexican peso that has reopened the issues in both political parties that the NAFTA debate exposed so vividly. These partisan issues are not new; it should be noted; they existed in 1974 when a Democratic Congress gave fast track authority to President Ford, and in 1988, when a Democratic Congress gave fast-track authority to President Reagan. These partisan disputes are complicated by the tendency of the rank and file of both parties to take more inward-looking positions than their party leaders.*

* *And there are broader concerns, involving labor and the environment, about which I'll have more to say later.*

***The most important issue, however, is the role of fast track in enhancing American economic prosperity and maintaining its global leadership role.***

The issue of fast track cannot be considered in a vacuum. It should be part of a discussion on the U.S. role in the post-Cold War international economy. Some statistics illustrate the importance of the role currently played by trade in the U.S. economy:

* *The United States is the world's largest exporter, with 12.8% of all global trade, as compared to 10.5% for Germany and 9.9% for Japan.*

* *U.S. exports, according to the latest Department of Commerce estimates, are projected to experience double-digit growth in 1995, up from 5 to 7% as recently as one year ago.*

* *Trade employs millions of Americans mostly in our most dynamic and competitive industries. Wages in these industries are higher than the national average.*

These trade benefits could not have been achieved without the bipartisan cooperation that marked 50 years of post-war U.S. trade policy and finally brought us NAFTA and the WTO. And these kinds of results cannot be assured for the future without our elected leaders stepping into the shoes of the leaders who came before. Other countries promote trade and investment overseas in their own interest. U.S. efforts in these areas are now at risk because trade-promoting agencies such as the U.S. Export-Import Bank and the Overseas Private Investment Corp. are threatened by budgetary stringency. Weakening or destroying these agencies is a form of unilateral economic disarmament that is particularly untimely now, when U.S. manufacturing and service industries are strong, explosive growth opportunities exist overseas, and there is so much competition for world markets.

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[2]Paula Stern, Water's Edge: Domestic Politics and the Making of American Foreign Policy (Greenwood Press 1979).

If we care about U.S influence globally, we must also recognize that some of our current policies are reducing that influence. A few of these policies we may nonetheless wish to pursue, such as cutting the U.S. defense budget as a percentage of GNP. Reducing the U.S. foreign aid budget like reductions in areas related to trade promotion will cost us trade and other opportunities for American businesses. To some extent, of course, the very success of our exercise of leadership and our post-War policies around the world must result in shrinking U.S. global economic dominance, but it should not lead to the marginalization of American business or the supplanting of American influence in important areas. **What we must avoid is a needless decline in our influence that will result if we legislatively cripple the leadership of the Executive Branch and the ability of the U.S. President, whoever he (or she) may be, to tackle economic problems and to seize market opportunities, through negotiation with our overseas trading partners. When Congress and the Executive Branch stand together, the nation as a whole stands strong.**

As the first generation of American political and business leaders to take the post-Cold War stage, we cannot afford to rest on our laurels in the areas of trade and economic competitiveness. We have an obligation to do things right, just like the generation of leaders after World War II who were "present at the creation," a phrase coined by Dean Acheson, President Harry Truman's Secretary of State. The victory that we won in World War II and in the Cold War that followed needs to be followed by still a third victory. Now, we have an opportunity to demonstrate our leadership once again, in a new era of global economic cooperation and healthy global economic competition. The choice in this global economy is not whether we should be trading or not; the question is how we trade. And in order for the United States to play its desired role in defining these rules, we have to lead in building the structure around the negotiating table.

To be sure, while public opinion polls suggest that there is a strong strain in the American public that wants the U.S. government to assert itself on the world stage, the same public thinks that government is too big and over-extended.[3] When we talk about shrinking government, however, it is important to distinguish between domestic affairs and foreign policy. In domestic affairs, we can devolve power to the states, and even to the localities, so that Americans are governed close to home in welfare, education, crime, and possibly other government services. In the foreign policy arena, in contrast, that paradigm does not work; the nation must speak with one voice, the joint voice of the U.S. Congress and the U.S. President. We need to temper our desire to shrink our government with the reality that our government must be well-equipped and capable of playing its proper role on the world stage in support of real American interests.

Thus, implementation of a trade policy based on enlightened self interest depends on three factors:

* *a strong Executive Branch with the right negotiating tools representing national, not parochial, interests;*

* *a bipartisan Congressional coalition; and*

* *credible fast-track authority to negotiate ever-wider trade agreements that broaden our markets and sustain our economic health and leadership.*

Fast track is vital because it allows the U.S. to demonstrate global leadership while pursing its own economic prosperity. There are several reasons why fast track is an indispensable tool for both the Executive Branch and the Congress if the nation's trade negotiation objectives are to be met.

**FIRST**, fast track enhances the U.S.'s ability to speak with one voice when addressing other sovereign nations. Only if the President and Congress forge a partnership through fast track can the U.S. exercise credible leadership on the world stage.

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[3]For example, the recently released annual strategic survey of the International Institute for Strategic Studies (IISS) stated that "[w]ith a sigh of relief, Americans feel that the end of the cold war means they need not continue lifting most of the international burden."

**SECOND**, by giving a President credibility with our trading partners, fast track lays the groundwork for a comprehensive trade strategy as opposed to reactive, ad hoc management of individual trade disputes. History shows that foreign governments resist negotiating "final" agreements which Congress can amend with added demands. Already, in the eyes of our negotiating partners, the lack of fast-track authority last year inhibited the President at the Asia Pacific Economic Cooperation (APEC) summit meeting in November, and it complicated discussions about implementing a credible "after NAFTA" trade plan at the Hemispheric Summit in December, as I further discuss below.

**THIRD**, fast track allows for rapid U.S. action in response to fast-moving global events. This is particularly important because there is a real danger that American business could be marginalized in several areas of the increasingly interlinked world economy.

**FOURTH**, fast track establishes a mechanism for the Executive Branch and the Congress to consult closely on trade talks.[4] The recent Uruguay Round implementing legislation is an example of how fast track, far from stifling Congressional input, actually encouraged the administration and the Congress to work together to create and to implement U.S. trade achievements.

**FINALLY**, fast track allows U.S. negotiators to channel and use pressure from domestic interests to help negotiate improved dispute-settlement arrangements or new international rules with America's trade partners. Without the fast-track option, trade disputes over areas not covered by the rules can fester and lead to demands for unilateral sanctions or retaliation. With fast track, the two branches of government can stand together to define national interests *vis-a-vis* other sovereign nations. This is particularly vital in light of the possible erosion of domestic political support for liberal trade -- aggravated, no doubt, by the recent peso crisis in Mexico.

## II. A Trade Architecture for the 21st Century; Alternative Trade Policy Approaches

As important as fast track is, even more important is what results from the decision of the President and Congress to negotiate trade agreements pursuant to fast track procedures. There are many alternative strategies, each with its own advantages and limitations.

* One possible approach is to pursue exclusively multilateral trade negotiations such as the recent Uruguay Round that led to the establishment of the World Trade Organization. A new multilateral trade round is not imminent, however: The world seems exhausted from the last seven-year negotiation process, and the job of getting the World Trade Organization (the successor to GATT) up and running takes precedence. It will probably be 10 years before the next big multilateral agreement on world trade. Thus, while it is preferable to build on the WTO, in the meanwhile U.S. negotiators should pursue other means to that end. As detailed below, building on NAFTA, initiating agreements with as many nations as possible as soon as feasible, can bring us to that end, much as the U.S.-Canada Free Trade Agreement helped jump start the Uruguay Round negotiations, and even as NAFTA itself helped bring closure and coverage at the Uruguay Round in areas such as intellectual property and services.

* The antithesis of the multilateral approach is for the U.S. to pursue a series of unilateral trade actions, such as under our "section 301" law. Reliance solely on this approach is both inadequate and overly broad. It is inadequate because the WTO dispute resolution system has effectively replaced section 301 for many areas of dispute between this country and our trading partners. It is overly broad because the "aggressive unilateralism" associated with section 301 causes friction with our trading partners while doing little to advance world prosperity.[5]

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[4]There may be need for procedural modifications to allow for greater time to review the implementation language for members of Congress who do not serve on the relevant trade oversight and drafting committees.

[5]While there are times when judicious use of 301 is certainly warranted, before targeting any industry for protection or bilateral trade discussions, the United States should review the

(continued...)

* A third approach is for the U.S. to enter into a series of separate regional agreements. Many examples of this may be found, including the Bogor APEC declarations and the proposed North Atlantic Free Trade Agreement between the U.S. and the European Union. This method, however, is too slow, requiring a series of painstaking negotiations, each one beginning from scratch. On closer examination, some of these regional schemes are limited to hortatory declarations about the future, with little concrete action to show for a results-oriented U.S. policy. Also, this method of advancing different arrangements with the myriad of regional groupings can lead to a proliferation of different standards for each region or country grouping. This can have a chilling effect on business people trading globally.

**The best answer, in my view, lies right here at home: Build on NAFTA.** In November 1993, Congress cast a decisive, bipartisan vote for more open trade.[6] By approving the North American Free Trade Agreement, Congress put America on a positive course toward opening world markets to trade and investment. NAFTA's backers argued forcefully and effectively for a strategy of global engagement -- for expanded trade opportunities for both American consumers and businesses. Theirs was a triumph of the national interest over fear, pessimism and the status quo. And we should build on that strength for the future.

## III. Putting NAFTA Into Perspective: A Continuum of Trade Liberalization, Trade Growth, and Increasing Global Prosperity

It is too soon to brag about the changes NAFTA has wrought, but we can say with certainty that the United States has benefitted from a period of global trade liberalization spanning two generations. Between 1970 and 1990, trade doubled as a share of U.S. gross national product (GNP). From 1950-80, when exports as a proportion of GNP rose from 7.4 percent to 16.7 percent, per capita income in industrialized nations nearly tripled. From 1986-93, U.S. exports of goods and services accounted for nearly 40 percent of GNP growth.

And there is much potential for these trends to continue. Over the next two decades, 12 countries with a combined population more than ten times that of the United States are expected to account for more than 40 percent of all export opportunities. The Commerce Department recently projected that U.S. exports to these emerging markets will be greater by the year 2000 than combined exports to the European Union and Japan. U.S. trade with Lain America alone could surpass trade with Japan and Europe by 2005. By that same year, future Hemispheric trade will bring an estimated 1.7 million new jobs.

Trade expansion is a boon to average working families, who get greater choices, lower prices on imported goods, and higher-skilled, higher-paying jobs in firms serving fast-growing overseas markets. Trade protection, on the other hand, favors less dynamic business, financial, and labor interests.

Both NAFTA critics and proponents have exaggerated its potential short-term impacts, but its most important features are the new areas it covers and its more comprehensive nature.[7] Overlooking these, foes predicted its passage would result in a flood of cheap foreign goods, an exodus of U.S. firms and investment to south of the border, and a net loss of 550,000 U.S. jobs

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[5](...continued)
relationship of that industry to overall U.S. trade goals.

[6]Indeed, it has been noted that between NAFTA and the WTO, 1993-94 may have been the high watermark for internationalist policies in the United States.

[7]NAFTA remains popular with the American people. According to a recent survey by the Chicago Council on Foreign Relations, half of the public and 86% of leaders believe that NAFTA is "mostly good" for the United States, while only 31% of the public and 13% of leaders think the agreement is "mostly bad."

over 10 years. But in the first year after NAFTA's passage, three-way trade of $348 billion soared 17 percent or $50 billion.[8]

Of course, in the wake of the Mexican financial crisis, critics are anxious to attribute the reversal in the first six months' increase in U.S. exports to NAFTA, despite the fact that NAFTA, a trade agreement, was silent on macroeconomic or monetary coordination. NAFTA is not a monetary agreement, and Mexico would probably have experienced the peso crisis even if NAFTA had not existed. Indeed, NAFTA has prevented Mexico from raising tariffs against increasing U.S. imports, as it might have done had the agreement not been in place, and many of its features will lead to important long-term gains.

## IV. Taking NAFTA Global

The Clinton Administration inherited the Bush Administration's regionalist plan to follow up NAFTA talks by holding free-trade talks with Chile to reward its remarkable return to a democratically elected government pursuing economic privatization, liberalization, and deregulation. I support this initiative, as do many on both sides of the aisle. I dare say that passing legislation for a free trade pact with Chile would be far easier than passage of fast track legislation. However, as a global power, the United States should be thinking of how to broaden the NAFTA model and apply it beyond Latin America to capitalize on economic opportunities for U.S. industry and agriculture. And because of the open-accession clause that governs eligibility of future NAFTA members, it is possible to open NAFTA beyond just one country or one region (which was the Bush Administration's original intent).

This nation should boldly reach out to all regions of the world--particularly those in the biggest emerging markets--in pursuit of America's own interest in trade, environment, and labor protection. This can be achieved by extending the NAFTA bridge from the three NAFTA countries--the U.S., Canada, and Mexico--to the rest of the Americas, to Asia, and indeed to Europe.[9]

The United States should welcome to NAFTA all nations, regardless of their geographic location, that wish to open their markets reciprocally to trade and investment, and to undertake at a minimum the NAFTA labor and environmental standards. These commitments, made by a growing number of nations, could eventually become the basis for broader multilateral agreements.

The United States faces the growing challenge of competition with emerging nations of the world. Just as it assimilated World War II-devastated Japan and Europe into a healthy trading system--and forged an agreement between a developing nation, Mexico, and an advanced nation, Canada--now America must tap into the fastest growing regions of the world, Asia and Latin America, and to other emerging economies in Eastern Europe and elsewhere.

Applying the NAFTA approach universally would signal that the admission price to free trade with the United States is the same for all nations. This strategy of extending NAFTA also makes clear that regional initiatives that involve committing the United States to maintain open markets have a place in America's trade policy (1) particularly with emerging democracies but (2) only when the arrangements *exceed* multilateral standards for trade liberalization. In this way, expanding NAFTA is consistent with America's objective of bringing benefits of regional agreements into a multilateral context.

## V. NAFTA, Plus

There are two principal ways to build on NAFTA. One is by accession: adding countries, such as Chile, one at a time. The second is by merger: merging with existing groupings of countries, such as the MERCOSUR or the European Union. These methods are not

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[8]U.S. Department of Commerce, NAFTA Facts, Document No. 4003. February 17, 1995.

[9]Future negotiations may be the opportunity both to extend the NAFTA geographically and to improve upon its procedures -- while maintaining NAFTA's major features.

inconsistent; both ways can be used to build on NAFTA, whichever is more appropriate for the country or group of countries at issue.

There are many countries and country groupings that could be added to NAFTA.

* In the Western Hemisphere, there are many opportunities for further expansion. Besides Chile, other nations or groups of nations that could be beneficially added to the NAFTA framework include Bolivia, the MERCOSUR nations (Brazil, Argentina, Paraguay, and Uruguay), Colombia and Venezuela (which with Mexico constitute the Group of Three), the Andean Group, the English-speaking nations known as Caricom, and the Central American nations.[10]

* Asia, Singapore, Korea, and Taiwan have all expressed interest in joining NAFTA. A bridge between NAFTA and Asia could ultimately develop into a *Pacific Area Free Trade Agreement* (PAFTA), although some countries in APEC would resist this idea.[11]

* With regard to Europe, there has been talk of a EU-US to form a *North Atlantic Free Trade Agreement*. President Clinton and Prime Minister Major of Great Britain discussed this possibility at a meeting in Washington last month, and Germany's foreign minister has urged that the idea be studied further. In light of the end of the Cold War, which was an important tie across the Atlantic, a strong geo-strategic argument can be made that there is a need to find other, salient means to maintain this alliance. The disadvantage of a EU-US link is that it will be perceived as a rich, Western European club. This problem could be solved by broadening the union to include the developing economies of Eastern Europe, together with NAFTA (including, of course, Mexico), creating a *Trans-Atlantic Free Trade Agreement*.

All of these geographical options are worthy of consideration.

## VI. Trade, Labor, and the Environment

Currently, one of the most serious obstacles to expansion of NAFTA pursuant to fast track is the controversy over labor and the environment. As our economy becomes more open to the benefits of trade, we must also be more sensitive to issues such as labor and the environment. In the national interest, we should resist allowing the very legitimate differences of views among the labor, business, and environmental communities to become a theological dispute or a political football that endangers the country's interests in expanding trade.

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[10]Last year's Summit of the Americas endorsed a *Free Trade Area of the Americas* (FTAA) by the year 2005, while last month, the President of Brazil met with President Clinton to discuss means by which Brazil and the other MERCOSUR nations could make substantial progress toward achieving the FTAA by the year 2000. One could conceive of the MERCOSUR and NAFTA merging. However, although virtually all Latin nations have signed trade and framework agreements with Washington that could lead to negotiations for expanded trade, the benefits granted Mexico will only be offered to other economies that undertake serious and sustained reform effort, and these benefits--and the disadvantages that would accrue to any nation that opts out of the process--provide a compelling inducement to adhere to the reform course.

[11]The allure of the "Asian Economic Miracle" and the attendant idea of a "Pacific Century" that gave rise to the Pacific Community concept have become almost cliches. But the breathtaking reality of the economies of Japan, the Four Tigers (South Korea, Singapore Taiwan, and Hong Kong) averaging almost 6% annual growth over the course of a generation, China since 1979, and the "new tigers" of Malaysia, Thailand, Indonesia (if not Vietnam) remains a monument to Asian export-growth approaches to development that shattered the North-South paradigm. East Asia has clearly become an engine of the global economy and a defining reality of the post-Cold War international system. The challenge for the U.S. is how to balance competing interests and best utilize its many assets—economic, political, strategic—to provide sustained and consistent leadership as a first among equals and to help shape the emerging order in the Pacific with Washington woven into its political and economic fabric. In the long term, it is the engagement of the U.S. private sector that will be the keystone of sustained American engagement in the Pacific in the 21st Century.

Certainly the issues of trade, labor, and the environment have each been considered in separate policy frameworks. But as the NAFTA side agreements demonstrated, these three policies have begun to be closely interrelated, which is why I believe the NAFTA model is so useful. I am not here to suggest specific legislative language, but rather to explore with these committees a formula that is both defensible as a policy and politically pragmatic, taking into account public concerns about job security, labor standards, and environmental protection.

Some object to the renewal of fast track because they do not want to permit the Administration to negotiate labor and environmental objectives as part of a trade package. Their objection is puzzling: Fast-track laws passed in 1974[12] and 1988[13] included labor rights among their negotiating objectives, and in May 1991, there was an exchange of letters regarding NAFTA negotiating objectives including environmental issues worked out between Republican President George Bush, on the one hand, and Democratic House Majority Leader Richard Gephardt and Chairman of the Ways and Means Committee, Dan Rostenkowski, on the other.

A progressive and politically sustainable trade policy requires support from all commercial interests--business, workers, and consumers. To build the necessary domestic political support for future trade initiatives, Congress and the White House must strike a balance to advance worker and environmental goals as well as trade and investment expansion. Rules must be set to achieve sustainable global economic growth that does not degrade the environment and that advances worldwide labor standards. But we must resist tendencies for enforcement actions taken in the name of environmental and labor protection to become masks for trade protection.

Since the United States and its GATT trading partners formulated the objectives of the Uruguay Round a decade ago, many important new issues have emerged to become more prominent, including environmental protection, international recognition of worker rights, and the harmonization of competition or domestic antitrust policies (which also relates to the unfair trade practice of dumping). These issues must be addressed in a balanced, reasonable way to help establish common rules for global competition in an era of economic interdependence.

New trade pacts require new social compacts with American workers. We should link our trade expansion strategy with a social strategy for cushioning the often jarring impact of global competition on American communities. Retooled education and training programs--for example, Job Opportunity Vouchers for displaced workers--should equip Americans to cope with the volatile global economic environment. But our new labor policies also should emphasize the opportunities created by open global trade. These, in my view, far outweigh the dislocations.

The WTO, which has replaced the GATT, has new authority to settle international trade disputes. To ensure domestic public support for open trade, the new WTO rules for settling disputes must be applied fairly and rigorously. The WTO will eventually have to pick up some of the trade, investment, and competition issues mentioned above, but it was not designed to handle the increasingly controversial issues surrounding environmental concerns and international labor standards. New organizations, or reinvigorated old ones, are needed for these tasks. Giving those tasks to more competent world organizations would deflect some of the pressure that is threatening open trade legislation, particularly the renewal of fast-track trade authority. Now that we are free from Cold War security threats, we can attend more to other important goals, including environmental protection and improving labor standard adherence.

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[12]The law listed as a negotiating objective "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT." Trade Act of 1974, Pub. L. No. 93-618, §121(a)(4), 88 Stat. 1978.

[13]"The principal negotiating objectives of the United States regarding worker rights are--
(A) to promote respect for worker rights;
(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and
(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade." Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, §1101(b)(14), 102 Stat. 1125.

**ILO.** The value of the 75-year-old International Labor Organization (ILO) should be reevaluated now that it is no longer used as a debating forum for Cold War adversaries. A reinvigorated ILO is the appropriate place to address squarely the issues of unfair labor standards and workers' rights. Trade restrictions against low-wage countries are not the answer to the fears of workers in high-wage nations such as ours. It is far better to channel U.S. diplomatic energies into improving adherence to internationally recognized standards that deal with the issues of forced labor and child labor, for example, and the freedom of association for workers. The Administration should work toward improving the functioning of ILO to address inhumane working conditions, reduce unemployment, and build up enforcement mechanisms in each country to ensure that international standards are indeed applied.

**GEO.** Likewise, the time may have come also to form a new organization to establish widely accepted, international environmental rules to replace the jumble of different standards and approaches adopted by individual nations. A Global Environmental Organization (GEO) could establish minimal standards based on scientifically accepted data. GEO would provide a single, neutral forum for addressing global or transborder environmental problems. It would develop methodologies and procedures for countries to follow in carrying out their shared commitment to global environmental protection, and it would mediate environmental disputes with established technical competence. Such an organization would also give environmental protection legitimacy and weight in developing countries, where support for environmental concerns is often weak. This will help underscore the fact that ecological security does not have to be sacrificed to gain economic security.

## VII. Leading the Way

Ultimately, expanding NAFTA to include many if not all of America's other trading partners will result in a new world template, a WTO at a higher level. NAFTA has higher economic and legal standards than the WTO; greater coverage than the WTO, such as with regard to intellectual property rights, investment, and services; and more coverage than the WTO to tackle labor and environmental issues that particularly arise when creating trade pacts between developed and developing nations.

In the short term, the U.S. should work at a minimum toward finalizing Chile's accession to NAFTA, a goal that is jeopardized by delaying reauthorization of fast track. Delaying Chile's entry into NAFTA would send precisely the wrong signals to our Latin American neighbors and other nations whose governments we are asking to open their markets and liberalize their economies. And it would signal the world that Congress is not prepared to sustain the global economic initiative that is the signature of world leadership.

In sum, the President and the Congress should rebuild a bipartisan public consensus to achieve new authority for the Executive Branch to negotiate future arrangements. The battle over NAFTA and the GATT show that American political leaders, despite much pulling and shoving, still understand the requirements of national success in the global economy. Our whole post-war experience shows that if we do not lead the way, we put American business, workers, and consumers--indeed, American leadership in a secure world--at risk. The passage of fast track will be a reassertion that America intends to lead and knows where it is going.

Chairman CRANE. Thank you very much for your testimony.

I would like to address a couple of questions, first, to Dr. Bergsten, but then, Dr. Stern, have you respond to the same questions.

Ms. STERN. Certainly.

Chairman CRANE. First, how far do you think we can proceed in negotiations with Chile without fast track authority? Second, do you believe that Chile would be willing to negotiate with us without this authority?

Mr. BERGSTEN. The Chileans, to their credit, have said publicly that they are unwilling to conclude a negotiation with the United States unless it has fast track authority. The administration can begin talks but I do not think they can get serious and really come to fruition unless fast track is in place.

Chairman CRANE. Dr. Stern.

Ms. STERN. I concur. I do think we can get very far down the track. I dare say that I can see passage of a free trade agreement with Chile before we even get to resolving some of these serious, broad social issues on fast track. Ultimately, if the negotiations are ripe for finalizing a deal with Chile, then we should just go ahead and finalize Chile and try to get the best fast track legislation later.

Chairman CRANE. Thank you.

Mr. Dreier.

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

I just have one brief question that I would like to pose, and either of you are certainly in a position to answer. Most everyone in this room has strongly supported the Clinton administration's very persuasive arguments that human rights policy in China is improved by exposure to Western values, and that is clearly created by more and open trade.

Having supported that argument, it seems to me that it certainly would carry forward on the issue of both labor and environmental standards. As I say that, I cannot help but think that, as you look throughout the world, clearly, the wealthiest, most productive countries on the face of the Earth are those that have the highest environmental standards and worker rights.

I just wonder if the argument that is used on human rights cannot be carried forward, as we look at this question of labor and the environment.

Ms. STERN. I think it is clear that trade does usher in advancement of other social goals which we, as a democratic nation and a developed nation, wish to see in other countries.

Moreover, we should be enhancing any future trade negotiations with provisions that assure the public here at home that as the United States increases trade with developing countries, American workers have the right to retraining programs so that they can deal with the changes that result from competing with these developing countries. Also, the United States should spend more energy looking at other ways to channel the public's concern about trading with China and other developing countries by using the international labor organization and, conceivably, even creating a new organization to deal with environmental standards on a global basis, a global environmental organization.

So there are ways of channeling some of these legitimate concerns so that they are not all dealt within the context of trade legislation alone. But, I also agree that overall, trade will also help advance these other very legitimate goals.

Mr. BERGSTEN. I fully agree, and I would broaden the point with a personal observation. China began its economic liberalization policies in the late seventies, during the period when I happened to be in charge of the international part of our Treasury Department. There was a big debate at the time as to whether we should bring China into the IMF, International Monetary Fund, and the World Bank, somewhat like the debate today about bringing China into the World Trade Organization.

We moved very quickly to support China's going into the IMF and the World Bank. I believe it is one of the biggest unsung success stories in recent decades, because the World Bank, in particular, played a decisive role in helping steer the Chinese toward market economic reforms, which still have a long way to go but have made enormous progress in 15 years. Those economic reforms, in turn, have certainly improved labor, environmental, and human rights elements in China. Again, a huge amount remains to be done, but the relationship, the correlation, is very clear, and we have proof positive from a U.S. initiative of 15 years ago that those linkages do work.

Chairman DREIER. So pursuing a similar policy as we move ahead with fast track would, obviously, be the most responsible route for us to take, then?

Mr. BERGSTEN. I think so, and I think it would have spillover effects on our broader social objectives at the same time it pursues our immediate economic goals.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Dr. Stern, I think we all agree that for this to be successful, we have to approach it in a bipartisan way. How do you see a balance being struck on the question of labor and environmental issues?

Ms. STERN. As I said, I think we have some good history behind us in 1974 and 1988. I am not here to suggest specific legislative language today. I leave that to you and to the executive branch. But if you go back and look at the labor objectives, for example, that were included in the 1974 act and the 1988 act, they, I think, are a good start.

There was a consensus then and that was at a time when a Democratic Congress was giving, first President Ford and then President Reagan, in 1974 and 1988, authority. This Congress should be able to do the same. So we should, for starters, look at the old legislation.

Mr. RANGEL. I am new on the committee. Why do you not send something to me that maybe we can start talking with the chairman here and see what we can work out.

Ms. STERN. It would be a great privilege.

Mr. RANGEL. Thank you. Tell me, do you ever see an occasion where the question of international illegal narcotic trafficking could be a proper subject to be bringing up at trade agreement negotiations?

Ms. STERN. I understand your concerns about that. I do believe that as the United States integrates more closely in trade as well as in these other arenas that we talked about, that additional goals of the United States, including a reduction of narcotics traffic, are a legitimate objective that will be achieved as we sit at the trade talks.

Mr. RANGEL. But not at that forum?

Ms. STERN. I am sorry?

Mr. RANGEL. At that negotiation, do you see any situation where it could be on that agenda, not where we work out things in the future?

Ms. STERN. I could see it certainly as parallel talks. Then the question becomes, however, does certain behavior by other countries in narcotics trafficking become a condition upon which——

Mr. RANGEL. Strike out condition and sanctions, just an issue.

Ms. STERN. Yes. The answer to you is, yes, I could see them as being parallel discussions, but when we get into conditions and sanctions, that is where we have a——

Mr. RANGEL. Strike that out.

Dr. Bergsten.

Mr. BERGSTEN. I think the parallel approach is the right one. As I said, I would leave the explicit linkage out of fast track, either pro or con.

The goal should be to seek international agreements on labor standards, environmental regulations, and narcotics. I will give you an example. The Montreal Protocol was an international agreement on the environmental problems regarding the CFC contribution to destruction of the ozone layer. It was also agreed to use trade sanctions to implement that environmental agreement because that gave it real teeth.

There were some countries that indicated they would not comply with the Montreal Protocol. They were quietly told that they would suffer trade discrimination if they did not, and they quickly got into line. That is the way to do it effectively.

In the labor standards area, the ILO has a series of agreements that have been referenced before. They need to be dusted off. They need to be beefed up.

Once you get an international agreement on the substance in a given area, then you may ask, quite rightly, should we use international measures, such as trade sanctions, to deal with those who do not adhere to them? In some cases, it will look promising, as with CFCs. In some cases, it may not. But I think that is the right sequence: parallel negotiations and then put in place some sequential links on those issues.

Mr. RANGEL. Those that might be of concern, narcotics, labor, and environmental issues, after they reach an agreement, say, in a lateral way, who do they reach back to in order to even discuss the question of sanctions? Do they go back to the trade negotiators and bring up these unrelated issues?

Mr. BERGSTEN. Fortunately, in the case of labor standards, there is an international institution competent to do that, the ILO. We published a book at my institute about 1 year ago recommending the creation of a global environmental organization to set up the same kind of operation on the environmental side.

Mr. RANGEL. With the ability to include sanctions?

Mr. BERGSTEN. Including the option to pursue that course in cases such as the CFC protocol, where there was widespread consensus on dealing with an environmental problem. Then there would have to be an agreement, essentially, between the two international institutions, the one responsible for the environment and the one responsible for trade. They would talk to each other as equals and work out the way in which trade would be related to the problem.

But, as I said, in the case of the Montreal Protocol, nobody has complained, and, in fact, the sanction worked, even though in a narrow, legal sense it did violate the existing GATT rules.

Mr. RANGEL. Could not narcotics coattail on that theory?

Mr. BERGSTEN. I would think it could.

Mr. RANGEL. Thank you.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. I thank both of the witnesses for their longtime contribution to international economics and international trade.

I like your suggestion, Dr. Bergsten, about how we ought to permanentize the basic fundamental law on fast track, although I admit it is a misnomer as far as the procedure is concerned. I think we have had enough experience with it where we could do that.

I think, as I understand your suggestion, we leave some of these peripheral issues to the actual trade negotiation authorization that the Congress must do before the administration seeks to negotiate. Is that what you are suggesting that we do?

Mr. BERGSTEN. Yes, I think so. I can foresee over the next 5 to even 10 years three very major new U.S. trade negotiations. One would be to implement the Miami commitment to achieve a free trade area of the Americas.

The second would be to implement the Bogor declaration from last November to achieve free trade and investment in the Asia Pacific region.

The third, and I think foretold by the first two initiatives, would be a major new round in the GATT.

Probably all three of those negotiations will address the topics that we are discussing here. They will probably address them in somewhat different ways, depending on their sequencing and the countries that are involved, with each building on the other.

So I think the prudent course would be to create a permanent fast track, with congressional authorization of each individual negotiation. These authorizations would then include negotiating instructions from the Congress to the administration, depending on the circumstances at the time and dealing with each of these issues in a sequential and cumulative way as the process evolves.

Mr. GIBBONS. Thank you.

Dr. Stern, I agree with you. I think we ought to use the basic framework of the NAFTA for our future negotiations, for a few more years, anyway, until we come up with something better. I think that is a good suggestion and I hope all our negotiators in the Congress will follow that suggestion.

Ms. STERN. Thank you. To put a point on that, that is the reason why I have some difficulties with a variety and myriad of commitments, such as when there is a standard in the Bogor declaration

for the APEC from what might be the NAFTA standards. We need to make it clear to all regions of the world that we are not discriminating or distinguishing one from the other.

Mr. GIBBONS. Yes. Dr. Bergsten, you have done a marvelous job in connecting the relationship of the fiscal budget deficit with the trade imbalance in the United States here. For this record again, and for me personally, would you go through and spin that out for us, flesh it out as best you can. Take as much of my time and as much as the chairman will let you have so that this audience and future audiences will clearly understand why we must cure the fiscal deficit first in order to cure the trade deficit.

Mr. BERGSTEN. When the United States runs a large budget deficit, it means that the Federal budget is drawing down the already very low private saving pool in the United States to fund the Federal Government. That leaves very little money left over for private investment, because you can only invest if you have savings to finance it.

We obviously want to invest to keep our economy growing and boost productivity, more than is permitted by our low national saving rate. Therefore, we borrow huge amounts of money from the rest of the world. Consequently, the United States has become the world's largest debtor country, and that number keeps rising by $100 to $200 billion every year.

But when you are a net borrower from the rest of the world and have a capital inflow, that must be offset in the overall balance of payments accounts by a deficit in your current account—that is, your trade in goods and services—because your borrowing from the rest of the world in the immediate sense finances imports of goods and services in excess of what you are exporting to the rest of the world.

The mechanism through which that happens is largely the exchange rate. When the U.S. Federal Government borrows huge amounts to finance a deficit, that pushes our interest rates higher than they would otherwise be. Those higher interest rates suck international capital into the dollar. The dollar is then overvalued, compared to our underlying competitive position, and that makes it very difficult for our firms to compete either in export markets or against imports in our own markets.

So whether you build it up from the domestic distinction between savings and investment or run it through the exchange rate, which is the mechanism through which it happens internationally, the budget deficit produces, almost like night follows day, a big trade deficit. Because we have such a low private saving rate, we just cannot afford to run budget deficits, even of the magnitude that are comfortably taken care of in other countries.

Mr. GIBBONS. Thank you very much. That was a good explanation.

Chairman DREIER. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman.

Dr. Bergsten, you suggested eliminating or exempting trade legislation from the PAY-GO requirements, and then you followed that up by an observation that we know that reduction in tariffs and trade barriers, in fact, increases the revenues to the Federal Government. If that, indeed, is the case, why do we need to exempt

trade legislation from PAY–GO? Why do we not just fix the PAY–GO rules to reflect reality?

Mr. BERGSTEN. You could do that, I acknowledge. The difficulty is the need, if you do it in one area, to do it in other areas. In other areas, I think it is much more difficult analytically to figure out what the net budget effect of a particular legislative action would be.

I suggest eliminating the PAY–GO requirements from trade legislation because trade legislation is so different from other kinds of legislation. Its goal is to implement deals worked out with other countries, yet accommodating those deals to our unique congressional system, where otherwise you would have two independent bites at the apple.

You could do it the way you suggest, but there, being a zealous advocate of getting rid of the budget deficit, and in fact converting it into a surplus, I would worry more about the precedential effect.

The overall environment is, of course, critical. If this Congress pursues and implements effectively what the two Budget Committees have proposed in the last 48 hours, and we are really on a glide path to a budget balanced by 2002, then, of course, a lot of these things could be reassessed. But at the moment, I would prefer the exemption route simply to protect the overall budget integrity.

Mr. ZIMMER. So you do not think there is a technical reason why you could not establish a reliable dynamic economic model to reflect the real impact of a trade agreement?

Mr. BERGSTEN. You could certainly create a model. You could estimate the effects. No one could tell you with a hand on the Bible that these estimates represented exactly what was going to happen, but in the case of trade, we do have a very good historical record to draw on and empirical relationships that could be used.

My fear is simply that in other areas—tax changes, for example, or perhaps some other spending changes—you are just not as sure of what the dynamic or spillover effects would be, and you might not be able to get evidence that is as reliable from the past that would guide the future.

Mr. ZIMMER. In exchange for the exclusion from the PAY–GO rules, or in addition to the exclusion from the PAY–GO rules, would you also change the fast track guidelines so that there would not be revenue-raising provisions in trade bills, strictly to offset any anticipated losses? That is what has brought us into a lot of controversy and a lot of needless agony.

Mr. BERGSTEN. That is right, and that was part of my reason for making the proposal. A lot of the debate in both the NAFTA and Uruguay round fights was over this issue. I think that is a violation of the basic purpose of fast track. These debates brought in issues that were irrelevant to the international negotiation, albeit necessary for our domestic purposes, but really diverged significantly from the original concept and therefore, I think, ought to be handled separately.

Mr. ZIMMER. Dr. Stern, do you have a response?

Ms. STERN. On the point about setting a precedent, if you remove the PAY–GO for trade legislation, you will have clever economists coming in with models that they have created on why other propos-

als would "be budget enhancing," if you will. Therefore, I think it would set a precedent that might get out of control and then undermine the goal of fiscal integrity that we would like to pursue.

Mr. ZIMMER. You assume those clever economists are wrong. Is it not possible——

Ms. STERN. No, but I think that the outcome of any model would be based on assumptions, and they may not all be shared assumptions. I think you could end up legislating based on subjective judgments which are masked as economic certainty. They may appear to be economically sound but are not really if you examine their assumptions. I do not think that the Members of Congress have the time to go and look at the assumptions that underpin every one of these proposals. The Congress may find itself on a slippery slope.

Mr. ZIMMER. So, in sum, do you agree with Dr. Bergsten's initial recommendation that we simply have an exclusion from PAY–GO rules for fast track legislation?

Ms. STERN. I think that it works in the trade legislation. I must tell you, I do not feel strongly on this subject, how it is handled. I do believe that if it continues to become something that hamstrings the entire Congress from granting the executive branch the necessary negotiating authority, then I would be very happy to see it excluded. But I do not have a strong view one way or the other how it is dealt with.

Mr. ZIMMER. Thank you.

Chairman DREIER. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

Fred and Paula, I want to congratulate both of you. Both of you have been experts in the area of international trade, and we appreciate all your expertise over the years. Your testimony was excellent today.

Fred, can I ask you, because I really like and appreciate your suggestion in terms of permanency of fast track with the responsibility of the executive branch coming back to the Congress for specific negotiating authority for a country or for groups of countries, would that include the ability of Congress to, for example, add labor and the environment for specific negotiating areas? That is the first question I have.

Second, should there not be some kind of mechanism set up where you have a fast track of this provision? Otherwise, the Congress could sit on it and not give the President authority, so perhaps there should be some disapproval of the President's request for the right to negotiate.

Could you answer both of those or respond to both of those?

Mr. BERGSTEN. Yes. I think the answer is yes to both. As I said, I would envisage Congress, in its authorization of a specific negotiation, laying out negotiating objectives for the administration. This has been done historically, but it kind of slipped in the NAFTA case. It was not really done explicitly enough.

In many negotiations, the congressional directive has not been very precise. Administrations always like that. It gives them more flexibility, and there is a case for that vis-a-vis the foreign partners. On the other hand, it makes it more difficult when you come back to the Congress to get approval for the deal.

With the enormous increase in the importance of trade to our economy, which Jim Kolbe pointed out, and with the enormously increased engagement of the Congress in this area, as indicated by the NAFTA and Uruguay round legislation, I think whatever additional difficulties might be caused by ironing out precise objectives would be very much worth it in terms of improving the whole process.

I think we are going to need a very big trade policy debate in the country within the next 1, 2, or 3 years over these three major new upcoming negotiations that I talked about. We have essentially completed the first half century of postwar trade negotiations. Border barriers for industrial trade among industrial countries have basically been eliminated. There are a few pockets of protection left, but not much with the end of the Uruguay round.

We are moving into the much more difficult area of getting behind the border and into competition policies, environmental issues, investment policies, government procurement, things that have traditionally been viewed as domestic policy but which, as we see in the current debate with Japan, have huge effects on international flows. Those now quite legitimately and logically become the focus of what we call trade policy, though they are not really trade issues.

As global economic interdependence proceeds, as it will and as it should because it benefits us all, those issues come front and center. That makes a much more complex agenda for trade, if we still call it trade, and I believe, therefore, the issues have to be discussed in some depth and detail with the Congress and with the public before we proceed to free trade in the Asia Pacific, in Latin America, or in another big GATT round.

Mr. MATSUI. Thank you. I appreciate that.

Let me ask you, Paula, a question, because you talked about labor and environment being legitimate issues of negotiation. One of the issues that came up during the NAFTA debate was how far on the environment we go. For example, there was a general consensus that the Mexican laws on the environment were adequate, obviously not as good as our laws, but adequate. So what we did was we put in an enforcement mechanism. Each country must enforce their own laws, and we set up a body in order to make sure that somehow that will happen over the years of this agreement.

The environmentalists were still not happy. They felt that we should go beyond the borders. For example, if we start negotiating with Brazil and we want Brazilian logs to come into the United States, even if they qualify with our standards, do we tell Brazil that your logs cannot be cut in the forest? That is an issue that obviously creates concern for many of us, because then the Japanese, if we start sending logs over there, will say, hey, if you are doing it up in Washington State and you are killing spotted owls, we do not want your logs. So it could be used against us at the same time.

How far do we go on environmental issues when it comes to these, if we make them conditions and if we put sanctions on them? Perhaps you can address that, and Fred, if you want to add to that, as well. But Paula, the question is for you in particular, because you do favor some environmental standards.

Ms. STERN. Yes. If you look back throughout our history, when the United States negotiates with other countries and tries to exert its influence, it has used trade and economics to advance other nontrade goals. So I think it is a legitimate linkage. The issue is how to do it, as you said, and how far do we go.

As a preface, I wish to emphasize that part of my written testimony which talks about channeling America's energies into revitalizing both the International Labor Organization and possibly creating a global environmental organization. I do not believe that the World Trade Organization or the NAFTA template are really adequate to these tasks. We have not achieved adequate consensus on adherence to and enforcement of some of these standards among ourselves or with other countries. So to try to load all of this onto the trade discussions will not get us far enough, fast enough.

While I think that it is legitimate to have these objectives, I do not think that the exact rules or enforcement and sanctions that were in place for Mexico necessarily have to be stated in absolutely the same language for every other country. I applaud your suggestion to adjust the language depending upon which countries or regions you are dealing with. That is absolutely correct; the nation's negotiators have to have flexibility to deal with the different realities of different countries.

On the other more general point of giving authority for the future, I think it may be begging the question to have permanent fast track and then come back to Congress for each new initiative. Fred's idea sounds very good, but I think we have to really examine whether it is not just begging the question.

Thus, we come back to the Congress for each region, whether it is the Asian countries or the Latin countries, we may get into an ad hoc-ism. Then we will not have a strategy which allows for standards which the American public can support that will apply globally and where there will not be exceptions. We may send signals to other countries that the United States will have lower standards for some countries than others, even though we are giving all of them the same free trade access to the United States.

So I think we have to be very careful about papering over in the beginning these important strategic issues and then ad hoc-ing it into the future.

Mr. MATSUI. But could you answer my question on the clear cutting issue, though?

Ms. STERN. On the Brazilian clear cutting and on the Washington State issue, I am sorry. I assume that we do not have scientific-based standards in a lot of these matters, and I think it would be ill conceived to put in sanctions until we have the agreed standards, and I do not know that we have them, for example, on the logging.

Mr. MATSUI. Fred, do you want to comment?

Mr. BERGSTEN. We need to make a three-way distinction on environmental problems of that type. Does the environmental action of a country adversely affect only its own environment? If so, it should be viewed as up to that country to deal with that problem.

Second, does its environmental practice or lack thereof have a cross-border effect that legitimately hurts a neighboring country? This justifies, in my view, the neighboring country taking it up

with them in negotiations, and that was the case in NAFTA on the issue of the Mexican border.

The third type of environmental problem is where there is global economic damage. That was the case with the effect of chlorofluorocarbons on the ozone layer. That may also be the case with Brazilian clear cutting because of the effect on greenhouse gases.

So you have to make a distinction as to the extent of the environmental damage caused by a particular country's practice in determining what is the appropriate remedy. Then, if you can get agreement to apply a remedy, you have a clear basis to do so, as I said before, including the possible use of trade sanctions once there is a widespread agreement that the practice can be effectively dealt with in that way.

Chairman DREIER. Mr. Payne.

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

Dr. Stern and Dr. Bergsten, thank you for being here and thank you the very positive contributions you both make in terms of U.S. trade policy and international trade policy.

Mr. Zimmer covered the area that I wanted to talk about. He did it very thoroughly, and so I will yield back the balance of my time. Thank you.

Chairman DREIER. Thank you very much.

Thanks to both of you for your very helpful testimony. We appreciate your being here and recognizing our time constraints.

Speaking of time constraints, I would now like to recognize the distinguished minority leader of the House, Mr. Gephardt, who, I understand, has a meeting in just a few minutes.

We welcome you, Mr. Leader, and look forward to your testimony. You can certainly summarize, if you wish.

## STATEMENT OF HON. RICHARD A. GEPHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. GEPHARDT. Thank you very much, Mr. Chairman and members of the subcommittees. I am pleased to be here. I am on a tight timeline and I will go through this real fast. Maybe if there could be a question or two, I would be happy to answer, but I may have to leave at that point.

Mr. Chairman, you may recall that when President Bush came to the Congress in 1991 for fast track authority, I supported his request but only after an extensive discussion and negotiation about what the authority would be used for. In fact, I offered a resolution on the House floor along with the fast track extension that outlined our specific objectives. The action plan that President Bush negotiated at that time addressed a broad number of issues relating to the GATT Uruguay round and the North American Free Trade treaty negotiations.

Today, in the absence of that kind of action plan, and I think we could get one if we work at it, I do not believe we should offer open-ended fast track authority. The Constitution vested in the legislative branch the authority over international trade. Before we grant this authority with the presumption that there will be no amendments, we should know what we are giving the authority for. We should know what we are trying to achieve in the first place.

This does not mean that the President cannot negotiate, but if he wants a process that restricts Congress' ability to offer amendments, then we have a right and an obligation to find out exactly where the fast track leads.

The fast track represents a partnership between the Congress and the executive, and while I appreciate the role of your two committees, the Rules and Ways and Means Committees, I must say that the interests of all Members of Congress representing all the people of the country must be included. The only way we can develop broad public support for trade agreements is if there is a full and open debate on all of these issues.

Let me also say that the administration has begun negotiations with Chile for accession to NAFTA. If, at the end of the process, we can agree on what our objective should be, then I believe we should limit the fast track extension to this one issue. If the administration can define what it will do with fast track in other areas, we can then examine whether we should further broaden the authority.

Finally, as most of you know, I believe that trade involves a great deal more than simply tariffs and traditional trade issues. For example, I do not understand how you can have a free trade agreement with a country that does not have a free labor market, a free capital market, or a real political and economic reform so that working people actually see some benefit from free trade.

Let us remember that a free trade agreement is really an attempt to marry different economies. That means we need to ensure the greatest compatibility between our economies in the long term, and we need a good prenuptial agreement to establish the ground rules.

I would ask that Members maybe look at my testimony. It is more complete. It addresses a whole range of issues. I am sorry we do not have more time, and I thank the subcommittees for letting me be here to make this testimony today.

[The prepared statement follows:]

Summary of
Testimony By House Democratic Leader Richard A. Gephardt
Ways and Means Trade Subcommittee
and House Rules Subcommittee on Rules and Organization
Hearing on Fast Track Authority
Thursday, May 11, 1995

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Broad v. Narrow:

It is premature to offer the President fast track authority.

In the absence of the kind of action plan that was negotiated in 1991, I don't believe should offer open-ended fast track authority. We should know what we're trying to achieve in the first place.

If we can agree on what our objectives should be, then I believe we should limit the fast track extension to Chile. If the Administration is prepared to define what it will do with fast track authority in other areas, we can then examine whether we should further broaden the authority.

Negotiating Objectives:

I believe that trade involves a great deal more than simply tariffs and traditional trade issues. For example, I can't understand how you can have a free trade agreement with a country that doesn't have a free labor market, or a free capital market, or real political and economic reform so that working people actually see some benefit from free trade.

During the NAFTA debate I said that I didn't believe that it was enough of a force for progress. I still hold that belief today. This year we are expected to run a trade deficit of more than ten billion dollars with Mexico. We've seen tremendous turmoil in their market. The NAFTA should not be a ceiling on our trade negotiations, it should be a floor.

If we're simply going to allow Chile to join the existing NAFTA, then I don't think we should offer fast track authority. And I would have trouble understanding how anyone who opposed the NAFTA could turn around and say that it looks any better today -- that we should simply extend its provisions to other nations.

Labor and environmental issues must be integral components of any future trade agreements -- not just as side agreements, but as part of the core agreement. And they must be fully enforceable.

We've also got to ensure that there is a broad base for economic and political reform to occur. Mexico's ruling elite refused to allow the benefits of economic reform to flow to all of the Mexican people. The failure to allow broad political reform helped foster an economic crisis that has affected our country as well as theirs.

We must use negotiations to ensure that human rights -- including the rights of indigenous people -- are respected, not degraded.

We need to seriously discuss the volatility of today's capital markets, and do all we can to prevent future currency crises, such as the one that occurred with the Mexican peso earlier this year.

We also need a serious discussion about the drug trade.

Another vital issue is the need for a transition program. Too often, this is an afterthought, not an integral part of trade implementing legislation.

Time period:

I don't believe that we should be offering trade negotiation authority -- if we are to grant it at all -- for a period that exceeds a President's term in office.

Chairman DREIER. Thank you very much, Mr. Leader. We appreciate your being here.

Mr. Rangel.

Mr. RANGEL. Mr. Leader, do you see the possibility of including the problem that we have with international drug trafficking ever being a proper subject in negotiating a trade agreement?

Mr. GEPHARDT. Yes, I do. Later in my testimony I talk about that. I talk about capital markets, I talk about currency exchange figures, and I think all of that, along with human rights, should be involved in negotiations of free trade agreements.

Chairman DREIER. Mr. Matsui.

Mr. MATSUI. I have no questions. I want to thank the leader for his testimony and for being here today.

Mr. GEPHARDT. I thank you.

Chairman DREIER. Mr. Payne.

Mr. PAYNE. No questions. I also want to thank the leader for being with us this morning.

Mr. GEPHARDT. Thank you.

Chairman DREIER. Thank you very much for being here, Mr. Leader.

Mr. GEPHARDT. Thank you.

Chairman DREIER. We are going to recess for just a few minutes, and I will try to get back as quickly as I possibly can, following this recorded vote.

[Recess.]

Chairman DREIER. The two subcommittees will reconvene.

Our next panel is made up of four witnesses from various business associations. We have Jerry Junkins, chairman, president, and chief executive officer of Texas Instruments, Inc., on behalf of the Business Roundtable; Duane Burnham, chairman and chief executive officer, Abbott Laboratories, and chairman of the Emergency Committee for American Trade; William C. Lane, International Governmental Affairs manager, Caterpillar, Inc., on behalf of the National Foreign Trade Council, Inc.; and Robert Morris, senior vice president, the U.S. Council for International Business.

We welcome all four of you and look forward to your testimony. We will begin with you, Mr. Junkins.

## STATEMENT OF JERRY R. JUNKINS, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, TEXAS INSTRUMENTS, INC., ON BEHALF OF BUSINESS ROUNDTABLE

Mr. JUNKINS. Thank you, Mr. Chairman.

I appreciate the opportunity to speak to you about what has already been discussed, the pivotal role, and increasingly so, that international trade and investment plays in our economy and the role of the fast track in facilitating the negotiations of these international agreements.

It seems like every time you open the newspaper or turn on the radio or the television, someone is talking about the Internet or the Global Information Infrastructure or the Networked Society. What all this talk really says to me is that we are living in an increasingly interdependent world and technology has certainly linked us to our neighbors in this country and around the world.

Clearly, a similar pattern of increasing linkage is taking place in the international trade and investment area. Our own company invests substantially around the world, and just a quick example, in Taiwan, investment by ourselves and other multinational companies has made it possible for that country to develop its economy and become a major market for U.S. exports. Last year, U.S. exports to Taiwan were about the size of the U.S. exports to Germany, and Taiwan consumed more semiconductors than all of China and the former Soviet Union combined. This clearly is a win-win situation, and there are countless other examples.

Therefore, it is clear that economic isolation is not a viable choice for our nation. The reality is that the world is increasingly and unavoidably interdependent, and what we must do is decide how we can structure our economic interdependence to benefit Americans and safeguard the interests of the American people.

Negotiating bilateral and multilateral trade agreements that lower these barriers to our goods and services and create transparent international rules of trade is certainly part of the answer. But, as has already been stated, we cannot hope to conclude these meaningful agreements if we cannot assure our trading partners that agreements reached with the U.S. Trade Representative won't be negotiated a second time with either Congress or the U.S. private sector.

Therefore, the Roundtable strongly supports the renewal of congressional fast track procedures. On balance, we do not believe that drastic changes in the fast track process are called for. However, four general aspects of the fast track need to be reviewed and reforms considered, and some have already been discussed.

No. 1, we do believe that the Congress should increase its oversight of negotiations in the prenegotiation phase. It is at this point that the specific objectives for actual negotiations are formulated, and it is critical for Congress to have a more structured input at this stage.

No. 2, Congress and the administration should review the process by which legislation is developed to ensure that the full House and Senate are adequately consulted before the implementing legislation is finalized. This recommendation really reflects concerns that have developed and been expressed by Members of Congress during the consideration of GATT and NAFTA, by the full House and Senate that they did not have the opportunity for input before implementing legislation was finalized.

No. 3, and this has already been discussed, the Congress should evaluate, we believe, how to treat revenue loss from tariff changes, since the elimination of foreign barriers to U.S. trade and investment will contribute revenue gains through increased U.S. economic growth. Consideration clearly should be given to exempting trade and investment agreements from these PAY–GO rules.

No. 4, to come to the question of trade and environment, we think what Congress should do is enact fire walls necessary to prevent the fast track process from being used to, one, amend domestic labor and environmental laws; two, to authorize imposition of punitive trade sanctions linked to these labor and environmental policies and practices; and three, to implement international labor and environmental agreements.

The Roundtable believes that environmental, labor, trade, and investment liberalization objectives are all important. However, conditioning an environmental or labor objective on achieving a separate trade and investment objective, or vice versa, we believe, will impede achievement of both objectives.

Last, on the time, the Roundtable believes the fast track should be extended for a period that realistically takes into account the increasingly complicated nature of these negotiations, and given our experience on GATT, it is clear that the extension should be for several years and should be for both bilateral and multilateral negotiations.

The reality is that trading does benefit our economy. We are linked economically with others, and trying to isolate ourselves certainly is not an option if we want to maintain and improve our standard of living and prosper as a nation. If we are to prosper, we must work to shape the environment in which we compete, and the negotiation of these market-opening agreements facilitated by this fast track authority will certainly help us in this effort. Thank you.

[The prepared statement and attachments follow:]

## STATEMENT OF JERRY R. JUNKINS, CHAIRMAN PRESIDENT, AND CHIEF EXECUTIVE OFFICER, TEXAS INSTRUMENTS, INC., ON BEHALF OF BUSINESS ROUNDTABLE

Mr. Chairman and members of the Subcommittee, I am Jerry R. Junkins, Chairman, President and Chief Executive Officer of Texas Instruments. I am appearing today on behalf of The Business Roundtable. Thank you for giving me this opportunity to speak to you today. Before addressing the specific issue of fast-track, I would like to comment on the critical importance of international trade and investment to the United States and its companies, workers, farmers, and consumers.

It seems like every time I open the newspaper, turn on the radio or switch on the television, someone is talking about the Internet, the Global Information Infrastructure or the Networked Society. What all this talk says to me is that wefe living in an interdependent world. Technology has linked us to our neighbors in this country and around the world.

A similar pattern of increasing linkage is taking place in the international trade and investment arena. Our own company, Texas Instruments, invests substantially around the world. In Taiwan, for example, investment by TI and other multinational companies made it possible for that country to develop its economy and become a major market for U.S. exports. Last year, U.S. exports to Taiwan were about the size of U.S. exports to Germany, and Taiwan consumed more semiconductors than all of China and the former Soviet Union combined. This is a win-win situation for the United States, since this interdependence results in increased sales for American companies and, therefore, the creation of jobs at home.

The United States seems to be at a crossroads. The Cold War is over, and our pursuit of free market reforms around the world has met with stunning success. Our national economy remains fundamentally strong. However, despite these positive realities, there seems to be some question about whether we as a nation should continue to aggressively pursue trade and investment liberalization around the world. The answer should be a resounding yes, and both the public sector and the private sector should work together to expand trade and investment opportunities around the world.

### INTERNATIONAL TRADE AND INVESTMENT ARE CRITICAL TO THE HEALTH OF THE U.S. ECONOMY

The U.S. economy, and U.S. business, have become internationalized. This is a fact of life that we can not, and should not, run from, but rather must embrace. There are those who enthusiastically recognize the nature of today's global economy and the exciting opportunities it presents. Others may seek to hide from the global economy. But we can't run from the reality of globalization, and we can't afford to turn our backs on major opportunities.

**We are no longer an isolated economy functioning (or capable of functioning) without significant interaction with other economies.**

Since the end of World War II, the importance of international trade to the U.S. economy has grown exponentially. The United States is the world's largest exporter, with $717 billion in exports of goods and services in 1994, accounting for 10.7 percent of overall GDP. From 1986 through 1993, exports of goods and services accounted for an astounding 37 percent of total U.S. economic growth. In absolute terms, total trade accounted for $1.9 trillion in business activity in 1994.

Trade is increasingly important for the world at large as well. In the last year alone, global trade in goods rose 9 percent in volume and 12 percent in value, to over $4 trillion. Compare this to the 3.5 percent rise in world goods production. Moreover, world services trade in 1994 has been estimated at $1.1 trillion.

While some may yearn for simpler days, there is no real way to now unhook the U.S. economy, or any national economy, from the larger global economy.

**Trade is good for the economy, good for business, good for farmers, good for workers, and good for consumers.**

We have no reason to attempt the impossible and try to hide from the global economy, because it presents enormous, unprecedented opportunities for our nation. I've already mentioned how important exports are to the U.S. economy. This importance continues to increase. In 1994 alone, U.S. goods and services exports grew at an annual nominal rate of 8.1 percent. Merchandise exports grew at a real annual rate of 11 percent, and as for some individual market sectors, consumer goods exports grew at an annual rate of 9.4 percent, and exports of autos and auto parts grew at 8 percent. These growth rates were far higher than the rate of growth for the economy as a whole, which was about 4 percent.

These exports mean huge amounts of money and jobs for the U.S. economy. There are now approximately 11 million U.S. jobs directly created by exports of goods and services; there are about 5 million jobs indirectly supported by exports. Moreover, the number of jobs directly supported by exports has risen 5 times faster than overall jobs in the U.S. economy.

These jobs created by exports pay, on average, higher wages than the average U.S. wage -- for example, jobs directly created by goods exports pay 18 percent higher than the average U.S. wage. Moreover, a significant majority of export growth is in high-wage sectors. Of the $65 billion increase in U.S. exports in the last two years, $15.5 billion was in electrical machinery, $8.4 billion in road vehicles, $4.8 billion in telecommunications equipment, $4.4 billion in computers, and $3.6 billion in general industrial machinery. These are the kinds of jobs this country needs to create for its workers.

Here are some examples of how important trade is for leading sectors of the U.S. economy:

| Industry | Exports as Percentage of Shipments (1993) |
|---|---|
| Computer equipment | 43.3% |
| Aerospace equipment | 32.8% |
| Entertainment | 26.2% |
| Telecommunications equipment | 25.7% |
| Electronic components & equipment | 23.6% |
| Plastics & rubber | 22.5% |
| Personal consumer durables | 18.6% |

Exports are also key for our farmers. Thirty percent of harvested acreage in the United States is destined for export markets; a third of all U.S. farmers' cash receipts come from export sales. U.S. agriculture sector exports were $50.8 billion in 1993.

And exports just keep growing for important U.S. industries. For example, from 1991 to 1994, exports of semiconductors were up 32 percent, machine tools, 22 percent, and telecommunications equipment, 21 percent. Over the past five years, exports of medical equipment grew an average of 14 percent a year, and exports of motor vehicles grew an average 11 percent a year.

Trade obviously benefits the company that sells goods or services abroad. But trade also has a tremendous beneficial ripple effect in communities and throughout the U.S. economy. Trade benefits suppliers, especially the numerous small and medium sized companies, whose goods are either incorporated into exports or whose goods and services directly support the operations of U.S. exporters. Trade benefits numerous service providers, such as insurance companies and banks that finance an exporting company's activities. The benefits ripple throughout the local community, to the restaurants, stores, and other establishments near manufacturing facilities.

In many instances, those who are benefitting from trade have no idea this is happening. For example, many workers, especially in the smaller and medium sized subcontractors, don't realize that the fruits of their labor are destined for overseas markets, and that exports are responsible for a sizable chunk of their paychecks.

Thus, exports are central to the overall health of our economy. The strength of U.S. exports has spearheaded the economy's growth. It has created high-wage jobs. And it will continue to do so.

Imports have their place, too. They give consumers a greater choice of goods and services, and provide them with goods and services not readily available from U.S. sources. Imports are often needed as inputs into further manufacturing, which facilitate U.S. production and make it more competitive, and hence create more U.S. jobs. Moreover, imports encourage competition and innovation. Walling off producers from competition often results in bloated, uncompetitive enterprises. This does not benefit anyone -- not the company, not its workers, not consumers, and not the nation.

The fact is that the United States is highly competitive in many areas including: semiconductors, computers, computer software (in which the United States has 75 percent of the world market), aerospace equipment, construction equipment, telecommunications equipment and services, financial services, information services (in which the United States has 46 percent of the world market) and entertainment. These are the technologies of today -- and of tomorrow. We must not be afraid to leap wholeheartedly into the opportunities presented by the international marketplace.

<u>A free flow of investment is just as important as a free flow of goods and services</u>.

Not only is trade good for the United States -- international investment is important, too. Far too often, public debate on this issue is shaped by ill-informed and irresponsible rhetoric suggesting that any investment involving a foreign country must be bad. The facts quickly demonstrate how critical foreign investment is for the U.S. economy and for U.S. workers.

First of all, we must recognize that the primary goal of foreign investment is the desire to serve the consumers in the country or region in which the investment occurs, not to find cheap labor or other inputs. Customers, be they users of intermediate goods in their own production operations or end users, demand prompt and reliable service from their suppliers. It is frequently difficult to meet those demands from thousands of miles away in the United States. Customers sometimes need or want to receive their goods from nearby manufacturing facilities. Proximity is even more important for services, of course. Consumers expect their banks, telephone companies, and professionals to be nearby.

In fact, foreign investment by U.S. companies is concentrated in developed countries. If foreign investment were motivated by a search for low cost inputs, developing countries would be the predominant location for foreign investment. But developing countries accounted for less than 22% of worldwide stocks of foreign direct investment in 1992.

Companies are also frequently forced to produce in other countries in order to jump over trade barriers. If we continue aggressively to tear down these barriers, this impetus will be removed. Moreover, overseas investments are often needed to keep U.S. companies competitive. Foreign investment allows companies to enjoy greater economies of scale and scope, and access to important foreign technologies.

It is especially critical to recognize that exports follow investment. From 1982-1990, the growth in exports to affiliates of U.S. multinationals exceeded the growth in exports to unaffiliated foreigners by $14 billion. There is also a direct positive relationship between U.S. direct manufacturing investment in a country and the likelihood of a U.S. merchandise trade surplus with that country. Moreover, U.S. multinationals' foreign manufacturing

investments are not predominantly made to produce goods to send back to the United States -- excluding Canada, only 7.2 percent of sales in 1990 by U.S. foreign manufacturing affiliates were exports to the United States.

U.S. multinationals' net return on foreign investments has been consistently positive, amounting to $48 billion in 1992 alone. In fact, this net return has been the single largest positive contribution to the United States' balance of payments.

Inward investment is good for the United States, too. Foreign-owned companies operating in the United States make important contributions to the nation's economic strength and health and create U.S. jobs. U.S. subsidiaries of foreign-owned companies accounted for 4.7 million U.S. jobs in 1990, and about 10 percent of U.S. manufacturing jobs. Foreign investors in the United States accounted for $91 billion of U.S. exports in 1990. Foreign investors bring funds that enable U.S. companies to expand. They also bring manufacturing know-how and other technology. We should recognize that we operate in a global economy, and welcome the jobs and other benefits of investment from sources outside our country.

**Liberalized trade and investment simply means getting governments, both at home and abroad, out of people's economic affairs and letting free markets work efficiently.**

The voters have sent a message that they want the government to reduce the level of intervention in their day-to-day lives. They would prefer that markets, not government agencies, make economic decisions. Those of us who believe in markets as the best decision-making mechanism for the economy can immediately see the need for trade and investment liberalization. Barriers to trade and investment impede growth, reduce choice, and result in higher prices, lower quality goods and services for consumers, and fewer jobs. That is why a mainstream consumer group like Consumers Union has generally supported trade liberalization. Artificial isolation from healthy and fair competition for producers results in inefficiency and waste. Governments around the world have recognized these realities, and have been steadily reducing barriers to trade and investment.

**The nay-sayers are wrong -- trade is not to blame for the economic problems some perceive in our nation.**

Many arguments have been raised against trade and investment liberalization. These arguments, on close examination, don't hold much water.

One argument is that trade is bad because it costs U.S. jobs. It is true that some jobs are displaced by imports. However, trade involves a trade-off -- the gradual shift of jobs from low-productivity, low-competitiveness, low-wage jobs to high-productivity, high-competitiveness, high-wage jobs. Yet far more jobs are shifted because of other factors, most significantly technological change. All these types of job shifts are inevitable. You cannot hide from these realities.

There are always advocates of imposing trade barriers to "protect" jobs. Unless we are willing to reconsider the failed theories of isolated and planned economies, we know that jobs are created by the reality of the marketplace. You cannot permanently freeze jobs into the economy if the realities of technology and competition mandate otherwise. Studies show the exceedingly high cost to the economy of trying to do so; one estimate is that U.S. import protection costs the U.S. economy $70 billion a year, or around 1.3 percent of GDP. Moreover, I have already described how U.S. jobs are created by exports. We cannot effectively promote export growth and open markets abroad while closing our own markets.

I am not underrating the real effects of job loss for individuals. I simply do not believe that trying to freeze our economy in the face of reality is in the interest of this or future generations of workers. Our work force is one of the most diversified and highly educated in the world, and as a very large and flexible economy, we have the ability to absorb

workers into productive and well-paying jobs. Protectionism is not the way to help our workers, our citizens, nor our economy. What we need to do is keep our economy dynamic and open, and promote good, solid, effective training and education to help workers adapt to change.

The Business Roundtable is committed to continue working with Congress and the Administration to develop and implement appropriate governmental education and training programs. We are on record in support of a comprehensive national worker assistance and retraining program and in support of programs to improve the U.S. education system, starting with pre-school children. The Roundtable supports these types of initiatives because in a world of increasing technological innovation, companies must be able to rely on a steady flow of educated, trained, and skilled scientists, technicians, and workers.

Some have pointed to the U.S. trade deficit as evidence that trade is bad for the United States. Actually, we have a trade deficit because we consume more than we produce. The rest of the world provides us with what we demand, so we run a deficit. Also, in the last few years, we have been growing rapidly while our trading partners are mired in recession, so we temporarily import more and export less. The federal trade deficit doesn't help, either. We must also realize that a large portion of our trade deficit consists of petroleum imports, which is not a job-displacing commodity. Another huge chunk is our auto and auto parts deficit with Japan, which is due to special, unique bilateral problems.

When discussing the trade deficit, we should be addressing the low savings rate in the United States, and the high federal budget deficit, not imports. If we can lick these problems, we will have gone a long way to improving the U.S. economy, and the trade deficit will fall in line. Resorting to isolationism and protectionism to "solve" the trade deficit problem will not help the economy.

There are also those who argue that international investment is bad. The data I presented above amply refute this argument. The decision to invest is a very complex one, involving many factors. For example, many U.S. companies invest abroad to boost their sales, which benefits the workers and shareholders back home in the United States. It's especially important to recognize that companies do not go abroad just to find cheap labor; many other factors weigh into investment decisions. The United States is endowed with numerous advantages which make it an attractive place for U.S. companies and foreign companies, including a highly productive and well-educated work force, state of the art communications networks and computer systems, technologically advanced production facilities, a well-developed transportation infrastructure, and stable and sophisticated legal and financial systems. If low wages were the main determinant of investment decisions and manufacturing strength, Haiti and Bangladesh would be economic leaders, not the U.S., Germany, and Japan.

To those who would try to shut the United States off from the world economy, I would point to the experience of the Smoot-Hawley tariff of the 1930s. The United States, in a misguided effort to protect its market, helped spark a worldwide shoving match of protectionism and isolationism, which has been credited with deepening the worldwide depression.

I would also point to the recent trade liberalization undertaken by many developing countries. After years of failed attempts to improve their economies through protectionism, they are converting to the open market, capitalist philosophy and experiencing the highest growth rates in the world. The results have been phenomenally positive. For example, the Argentine GDP has grown at an annual rate between 6.0 and 8.7 percent after the liberalization policies of the current government began to take hold. In all of these countries, people are finding that opening markets, including dropping trade barriers, improves the national economy and the standard of living. It would be ironic for us now to repudiate our own counsel regarding free, open markets after seeing how well it has worked in these newly opened economies.

**Constant trade and investment liberalization are needed to improve prospects for U.S. companies and their workers.**

The goal of the government and the private sector is, and should be, to expand the U.S. economy and to create jobs for our workers. To accomplish these goals, it is critical that we open and expand foreign markets so we can boost U.S. exports. Congress, the Administration, and the business community, working together, have accomplished a lot towards this goal in the recent past. Most significantly, in just the last two years, the United States put into effect the NAFTA and the Uruguay Round, and negotiated numerous bilateral trade and investment agreements. All these accomplishments have gone far in opening foreign markets to U.S. goods and investment.

However, we cannot stop here. In my industry, if you stop investing in the future, you run the serious risk of falling behind. Trade and investment liberalization is the same -- an ongoing process in which the United States must invest. If we are not in the vanguard of liberalization, we risk falling behind other countries, which are pursuing their own liberalization agendas. Moreover, continued efforts are needed to open up markets in developing countries, markets that will present huge opportunities for this country in the years to come. And lastly, despite recent improvements in world trade rules, trade and investment barriers remain, and new ones may always be erected. That is why it is critical that we aggressively pursue trade and investment liberalization initiatives, such as those taking shape in the Asia-Pacific Region and in Latin America.

Growth in the developing world presents especially important opportunities for U.S. companies and their workers. Developing countries, particularly in Asia and Latin America, lead the world in GDP growth, have steadily increasing middle classes demanding consumer goods, and have high demand for goods and services, especially those needed for infrastructure improvement. The Commerce Department estimates that of the $2 trillion increase in global imports expected in all countries except the United States between now and 2010, 75 percent will occur in developing countries and former centrally planned economies.

Developing countries have a particularly strong demand for products and services for which U.S. companies are highly competitive providers. Examples are capital goods and equipment; high technology equipment and services; and goods and services needed for improvement of infrastructure such as transportation, construction, telecommunications, and environmental protection. Moreover, development builds demand for consumer goods and services, again an area of U.S. predominance. By the year 2010, China, India and Indonesia combined will have 700 million people with annual income equal to that of Spain today. The opportunities for the United States are, frankly, mind-boggling.

We are already seeing significant benefits from these markets. Over 40 percent of U.S. exports now go to the developing world; U.S. exports to Asia (excluding Japan) and Latin America have grown much more rapidly over the last decade than our exports to our major developed country trade partners. In 1994, for example, U.S. exports to developing countries grew at an annual rate of 11.5 percent. Growth of developing country economies and U.S. exports to those countries are predicted to continue rising dramatically.

We need markets, developing and developed alike, to be open to our goods, services, and investment. Although the trend has been positive, we cannot guarantee economic liberalization will continue without our encouragement, and backsliding is always possible.

Moreover, the world will not wait for us, as many countries are pursuing trade and investment liberalization agreements that could leave the United States out in the cold. Already, there are overlapping trade agreements in Latin America that do not include the United States. Some Asian nations have been discussing a trade grouping that would exclude the United States. The European Union has been exploring trade agreements with Latin American nations. In order to ensure that our trading partners don't implement agreements and regimes detrimental to our interests, we must remain engaged, and maintain the

leadership role we have exercised so successfully these many years. This is not a burden for the United States. It is an unparalleled opportunity to shape post-Cold War economic relationships in our interests.

The U.S. population is only four percent of the world population. If we ignore foreign markets, and do not actively pursue liberalization abroad, we risk putting our companies and workers at a disadvantage in competing for the huge prizes for success in the world marketplace, selling merchandise to the other 96 percent of the world's population. We cannot afford to do that.

And let's not forget that economic liberalization abroad benefits the liberalizing country itself, as well as global stability in general. Developing countries around the world have recognized the benefits of liberalization. They have, to varying degrees, abandoned statist, protectionist strategies in favor of openness. The result has been an economic boom. This in turn promotes creation of a middle class, which, along with openness to the rest of the world, promotes democracy and economic and political stability. Thus, economic liberalization advances important U.S. non-economic goals. And, in pure self-interest, we should note that these effects in turn boost the market for U.S. exports.

We recognize that there are many important domestic issues on the national agenda. The Roundtable is as committed as you are to move aggressively on these issues. Nevertheless, the United States cannot afford to lose sight of the fundamental importance of international trade and investment to the health of the U.S. economy and its continued strength in the future. The Roundtable is committed to making the extra effort with you to keep international initiatives high on the national agenda.

## FAST TRACK PROCEDURES ARE A NECESSARY TOOL FOR THE NEGOTIATION OF INTERNATIONAL AGREEMENTS TO ELIMINATE TRADE AND INVESTMENT BARRIERS RAISED AGAINST THE UNITED STATES

It is clear that economic isolation is not a viable choice for our nation. If we retreat from the world marketplace in the name of independence of action, the likely result will be a shrinking economy, shrinking standards of living for Americans and the risk that the U.S. will drop from its leadership position to last in line. The reality is that the world is increasingly and unavoidably interdependent. The question we should be asking, therefore, is not "how can we avoid engaging with the world," but "how can we structure our economic interdependence to benefit Americans and safeguard the interests of the American people?"

Negotiating bilateral and multilateral trade agreements that lower foreign trade barriers to our goods and services and create transparent international rules of trade is part of the answer. We cannot hope to conclude meaningful agreements, however, if we cannot assure our trading partners that agreements reached with the U.S. Trade Representative will not have to be negotiated a second time with the U.S. Congress or the U.S. private sector.

During the last thirty years, Presidents Nixon, Ford, Carter, Reagan, Bush, and Clinton all utilized the fast-track process established by the Congress to facilitate international trade and investment negotiations to break open foreign markets for U.S. products and services.

As the Senate Committee on Finance explained in 1974, fast track procedures were created out of a clear and pressing need, because "our trading partners have expressed an unwillingness to negotiate without some assurances that the Congress will consider the agreements within a definite time-frame." The Committee recognized that, as a result, "[o]ur negotiators cannot be expected to accomplish [Congressional] negotiating goals . . . if there are no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits." When the House Committee on Ways and Means endorsed extension of the fast-track process in 1988, it emphasized that the fast-track process preserved a careful

constitutional balance between the Congress and the President, included safeguards against abuse, and had a proven track record.

The reasons given by Congress to justify the renewal of fast-track procedures in 1988 and its extension in 1991 are equally compelling today. There is still a clear and pressing need for fast-track procedures and the careful constitutional balance remains in place.

If fast-track procedures are not reauthorized, comprehensive international negotiations that the United States needs to pursue will be impaired. Our trading partners will be reluctant to complete negotiations with us if they believe that they will have to negotiate the details of the agreement a second time with the Congress and the U.S. private sector. The Roundtable believes that such an outcome will be detrimental to the national interests of the United States.

Fast-track has now been used five times: in 1979 for the GATT Tokyo Round; in 1985 for the U.S.-Israel Free Trade Agreement; in 1988 for the U.S.-Canada Free Trade Agreement; in 1993 for the North American Free Trade Agreement; and in 1994 for the GATT Uruguay Round. Each of these have provided new insights on how to shape fast-track.

On balance, The Roundtable believes drastic changes to the fast-track process are unnecessary. However, four general aspects of fast-track need to be reviewed and reforms considered. First, the Congress should increase its oversight of negotiations in the pre-negotiation phase. It is at this point that the specific negotiating objectives for an actual negotiation are formulated. The types of negotiating objectives set forth in the past have been a good general overview of the key issues, but they are static and out of context. It is more meaningful for the Congress to have a comprehensive and structured input into the development of negotiating objectives in the context of the actual negotiation.

Second, Congress and the Administration should review the process by which legislation is developed to ensure that the full House and Senate are adequately consulted before the implementing legislation is finalized. This recommendation reflects concerns expressed by Members of Congress during consideration of the GATT agreement by the full House and Senate that they did not have an opportunity for input before the implementing legislation was finalized. This is a valid concern. Once implementing legislation is introduced, no amendments are permitted. However, many members of the House and Senate do not serve on the committees involved in preparing the implementing legislation.

Third, the Congress should reevaluate how to treat the revenue loss from tariff changes. Under the pay/go rules, Congress must find offsets for revenue losses. Since the elimination of foreign barriers to U.S. trade and investment will contribute to revenue gains through increased U.S. economic growth, consideration should be given to exempting international trade and investment agreements from the pay/go rules.

Fourth, Congress should enact firewalls necessary to prevent the fast-track process from being used (1) to amend domestic labor and environmental laws, (2) to authorize the imposition of punitive trade sanctions linked to labor and environmental policies and practices, and (3) to implement international labor and environmental agreements.

The Roundtable believes that liberalization of trade and investment is fully consistent with the pursuit of sound environmental policies and improved working conditions throughout the world. While enhanced environmental protection and improved working conditions are not the fundamental objectives of international trade and investment liberalization, the economic growth fostered by expanded trade and investment can provide the financial and technical resources and create the public and private expectations and social choices that are necessary to promote effective environmental protection measures and improved working conditions.

However, the focus of trade and investment agreements should be on liberalizing trade and investment, not on remedying specific environmental and/or labor-related problems. The proper instruments for addressing transborder and global environmental issues and improved world-wide working conditions are international environmental and labor agreements, not trade and investment agreements.

Environmental and labor and trade and investment liberalization objectives are all important. Making progress on one of these fronts should not be held hostage to making progress on the other. These objectives should be pursued vigorously through separate or parallel initiatives. Conditioning an environment or labor objective on achieving a separate trade and investment objective, or vice versa, will impede the achievement of both objectives. Such strict "conditionality" should be avoided.

Attached for the Committee's information are two statements by The Business Roundtable that explain in greater detail The Roundtable's position on international trade and investment initiatives and their relationship to international environmental and labor issues. The first, Protecting the Global Environment and Promoting International Trade: Principles and Action Plan, outlines a set of principles that the Roundtable believes should govern the relationship between trade policy and environmental protection. It also includes a series of initiatives that the U.S. should pursue in order to make significant progress in addressing transborder and global environmental concerns without unnecessary and unwarranted obstacles to continued liberalization and expansion of international trade and investment. The second, International Trade and Investment and Labor: Constructive Approaches, similarly sets out a framework and proposed initiatives to promote improved working conditions throughout the world.

Finally, The Roundtable also believes that fast-track should be extended for a period that realistically takes into consideration the increasingly complicated nature of international trade and investment negotiations. It should be noted that the Uruguay Round took seven years to negotiate and almost another full year to implement. Finally, the Roundtable believes that fast-track should be reauthorized for use in both multilateral and bilateral negotiations. To limit it to one or the other or to specific countries is too restraining and would unduly restrict the United States from taking advantage of unforeseen negotiating opportunities that may arise and accrue to the economic benefit of the United States.

## CONCLUSION

The reality is that trading benefits our economy. We are linked economically with others. Trying to isolate ourselves simply isn't an option if we want to maintain and improve our standard of living and prosper as a nation. And if we are to prosper, we must work to shape the environment in which we compete. The negotiation of market opening agreements, facilitated by fast-track authority, will help us in this effort.

**The Business Roundtable**

May 9, 1995

INTERNATIONAL TRADE AND INVESTMENT AND
LABOR: CONSTRUCTIVE APPROACHES

The United States needs to promote economic growth through international trade and investment, which will improve working conditions throughout the world. The Business Roundtable believes these are complementary objectives: Success in achieving trade and investment liberalization will facilitate improved working conditions.

The relationship between trade and investment policy and labor policy has become a source of intense debate and controversy, both domestically and internationally. The way in which these issues are addressed by policy makers is of enormous importance to the business community and society in general. Consequently, The Business Roundtable has undertaken to formulate a set of general principles upon which the policy debate should proceed.

**Principle 1. Trade and investment agreements should focus on achieving trade and investment liberalization, rather than on achieving labor policy objectives.**

The principle objectives of trade agreements have been and should remain the liberalization of trade and investment and the promotion of economic growth. Trade expansion and economic growth create social and financial conditions conducive to achieving improved working conditions. The successful conclusion of a trade and investment negotiation should not be compromised or delayed by ancillary efforts to address labor issues by means of an agreement whose fundamental objective is to liberalize trade and investment. The inconsistency of linking between trade and labor policies is particularly troublesome because such conditionality would impede the achievement of both objectives.

For example, there is growing evidence to suggest that increasing trade and investment is having a positive impact on working conditions in developing countries without the threat of trade sanctions or the compulsion of international labor standards. Recent studies of those developing countries that have emerged as world market competitors indicate that their workers are reaping the benefits of the international trading system. Since the 1960's, real wages have increased by 400 percent in Hong Kong, over 600 percent in Korea, and more than 800 percent in Taiwan. In the 1980s, when newly industrialized countries became significant forces to be reckoned with in world markets, real earnings for workers in those countries either kept pace with or exceeded growth in GDP/GNP. Equally significant is the mounting evidence that these economies are also increasing real minimum wages,

sanctions, the United States should pursue cooperative international initiatives. To this end, The Business Roundtable believes the United States should upgrade its participation in the ILO. As the United States Council for International Business has suggested, the Untied States should:

- take more seriously the ILO's work with respect to employment creation and structural adjustment, including both policy and technical assistance activities;
- help revamp and modernize the overly complex system of ILO conventions (which are unworkable, as evidenced by their poor ratification record); and
- promote efforts to improve the ILO's supervisory machinery.

With respect to the WTO, it is not an appropriate forum to address international labor issues in general. The WTO's principal purposes are to facilitate the negotiation of trade and investment liberalization agreements and to ensure their implementation. Attempts to negotiate internationally recognized labor standards in the WTO that are linked to trade sanctions will politicize the WTO to the extent of risking its ability to adequately and effectively perform its mission.

Equally significant, and often ignored, is the plain fact that the WTO's dispute settlement procedures are not structured to address broad social issues. Even if it were possible to overcome the substantial difficulty in agreeing on clearly defined international labor standards, a dispute would involve qualitative and politically subjective judgments of what constitutes injury and how much trade should be sanctioned. For example, the WTO does not provide for collective withdrawal of market access rights (a concept envisaged by many proponents of a WTO labor regime, but in direct conflict with the WTO's fundamental principle that relates the severity of a breach of obligations directly to the level of injury caused).

## Conclusion

The Business Roundtable agrees that improving working conditions around the world is an important goal. Economic growth, spurred by trade and investment, is the most constructive path to this objective. In conjunction with trade and investment, cooperative international efforts can also play a significant role. Trade sanctions and conditionality are counterproductive and undermine progress. With this in mind, the United States should promote improved global working conditions by continuing to promote trade and investment liberalization worldwide, while simultaneously pursuing cooperative bilateral and multilateral efforts on labor conditions.

**[An additional attachment to this testimony is being retained in the Committee's files]**

Chairman DREIER. Thank you very much, Mr. Junkins.
Mr. Burnham.

**STATEMENT OF DUANE L. BURNHAM, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ABBOTT LABORATORIES, AND CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE**

Mr. BURNHAM. Thank you. Good morning. I am Duane Burnham, chairman and chief executive officer, Abbott Laboratories, an Illinois-based manufacturer of health care products. I am here today to testify on behalf of the Emergency Committee for American Trade, of which I am also chairman, in support of fast track authority that will enable the President to negotiate trade agreements on behalf of the United States.

The Emergency Committee for American Trade, or ECAT, as we are more popularly known, is an organization of the leaders of about 60 large U.S.-headquartered multinational companies. ECAT was pleased to have been in the forefront of those who supported the original grant of fast track trade negotiating authority that was contained in the Trade Act of 1974. Without the fast track, there would have been no Tokyo round of multilateral trade negotiations in the seventies, no United States-Israel Free Trade Act, no United States-Canada free trade agreement, no NAFTA, and no Uruguay round.

While we do not have a bill of particulars as to what the details of a new grant of fast track negotiating authority should contain, we do have the following thoughts as to a general outline.

As to duration, we suggest a grant of negotiating authority for a period of at least 5 years. Were foreign trade a less contentious issue than it is, we would suggest a fast track grant for a period far longer than our suggested 5 years in order to provide greater certainty as to the conduct of U.S. trade policy.

As to the scope of trade negotiating authority, we recommend that the authority should be available for either bilateral, regional, or multilateral negotiations. This would enable the President to negotiate a trade agreement with Chile, for example, or with any other country or countries, as may be deemed appropriate.

In addition to authorizing negotiations on nontariff barriers, the fast track should also grant the President the authority to proclaim modifications of U.S. tariffs, subject to such limitations as are determined by the Congress.

As to objectives to be attained through trade negotiations that would be authorized by the new grant of fast track authority, we believe that since the new grant is not being formulated for the purpose of authorizing U.S. participation in a particular negotiation, the negotiating objectives of the fast track should be of a general nature, such as attainment of more open, fair, and reciprocal market access and improved trading rules and provisions that would benefit the U.S. economy.

More specific negotiating objectives would be spelled out and crafted to fit the circumstances of particular negotiations that might be undertaken, pursuant to the basic grant of fast track negotiating authority.

As is known to the Members of Congress, we in ECAT, together with other business groups, are opposed to the inclusion of labor and environmental issues as objectives of trade negotiations. We are in no way, however, opposed to international negotiations on these issues in nontrade forums, such as the ILO or other appropriate bodies of the United Nations, or in other international organizations. In fact, we believe it appropriate that the United States negotiate international agreements to improve labor standards and to safeguard the environment.

We firmly and strongly believe, however, that trade negotiations are not an appropriate forum for such negotiations. Because there is little consensus domestically or internationally on labor or environmental issues, we do not believe that such issues should be considered outside the normal legislative process, as they would be under the fast track procedures applicable to trade agreements.

In addition to opposing labor and environmental considerations being subject to trade negotiations, we in ECAT also adamantly oppose the use of trade sanctions as a means of seeking labor or environmental objectives or of expressing U.S. displeasure with foreign labor or environmental measures. The use of trade sanctions for such nontrade related issues disrupts commercial relations and is costly to U.S. exporters and their employees.

We recommend that other aspects of a fast track extension basically conform to the fast track provisions of the 1988 Omnibus Trade and Competitiveness Act, as amended. These provisions have well served the economic interests of the United States. We would suggest, however, that fast track procedures might be modified to ensure more effective and appropriate consultations with the Congress, both before, during, and after trade negotiations.

We in ECAT and, I believe, others in the business community, are generally satisfied with fast track procedures for consultations with the business community during the course of trade negotiations. We recommend that these be continued.

Before concluding, I would like to comment on the applicability of the congressional budget process to the financial consequences of trade negotiations. Opinion is nearly unanimous that trade liberalization stimulates economic activity with resultant positive economic consequences for the Federal budget. Therefore, we wonder if it would be possible to accommodate these consequences by perhaps removing trade agreements from the budget process.

I thank you for the opportunity to present our ECAT views to you and look forward to working with all of Congress on future matters of U.S. trade policy.

[The prepared statement follows:]

STATEMENT OF DUANE L. BURNHAM, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ABBOTT LABORATORIES, AND CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE WAYS AND MEANS SUBCOMMITTEE ON TRADE AND THE COMMITTEE ON RULES SUBCOMMITTEE ON RULES AND ORGANIZATION HEARING ON EXTENSION OF "FAST TRACK" NEGOTIATING AUTHORITY

THURSDAY, MAY 11, 1995

Good morning, I am Duane Burnham, Chairman and Chief Executive Officer of Abbott Laboratories, an Illinois-based manufacturer of health care products. Our worldwide sales in 1994 totaled more than $9 billion. We have 50 thousand employees in 130 countries. I am here today to testify on behalf of the Emergency Committee for American Trade, ECAT, as we are popularly known, in support of a grant of "fast track" authority that will enable the President to negotiate trade agreements on behalf of the United States.

I am also the Chairman of ECAT which is an organization of the leaders of about 60 large U.S.-headquartered multinational companies. ECAT member firms account for a substantial portion of total U.S. exports. Their worldwide sales last year were over $1 trillion, and they employ nearly 5 million workers. As can be seen from these figures, ECAT has a keen interest in U.S. trade policy, and has supported trade-expansionary measures over the 28 years of its existence.

ECAT was pleased to have been in the forefront of those who supported the original grant of fast track trade negotiating authority that was contained in the Trade Act of 1974. The fast track was and is an innovative mechanism that assures to our trading partners that those provisions of trade agreements negotiated by the United States requiring statutory action will be considered in a timely fashion by the Congress. Without such assurance, it is a certainty that other countries would not conclude comprehensive trade negotiations with the United States. Without the fast track, there would have been no Tokyo Round of multilateral trade negotiations in the 1970s, no U.S.-Israel free trade pact, no U.S.-Canada Free Trade Agreement, no NAFTA, and no Uruguay Round.

Because we in ECAT firmly believe that these agreements substantially benefit the United States, we are strongly supportive of a new grant of fast track negotiating authority that will enable the United States to enter into new trade agreements designed to enhance our country's economy. We also believe that those who might be disadvantaged by such agreements should be appropriately assisted in coping with any changed circumstances.

While we do not have a bill of particulars as to what the details of a new grant of fast track negotiating authority should contain, we do have the following thoughts as to its general outline.

As to duration, we suggest a grant of negotiating authority for a period of at least five years. We would prefer this to a hyphenated authority such as the one provided in the Omnibus Trade and Competitiveness Act of 1988. That authority was for a period of three years with a qualified provision for a two-year extension. Were foreign trade a less contentious issue than it in fact is, we would suggest a fast track grant for a period far longer than our suggested five years to provide greater certainty as to the conduct of U.S. trade policy. Certainty is critical to the long-range planning that is increasingly necessary for the advancement of the economic well-being of U.S. firms and their employees in a globalized economy.

As to the scope of trade negotiating authority, we recommend that the authority should be available for either bilateral, regional, or multilateral negotiations. This would enable the President to negotiate a trade agreement with

Chile, for example, or with any other country or countries as may be deemed appropriate.

In addition to authorizing negotiations on non-tariff barriers, the fast track should also grant the President the authority to proclaim modifications of U.S. tariffs subject to such limitations as are determined by the Congress. Based on the requirement of reciprocity, we would suggest that the President be authorized to negotiate reductions in U.S. tariffs of 50 percent. The President should also be granted additional authority to negotiate the elimination of U.S. tariffs under such circumstances, for example, as the zero for zero negotiations of the Uruguay Round.

As to objectives to be attained through trade negotiations that would be authorized by the new grant of fast track authority, we believe that since the new grant is not being formulated for the purpose of authorizing U.S. participation in a particular negotiation, the negotiating objectives of the fast track should be of a general nature such as the attainment of more open, fair, and reciprocal market access, and improved trading rules and provisions that would benefit the U.S. economy.

More specific negotiating objectives would be spelled out and crafted to fit the circumstances of particular negotiations that might be undertaken pursuant to the basic grant of fast track negotiating authority. These specific objectives would be developed among the President, the Congress, and the public prior to entering into any trade negotiation. It is likely that the specific objectives of future trade negotiations will concern trade in goods and services, and improved protection for intellectual property rights. However, other objectives such as harmonizing competition policies or guaranteeing national treatment for foreign investments might also pertain to particular negotiations.

In short, we foresee the possibility of differing objectives for different trade negotiations. Therefore, we suggest the generic grant of fast track authority contain only general objectives. Later, specific objectives would be filled in for particular negotiations that might take place during the time frame of the basic authority.

As is known to members of the Congress, we in ECAT together with other business groups are opposed to the inclusion of labor and environment issues as objectives of trade negotiations. We are in no way opposed to international negotiations on these issues in non-trade forums such as the International Labor Organization or in other international organizations. In fact, we believe it appropriate that the United States negotiate international agreements to improve labor standards and to safeguard the environment. We firmly and strongly believe, however, that trade negotiations are not an appropriate forum for such negotiations. We recognize, however, that there are and will be instances where a labor or environmental consideration is directly and necessarily related to a matter subject to a trade negotiation. Such an instance might include sanitary or safety matters directly related to a trade agreement involving an agricultural or industrial product.

Because there is little domestic or international consensus on labor and environmental issues, we do not believe that such issues should be considered outside the normal legislative process as they would be under the fast track procedures applicable to trade agreements.

In addition to opposing labor and environmental considerations being subjects of trade negotiations, we in ECAT also adamantly oppose the use of trade sanctions as a means of seeking labor or environmental objectives or of expressing U.S. displeasure with foreign labor or environmental measures. The use of trade sanctions for such non-trade-related issues disrupts commercial relations and is costly to U.S. exporters and their employees.

We recommend that other aspects of a fast track extension basically conform to the fast track provisions of the 1988 Omnibus Trade and Competitiveness Act, as amended. These provisions have well served the economic interests of the United States.

We would suggest, however, that fast track procedures might be modified to insure more effective and appropriate consultations with the Congress both before, during, and after trade negotiations. In this way Congress can be a more effective participant in the whole negotiating process. This, for example, might require extending the 60-day notification requirement of intent to enter into trade negotiations to a somewhat longer period, of perhaps 75 days, to enable more extensive consultation between the Administration and the Congress on the nature and objectives of proposed negotiations before actually initiating them. This would enable the views of the Congress to be more effectively obtained and represented in the framework of negotiations. Similarly, the 90-day notification requirement of intent to sign a trade agreement might be extended to 120 days for the same purpose.

We in ECAT, and I believe others in the business community, are generally satisfied with fast track procedures for consultations with the business community during the course of trade negotiations. We recommend that they be continued. Our earlier suggestion that the 90-day notification requirement of intent to sign a trade agreement be extended to 120 days would afford the business community, particularly the advisory committees to the USTR and other agencies, needed time to evaluate and offer views on the proposed agreements.

Before concluding, I would like to comment on the applicability of the Congressional budget process to the financial consequences of trade negotiations. Opinion is nearly unanimous that trade liberalization stimulates economic activity with resultant positive economic consequences for the federal budget. Therefore, we wonder if it would be possible to accommodate these consequences, perhaps by removing trade agreements from the budget process. Otherwise, the future of U.S. trade policy might inappropriately be held hostage to questionable economic assumptions. This would be to the detriment of the U.S. economy, its firms, and its workers, and the countries with whom the United States trades.

If it is decided to leave trade agreements in the budget process, we suggest some revision of the rules to provide more flexibility in selecting the items to constitute the financing package. This could help to avoid the kind of jeopardy that the financing package nearly caused for the Uruguay Round.

I thank you for the opportunity of presenting these ECAT views to you, and look forward to working with you on future matters of U.S. trade policy.

Chairman DREIER. Thank you very much, Mr. Burnham.
Mr. Lane.

**STATEMENT OF WILLIAM C. LANE, INTERNATIONAL GOVERNMENTAL AFFAIRS MANAGER, CATERPILLAR, INC., ON BEHALF OF THE NATIONAL FOREIGN TRADE COUNCIL, INC.**

Mr. LANE. Thank you, Mr. Chairman, and thank you for this opportunity to present the National Foreign Trade Council's views regarding a new grant of fast track trade negotiating authority.

Even with the success of NAFTA and GATT, the council believes much remains to be done in order to increase U.S. exports. Trading blocks are forming and expanding in Asia, Europe, and Latin America. If the United States is part of these arrangements, American exporters and workers will benefit from improved market access. But if we are excluded, U.S. firms will be seriously disadvantaged in some of the world's fastest growing markets.

A good example of this is the proposal that NAFTA be expanded to include Chile. By obligating Chile to eliminate its current 11 percent duty on manufactured goods, the United States has an opportunity to not only gain better market access in Chile, but preferential market access. That is because Chile will only eliminate its duties on North American-built products. That means companies like Caterpillar will be able to sell virtually their entire product lines in Chile duty free, while our European and Japanese competitors will continue to be subject to Chile's high tariffs.

For the United States, what is even more compelling is that while Chile must make major trade concessions to join NAFTA, for many sectors of the U.S. economy, no change in U.S. tariffs will be required. The reason is simple. The United States has already eliminated its tariffs on a wide range of products. From beer to bulldozers, from furniture to pharmaceuticals, the U.S. tariff is already zero.

Of course, Chile does not have to join NAFTA. It could link up with the South American trading block, MERCOSUR. But if that happens, it is going to be Brazilian companies and their workers who will benefit from preferential market access in Chile.

Whether the goal is to increase trade in Chile, Asia, or the one continent we never hear about, Africa, the National Foreign Trade Council believes the premise behind fast track authority is still a sound one. For the United States to win meaningful trade concessions from other countries, there must be assurances that Congress will vote on a final trade bill in its entirety. That is why the Council recommends that a new grant of negotiating authority be structured in such a way as to allow America to pursue an ambitious trade agenda.

Consistent with this objective, we believe new authority should be for a long duration. We suggest 6 to 8 years, with flexibility so that the United States can pursue freer trade both within a regional and WTO context.

But the council also recommends that there be an improved fast track provision. We recall that the previous grant of negotiating authority extended fast track treatment to provisions deemed necessary and appropriate. This language allowed Congress to pass,

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**TESTIMONY OF WILLIAM C. LANE**
**INTERNATIONAL GOVERNMENTAL AFFAIRS MANAGER**
**CATERPILLAR INC.**

**ON BEHALF OF**

**NATIONAL FOREIGN TRADE COUNCIL, INC.**

**BEFORE**

**SUBCOMMITTEE ON TRADE**
**COMMITTEE ON WAYS AND MEANS**
**U.S. HOUSE OF REPRESENTATIVES**
**HONORABLE PHILIP M. CRANE, ILLINOIS, CHAIRMAN**

**AND**

**SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE**
**COMMITTEE ON RULES**
**U.S. HOUSE OF REPRESENTATIVES**
**HONORABLE DAVID DREIER, CALIFORNIA, CHAIRMAN**

**MAY 11, 1995**

Thank you Chairmen Crane and Dreier, and members of the Subcommittees. I appreciate the opportunity to testify today on the matter of extension of the President's trade negotiating authority.

My name is Bill Lane, of Caterpillar Inc., where I am Manager of International Governmental Affairs. I also serve as chairman of the National Foreign Trade Council's Trade and Investment Committee, on behalf of which I appear before you today.

The National Foreign Trade Council (NFTC, Council), founded in 1914, is a broad-based trade association dealing exclusively with U.S. public policy affecting international trade and investment. The Council's membership consists of approximately 500 U.S. manufacturing companies, financial institutions and other firms having substantial international operations or interests. Our members collectively account for over 60% of U.S. non-agricultural exports and a like percentage of all U.S. private foreign investment.

The Council's goal is to develop and advance policies designed to expand U.S. exports, enhance U.S. foreign investment, and improve the competitiveness of U.S. industry.

The NFTC strongly urges Congress to pass legislation this year extending "fast track" trade negotiating authority to the President.

The Council has long believed that it is in the U.S. national interest to provide the President with fast track trade negotiating authority. Equipped with such authority, Republican and Democrat administrations have persuaded foreign countries to open markets and adhere to a common set of trading rules. Fast track has proven vital to America's efforts to increase exports and create U.S. jobs.

via NAFTA and GATT, new revenue measures needed to satisfy congressional PAY–GO requirements.

NFTC believes that such an application of fast track authority was not appropriate. To correct this problem, the council recommends that new authority be more narrowly defined so that only what is required to enact the trade agreement be covered by fast track.

We also believe that new authority should not mandate that trade liberalization be linked to various social objectives. Persuading countries to lower trade barriers is a worthy and difficult pursuit in its own right, especially when U.S. tariffs are already at zero. Further efforts to open markets to American products will be vastly more complicated if trade agreements are encumbered with the added burden of setting labor and environmental mandates.

Mr. Chairman, fast track negotiating authority has allowed Republican and Democratic administrations to persuade foreign countries to open markets and adhere to a common set of trading rules. As a result, U.S. exports have increased and new American jobs have been created. We strongly believe that it is time for Congress to provide the President with new trade negotiating authority.

The 500-member National Foreign Trade Council looks forward to working with both of you and the other Members of the 104th Congress in this endeavor. Thank you.

[The prepared statement follows:]

Even with the success of the North American Free Trade Agreement (NAFTA) and Uruguay Round of GATT Negotiations (Uruguay Round), much remains to be done in order to increase U.S. exports. Trading blocs are forming and expanding in Asia, Europe and Latin America. If the United States is included in these arrangements, American exporters and workers will benefit from improved market access. If excluded, U.S. firms will be seriously disadvantaged in some of the world's fastest growing markets.

A good example of this is the proposal that NAFTA be expanded to include Chile. By obligating Chile to eliminate its current 11 percent duty on manufactured goods, the United States has an opportunity to not only gain better market access in Chile, but preferential market access. This is because Chile will only eliminate its duties on North American-built products. That means companies -- like Caterpillar -- will be able to sell virtually their entire product lines in Chile duty-free, while our European and Japanese competitors will continue to be subject to Chile's high tariffs.

What is even more compelling from the standpoint of the United States is that while Chile must make major trade concessions to join NAFTA, for many sectors of the U.S. economy no change in U.S. tariff rates will be required. The reason is simple. The United States has already eliminated its tariffs on a wide range of products. From beer to bulldozers . . . from furniture to pharmaceuticals, the U.S. tariff is zero.

Of course, lower tariffs is just one benefit of an expanded NAFTA. American firms will also benefit from improved market access for services, enhanced intellectual property rights protection, and better investment rules.

As you know, Chile doesn't have to join NAFTA. It could link up with the South American-based trading bloc Mercosur. If that happens, it will be Brazilian companies and their workers who will benefit from preferential access to Chile's market.

Whether the goal is to increase trade with Latin America, Asia or Africa, the NFTC believes the basic premise behind "fast track" authority is a sound one. For the United States to win meaningful trade concessions from our negotiating partners, there must be assurances that Congress will vote on a final agreement without amendment. Otherwise, negotiators will contend -- correctly -- that a final trade agreement is worthless because it could be "amended to death" by Congress.

But the Council also believes a new grant of negotiating authority should be structured differently from what was included in the Omnibus Trade and Competitiveness Act of 1988.

Following are the key elements of what the NFTC believes should comprise a new grant of fast track trade negotiating authority. We sent our fast track policy statement to each member of the Committees on Ways and Means and Finance in March.

- ***An Ambitious Trade Agenda***: New authority should be broad enough to permit negotiations beyond those required for Chile's accession to NAFTA. Authority should allow America the flexibility to bring other Latin American nations into NAFTA, pursue free trade objectives in Asia and initiate the first, comprehensive round of WTO negotiations.

- ***Six-to-Eight Years of Negotiating Authority***: Persuading countries to liberalize their trade regimes takes time. Consequently, negotiating authority needs to be granted for a long enough period so that comprehensive trade negotiations with Latin America and Asia can be concluded. Consistent with such a lengthy duration, NFTC believes there should be

increased Executive branch consultation with Congress and the private sector. Finally, to lessen the tendency to politicize trade, NFTC recommends that any built-in "fast track" renewals occur off the election cycle.

- ***Limited "Fast Track" Applications***: Previous grants of "fast track" have been too broad and liberally applied. By allowing fast-track treatment of provisions deemed "necessary and appropriate," Congress passed via NAFTA and GATT implementing legislation revenue measures needed to satisfy Congressional "pay-go" requirements. The Council recommends that a new grant of authority be more narrowly applied so that only what is "required" to enact the provisions of a trade agreement will be covered by "fast track."

- ***No Mandate to Link Trade with Labor/Environment***: Labor and environmental issues are important to NFTC members. The Council encourages the United States to pursue its labor and environmental objectives through engagement in such fora as the International Labor Organization, the Organization of American States and United Nations. Furthermore, we believe trade liberalization actually provides the resources needed to improve the environment and enhance worker rights.

  But NFTC strongly opposes calls to condition trade liberalization on meeting certain social objectives. Persuading countries to lower trade barriers is a worthy and difficult pursuit in its own right. Future efforts to open foreign markets will be vastly more complicated if trade agreements are encumbered with the added burden of setting and enforcing labor and environmental mandates.

- ***Limit Use of Trade Sanctions***: NFTC is keenly aware that some of the groups calling for linkage between trade liberalization and labor/environmental issues have a long history of advocating protectionism. It would be tragic if after 50 years of being the catalyst of global trade liberalization, the United States would allow these groups to erect new trade barriers through the back-door means of enforcing non-trade provisions.

  To limit such a possibility, NFTC recommends that a new grant of negotiating authority stipulate that trade sanctions cannot be used to enforce non-trade provisions.

Thank you again, Chairmen Crane and Dreier, for the opportunity to present the Council's views on this important issue. The National Foreign Trade Council looks forward to working with you and the 104th Congress this year to fashion a new grant of Trade Negotiating Authority.

Chairman CRANE. Thank you, Mr. Lane.
Mr. Morris.

**STATEMENT OF ROBERT J. MORRIS, SENIOR VICE PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS**

Mr. MORRIS. Thank you, Mr. Chairman.

I wish to make four main points in my testimony today. No. 1, the U.S. Council for International Business favors early renewal of fast track legislation, especially for the proposed negotiations this year for Chile's accession to NAFTA. However, we also recommend that any accession to NAFTA not be used as an occasion to add new provisions dealing with environment or workers' rights into the NAFTA agreement itself.

No. 2, we do favor expanded cooperation with any new free trade partners in this hemisphere in a variety of areas, and we support the negotiation of separate agreements with Chile, and eventually other free trade partners, which provide for programs of enhanced cooperation on environmental and labor matters in particular.

However, we also recommend that Chile and other new partners not be required to accede to the environmental and labor side agreements as reached with Mexico and Canada in 1993. We believe that any separate agreements on labor and environment with other countries should concentrate on encouraging and enhancing cooperation but should not contain coercive or confrontational features. We are particularly opposed to the incorporation of any form of trade sanction to enforce environmental or labor standards or behavior, since such sanctions would be contrary to the objectives of the NAFTA.

No. 3, we recommend that the legislation explicitly exclude the use of fast track procedures for negotiating or approving international agreements concerning labor or environmental matters, whether such agreements include trade measures or not. The legislation should also prohibit the use of fast track to change any U.S. labor or environmental laws. If the U.S. Government believes it is necessary to negotiate international agreements on such matters, and if any particular agreement requires action by Congress, that action should be pursuant to the normal legislative process and not the special fast track procedures.

Incidentally, we do believe there is a need to clarify or even change certain WTO rules to deal with the legitimate needs of environmental policy, but we see no need to make the WTO the preeminent international institution for the enforcement of environmental goals.

Finally, since we are recommending that the renewal legislation contain these specific references to labor and environmental issues, we also recommend that this legislation be the vehicle to deal with a problem which developed in the drafting of section 131 of the Uruguay Round Agreements Act of 1994 concerning future work regarding trade and workers' rights. This section directs the administration to seek establishment of a WTO working party on trade and workers' rights.

There are two problems with this section which we believe need to be corrected. The first is the requirement that the examination of the effects of denial of rights on trade be examined in the WTO,

and the second is in the language of the defined objectives, which carries the implicit assumption that there is a need to consider ways to address the presumed effects of trade on the denial of workers' rights before the examination has even concluded that there are such effects.

We objected to this section at the time that it was being negotiated last summer. Our informal inquiries led us to conclude that Congress had not intended to prejudge the results of that analysis, but the legislated text can be read that way and doubtless is so read by some. We believe this latter problem can be addressed by relatively simple changes in the text and have appended a revised text of section 131 to my fuller statement for your consideration.

However, the more fundamental issue is whether such an effort should or even can be undertaken in the WTO at all and whether pressing forward with that effort, as mandated in the law, may, in fact, be both ineffective and counterproductive to the effort to strengthen respect and enforcement of core worker rights in all countries.

The incontestable fact is that repeated attempts by the United States over the last 40 years to have that relationship between trade and workers' rights examined in the GATT have failed, and for good reason. The countries which are the objects of efforts to strengthen worker rights clearly understand that the purpose of the exercise is to change GATT rules to permit the use of trade sanctions to enforce observance of such rights. Consequently, they have consistently blocked all efforts to study this issue in the GATT and will almost certainly continue to do so in the WTO.

They are right to do so, because the GATT or WTO is, in fact, the wrong institution to examine the relationship between trade and workers' rights if, as the United States insists and as Congress agreed to last year, the first step is to discover what the nature of that relationship actually is.

On the other hand, work has been going forward for at least 1 year in both the OECD and the ILO to try to identify the interrelationships between trade, economic growth, employment, productivity, and the treatment of workers. These institutions have both the expertise and the mandates to do this kind of analysis and we believe that the law should be amended to encourage that effort. Our recommended language to do that is also appended to my fuller statement.

Thank you, Mr. Chairman.

[The prepared statement and attachment follow:]

**Testimony of Robert J. Morris**
**Senior Vice President**
**U.S. Council for International Business**
**Before the**
**Subcommittee on Trade**
**and the Subcommittee on Rules and Organization**
**U.S. House of Representatives**

**May 11, 1995**

The U.S. Council for International Business is a membership organization whose mission is to advance the global interests of American business, primarily through the international business organizations (ICC, BIAC and IOE) with which the Council is affiliated. Our objective is to promote an open system of world trade, finance and investment in which business can flourish and contribute most effectively to economic growth, human welfare and protection of the environment.

I wish to make four main points in my testimony today.

First, the U.S. Council favors early renewal of fast track legislation, especially for the proposed negotiations this year for Chile's accession to NAFTA. While we would leave the decision on the scope and duration of the authority to negotiate agreements using fast track procedures to Congress, we recommend that any accession to NAFTA not be used as an occasion to negotiate substantial changes in the NAFTA agreement, and especially not to add new provisions dealing with environment or workers rights into the NAFTA agreement itself.

Second, we do favor expanded cooperation with any new free trade partners in this hemisphere in a variety of areas, and we support the negotiation of separate agreements with Chile (and eventually other free trade partners) which provide for programs of enhanced cooperation on environmental and labor matters in particular. However, we also recommend that Chile and other new partners not be required to accede to the environmental and labor side agreements as reached with Mexico and Canada in 1993.

American business accepted the current NAFTA side agreements because the close proximity and intensity of the economic and social relationships among the U.S., Canada and Mexico arguably required such comprehensive agreements. However, these considerations simply do not apply in our relations with other countries in this hemisphere. Thus, we believe that any separate agreements on environment and labor with other countries should concentrate on encouraging and enhancing cooperation (including private sector-to-private sector voluntary projects) along the lines of the cooperative aspects of the NAFTA side agreements, but should not contain coercive or confrontational features. We are particularly opposed to the incorporation of any form of trade sanction to enforce environmental or labor standards or behavior since such sanctions would be contrary to the objectives of the NAFTA.

Third, we recommend that the legislation explicitly exclude the use of fast track procedures for negotiating or approving international agreements concerning labor or environmental matters, whether such agreements include trade measures or not. The legislation should also prohibit the use of fast track to change any U.S. labor or environmental laws. If the U.S. government believes it is necessary to negotiate international agreements on such matters, and if any particular agreement requires action by Congress, that action should be pursuant to the normal legislative process, not the special fast track procedures.

Finally, since we are recommending that the renewal legislation contain these specific references to labor and environmental issues, we also recommend that this legislation be the vehicle to deal with a problem which developed in the drafting of a section in the Uruguay Round Agreements Act of 1994 which concerns future work regarding trade and workers rights.

Section 131 of that Act directs the President to seek establishment of a working party in the WTO to examine the relationship of certain workers rights "to the articles, objectives and related instruments" of the WTO. Section 131(b) lays out the U.S. objectives for the working party, which include to "examine the effects on international trade of the systematic denial of such rights" and to "consider ways to address such effects".

There are two problems with this Section which we believe need to be corrected. The first is the requirement that the examination of the effects of denial of rights on trade be examined in the WTO; the second is in the language of the defined objectives which carries the implicit assumption that there is a need to consider ways to address the presumed effects on trade of the denial of workers rights before the examination has even concluded that there are such effects.

We objected to this section at the time it was being negotiated last summer. Our informal inquiries led us to conclude that Congress had not intended to prejudge the results of the analysis, but the legislated text can be read that way and doubtless is so read by some. We believe this problem can be addressed by relatively simple changes in the text, and have appended a revised text of Section 131 to this statement for your consideration.

However, the more fundamental issue is whether such an effort should, or even can, be undertaken in the WTO at all, and whether pressing forward with that effort, as mandated in the law, may in fact be both ineffective and counterproductive to the effort to strengthen respect and enforcement of core worker rights in all countries.

The incontestable fact is that repeated attempts by the U.S. over the last 40 years to have the relationship between trade and worker rights examined in GATT have failed, and for good reason. The countries which are the object of efforts to strengthen worker rights clearly understand that the purpose of the exercise is to change GATT rules to permit the use of trade sanctions to enforce observance of such rights. Consequently, they have consistently blocked all efforts to study the issue in GATT, and will almost certainly continue to do so in the WTO.

They are right to do so, because the GATT or WTO is in fact the wrong institution to "examine" the relationship between trade and worker rights if, as the U.S. insists, the first step is to discover what the nature of that relationship actually is. The GATT/WTO simply is not equipped to carry out complex analytical studies. The WTO is competent to do analysis about the implications of various GATT rules and to assist members in reaching conclusions about whether to clarify or change such rules. Developing countries know that, and view any effort to undertake a study in the WTO as a not-very-well disguised effort to change WTO rules for the purpose of authorizing sanctions to enhance worker rights.

On the other hand, work has been going forward for at least a year in both the OECD and ILO to try to identify in credible, objective analysis the interrelationships among trade, economic growth, employment, productivity, and treatment of workers. These institutions, and especially the OECD, have the capacity, membership and mandates to do this kind of work and we believe Congress should both recognize this and encourage full U.S. participation in these efforts, while leaving the question of whether further work in the WTO is needed until it has had the opportunity to examine the results of the analytical work underway in those institutions. That is the thrust of the amended Section 131 which we recommend in the attached draft text.

## Amendments to Uruguay Round Agreements Act of 1994

## Proposed by the U.S. Council for International Business

Delete Section 131 and substitute the following new section 131.

Section 131. Economic Growth, Trade and Workers Rights

(a) In General.____ The President shall encourage full U.S. participation in examinations underway in the ILO and the OECD of the relationships among economic growth, trade, employment and productivity, and the promotion of worker rights as defined in Section 502(a)(4) of the Trade Act of 1974.

(b) Objectives of the examinations.____ The objectives of the United States in the examinations described in subsection (a) are to____

(1) explore the interrelationships among economic growth, international trade and progress toward strengthening workers rights as defined in Section 502(a)(4) of the Trade Act of 1974, taking into account differences in the level of development among countries;

(2) examine whether and, if so, to what extent the systematic denial of such rights has significant effects on international trade;

(3) As regards the ILO in particular, consider how the organization can improve its ability to assist countries to promote workers rights.

(4) develop methods to coordinate the work going on in the two organizations.

(c) Report to Congress.____ The President shall report to Congress not later than 1 year from enactment of this provision on the progress made in those examinations and on United States objectives with respect to them.

Chairman CRANE. Gentlemen, I ask your indulgence one more time. We do not control the itinerary over there on the floor. I would like to recess, but I know there are a couple of questions from some of our colleagues that they would like to direct to you. Hopefully, we will keep this recess limited to 5 to 8 minutes. We will be right back. Thank you.

[Recess.]

Chairman DREIER. Now that our welcoming committee of Mr. Houghton has greeted everyone appropriately, we will reconvene. [Laughter.]

I understand that Mr. Matsui has a question, and I suspect that most of the members of this panel are very, very impressed and supportive of the remarks that all four of you have provided.

I would like to touch on one item, and that has to do with this ongoing discussion as to exactly what amount of time we might extend fast track on. If we look at this 3- to 5-year range, Mr. Burnham, you talked about a 5-year authority. If we look at that, other than inclusion of Chile in the North American Free Trade Agreement, what countries would you see as top priorities for us as we would move ahead with negotiations? I would like to hear from all four of you on it.

Mr. BURNHAM. There are a whole series of areas of the world that are particularly of interest to all of our Members. Chile is obviously on the table at this point in time. If we look at the Asia Pacific area, there are a number of countries that are potential targets for these kinds of agreements that we could see in the long term.

Obviously, the growth in that area of the world is important to all of U.S. industry. Additional trade agreements in that area would allow us to expand some of the trade activities that we have and that we anticipate.

Mr. JUNKINS. Congressman, I think we need to allow both time and flexibility and certainly, we all know and understand the opening of the Americas, as well as APEC. We in the Roundtable are taking a look at some of the countries, for instance, in Southeast Asia. We have several countries there that we have almost total open trade with.

I think it is appropriate that we try to target a few of those, get it as completely open as possible, with the idea of doing two things. One, maybe most important, is accelerating the broad base of countries toward the ultimate GATT objectives. We have all been critical, in some respects, that it is taking too long for some of those to develop and it is because of the lowest common denominator. If we can selectively pick off countries, negotiate agreements, get them completely open, and accelerate by 4 or 5 years, I think we can create momentum that will accelerate the entire world in this area.

So I would make it as broad and as general as possible, for both bilateral or multilateral, in small groups or large multilateral agreements.

Chairman DREIER. Mr. Lane.

Mr. LANE. Mr. Chairman, allow me to answer that from both a tactical and strategic viewpoint. Tactically, Chile is obviously the

next to join NAFTA, followed by Argentina. I think there is broad consensus on this from most folks familiar with Latin America.

Strategically, the world is currently awash in regional trade pacts. NAFTA is being extended. The EU, European Union, is being expanded. ASEAN is very serious about setting up a regional free trade area. You have APEC, which we are all trying to figure out, but clearly holds great promise. You have the South African Customs Union that is starting to take form. Finally, there is MERCOSUR.

We have some concerns that we may be building a lot of unneeded complications in the world trading system. Tactically, it makes sense to take freer trade wherever and whenever we can get it. That is why extending NAFTA to Chile really makes sense.

But the strategic solution is to address these issues in a multilateral and a WTO context. At some point, I think we are all going to have to swallow hard and say, it is time for a new GATT round. We can call it the American round. With this approach, we can open markets all over the world with as open a market access as possible.

Chairman DREIER. As you talk about the complexities, I wondered if you all—and I will let you, Mr. Morris, go ahead, but let me just briefly state that there was a piece in the Los Angeles Times written by Henry Kissinger about 1 month or 6 weeks ago in which he referred to the threat of this competition that might exist between North and South America as we see MERCOSUR and other blocks forming and possibly, because of the peso problem, a diminution in the commitment of this country toward moving ahead with NAFTA.

I wonder if you all might comment along that line, and you can certainly join, Mr. Morris, in reference to the need to establish countries.

Mr. MORRIS. Thank you, Mr. Chairman.

I, first of all, want to associate myself very much with what Bill Lane had to say about the need to strengthen the multilateral system. I think we do lose sight of that as we concentrate on the regional opportunities that seem to be so tempting and so potentially more operational.

But let us not forget that we left a lot of unfinished business after the conclusion of the Uruguay round, not least, for example, our inability to get the full range of zero-for-zero tariff arrangements that we had sought. We left uncovered a lot of areas where there will be a need for further action in the WTO to strengthen the international trading system, the world trading system.

I think, for example, the fact that the administration has chosen to go to the WTO dispute settlement system for judgment on whether or not the internal practices of the Japanese are consistent with their external liberalization obligations underlines one of the most important areas where we need to strengthen the system, and that is to make it clear that the domestic practices which restrict market access need to be more clearly and more directly addressed in world trading rules.

If the dispute settlement process that has been initiated by the administration on the Japanese practices does not fully satisfy the

needs that we feel are out there to do that, then clearly there is an area where further negotiation will be required.

Whether or not any of these, apart from, obviously, the tariff reductions, will require changes in U.S. law is an open question, but that is itself another reason why the availability of the fast track procedures to deal with that kind of a problem are really quite important and, therefore, should be extended for as long a period of time as the political consensus can achieve.

Relating to the question about Latin America, frankly, I am at least as concerned by the fragmentation of the global economy which is implied by all of these moves toward free trade arrangements that are exclusive to the partners that enter into them. This is a difficult problem for American business, because businesses, when they invest overseas or when they market overseas, normally have to do it on a global basis. They should not be required to restructure their operations to reflect a particular pattern of regional integration just because that pattern is out there.

They do, they have to, because that is the reality, but it would be so much better if they could do it with the freedom to move their products and their operations as necessary to serve particular markets as they emerge.

The Europeans, for example, are making overtures toward MERCOSUR. That, in and of itself, ought to be a matter of concern to us. It is not just the Latin Americans getting together among themselves or vis-a-vis the United States, but also what is happening to the fragmentation of the international system that is implied in the European move to try to negotiate some kind of an open trading arrangement with MERCOSUR while we are all wrapped up in our internal processes and not able to cope with that kind of a challenge. So both are out there and both need to be addressed.

Chairman DREIER. I could not agree with you more.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

I am sorry I am late, and I am sorry I delayed the procedures here.

Chairman DREIER. We survived it.

Mr. HOUGHTON. I have just a quick question, and this may be out of ignorance of the past testimony that has been given. It seems to me that there is no disagreement on the basic concept of the fast track. We are moving in that direction, and I hope that we are sort of one accord here.

However, I have just a couple of questions. First of all, nothing can be perfect. Where are the pitfalls? What is the biggest worry? What should be tightened up?

Second, maybe in that regard, there are a lot of nontrade related issues, and we have problems here because of this concept of PAY-GO. Everything we propose has to be paid. In the implementing language, sometimes you get tangled up in your scabbard because you want to do something but you do not have enough money to do it. Do you think those nontrade related issues should be part of any fast track legislation?

Mr. JUNKINS. Congressman, I made four suggestions, and the reason for the first three have to do in a general way with that,

and specifically more up-front work in deciding between the Congress and the administration what the objectives are, a process by which there can be a better understanding across Congress and a way to address this PAY–GO issue.

The Congresswoman from Utah mentioned earlier about the problems of the perception in the public. Fast track itself, the word is a problem. There clearly is a perception. Business understands and is committed to assisting in the education both of our own people in the communities in which we live and Members of Congress in terms of the business benefits that come from this.

It seems to me, No. 1, that we need to narrow this as much as possible so that all ills of mankind are not debated every time we come through with a fast track bill.

No. 2, as you have to do what we did in GATT, and that is accommodate the PAY–GO rules, we sent signals that these kinds of agreements cost money, and whether it is somebody whose interest rate they think is going down or whose pension may be affected by it and so on, I think we destroy, really, a great deal of the confidence that we need to build in the American public for free trade and, frankly, in the institution itself.

So my suggestions would be to narrow it, keep it on the issues that are necessary for the trade agreement, and really do not allow these others to creep into the debate. I think it will make your job easier. It certainly will make ours easier. I believe the public will have more confidence.

If they had any idea of the amount of time, effort, understanding, and dedication that many of the members of this committee put into these agreements, the public would have an entirely different view of what is going on up here in terms of monitoring this and being aware of it, and I think we need to strengthen that.

Mr. HOUGHTON. Thank you.

Does anybody else have any comments?

Mr. BURNHAM. I would just comment, maybe amplify a little bit on what Jerry Junkins said. I think the importance of clean, enabling legislation to the economy is often lost. We in the business community focus on the economic benefits of open and free markets.

One of the things that we in the health care industry particularly look at is research and development. For our company, for example, $0.10 of every $1 goes into research and development. Without free trade, we would totally be unable to invest in the technologies that we need to advance our business and, frankly, the quality of life in the United States. If we were not in a position where trade were open and those markets were available to us, we would be far less able to compete.

I think a focus on the need for a clean grant of trade negotiating authority, as opposed to focusing on all the other issues that go into fast track enabling legislation, would be much more sensible for the community at large as well as for our own individual companies.

Mr. HOUGHTON. Thank you very much.

Mr. LANE. If I could just add one thing, and I think this is something we all have to be careful of, namely, that we not oversell these agreements. Let us use extending NAFTA to include Chile as

an example. It is a good agreement. In Caterpillar's case, Chile is a big market because of its strong mining sector. NAFTA will give us preferential market access in that market. But even though Chile is a very long country, it is also a very narrow country. In other words, NAFTA is not going to make a huge difference commercially.

I think what often happens is we get caught up in our own efforts to persuade and we have a tendency to oversell. Free trade is good, but it does not cure all the ills of the world. I think we have to be careful to keep the benefits of trade in the proper context.

Mr. HOUGHTON. Thank you. My time is up. Thank you very much, gentlemen.

Thank you, Mr. Chairman.

Chairman DREIER. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I want to thank all four of the gentlemen here for their testimony. I appreciate the fact that Mr. Junkins, Mr. Burnham, Mr. Lane, and Mr. Morris have been involved in many of the trade issues we have had over the last few years and we want to thank them for all their help.

Fred Bergsten made a suggestion in terms of a permanency of fast track and the coming back to the Congress for authorization for specific areas of negotiating authority. Paula Stern felt that that was really begging the question, and I guess both of them have good points.

Do you all perhaps have thoughts on that particular point?

Mr. JUNKINS. I certainly would support Dr. Bergsten's side. I think, Congressman Matsui, you ought to make it as long as possible and, again, put as much front-end activity into it as appropriate to make sure there is an up-front agreement between the Congress and the administration, because the world is changing. I do not think you can sit here and define precisely where and when the next thing is going to come along. So I would certainly argue to make it as long as possible.

Mr. MATSUI. Then allow the authorization to go on a case-by-case basis?

Mr. JUNKINS. Yes.

Mr. MATSUI. Does anybody disagree with that?

Mr. MORRIS. I do not disagree, Congressman, but I think it is important, if you are going to go that route, to do whatever you possibly can to make it clear for your successors that will have to deal with the question of what kinds of negotiating objectives they are going to define pursuant to these procedures, that it be very clearly limited to commercial matters.

This facility should simply not be available to negotiate every conceivable, though desirable, international objective that we might have, and that explicitly includes and extends to such areas as environmental problems, labor problems, and so on. Those may be appropriate to deal with in terms of international agreements, and we do not deny that for a moment, but fast track ought not to be available for those kinds of agreements and the legislation ought to make that clear.

Mr. MATSUI. You are suggesting that there be specific prohibitions on certain areas in the overall language, then?

Mr. MORRIS. I think so. I think that is about the only way in which you can assure that the procedures will not be abused.

Mr. MATSUI. Let me make an observation about that, because my point of view is that if you had a clean bill and allowed future Congresses, future administrations, and future leaders of both business, environmental, and others in the United States to kind of make that decision, I do not know what might happen 10 years from now if you had a permanent fast track, for example.

But beyond that, the real concern I have is the potential for a loss of consensus in the United States on the concept of free trade, and I think you all alluded to that in the past, if not in this testimony. I am sorry that I did not hear all of your testimony. I was running back and forth for votes.

You have on your left the Democrats, and labor has been very influential. On the right, you have the Perot/Buchanan faction, and I believe that faction is getting very strong, at least from what I have seen in California and elsewhere. You could have a center of gravity that becomes very narrow over time. We saw that in NAFTA. It did not happen in GATT. But who knows where it might end up.

Perhaps we have to kind of think about how we handle these things, particularly if we want a strong bipartisan bill in the U.S. House and Senate.

I do not know quite how to deal with this. I am just raising this issue, kind of throwing the ball up in the air and perhaps getting some comments from you, because we have heard the testimony here today and comments made by our colleagues, and there was a huge diversity of opinion on this particular issue. Somehow, we have to come to some consensus. I would like to be part of that consensus, if we can achieve it. Obviously, we want everyone to be part of that consensus. Maybe it is impossible. Maybe it is a pipe dream. I do not know.

Yes.

Mr. LANE. Congressman, at the National Foreign Trade Council, we had four very lengthy and spirited discussions on this whole issue of fast track negotiations, and we were able to reach a strong consensus. We believe fast track should be granted for a long period of time. We thought recommending 6 to 8 years was pretty gutsy. Dr. Stern suggested 9 years, so it overlaps two Presidential terms.

That would be fine, but no one at NFTC, National Foreign Trade Council, suggested permanent fast track. I think it is important to occasionally go back and rehash these issues. In a way, it is a public service when we go through this process and remind people of the benefits of free trade.

Mr. MATSUI. Are there any other comments on this?

[No response.]

Mr. MATSUI. I want to thank all of you for your testimony.

Chairman DREIER. Thank you very much.

Mr. Rangel.

Mr. RANGEL. No questions, Mr. Chairman.

Chairman DREIER. Thank you very much.

Let me express our appreciation to all four members of this panel. It was extraordinarily helpful, and I appreciate your understanding of the time and scheduling constraints around here. You have been very kind.

Chairman DREIER. Our last panel today includes Robert W. Holleyman II, president, the Business Software Alliance; Karen El-Chaar, manager of International Trade, Air Products and Chemicals, Inc., and vice chairman, the International Trade Committee, Chemical Manufacturers' Association, on behalf of the Office of the Chemical Industry Trade Advisor; Mark A. Anderson, director, the Trade Task Force, AFL–CIO; and Rodrigo Prudencio, trade and environment specialist, the National Wildlife Federation.

We are happy to welcome the panelists here. You can proceed in whatever order you would like.

Mr. Prudencio.

## STATEMENT OF RODRIGO J. PRUDENCIO, TRADE AND ENVIRONMENT SPECIALIST, NATIONAL WILDLIFE FEDERATION

Mr. PRUDENCIO. Thank you, Mr. Chairman.

I will be briefly going over my written statement, so I will ask that it be submitted for the record, please.

Chairman DREIER. Without objection.

Mr. PRUDENCIO. Mr. Chairman, I am Rodrigo Prudencio, trade and environment specialist for the International Programs Division, the National Wildlife Federation. The NWF, National Wildlife Federation, is the nation's largest private conservation organization, with over 4 million members and supporters. Thank you for the opportunity to testify before this joint subcommittee hearing on the reauthorization of fast track legislation.

Mr. Chairman, the National Wildlife Federation supported the 1991 2-year reauthorization of fast track. We did so because then-President Bush and USTR Ambassador Carla Hills, as well as influential leaders in the Congress, understood the value of addressing trade related environmental concerns in trade and investment negotiations. Ultimately, this bipartisan approach helped generate a wider constituency for economic integration than had previously been thought to exist.

At present, however, it should be obvious to anyone who takes the pulse of America on trade issues that there is little margin for error in gauging public support for international trade agreements. Indeed, some have suggested that fast track is, to put it bluntly, dead.

So Congress' priority in considering fast track legislation should be to figure out how the legislation can be drafted to maintain a constituency that favors, rather than opposes, trade and investment liberalization, not just in Chile, but throughout the world.

My organization, the National Wildlife Federation, along with many other environmental organizations, supported the North American Free Trade Agreement. We again can be an important element of the constituency of support for fast track and free trade, but only if U.S. trade policy and trade laws incorporate and address our concerns.

The National Wildlife Federation proposes the following approaches for a fast track bill. These suggestions will strengthen the prospects for trade and investment rather than dividing the very constituency that would allow the process of economic integration to proceed.

First of all, with negotiating objectives, some language on trade related environmental issues should be part of the fast track bill. This language should not reference any single negotiation or agreement but state that it is the goal of our negotiators to make trade and environment policies less conflicting and more mutually compatible. This would prevent the prevailing winds of individual agreements from steering U.S. negotiators off course.

Objectives for a specific agreement, say, for example, with Chile, should be set with greater public involvement than has previously been the case. The newly formed USTR and EPA Trade and Environment Advisory Committee, as well as a wider public consultation process, can be used to properly scope out environmental issues that would arise in the context of a specific agreement.

The second element of NWF's fast track proposal is citizen empowerment. This would include environmental impact assessment and public consultation processes associated with agreements. We believe there is a strong argument to suggest that some form of assessment be conducted at several different points prior to, during, and after a trade and investment accord has been negotiated. For instance, the initial scoping process helps identify major issues that would arise in the context of a specific agreement, and, as noted above, should help shape U.S. specific negotiating objectives in the field of environment.

Keeping in mind that the highest goal of fast track legislation is to gather a broad constituency for environmentally sustainable economic integration, Congress and the administration would be wise to utilize the process of environmental reviews in involving the public in a positive way in the crafting of these agreements.

After negotiations over a specific agreement have been concluded, the administration would distribute a report on the conclusion of negotiations to the Congress. To consider the report, a longer time period should be given to Congress and the public to debate and form opinion before a vote on the submitted agreement. Also, jurisdiction over set agreements should be broadened to include various other committees.

Last, the longer time period should allow the private sector advisory groups, including the Trade and Environment Public Advisory Committee, to report adequately and accurately to the Congress on their respective issues.

Mr. Chairman, let me conclude by restating that America's enthusiasm about entering into future trade agreements appears to be waning. Trade is increasingly a part of our lives, but, simultaneously, less comprehensible. We need to change that.

With respect to environment, the antidote for this diminishing support is twofold. No. 1, Congress should encourage a fast track bill which increases public involvement in the decisionmaking process. The National Wildlife Federation's proposals do this by assuring longer time periods for public comment at the beginning and

end of negotiations, as well as access to information regarding the state of negotiations as they unfold.

No. 2, and perhaps more importantly, fast track legislation should ensure that trade related environmental issues will be addressed appropriately and adequately in the context of trade negotiations, as we have proposed above.

Mr. Chairman, as I noted at the beginning of this testimony, the National Wildlife Federation has been a supporter of the fast track process as long as that process moves trade in the direction of dealing effectively with trade related environmental issues. If Congress moves forward on a fast track bill that approaches environment in that fashion, we will be ardent supporters. If not, we will reluctantly be forced to oppose it. Thank you.

[The prepared statement follows:]

Working for the Nature of Tomorrow

NATIONAL WILDLIFE FEDERATION

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**TESTIMONY OF RODRIGO J. PRUDENCIO**
**TRADE AND ENVIRONMENT SPECIALIST, INTERNATIONAL PROGRAMS DIVISION, NATIONAL WILDLIFE FEDERATION**
**ON**
**EXTENSION OF "FAST-TRACK" NEGOTIATING AUTHORITY**
**BEFORE**
**A JOINT HEARING OF**
**THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS, AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE COMMITTEE ON RULES**

**MAY 11, 1995**

Good afternoon, Mr. Chairman. I am Rodrigo Prudencio, Trade and Environment Specialist for the International Programs Division of the National Wildlife Federation. The Federation is the nation's largest private conservation organization, with over 4 million members and supporters. The mission of the National Wildlife Federation is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources, and to protect the earth's environment in order to achieve a peaceful, equitable, and sustainable future.

Thank you for the opportunity to testify before this joint Committee hearing on the reauthorization of fast-track legislation.

Mr. Chairman, as you may know, the National Wildlife Federation supported the 1991 two-year reauthorization of fast-track. We did so because then-President Bush and USTR Ambassador Carla Hills, as well as influential leaders in Congress, understood the value of addressing trade-related environmental concerns in trade and investment negotiations. Ultimately, this bi-partisan approach led to a successful negotiation with Mexico and Canada on trade-related environmental issues, and helped generate a wider constituency for economic integration than had previously been thought to exist.

Today, as you begin deliberations on whether to extend fast-track legislation over the next few years, and explore suggestions on how best to modify and improve this legislation, it is even more critical to maintain and strengthen, rather than divide, the constituency that helped promote environmentally sustainable economic integration in North America.

In this regard, please allow me to offer a few initial observations.

First, as should be obvious to anyone who counts votes in Congress, or takes the pulse of America on trade issues, there is little margin for error in gauging public support for international trade agreements. Indeed, some have suggested to us that there is no constituency in the United States for further trade and investment accords. According to this view, fast-track is, to put it bluntly, dead.

A second observation, following from the first, is Congress' priority in considering fast-track legislation is to figure out how the legislation can be drafted to maintain a constituency that favors rather than opposes trade and investment liberalization, not just in Chile but throughout the world. Environmental organizations, many of which supported the North American Free Trade Agreement (NAFTA), can be an important element of this constituency, but only if U.S. trade policy, and trade laws, incorporate and address our concerns.

The reasons for doing so today are just as compelling as they were four years ago, and the testimony that follows is intended to provide suggestions to Congress on how to work with the Administration in fashioning a fast-track bill that strengthens the prospects for trade and investment, rather than dividing the very constituency that would allow the process of economic integration to proceed.

## Trade and Environment: In the Interest of the United States

Since the early 1970's, international trade experts have been aware of the ties between international trade and environmental protection policies. But in those early years, the connections between trade and environment were at best hazy, and the appropriate policy responses to potential conflicts between trade and environmental concerns were largely ignored.

Twenty years later, the growth in the world economy, and the increasingly global nature of environmental problems, has made the connections between trade and environment more clear, and the potential conflicts more real. As a result, international efforts to make trade and environmental objectives mutually supportive are now moving rapidly forward. Indeed, the host of issues facing policy-makers today demonstrates that the question is not *whether* trade and environmental issues should be handled together, but rather, *how* both policy goals can be met.

Environmental protection has become a legitimate trade issue in many ways. International trade rules can affect our sovereign right to set and maintain the kind of environmental, consumer, and food safety laws we deem appropriate. International trade agreements can potentially undermine international environmental treaties which use trade, in some form, as an effective enforcement tool. Moreover, the direct impact of trade and investment liberalization can sometimes magnify environmental problems in countries other than our own, creating spill-over or transboundary effects that we in the United States must ultimately confront. Environmental problems caused by trade, and located on the border with Mexico provide just one example, but increased global environmental problems related to trade, whose sources may lie far from our borders, are also a growing concern.

To be sure, there are other areas where free trade and environmental protection should be compatible. Consider the benefits of phasing-out or eliminating environmentally-damaging and trade-distorting subsidies such as agricultural subsidies. In addition, tariff reduction and services agreements can make U.S. environmental technology and know-how more competitive in overseas markets.

NWF supports an approach in these policy areas which strengthens environmental protection while reducing the conflicts and increasing the complementarities between trade and environmental objectives. However, U.S. interests in these areas are best achieved when our goals and objectives are clearly articulated and manifestly supportive of trade that promotes, rather than inhibits sustainable development.

## Fast-Track: Building a Better Model

This year's reauthorization of fast-track trade negotiating authority presents a critical opportunity to ensure that U.S. trade laws keep pace with new environment-related developments in trade policy and help secure long-term U.S. objectives. What follows is a number of elements which should be part of any new fast-track legislation:

**Trade Negotiation Objectives:**

Overall Objectives: Some over-arching language outlining U.S. objectives on trade and environment issues should be the highlight of this part of the fast-track bill. This language should not reference any single negotiation or agreement, but state that it is the goal of our negotiators to make trade and environmental policies less conflicting and more mutually compatible. Rather than subject U. S. negotiators to the prevailing winds of individual

agreements, this general negotiating objective would act as a beacon for a positive approach to trade-related environmental issues.

Specific Objectives: Objectives for a specific agreement, say for example with Chile, should be set with greater public involvement than has previously been the case. The newly formed USTR-EPA Trade and Environment Advisory Committee, as well as a wider public consultation process, can be used to properly scope out environmental issues that would arise in the context of a specific agreement. Moreover, an initial environmental review conducted by federal agencies should also be conducted prior to the onset of actual negotiations, and the findings of that review be available to Congress, and the public, to further assist in the delineation of specific objectives.

Rather than adopting a cookie-cutter approach to the setting of specific negotiating objectives, an improved process for fashioning these objectives would take into account specific attributes of a given negotiation. With respect to Chile, for example, environmental issues will be as compelling as they were when the previous Republican Administration negotiated NAFTA. Therefore, the specific authority to negotiate with Chile should be structured to incorporate trade-related environmental issues that are appropriate to Chile.

**Environmental Impact Assessment and Public Consultation:**

Much has been made in recent legal challenges as to whether and how to conduct environmental impact assessments of trade and investment agreements. We believe there is a strong argument to suggest that some form of assessment be conducted at several different points prior to, during, and after a trade and investment accord has been negotiated. The initial scoping process helps identify major issues that would arise in the context of a specific agreement and, as noted above, should help shape U.S. specific negotiating objectives in the field of environment.

A second assessment, at some point in the process of negotiating an agreement, should build on the initial scoping process and function effectively as a mid-term review of how the nature of environmental impacts of a proposed agreement may have shifted, and how negotiating stances of the U.S. government might appropriately be modified.

A third aspect to an environmental review would occur after a negotiation has been completed. This is typically the way such reviews have been conducted to date, and while offering little to change the text of an agreement, can provide valuable information to the public, and Congress, on the extent to which environmental issues have been dealt with effectively.

The fast-track legislation should spell out a clear process for conducting environmental reviews of pending trade and investment accords that incorporate the essential elements of our existing National Environmental Policy Act (NEPA), but are written in a manner appropriate to the preparation for and actual negotiation of such accords.

These assessments, however, are perhaps most important for involving the public at various stages in the development of trade and investment agreements with other nations. Keeping in mind that the highest goal of fast-track legislation is to gather a broad constituency for environmentally sustainable economic integration, Congress and the Administration would be wise to utilize the process of environmental reviews in involving the public in a positive way in the crafting of these agreements.

**Report on the Conclusion of Negotiations:**

After negotiations over a specific agreement have concluded, the Administration would distribute a Report on the Conclusion of Negotiations to the Congress. The Report would include the legal text of the agreement, the draft implementation bill, the Statement of Adminstrative Action, a report that explains the progress made in meeting the surveyed objectives, and as has been previously submitted by the Bush and Clinton Administrations, an

environmental impact report would be delivered to Congress. The Report would also be distributed publicly.

In this area, especially, the fast-track procedures should be strengthened in three ways. First, a longer time period should be given to Congress and the public to debate and form opinion before a vote on the submitted agreement. Second, jurisdiction over said agreement should be broadened to include various other committees, such as, the Senate Environment and Public Works, and the House Resources Committees. Lastly, the longer time period should allow the private sector advisory groups, including the Trade and Environment Public Advisory Committee, to report adequately and accurately to the Congress on their respective issues.

Building Consensus and Constituencies for Trade

The fast-track procedures were originally intended to speed Congress' consideration of trade agreements. But the last two agreements to be presented to Congress, the NAFTA and the GATT Uruguay Round, both faced considerable threat of defeat. Clearly, there is little to suggest that America is any more enthusiastic about entering into future agreements, and indeed there may even be greater opposition to such agreements than existed with NAFTA and GATT.

With respect to environment, the antidote for this diminishing support is twofold. First, Congress should encourage a fast-track bill which increases public involvement in the decision-making process. NWF's proposals do this by assuring longer time periods for public comment at the beginning and end of negotiations, as well as access to information regarding the state of negotiations as they unfold..

Second, and perhaps more importantly, fast-track legislation should ensure that trade-related environmental issues will be addressed appropriately and adequately in the context of trade negotiations, as we have proposed above. Some environmental issues are by their very nature trade-related issues, and should therefore be part and parcel of any future trade negotiation. These would include the protection of U.S. food safety and consumer protection standards, as well as the enforcement of international environmental agreements. They would also include issues specific to a given trading partner, say for example Chile, or any of the other agreements we might seek to enter into in this hemisphere under a future fast-track reauthorization.

**Conclusion**

**Mr. Chairman, as I noted at the beginning of this testimony, the National Wildlife Federation has been a supporter of the fast-track process, as long as that process moves trade in the direction of dealing effectively with trade-related environmental concerns. If Congress moves forward on a fast-track bill that approaches environment in that fashion, we will be ardent supporters. If not, we will reluctantly be forced to oppose it.**

Chairman CRANE. Thank you, Mr. Prudencio.

Ms. El-Chaar, you might commence, and I think after you have finished your testimony, we are going to have to recess again. They are just calling us to the floor.

**STATEMENT OF KAREN EL-CHAAR, MANAGER, INTERNATIONAL TRADE, AIR PRODUCTS AND CHEMICALS, INC., AND VICE CHAIRMAN, INTERNATIONAL TRADE COMMITTEE, CHEMICAL MANUFACTURERS' ASSOCIATION, ON BEHALF OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR**

Ms. EL-CHAAR. Thank you. Mr. Chairman and members of the subcommittees, my name is Karen El-Chaar and I am manager, International Trade, Air Products and Chemicals, Inc., and serve as vice chairman, the International Trade Committee, Chemical Manufacturers' Association. I am here today representing the Office of the Chemical Industry Trade Advisor to urge you to renew the President's fast track trade negotiating authority. Fast track is a key component in the U.S. industry's ability to serve the global chemical market.

The OCITA, Office of the Chemical Industry Trade Advisor, is a coalition of seven national chemical trade associations. OCITA's role is to provide a unique chemical industry perspective on trade policy issues. Not only is our industry the largest exporting sector in the United States, but if it were not for the chemical industry, the country's trade deficit would be even greater than it is.

For over 70 years, the U.S. chemical industry has maintained a positive trade balance. In 1994 chemical industry exports totaled $51.5 billion, returning a trade surplus of $18.3 billion. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion and bettered aircraft exports by $23 billion.

Our industry is responsible for 27 percent of total worldwide sales of chemicals and allied products. OCITA provides some 2,600 companies nationwide with a voice on trade policy issues like fast track authority that affect their bottom line.

OCITA's bottom line is that Congress should renew the President's fast track negotiating authority and it should be renewed soon. Without fast track authority, the President cannot fully assure that the United States can continue to capitalize on the gains made in the Uruguay round and the NAFTA. Our industry's future growth will come in those markets, such as Latin America and the Far East, where trade agreements negotiated under fast track can pry back significant barriers to trade.

Chemical sales growth prospects vary among the regions of the world. Sales growth in our most mature markets, the United States, Canada, Japan, and Europe, is expected to be slow. The most rapid market growth is projected for the newly industrializing and developing nations. The prospect of that growth and the benefit it brings to the United States are what prompts our support for renewed fast track negotiating authority.

The Latin American market for chemicals and allied products was valued at $63.8 billion in 1993. The long-term potential of the market is huge. With 376.1 million persons, many Latin American nations have already achieved some success in trade liberalization

and disciplines. Additional bilateral and multilateral trade agreements could further enhance the value of the Latin American market to the United States.

The market for chemicals and allied products in China and the East Asian newly industrialized countries is the most dynamic in the world. Within 10 years, the per capita incomes of these nations are expected to exceed that of the more advanced countries in Western Europe. With a 1993 market value of $134.7 billion, long-term growth and sales prospects are excellent.

We cannot hope to serve these markets without the proper tools, however. Those tools are disciplines on tariff and nontariff barriers, meaningful intellectual property protection, and reform of investment measures. Reducing or eliminating tariff barriers alone would mean significant new sales for our industry, but these tools can only be forged on the anvil of fast track negotiating authority.

In short, Mr. Chairman, renewing the President's fast track authority is essential to securing the economic gains we realize from trade agreements. Our industry currently employs 1 million American men and women. For every additional $1 billion our industry secures in export sales, we create 4,000 new American jobs. Chemical export growth also spurs additional investment in downstream manufacturing and related exports, creating a ripple effect of future jobs, investment, and economic growth.

As important as fast track authority is to our industry, Congress must be careful not to burden the procedure with mandated progress in areas not related to trade. OCITA believes that bilateral environmental and labor issues, for example, are more properly the subject of other nontrade agreements. Similarly, legislation to implement a trade agreement must be limited to those provisions absolutely necessary to meet U.S. obligations.

Prior to the record closing on these hearings, OCITA will be happy to provide the subcommittees with more details on the chemical industry's trade related priorities for future negotiations.

Mr. Chairman, the U.S. chemical industry's continued growth and success in the global market depends on fast track authority. Fast track protects Congress' prerogative in trade policy matters while assuring that we can realize the negotiated benefits of a trade agreement.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions you might have.

[The prepared statement and attachment follow:]

**STATEMENT OF KAREN EL-CHAAR, MANAGER INTERNATIONAL TRADE, AIR PRODUCTS AND CHEMICALS, INC. VICE-CHAIRMAN, INTERNATIONAL TRADE COMMITTEE CHEMICAL MANUFACTURERS' ASSOCIATION, ON BEHALF OF OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR**

RENEWAL OF FAST-TRACK NEGOTIATING AUTHORITY
May 11, 1995

Mr. Chairman, members of the Subcommittees. My name is Karen El-Chaar. I am Manager, International Trade of Air Products and Chemicals, Inc. and serve as Vice-Chairman of the Chemical Manufacturers Association's International Trade Committee.

I am here today representing the Chemical Industry Trade Advisor to urge you to renew the President's "fast-track" trade negotiating authority. Fast-track is a key component in the U.S. industry's ability to serve the global chemical market.

The Office of the Chemical Industry Trade Advisor, or OCITA, is a coalition of seven national chemical trade associations[1]. OCITA's role is to provide a unique chemical industry perspective on trade policy issues affecting the chemical industry. Our industry is the largest exporting sector in the United States. Chemical industry exports totaled $51.5 billion in 1994, returning an $18.3 billion trade surplus that year. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion, and bettered aircraft exports by $23 billion. Our industry is responsible for 27% of total worldwide sales of chemicals and allied products. OCITA provides some 2,600 companies nationwide with a voice on trade policy issues, like fast-track authority, that affect their bottom line.

OCITA's bottom line is that Congress should renew the President's fast-track negotiating authority. And it should be renewed soon, to enable the United States to capitalize on the gains made in the Uruguay Round of Multilateral Trade Negotiations, and the North American Free Trade Agreement.

Our industry's future growth will come in those markets -- such as Latin America and the Far East -- where trade agreements negotiated under fast-track can pry back significant barriers to trade. Chemical sales growth prospects vary among the regions of the world. Sales growth in our most mature markets (the U.S., Canada, Japan and Europe) is expected to be slow. The most rapid market growth is projected for the newly industrializing and developing nations. The prospect of that growth, and the benefits it brings to the United States, is what prompts our support for renewed fast-track negotiating authority.

The Latin America market for chemicals and allied products was valued at $63.8 billion in 1993. The long-term potential of the market is huge. With 376.1 million persons, many Latin American nations have already achieved some success in trade liberalization and disciplines. Additional bilateral and multilateral trade agreements could further enhance the value of the Latin American market to the United States.

The market for chemicals and allied products in China and the East Asian newly industrialized countries is the most dynamic in the world. Within ten years, the per capita incomes of these nations are expected to exceed that of the more advanced countries in Western Europe. With a 1993 market value of $134.7 billion, long-term growth and sales prospects are excellent.

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[1] OCITA members are the Chemical Manufacturers Association (CMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), American Crop Protection Association (ACPA), National Paint and Coatings Association (NPCA), The Fertilizer Institute (TFI), the Chemical Specialties Manufacturers Association (CSMA), the Society of the Plastics Industry (SPI).

We cannot hope to serve these markets without the proper tools, however. Those tools are disciplines on tariff and non-tariff barriers, meaningful intellectual property protection, and reform of investment measures. Reducing or eliminating tariff barriers alone would mean significant new sales for our industry. But these tools can only be forged on the anvil of fast-track negotiating authority.

In short, Mr. Chairman, renewing the President's fast-track authority is essential to securing the economic gains we realize from trade agreements. Our industry currently employs a million Americans. For every additional $1 million our industry secures in export sales, we create 4 new American jobs. Chemical export growth also spurs additional investment in downstream manufacturing and related exports, creating a ripple effect of future jobs, investment and economic growth.

As important as fast-track authority is to our industry, Congress must be careful not to burden the procedure with mandated progress in areas not related to trade. OCITA believes that bilateral environmental and labor issues, for example, are more properly the subject of other, non-trade agreements. Similarly, legislation to implement a trade agreement must be limited to those provisions absolutely necessary to meet U.S. obligations.

Mr. Chairman, the U.S. chemical industry's continued growth and success in the global market depends on fast-track authority. Fast-track protects Congress' prerogative in trade policy matters, while assuring that we can realize the negotiated benefits of a trade agreement.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions you might have.

## ADDITIONAL COMMENTS OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

The Office of the Chemical Industry Trade Advisor (OCITA) is a coalition of seven national trade associations. OCITA members are the Chemical Manufacturers Association (CMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), American Crop Protection Association (ACPA), National Paint and Coatings Association (NPCA), The Fertilizer Institute (TFI), the Chemical Specialties Manufacturers Association (CSMA), and the Society of the Plastics Industry (SPI). OCITA provides some 2,600 companies nationwide with a voice on trade policy issues, like fast-track authority, that affect their bottom line.

OCITA's role is to provide a unique chemical industry perspective on trade policy issues affecting the chemical industry. Our industry is the largest exporting sector in the United States. Chemical industry exports totaled $51.5 billion in 1994, returning $18.3 billion trade surplus that year. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion, and bettered aircraft exports by $23 billion. Our industry is responsible for 27% of total worldwide sales of chemical and allied products.

### Fast-Track Authority

OCITA believes that Congress should renew the President's fast-track negotiating authority. This should be done in the immediate future in order to enable the United States to capitalize on the gains made in the Uruguay Round of Multilateral Trade Negotiations and the North American Free Trade Agreement.

Renewing the President's fast-track authority is essential to securing the economic gains we realize from trade agreements. The chemical industry currently employs a million Americans. For every additional $1 million our industry secures in export sales, four new American jobs are created. Chemical export growth also spurs additional investment in downstream manufacturing and related exports, creating a ripple effect of future jobs, investment and economic growth.

Our industry's future growth will come in those markets -- such as Latin America and the Far East -- where trade agreements negotiated under fast-track can remove significant barriers to trade. Chemical sales growth prospects vary among the regions of the world. Sales growth in our most mature markets (the U.S., Canada, Japan and Europe) is expected to be slow. The most rapid market growth is projected for the newly industrializing and developing nations. The prospect of that growth, and the benefits it brings to the United States, is what prompts our support for renewed fast-track negotiating authority.

The Latin America market for chemicals and allied products was valued at $63.8 billion in 1993. The long-term potential of the market is huge. With 376.1 million persons, many Latin American nations have already achieved some success in trade liberalization and disciplines. Additional bilateral and multilateral trade agreements could further enhance the value of the Latin American market to the United States.

The market for chemicals and allied products in China and the East Asian newly industrialized countries is the most dynamic in the world. Within ten years, the per capita incomes of these nations are expected to exceed that of the more advanced countries in Western Europe. With a 1993 market value of $134.7 billion, long-term growth and sales prospects are excellent.

While the potential for growth is great, the chemical industry cannot serve these markets without the proper tools. Those tools are disciplines on tariff and non-tariff barriers, meaningful intellectual property rights protection, and reform of investment measures. In addition, reducing or eliminating tariff barriers alone would mean significant new sales for our industry. Fast-track negotiating authority is necessary to the development of a more equitable trading arena.

Negotiating Authority

While OCITA does not have a complete list of all details that should be included when granting new fast track negotiating authority, we would like to make the following observations and suggestions.

OCITA suggests that fast-track negotiating authority be granted for a period of at least five years. Certainty is critical to long-range planning and the well-being of U.S. firms. Persuading countries to liberalize their trade regimes takes time. Therefore, negotiating authority should be granted with sufficient time to conclude meaningful agreements. The scope of trade negotiating authority should be available for either bilateral, regional, or multilateral negotiations.

As important as fast-track authority is to our industry and other U.S. industries, Congress must be careful not to burden the procedure with issues not directly related to trade. For example, labor and environmental objectives should not be included in future trade negotiations. OCITA believes that these issues are important but are more properly the subject of other non-trade agreements. These issues should be pursued through engagement in such organizations as the International Labor Organization, the Organization of American States and the United Nations.

OCITA believes that legislation to implement a trade agreement must be similarly limited to those provisions absolutely necessary to meet U.S. obligations. In the past, fast-track treatment has been applied liberally to allow unrelated revenue measures to be included in the legislation. OCITA recommends that a new grant of authority be more narrowly applied to limit the legislation to only that which is required to enact the provisions of the covered trade agreement.

Finally, OCITA believes that the principal negotiating objective of any future multilateral negotiation on chemical tariffs should be sectorial harmonization, i.e. lowering foreign tariffs on chemicals to levels comparable to those negotiated in the Uruguay Round by the U.S., Europe, Canada, Japan and other industrialized nations. As a necessary condition to any further lowering of U.S. chemical tariffs, the agreement negotiated should be one that the President determines that the opportunities for U.S. chemical exports are substantially equivalent to those afforded foreign products in the United States. OCITA would encourage future multilateral negotiations in the chemical sector to use the Uruguay Round Chemical Tariff Harmonization Agreement (CTHA) as the model for negotiations to eliminate the problems created by free riders.

Conclusion

The U.S. chemical industry's continued growth and success in the global market depends on fast-track authority. Fast-track protects Congress' prerogative in trade policy matters, while assuring that we can realize the negotiated benefits of a trade agreement.

Chairman CRANE. Thank you very much, Ms. El-Chaar.

We will stand in recess, then, for 5 to 8 minutes. I apologize to you gentlemen. We will be right back.

[Recess.]

Chairman CRANE. The subcommittees will reconvene and Mr. Holleyman is next.

## STATEMENT OF ROBERT W. HOLLEYMAN II, PRESIDENT, BUSINESS SOFTWARE ALLIANCE

Mr. HOLLEYMAN. Mr. Chairman, I am testifying today on behalf of the member companies of the BSA, Business Software Alliance. Our companies include the leading U.S. publishers of software for personal computers, companies like Novell and Lotus Development, Sybase, Microsoft, and Autodesk.

Collectively, U.S. PC software companies are the world's leaders. According to the Department of Commerce, in 1993, U.S. PC software companies held nearly 75 percent of the global market for personal computer software. They truly are the stars of U.S. export industries. It is a rapidly growing market, and it is a pleasure to have the opportunity to testify on behalf of these companies regarding the proposed extension of fast track negotiating authority.

I would like to be clear in the statement of the software companies that I represent. We affirmatively endorse the extension of fast track negotiating authority, and in addition, we believe that intellectual property protection should be identified by Congress as an explicit negotiating objective in conjunction with any fast track negotiations.

Our basis for this testimony is also clear. It is history. We know what works. We know what has worked to the benefit of U.S. software companies in the past through two very clear agreements. The first of those agreements was the North American Free Trade Agreement, where the United States negotiated the most explicit protection for intellectual property and for computer software that had been negotiated up until that time, and it is still the world model for intellectual property protection.

Second, the trade related intellectual property provisions in the Uruguay round negotiations take a very important step in expanding protection to more than 100 countries who will be adherents to that agreement.

BSA believes that Congress' grant of fast track authority was instrumental in allowing both of these agreements to be negotiated. BSA supports the extension of this authority to allow expansion of NAFTA to include Chile and other countries in this hemisphere, and we believe that doing so will strengthen intellectual property protection for U.S. software companies.

U.S. companies will be the beneficiaries of any effort that opens markets, and, second, that requires protection of copyrighted works, both as a matter of law and as a matter of practice through adequate enforcement.

Currently, NAFTA provides several key benefits that would be useful in reducing rates of software piracy throughout the whole of Latin America, and, in addition, would expand upon the benefits of U.S. software companies in those markets.

Specifically, NAFTA would address problems like those that exist in Chile, where more than 84 percent of all the software in use is pirated because of several deficiencies in the Chilean law. Specifically, there are no statutory damages when infringement is shown. There is no ability to go before a court and get ex parte relief. The civil penalties and criminal penalties are inadequate.

We believe that by taking the NAFTA copyright and enforcement provisions and expanding those throughout the hemisphere and into countries like Chile, it will require affirmative changes in the Chilean law that will reduce software piracy. It will take what was a $14 million market last year for computer software companies and expand it up to a potential of an $84 million market in that one country.

We believe that those would be positive steps, and that all U.S. software companies would be the beneficiaries. We believe that fast track authority is absolutely critical to expanding trade opportunities for U.S. companies. We urge the subcommittees to extend fast track authority and to explicitly identify intellectual property as a negotiating objective in that process. Thank you very much.

[The prepared statement follows:]

TESTIMONY OF

ROBERT W. HOLLEYMAN II, PRESIDENT
BUSINESS SOFTWARE ALLIANCE (BSA)

BEFORE THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS
AND
THE SUBCOMMITTEE ON RULES AND ORGANIZATION
OF THE COMMITTEE ON RULES

UNITED STATES HOUSE OF REPRESENTATIVES

ON EXTENSION OF FAST-TRACK NEGOTIATING AUTHORITY
TO THE ADMINISTRATION
FOR THE NEGOTIATION OF TRADE AGREEMENTS

MAY 11, 1995

1. **The BSA and the Computer Software Industry.** The Business Software Alliance ("BSA") is the leading organization in the world fighting against international barriers to trade in computer software for personal computers, and working toward stronger intellectual property laws and enforcement protecting the rightholders of computer software around the world. The BSA promotes the continued growth of the software industry through its international programs in the United States and more than 60 countries around the world.

BSA members include the leading publishers of business software for personal computers, such as Autodesk, Bentley Systems, Intergraph, Lotus Development, Microsoft, Novell and the WordPerfect Applications Group, The Santa Cruz Operation and Sybase.

2. **BSA Endorses the Extension of Fast Track Negotiating Authority.** As Representative Philip M. Crane declared when he and Representative Dreier announced these Joint Hearings, benefits to the U.S. economy as a result of trade agreements concluded under fast-track negotiating authority "are dramatic and proven." This certainly has been the result for the computer software industry, perhaps America's most successful export industry. This U.S. industry dominates a global market of more than $75 billion per year, due not only to American creativity in the realm of high technology, but also to falling trade barriers which have generated billions of dollars of additional export revenues, as well as hundreds of thousands of high value-added jobs in the United States.

BSA stands to benefit most clearly from the recently enacted North American Free Trade Agreement (NAFTA), and the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPs), one of the fruits of the Uruguay Round of multilateral trade negotiations, both of which were concluded under fast track procedures. It is doubtful that NAFTA and TRIPs would have been enacted on the same timetable--or at all--without fast-track negotiating authority. BSA shares the view of many observers that negotiation of a successful, definitive trade agreement would not be possible without fast track negotiating authority. Fast track procedures allow trade negotiators to make comprehensive commitments to trading partners, and obtain promises in return, without likelihood that individual provisions will be modified. Nonetheless, Congress retains its constitutional authority to approve or disapprove any treaty or trade agreement negotiated by the United States.

Because the United States is the world's largest economy and the world's leading exporting nation, BSA believes that the United States stands to gain

more than most countries from falling trade barriers. This is particularly true in the export of goods having high intellectual property content as a percentage of total value, such as computer software, where the United States continues to dominate global markets. Just as fast-track negotiating authority was necessary for U.S. approval of NAFTA and TRIPs, BSA believes that fast-track negotiating authority will be necessary to conclude other important trade agreements, such as agreements approving the accession of Chile and other countries in the Hemisphere to NAFTA.

3. **NAFTA's Importance to the Computer Software Industry.** As mentioned above, BSA does believes that fast track negotiating authority enabled the United States to negotiate NAFTA, which was then approved by Congress. NAFTA was an important and historic accord for the computer software industry because it delivered the following benefits:

- **National Treatment** - NAFTA requires national treatment with regard to the protection and enforcement of intellectual property rights, which prevents a foreign government from singling out U.S. companies (holding intellectual property rights), or foreign companies, for less favorable treatment than it provides to its own companies.[1] This principle has important practical effect in preventing unfavorable levies relating to intellectual property rights that various governments, particularly in Europe, impose on U.S. companies.

- **Computer Programs Are Literary Works** - NAFTA specifies that computer programs are literary works within the meaning of the Berne Convention,[2] and thus will benefit from all of the Berne Convention jurisprudence on the protection of literary works, which includes strict limitations on exceptions from protection.

- **Databases Are Protected Works** - Databases and other data compilations which by reason of selection or arrangement constitute intellectual creations are protected by copyright.[3]

- **Commercial Rental Right** - NAFTA clearly establishes that the rightholder of a computer program can authorize or prohibit the commercial rental of a computer program, and the distribution of a computer program will not exhaust the rental right (which otherwise would be exhausted by the "first sale" doctrine).[4]

- **Enforcement Provisions** - Perhaps the most important provisions of NAFTA are the extensive enforcement provisions, never before included in a multilateral intellectual property rights agreement. They are particularly important to BSA because so many Latin American countries lack "effective" enforcement of intellectual property rights including "expeditious" remedies to prevent and deter infringement, the standards set forth in NAFTA. Among the breakthroughs in the enforcement chapter are the following:

  A) The parties must have the right to limited discovery.[5]

  B) Injunctions must be available to parties in civil proceedings.[6]

  C) Damages must be adequate to compensate the right holder for the injury suffered.[7]

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[1] NAFTA Art. 1703.
[2] NAFTA Art. 1705(1)(a).
[3] NAFTA Art. 1705(1)(b).
[4] NAFTA Art. 1705(2)(d).
[5] NAFTA Art. 1715(2)(a).
[6] NAFTA Art. 1715(2)(c).
[7] NAFTA Art. 1715(2)(d).

D) Provisional measures must be prompt and effective, and must be available on an *ex parte* basis where delay is likely to cause irreparable harm to the rightholder or evidence is likely to be destroyed.[8]

E) Criminal penalties and remedies must be available at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale, and the level of penalties should be sufficient to provide a deterrent. Both problems are faced by the computer software industry in Latin America and around the world, and criminal penalties tend to be insufficient to provide a deterrent, unlike in the United States where felony provisions may be imposed including incarceration of up to five years and penalties of up to $250,000.[9]

- **Moral Rights** - Moral rights are excluded from the purview of NAFTA, which was an important goal of U.S. industry. These rights which are personal to authors, and often nontransferable, thus cannot be adjudicated by the NAFTA dispute settlement mechanism, and will continue to be freely alienable in the United States.[10]

- **Economic Rights Transferable** - No limitations can be placed on freedom of contract regarding the economic exploitation of a work,[11] which would prevent the application of laws, found in many civil law countries, that do not recognize certain transfers of rights by rightholders, and even when recognized, the right of the transferee to receive remuneration may be circumscribed.

- **Basic Rights** - NAFTA establishes a public distribution right and a public communication right, which are the rights of the rightholder to authorize or prohibit the first distribution to the public of a work, or the first communication of the work to the public.[12] These give the rightholder stronger distribution rights than the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971), and thus are of considerable use to U.S. industry, especially as we move into the Information Age.

**4. TRIPs' Importance to the Computer Software Industry.** While NAFTA generally establishes the highest level of intellectual property protection ever set forth in a multilateral trade agreement, TRIPs is even more important because it will bind more than 100 nations to standards of intellectual property protection that are similar to NAFTA standards. TRIPs' enactment by Congress as part of the Uruguay Round Agreements Act of 1994 also benefited from fast-track procedures. The advantages of TRIPs to the computer software industry include:

- **Constructive Accession to Other IPR Agreements** - TRIPs requires that the members of the World Trade Organization must extend intellectual property protection to other members as if all members had acceded to various intellectual property rights conventions, such as the Berne Convention on copyright, the primary multilateral agreement for protection of computer programs and other literary works.[13]

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[8] NAFTA Art. 1716(2).
[9] NAFTA Art. 1717(1).
[10] NAFTA Annex 1701 3(2).
[11] NAFTA Art. 1705(3).
[12] NAFTA Art. 1705(2).
[13] TRIPs Art. 3(1).

- **National Treatment** - TRIPs also establishes national treatment as the essence of intellectual property protection (although TRIPs national treatment is subject to more exceptions than Berne national treatment).[14]

- **NAFTA-Like Provisions** - Most of the provisions set forth above are also found in TRIPs, with the exception of the provision on the free transferability of economic rights, and NAFTA's clear enunciation of a distribution right and public communication right.

5. **Fast-Track Authority Should Require Strong Intellectual Property Protection.** As a grant of negotiating authority, Congress is able to establish policies, conditions and negotiating objectives to govern the Administration's fast-track authority. **One such condition or negotiating objective should be that any trade agreement will include strong provisions on intellectual property protection.** The United States Congress and the Executive Branch have cooperated over the past decade in guaranteeing to global industry much higher standards of intellectual property protection and enforcement than existed previously. This cooperation must continue in any negotiations on NAFTA accession or other trade agreements.

While the BSA recognizes that fast-track procedures must not become burdened with issues unrelated to trade, intellectual property protection is an essential component of international trade. Without strong intellectual property protection abroad, it is estimated that more than half of all United States exports would suffer substantial harm. Intellectual property protection and trade are inseparable, a position clearly recognized by NAFTA and TRIPs.

6. **Chilean Accession to NAFTA.** Fast-track negotiating authority would enhance the likelihood of Chilean NAFTA accession, and thus would expand the NAFTA trading area to the benefit of the computer software industry and much of the rest of U.S. industry. But whether or not Congress does grant the Administration fast-track authority, it is essential that negotiations with Chile (and other trading partners) require substantial improvements in intellectual property legislation and enforcement. Significant Chilean deficiencies include:

- **Penalties Inadequate** - Chilean criminal penalties for copyright infringement are seriously inadequate, and Chilean law fails to prescribe significant statutory damages for civil law copyright infringement (unlike U.S. or Brazilian law, for example).

- **Need to Prove Profit-Making Intent** - For most violations involving computer programs, the need to prove the existence of "profit-making intent" on the part of the infractor in order to fall within the Law.

- **No *Ex Parte* Search Procedures** - There is no express provision in Chilean legislation mandating *ex parte* civil search procedures (that is, without advance notice to the opposing party), which makes it very difficult for private parties to enforce copyright laws against Chilean pirates.

- **Limited Remedies** - Remedies available to Chilean enforcement authorities to curtail piracy are quite limited. The authorities should be permitted to close commercial establishments that use illegal software (much as they do in tax evasion cases with great effect). The seizure of illegal copies of computer programs and personal computers (or other equipment used to make copies) should be explicit in Chilean legislation.

- **Copyright Modifications Needed** - Modifications to Chile's copyright law are necessary. In particular, Chilean law should expressly prescribe a rental right

[14] TRIPs Art. 3(1)-(2).

(at least for computer programs), consistent with Art. 1705(2)(d) of NAFTA and Art. 11 of TRIPs.

- **Chile's Customs Valuation Is Unfavorable** - Chile's customs duty on the importation of computer software is 11%, but Chile assesses this duty over the value of a software package's content, not just the value of the physical media. Assessment over the value of the media only is favored by most of Chile's trading partners, including the United States, Canada, Mexico, Brazil, and the countries of the European Union. Assessment over the value of the content raises the price of computer software in the Chilean market and probably increases piracy.

7. **Conclusion.** Fast track negotiating authority for trade agreements has served the interests of U.S. industries such as the export-oriented computer software industry exceedingly well. Such authority should include as a condition or negotiating objective very high, NAFTA-like standards of intellectual property rights protection and enforcement. Countries such as Chile should not be permitted to derogate from such standards in any negotiations over accession to NAFTA. With these objectives in mind, the BSA strongly supports the extension of fast track negotiating authority.

Chairman CRANE. Thank you, Mr. Holleyman.
Mr. Anderson.

**STATEMENT OF MARK A. ANDERSON, DIRECTOR, TRADE TASK FORCE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO)**

Mr. ANDERSON. Thank you, Chairman Crane.

The AFL–CIO appreciates this opportunity to testify on fast track negotiating authority. We believe that the current international economic position of the United States, together with the recent Mexican financial crisis and the resulting harm to workers, suggests at least extreme caution in further pursuing the trade liberalization agenda.

The AFL–CIO, therefore, believes that fast track authority, if granted, should be limited to negotiations with Chile but must include, among other things, worker rights, standards, and capital markets as principal negotiating objectives.

Workers in the United States have endured an extended period of economic hardship and extreme uncertainty. The huge structural shifts that have taken place in the economy have caused real pain for millions of workers and their families. Over the last 12 years, the nation has experienced falling wages, declining incomes for the majority of American families, increasing inequality and poverty, and the loss of millions of manufacturing jobs, all as the U.S. trade deficit has grown to record levels.

Just this year, the Mexican financial crisis, brought on in large part because of Mexico's own unsustainable trade deficit, will bring further pain to workers in both countries. Mexican workers have already seen their jobs disappear and their standards of living plummet. U.S. workers will experience increased downward pressure on their wages and will see their jobs eliminated as Mexico cuts imports, promotes exports, and attracts more and more U.S. investment to take advantage of its ever-cheaper labor costs.

The small 1994 U.S. trade surplus with Mexico will turn into a deficit that may reach $15 billion this year. The promise that NAFTA would bring about increased employment and prosperity for all has proven to be empty.

This tragedy should be a cautionary tale for all of us. It suggests, at least, that so-called free trade agreements are not a panacea for our problems, and if progress is to be made, it must be recognized that economic integration is a complex process that should be undertaken slowly and with extreme care. If anything, a deepening and widening of the negotiation agenda is needed.

Negotiations with Chile provide an opportunity to address these issues, make necessary improvements in the NAFTA, and reduce the likelihood of the Mexican crisis being repeated.

In our view, worker rights are the key to a successful agreement. The linking of worker rights and standards to trade has been a long held but unfulfilled negotiating objective of successive Democratic and Republican administrations. It is not a new issue and has been under discussion far longer than trade in services, investment, or intellectual property protection.

Both the 1974 and 1988 trade acts made worker rights a principal negotiating objective of the United States. The Uruguay

Round Agreements Act of 1994 directs the President to continue to press for worker rights in the WTO, as did Presidents Reagan and Bush throughout the round.

It has an even longer history in U.S. law. For example, the McKinley Tariff Act of 1890 prohibits the import of prison-made goods. Over the last 10 years, a large series of U.S. trade and investment laws were enacted that included worker rights conditionality.

Now, despite this history, the relationship between worker rights and trade remains controversial, so I would like to touch on why worker rights is, indeed, an integral part of trade and not an extraneous issue.

Both the NAFTA and the Uruguay round agreements resulted in the establishment of extensive rules under which goods and services are produced. The appropriate role of both government and private enterprise in economic development is directly addressed. This reflects agreement among the parties that in order to encourage the growth of trade, there needs to be agreed upon rules to ensure fair competition.

Those rules are no longer limited to border measures, like tariffs or quotas, but now address a whole series of practices that, in the past, were considered purely domestic in nature. The provisions of financial services, domestic government subsidies, consumer and product standards, intellectual property protection, and environmental policy, just to name a few, are all subject to international discipline or negotiation and are all considered to be trade related.

Labor used in the creation of goods for export is at least equally trade related. Indeed, the denial of worker rights has long been used to affect trade flows. This is most graphically demonstrated in the worldwide growth of export processing zones, where restrictions on worker rights are frequently used by governments as a trade and investment incentive.

If it is possible for us to reach agreement on issues as complex as intellectual property protection, whose direct link to trade is tenuous, at best, surely it is possible to negotiate basic rules for worker rights and standards that are directly related to the production process.

Finally, Mr. Chairman, a central thrust and major deficiency of the NAFTA, in our view, is the reduction or the elimination of government control over the provision of financial services, capital flows, and investment. The financial crisis in Mexico is a grim reminder of the folly of relying solely on the market as a means of achieving economic prosperity. Ironically, in this case, speculators will be protected by U.S. Government intervention, but workers in both countries have been simply told to submit to the discipline of the market.

Once again, in our judgment, negotiations with Chile provide the opportunity to learn from past mistakes and develop alternative approaches to the important issue of capital markets. Certainly, U.S. taxpayers should no longer be required to be the ultimate rescuer of speculators and elites involved in ill-conceived economic activity.

Thank you very much, Mr. Chairman.

[The prepared statement and attachment follow:]

**STATEMENT OF MARK A. ANDERSON, DIRECTOR, TASK FORCE ON TRADE**
**AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS**
**BEFORE THE SUBCOMMITTEE ON TRADE**
**COMMITTEE ON WAYS AND MEANS**
**ON**
**FAST TRACK NEGOTIATING AUTHORITY**

May 11, 1995

Mr. Chairman, members of the Committee, the AFL-CIO appreciates this opportunity to present its views on the fast track negotiating authority. The current international economic position of the U.S., together with the Mexican financial crisis and the resulting harm to workers, suggest extreme caution in further pursuing a trade liberalization agenda. However, if the process is to continue, it is particularly important for the Congress to establish negotiating objectives that hold out the prospect of advancing, not retarding, the interests of working Americans.

For these reasons, the AFL-CIO believes that fast track authority, if granted, should be limited to negotiations with Chile, and must include among other things, worker rights and standards, and capital markets as principal negotiating objectives. Appended to this statement is a more complete review of issues related to possible negotiations with Chile that was submitted by the AFL-CIO to the U.S. Trade Representative on April 28, 1995.

Workers in the United States have endured an extended period of economic hardship and extreme uncertainty. The huge structural shifts that have taken place in the economy have caused real pain for millions of workers and their families.

Last year the U.S. merchandise trade deficit reached a near record $151 billion. The 1995 deficit is projected to be substantially larger. Over the last dozen years, the trade deficit has totaled some $1 1/2 trillion, and helped turn the U.S. from being the world's largest creditor nation, to the worlds largest debtor. During this period, a period of increasing trade liberalization, the nation experienced falling wages, declining incomes for the majority of American families, increasing inequality and poverty, the loss of more than three million jobs in the manufacturing sector, and growing social tension. While trade is not necessarily the cause of all these problems, it has certainly made a major contribution, and indicates that the best interests of working people are tremendously vulnerable, as long as those interests are ignored in negotiations on international economic issues.

Last December, Mexico, because of its own unstainable trade deficit, was forced to allow the peso to freely float in value relative to the dollar. This action had the effect of almost immediately reducing the peso's value by some 50 percent. It is clear, that the cost of this devaluation, together with its underlying economic causes, will be borne largely by workers in both countries. For Mexican workers, imported goods have skyrocketed in cost, real earnings have plummeted, inflation has soared, and more than one-half million jobs have disappeared. Because of the devalued peso, U.S. employers in the export maquiladora sector who calculate their wage costs in dollars, will see an annual windfall of some three-quarters of a billion dollars. As Chrysler President Robert Lutz observed, lower labor costs will "flow right through to the bottom line."

U.S. workers will experience increased downward pressure on their wages, and will see their jobs disappear as Mexico cuts imports, promotes exports, and attracts more and more U.S. investment to take advantage of its ever cheaper labor costs. The small 1994 U.S. trade surplus with Mexico will turn into a deficit that may reach $15 billion this year. By most commonly accepted calculations, this will mean the loss of 300,000 U.S. jobs this year alone. The promise that NAFTA would bring about increased employment and prosperity for all has proven to be empty.

This tragedy should be a cautionary tale for all of us. It suggests, at least, that so-called free trade agreements are not a panacea for our problems. If progress is to be made, it must be recognized that economic integration is a complex process that should be undertaken slowly and with extreme care. If anything, a deepening and widening of the negotiation agenda is needed.

Issues such as capital markets and most importantly, worker rights and standards, must be dealt with directly. Certainly, U.S. taxpayers should no longer be required to be the ultimate rescuer, as is the case with Mexico, of speculators and elites involved in ill-conceived economic activity.

Negotiations with Chile provide the opportunity to address these issues, make necessary improvements in the NAFTA, and reduce the likelihood of the Mexican crisis being repeated. Early in 1994, the AFL-CIO and our counterpart organization, the Unitarian Workers Central (CUT) of Chile, reached agreement to support the negotiation of a bilateral trade agreement between our two countries, so long as those negotiations were directed at reaching agreement on core worker rights and standards. Our two movements did not shy away from integration, we sought to embrace it.

We believed that a bilateral agreement could be a significant improvement over the flawed NAFTA, and had the possibility of setting new standards for decency in trade. While the decision to negotiate a new trade arrangement with Chile through the expansion of NAFTA was disappointing, we continue to believe that the goal of directly incorporating worker rights and standards in commercial agreements is eminently possible. The government of Chile has expressed its willingness to negotiate on this issue. The governments of Mexico and Canada have indicated that labor rights and standards must continue as part of an expanded NAFTA. The U.S. Administration has expressed the view that the NAFTA side agreement is a floor, not the ceiling for future negotiations.

The opportunity to secure the support of workers, who are most at risk from trade liberalization, should not be lightly dismissed. Addressing their interests would demonstrate that movement toward freer trade can be beneficial to the majority of people and not just corporate and political elites.

**WORKER RIGHTS**

The linking of worker rights and standards to trade has been a long held, but unfulfilled negotiating objective of successive Democratic and Republican administrations. It is not a new issue, and has been under discussion far longer than trade in services, investment, or intellectual property protection.

The 1974 Trade Act, which provided the authority to negotiate the Tokyo round of multilateral trade negotiations directed the President to seek "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT (Section 121(a)(4))." The Omnibus Trade and Competitiveness Act of 1988, which provided the authority to negotiate the Uruguay Round stated, "The principal negotiating objectives of the United States regarding worker rights are: (A) to promote respect for worker rights; (B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and (C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international traded. (Section 1011(b)(14)). The Uruguay Round Agreement Act of 1994 instructed the President to seek the establishment of a working party, under the auspices of the World Trade Organization (WTO), to examine the relationship of internationally recognized worker rights to the articles, objectives, and related instruments of the GATT and WTO respectively, and to examine the effects on international trade of the systematic denial of such rights (Section 131). The Clinton Administration is currently pursuing that Congressional directive.

These longstanding negotiating objectives are based on the understanding that there are no automatic mechanisms by which increased trade, or indeed, purely national economic growth leads to higher wages and improved working conditions. While increased trade can provide the resources for improvements, history tells us that only trade unions through collective bargaining and government through adequately enforced labor laws can ensure that trade really does lead to higher standards of living for all workers.

The preamble to the GATT, understanding that increased trade is not an end in and of itself, states that the participating countries are entering into the accord:

> "Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods."

The Havana Charter of 1948, which the GATT incorporates by reference states:

> "The Members recognize that ... all countries have a common interests in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade and accordingly each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within the territory."

But the history of linking worker rights and trade is much older. The McKinley Tariff Act of 1890 included a provision banning the import of prison made goods. That prohibition is included in the GATT. In 1912 the U.S. banned the import of white phosphorous matches because of health hazards associated, not with their use, but with their production.

Both the Eisenhower and Nixon Administrations proposed including worker rights in the GATT. At the start of the Uruguay Round in 1986, the Reagan Administration proposed that worker rights be included on the negotiating agenda, and throughout the round former USTR's Clayton Yeutter and Carla Hills sought to introduce the issue many times. Their reasoning was explained in a 1987 letter to the Ways and Means Committee from President Reagan's Labor Secretary Bill Brock who wrote:

> "Those countries which are flooding world markets with goods made by children, or by workers who can't form free trade unions or bargain collectively, or who are denied even the most minimum standards of safety and health are doing more harm to the principle of free and fair trade than any protectionist group I can think of."

While sadly little progress has been made at the multilateral level, the last twelve years have seen a significant expansion of worker rights conditionality in U.S. law. The Caribbean Basin Initiative, the Generalized System of Preferences, the Andean Trade Preference Act, the Overseas Private Investment Corporation, Section 301 of the 1988 Trade Act, and U.S. participation in international financial institutions all contain some form of worker rights conditionality. Experience under these programs has indicated that by directly focusing on worker rights, increased trade and investment can contribute to economic and social development.

Despite this history, these are some who believe that worker rights and standards are unrelated to trade, and therefore have no place in trade negotiations. Both the NAFTA and the Uruguay Round agreements resulted in the establishment of extensive rules under which goods and services are produced. The appropriate role of both government and private enterprise in economic development is now directly addressed. This reflects an agreement among the parties that in order to encourage the growth of trade, there needs to be agreed upon rules to ensure fair competition. In other words, the right to participate in world trade places certain duties on countries to observe international norms. Those norms are no longer limited to border measures like tariffs or quotas, but now address a whole series of practices that in the past were considered purely domestic in nature. The provision of financial services, domestic government subsidies, consumer and product standards, research and development practices, agricultural policies, intellectual property protection,

environmental policy, and anti-competitive practices are all subject to international discipline or negotiation and are all considered to be trade related.

Labor used in the creation of goods for export is equally trade related. Indeed, the denial of worker rights has long been used to affect trade. This is most graphically demonstrated in the worldwide growth of export processing zones, where restrictions on worker rights are used by governments as a trade and investment incentive. Pakistan, Turkey, Peru, Columbia, Venezuela, Indonesia, Malaysia, Philippines and various countries of the Caribbean Basin, to name just a few, have used or are using such restrictions. In countries like China, independent unions are simply prohibited.

The question is not whether GATT or regional trade agreements should interfere with national policies. They already do. After all, trade agreements are by definition about reducing national sovereignty. That is why they are negotiated. For workers, the issue now is whether those international regulations can be extended to the people side of the production equation, to set a minimum level of labor standards so as to ensure that social conditions improve as trade expands. If it is possible to reach agreement on issues as complex as intellectual property protection, whose direct link to trade is tenuous at best, surely it is possible to negotiate basic rules for worker rights and standards that are directly related to the production process.

At the international level, the real difference in view over worker rights is between those who believe that the operation of democratic institutions is a necessary and essential aspect of economic development, and those who believe that autocratic government and "disciplined labor" is the key to economic success. This latter view has even been expressed in our own country from time to time. At the turn of the century, George Baer, head of the Reading Railroad, voicing opposition to an ongoing strike of miners stated:

> "The rights and interests of the laboring man will be protected and cared for--not by the labor agitators, but by the Christian man to whom God in his infinite wisdom has given the control of the property interests of this country."

Surely, we have learned the error of this view and now understand that worker rights and democratic institutions are as necessary internationally, as they are in our own country. The experience of the former Soviet Union, Eastern Europe, Chile, and South Africa all point to the importance of worker rights and democratic institutions. Where these basic rights are denied, power will be concentrated in the hands of a political and economic elite. By itself, this will restrict the ability of mass markets to develop. For growing trade to lead to benefits for the majority of people, there has to be freedom to create institutions such as trade unions that can ensure a fair distribution of productivity gains. This is also in our overall interest because it will encourage a faster growth of new markets.

While the North American Agreement on Labor Cooperation represents a small first step in associating worker rights and standards to an international trade agreement, major improvements are needed. The AFL-CIO believes that a minimum, negotiations with Chile should focus on reaching agreement concerning the prohibition of forced labor, guarantees on freedom of association and the right to organize and bargain collectively, nondiscrimination in employment, and a minimum age for the employment of children. Negotiations should also seek to delineate rules and regulations that ensure a safe and healthy workplace. An international consensus on these issues and others has already been developed by the International Labor Organization.

Agreements reached in these areas should be incorporated in the main body of trade agreements, and be subject to the same dispute mechanisms available to other covered issues. During this period of increasing economic insecurity, workers interests can no longer be shunted aside to inadequate side agreements.

**CAPITAL MARKETS**

A central thrust and major deficiency of NAFTA was the reduction or elimination of governmental control over the provision of financial services, capital flows, and investment. What was ignored is the reality that when governments stop regulating or supervising trade, currency, and investment flows, then those matters will be the sole province of private investors, multinational corporations and currency speculators. They, not elected governments, will make decisions affecting economic development and equity, and thus democracy itself.

The financial crisis in Mexico, and its harm to Mexican and U.S. workers is a grim reminder of the folly of relying solely on the "market" as a means of achieving economic prosperity. Ironically, speculators will be protected from the market by U.S. government intervention, but workers in both countries have been simply told to submit to the discipline of market forces. During the NAFTA negotiations, the AFL-CIO repeatedly urged that the governments address such issues as excessive foreign debt, exchange rate fluctuations, and investment controls and oversight. That advice was ignored.

Negotiations with Chile provide the opportunity to learn from past mistakes and develop alternative approaches to the important issue of capital markets. U.S. taxpayers should no longer be required to be the ultimate rescuer of speculators and elites involved in ill conceived economic activity. Among the issues that should be positively addressed are greater transparency, a transaction tax on short term financial instruments, expansion of such laws as Chile's that prohibit the repatriation of capital for one year, expansion of government screening of inward investment, increases in reserve requirements for financial institutions, as well as direct negotiations on exchange rates.

Mr. Chairman, the AFL-CIO believes that negotiations with Chile, if carefully constructed, hold the possibility of making needed improvements on NAFTA. Worker Rights are key to a successful agreement. We stand ready to work with you and members of the Committee to structure legislation that would benefit workers, and make freer trade a positive goal for all.

**STATEMENT OF MARK A. ANDERSON, DIRECTOR**
**AFL-CIO TASK FORCE ON TRADE**
**ON BEHALF OF THE**
**LABOR ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS AND TRADE POLICY**
**TO THE UNITED STATES TRADE REPRESENTATIVE**
**ON**
**NEGOTIATIONS WITH CHILE ON ACCESSION TO THE NAFTA**

**April 28, 1995**

On December 11, 1994, the heads of State of the United States, Mexico, Canada, and Chile announced their decision to begin the process by which Chile will accede to NAFTA. In that announcement, they stated "We seek in this hemisphere to expand market opportunities through equitable rules and to eliminate barriers to trade and investment through agreed disciplines at high levels. This approach, coupled with policies that address the conditions of labor and protection of the environment will be pillars of a new partnership in the Americas." Formal negotiations are expected to begin in the spring of 1995.

The AFL-CIO and the Unitarian Workers Central (CUT) of Chile had advocated the negotiation of a bilateral trade agreement to make it more likely that basic worker rights and standards were included directly in an agreement, and subject to the same dispute settlement mechanism available to rules governing capital. While recognizing that the NAFTA represented a small first step in addressing workers interests, workers in both the U.S. and Chile did not want the flawed labor side agreement to NAFTA to be the standard for further hemispheric integration.

In commenting on the announcement of negotiations leading to Chilean accession to NAFTA, the AFL-CIO and the CUT stated that they "deeply regret the decision of our two governments to negotiate a new trade arrangement through the expansion of the flawed NAFTA. We have argued for months for a bilateral agreement which would set new standards for decency in trade matters in a way that the interests of the companies should not be above the internationally recognized labor rights of the workers... We will nevertheless continue to work together to make respect for basic worker rights and standards a central feature of trade agreements in this hemisphere."

While negotiations with Chile over NAFTA accession will make this goal more difficult to achieve, it remains eminently possible, and should be the principal negotiating objective of the U.S. The government of Chile has expressed its willingness to discuss these questions. The opportunity to secure the support of workers, who are most at risk from trade openings should not be squandered by governments. Addressing their interests would clearly demonstrate that movement toward freer trade can be beneficial to the majority of people and not just corporate and political elites.

Events following the enactment of NAFTA, demonstrated that the agreement, as written, provided no guarantee or assurance of economic prosperity. Indeed, the reverse is painfully evident. The financial crisis in Mexico that has resulted in a massive devaluation of the peso will cause untold hardship for tens of thousands of Mexican and U.S. workers. In Mexico, workers have seen their real earnings plummet, while multinational corporations have reaped a financial windfall from drastically lower dollar denominated wage costs. U.S. workers will see their jobs disappear as Mexico cuts imports, promotes exports, and seeks to attract more and more U.S. investment. The small U.S. trade surplus in 1994 will turn into a deficit that may reach $15 billion in 1995. Clearly, NAFTA is not the answer. Negotiations with Chile provide the opportunity to make necessary improvements and reduce the likelihood of the Mexican tragedy being repeated.

LABOR RIGHTS AND STANDARDS

The linking of labor rights and standards to trade has been a long held, but unfulfilled, bipartisan negotiating objective of successive U.S. administrations. Both the 1974 and the 1988 Trade Acts made worker rights a principal trade negotiating objective of the U.S. Labor rights conditionality has been established in a variety of U.S. trade laws, among them the Caribbean Basin Initiative in 1983, the Generalized System of Preferences in 1984, Overseas Private Investment Corporation in 1985, Section 301 of the 1988 Trade Act, and most recently in the 1994 authorization bill for multilateral lending organizations. That conditionality must be extended to NAFTA through the upcoming negotiations with Chile. Failure would be a step backward in this vital area.

This linkage has been based on the understanding that there are no automatic mechanisms by which increased trade or indeed, purely national economic growth, leads to higher wages and improved working conditions. While increased trade can provide the resources for improvements, history tells us that only trade unions through collective bargaining and government through adequately enforced labor laws can insure that increased trade really does lead to higher standards of living for all workers.

As a rules-based international trading system develops, it is vital that workers receive the same treatment that has been provided business interests. These rules are, in large measure, designed to establish basic conditions under which traded goods and services are produced. No longer are they focused solely on border measures, but now address practices that heretofore were considered purely domestic in nature. For example, the provision of financial services, domestic government subsidies, consumer and product standards, anti-competitive practices are all subject to international discipline or discussion. If it is possible to reach agreement on issues as complex as intellectual property protection, whose direct link to trade is tenuous at best, surely it is possible to negotiate basic rules for worker rights and standards that are directly related to the production process.

While the North American Agreement on Labor Cooperation represents a small first step in associating worker rights and standards to an international trade agreement, major improvements are needed. The AFL-CIO believes that at minimum, negotiations should focus on reaching agreement concerning the prohibition of forced labor, guarantees on freedom of association and the right to organize and bargain collectively, as well as nondiscrimination in employment. Negotiations should also seek to delineate rules and regulations that insure a safe and healthy workplace, prevent child labor and establish appropriate standards concerning hours of work. An international consensus on these issues and others has already been developed by the International Labor Organization.

Agreements reached in these areas should be incorporated in the main body of trade agreements, and be subject to the same dispute mechanisms available to other covered issues. During a period of increasing economic uncertainty, workers interests can no longer be shunted aside to inadequate side agreements.

FINANCIAL SERVICES, INVESTMENT, AND CAPITAL MARKETS

A central thrust of NAFTA was the reduction or elimination of governmental control over the provision of financial services, capital flows, and investment. What was ignored is the reality that when governments stop regulating or supervising trade, currency, and investment flows, then those matters will be the sole province of private investors, multinational corporations and currency speculators. They, not elected governments, will make decisions affecting economic development and equity, and thus democracy itself.

The financial crisis in Mexico, and its harm to Mexican and U.S. workers is a grim reminder of the folly of relying solely on the "market" as a means to achieve economic prosperity. Ironically, speculators will be protected from the market by U.S. government intervention, but workers in both countries have been simply told to submit to the discipline of market forces. During the NAFTA negotiations, the LAC repeatedly urged that the governments address such issues as excessive

foreign debt, exchange rate fluctuations, and investment controls and oversight. That advice was ignored.

The upcoming negotiations provide the opportunity to learn from past mistakes and develop alternative approaches to the important issue of capital markets. U.S. taxpayers should no longer be required to be the ultimate rescuer of speculators and elites involved in ill conceived economic activity. Among the issues that should be positively addressed are greater transparency, a transaction tax on short term financial instruments, expansion of such laws as Chile's that prohibit the repatriation of capital for one year, expansion of government screening of inward investment, increases in reserve requirements for financial institutions, as well as direct negotiations on exchange rates.

**INTELLECTUAL PROPERTY**

There are a variety of issues concerning the rights of performers that need to be addressed in the upcoming negotiation. They include the following:

* A new NAFTA agreement, as is now the case with the WTO, should require that parties to the agreement provide performers with the ability to prohibit the unauthorized fixation, reproduction, or broadcast of their live performances.

* Negotiations must develop provisions, based on existing U.S. law, that obligates audio hardware manufacturers and blank tape suppliers to pay a levy to compensate copyright owners and performers for unauthorized home copying. The revenue collected from this levy is distributed to performers and copyright holders on the basis of national treatment. U.S. statute also prohibits the sale or importation of audio hardware that is not equipped with technology that prevents serial digital copying. Similar protections should be included in NAFTA.

* Legislation is now being considered by Congress that would give copyright owners the ability to authorize or prohibit the transmission of their sound recordings through digital media. This kind of protection is necessary for performers and must be included in a new agreement, and should be extended to all audio/visual works.

* The existing NAFTA, denies American performers, but not producers, the right to collect revenue for the public performance of their sound recordings. This inequity must be corrected in the upcoming negotiation, and should be extended to all audio/visual works.

* Finally, the existing NAFTA exempts Canada from appropriate obligations for its "cultural industries." This exception has been particularly harmful to the U.S. entertainment industry, is currently subject to a Section 301 petition, and has been cited by France, the European Union, and other countries as the basis for exempting their cultural industries from WTO discipline. It must not be extended to other nations.

**TEMPORARY ENTRY**

The existing NAFTA, as well as its predecessor, the U.S.-Canada FTA, made significant changes in U.S. immigration laws by expanding the right of U.S. employers to recruit foreign nationals to work in the United States on temporary status in professional occupations. Employers are not required to obtain a visa or demonstrate that a shortage exists.

The impact of these provisions is most acute in the health care industry. Because the FTA provisions were enacted on top of the H-1A visa program which was enacted in 1989, the annual entry of temporary RN's now equals some 5 percent of RN's newly diplomaed in the United States each year who are looking for work. Instead of cutting back on their use of temporary RN's as the shortage of the 1980's abated, employers have continued to increase their use. This is especially troublesome in light of the fact that the health care industry is undergoing a massive and far-reaching restructuring. The maximum cooperation of government, employers and workers will be needed to promote the retraining and re-employment of displaced workers. The continued

existence of this free trade loophole--which is being expanded through inter-governmental consultations to include additional health care occupations--only makes that cooperative effort more difficult to achieve.

The LAC believes that NAFTA provisions permitting this type of entry should be renegotiated in order to remove registered nurses and other health care professionals from the list of eligible occupations.

**SAFEGUARDS**

The existing NAFTA seriously weakened Sec. 201 of the Trade Act by drastically limiting the ability of the government to impose protective measures, including quotas, to remedy or prevent injury to domestic industry and to workers as a result of increased imports from the other parties. While providing the illusion of possible safeguard action, the present agreement includes procedures and definitions that make the finding of injury highly unlikely, while at the same time prohibiting the imposition of measures that would remedy injury caused by imports.

The deficiencies of this chapter loom large in light of the Mexican financial crisis and peso devaluation which help will turn the small 1994 U.S. trade surplus with Mexico into a deficit that may reach $15 billion by the end of 1995. That shift in terms of trade between Mexico and the U.S. will result in the displacement of tens of thousands of U.S. workers because they have little hope of receiving relief from U.S. trade law. The LAC believes that this chapter should be renegotiated to correct its serious shortcomings.

**ENVIRONMENT**

The Declaration of Principles adopted by the Heads of State at the Summit of the Americas stated that, "Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly." Negotiations with Chile provide the first opportunity to take concrete steps to bring life to that Summit declaration.

The LAC believes that the environmental side agreement to NAFTA, while establishing a connection between necessary environmental protection and commercial agreements, is inadequate to the task of insuring progress in this important area, and should be significantly improved. Appropriate environmental law, and the means to fairly and openly settle disputes concerning those laws, should be made part of any new trade agreement.

**NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM**

The NAFTA-TAA Program was established to provide training, re-employment services and income support for workers dislocated because of trade with Mexico and Canada. As of April 10, 1995, the Department of Labor had received 426 petitions requesting assistance. Of that number, 194 were certified, covering almost 27,000 workers who lost his or her job because of NAFTA. With the U.S. trade balance deteriorating sharply with Mexico and Canada, the need for effective adjustment assistance will grow rapidly. The addition of Chile to NAFTA will add to this serious problem.

The LAC believes that NAFTA-TAA needs to be improved by increasing public outreach efforts on the part of government, relaxing the very strict training requirements currently present in the program, increasing program coverage to include service workers, and extending the income support component of the program to two years. Such steps would ease the burden on those workers whose jobs disappear because of NAFTA.

Chairman CRANE. Thank you.

This is a germane issue, but not one that we focused on thus far in our discussions today. The President has made a case, and I think very convincingly, that the promotion of free markets in China is calculated to enhance rather than diminish the human rights of the Chinese people. While it is not the total answer to human rights problems, still, I think, raising living standards when you are talking about basic human rights, the ability to put a roof over your head, clothe your children, feed your children, is a vital human right. Would you folks agree with that?

Mr. ANDERSON. Mr. Chairman, I would certainly view the ability of someone to improve his or her own lot in life a desirable goal for all governmental policy or private sector policy.

I would make a distinction, however, between the promotion of human rights as an overall goal and the promotion of labor rights and standards in trade agreements. Human rights are something that we believe, and we disagreed with the President's decision, Mr. Chairman, to delink on China. We disagreed with it very strenuously. But it is a different issue when you talk about labor rights and standards, which have a direct economic impact on the trade flows.

Chairman CRANE. Does anyone else choose to comment on that?

[No response.]

Chairman CRANE. That was the second question I was going to get to, and that is the President does not approve of the linkage with MFN, most favored nation, extension to China of human rights conditions. I am just curious how, if that should not be linked, you simultaneously feel either labor or environmental issues should be linked. I mean, if they are not directly and immediately related to the promotion of more free trade.

Mr. ANDERSON. If I could expand, Mr. Chairman, the notion of labor rights and standards, I think that labor workers are certainly a direct part of the production process. Certainly, their conditions, their ability to join together into unions to bargain over their conditions, their ability to improve their wages through collective action or through individual action has a direct bearing on how goods are traded internationally. Certainly, it has a direct bearing on the price and cost of those goods.

For me, it is instructive that there are so many countries in the world who use the denial of worker rights, prohibit the organization of unions, permit the employment of children, as a means of attracting foreign investment and as a means of expanding trade, because they realize it will cut their costs. We think those are the kinds of things that should be addressed in a negotiating context so that the livelihoods of all those workers can be improved.

Chairman CRANE. Does anyone else have a comment?

Mr. PRUDENCIO. Mr. Chairman, I would just add on the environmental questions and where they relate to environment, again, pointing to my testimony, we are looking at addressing the trade related environmental issues. We feel strongly that environmental issues of their own right deserve their own fora for negotiation, which is why the Montreal Protocol, the convention to protect the trade of endangered species, all those were negotiated not as trade agreements or with trade provisions to enforce them, but as indi-

vidual environmental agreements, where we look for certain environmental safeguards within these trade agreements or on issues that directly relate to environmental protection, consumer safety.

Pesticide revenues, for instance, the role of investment in creating potential pollution havens in other countries, those are the issues we are trying to identify and trying to address within these trade negotiations. We are not trying to, for instance, force another country to set a certain standard on environmental protection.

In fact, the NAFTA environmental agreement or the NAFTA itself did not set one environmental standard. That is important to note. What the NAFTA side agreement did, it said, we are going to work cooperatively to make sure that we are all improving our environmental performance and we will have some mechanisms in place if one of us does not live up to the bargain. That is important to note, I think.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. Thank you.

Mr. Anderson, I cannot think of anything that is more directly related with trade than how it impacts on American workers. The best deal in the world, if it means that we are going to be unemployed, obviously, we would have to take a look at it. So I can see how people want to make this as simple as possible, but when the people go to vote, the only thing I hear is, what is the impact going to be on the American workers?

It seems to me that those that negotiate should not be so far up in the clouds that they do not understand that on the street and in the Congress, people want to know. We want to help those people. We want free trade. But how does it impact on me?

But, Ms. El-Chaar, as relates to environment, I would normally think that the chemical industry, whenever anyone says that they are discussing environmental protection, that the chemical industry would say, count me in. I would like to fund that. We talk about cancer, lung cancer, the cigarette industry says, I am with you. You talk about drunk driving, the alcohol and beer industry say, whatever I can do.

Why would not the chemical industry say, that is what I have been telling you all along. We have to have progress and protect the environment.

Ms. EL-CHAAR. We are not saying the opposite. We are in agreement with you. Yes, we should be protecting the environment.

Mr. RANGEL. I mean, whenever it comes up, you say, count me in. If it comes up here with a trade agreement, you say, hey, I want to be there. I want to show you what we have been doing. I want them to learn as a result of our mistakes and our progress. Why would you not insist that the industry be protected to show what you believe would be a good record or at least to show what you intend to do in the future as you find the balance between profit and our national interest?

Ms. EL-CHAAR. We do insist on being there, and we do promote our record. Many of the chemical companies manufacture products that work in tandem with the environment. Perhaps one product——

Mr. RANGEL. Specifically, what I am talking about is your testimony saying that it should be excluded from the fast track. That is all I am talking about. I know other good work that you do, but I am only talking about this. How would this impede anything that your industry would want to do?

Ms. EL-CHAAR. I would suggest that working with environmental initiatives is better addressed through multilateral larger fora——

Mr. RANGEL. I heard you. I am asking why. Why would you want to do it multinational? Why would you think it would hurt your industry to almost insist that if you are going to discuss environment, I want to be on that table? How do you think it helps you—and this may be a dangerous question to answer—how would it help your industry to exclude it from the trade negotiation? What could happen badly for your industry?

Ms. EL-CHAAR. Perhaps I am not best qualified to answer the question at this point, but we will ensure——

Mr. RANGEL. Do you represent the industry?

Ms. EL-CHAAR. On this position, yes, but we can answer your question and submit it as an answer to your question for this testimony.

Mr. RANGEL. Oh, no. I think we all know the answer, and it is unfortunate, that is all. I wish the chemical industry could have more confidence in our negotiators and in the process. Thank you so much.

Thank you, Mr. Chairman.

Chairman CRANE. I want to thank all of you for your testimony today. I appreciate your giving of the time. The subcommittees now stand adjourned.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

# EXTENSION OF FAST TRACK NEGOTIATING AUTHORITY TO THE ADMINISTRATION

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**WEDNESDAY, MAY 17, 1995**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
JOINT WITH COMMITTEE ON RULES,
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE,
*Washington, D.C.*

The subcommittees met, pursuant to call, at 10:03 a.m., in room 1100, Longworth House Office Building, Hon. David Dreier (chairman of the Subcommittee on Rules and Organization of the House) presiding.

Mr. DREIER. The joint subcommittees will now come to order. The matter before us is the second of two joint hearings of the subcommittees concerning fast track agreement negotiating authority.

I would like to say good morning and welcome to the members of the subcommittee on Trade and the Subcommittee on Rules and Organization of the House, also to our distinguished witnesses, especially our good friend, U.S. Trade Representative, Mickey Kantor, and the members of the audience who are here today.

These public hearings are intended to provide the two subcommittees with an opportunity to address issues relating to fast track procedures and rules, trade goals, negotiating objectives, and conditions associated with an extension of fast track authority.

Congress has recognized for decades the critical role the President must play to further a top national economic priority—promoting an open and fair trade regime. This clearly contributes to a stronger and more vibrant U.S. economy.

U.S. exports have more than doubled over the last 10 years. We are the world's top exporter. Exports directly account for more than 1 in 10 U.S. jobs. Nearly one-quarter of our economy is tied to international commerce.

Reducing our import barriers has made our economy more efficient. Free trade also benefits middle-income families by cutting taxes, increasing buying power, and raising living standards.

I would note that fully implementing the Uruguay round of the General Agreement on Tariffs and Trade promises the equivalent of a $500 tax cut for every American family.

Despite the overwhelming benefits of lower trade barriers, some have questioned the merits of the fast track process. Fast track has been called secretive, hasty, and even unconstitutional by some. I totally disagree with this view. I hope very much that this hearing

will help in fostering greater understanding of the history and purpose of fast track.

I would point out that fast track is only the most recent congressional executive agreement to lower trade barriers. As early as 1890, Congress delegated tariff bargaining authority to the President. In 1934, following the economic disaster caused by Smoot-Hawley protectionism, something that Chairman Crane likes to often refer to, Congress authorized the President to proclaim U.S. tariff reductions as part of trade agreements. This ability to reduce tariff barriers helped fuel this country's economy in the postwar era, creating economic growth in free market democracies around the world.

By the early seventies, tariff reductions were no longer the singular goal of the U.S. trade policy. In 1974 Congress developed the fast track procedures to provide the President with credibility in negotiations to eliminate nontariff trade barriers. Fast track ensures that Congress carries out its constitutional responsibilities regarding legislative implementation of those agreements.

Promoting free trade has been a successful national policy for 60 years. Fast track has contributed to that success for two decades. While the goal of improving the lives of American families by fostering greater international commerce has not changed, fast track can be fine-tuned to maximize its positive impact on the process.

Fast track procedures must foster ongoing and substantive consultations between the executive branch and the Congress in order to maintain its viability as a bond between the two branches with a role in international commercial policy. Fast track must be focused on matters directly related to trade in order to avoid a critical procedural tool being undermined through overly broad application.

Finally, the fast track process must be updated to account for changes in other congressional procedures, such as the PAY–GO budget rules instituted in 1990.

I look forward to hearing from our witnesses today on how the fast track process can be improved.

I want to extend a warm welcome to Ambassador Kantor and look forward to resolving this issue. I would like at this time to yield to Chairman Crane, who has been a leader in this fight for free trade, and I appreciate the fact that we are able to jointly work together in these two subcommittees on this issue. Chairman Crane.

Chairman CRANE. Thank you, Chairman Dreier. I, too, look forward to hearing our witnesses testify today on the second day of our joint fast track hearings.

In my May 11 statement, I set forth the details of my position on fast track authority. I am a strong supporter of fast track authority because it assures certain and expeditious consideration of legislation to implement trade agreements, agreements that have allowed us to make substantial progress in opening markets, lowering tariffs, and regulating and ending nontariff barriers to trade. I look forward to hearing from our witnesses today and working with the administration to develop a fast track limited to trade issues only.

Mr. DREIER. Mr. Beilenson.

Mr. BEILENSON. Thank you, Mr. Chairman.

We on the Rules Committee appreciate having this opportunity again to join with our colleagues on the Subcommittee on Trade for this second day of hearings on issues involved in the renewal of fast track trade agreement authority.

This has become an essential feature of U.S. trade policy. Without it, it is highly unlikely that the United States would have been as successful as it has been in recent years in negotiating more open trade arrangements with other nations, arrangements that are providing new markets for U.S. goods and promoting economic growth, both here at home and abroad.

We look forward to working on the renewal of this authority in the weeks ahead. We appreciate the guidance we are receiving on this matter through this set of hearings.

One suggestion made at last week's hearing was to make fast track authority permanent, but to require Congress to explicitly authorize any trade agreement the administration wishes to negotiate under that authority. I hope that suggestion will be pursued by our two subcommittees.

I hope we will be able to find a satisfactory way to address environmental and labor issues in the context of this renewal of trade authority. I personally feel strongly that we cannot responsibly negotiate rules for the flow of goods and services across borders without considering the ecological consequences or the effects on workers that will result from those rules.

We are looking forward to hearing from our Trade Ambassador, Mr. Mickey Kantor, and the other distinguished witnesses we will be hearing from today, and I join in welcoming them and thanking them for taking the time to be with us here today.

Thanks, Mr. Chairman.

Mr. DREIER. Thank you very much, Mr. Beilenson.

Are there any other Members who wish to make opening statements?

If not, it is with a great deal of pleasure that I welcome my very good friend and fellow Angeleno. We are also joined by my ranking minority member, Mr. Beilenson.

I have to say that, once again, it has been a great pleasure for me to welcome this administration and Mickey Kantor. From his active role as a Democratic leader in California, who might have had a pattern of wanting to replace some of us who serve as Members of the California congressional delegation on the Republican side, to his official position here in this administration so that we can, in fact, find and maintain strong areas of agreement, I look forward to continuing that and continuing to have you in this capacity for at least a couple of years to come.

With that, I am happy to welcome you, Ambassador Kantor. I look forward to your testimony.

## STATEMENT OF HON. MICHAEL KANTOR, U.S. TRADE REPRESENTATIVE

Ambassador KANTOR. Mr. Chairman, thank you for the kind remarks. I look forward to that as well—in fact, for the next 6 years.

Let me say that I, in response to your kind remarks and my background in California and with also our friends, Bob Matsui—

and Mr. Matsui, Mr. Beilenson, I rarely went east of La Cienega, so, therefore, I had no effect on your district whatsoever.

In fact, my record in politics in California would show I had very little effect on politics in California. Some suggested the best thing that ever happened to the Republican party there is that I was chairing a number of campaigns for Democrats in the State, so I think I am better off in this nonpartisan and bipartisan job.

Mr. DREIER. Well, I have to say, it was your departure that actually led us to increase our numbers in the Republican delegation in California.

Ambassador KANTOR. I am not sure there is a correlation.

I want to say hello also to Chairman Crane, who we have worked closely with and has been so helpful to us.

I hope it is appropriate also to indicate in the audience here is a former member, Mr. Frenzel, who has been so helpful and worked with this administration in a bipartisan effort on NAFTA and GATT and other matters, and he has been very helpful. He was a very valued member of the Ways and Means Committee for years, and we all have tremendous respect for him, and I am appreciative that he is here today as well, Mr. Chairman.

I would like to, if I could, submit my entire testimony for the record and not read it in the whole——

Mr. DREIER. Without objection, so ordered.

Ambassador KANTOR.—and just highlight that testimony.

We together, in a bipartisan manner, have an opportunity and responsibility, as you indicated, Mr. Chairman, to promote open and fair trade. We have worked together now for 27 months, and I would say that the President of the United States, working with Republicans and Democrats in the Congress and among Governors, both in the private sector as well as nongovernmental organizations, has had a successful, a successful 27 months, maybe the most successful in the history of American trade policy.

I need not go over everything except to say that we have had 81 trade agreements during this period. Among them has been the largest trade agreement in history, which you cited, the Uruguay round, which in addition to a major tax cut for every American family, cut tariffs by 40 percent, will create millions of jobs in our economy, will add $100 to $200 billion a year to our gross product, and is—will lead to higher standards of living.

We approved the largest regional trade agreement in history, the North American Free Trade Agreement, begun by the Bush administration and then completed by the Clinton administration and ratified by a bipartisan Congress of the United States.

In addition to that, we have had the Summit of the Americas and the Free Trade Agreement of the Americas. We are working on Chile accession. We have reinvigorated, with the President's leadership, working with the Congress, the APEC, Asia Pacific Economic Cooperation forum, which has led to a declaration in Bogor and Indonesia just last year which will lead to free trade in the fastest growing region of the world in the Pacific by the year 2010 or 2020, depending on the level of development of the economy.

We have had numerous bilateral as well as regional agreements, including the largest procurement agreement in history between Europe and the United States which will provide $100 billion in op-

portunities for European companies and U.S. companies alike—a $200 billion agreement reached on April 15, 1994.

Let me make three very quick points on why open and fair trade, which you concentrated on, Mr. Chairman, is so important, then lead into why fast track is so important to those points, and then talk about an agenda. If I might at some point, I would like to just run through some charts very quickly at the last part of my testimony.

First of all, trade is critical to our economy. Just a few years ago, trade represented no more than 7 to 9 percent of our economy. Now it is 28 percent. In 1994 it represented $1.8 trillion. For the first time in American history, our exports exceeded $500 billion. I would note in February, our exports to Japan for the first time exceeded $5 billion. So trade is growing and growing quickly.

We have a number of jobs, which I will note. You can see the 28 percent. You see the growth of trade in the U.S. economy from 1970 up to 1994, from a very low percentage, less than 10—or just barely over 10 percent all the way up to 28 percent. That is a dramatic rise. Jobs connected to exports in our economy paid 13 to 17 percent more than other jobs in our economy. Therefore, trade is critical, critical to our success.

We need not note more than in passing that the globalization of our economy and the interdependence of the United States and other economies is a fact. We are not going to turn that around, whether we want to or not. What we need to do is make sure, as the President has said, that we compete, not retreat. So that is point No. 1.

No. 2, is that trade has become central to our foreign policy. Frankly, in the past, trade was a tool of our foreign policy, advancing political and strategic interests, as it should have been during the cold war. We had an obligation during the cold war to make sure we thwarted Soviet expansionism by building the economies of the European Union and Japan. We did that very successfully. We allowed both of those entities to maintain sanctuary markets where our markets remained open in order that their economies would grow, they would become stronger and stronger, and this was part of an overall policy of containment. The fact is, it was a proper policy at that time, and now that policy has run its course.

The cold war is over, Mr. Chairman. It is now time that trade and international economics takes its place among strategic and political issues, as all three are the legs of a very important stool upon which we will stand to provide leadership in the international arena over the next number of years.

No. 3, our economic strength begins at home. We can't compete in foreign markets unless we are strong at home. We lower our deficit, we increase jobs, we raise our standard of living. We make sure we educate and train our people. We invest in the future of our economy. None of that is partisan. None of that is liberal or conservative. This is about our country and about its future, and that is how trade fits into this overall approach.

Let me indicate that the Speaker, in a statement last week with regard to fast track, could not have been more articulate and more supportive of what this administration believes. He observed that the partnership between the Congress and the President on mat-

ters governing the development of trade policy objectives has been a successful one. We agree with that.

He said fast track has unquestionably spurred economic growth and private sector job creation in the United States. We obviously agree with that.

He said the explosion of economic opportunity and growth that can be directly related to international trade has become critical to our economy. That is obvious, and that is something where we agree with the Speaker.

I could go on and on. Let me just say that this testimony by Speaker Gingrich is something we support. It is something we have shared together. We have fought for the NAFTA and the GATT and other trade agreements, and this is one area where this administration and this Congress, working with the American people, have full and complete agreement.

Let me now talk about fast track, how important it is to our trade policy and what we would like to do as we proceed forward in a bipartisan manner.

First of all, we certainly need expeditious consideration of this if we are going to have certainty in our trade negotiations. It shouldn't escape our attention that in 1967 two trade agreements reached by the Johnson administration were turned down by the Congress. Part of the reason for this was that there was no fast track at that point. In 1974 fast track was initiated in the 1974 trade bill.

For 20 years, Republicans and Democrats, liberals and conservatives, regardless of region, have supported this concept for the Republican and Democratic Presidents of the United States. It is critical to our future. It means credibility with our trading partners as we try to move forward on a mutual trade agenda. It means leadership continues in the hands of the United States. It means, indirectly, countries realize that we are going to move forward with a trade agenda which opens markets, expands trade; and, therefore, the countries begin to liberalize their markets even before we reach these agreements. We have seen this happen time after time.

Last, fast track means a partnership between the Congress, which is critical, and the administration. Nothing, nothing is more important than maintaining that bipartisan approach. We have tried to be as careful as possible—and I appreciate the leadership, Mr. Chairman, you have shown and Chairman Crane has shown, Mr. Gibbons has shown, Mr. Matsui and others, as we have tried to make sure we have not politicized this issue; and we don't intend to do so in terms of this fast track discussion.

We may have some disagreements. I am sure we are not going to have full and complete agreement on every nuance in what we are dealing with, but at least I think we can agree to move forward in a positive direction together as we work out these concerns.

Let me observe here that the nature of trade agreements has changed significantly in the past decade. As traditional trade barriers have come down, tariff and nontariff barriers, we are now confronting matters that previously were considered purely, frankly, domestic issues. Antitrust or competition policy, we know, has enormous adverse effect potentially on U.S. products going into our

market. Just yesterday, we addressed that issue with regard to Japans autos and auto parts.

Corruption, bribery, and lack of transparency in government procurement has an adverse effect on U.S. businesses—therefore on U.S. workers—as we try to sell our products all over the world. Environmental standards and labor issues also have a direct effect upon trade and put us in an adverse competitive position if they are not addressed carefully and properly in trade agreements. It is through this process of negotiation that these issues are defined, refined, and incorporated into agreements.

This administration has demonstrated the importance it attaches to issues including the environment and worker standards. The NAFTA, with the bipartisan support of the Congress, includes supplemental agreements addressing those issues. At the Summit of the Americas last December, all 34 Democratic nations in this hemisphere recognized the relationship between trade, labor, and the environment.

In the summit action plan, the 34 heads of State pledged to "make trade liberalization, environmental policies mutually supportive," and to "further secure the observance and promotion of worker rights," as economic integration proceeds.

In the context of these recent developments, it would not be productive for the United States to suddenly change course. We must work together in a bipartisan manner to find the formula that addresses our concerns. We did it with NAFTA. We can do it as we contemplate expanding NAFTA and seeking other trade opportunities as well.

Flexibility is essential to the negotiation of good agreements. We need to address the full range of issues pertinent to our trade and economic interests in individual countries. Congress still gives guidance and decides whether to approve or disapprove the agreements. That is why the fast track has always worked for Republican Presidents and Democratic Presidents alike. It is a formula that has expanded trade and created American jobs for two decades, while preserving the prerogatives of both Congress and the President.

If I might, Mr. Chairman, I would like to end by going to these charts and indicating how important new agreements are and how it will affect our economy. I will apologize, I have no microphone. I will try to speak up, although some have said that is not a problem for me.

I have already referred to this chart which shows the growth from 1970 to 1994 in terms of trade as a percentage of our economy. It is $1.8 trillion and 28 percent as of 1994. U.S. jobs from 1986 to 1994 have grown—related to exports—from 6.6 to almost 12 million today. Those are very high-paying jobs, traditionally are high-wage, high-skill jobs.

Developing countries have provided the fastest growing markets for our exports. As you can see, this is Asia and Latin America. You can see the more mature economies of Japan, the European Union, and Canada have much less growth over the last number of years. This is from 1985 to 1994; and so, therefore, you can see where our opportunities lie in Asia and Latin America.

Developing countries will provide the largest share of future export growth. It is really fascinating. Today, we have as much dollar exports to Latin America as we do to Europe, all of Europe. By the year 2010, we will have more exports to Latin America than Europe and Japan combined. Fifty-five percent of all our exports by the year 2010 will be to Asia outside of Japan and to Latin America. That is an enormous change in our priorities. This President and this Congress has focused on that with the free trade area of the Americas, with NAFTA, with the accession to NAFTA, and with APEC. We have recognized how critical this is to our future.

The U.S. share of the Latin American market is growing. It is almost 50 percent today. That is in a critical area. Let me make a point about that.

The growth of Latin America, the building of industrialization in the middle class, a younger population, a faster growing labor force, faster growing economies, has not been lost on our trading partners. Japan and the European Union recognize that. They negotiated every day with both the subregional areas, like the ANDEAN Pact and MERCOSUR, as well as individual countries.

Shame on us if we don't take advantage of this market share we have now and continue to work with our Latin American neighbors. By proximity and proclivity, they want to work with the United States. That is why fast track is so critical to maintain this momentum we have in Latin America today.

This shows that the low-income developing populations are growing faster. Look at the labor forces. They are growing faster as well.

Asia, Latin America, and former Communist countries will lead the world's growth. That just emphasizes the issues we are talking about today in terms of fast track and working on new agreements.

Finally, I have cited some of the numbers. This shows up to 2010. Look at Latin America, including Mexico, Asia outside of Japan. Look at the growth and look where they will stand in terms of U.S. dollar volume.

We will have by the year 2010 about $1.2 trillion in exports. That is a stunning figure. By the way, in 1948 we had $38 million in exports. This $1.2 trillion, over one-half will be in those two areas alone. The rest of the world—Japan, the European Union—will grow very slowly. Important areas, nonetheless, but slowly.

This is where the opportunity is, and that is why fast track is so critical to our future. I thank you for your attention. I hope that we can work closely together as we move toward a fast track agreement in this Congress.

[The prepared statement follows:]

**TESTIMONY BEFORE THE**
**WAYS AND MEANS COMMITTEE**
**AND RULES COMMITTEE JOINT HEARING**

**AMBASSADOR MICHAEL KANTOR**
**MAY 17, 1995**

**Introduction**

Mr. Chairman, it is a pleasure to appear here today to discuss the opportunities and responsibilities we face in the coming years in trade policy. We have a unique opportunity to work together to build on the historic accomplishments President Clinton, with bipartisan support in Congress, has already made in trade.

In just over two years, President Clinton and his administration, with bipartisan support in Congress, advanced and then ensured the passage of the North American Free Trade Agreement; set our negotiations with Japan on a new course under the Framework Agreement and are now working diligently to open Japan's closed autos and auto parts market; concluded and obtained approval of the broadest trade agreement in history, the Uruguay Round; set the stage for trade expansion in Asia through the Asia Pacific Economic Cooperation forum with the Bogor Declaration; and announced creation of a Free Trade Area of the Americas by 2005 at the historic Summit of the Americas. We concluded the largest procurement agreement in history with the European Union, 14 agreements with Japan, an agreement covering 80 percent of global shipbuilding, and an historic intellectual property rights agreement with China. In addition, his Administration completed scores of other bilateral trade agreements, including textile agreements.

It is important that we don't rest on our laurels, however. We must move forward in the effort to open markets and expand trade, especially in Latin America. This is a critical part of the effort to create jobs and raise standards of living in the United States, foster growth, and build global stability. Today, I want to talk about how important this is to the country as we approach a new century; and the importance of working together to establish an effective fast track procedure that ensures we can negotiate and implement trade agreements that fully benefit American workers and companies.

It is important to first emphasize the importance of trade to our future prosperity. President Clinton's trade policy is part of an economic strategy to keep the American dream alive as we move into the 21st century. President Clinton understands that future prosperity in the United States depends on our ability to compete and win in the global economy. He has based his trade policy on three basic truths about the era in which we live.

**1) Trade is increasingly important to the U.S. economy.**

Where our economy was once largely self contained, now we are increasingly interdependent with the rest of the world. This change began decades ago, but has accelerated in recent years. Twenty-seven percent of our economy is now dependent on trade.

This global economy offers tremendous opportunities for American workers. Over 11 million workers in this country owe their jobs to exports. These jobs pay higher wages, on average, than jobs not related to trade. Every billion dollars of exports supports 17,000 jobs. Clearly, expanding trade is critical to our effort to create good, high-wage jobs.

The United States has a mature economy and we have only four percent of the world's population. Future opportunities for growth here at home lie in providing goods and services to the other 96 percent. Given this fact, opening markets, expanding trade and enforcing our trade agreements are more important than ever to fostering growth here at home.

**2) Trade is increasingly central to our foreign policy.**

With the end of the Cold War, and the growing importance of trade to our economy, economic concerns are now as evident in our foreign policy as strategic, or political concerns.

After World War II and during the Cold War, the United States used trade policy as part of the strategy to help rebuild the economies of Europe and Japan and resist communist expansionism. We led the world in global efforts to dismantle trade barriers and create institutions that would foster global growth.

During that period, we often opened our market to the products of the world without obtaining comparable commitments from others. As the dominant economic power in the world, we could afford to do so. And as part of a strategy in the Cold War, we needed to do so.

Despite the uneven commitments, the resulting expansion of trade fueled growth, stability and ultimately proved to be the winning card in the Cold War. But now we are no longer the sole dominant economic power in the world. We are the world's largest economy -- and largest trading nation -- but our economy, which represented 40 percent of the world's output following World War II, now represents 20 percent.

Although we welcome the products, services and investment of other nations here in the United States, now we insist that the markets of our trading partners be open to the products, services and investment of the United States. We insist on reciprocity in our trade agreements.

In addition, it is critical to fostering global stability that we expand economic ties with other countries. Fostering growth in other countries through expanded trade is in our interest because it builds the middle class and helps democracies take root.

**3) Our nation's economic strength begins at home.**

Trade negotiations and trade agreements open new opportunities for American workers and firms. All of us, in turn, must accept the responsibility to make the most of those opportunities. And government -- at the local, state, and federal level -- must work as a partner with the American people to give them the tools to prosper in the new economy. Getting our own domestic policies in order, expanding education, and investing in the future has taken on a new urgency as we compete in the global economy.

American workers compete against highly educated, high-wage workers in other countries as well as low-skill, low-wage workers. We must make sure everyone achieves their full potential.

Together, President Clinton and the bipartisan coalition in Congress have ensured American leadership in the global economy. We have opened doors of opportunity that have led and will continue to lead to the creation of jobs. Our efforts to open markets and expand trade will particularly benefit small and medium sized businesses, who often lack the means or resources to overcome foreign obstacles to trade. Despite the temptation to turn inward and cut ourselves off from the world, the United States has renewed its commitment to remain engaged in the world and continue the U.S. leadership role in the global economy.

**Fast Track**

Our trade agenda is now entering a new phase. We must get down to the hard work of reaping the benefits of those trade agreements that we have negotiated over the past two years for the good of U.S. workers and companies. We must forge new agreements to continue to reduce trade barriers to U.S. exports and expand economic opportunity here. To do that the President and the Congress will need to work in close partnership. Essential to that partnership -- and to opening foreign markets for American goods and services -- is a renewal of trade negotiating authority in fast track.

Mr. Chairman, there are strong reasons why the Congress created fast-track -- and then renewed and extended it over the past 20 years. And why Congress has made fast track procedures available for both Democratic and Republican Presidents. First, fast track confers a very powerful advantage on America's trade negotiators. Just consider the astonishing list of trade-opening agreements we negotiated under fast track during the past two decades -- including the GATT Tokyo Round, our free-trade pacts with Israel and

Canada, the NAFTA, and, most recently, the Uruguay Round agreements. Fast track was vital to each one of those accomplishments. I can tell you first hand that we simply could not have brought home the Uruguay Round agreement or the NAFTA if I did not have the fast-track to rely on.

Fast-track allows the United States to set the pace and timing of our most trade important negotiations. More importantly, fast-track gives us credibility and clout at the negotiating table. It tells other countries that the Administration and the Congress stand together in negotiating the best possible agreement for the United States. That means American negotiators can make tough demands, and our negotiating partners know that Congress will back up those demands. And it allows our trading partners to make hard decisions with the assurance that the United States will not reopen the deal it strikes.

Fast track isn't just a vital negotiating tool. It provides important, indirect trade advantages as well. Fast track sends a powerful signal to those countries hoping for special trade arrangements with us. It says that the Congress and the Administration are serious about moving forward. That creates a strong incentive for countries to make *unilateral* economic reforms and market openings -- just to qualify for free and fair trade negotiations with us.

We can already see the power of this incentive in Latin America, where numerous countries are reforming their economies and lowering trade barriers based in part on the hope of entering into a free and fair trade arrangement with us.

Conversely, if we fail to renew fast-track -- and thus signal that America's trade agenda is "on hold" -- countries in the region are likely to procrastinate in making the changes we seek. Moreover, other countries that are prepared to negotiate will set the terms of integration in the region -- terms that are not likely to coincide with U.S. objectives or standards of fair trade.

Holding out the possibility of privileged access to the U.S. market acts as a powerful "carrot," which complements the "stick" of U.S. trade remedies. That gives the President, working with bipartisan leadership in the Congress, the full array of economic policy tools to further this nation's trade interests.

Mr. Chairman, you know just how much importance I attach to our trade laws. I have not been reluctant to enforce those laws when other countries have unfairly closed their markets to our workers and companies. Our trade laws are very important tools to open those markets and level the playing field. To fully benefit American workers and promote economic growth, we must complement use of our trade laws with the economic opportunities created by trade-opening agreements such as the Uruguay Round and the NAFTA. Agreements fostered by fast track authority mean hundreds of thousands of high-wage, high-skilled jobs for Americans across this country. Fast-track renewal is critical if we want to continue expanding economic and job growth in this country by opening key foreign markets for our firms and workers.

In sum, fast-track represents a joint undertaking by the President and Congress to accomplish the best possible results for the United States in international trade negotiations. That is why Congress has provided fast-track procedures for every President over two decades -- and why fast track has always enjoyed wide bipartisan support.

Fast track is also an issue that has united the Congress and the Executive Branch. Fast track creates a partnership establishing a clear channel for the Congress to be consulted, make its voice heard, and have its specific concerns addressed both before and after negotiations get underway. And fast track ensures that the Administration and the Congress draft implementing legislation together.

Mr. Chairman, I would like to note that trade policy has become much more complex in the last fifteen years. When the GATT was founded after World War II, it began with lowering tariffs. Later, we began to address non-tariff barriers. In the Uruguay Round, we established rules for agriculture, services and protecting intellectual property for the first time. This fifty-year record of tariff reductions and trade rules have sparked tremendous interdependence among nations. The prosperity of the United States, as well as many

countries around the globe is now increasingly dependent on fostering free and fair trade.

Our focus on non-tariff barriers has now led to issues that have been considered "out of bounds" because they address a nation's internal policies, not at the border. We look at these policies because they distort or inhibit trade. These policies include, but are not limited to, a nation's actions -- or inactions -- regarding anticompetitive business practices; lack of regulatory transparency; corrupt practices such as bribery; environmental protection; and adherence to internationally recognized labor standards. In addition, there is a clear need, as demonstrated by the creation of the Committee on Trade and Environment in the WTO, to clarify the relationship between trade disciplines and environmental policies.

President Clinton has long understood the importance of these issues and firmly believes we must move forward in addressing them. As a candidate, he spoke at North Carolina State University to endorse the NAFTA, but insisted that we negotiate agreements on labor and environment as they intersect and interact with trade. As President, he has spoken frequently on these issues and worked hard to address them with our trading partners. President Clinton understands that this is an important part of working towards more open markets, fostering global growth and maintaining U.S. leadership in the global economy.

At the historic Summit of the Americas last December, the nations of this hemisphere agreed to recognized the link between trade and the environment, as well as trade and improving working conditions. The Declaration of Principles says, "Free trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment." In the Plan of Action, the 34 heads of state pledged to make trade and environment mutually supportive, and to "further secure the observance and promotion of worker rights."

We should view the current debate over whether fast track should include labor and environment in this context. We are beginning to reach international consensus on the importance of addressing these issues.

There are, of course, differences of opinion in the Congress about the relationship of trade and labor and the environment. This is a very difficult issue both substantively and politically. However, we should not run away from this challenge: we should seek to find a solution that enjoys broad bipartisan support.

The President needs to have the flexibility to act to take quick advantage of opportunities to conclude agreements that will benefit American companies and workers. The President -- as well as future administrations -- should have the freedom and flexibility to address whatever issues that arise in trade negotiations. Thus, to ensure the President can seize the tremendous opportunities in the global economy, we need to have fast track, reflecting our trade priorities in several areas:

**Extended Uruguay Round Negotiations**. We are poised to move forward within the next year to complete extended negotiations, as called for in the Uruguay Round agreements that the Congress approved last year. For example, we now have talks underway in the WTO to open markets around the world in financial services and basic telecommunications services. Agreements in those two dynamic sectors could be of tremendous benefits to our firms and workers. We also expect to negotiate a further lowering of trade barriers in the agriculture sector, where the United States leads the world; in investment; and to establish new, universally applicable rules of origin to streamline customs procedures world-wide. Congress can improve our chances of success in each of these areas by renewing fast track for these talks.

In addition, we should begin to study areas in which we can progressively expand economic ties and remove trade barriers with the European Union, already our largest trading partner.

**Latin America**. An issue of great importance for this administration is to build on the commitments of the Summit of the Americas and expand trade in this hemisphere. Allow me to explain why the U.S. must move forward with concrete action to expand trade and negotiate trade agreements in the Western Hemisphere and why we seek fast track to do so.

The history of our economic relations with Latin America and the Caribbean was based for much of the last 20 years on a preoccupation with official development assistance and other politically driven initiatives in our effort to encourage democracy. Many countries in the were non-democratic regimes. The region was viewed as devoid of market based competitive economic policies or significant opportunity. Not surprisingly, our trade with the region was viewed as having little promise. U.S. trade policy towards the region was focused almost entirely on a limited set of issues with only a few countries in South America and on tariff preferences for sub-regional groups.

This old thinking has been buried in recent years by a revolution in economic policy coupled with a dramatic strengthening of democracy. This Administration, or any astute observer of this hemisphere, does not believe this region should be ignored. Accordingly, numerous initiatives to strengthen ties in the hemisphere have been launched or strengthened.

We have an historic opportunity now to take major steps toward hemispheric prosperity -- and expand U.S. economic opportunities. Strengthening the economic ties among the nations of the Americas will cement recent economic reforms, foster growth, build the middle classes and strengthen democracy. This is not time to sit back and hope for the best, or lose sight of the need to act on our hemispheric objectives. There will inevitably be some difficulties as we proceed, but to not proceed will only increase the prospect of the U.S. losing out on substantial economic opportunity and the chances of having to face unnecessary economic turbulence.

The Summit of the Americas was a watershed in hemispheric relations. It placed the United States squarely in the center of the hemisphere's economic integration and renewed our leadership position. Our economic fortunes, and our leadership in this hemisphere, however, will be determined in large part by the success we have in implementing the Summit trade and integration action plan. This Administration is determined to move forward to begin building the Free Trade Area of the Americas (FTAA). The negotiation of Chile's accession to the NAFTA is a necessary strategic step in this endeavor. If we are not able to complete Chile's accession to the NAFTA expeditiously, others in the Hemisphere will ask if we are able to lead the hemisphere's integration and market opening.

The absence of a timely Congressional fast-track procedure to review and implement comprehensive trade agreements will:

- undermine the U.S. ability to open vibrant new and growing markets in the hemisphere and significantly influence the critical initial stages of the FTAA process;
- cripple our ability to build more fairness and openness into the hemisphere's trade regimes;
- weaken the hemispheric commitment to market based economic policies and open economies; and
- most importantly harm our ability to increase the higher paying U.S. job base that results from the expansion of U.S. trade and the stimulation of investment.

This is an issue on which the Administration and Congress should come together for the national economic interests.

Let's consider what is at stake from an economic standpoint for the United States:

- Latin America and the Caribbean is now the second fastest growing region in the world;
- U.S. exports to this region exploded from nearly $31 billion in 1985 to nearly $93 billion in 1994, supporting over 600,000 new U.S. jobs;
- U.S. exports to Latin America, including Mexico, increased 71 percent from 1990 to 1994;

- U.S. exports to Latin America and the Caribbean now approximate our exports to the European Union (E.U.). If trends continue, U.S. exports may reach $232 billion by 2010, greater than our combined exports to the E.U. and Japan;

- Latin Americans spend an average of 40 cents of every dollar spent on trade on U.S. goods. We supply over 70 percent of some Latin countries' imports and often three to four times as much as a country's next largest trading partner: and

- U.S. exports of capital goods, which account for over half of U.S. exports to Latin America and the Caribbean, in just the 1992 to 1994 period increased dramatically. For example:

  - electrical machinery exports increased from $6.8 billion to $9.7 billion, or 42 percent; and

  - office machines and computer equipment increased from $3.4 billion to $5 billion, or 47 percent.

We must also bear in mind that the region is not waiting for us. The world recognizes the new vibrancy of this region. The region is embarked on its own agenda, easily the most active of any developing region in the world. The E.U. is seeking preferential trade agreements with the Southern Common Market (Argentina, Brazil, Paraguay and Uruguay) -- which comprises over half the economic output of Latin America -- and others that have the potential to leave U.S. exporters, investors and service providers at a relative disadvantage. The average tariff in the region is still four times the U.S. average. It is in our interest to undertake efforts to gain tariff free access to these important markets as our competitors are doing while U.S. exporters continue to face significant tariffs.

The competition to seek out new economic and trade opportunities must be faced with a decisive commitment to comprehensively open markets on the basis of reciprocity in this hemisphere. The constant search for new economic opportunity is something this country was built on, but one that has taken on ever more challenging dimensions in this hemisphere.

The first critical step is Chile's accession to the NAFTA. It is important for the United States to forge a partnership with the leader of economic reform in Latin America and its most dynamic economy over the last 10 years. Chile is one of our fastest growing export markets in Latin America. U.S. exports have grown from $682 million in 1985 to $2.8 billion in 1994 -- quadrupling. We ran a trade surplus with Chile of nearly $1 billion in 1994. Since 1985, Chile's economy has grown at an average rate of six percent rivaling the dynamic Pacific Rim economies. In the first quarter of this year Chile's economic growth has been 7.4 percent and has shown declining single digit inflation. Chile is an economy that has thrived on increased trade and investment and on prudent growth-sustaining economic policies.

Chile is not just a symbol of reform, but an activist in opening markets, having negotiated free-trade areas with Venezuela, Colombia, Ecuador and Mexico. It is pursuing an agreement with the Southern Common Market and has proposed a free-trade area with the E.U. Chile was the first developing country to bind all its tariffs in the GATT during the Tokyo Round, was an active player in the Uruguay Round, and is a new member of APEC.

Chile's accession to the NAFTA is its number one trade priority. Two successive Presidents have committed the United States to the pursuit of a free trade area with Chile. On December 11, 1994 in Miami the President, along with the leaders of Chile, Mexico and Canada, committed to pursue Chile's accession to the NAFTA in what is viewed in the region as a near term test of the U.S. commitment to trade and economic integration in the hemisphere. Ensuring that happens will encourage similar economic and trade policies through this hemisphere -- a goal we can all view as enormously beneficial to our economic future.

For the United States, Chile's accession to the NAFTA, because it will need to address a comprehensive set of U.S. inspired disciplines, is the most important concrete step we can now take to ensure we are shaping the trade and integration effort in Latin America in a

realm of fast-moving and competing trade agreement paradigms. Chile, the region, and our European and Asian partners, are measuring the U.S. commitment to lead.

**Asia**

Finally, it is important to build on the Bogor Declaration, the commitment by the Asia Pacific nations to eliminate barriers to trade by 2010 or 2020, depending on each country's level of development.

The Asia Pacific region is critical to future U.S. prospects for trade expansion. It has the fastest growth in the world -- three times the rate of the established industrial countries. Over the past three decades, Asia's share of the world's GDP has grown from eight percent to more than 25 percent. By the year 2000, if current trends continue, the East Asian economies will form the largest market in the world, surpassing Western Europe and North America.

This growth has led to an explosion of trade with the United States. East Asia is the number one export market for U.S. products. US merchandise exports to Asia have grown nearly 60 percent over the last five years. U.S. trans-Pacific trade was 50 percent more than our trans-Atlantic trade in 1992. Our exports to Asia account for over two million jobs in the United States. One projection shows that Asia, excluding Japan, will be our largest export market by the year 2010, amounting to $248 billion.

Following the APEC summit last year, APEC leaders directed ministers to develop a plan for implementing the Bogor Declaration. Work is underway to develop an APEC Action Agenda for consideration at the next Leader's meeting in Osaka, Japan, in November. All APEC members are working constructively and pragmatically to prepare this agenda, to define issues fro APEC work, and to outline the business facilitation, cooperation and liberalization steps APEC should take to implement this important goal. The Osaka meeting also will be a critical next step to realizing the Seattle Summit's vision of an Asia-Pacific Community of nations which ensures U.S. presence in the region's economy in the future.

**Conclusion**

Mr. Chairman, President Clinton, with the support of a bipartisan coalition in Congress, is doing everything possible to raise standards of living and improve the lives of working Americans as they compete in the new economy. Together, we must continue to fight to open markets and expand trade, because it will foster new opportunities for working Americans, create jobs and raise standards of living.

The President put it best in a speech last November: "The center, the heart of our economic policy must be an unbreakable link between what we do to open the global marketplace and what we do to empower American workers to deal with that marketplace."

Americans need not hide behind their fears, but must boldly build a new country of peace, growing prosperity, and economic security. I look forward to working with you to achieve that goal. Thank you very much.

Mr. DREIER. Thank you very much, Mr. Ambassador. That is very helpful testimony.

As you were standing at the charts, I couldn't help but think of that horrible Wall Street Journal front page story that was written about you at the very beginning of this administration saying that they didn't think that you would be able to handle this issue. You have obviously done an extraordinary job, and we are very impressed with so much of your work.

I would like to begin by raising one of those areas of disagreement that we have.

Last year, I had the privilege of participating in what was the first bipartisan, Oxford-style debate that we had on the House floor. Mr. Thomas had participated in the health debate. Other Members participated in the three Oxford-style debates that we had. The one that I participated in focused on the issue of trade and human rights, and it was interesting because a number of people in the Clinton administration helped us with information on this because we were making the case that President Clinton consistently makes about the need to improve human rights in China through exposure to Western values. The byproduct of that is that we would improve living standards.

We know that the areas of worker rights and environment are priorities for everyone. We all desperately want to improve those. But I have a difficult time reconciling the argument that I share with you and President Clinton on utilizing greater trade to improve the human rights situation in China and, at the same time, trying, through the fast track procedure, to deal with the issues of worker rights and environmental standards with constraints, strings attached. I just would like, Mr. Ambassador, to have you comment on the disparity there and try to explain how we can possibly reconcile that.

Ambassador KANTOR. We believe we can. The President has advocated addressing these issues where they have a direct connection and nexus with trade, beginning as early as October 4, 1992, at Raleigh, N.C., when he endorsed the NAFTA in a speech there during the campaign when he was still Governor of Arkansas, as you may recall.

Let me make a couple of comments about what you said.

First of all, I don't disagree with everything you said. I think we have to, first of all, indicate there is certainly a separation between human rights and worker rights, and I will come back to that.

Second, we agree, with regard to MFN to China, the President separated, in a very courageous decision supported by the Congress of United States, trade from human rights concerns.

We believe in full and complete engagement with China. We believe the best way to gain more and more liberalization, more and more democracy in China is not to disengage but to engage on both the economic front, on the human rights front, and on the proliferation front, but not connected together in a way that would lead to a process where we would not have the influence that we have been able to exhibit.

The intellectual property rights agreement, which we reached, led by Ambassador Barshefsky, who is sitting behind me, who did a marvelous job with our team—there was Lee Sands, Deborah

Lehr, Tom Robertson, Kathy Field, and others, is an example of what you can do.

In that agreement there is liberalization of the Chinese courts. The rule of law is respected. We open up those courts in economic matters. It is only the next leap into other matters as well. So we think we are making progress. So, on that, we would agree.

Just a bit of history. The Treaty of Versailles in 1919 recognized the nexus between trade and worker rights. That was again reiterated in the Havana Charter, which was the forerunner, of course, to the GATT in 1947. Along the way, this was lost in the GATT over the fight in the U.S. Congress.

Starting with President Eisenhower in 1953, every President, Republican or Democratic, regardless of ideology, regardless of party, has supported taking up the case of the nexus between worker rights, internationally recognized standards and trade.

Now, let me explain what we mean by that, because sometimes I think we don't explain it in enough detail. I am sorry to go on so long, but it is so important.

We are talking about child labor, slave labor, prison labor, freedom of association, the right to collectively bargain, and working conditions. In fact, many U.S. laws, including GSP, Generalized System of Preferences, in section 301, already recognize the nexus between trade and those issues. So, therefore, it is not such a great leap to say in future trade agreements we should effectively address those issues in order to make sure U.S. companies are not put at an unfair advantage.

Comparative advantage, legitimately exercised, is appropriate and proper in trade. Not legitimately exercised—for instance, the use of child labor, prison labor, slave labor—these are examples of things that we should oppose and that we should insist be outlawed in trade agreements. I think there is very little controversy over that, although you may want to take issue with that, Mr. Chairman.

The fact is that whether it is environmental rights, now recognizing that within the World Trade Organization—we have a Trade Environment Committee, we have an environmental side agreement to the NAFTA, which the Congress passed; a labor side agreement to the NAFTA, which the Congress passed; U.S. trade laws, which recognize worker rights. We have gone a long way toward recognizing how important these are to keep U.S. businesses competitive and our workers from being disadvantaged.

That is what we are trying to accomplish. We don't believe this needs to go over into the field of human rights and not have an economic or trade context.

Mr. DREIER. The only problem I have is that, as you raise the issue of worker rights, we get right back to the China debate. It seems to me that as you have gone through this litany of the benefits in the United States, in Latin America, and throughout the world with the freer trade, which we jointly support, that improving environmental standards and worker rights is obviously what is going to follow. That is why I just have a tough time with the idea of imposing those limitations.

We want to move ahead, and I want to call on Chairman Crane at this point.

Chairman CRANE. Thank you, Chairman Dreier.

Ambassador Kantor, you enumerated a list of worker rights or worker conditions. When does child labor end?

Ambassador KANTOR. I am sorry.

Chairman CRANE. At what age does child labor end?

Ambassador KANTOR. Well, it depends on the jurisdiction, of course, and the country, what the various laws are.

But I think, generally speaking, this country has stood up very strongly against the use of child labor of 8 year olds and 10 year olds working in factories in various countries around the world which are producing products at rates in which it is very difficult for the U.S. companies to compete. It is not only bad for our companies; it is also bad for their economies if—let me just give you an example.

If kids don't go to school, if there is no level of compulsory education up to a certain age, if they are working in factories, they are not going to educate their population; therefore, create a trained work force; therefore, industrialize; therefore, create a middle class which is stability and new markets for us.

Nothing could be more important for the United States of America than to keep our companies competitive by being able to work on these issues which are, I think, legitimate. Everyone from Eisenhower to Clinton has supported it, at the same time making sure we build industrial and middle-class societies around the world which are in new markets. Both fit together, I think, in a very consistent fashion.

Chairman CRANE. Well, if, for example, a country said, if you are 10 or under, you are a child, and that is our law; and anyone over 10 is not viewed as a child—or 12—do we respect that country's right to make that determination?

Ambassador KANTOR. I think the International Labor Organization has set certain standards in this area which are helpful. I believe we need to harmonize up those standards.

We are not going to solve this problem tomorrow. We are not going to solve them completely with trade. But what we can do is start to make progress. To ignore the problem of prison labor, slave labor, child labor——

Chairman CRANE. No. I am not talking about prison and slave labor. I am talking about child labor.

To put this into another context, historically, a child became a man at 12. Adolescence is a phenomenon of the 20th century, and it came about because we were affluent and we were in a position where we could educate our kids beyond age 12. They didn't have to get out and start laboring.

But I remember, in my own case, back in the thirties as a kid. We worked for 10 cents an hour, 10 hours a day down at the farm, and we were under 12 years of age. We were contributing to the total product.

Now, is that, in our contemporary environment, viewed as a violation of child labor law?

Ambassador KANTOR. Well, I think, on one hand, as a kid, I worked in my father's store every summer; and I didn't get paid anything, frankly. I am still angry about it.

Chairman CRANE. Well, did you get an allowance, though, Mickey?

Ambassador KANTOR. No, I didn't even get that. Very tough household. Some would say that is why I react the way I do today.

The fact is—in a serious note, Mr. Chairman, the fact is that child labor, used unfairly in a noncompetitive situation, is not good for the country that is doing it nor good for the United States. We have laws which allow kids to work with their parents on farms and in other activities. Those laws—the fact is, you have to be balanced in your approach to this situation, as we were in the NAFTA, which you supported, we supported. We said, enforce your own laws. Make sure at least those minimum standards are adhered to. I believe that is a step in the right direction.

Will it solve all the problems? Of course not. But I think at least it allows us to begin to harmonize up standards and keep our companies competitive. That is all we are trying to promote here.

Chairman CRANE. Well, that is a good objective, to be sure. As Ben Franklin said, a good example is the best sermon. That is why the presence of American companies in some of these developing countries that are implementing standards that are above the norms in some of those less developed countries, I think provides a very positive incentive for competition within those boundaries to get up to speed and meet more advanced standards that we have achieved.

But I am just a little concerned about the potential arbitrariness of a cutoff in defining what our situation ought to be with respect to countries that do not have the level of advancement, the opportunities for their kids to go on to high school, to continue to, in effect, live off their folks without having to work for a living.

All we did down at the farm—we were working for our spending money because we never got allowances either, and you spent what you got or what you earned.

Let me turn to one other issue before yielding, and that is a question of this fast track extension. Is that absolutely essential for consummating a free trade accession to Chile?

Ambassador KANTOR. Yes, sir, it is.

Chile is one of the most impressive economies in this hemisphere. They are a strong democracy and a strong market economy. The year before last, they had 10 percent growth, 4 percent unemployment, a trade surplus, and a budget surplus. I am very jealous of those numbers. They continue to grow at a very rapid pace.

We need to bring Chile into the NAFTA. We can only do it effectively with the fast track procedure.

I would only observe that my Chilean counterparts have been very concerned that we don't have fast track authority today because they are worried—and I think you can understand why—if they begin these negotiations, make certain concessions and we don't get fast track authority, we will have a second negotiation with the U.S. Congress. I think that is a legitimate concern on their part, and any help we can get to work on this would be very helpful to Chile's accession, as well as moving forward in Asia and Latin America with broader agreements.

Chairman CRANE. I concur with your assessment, but are the negotiations moving forward with the expectation that we will get a fast track extension authority?

Ambassador KANTOR. Yes, sir, they are. We have had four meetings already of experts and officials. We will have a fifth meeting in May. We have our first ministers meeting on June 7 in Toronto. We are moving rapidly forward.

But there is concern, and legitimate concern, on the part of Chile and our other counterparts, Canada and Mexico, who don't have the same systems that we have. So, therefore, I would only urge all of us, including the administration, to move as quickly as possible.

Chairman CRANE. Well, I am glad to hear those encouraging words, Mr. Ambassador. The fact is that I think it is essential that we not only get the fast track extension but that we get the vote on Chilean accession, ideally no later than January or February of next year.

Thank you again, Mr. Ambassador, for your testimony.

Yield back.

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

To one who I am sure received an allowance, Mr. Beilenson.

Mr. BEILENSON. Thank you, Mr. Chairman.

Mr. Ambassador, let me come back briefly, if I may, to another nexus upon which you touched, at least briefly, toward the end of your response to Mr. Dreier's original question. That is the question of addressing environmental issues in the context of this renewal of trade authority.

You pointed out to us again that trade is growing most quickly in developing countries. I take it there is an inherent tension, as it were, there. I take it these are countries that haven't, as yet, on the whole, paid quite so much attention to environmental as well as perhaps labor standard matters as some other more developed countries. Could you tell us a little bit about that?

More than that, for those of us who are strong supporters of open and free trade but who also care very deeply and want as much as possible for labor and environmental questions to be included, is there any decent, good, or useful way of ensuring that environmental standards, for example, are included in these negotiations without tripping up the negotiations themselves?

Ambassador KANTOR. I will come back to it—the answer is yes, but I will come back with a little more lengthy explanation to your second question.

In your first question, the United States has been the leader in promoting sustainable development around the world. We have certainly been the leader in three administrations in promoting the environment as—and its nexus with trade as part of the Uruguay round trade agreements.

We were not able in many ways to have a full, sustainable development agenda promoted in the Uruguay round agreement, but in the sanitary and phytosanitary regulations, in the technical barriers to trade or standards section, we made major changes and reforms which are helpful to the environment as it intersects with trade.

In addition to that, all countries unanimously, by consensus, because of the good work of the Reagan, Bush, and Clinton administrations, agreed to set up for the first time in history in this multilateral organization, a trade environment committee.

We are clearly moving forward. That doesn't mean, as I have said before, that we have solved every problem. Of course we haven't. That doesn't mean trade will solve every problem in the environment. It shouldn't, and it can't. But it does mean, where there is a nexus between the two, we should clearly, forthrightly address the issue and confront it directly. We are doing that in this administration with the help of Congress. We will continue to do it, I hope.

Fast track authority in this area would be very helpful. It would be a negative signal to the rest of the world if this Congress for some reason adversely addressed the issue of environment or labor in trade agreements because these issues, along with many other so-called new issues, are critical to our economic future.

Let me give you just one, Mr. Beilenson, at risk of going on too long, one bit of history.

Ten years ago, no one thought intellectual property protection, investment protection, or services should be part of a trade agreement. The Tokyo round, completed in 1978 and 1979, was merely a tariff agreement with a little bit of nontariff barriers addressed, as Mr. Gibbons knows so well.

We have now recognized that expanding trade, opening markets, is dependent upon a whole host of concerns, many of which we are addressing here today, which would not have been conceived 3 or 4 years ago.

Mr. BEILENSON. Thank you, Mr. Chairman.

Mr. DREIER. Mr. Thomas.

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

Mr. Ambassador, I, too, want to congratulate in a general sense the effort of this administration and, in so doing, congratulate the earlier administrations which happened to be of a different party in terms of the uniformness in which we have tried to handle the question of trade.

Notwithstanding our failure to restructure our executive branch in a way that allowed us to have the horsepower and the coordination other nations have in the area of trade, I think across several administrations, all of the ambassadors have done an outstanding job with very few personnel vis-a-vis most of our other agencies in the government, and you continue to do an excellent job with what I think are too few people focused on a very critical area.

Just briefly—because I don't want to enter into a dialog on it—I agree with you generally that the question of the environment and worker rights has a nexus in terms of their focus on economic and trade issues. What concerns me is that, more recently, what I have seen as arguments on workers' rights tend not to be so much for underscoring the international agreements that I think all of us would agree with in terms of fundamentals—the slave labor, prison labor, and the rest—but appear to me to be more and more actually the reverse of what their proponents would hope people would think they were. Frankly, I think a number of them have been protectionist.

In the argument that you have to elevate workers in other countries to standards in the United States and if you don't do it, we don't have an agreement with them and we don't move forward on opening up trade between the countries, on the one hand, you could certainly argue the higher sense that this is to try to elevate the workers' conditions in other countries, but what I have noticed in terms of who the proponents are and the way in which it is presented, I believe that there is far more to the agenda than just that.

I do want to compliment this administration for continuing to try to keep it to its bare essentials as it relates to trade.

In terms of your charts and the importance of Latin and South America, I agree with you. We were heavily involved in the United States-Israeli one because it was first, and we wanted to try to get it right. We, obviously, have run into problems because it was first and we agreed to quota reductions. Now, with the Uruguay round, you can "tariffy" quotas and they are now trying to reopen an agreement that is 10 years old and was supposed to move forward.

We have some of those problems with Canada as well. I was very much concerned and involved with the United States-Canada agreement, in part because of the products and location of the country. That led to NAFTA. I was very pleased with the administration's movement toward trying to create a North American Free Trade Agreement.

What bothers me now is that we are talking about moving into the Latin and South American area with far more aggressiveness, with all the focus on Chile.

I have to tell you that representing California and the role that especially agriculture plays, not only in terms of the economy of the United States—and people forget about us until something like lettuce disappears from the marketplace and all of a sudden we become focused on the bags of baby carrots that people now consume in terms of the value added of that product and the enormous increase in consumption, or the fact that almonds are one-third of 1 billion dollars' worth of our balance of payment question with the European Union.

I could go on and on, but the one that I want to focus on, just as an example of the concern I have in the complexity of creating an expanded market here in North and South America, is a question of why?

It doesn't make a lot of sense to me to have a treaty between the United States and Mexico, and Mexico has a treaty between Mexico and Chile, and we are going to enter into an agreement with Chile, which perhaps would provide a tariff structure between Chile and the United States, all three of which put producers of mine at a disadvantage in the marketplace in literally all three countries. That is not my idea of a reasonable trade agreement.

When you throw in the fact that the Mexicans are not even honoring the areas of agreement in the area of phytosanitary, that they are putting up phony arguments for moving our stoned fruit products, for example, across the border, when in fact they are attempting a political ploy, I have to kind of underscore the fact, Mr. Ambassador, that I am a strong supporter of the direction that you are going but that, at some point, we have to go back and revisit

what we thought we had as an agreement. That if it isn't there, I am not anxious to go forward, and that you know and understand the concerns that we have and that other people have to understand that if it isn't the way we thought it was, we are not going to go forward.

Ambassador KANTOR. Let me respond to that.

No. 1, agriculture is a critical export product. We are going to exceed, for the first time in American history, $50 billion in exports in agriculture this year. Obviously, the State of California is one of the most important agricultural exporting entities in the world.

Our agreements with Canada and Israel, I will only remark quickly, require them to get rid of tariffs in the agricultural sector. We went to tariffication on tariffs in the Uruguay round. We will insist they adhere to those agreements.

No. 2, as far as Chile, Mexico, and the United States are concerned—somebody is going to go out and write that I have criticized the Bush administration. I have not. This agreement was signed on December 17, 1992, but there is an acceleration clause in that agreement that was well done and well negotiated.

We have asked Mexico to negotiate an acceleration and lowering of tariffs on wine to put us on an equal footing with Chile in the Mexican market. The Mexican Government has refused so far.

We have made it clear, absolutely clear, as we begin the suggestions over Chile's negotiations, that we are going to address this issue in all three markets—not only as to wine but as to agricultural products. That is very high on our agenda.

We will work with you and, obviously, other Members of the Congress, Republican and Democrat. Nothing could be more important. This doesn't mean we want to be unfair to Chile or Mexico. It means we want to be treated fairly; and in certain areas like wine, we are not. So, therefore, I couldn't agree more with you.

Mr. THOMAS. Thank you for your response, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. DREIER. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman.

I was sitting here reflecting about my experience on this panel over these long years and the progress we have made. When I looked at your first chart, I realized that imports and exports of the United States when I first started were less than $50 billion combined and we are now up to over $1 trillion. I would have to say that we have made great progress.

Let me say about your performance, I have observed many people in your office; and I think you have as good a concept of what the strategy ought to be as I have ever heard. Your presentation today with these charts represents your actual strategy. You are right on track, and you are out ahead of most people in your thinking. Because the great markets of the world are those that are still undeveloped and will develop. We ought to spend our time and our energy in going after these markets and expanding our presence in them. That is where our opportunity lies.

As far as fast track is concerned, we simply have got to recognize that, as Americans, we have a far different system of government than everybody else on Earth. While we are only 5 percent of the population, we have got to make the kind of changes in our govern-

ment that allow us to get out and compete with the rest of the Earth.

Fast track is certainly that kind of a process. I was here when it was developed. We came about it in a rather circuitous manner; but there is no way we can conduct negotiations with the rest of the Earth unless we have fast track.

It is so clear and so simple. Nobody is going to negotiate with us unless we are prepared to negotiate from a framework which they understand, and they don't understand our government and they don't understand the necessity for coming back and having to negotiate again with Congress and the impossibility of negotiating with Congress because we represent 435 different constituencies, rather than a unified public policy.

Fast track works. It is an appropriate adaptation of our Constitution and our practices to deal with the rest of the world in trade negotiations. We must, as Americans, recognize that fast track is in our best interest, and is not some encroachment upon the Constitution.

Now, we hear discussion about the environment and about labor rights. I think you are on the right track. We are burying our heads in the sand if we don't admit that these are issues that must be addressed. I don't think they ought to drive our trade negotiations, but they have to be a component part of these negotiations. I think, Mr. Kantor, you have handled these issues very well.

We are in an era of change, not dramatic change, but it is an important change and environment and labor rights are an important part of this process. As you pointed out, we can be at an economic disadvantage if we don't recognize that a country with inadequate environmental laws has an economic competitive advantage on us, and a country with terrible human rights and inadequate labor laws has an advantage on us. So you are on the right track. Keep going in the direction you have started.

You may wish to react to what I have said, but I don't really have a question for you. I just want to commend you for what you are doing. It is excellent.

Mr. KANTOR. Thank you, Mr. Gibbons. I appreciate that very much.

Mr. DREIER. Mr. Ramstad.

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

Mr. Ambassador, certainly there is enough empirical data to conclude that trade agreements increase economic growth and therefore revenues to the government. However, we must, obviously, operate within the parameters of PAY–GO rules. I would like to ask you, Mr. Ambassador, have most of the nontrade provisions included in the trade bills been added to comply with PAY–GO rules?

Ambassador KANTOR. There have been a lot. I don't know if I would say most because I haven't counted them, but there have been a lot because we have had to comply, and that is because we want to maintain budget discipline. I think that is generally accepted both in the administration and here in the Congress.

We are living in an era, properly so, where budget discipline is critical. It is important to our economy. It is important to build credibility with the American people. It is important with these trade agreements. We want the American public to support what

we are doing because we are working for them and in their interests, and to the extent we maintain that discipline and adhere to PAY–GO rules, I think we help that.

Mr. RAMSTAD. I guess what I am really getting at, Mr. Ambassador, in your judgment should the PAY–GO rules be changed so that they more accurately project the impact on Federal revenue of trade bills, the dynamic nature of trade bills? In other words, should the scoring account for the increased economic growth that is spurred by more free international commerce?

Ambassador KANTOR. The answer is the administration would not support a change in those rules. We believe that they are properly drafted. They create the kind of discipline I was talking about. We think it is important to continue to reduce the deficit as this President has over 27 months. It is half what it was when we arrived in Washington.

We worked with the Congress on that issue, and we believe that if we began to address it in that way in trade agreements, that would begin the slippery slope downward toward lack of discipline. We don't think that would be appropriate at this time.

Mr. RAMSTAD. So that is not under consideration by the administration?

Ambassador KANTOR. No, it is not.

Mr. RAMSTAD. The other line of questioning was pretty much exhausted. As a cleanup hitter, that often happens, but I want to thank you, Mr. Ambassador, for working in a bipartisan, pragmatic way on these issues. It has been a privilege to work with you. I just wish some of that bipartisanship would permeate some of the other issues under the jurisdiction of the subcommittees. No reflection on you certainly, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. GIBBONS. Good suggestion.

Mr. DREIER. Thank you very much, Mr. Ramstad. That is an excellent suggestion, and I would like to ask, Mr. Ambassador, that you take that back to some of your colleagues within the administration.

Now, I would like to call on the distinguished ranking minority member of the Trade Subcommittee, my friend from New York, Mr. Rangel.

Mr. RANGEL. Well, I would like to take this opportunity, Mr. Chairman, to be as bipartisan as we can ever be under the circumstances in which we have had our hearings in the past. I would also ask unanimous consent to allow my opening statement to be placed in the record.

Mr. DREIER. Without objection.

[The prepared statement follows:]

**STATEMENT OF**
**CONGRESSMAN CHARLES B. RANGEL**
**HEARING ON FAST-TRACK**
**TRADE AGREEMENT AUTHORITY**
**MAY 17, 1995**

I would like to welcome Ambassador Kantor and the other witnesses to today's hearings. Ambassador Kantor has compiled an outstanding record as United States Trade Representative. He will be able to speak to us authoritatively on the importance of fast track for negotiating and implementing complex trade agreements given his experience with NAFTA and the GATT agreements.

It is clear from testimony we received at last week's hearing that, while there is fairly broad agreement on the need to renew fast track, there is no clear consensus on how exactly this should be done. I was particularly struck at the diversity of views last week on the issues of labor and the environment, and how they should be dealt with in future trade agreements. I look forward to hearing from Ambassador Kantor on that subject.

As I indicated last week, the principles of broad bipartisan consensus and Executive-Congressional partnership continue to be essential for successful trade negotiations and implementation of the results. Last week's hearings were a useful beginning to our debate on fast track and today's hearings should further our understanding of this important matter.

Thank you, Mr. Chairman.

Mr. RANGEL. I would like to thank you once again, Mr. Ambassador, for the great job you have done for our country. We have traditionally been bipartisan in our approach to this.

In your opening statement you seek the same thing as relates to giving authority under fast track for you to deal with some of the labor and environmental conditions that may be controversial. It would seem to me, however, that regardless of how we would look at the agreement once it is reached that we should give the executive branch the authority to have the tools that it requested to work with, and I think what you would be doing is trying to resolve some of the problems people may have as they have to vote or support the overall agreement. You would be given the opportunity to remove the problems of environment and workers' rights the best you can, and as I have been saying over the years, we should be able to include the narcotic trafficking since we are opening up our borders and we are communicating more so that at least we, in the Congress, would know that as you talk with these countries that you put our concerns on the table as friends and negotiators.

My question is, Have you felt that you have been able to make any progress in bringing closer together these nonpartisan committees on the question of fast track and workers' rights as well as environment in reaching some compromise?

Ambassador KANTOR. First of all, I want to be a little bit careful. The one thing I try not to do is get in the way of the inner workings of these committees. I am not a member of this great House, and that is not part of my jurisdiction, but let me just say in August of last year there are a number of people here, I am looking at Mr. Matsui, Chairman Archer is not here. We worked very closely together trying to reach a compromise on these issues.

The language reached was acceptable both to the administration and to the Ways and Means Committee unanimously. In fact, at that point it was late in the process, and we were unable to get the other body to agree to that compromise for a number of reasons, which frankly had nothing to do with the compromise itself. So on one hand I would say, yes, we have made some progress. Whether that approach is viable now is another question.

We feel strongly about the questions, not only environment and worker rights. I want to emphasize that there are other issues, and that is the problem here that we need to raise as well, including transparency, corruption, bribery, which get in the way of trade, anticompetitive policies. These are things that are of enormous importance to our workers and to our businesses.

I have enjoyed and been appreciative of the support this administration has received on a bipartisan basis. The President is deeply grateful for it. I don't believe this is beyond our ability to address. We feel strongly about the issue. There are many on the subcommittees that agree with us. There are some, I assume, that don't agree with us, but I think all agree, and in fact, I have had no one disagree that we need fast track authority.

We need to move forward to take advantage of these opportunities. It is in the interest of the American people, and so we will continue to work with obviously you, Mr. Rangel, as we always have, and everyone else on the subcommittees to reach that kind of agreement that will work for everyone. It is in the interest of the

country. It is in the interest of our economy. It is no reason to turn back at this time.

Mr. RANGEL. Well, I think things will be easier. The 100 days are over, the contract is over, we are back to reality, and I think that we might be able to work this out in a bipartisan way. Thank you. You do a great job.

Ambassador KANTOR. Thank you, Mr. Rangel. Appreciate it.

Mr. DREIER. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman.

Mr. Ambassador, I would like to ask you a question that may sound political, but it is really not. It is substantive. I believe as you have said that free and fair trade are just simply a positive assumption as a plus for the United States.

You mentioned the Speaker's comments and certainly in your own you reiterated that this is always a plus for us, but when I go back home I often hear from constituents that they are very concerned about the NAFTA and the GATT, and they have suspicions that they are going to cause us to lose sovereignty or we recall from last year's debate the great sucking sound of the loss of jobs in the manufacturing sector to Mexico, for example. I am really concerned about why we can't seem to bring these people up to speed on some of the issues that are so obvious to us on the subcommittees and others of us who agree with your administration that we should be supporting any opportunity to enhance fair and free trade.

I am wondering if you could speak for a moment about why you believe so many people are out there still in opposition and how realistic their concerns are. For example, what the results of NAFTA really have been and what we can do together on a bipartisan position to ease their fears and to get together on this critically important issue.

Ambassador KANTOR. Thank you for your question. It is not political at all. It is very substantive and critical. The American people are very smart, and this is an area they understand better than many people suspect.

I have certainly learned they understand it very well. There is a historic reason why the American people are skeptical, and even cynical, about trade.

For years, we had a self-contained economy. We literally didn't need to export or import. We were the strongest economy on Earth from World War II until the midseventies; we were unchallenged and unrivaled. We used trade politically during those years to advance strategic interests in the cold war, and so as we opened our markets, as we should have, others kept their markets closed, as we allowed them to do, and Americans saw this as unfair.

Although we built the economies of Europe, Japan, and others, we became a bulwark against Soviet expansionism, and it was an appropriate policy at the time. What we didn't do during that period of time or subsequently—Democrats and Republicans, this is not political—is begin to talk to the American people about a new world of globalization, interdependence, higher paying jobs. We are 4 percent of the world's population, 96 percent of our market is outside of our borders, and we have to take advantage of it.

We had to do two things or three things; No. 1, build our own economy; No. 2, reach trade agreements that were reciprocal in na-

ture where everyone played by the same rules; and No. 3, absolutely make sure that trade was no longer used as a tool for other foreign policy interests. We have begun to do that; the Reagan administration, the Bush administration, and now the Clinton administration, Republicans and Democrats, liberals and conservatives.

For the first time in the history of the Gallup Polls, in November 1994 the American people saw trade as more advantageous than disadvantageous. So, as we continue to face some skepticism or even cynicism, we are making progress.

Frankly, it is up to all of us in the Congress and the administration, Governors, mayors, to continue to advocate opening markets because we have got to compete in winning these world markets or we are not going to expand our economy. We are a mature economy. We are an aging population. We are almost at zero population growth.

We must sell our high technology goods, representing high-wage, high-skilled jobs all over the globe. That can only be done through use of trade agreements or sometimes in exercising our trade laws, and so you are raising the absolutely correct issue.

This President has focused on it. He has advocated open trade and open markets from the day he announced his candidacy for President. He then went to Georgetown and made two speeches and talked about it. He went to the New York Foreign Policy Association in April 1992 and spoke about it. He went to the Los Angeles World Affairs Council in May 1992 and talked about it.

October 4 in Raleigh, N.C., he supported the NAFTA and talked about the need to open markets, expand trade, increase jobs, and raise our standard of living, and he has continued to talk about it as President of the United States. Republicans and Democrats, leaders of both parties have supported him in this quest, and we need to continue to do so.

Mr. DREIER. Thank you very much, Ms. Dunn. I would just say that it concerns me, Mickey, to see us moving possibly even further toward including other areas. You have to ask yourself at what point you draw the line on what is clearly a trade agreement. I mean, we have talked, you have mentioned bribery and corruption, what about embezzlement. I mean, this thing could expand further and further, and that is something that does concern me.

Mr. Matsui.

Mr. MATSUI. Thanks, Mr. Chairman.

Ambassador Kantor, I want to, again, congratulate you and the President, both of you, and certainly President Bush and Carla Hills, Ambassador Hills, have done a tremendous job for this country.

When you think about the last 24 months, you really build off of the previous administration's work in the area of NAFTA, GATT, MFN, China, the APEC conference, and certainly the Summit of the Americas, and now your efforts on behalf of opening the Japanese markets.

I believe there is a great deal of American support for that effort, and we congratulate you and we are all behind your efforts. As we get closer to the 30-day deadline, obviously many people will become anxious, particularly our auto dealers that sell these cars.

At the same time, I am convinced that throughout this period and well into the period when sanctions will actually be imposed, should they be necessary, you will have the strong support of the Congress and certainly the American people.

I want to make two observations. No. 1, I think what Mr. Thomas says is very correct in terms of California agriculture. I am not one that normally likes to talk about special issues within my State or my district, but the wine issue, obviously, is one that many people expect to be settled in the Chilean negotiations.

The disparity of 10 years, 3 years in terms of Chilean wine going into Mexico, and U.S. wine going into Mexico. I have to say I am beginning to believe that it is the Chileans, but it is also the Mexicans, who may be wanting to develop their own production capability of wine, and that being the case, we may have to negotiate with both, and I am hopeful that the Mexicans will understand the importance of this issue.

No. 2, I would like to talk about the issues of labor and environment. I think these are two issues that are going to create a problem for fast track, and I believe it is essential for this administration to have negotiating authority. I mean, it would be shameful if this Congress did not give the President and you the authority to negotiate trade opening agreements.

Another is the PAY–GO issue, which I don't believe is particularly critical. I think we need to resolve it, but I don't think it is critical to how a Member will vote. The issues of labor and the environment are. We have a real difference there that developed in the last hearing. Certainly, as the comments here bring out, some would like to see labor and the environment specifically prohibited as negotiating objectives and as part of the negotiated agreement.

Others would like to see specifically labor and the environment mentioned as negotiating goals and objectives. It is almost as if we will not be able to put this together. I have to say there is a midground, and I hope others will agree with it, and that is pretty much the status quo. Don't state anything about these things. Leave it to the administration's negotiations with the Congress, and the meeting and conferring to make those decisions.

Let me say why I think that is essential. Unlike some who may think labor and the environment should never be part of the negotiating process, I think that perhaps in the future they should be. You raised interesting observations. Ten years ago we never would have thought about intellectual property protection or investment protection, and the reason for that is because I think there was a general feeling among the international trade community that we should not reach into the sovereignty of another country.

We shouldn't tell, for example, the Chinese certain kinds of things they should do with or without human rights, and they shouldn't tell us what we should do in terms of some of our domestic activities, but we have changed that. That concept has been actually changed in our negotiations on intellectual property, and in the area of investments, protection of investments.

Now, we have gone to the Chinese and say you have to provide due process to people that trade with you, and that means you have to change your court system, domestic court system. We will

say the same thing in terms of Latin countries as we develop investment protection patterns.

The issue of transparency, which I think is really going to be the issue of the 21st century, we are going to have to make sure that the other countries that we deal with have strong securities and exchange regulations so investors will know whether or not stocks have got something behind them or not. That being the case, we don't know today what kind of negotiations we may need in the future.

Labor and environment may become an issue, and so you need those tools to be able to make that determination as time permits, and in reference to that, when we dealt with developed countries, it was never a problem. It is only as we begin to deal with emerging countries like China, Indonesia, India, Pakistan, that we are really going to need all these tools and have a great deal of flexibility.

So it is my hope that if we want to give you the authority that I think is essential, that we give you flexibility, and obviously we always have the final decision to vote against whatever you come up with. So, ultimately it is the Congress that will decide whether your negotiating objections are correct or not, so I am hopeful that we will be able to come to some resolution of what I believe to be a very difficult issue at this time to deal with.

Ambassador KANTOR. If I might, thank you, Mr. Matsui, for your kind words, and I couldn't agree with you more. Let me just use the China intellectual property rights agreement which Ambassador Barshefsky did such a wonderful job on as a precise example of what we are trying to do.

Let me talk about the eight different areas this agreement addressed, and then you will realize how far we have come in trade in trying to address the critical issue. One example of the problem, last year China produced 75 million pirated compact disks mainly of U.S. origin. Seventy million of those were exported, mainly into Asia, some as far as into Canada, even a few got into the United States.

We were hurt in the Chinese market, a huge potential market and hurt in the third country markets as well. We probably lost about $800 million in 1 year just in the Chinese market alone due to the failure to enforce intellectual property rights in this area, the area of trademarks and other areas as well.

The agreement we reached addressed everything from transparency to their courts to new customs systems, to special enforcement teams, to the right of establishing the U.S. companies in their market, to joint ventures between U.S. and Chinese companies, to market access to technical assistance, including onsite involvement of patent and trademark office employees, the Federal Bureau of Investigations, the Department of Commerce, and the Department of Justice.

Now, that is going a long way toward addressing a huge problem affecting our companies and our workers, but yet involving policies internal to China. That is exactly the example of what we are talking about. It has a direct effect on us economically, a direct effect on our employees and our workers and our standard of living, yet involves policies internal to China. You made the obvious and the

correct assertion and example, and I just wanted to relate those for the record just to show how far we have gone in that agreement.

Mr. MATSUI. Thank you, Mr. Ambassador.

Mr. DREIER. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman. I just have a specific question about PAY–GO policy. Is it not the purpose behind the PAY–GO policy that the Federal Government will not undertake programs that will lose more revenue than they will gain?

Ambassador KANTOR. Well, under the scoring systems, and I am not an expert in this area, so excuse me for what might be too simplistic an answer. We don't believe it is necessary or prudent to sacrifice budget discipline to pass trade implementing legislation in the Congress.

The PAY–GO system was implemented to impose discipline, as I understand it. There are those who are in front of me who know a lot more about it than I do. All I can tell you from my perspective as a member of the President's cabinet, is that from the President's perspective, budget discipline is critical.

We have done it in this administration. We have cut the deficit in half since we arrived here 27 months ago. More needs to be done working together on a bipartisan basis, but to somehow forego the PAY–GO rules, whether it is in terms of trade agreements or in other areas as well, would not be helpful to that process.

Mr. ZIMMER. Is there any major trade agreement that the United States has entered into over the last two decades where the result of that trade agreement has not been an increase in the revenues with the so-called offsets even disregarded?

Ambassador KANTOR. If you took a dynamic economic model, my guess is my economist friends—I just happen to be a dumb lawyer—my economist friends would tell me that the answer is, Every one of the trade agreements have contributed more to our economy and to our Federal revenues than have been taken out. Certainly the Uruguay round, NAFTA will do the same, but that is not the question here.

The question here is that the PAY–GO rules impose a discipline that is important, especially at this point in time, in developing credibility with the American public, keeping all of our feet to the fire, and making sure we continue to address this huge problem of a budget deficit. So I would only suggest on behalf of the administration that we continue to stick to those rules.

Mr. ZIMMER. Ambassador Kantor, are you conceding that the PAY–GO rules in the case of international trade agreement do not reflect economic reality? I understand your point about economic discipline, but I am trying to talk about the real world. I don't know whether lawyers or economists understand the real world.

Ambassador KANTOR. Some would say neither of us understand the real world very well.

Mr. ZIMMER. I am amongst the latter, and I am seeing things more clearly since I stopped practicing law, but the question is why should we bind ourselves by something that is clearly an artifact?

You referred to dynamic scoring. Well, in this case it is just common sense, and I don't understand why the administration binds itself to a model which no rational person, regardless of his professional training, would agree with.

Ambassador KANTOR. Discipline is a very interesting subject. We could talk about it a lot, especially in terms of public policy. You may or may not agree with me. This administration is very focused.

We need to lower this budget deficit as much as possible. If we begin to address issues such as trade agreements in one way and other agreements in others, it will only be a short period of time before one person or another will begin to say, well, what about investing in education, what about capital gains, what about other areas?

I don't think we should start down that slippery slope and reduce our discipline in this area. The President believes we should maintain this discipline, and we are going to continue to maintain that position.

Mr. ZIMMER. Let me just suggest that instead of talking about discipline in the abstract even when it runs counter to economic reality, we should both focus on the objective, which is to balance the budget, and I eagerly await the administration's entry into the debate about exactly how we are going to eliminate the budget deficit. Thank you.

Ambassador KANTOR. This administration certainly understands economic reality, 2.6 million new jobs, I mean in the last—I am sorry, 6.3 million new jobs in the last 27 months. Incomes are rising, 15 million American families are paying lower taxes today, they are the working poor who have worked hard and played by the rules.

We have invested in education, Goals 2000, School to Work, AmeriCorps, money for Head Start, that is where we ought to be putting our money, build our economy, maintain discipline, lower the number of Federal employees, which we have done by 100,000 since coming into office. It will be 272,000 by the end of 4 years, the smallest Federal Government since Jack Kennedy was President of the United States.

This President understands reality, smaller government, bigger economy, build jobs in the private sector. Ninety-three percent of all the new jobs, of that 6.3 million new jobs, are in the private sector, the highest percentage since Warren Harding was President of the United States, and that is economic reality. This President has done quite well with the support of the Congress in moving forward in this regard.

Mr. ZIMMER. Thank you.

Mr. DREIER. I would add to that that the level of income for those in the export sector is significantly greater than the nonexport sector, and it is for that reason that we are going to be looking at legislation that could possibly modify the PAY–GO procedures because clearly the level of revenues to the Federal Treasury is enhanced due to increased exports. I hope very much that we will be able to find some kind of area of agreement.

We have received a letter from Alice Rivlin on this issue, and I do know the administration's position, but I think that we may be able to come up with a way in which we can address that.

Mr. Neal.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman, and thank you very much, Mr. Ambassador. I wanted to commend you and commend the administration for the job that you are doing. I think the charts tell the story in terms of, No. 1, how important trade is to our economy and to our Nation, and, No. 2, what this administration has accomplished such as the NAFTA agreement, the GATT, and others, and what this means to districts like my own is certainly very, very important.

You have been very responsive to needs of special segments of our working population, i.e., those who are in the textile and apparel industry. I just wanted to take this opportunity to thank you for that and to let you know that we appreciate all of your efforts on our behalf. I have no questions, and I would yield back the balance of my time.

Ambassador KANTOR. Thank you, Mr. Payne, I appreciate that very much.

Mr. DREIER. Thank you very much, Mr. Payne.

Mrs. Waldholtz.

Mrs. WALDHOLTZ. Thank you, Mr. Chairman.

Ambassador, I think we all recognize how important it is to have an effective trade policy. It is important to our country's economic future as well as the future of the rest of the world. But, I want to return for a moment to something we touched on earlier, and that is what I think is a deep public concern about whether we are pursuing the right trade practices.

The peso crisis falling so closely on the heels of the finalization of the NAFTA agreement helped erode public confidence as to whether our government, both the administration and the Congress, is conducting thorough, successful trade negotiations. We could spend all day arguing whether that is a correct linkage or not, and I don't want to get into that today. I think that is a discussion for another day.

But my question is in the face of what I think is an erosion of public confidence. Are there procedural or substantive changes to the fast track procedure that you could recommend that could help bolster public confidence so the public will feel more secure that we are thoroughly investigating the claims of the people with whom we are negotiating, and the impact of the agreement on American workers?

Ambassador KANTOR. No. 1, the more open the debate and the more extensive the hearings on this subject, the more help it will give because I think there is such a wide support for opening trade, expanding markets, for creating more and more export jobs in this country.

As I said before, we are a mature economy. We have to rely on the 96 percent of the consumers who live outside our economy. The faster growing economies, younger populations, faster growing labor force, and growing industrialization are going to be our markets of the future. If we just relied on our economy, because of our lower growth rates in all of the areas I just mentioned, we would be in some trouble.

No. 2, no great nation in history has ever increased its wealth without expanding trade, which is fascinating.

No. 3, what we need to do is make sure we reach a quick agreement on fast track and move forward. We have enormous opportunities in Latin America and in Asia, and in the progressive elimination of trade barriers with Europe as well. All of that is in the best interests of the American people.

Let me give you an example which came up yesterday, which has had some note. Our automobile industry is critical to our future. They are 5 percent of our gross product. Two-and-a-half million Americans are employed by our manufacturers, by our automobile dealers, and by their suppliers.

The auto industry purchases more iron, steel, aluminum, flat glass, platinum, synthetic rubber, and more natural rubber than any other industry in America, so therefore the ripple effect is greater than any other industry. In fact, it purchases more semiconductors than almost any other industry in America.

It is a high-technology industry with high-wage, high-skilled jobs. To the degree that the second largest car market in the world, Japan, is closed to our products, it has an adverse effect upon American workers, American jobs, American companies, and our economy. Therefore reaching trade agreements, exercising our trade laws, making sure we work in a multilateral, regional, and bilateral basis are critical to our economic future.

One thing I would give you, I just talked to Ms. Dunn about this. We had a dialog on this issue as well, the fact is the American people are gaining in confidence in terms of trade. For years, of course, we used trade as a political, not an economic tool. We have changed that in this administration.

We realize our economic security and our national security are inexorably intertwined with each other, and so we are going to continue down that path. We have had great support from Republicans and Democrats alike, and I think there is a consensus, a consensus among the Congress, the administration, and among Governors, Republican and Democratic alike, that we ought to continue this, and so all I would suggest in light of fast track is we move quickly, we move in a bipartisan manner and make sure we have wide agreement in the Congress as we move forward.

Mrs. WALDHOLTZ. But there are no particular changes that you would recommend in the fast track procedure that could increase confidence? You think we should move forward as it is?

Ambassador KANTOR. The fast track procedures always required and maintained that administrations, Republican and Democratic, over the 20 years have had to consult very closely, especially with Ways and Means and the Finance Committee of the other body. I certainly have done that on a continuing basis. I know my predecessors did as well. That is the best way to ensure that the people's representatives, as symbolized by all of you up here, are deeply involved in every step of our trade negotiations, as you were in the NAFTA and the GATT and other areas as well. That is the best way to ensure full and complete agreement.

On the other hand, we have to make sure that what we negotiate sticks. No country is going to sit down at the table with me or anyone else in my position and negotiate if they think the first negotiation is with the trade rep and the second is with the Congress of the United States. That just won't work.

Mrs. WALDHOLTZ. I have no further questions. Thank you.

Mr. DREIER. Mr. McInnis.

Mr. MCINNIS. Thank you, Mr. Chairman.

Mr. Ambassador, prior to the NAFTA agreement there were several tire companies in the United States that exported tires to the country of Mexico. Subsequent to the NAFTA agreement, Mexico is now allowed to export tires to the United States duty free, but is utilizing a 4-year exception to the standards chapter to prevent us from exporting tires into Mexico. So I have two questions.

A few days ago the Washington Post covered this topic in a recent article which you may have read. My first question is obvious, What activities are being utilized at this point to stop this injustice so that we "all play by the same rules," and second, what is being done, Mr. Ambassador, to prevent other nations from adopting these tactics if we were to bring Chile or other countries into the NAFTA agreement?

Ambassador KANTOR. First of all, I met just yesterday with the Mexican trade minister. This is one of the most important issues on our agenda. What the Mexican Government has allowed to happen in terms of requiring U.S. tires exported to Mexico to be molded in Spanish is inconsistent with international standards where English is used to describe certain attributes of the tire involved. They would not accept that we were willing to put labels on those tires which would accomplish the same purpose.

We made it clear we would use the dispute settlement processes of the NAFTA if they did not change their policy. They had agreed with us to respond to our proposal by May 5. I think that is the right date. Someone will correct me if I am wrong. We are still waiting for this response. We will not wait forever.

Second, we will directly address this issue, not only that issue, but there is a used tire import ban in certain countries that we have to address. As we go into Chile's accession, we will make sure we address these issues in an appropriate way.

Let me say the Mexican Government has attempted to indicate to us that we could not reopen certain areas of NAFTA such as this or the wine area, Mr. Thomas. We made it clear to them we don't go into any negotiation with preconditions, and we won't do so in this case, so we are addressing the issue.

You are absolutely correct it is a problem. We are deeply concerned about it, and we made sure the Mexican trade minister understood our deep concerns yesterday.

Mr. MCINNIS. Well, Mr. Ambassador, May 5, you are not going to wait forever. Could you define that? Did you define that to the Mexican personnel that, hey, May 5 is the preliminary date, but May 20, for example, is the drop dead date. How specific is this response?

Ambassador KANTOR. May 20 is the date, and that is what I mean by not waiting forever.

Mr. MCINNIS. Thank you, Mr. Ambassador.

Ambassador KANTOR. Thank you.

Mr. DREIER. Mr. Houghton.

Mr. HOUGHTON. Thank you.

Mr. Ambassador, I heard what you have said. I think literally and figuratively you are on the right track. I am going to give you

a Memorial Day present. I am neither going to make a statement nor ask a question. Thank you very much.

Ambassador KANTOR. Thank you very much, Mr. Houghton.

Mr. DREIER. Mr. Ambassador, thank you very much. We appreciate your taking the time to be with us. It was very thoughtful testimony, and you handled the questions extraordinarily well. We look forward to working with you on some of these areas of concern that we have so that we can proceed with the kinds of agreements that will increase opportunities to improve living standards, worker rights, the environment, and improve the plight for people here in the United States. Thank you very much for being here.

Ambassador KANTOR. Thank you very much, Mr. Chairman, for your kindness. I appreciate it.

Mr. DREIER. Our next panel includes a most distinguished former Member of Congress, a member of the Ways and Means Committee, Bill Frenzel.

Congressman Frenzel served his country and the citizens of Minnesota for over 20 years as a congressional leader on all matters of trade, finance, and fiscal policy. Bill Frenzel was a member of this committee in 1974 and participated in the crafting of the fast track process.

After leaving the people's House, Congressman Frenzel was tapped by President Clinton to explain why the North American Free Trade Agreement was a bipartisan issue vital to our Nation's long-term future, and I had the privilege of helping him convince people that it was a bipartisan issue. He was a critical member in that effort, and he remains a leading voice on trade and budget matters.

Joining him on this panel is Richard R. Rivers. Mr. Rivers has served as general counsel of the Office of the U.S. Trade Representative from 1977 to 1979, served on the staff of the Senate Finance Committee from 1972 to 1977, and helped draft the fast track procedures included in the 1974 Trade Act. He is currently a senior partner in the Washington law firm of Akin, Gump, Strauss, Hauer & Feld.

I am very honored to welcome Bill Frenzel and Dick Rivers to this subcommittee hearing and look forward to their thoughts on where fast track came from, whether it has accomplished its intended goals, and any modifications that might be made, and I would like to first defer to Chairman Crane.

Chairman CRANE. Well, I thank the gentleman for yielding, and I want to welcome both of our distinguished witnesses, but especially a good friend and former colleague that I sat next to on the Trade Subcommittee for quite some time, Bill Frenzel, and rather than me taking the time to welcome Bill before the subcommittees, I would like to yield to our colleague, Mr. Ramstad, down there, since they are both Minnesotans.

Mr. RAMSTAD. I thank the Chairman for yielding, and it is a real pleasure to welcome my mentor and predecessor, Bill Frenzel, back to the committee, not that he needs any formal welcome to the Ways and Means Committee on which he served with such distinction for 16 years. I know I am embarrassing him now. I don't know anybody more modest or anybody with greater expertise or knowledge on trade issues than my friend, Bill Frenzel.

I think Mr. Gibbons put it well when he mentioned to Ambassador Kantor that we have made great progress on trade over the last couple decades, and as virtually every member of the Ways and Means Committee more senior to me has mentioned since I joined the committee earlier this year, nobody has contributed more to that progress over the last two decades than Bill Frenzel. Bill, it is great to see you here today and welcome. I look forward to your testimony.

Mr. DREIER. Thank you very much, Mr. Ramstad. We look forward to your testimony, and I can assure you, Mr. Rivers, that had you been a member of the Ways and Means Committee you would have gotten similar accolades.

Gentlemen.

Mr. THOMAS. Reserving the right to object.

## STATEMENT OF HON. WILLIAM FRENZEL, WASHINGTON, D.C., FORMER MEMBER OF CONGRESS

Mr. FRENZEL. Chairman Dreier, Chairman Crane, members of the two subcommittees, thank you very much. You are putting wings on the dog, and I am just going to do my best to do what you asked us to do here. I would ask that my written testimony, in two pieces, be accepted for the record, and that I may be permitted to proceed for a few minutes.

Mr. DREIER. Without objection.

Mr. FRENZEL. Mr. Chairman, the problems that face you, I think, on how to reconstruct fast track, I hope, are problems of repair only. In my mind, the most difficult question is the budget question, the PAY–GO question.

In my testimony, I explain that this brings matters on taxation that are quite complicated before the Congress with insufficient time to discuss them. I mentioned the Pickle amendment last year in the Uruguay round, which was a very complicated, important piece of tax policy, which was not given proper attention by the Congress because it was simply one of the financing pieces. You know a number of similar examples.

Some Members have suggested that you simply waive PAY–GO with respect to multinational trade agreements. I would think that would be a great thing to do if you, Chairman Dreier, and Mel Hancock were the only Members in the Congress. I am a little nervous about the precedent that a waiver sets. I have been around too long to think you could get away with just making it apply to trade bills, and so I suggest caution with respect to a waiver.

One of the other solutions is that you get better dynamic estimates from the CBO, Congressional Budget Office. I doubt these two subcommittees are going to go arm wrestle with CBO and change the estimation process. I think, however, every year you get better data and better estimates, and I suspect that some day you will have a situation where the CBO will estimate that trade bills pay for themselves. However, in the early years CBO seems unwilling to do so, and you will still probably have some PAY–GO to worry about.

If that is the case, I think the Members need a fair chance to discuss the financing portion of a trade bill, and I suspect it is not a bad idea to create a piece of the rule so that those items can be

discussed. Maybe even one of our famous modified open rules, which might allow amendment of the financing piece as long as the amendment was revenue-neutral, would be appropriate.

I do not like to recommend an amendment that would allow the whole trade bill to go down because of the financing piece. I think my final counsel on this budget problem is that the problem is not really in the House, it is in the Senate. You need 60 votes to pass a trade bill as long as you have PAY–GO, and so if these two subcommittees or others are involved in a fast track bill, you are going to have to be very careful in negotiating with the Senate so you don't let them run away with you, or find ways to overburden the trade bill, and yet, at the same time, provide a way for them to pass it on to majority vote.

I am not smart enough, I don't understand Senate rules. As near as I can figure, only one person does, and I am not sure he is in favor of this proposition.

There is a second proposal that I think is important. Nowadays the President presents to the Congress a proposal that contains "necessary and appropriate" changes to the law to ratify the negotiations. Congress throws in a few more "appropriates" in its nonmarkup section. That allows what I think are nongermane features to be picked up under the protection of the fast track where they are unamendable and unreachable. My advice to the subcommittees would be to dump the word "appropriate," and stay with "necessary." I understand that political urgencies will distort the definition of the word "necessary," from time to time, but it is a lot harder to distort than "appropriate," and I think it is a worthwhile change.

The third problem is the time definition. It is suggested that there be a time certain or a time requirement from the President or President's representative signing whatever the agreement is to the introduction date. I don't think that is a bad idea, but I think you need to be careful because often there is a long time between the initial signing and the final draftsmanship.

I do think it is unreasonable to let the President hold the introduction for months and months and months. I would think that some sort of a time requirement there would be worthwhile.

Also committees of the House and Senate need time, as we found out when Senator Hollings made his legitimate request for time last year and bumped you all into a special session. Your discussions on fast track have to allow time for those committees.

Now, I do not think you need to extend the time between introduction and final ratification. After all, it is called the fast track process, and if you slow it down you are only going to make life more difficult for yourself.

The fourth point I would like to make is, above all, preserve the essential fast track process. It is an ingenious process by which the Congress can exercise its constitutional jurisdiction over trade and still let somebody else do the negotiating which Congress cannot do. Whatever you do, try to retain that process.

I believe, as the previous witness suggested, that we ought to have negotiating authority on the books right now. I have perceived in the brave new world, or whatever we are in now, that commercial competition is the hallmark of our international relations.

I think a President always needs negotiating authority. I think there are opportunities that abound out there, not just the WTO where Ambassador Kantor indicated he had opportunities or NAFTA or even APEC. There are other situations which we can't even imagine now in which it is going to be good for the President to have the authority. If he has to come arm wrestle you and get over the political hurdles of environment and labor rights and drug interdiction and whatever else, America is going to miss some opportunities.

My judgment is you ought to have a basic piece on the book. If after the President starts negotiating under that authority you want to give him some instructions on goals, set a time certain when he should complete the negotiation, I think that is appropriate. But the President has to be equipped in today's world to begin negotiating immediately.

I believe that this authority ought to have a fairly long term. I leave it to you to decide what it is. I believe it should always extend into the term of the next President, whoever he or she may be.

Trade has carried hitchhikers for years, whether it is national security or whether it is suppression of the people or whether it is shipping bombs around the world or narcotics or environment or labor rights or any of a long list of 100 things. None should be encouraged, but you should not forbid them in the negotiating authority.

The law ought to be silent. The President ought to be told by the Congress what is acceptable and what isn't, but his negotiating authority should not be unreasonably restricted. So, Mr. Chairman, I have overtaken my time and I shall withdraw.

[The prepared statement and attachment follow:]

**STATEMENT OF WILLIAM FRENZEL, GUEST SCHOLAR**
**BROOKINGS INSTITUTION**

RULES AND WAYS AND MEANS COMMITTEE
JOINT HEARING ON "FAST TRACK" AUTHORITY

Dear Mars. Chairmen:

My first duty is to remind the Chairmen and their Subcommittees that this presentation is mine alone and does not represent the opinions and ideas of the Brookings Institution. The second is to tell you what a privilege it is to appear before either of these distinguished Subcommittees. Because the subject of this hearing is of such unusual importance, and of particular interest to me, today meeting is a special pleasure.

HISTORY

As is widely known in these Committees, and less widely known among Members of Congress, Fast Track Authority is a rather recent addition to the Legislative process. When the first Congress met, the second law it enacted, US Code 2, was a trade bill, a protective tariff for the fragile industries of the new country. Thereafter, the Congress continued to carry out its Constitutional Trade jurisdiction until after the passage of The Reciprocal Trade Act of 1934. From then until 1962, Congress passed successive laws allowing The Executive Branch to negotiate reductions, within specific limits, in our tariffs, in exchange for tariff reductions by our trading partners. When the agreement was completed, The President merely promulgated our reductions.

For the early GATT rounds this procedure worked fine because they dealt almost completely with tariff changes. When non-tariff measures (NTMs) began to be more important, the Pre-approval/Promulgation system was no longer adequate. For the Kennedy Round negotiations, the President and the Congress agreed on the Fast Track process: The Congress gives the President Negotiating Authority; The President presents the legal changes required to implement the agreement he has negotiated;

and then Congress votes on those changes, without amendment, within 60 days of the introduction of those changes.

For the 1979 Tokyo Round ratification, the process was modified to allow Congress and its committees of jurisdiction to replicate its standard mark-up and conference committee procedures before the President actually introduced his bill. The new procedures allowed Congress to maintain tighter controls over the negotiations than than under the 1974 system. That new procedure, which allows for a little more potential for Congressional mischief, has been used since for the US-Israel, the US-Canada, NAFTA, and Uruguay treaties.

## NEW PROBLEMS

In a dynamic Legislative arena, old rules are often inadequate to cover new contingencies. In my judgement, there are good reasons to consider revisions to the current Fast Track procedures now.Some of the reasons are the following:

1. New Budget Rules have complicated process and confused some of the players. Budget strictures require financing of Trade bills under the Pay-Go limitation. Many Members might agree that Trade treaties do pay for themselves in additional economic activity, but very few Members would be willing to scrap Pay-Go, even in a severely limited instance, for fear that such action would open an undesirable loophole precedent. Assuming that the Budget restriction will endure, the problem which remains is that complex tax provisions can, and often must, be inserted into the unamendable bill. Time pressures and the desire to focus debate on the trade bill means that the hitchhiking tax provisions may get insufficient debate.

In the case of the Uruguay Fast Track, a good example was the Pickle amendment to the ERISA Act. It was highly controversial, subject to frequent changes in closed-door sessions, and, of course, got little attention either from Congress or the Press although I consider it far more important tax policy than the so-called "Washington Post Boondoggle". The House probably doesn't want to go through a process like that again.

2. Another problem is that the Fast Track law allows measures "necessary or appropriate" to be included in the bill under consideration. One person's definition of appropriate may vary widely from another's. Experience has proved that the temptation to expand the bill, both by the Executive and the Legislative Branches, is irresistible. It is preferable in my judgement, to allow political exigencies to expand, occasionally, the definition of "necessary", than to allow infinitely more opportunities for mischief under the much looser definition of "appropriate".

3. Senator Hollings's legitimate request for time for his Committee to review the Uruguay bill revealed another flaw in the process, or in the administration of the process. Time restrictions are essential to the Fast Track process, but each house must have the ability to allow its Members and its Committees time for proper review of the implementing bill. In an exception process negotiated between branches to handle increasingly complicated Trade bills, it is advisable that the process be clearly understood, and that it not try to sidestep political realities.

POSSIBLE CHANGES

In general, my own opinion is that the Fast Track is a practical, convenient way for the Congress to dispatch its Constitutional authority for Trade, but changing circumstances have made it ripe for repairs. The repairs should not change the essential nature of the process. The Fast Track remains an ingenious way for the Congress to exercise its Trade responsibilities under the Constitution. With a process like Fast Track, it has pretty good control over the negotiating process and the approval of the result of the process. Congress is not a good negotiator, but with a Fast Track type process, regularly reviewed and revised, it can do everything it needs to do in Trade, except the actual negotiations.

Therefore, Msrs. Chairmen, my recommendation is to revise the Fast Track process, but to retain its essential nature. Because you are dealing with subject regularly, you will undoubtedly have more ideas than I about needed changes. Here, however, a word of caution is appropriate (and maybe necessary). Although the system is obviously flawed, it is my fervent hope that you don't overfix it. It would be relatively easy to fix up the Fast Track process so well that it would not work. I hope you will resist that temptation and, instead, fix only the real flaws.

1. Allow for debate and amendment of revenue items required by Budget rules. Amendments probably should be limited and revenue-neutral. This part of the new Fast Track Law must be tight enough to keep the Senate, as well as the House, from shipwrecking the bill over its financing provisions. An alternate change might be to exempt Multi-Lateral Trade Agreements from the Pay-Go Budget rules. That would be very difficult, and perhaps unwise in the middle of political fist fight on budget balancing.

2. Limit Fast Track bills to matters that are "necessary" to implement the Trade Agreement, including, of course, financing items, per #1 above.

3. Provide for review of the final bill by committees which have jurisdictional interest before the bill is introduced, and therefore unamendable. The time restraints are formidable, but if other committees cannot be worked into the Ways and Means and Finance "non-markups", then they must be given time for hearings and recommendations between the signing of an Agreement and the "non-markup" or the bill introduction.

Finally, I do not believe the description of the Negotiating Authority need be included in the Fast Track Law. Congress can give Negotiating Authority loose or tight, long or short, with goals or without, with one country or the whole world, but the Fast Track approval process should be the same in all cases.

Msrs. Chairmen, may I again say how privileged and flattered I am to appear before you today on this vital subject? Thank you.

ADDENDUM TO TESTIMONY

After preparing the foregoing testimony, a few other thoughts, which might be worth adding to the Fast Track Discussion, occurred to me. They follow in no particular, or rational, order.

1. Pay-Go Budget Rules Many Members, particularly Mr. Armey and Mr. Archer, have long requested that CBO revenue estimates reflect the economic reality that increased tax revenues follow increased economic activity. So far CBO has been unwilling to make extended estimates, despite the Senate 10 year rule, and its 5 year estimates, despite the complaints of the requestors, do not seem to include new revenues that many economists predict will flow from Trade agreements like Uruguay and NAFTA. This is contentious issue, fraught with political peril, and I do not recommend that these Subcommittees try to out-muscle the CBO. However, it would be well for the Subcommittees to follow this question. If CBO ever alters its estimating procedures, I hope these Subcommittees will be quick to alter Fast Track Law.

2. Pay-Go Budget Rules I hope these Subcommittees will counsel with their Senate counterparts on the Senate Budget Rules. Under current procedures, even after giving effect to all of the changes generally prescribed, it still takes 60 votes in the Senate to pass a Trade Agreement. I am not clever enough to figure out how to back the Senate into a simple majority situation, but somebody may be able to do so. The Law must work in both houses, and a 60 vote Senate hurdle seems to me to be unrealistically high.

3. Nature of Authority In my original testimony, I did not make recommendations as to what kind of Negotiating Authority this Congress ought to give the President. At the risk of violating germaneness rules, I now respectfully suggest that the Authority contain as few conditions or limitations as possible.

Since the fall of the Wall, vigorous commercial competition is becoming, more and more, the driving force in the relationships between nations. Countries are demanding newer and better ways to find increased market access. If the WTO,

APEC, or NAFTA is not open or expanding, other groups or "clubs" will be formed. The US, like every other international competitor, must be ready, at a moment's notice, to begin negotiations anywhere in the world. The deals will come and go quickly. If the President is obliged to fuss with Congress for a couple of months, the US may well lose a valuable access it could otherwise have gained.

Except for the immediate post-War II period when every other country is the world had a war-ravaged economy, US companies have never been in a better position to compete internationally. The government, specifically the Congress, which has Constitutional jurisdiction over Trade, must be ready to provide new opportunities immediately. Unless it provides the President Negotiating Authority he can use to open or expand not only our major trading systems, but also to do so in new systems we can only imagine, I believe Congress will be negligent it its duty, and perhaps cast some doubts on the wisdom of Framers who chose Congress to control trade.

Mr. DREIER. Thank you very much, Mr. Frenzel.

Mr. Rivers.

**STATEMENT OF RICHARD R. RIVERS, SENIOR PARTNER, AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.**

Mr. RIVERS. Thank you very much, Mr. Chairman. On a personal note I want to thank you for your welcome to this hearing room. I will note, however, that it was a member of this committee, the late Hale Boggs, who brought me to Washington 30 years ago, and my testimony today was prepared in part by his grandson, Lee Roberts, so in a way, things have come full circle.

I have been in this hearing room on a number of occasions. Thank you. I also have a statement I would like to submit for the record, but I will just briefly summarize.

Mr. DREIER. Without objection, so ordered.

Mr. RIVERS. Let me say I wish in general to associate myself with the remarks that Mr. Frenzel has given. I think that is very sage advice. I strongly support renewal of the fast track provision. This is an indispensable tool for the President and executive branch to conduct trade policy. You just can't do it without it.

There are a number of issues that have to be addressed. First, I am of the view that you ought not encumber it with a requirement to negotiate on other issues however important or desirable those issues might be. Side agreements on environmental issues and labor issues ought not be made a requirement.

I think silence is golden and I think Bill Frenzel is right about that. My reasoning, my position is based on the original purpose of the fast track authority. Fast track is a delicate arrangement between the legislative and the executive branches. Both branches recognize that well-crafted trade agreements are in the interest of the United States, but they also recognize that if Congress maintains the option to amend agreements piecemeal during the approval process, then countries negotiating with the United States will fear that any deals reached will be reopened and they will find themselves back in this hearing room negotiating again. But this fast track authority is a very limited grant of authority to the executive branch and one that ought not to be abused.

It should only extend to provisions, I believe, that are necessary. I tend to think that the original language "appropriate" is desirable, but I do agree with Bill Frenzel that "appropriate" is a little bit easier to distort than "necessary" by itself.

There is a real danger in the United States trying to solve all of its problems through trade negotiations. The wider you expand the scope of fast track, the more you can expect unwanted intrusions by our trading partners into our own domestic policies. Moreover, we should not expect our trade negotiators to substitute their expertise for that of other agencies of our government.

The way to avoid these potential pitfalls is to keep the fast track process generally clean and unencumbered by side agreements, or at least let's be silent on the issue.

The second issue, obviously, is the very difficult one of pay-as-you-go rules, which were added by the 1990 budget agreement. When fast track was designed in 1974, we had nothing like that in mind. We probably should have had, but we didn't at the time.

There is no easy or obvious solution to this problem, and this brings to mind an aphorism of my friend and law partner, Bob Strauss. He is occasionally heard to say that this is one of those chasms that must be crossed in two steps, and I think that is exactly what this is.

One possible solution would be to create a mechanism whereby the necessary budget cuts would be considered outside of the fast track procedures. I would defer especially to Bill Frenzel. I think if it is brought up under kind of a modified, open-rule procedure it is important that it be revenue neutral.

My concern is that we ought not allow the PAY–GO requirement, which is very important in terms of budget objectives, to be the device by which entire trade agreements are sunk on their merits. We should not create an Achilles' heel from the PAY–GO provision that would block the consideration of the central legislation.

We negotiate and conclude these agreements because they boost the economy of our country. We stand to gain from these agreements more than what we temporarily lose in tariff revenues. So I believe that the unique character of trade agreements justifies some sort of special treatment to resolve the PAY–GO problem. Fast track is a good way to pass trade agreements, but it is a very impractical way for deciding budget policy issues.

In conclusion, let me say that I strongly urge renewal of this authority because, without it, the trade policy bus is going to go on into the next century without the United States as a passenger and a participant.

Thank you.

[The prepared statement follows:]

**AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.**

**TESTIMONY OF MR. RICHARD R. RIVERS**

**BEFORE THE JOINT HEARING OF THE TRADE SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS AND THE RULES COMMITTEE UNITED STATES HOUSE OF REPRESENTATIVES**

**MAY 17, 1995**

Thank you very much for inviting me to appear today before your two committees. I am pleased to be here, in a personal capacity, to share my views on the renewal of fast track.

Let me begin by saying that I strongly support the renewal of the fast track provision. This is a necessary tool for the Executive Branch to conduct the trade policy of the United States. Today I intend to address two issues concerning the proper structure of fast track.

First, I am convinced that fast track should not be encumbered with the authority to negotiate on other issues, however important. In particular, side agreements concerning environmental issues and labor issues should not be part of fast track.

My reasoning for this is based on the original purpose of fast track authority. Fast track is an arrangement between the Legislative and the Executive Branch. Both branches recognize that well-crafted trade agreements are in the interest of the United States. But both branches also recognize that if Congress maintains the option to amend agreements piecemeal during the approval process, then countries negotiating with the United States will fear that any deals reached will later be reopened. But this is a very limited grant of authority to the Executive, and one that should not be abused. Fast track should only extend to provisions that are necessary and appropriate as part of trade agreements.

This limited but critical role for fast track will be more clear if I give you a little historical background. Beginning with the 1934 Trade Agreements Act, Congress delegated to the Executive, for reasons of practicality, the authority to negotiate tariff reduction agreements. In simple terms, Congress gave the President advance authority to reduce tariffs and the President used that authority to negotiate agreements. This arrangement was successful, and it led to a series of GATT tariff reductions during the post-war era.

However, by the 1970s the swamp of tariffs had been drained. As the waters receded, it became apparent that the true stumps and boulders creating hazards to international trade were the so-called non-tariff barriers. These include quotas, subsidies, standards, procurement practices, customs valuation rules and similar behavior that have the effect of limiting trade. Virtually all countries do this, at least to some extent, and by the 1970s it was clear that these non-tariff barriers had become the most significant impediments to trade liberalization.

The need to negotiate trade agreements addressing non-tariff barriers eventually led to the first grant of fast track authority, in the Trade Act of 1974. But this path was not a direct one, and therein lies a lesson. Originally, in 1973, the Nixon Administration proposed legislation that would have given the President the authority to negotiate on non-tariff barriers of whatever kind or character. Moreover, when the negotiations were completed, he would have simply notified Congress of the agreements and whatever changes in U.S. law were needed. Unless either the House or Senate adopted a resolution of disapproval, then the proposed changes would become the law of the land. It was, in effect, a proposal for negotiating authority limited only

by possible legislative vetoes, which today would be considered unconstitutional. This legislation was in fact passed by the House of the Representatives.

But the Senate took a different view. When the Finance Committee analyzed the bill, Senator Herman Talmadge of Georgia said that he had doubts about its constitutionality. In words I'll never forget, he told me, "We just don't do things that way". He offered an amendment during mark-up that later became the basis of fast track. In essence he was saying: "Mr. President, we agree with you that non-tariff barriers are serious problems that should be addressed through trade negotiations. We understand that you need the credibility at the negotiating table that will only come if we foreswear piecemeal amendments. But the Congress cannot and should not give up its role. We insist that you consult with us throughout the negotiating process, and we will of course maintain the authority to reject agreements in their entirety."

But this is a limited grant of authority -- it was given because Congress wanted trade agreements. Congress gave the President specific authority to obtain trade policy goals, and there was never any suggestion that matters of a broader scope would be included.

There is real danger for the United States in trying to solve all problems through trade negotiations. The wider you expand the scope of fast track, the more you can expect intrusion by our trading partners into U.S. policies. Moreover, we should not expect our trade negotiators substitute their expertise for that of other agencies in our government. The way to avoid these potential pitfalls is to keep fast track "clean," unencumbered by side agreements.

The second issue facing fast track is the need for new procedures because of the "pay as you go" rules of the 1990 budget agreement. When fast track was designed in 1974, we obviously had nothing like the current budget rules in mind.

While I vigorously support the need to reduce the budget deficit, it is frustrating that important trade agreements -- which are complicated enough in themselves -- have had their approval complicated further by the need to decide on funding changes for programs unrelated to trade policy. Moreover, legislators are now forced to take an up or down vote on legislation that covers not only complex trade agreements, but also complex decisions on federal budget priorities.

There is no easy or obvious solution to this problem. As my friend and law partner Robert Strauss would say, "This is a chasm that needs to be crossed in two steps." One possible solution would be to create a mechanism whereby the necessary budget cuts would be considered outside of fast track procedures. I am concerned, however, that this would slow down and complicate the approval of trade agreements even further.

A second solution would be to allow special "scoring" for the budget impact of trade agreements. After all, tariff cuts spur trade and therefore ultimately have the effect of increasing, rather than decreasing, federal revenues. However, I do not need to tell the members of the committee how controversial such "dynamic scoring" might become.

The best solution, and the one I urge you to follow, would be for Congress to exempt all fast track trade agreements from the budget rules, similar to the waiver passed for the Uruguay Round. Such a blanket waiver would eliminate the need to either satisfy or waive the budget rules for each individual trade agreement.

Trade agreements deserve such a blanket waiver. We negotiate and conclude these agreements because they boost our economy. We are the largest exporter in the world and home to the lion's share of the world's multinational corporations. We stand to gain the most from these agreements that lower trade barriers to American goods and services around the world, much more than is temporarily lost from cuts in tariffs. I recognize that this exception would be opposed by some, but I believe that the unique character of trade agreements justifies such an exception. Fast track is a good way to pass trade agreements, but it is an impractical means for deciding budget policy issues. A pay-go waiver would eliminate an unnecessary complication from both fast track trade agreements and the budget process.

Allow me to close by observing that we are discussing fast track because countries around the world are negotiating trade agreements of increasing scope with growing frequency. The United States cannot afford to sit by while the world changes so dramatically and at such a pace -- we need to be able to reduce tariffs and nontariff barriers around the globe. If the United States is forced to disengage from this process because the President and Congress cannot agree on fast track authority, our international economic future could be jeopardized.

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I will be happy to answer any questions that any members of the committees may have.

Mr. DREIER. Thank you very much, Mr. Rivers.

I would like to pose just one question.

Bill, you indicated that you didn't want to say a certain timeframe for fast track beyond having it extend to the next administration. I would like to ask about the constraint for the nonamendable implementing bill, 45 days, 45 legislative days, which conceivably could work out to be about 3 months. Do you think that should be modified at all?

Mr. FRENZEL. No. I don't say that it can't be modified, Mr. Chairman, but I think it has proved to work all right; and I am reluctant to make it any longer because the only thing that is more important than the adjective fast is the other adjective—single. It is a single track because it can only go up or down, and it is a fast track because Congress has to take it up at a time certain.

I wouldn't recommend extending it or contracting it, but it may be that you can do it a little bit without hurting it.

Mr. DREIER. Mr. Beilenson.

Mr. BEILENSON. Thanks, Mr. Chairman.

We do have a vote on. I don't have any questions of these gentlemen. I found their testimony to be very direct, to the point, and what you both said are things I agree with, so I we will leave it at that.

Surely good to see you, Mr. Frenzel.

Mr. FRENZEL. Thank you, Tony.

Mr. DREIER. Thank you, Mr. Beilenson.

We are going to recess. I suspect that if you all could stay for a few minutes, there are a number of Members who I think would like to pose a few questions to you, and I would hope that we could reconvene in 5 or 8 minutes. That is what Mr. Crane indicated, and we are going to try and work that out. Thank you.

The subcommittees stand in recess.

[Recess.]

Chairman CRANE [presiding]. Folks, I think if you will take your seats, we can get started. The others will be filtering in after this journal vote.

Let me start off by asking both of you the same question. That is, is it serious to believe that an international trade agreement could be negotiated if there were no fast track process in place where, ultimately, after the negotiations, we got a straight up or down vote in Congress? How far do you think we might be able to proceed in negotiations with Chile, for example, in the absence of fast track extension?

Mr. FRENZEL. Mr. Chairman, I believe we cannot negotiate without fast track. As the world got complicated, we needed the fast track. I believe that if we hadn't had it in 1974, we couldn't have ratified the Kennedy round, and I don't think we could have ratified any of the rounds since.

So I think it is absolutely essential in this very complicated world to have some vehicle like this by which the President negotiates and the Congress ratifies. Particularly now with the United States, still the largest economy in the world, the biggest trading country, but less and less dominant, people simply will not negotiate with us unless they know they have a fair shot to have it approved.

There is much reluctance to negotiate even with the fast track, because countries must negotiate, sign, commit their own countries, and then congressional approval is still needed. We are the only country that I know of that says you must jump that extra hurdle. If there was the potential for amendment in the Congress, I don't think we could get Outer Mongolia to negotiate with us.

Chairman CRANE. Mr. Rivers.

Mr. RIVERS. I agree. Under the Constitution, the President has the inherent constitutional authority to negotiate with foreign countries, but it is the Congress that regulates trade. The President can go out and negotiate but when it comes to where the rubber hits the road, so to speak, it is Congress that makes the decisions, and I can't imagine a foreign government that is going to enter into serious trade negotiations with the President if they feel like they are going to face Congress in another implementing negotiation immediately thereafter.

So I agree with Bill Frenzel.

Mr. FRENZEL. I think, Mr. Chairman, you mentioned Chile. My own judgment is that the House might be able to pass a Chile accession to NAFTA on a closed rule, but once you send that thing over to the Senate, you can kiss it goodbye. Heaven knows what it would pick up over there—probably the price of gold, how to regulate the militia, the anti-uzi prohibition. I certainly hope we won't do real negotiating with Chile under anything but a solid fast track authority.

Chairman CRANE. Other than Chile's accession to NAFTA, are there any other trade initiatives that you folks would encourage the administration to undertake?

Mr. RIVERS. Well, I think one element of this debate that ought to be addressed in this hearing is what is out there that we don't yet know about. With the world changing so dramatically, a year from now we may find that having this authority in the President's toolbox is very, very important to seize opportunities that may present themselves.

One example is, the whole process of Uruguay round regionalization—there is talk of some sort of new North Atlantic arrangement, post-NATO on the trade side. A lot of that is, at the present, somewhat ill defined; but it is advancing rapidly. A year from now there may very well be opportunities that we don't know about right now.

Mr. FRENZEL. Ambassador Kantor mentioned that he had some things he would like to begin working on in the WTO. These are more specific, not broad negotiations, but I believe they require fast track authority.

I also think that sooner or later we have to get APEC off of this 2020 or 2015 free trade goal, and we have to do something specific over there. When that time comes, the United States has got to be ready or the others will go without us.

I think also the elections in Argentina give me some confidence that there may be more qualifiers in South and Latin America for accession to NAFTA. I just don't believe in the kind of world we are in today that America can afford to be without negotiating authority. Because if we won't negotiate, others will.

Chairman CRANE. I understand that the Advisory Committee for Trade Policy Negotiations issued a report recently stating—or supporting, rather, trade negotiating authority but finding that the benefits for the U.S. business sector arising out of a Chilean accession are not sufficiently large to overcome the heavy costs of obtaining trade negotiating authority in the current environment.

In light of the strong language of that report, what kind of difficulties do you think we will have in getting fast track passed?

Mr. RIVERS. Well, I don't necessarily agree with what the advisory committee says. I think it may well be that the cost and benefits of a particular agreement with Chile may not balance out, but the principle of that type of negotiation in the Western Hemisphere is extremely important, I think.

Obviously, the current climate is not ideal, but the current climate is never ideal for these types of negotiations. There are always groups that don't want them to proceed, want to protect their own interest in a way that subordinates the broader national interest, but we have always had to contend with that. That is the nature of trade policy.

Mr. FRENZEL. I don't know what they refer to when they suggest the cost is too high. Presumably, that is a political cost that is paid to bring that treaty into being.

I agree with Dick Rivers with the thought that it is pretty hard to expand NAFTA until you take Chile in. The potential benefit beyond Chile is enormous. So if you have to do one that doesn't show a huge return, I don't mind doing that to set the precedent that NAFTA is an expandable treaty and it is one that we want our entire hemisphere in for the future.

I don't want to outguess people who are doing international business, but I would really be surprised to see any kind of a relatively free trade treaty that didn't deliver pastime benefits at both ends.

Chairman CRANE. Do you have any general comments to make while we are still waiting for our colleagues to get back here?

Let me throw one thing out for you. That is, I have had a bill in, Bill, for some time, promoting free trade agreements with Pacific rim countries. I have met with a number of the ambassadors, and there are some very eager to begin those kinds of negotiations with us. Some are more advanced in terms of the possibility than others, but what is your view on the potential?

We are planning to take a trade subcommittee trip over there and ending that in Osaka on November 19, which is the APEC conference they are hosting, but we will start in Australia and then work our way up from there. What do you think of the possibilities, No. 1, and, No. 2, the advisability?

Mr. FRENZEL. Well, in the first place, I think the fact that there will be congressional observers at the APEC Osaka meeting is extraordinarily important. I think that APEC has got a pretty good launching. It has got a long way to go, and the fact that you are going to bring some of our colleagues over there is an important recognition of what we expect long term from APEC.

I have known about your bills. I think I have been one of your few cosponsors on some of those efforts. It is always worthy to press wherever we can with whoever will negotiate with us for free trade treatment or a free trade zone, whatever it may be.

Certainly, if we were to negotiate a free trade agreement with Hong Kong or Singapore, it would only be us that are lowering the barriers, because they don't have very many. But I think those kinds of agreements, if entered into, like Australia and New Zealand, like the EU and some of the Mediterranean countries, like the United States and Israel, like NAFTA, are always items that put pressure on the WTO to keep going forward, too. So I think they serve a double purpose, and I endorse them.

Chairman CRANE. Do you have any thoughts, Mr. Rivers?

Mr. RIVERS. No. I agree entirely with what Bill said about APEC and the importance of incorporating those developments into U.S. trade policy and into the post-Uruguay round world.

I have one general comment I would like to make on fast track that I think bears underscoring, and that is when Congress originally enacted this in 1974, the emphasis—and I think it was correct at that time and I think it is correct today—the emphasis was heavy on consultation, consultation between the executive branch and the Congress, the Members of Congress, and the relevant committees and, also—and I would like to underscore this—consultation with the private sector.

The entire structure of advisory committees was set up in 1974 as part of the Trade Act of 1974, and you can't conduct trade policy without almost daily consultation with those private sector advisors, the people that know their industries and know their interest in the world, and also with the committees of Congress.

So the fast track won't work without that intense degree of consultation.

Chairman CRANE. Well, gentlemen, I thank you profoundly for your willingness to come testify today. With no further questions from me and unless you have any final, concluding comments to make, we will adjourn this portion of our hearing, and I will call upon the next witnesses. Thank you again for being here.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. RIVERS. Thank you.

Chairman CRANE. Next is Clifford Sobel, Bruce Cowen, David Starobin, Arthur Gundersheim, Robert Neimeth, and Mary Minette. If you folks will get situated.

If you are comfortable, we will start with Mr. Sobel.

## STATEMENT OF CLIFFORD M. SOBEL, CHIEF EXECUTIVE OFFICER, BON-ART INTERNATIONAL, AND CHAIRMAN, ALEXIS DE TOCQUEVILLE INSTITUTION, ARLINGTON, VA.

Mr. SOBEL. Good afternoon, Mr. Chairman and members of both subcommittees. Thank you for inviting me here today to offer our views on fast track.

I come here in my capacity as chairman of the board of Alexis de Tocqueville, but I am also the chairman and CEO of two firms importing and exporting displays for retail stores. These companies employ over 450 people domestically, and I believe that the spread of free trade in the Western Hemisphere and throughout the world will allow me to employ even more people in New Jersey, California, and other States.

I will speak today about three major areas that pertain to fast track. First, why fast track is necessary for America; second, how

granting the President fast track has served the Nation well in the past; and, third, what are some of the ways that Congress can improve fast track.

First, the most important reason why fast track is necessary is that it gives the President of the United States the credibility to negotiate with foreign countries in good faith. Without fast track, it would be far more difficult for the President to conclude additional trade agreements, whether with Chile or other nations.

In my experience as a businessman, the people sitting across the table from you must have confidence that the concessions they make will not be continually anted up. Given the constitutional prerogatives of Congress, a foreign nation would have every reason to fear that a trade agreement with the United States would be reopened, picked apart, and returned in a different form without fast track.

A second key point is that fast track authority has served the Nation well in the past. The Tokyo round, Uruguay round, United States-Canada trade agreement, and NAFTA have all come to fruition under the grant of fast track authority. GATT, as just concluded in the Uruguay round, is expected to generate 1.4 million jobs in the United States by its 10th year of implementation. GATT negotiators spun such an intricate web involving so many nations and issues that if the U.S. Congress were to be removed or added one or more parts, it would have jeopardized the entire agreement.

The third and probably most important area I would like to discuss is how fast track authority can be improved. The best reform would be for Congress to consider removing trade agreements from the pay-as-you-go strictures of the Budget Enforcement Act of 1990. Pay as you go should be waived pursuant to fast track, since nearly every economist since Adam Smith in the Wealth of Nations has discussed how reducing tariffs actually increases government revenues by raising the volume of trade and by boosting economic growth. I believe Congressman Zimmer this morning addressed that very ably.

However, under a static scoring system and the nineties Budget Act, tariff cuts must be paid for by raising taxes someplace else.

To give you an idea of the absurd situations that can predictably take place under the current law, look at what occurred during GATT. Even though everyone knew GATT would increase revenues overall—and detailed analyses showed that this would be the case—Congress and the administration were forced to scramble to come up with revenue replacements.

The result? To take one example, Congress froze the maximum annual contributions employees could make to their 401(k) plans in 1995 and then limited the increase in the maximum contribution for future years to below the rate of inflation.

When every economic and political leader is decrying the poor rate of savings in America, it seems counterproductive to balance a positive development such as a free trade pact with something not only negative but totally unrelated, such as placing limits on how much people can save for their retirement in a given year.

Another area ripe for reform is negotiating objectives. I do not believe that Congress should burden fast track authority with such objectives as raising the labor and environmental standards of our

negotiating partners. In the long run, increased trade, by increasing a country's wealth, will do more to help the Nation's workers and environment than anything we can attempt to dictate through negotiations.

In this country, U.S. labor and environmental laws are currently quite controversial. Imagine how much more controversial they would be if they were dictated by a foreign power.

What some in this country see as an America using its moral authority, others see as it as preaching protectionism or worse. When American negotiators at GATT attempted to multilateralize the U.S. approach to workers' rights, developing countries in particular were vocally negative.

As author Patrick Low noted in "Trading Free," a book on GATT, some of the more emotive interventions from developing countries questioned the sincerity of U.S. concerns about the welfare of foreign workers. Others raised racial considerations. The underlying assumption was that a workers' rights agenda would be used to reduce wage differentials through government intervention, thereby undermining a vital developing country source of comparative advantage.

In conclusion, I would urge the subcommittees to approve an extension of fast track negotiating authority, and I hope you will consider the reforms on fast track that I discussed here today. Thank you.

[The prepared statement follows:]

**U.S. House of Representatives**

**Committees on Ways & Means and Rules**

**Joint Hearings**

**on**

**Fast Track Negotiating Authority**

**May 17, 1995**

**Testimony**

**by**

**Clifford M. Sobel**

**Chairman of the Board**

**Alexis de Tocqueville Institution**

**Arlington, Virginia**

Mr. Chairmen and Members of both Committees, thank you for inviting me to appear here today to offer my views on fast track. I come here in my capacity as Chairman of the Board of the Alexis de Tocqueville Institution, but I am also the CEO of two firms active in importing and exporting displays for retail stores. These companies employ over 450 people and I believe that the spread of free trade in the Western hemisphere and throughout the world will allow me to employ even more men and women in New Jersey, California, and in other states.

I will speak today about three major areas that pertain to fast track. First, why fast track is necessary for America. Second, how granting the President fast track has served the nation well in the past. And third, what are some of the ways that Congress can improve fast track.

First, the most important reason why fast track is necessary is that it gives the President of the United States the credibility to negotiate with foreign countries in good faith. Without fast track, it would be far more difficult for the President to conclude additional trade agreements, whether with Chile or other nations. In my experience as a businessman the people sitting across the table from you must have confidence that the concessions they make will be not continually anted up. Given the Constitutional prerogatives of Congress, a foreign nation would have every reason to fear that a trade agreement with the U.S. would be re-opened, picked apart, and returned in a different form without fast track.

A second key point is that fast track authority has served the nation well in the past. The Tokyo Round, the Uruguay Round, the U.S.-Canada trade agreement, and NAFTA all came to fruition under the grant of fast track authority. GATT, as just concluded in the Uruguay Round, is expected to generate 1.4 million jobs in the United States by its 10th year of implementation. GATT negotiators spun such an intricate web involving so many nations and issues that if the U.S. Congress were to have removed or added one or more parts, it would have jeopardized the entire agreement.

The third and most important area I would like to discuss is how fast track authority can be improved. The best reform would be for Congress to consider removing trade agreements from the "pay as you go" strictures of the Budget Enforcement Act of 1990. "Pay as you go" should be waived pursuant to fast track, since nearly every economist since Adam Smith in the Wealth of Nations has discussed how reducing tariffs actually increases government revenues by raising the volume of trade and by boosting economic growth.

However, under a static scoring system and 1990's budget act tariff cuts must be "paid for" by raising taxes someplace else. To give you an idea of the absurd situations that can predictably take place under the current law look at what occurred during GATT. Even though everyone knew GATT would increase revenues overall, and detailed analyses showed this would be the case, Congress and the Administration were forced to scramble to come up with revenue replacements. The result? To take one example, Congress froze the maximum annual contributions employees could make to their 401(k) plans in 1995 and then limited the increase in the maximum contribution for future years to below the rate of inflation. When every economic and political leader is decrying the poor rate of savings in America, it seems counterproductive to balance a positive development, such as free trade pact, with something not only negative but totally unrelated, such as placing limits on how much people can save for their retirement in a given year.

Another area ripe for reform is negotiating objectives. I do not believe that Congress should burden fast track authority with such objectives as raising the labor and environmental standards of our negotiating partners. In the long run, increased trade, by increasing a country's wealth, will do more to help a nation's workers and environment than anything we can attempt to dictate through negotiations. As we know in this country, U.S. labor and environmental laws are currently quite controversial: imagine how much more controversial they would be if they had been dictated by a foreign power?

What some in this country see as America using its moral authority, others see as

preaching protectionism, or worse. When American negotiators at GATT attempted to multilateralize the U.S. approach to workers' rights, developing countries in particular were vocally negative. As author Patrick Low noted in *Trading Free*, a book on GATT, "Some of the more emotive interventions [from developing countries] questioned the sincerity of U.S. concerns about the welfare of foreign workers. Others raised racial considerations. The underlying assumption was that a workers' rights agenda would be used to reduce wage differentials through government intervention, thereby undermining a vital developing-country source of comparative advantage."

In conclusion, I would urge the committee to approve an extension of fast track negotiating authority. And I hope you will consider the reforms on fast track that I discussed here today. Thank you.

Chairman CRANE. Thank you, Mr. Sobel.

Something I want to remind all of you is that while we have a guideline of trying to confine presentations, confine them to 5 minutes, that if you have any longer statements or materials you want, it will all be inserted in the record.

Mr. Gundersheim.

**STATEMENT OF JACK SHEINKMAN, PRESIDENT, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AS PRESENTED BY ARTHUR GUNDERSHEIM, ASSISTANT TO THE PRESIDENT, DIRECTOR OF INTERNATIONAL AFFAIRS, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION**

Mr. GUNDERSHEIM. Thank you, Mr. Chairman. I trust my statement will be entered into the record.

The issues we want to raise today in terms of fast track are—it is almost not the question. The question of trade is, How is it done? The question is, How does it really benefit people? How does it enhance living standards and how does it truly promote world increases in wealth?

The issue of trade, in and of itself, is not by definition, automatically great and wonderful for every participant. I obviously picked in my written testimony the extreme example of China at the turn of the century—trade benefits there, one could say, were not overwhelmingly beneficial for them.

The issue is, What are the standards by which we are going to enter into trade negotiations? What are the objectives and what are the ultimate goals that the United States is trying to seek in entering into agreements?

In that sense, this debate over fast track or no fast track is almost not quite the issue. It is irrelevant in a way. Because if there were no fast track, you would debate the merits of a trade agreement at the end of the agreement. But, in effect, you debate the merits of a trade agreement while it is being negotiated.

The same demands that Congress would make in terms of the contents of an agreement and certain parameters of the negotiations and the certain objectives that a particular Congressman would like to see, or Senator, those are entered into in the process of negotiation; and they frequently hold up the negotiations just as they would if there were a vote at the end of the process.

Carla Hills would have signed the Uruguay agreement in 1991 if it weren't for the fact that certain Members of Congress objected to what was sitting on the table at that point in time. We didn't have the agreement in 1991.

So I don't understand why the issue is as vital as some people seem to make it.

The real issue is, What is it that we want to see? If some people in the rest of the world don't like our democratic process and they don't like a representative government, that is their problem. I don't think the exigencies of trade should override our democratic principles. That goes to the issue of whether labor rights and the treatment of human beings is an essential part of trade agreements.

I always thought under Economics 101 there were three factors in production: land, which are basically resources, labor, and cap-

ital. Somehow we seem to feel that labor is not a contingent part of this whole equation and we just ought to write it out.

The whole purpose of trade is to see how the benefits of the enhanced wealth created adhere to the people who produce it. Unless there is some opportunity and necessity in the goals of the negotiations to make sure that that happens, we don't see any purpose in trade negotiations.

The only way we see that can be accomplished currently in the world is by an absolute commitment to the simple rights of people to associate, the opportunity to pursue their goals collectively, and to share, within their own particular systems, ways in which the benefits of trade could be ensured to them.

We traditionally in our own country said child labor—and child labor very carefully defined, Mr. Chairman, because I recognized your question to Ambassador Kantor—that there are limitations in terms of the ways and ages at which people should work, in what industries they should work, and how many hours they should work. There are limitations under the physical conditions that people ought to work, that there are health and safety laws, there are all kinds of other limitations that we place so the benefits of the economic environment adhere to everybody.

Now all we are simply saying is that this has to be an essential part of any future trade negotiations. Without that, I think you will find the labor movement in very strong opposition.

I want to make a couple other points. One is that there has to be, in addition, a means by which to deal with the problem that several nations never enforce their own laws or their own practices.

NAFTA presented a very interesting, innovative idea in the sense that people in the private sector, the nongovernmental organizations, can petition to try and get nations who are participants in the agreement to enforce their own laws. They can rectify their failure to enforce particular situations that, as a consequence of which, create an artificial competitive advantage, and I think that ought to be considered seriously in any future trade negotiation objectives.

One other thing you have to deal with is unanticipated consequences. Obviously, since NAFTA was negotiated, and even the Canadian free trade agreement, there have been dramatic changes in the currency markets. Therefore, many of the balances achieved in that agreement no longer are in effect. In fact, we would perceive that as being a vastly unequal treaty at this moment.

There has to be a mechanism created—and I know there are reopener clauses—but a specific mechanism created so that the terms of trade that were agreed to at the time of negotiations can be dramatically and quickly addressed if the circumstances change such as to change the balance that was achieved initially.

Finally, I want to say that if fast track were to be limited to Chile only, I would hope that there would be no restrictions in terms of what could be negotiated on the labor and environmental front. We have had very strong indications from the Chilean Government, from the Chilean labor movement, that they are willing to enter into a labor rights agreement with the United States of a much stronger nature and a much firmer nature than currently exists in NAFTA. We would hope that the two countries have the ability to enter into such an agreement without constraints being placed on it by Congress.

Thank you very much.

[The prepared statement follows:]

TESTIMONY OF

THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO
JACK SHEINKMAN, PRESIDENT

PRESENTED BY ARTHUR GUNDERSHEIM, ASSISTANT TO THE PRESIDENT
DIRECTOR OF INTERNATIONAL AFFAIRS

HEARING ON EXTENSION OF FAST TRACK AUTHORITY
FOR FUTURE TRADE AGREEMENTS

TO CHAIRMEN CRANE AND DRIER AND MEMBERS OF THE
WAYS AND MEANS SUBCOMMITTEE ON TRADE AND
RULES SUBCOMMITTEE ON RULES AND ORGANIZATION

MAY 17, 1995

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Chairmen Crane and Drier and Members of the Subcommittee:

Our union of some 230,000 members has always been an advocate of development, and not a spokesman for "protectionism." We fully understand that trade can act as a major means to improve living standards and raise wealth for all participants.

But we also know that trade likewise can be a disaster, a means for enhanced exploitation of people, destruction of nations and often historically responsible for many a war. The issue is not more or less trade, but how it is done. Just ask the Chinese of a century ago whether being forced to open their markets to global trade was such a great thing; for them it meant humiliating treatment of their workers, destruction of their nationhood and millions of opium addicts.

To those who forget this history now argue that labor and human rights have nothing to do with trade. These advocates also forgot their first lesson in economics -- that the basic inputs of production are land, labor and capital. To negotiate international rules regarding only two out of these three is preposterous.

Others testifying at this hearing will set forth the long bipartisan history of including treatment of workers as one of our major objectives in trade policy. After all, when our own nation found that totally free markets led to huge swings between boom and bust cycles, to the most frightful working conditions, to massive financial frauds, to robber barons and mass poverty, Congress said enough. We have other society wide values co-equal to, or more important than, economic productivity and pure commercial concerns. Thus we established a tax system meant to spread the wealth from economic activity to all members of society while it still rewarded initiative, effort, and risk. We established Fair Labor Standards and a minimum wage, outlawed use of child labor and set reasonable levels of health and safety conditions. We mandated transparent filings in capital markets and requirements of honest accounting for public corporations. Numerous ways were set to prevent monopoly or other abuses of market power. We set rules of interstate commerce to prevent a destructive competition of one state against another which resulted in a race to the bottom, rather than a raising common denominator.

So the lesson is clear. Without an absolute commitment to worker rights and standards, to simple human rights of association and opportunity to pursue goals collectively, giving "fast track" negotiating authority to the President is unacceptable to our members. If future Congressional action on trade agreements is to be circumscribed and limited, then Congress has the obligation to mandate components of such an agreement (or agreements). For us, the human factor of economic activity is of higher priority than all other terms of trade.

However, stating labor rights as a necessary condition of future trade agreements is not the complete requirement. There has to be an effective enforcement mechanism, particularly since many of these matters are dependent upon national governmental action, not international action.

The side agreements of NAFTA contain a very innovative feature that should be expanded and made part of all future agreements. The side agreements allow private sector people or organizations to petition against the failure of our trading partner to enforce their own laws within its boundaries and seek redress from this "artificial" government created competitive advantage. Just as we are demanding that the Japanese government answer to and rectify its failure to foster domestic competitive practices in the current auto industry negotiations, so should all national practices designed to gain unreasonable advantage be open to formal challenge.

New trade agreements also must contain specific reopener requirements if the underlying conditions or unanticipated events significantly change the balance agreed upon at the time of signing or ratification. The currency crisis in Mexico and the 30% devaluation of the Canadian dollar have greatly undermined the balance of concessions negotiated in the Canadian and NAFTA agreements. U.S. workers and companies are now faced with competitive pressures never expected. In effect, we now face a very inequitable NAFTA agreement - one that never would have passed Congress under current conditions. Creating high incentives for American companies to locate or expand their production in our competitor's countries merely to use them as export platforms is not what trade is about.

In fact the explosion of Foreign Trade Zones (FTZ's) throughout the world undercut the very purposes of expanding trade. FTZ's sole function are to create exemptions from a country's domestic laws, policies and practices so as to induce foreign investment or processing. The products produced are not allowed to enter the domestic market. The usual pressures of economic forces to raise wages, retain wealth and pay for infrastructure are absent, thus hindering local development, not assisting it. In fact FTZ's should be made an illegal means of international competition.

One final point. There has been some discussion of restricting Fast Track authority to negotiations only with Chile as a first step in expanding NAFTA. There is a chance in these negotiations that the two governments may agree to expand or enhance labor rights and environmental agreements from what NAFTA currently contains. In short, what is known in the slang of trade as a "consenting adults" clause.

We would be strongly opposed if Congress mandated restrictions on what the two countries could negotiate on these issues.

In a world increasingly moving toward an global market place the conditions under which products and services are produced are as important as the traded items themselves. If the benefits of increasing trade are to contribute to economic development, there has to be a guaranteed way by which workers and the general citizenry can share in an increased standard of living. Assurances of the right to form unions, to bargain freely in a democratic environment and to set minimum standards of work are the only way this will happen.

Chairman CRANE. Thank you.
Dr. Starobin.

**STATEMENT OF JAY MAZUR, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AS PRESENTED BY HERMAN STAROBIN, PH.D., RESEARCH DIRECTOR, INTERNATIONAL LADIES' GARMENT WORKERS' UNION**

Mr. STAROBIN. Thank you for this opportunity to testify on fast track issues.

We oppose the use of fast track because Congress ends up delegating too much of its authority to the executive branch. That authority is clearly cited in article 1, section 8 of the Constitution. However, if Congress in its wisdom decides to grant such authority, it should include in it provisions on worker rights and labor standards.

Such provisions are not new to U.S. trade law. Let me mention just a few examples.

The Trade Act of 1974 listed among our Nation's objectives in the Tokyo round negotiations of the General Agreement on Tariffs and Trade "adoption of international fair labor standards."

The Omnibus Trade and Competitiveness Act of 1988 includes among our Nation's major objectives in the GATT Uruguay round promoting respect for worker rights, ensuring that the benefits of the trading system are available to all workers, and adoption by GATT of the principle that denial of worker rights should not be a means by which a country or its industries gain competitive advantage in international trade.

CBI, Caribbean Basin Initiative, legislation states that, in designating a beneficiary country, the President must take into account the degree to which its workers enjoy reasonable workplace conditions and collective bargaining rights. CBI, you will recall, was proposed by President Reagan in 1982 and went into effect on January 1, 1984.

When the GSP was established during the Nixon and Ford presidencies, renewed by Congress in the Trade Act of 1984, and signed into law again by President Reagan, it included specific provisions on worker rights. The President was prohibited from designating any country for GSP benefits which had not or was not taking steps to afford internationally recognized worker rights.

Section 503 of the act defined these rights as:

> the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children and acceptable conditions of work with respect to minimum wage, hours of work, and occupational safety and health.

The argument that labor and environmental standards have no relation to trade and therefore are not germane in negotiating trade agreements is seriously flawed. If this were the case, it could also be argued that intellectual property and financial services, among other factors, have no place in a trade agreement.

The notion of comparative advantage cannot ignore the comparative advantage that some countries exercise through lax labor laws, poverty level wages, and frightful environmental standards.

The collapse of the Mexican economy, as an examination of trade data shows, raises serious doubts as to whether new markets have

truly been created as a result of trade policy. They raise the question as to whether, in the words of the advisory on this hearing, "the benefits to the economy achieved are dramatic and proven."

We are told that every $1 billion in exports creates 20,000 jobs. Ambassador Kantor changed that to 17,000 in his testimony today, but the 20,000 figure is the one that has been generally used. That figure was developed by the Commerce Department for the Bush administration NAFTA negotiators.

Our chief NAFTA negotiator at the time, Julius Katz, told the Wall Street Journal on January 4, 1995, that, "The job numbers are totally phony numbers. My great regret is we got trapped into that argument."

We also continue to be subjected to the misclassification of apparel export data to bolster the case for trade policy. Exports of apparel parts for assembly and return as finished in products to the United States under item 9802 of the Harmonized Tariff Code, for example, are commingled with exports of finished in product.

Last year, our government negotiated an agreement with India that provided for reciprocal market opening for apparel and textile products. Given its low living standards, however, it is doubtful that India provides any appreciable market for U.S. imports.

Moreover, in its WTO accession statement, India reserved the right to invoke article 18(b) of the GATT which was carried over into the WTO. This article allows a developing country to invoke balance of payments criteria and institute new quotas and tariffs.

We have questioned the reported successes of trade policy in our testimony. It seems clear that for reciprocal market opening to work, especially with the developing world, the United States must follow a policy that would help to create an effective market in these countries.

This brings me back to the conclusion that worker rights, labor standards, and attention to environmental concerns are as important in trade policy as any other factor. Markets can be effectively opened if our trade policies incorporate these standards, making it clear to the minute elite in the developing world and U.S.-based multinationals that this is the only way we can benefit the people of our own country and assist those in a developing world.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Before the
Subcommittee on Trade, Ways and Means Committee
and the
Subcommittee on Rules and Organization, Committee on Rules
U. S. House of Representatives
May 17, 1995

ON THE EXTENSION OF "FAST TRACK" PROCEDURES

**STATEMENT OF JAY MAZUR, PRESIDENT**
**INTERNATIONAL LADIES' GARMENT WORKERS' UNION**
**AS PRESENTED BY HERMAN STAROBIN, PH.D., RESEARCH DIRECTOR**
**INTERNATIONAL LADIES' GARMENT WORKERS' UNION**

Thank you, Chairman Crane and Chairman Dreier, for this opportunity to appear today before your committees to testify on fast track issues. My comments are made on behalf of the International Ladies' Garment Workers' Union and our 155,000 members who produce women's and children's apparel and related products in more than two-thirds of our nation's fifty states.

We are on record in opposition to the use of fast track authority to promote the North American Free Trade Agreement and the Uruguay Round of the General Agreement on Tariffs and Trade for reasons which I will elaborate on below. Our primary reason for opposing fast track and its use from time to time is that, despite arguments to the contrary, Congress ends up delegating too much of its constitutional authority. This limits the ability of Congress to shape trade policy.

Granting fast track authority to negotiate an accession agreement to the NAFTA with the government of Chile appears to be the immediate issue before the Congress. However, if the Congress decides to grant such authority, we believe it essential to include in any further grant of fast track authority provisions on worker rights and labor standards.

In the "Advisory" for this hearing, Chairman Crane says that "fast track authority should be limited to trade legislation, and it is not appropriate to use fast track authorization for legislation involving issues not directly related to trade or not necessary to implement the trade agreement." Chairman Dreier states that, "there are increasing concerns that provisions not closely related to trade agreements are being attached to implementing legislation in order to receive expedited consideration."

The statements by both Chairmen do not specifically mention provisions on worker rights and labor standards or environmental considerations. However, it seems clear that some in the Congress, among them the chairmen of the two subcommittees, do not see these matters as "closely related" or "directly related" to trade or that they may be a major issue. These issues, it will be recalled, played an important role in discussions and debate on both the NAFTA and GATT enabling legislation.

Because of opposition to linking trade and worker rights and the environment, weak side agreements on both issues were negotiated in the case of NAFTA in order to insure passage of the agreement by the Congress. For the same reason, labor rights and environmental provisions were completely eliminated from the legislation to implement the Uruguay Round. In the latter action, it is worth pointing out that some other matters not "closely" or "directly" related to trade were included.

Worker rights and labor standards are not new to U. S. trade law. The Trade Act of 1974 listed among our nation's objectives in the Tokyo Round negotiations of the General Agreement on Tariffs and Trade "adoption of international fair labor standards". (Section 121 (a) (4). The Omnibus Trade and Competitiveness Act of 1988 includes among our nation's major objectives in the GATT Uruguay Round promoting respect for worker rights, ensuring that the benefits of the trading system are available to all workers and adoption by GATT of the principle that denial of worker rights should not be a means by which a country or its industries gain competitive advantage in international trade.

The Caribbean Basin Economic Recovery Act, generally known as the CBI, states that, in designating a beneficiary country, the President must take into account, among other factors, the degree to which its workers enjoy reasonable workplace conditions and collective bargaining rights. CBI was proposed by President Reagan in 1982, passed by the Congress in 1983 and went into effect on January 1, 1984.

When the General System of Preferences was established during the Nixon and Ford presidencies and renewed by Congress in the Trade Act of 1984 and signed into law by President Reagan, it included specific provisions on worker rights. The President was prohibited from designating any country for GSP benefits which had not or was not taking steps to afford internationally recognized worker rights to its workers. These rights are specifically defined under the 1984 Trade Act, Section 503, as

"(A) the right to association;
"(B) the right to organize and bargain collectively;
"(C) a prohibition on the use of any form of forced or compulsory labor;
"(D) a minimum age for the employment of children;
"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

The "Advisory" also lays out the circumstances under which fast track was used to negotiate NAFTA and the Uruguay Round agreement. It makes the point that, "[t]he purpose of the fast track approval process was to preserve the constitutional role and fulfill the legislative responsibility of Congress with respect to trade agreements. At the same time, the process was designed to ensure certain and expeditious action on the results of the negotiations and on the implementing bill with no amendments."

Article I, Section 8 of the Constitution explicitly states that, "The Congress shall have Power ... To regulate Commerce with foreign Nations...." The granting of fast track authority to the Executive Branch means that the Congress accepts trade agreements negotiated by the Executive Branch without the right to amend such agreements. It transfers from the Congress to the Executive Branch the making of trade policy.

Congress should maintain its constitutional power to "regulate Commerce with foreign Nations". It should insure the most open debate on any agreement without limitations and exercise its right to amend trade agreements. It should restore the power given to it by the Constitution.

The "Advisory" notes that the Administration is to negotiate with Chile on possible accession to NAFTA. Chairman Crane says that "[b]ecause the benefits to the economy achieved by opening new markets to U. S. exports and reducing foreign trade barriers to U. S. goods and services through trade agreements are dramatic and proven, we must give the Administration the expedited authority it needs to negotiate and conclude these agreements."

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To the best of our knowledge, of the hundreds of agreements negotiated over the years by successive U. S. administrations, the only ones which used fast track procedures were NAFTA and GATT. No one has ever satisfactorily explained why trade agreements now require fast track authority. What has changed? Why has it suddenly become necessary for Congress to delegate even more of its authority to negotiate trade agreements to the Executive Branch?

Since the enactment of the Reciprocal Trade Agreements Act of 1934 by the Congress, it has periodically delegated its constitutional authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal agreements, subject to specific conditions and limitations. Sections 1102(b) and 1102(c) of the Omnibus Trade and Competitiveness Act of 1988 authorize the President to negotiate agreements with foreign countries, subject to congressional consultation, and "fast track" requirements for approval of bilateral and multilateral agreements.

In its wisdom, and perhaps in recognition of its constitutional obligations, Congress has tied fast track procedures to specific dates in line with anticipated trade negotiations. Fast track is not a blanket authority; it exists within given time frames and can either be renewed or not renewed by the Congress.

As we will show below, the trade agreements negotiated by successive administrations under fast track have been far less successful in creating private sector jobs in the U. S. Nor have they created good jobs for the people of our trading partners. Nor have they provided the other benefits claimed for them. It is difficult, indeed, to find any reason to view them as beneficial to our nation's economy and its workforce.

In prior testimony on NAFTA and the Uruguay Round before the Trade Subcommittee of the Ways and Means Committee and the Senate Finance Committee, we have expressed serious doubts as to what, in fact, has been, or could be, achieved in such agreements. Before summarizing those conclusions and the contemporary situation resulting from the recent agreements, I would like to make a few additional comments.

It is difficult to understand why there is such a rush to judgment on what an agreement that may lead to Chile's accession to NAFTA will accomplish well before negotiations have even started. It would make more sense to hold off granting of fast track authority to any Administration until it becomes clearer exactly what such an agreement might entail. So far, to the best of our knowledge, only very preliminary discussions have been held with Chile. Congress should ask for progress reports on a step-by-step basis before indicating readiness to grant fast track authority.

We see the argument that labor and environmental standards have no relation to trade and, therefore, are not germane in negotiating a trade agreement as seriously flawed. If this were the case, it could also be argued that intellectual property rights, for example, also have no place in a trade agreement.

This argument goes to the very issue of what is trade and how trade between and among nations is implemented. The very notion of comparative advantage cannot ignore the comparative advantage that some countries exercise through lax labor laws, poverty-level wages and the ignoring of environmental standards which U. S. companies are required to enforce.

Nor does trade mean, as we shall show, the export of parts to low-wage countries with poor or unenforced environmental standards and assembled there with low-cost labor and then returned to the U. S. This kind of "trade" is one in which U. S. companies trade with themselves and not with the so-called beneficiary countries.

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The collapse of the Mexican economy at the end of last year and examination of trade data raise serious doubts as to whether new markets have truly been created as a result of trade policy. They raise the question as to whether "the benefits to the economy achieved ... are dramatic and proven."

Clearly, there are those who have benefitted from trade policy, but they do not include the average American. We have been subjected to the use of patently incorrect data in justification of trade policy. I would like to list some of them briefly.

We are told that every billion dollars in exports creates 20,000 jobs. That figure was developed by the Commerce Department for Bush Administration NAFTA negotiators. Our chief NAFTA negotiator at the time, Jules Katz, told The Wall Street Journal on January 4, 1995 that, "The job numbers are totally phony numbers.... My great regret is we got trapped into that argument."

The 20,000 figure has subsequently been revised downward and I understand that a new figure

should appear shortly. Even assuming that any of these figures has some modicum of accuracy, it seems obvious that every billion dollars in imports results in the loss of 20,000 jobs or whatever the figure will be. This factor is completely ignored by supporters of trade policy, despite the massive merchandise trade imbalance, which is not offset by a smaller surplus in trade in services.

What may have been meant was that each billion dollars of the surplus of exports over imports created 20,000 jobs. But that, of course, is not done because, given our unfavorable trade balance, more job losses would have to be reported than jobs created.

We have also been subjected for many years to the misclassification of apparel export data, despite our efforts to have these data corrected. Exports of apparel parts for assembly and return as finished products to the U. S. under Item 9802 of the Harmonized Tariff Code are commingled with exports of finished product.

Given the tremendous increase in outward processing, especially in Mexico and the Caribbean Basin Initiative countries, export data are grossly distorted. The General Accounting Office in its two-year old study, U.S.-Mexico Trade, states that Mexican trade data differed from U. S. data because Mexico excluded from its import figures shipments to maquiladora operations because the product assembled there did not enter Mexico's market. U. S. data, it said, do not distinguish between parts sent to Mexico (or any other countries, including the CBI) for assembly and return to the U.S. and finished product.

The GAO recommended that U. S. export data be revised. This has not been done by the appropriate government agencies. False data are used to justify such trade agreements as NAFTA, the Uruguay Round and CBI parity and in support of extension of fast track.

Using Bureau of the Census data and the methodology suggested by the GAO, we have found that new markets are not being created as a result of trade policy. Once again, to take the case of apparel, reported exports in 1993, net of reexports of foreign apparel, totalled $4.8 billion. However, $3.1 billion or 65.2 percent were exports of parts for assembly and return to the U. S. Yet the $4.8 billion figure was used to show how rapidly apparel exports are growing and that reciprocal market opening, negotiated in recent trade agreements, works.

Further analysis underlines the conclusion that we are not opening new markets to the extent supporters of current trade policy assert. Of the remaining $1.7 billion in reported apparel exports in the 1993 data, 95.4 percent went to Canada, Japan and the European Union. This left a total of $77 million in real apparel exports to the rest of the world -- including Mexico and the CBI.

In a similar study we did last year, we found that the U. S. reportedly imported $4.2 billion worth of apparel from the CBI in the year ending September 1994. Of this total, $3.4 billion or 80 percent, were imports of apparel assembled under the Item 9802 program and the special CBI program.

With respect to the alleged opening of new markets, the case of India is worthy of attention. USTR hailed an agreement reached with the government of India on, among other things, reciprocal market opening for apparel and textile products. The agreement was concluded on December 31, 1994, the last day for India to accede to the new World Trade Organization as a founding member.

Given its low living standards, it is doubtful that India provides an appreciable market for U. S. imports. Of equal interest is that fact that in its accession statement to the WTO Director General India reserved the right to invoke Article 18()B of the GATT, which has been carried over into the WTO. Article 18(B) allows a "developing" country to invoke balance of payments criteria to institute new quotas and tariffs.

Of perhaps even greater concern is the fact that the Indian parliament has turned down the Uruguay Round agreement on protection of intellectual property. The provision has been viewed

as crucial to U. S. trade negotiators elsewhere. Furthermore, since the WTO is a unitary agreement and members cannot pick and choose which articles they will abide by, it remains to be seen whether India can still be considered a WTO member. The Trade and Rules subcommittees should look into this matter.

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We have suggested in this testimony that the reported successes of recent trade policy are highly questionable. For reciprocal market opening to be successful, especially as it concerns the developing world, it is essential that the U. S. endorse a policy that would make possible an effective market in these countries.

This brings us back to our conclusion that worker rights and labor standards and attention to environmental concerns are as important in trade policy as any other factor. Markets can be effectively opened if our trade policies incorporate these standards, making it clear to the minute elite in the developing world and U. S.-based multinationals that this is the only way we can benefit the people of our own country and assist those in the developing world.

The role of U. S.-based multinational corporations is crucial in this area. As reported in the Survey of Current Business for March of this year, these companies represent 41 percent of U. S. imports and 58 percent of our nation's exports. They should be held accountable by the Congress for truly contributing to our nation's workforce and assisting Third World nations to raise their living standards, rather than maintaining the degradation that is so characteristic of working conditions in these countries.

As the representative of all of the people of our nation, Congress should reserve its constitutional right to make trade policy in the interests of all of us.

Chairman CRANE. Thank you, Dr. Starobin.
Mr. Cowen.

**STATEMENT OF BRUCE D. COWEN, PRESIDENT, TRC COMPANIES, INC., WINDSOR, CONN., ON BEHALF OF THE U.S. CHAMBER OF COMMERCE**

Mr. COWEN. Thank you, Mr. Chairman. If I could ask that my written statement be included in the record, I will summarize that statement now.

Chairman CRANE. Without objection.

Mr. COWEN. The U.S. Chamber of Commerce's support for fast track authority dates back to the 1974 Trade Act. Indeed, the Chamber has supported the concept of fast track trade negotiating authority since its inception as tariff proclamation authority in 1934.

The reasoning is simple. The United States trading partners will not sit down to negotiate an agreement that can be undone or modified significantly and after the fact by Congress. They need to know that the deal will either pass or fail as is, without the uncertainty of numerous amendments or death by a thousand cuts.

Fast track should apply broadly in geographic terms to negotiations not only with Chile and other Western Hemisphere nations but worldwide. At the same time, it should be limited to trade issues and not serve as a catchall for labor, environmental, and other issues that are not directly trade related.

We recognize that fast track is, in effect, a waiver of House and Senate rules. As such, it is a privilege, not an obligation. In return for that privilege, the executive branch owes it to the Congress and to the private sector to tell both what it is they are negotiating while they are negotiating. Improved U.S. access to foreign markets has long been a bipartisan objective, even if not without controversy.

Negotiation and approval of NAFTA in the Uruguay round agreements under three administrations and several Congresses testifies to that fact. But taking advantage of the resulting opportunities and successfully competing in those markets is up to competitive individual companies.

Proinvestment, domestic, tax, and regulatory policies can do much to encourage competitive U.S. companies; and trade agreements can open up a lot of doors. But it is ultimately up to the companies themselves to walk through those doors and compete for the business that is available.

We have proven that at TRC where South America is the single largest growth market for our environmental engineering services. We recently were awarded a $1 million contract to design a state-of-the-art municipal landfill in Santiago, Chile; and we expect to be awarded a contract for approximately $2 million in Colombia to remediate a pesticide contaminated property designated to be a residential area.

South America should contribute over $5 million in revenue to TRC. We are a $100 million company with 800-plus people located here in the United States over the next year.

Mutually beneficial trade agreements in Latin America and elsewhere should increase the potential not only for us but for companies of all kinds and markets all over the world.

Before I wrap up, I would just say that it is probably unusual for a president of a major U.S. environmental company to be supporting fast track without the labor or environmental side agreements, and the reason for that I would like to summarize.

First, we work for U.S. companies abroad. Many of the U.S. companies abroad today are applying U.S. environmental standards like those being met in the United States. So by going south or going east or going west, they are basically stepping up the standard for the environment within those countries.

The second point is that banks, not only in the United States but internationally, are all taking actions to eliminate the kind of environmental hazards that we have had in the United States in the past and other parts of the country. There is self-regulation going on.

Finally, I think if you look at the governments, governments are becoming more proactive. As the economies improve, the wealth improves. Quality of life is a very important issue.

Mr. Chairman, I appreciate this opportunity to testify; and I will be happy to try and answer any questions that you or the subcommittees may have.

[The prepared statement follows:]

**STATEMENT OF BRUCE D. COWEN**
**PRESIDENT, TRC COMPANIES, INC.**
**ON BEHALF OF THE U.S. CHAMBER OF COMMERCE**

May 17, 1995

Mr. Chairman and members of the subcommittees, I am Bruce Cowen, President of TRC Companies, Inc. TRC is a publicly owned international environmental engineering and consulting company headquartered in Windsor, Connecticut, focused primarily in the United States, Latin America and central Europe, and employing over 800 employees throughout the United States. I am pleased to present this testimony in support of renewed fast track trade negotiating authority on behalf of the United States Chamber of Commerce, the world's largest voluntary business federation. I am a member of the Chamber's Board of Directors.

**WHAT IS FAST TRACK?**

Fast track means that when the U.S. executive branch enters into a trade agreement requiring congressional approval, Congress will vote on it up or down, without amendments, within a specified amount of time. This process is a Congressional invention designed to simplify the negotiating process and provide the President and his negotiating team with the credibility needed to approach the bargaining table.

**WHY IS FAST TRACK SO IMPORTANT?**

Fast track authority is essential if the United States is to pursue international trade agreements. It was critical to the implementation of the North American Free Trade Agreement (NAFTA) and the GATT Uruguay Round Agreement. And it will be critical to the conclusion of any other international trade agreements that may come up in the future. The Chamber believes that such agreements, if properly negotiated, will benefit a broad base of its 215,000 business members -- ranging from most of the Fortune 500 companies to tens of thousands of small- and medium-sized firms.

The Chamber's support of presidential fast track authority is not new, but dates back to its support for the Omnibus Competitiveness and Trade Act of 1988, as well as previous legislation providing for such negotiating authority -- the 1974 Trade Act. Indeed, the Chamber has supported the concept of "fast track" trade negotiating authority since its inception as "tariff proclamation authority" in 1934. The reasoning for this support is straightforward -- the United States' trading partners will not sit down at the negotiating table if any contracted agreement with the United States is subject to unilateral modifications ex post facto by Members of Congress. This is basic to doing business; one simply cannot expend valuable time and resources contracting with negotiators who are not in a position to commit their company -- or nation -- to an agreement.

At the same time, such Congressional approval will require intensive, good-faith consultation by the executive branch and private sector during the development of negotiating strategy and the negotiations themselves.

**WHAT TYPE OF AGREEMENTS SHOULD WE NEGOTIATE UNDER FAST TRACK?**

The primary purpose of any trade agreements we seek to negotiate should be to reduce trade barriers, increase opportunities for U.S. companies in global markets and, in so doing, increase employment and income in the United States. Toward this end, the objectives of trade agreements authorized and negotiated under fast-track should be limited to the resolution of trade issues that are generally consistent with section 1101 of Public Law 100-418, the "Omnibus Trade and Competitiveness Act" (19 U.S.C. 2901).

Overall negotiating objectives should include:

- More open, equitable and reciprocal market access;
- The reduction or elimination of barriers and other trade-distorting policies and practices;
- Strengthened international trading disciplines and procedures; and
- Increased economic growth and employment in the U.S. and global economies.

Specific negotiating objectives should include:

- Expanded competitive opportunities for the export of U.S. goods;
- More open and equitable conditions of trade for U.S. services, including financial services;
- Reduction and elimination of artificial or trade-distorting barriers to international direct investment;
- Maximum protection for intellectual property rights; and
- Transparent, effective and timely enforcement of agreements' rules and implementation of dispute settlement procedures.

**WITH WHOM SHOULD AGREEMENTS BE NEGOTIATED UNDER FAST TRACK?**

There are any number of potential opportunities to negotiate mutually beneficial trade agreements. I will limit my comments on the most prominent of these opportunities.

The most immediate impetus for renewal of fast track is the U.S. commitment, reaffirmed most recently in Miami last December, to continue expansion of NAFTA throughout the Western Hemisphere, beginning with Chile. Since 1992 the U.S. Chamber has agreed that Chile should be the next candidate for free trade agreement negotiations with the United States. We are pleased that formal negotiations are expected to begin in June after the NAFTA ministerial meeting. A comprehensive trade agreement with Chile based upon NAFTA's core principles would be a win for everyone--the United States, our NAFTA partners and Chile. The key to Chile's prompt accession to NAFTA is prompt approval of fast-track negotiating authority of the kind discussed earlier in my testimony --- authority which permits us to reach a comprehensive commercial agreement unencumbered by non-trade negotiating objectives.

Rapidly bringing Chile into NAFTA is a critically important step toward building a hemispheric free trade area that could greatly advance U.S. economic and political goals in the region. Chilean accession to NAFTA would provide a signal that there is renewed momentum in the drive to achieve the free trade zone envisaged at the Miami Summit last December. In addition, a Chilean accession based upon NAFTA core principles would a benchmark for future steps in constructing the hemispheric wide free trade area.

The potential for expanded U.S. trade and investment throughout the Western Hemisphere remains enormous--- despite the effects on currency and financial markets in the immediate aftermath of the Mexican peso crisis. By 1994 trade between the United States and Latin America exceeded $125 billion and had grown 46% over the previous four years. The three hundred forty million people and $1.3 trillion GDP of the Latin American region offer enormous opportunities for U.S. exports of goods and services.

Realizing those opportunities will, however, require U.S. leadership in sustaining and fostering the move toward open markets and fair trade throughout the Hemisphere. This leadership can only be fully exercised through Congressional approval of fast track authority. With such authority in hand, the U.S. Government would be in a much stronger position to address the major areas of "unfinished business" from the Summit of the Americas held last December. Areas that the U.S. Chamber believes need to be addressed on a priority basis include:

1. Creation of the Free Trade Area of the Americas based on NAFTA's core principles;
2. Building on existing regional/subregional arrangements while avoiding the proliferation of trade agreements with different standards and rules;
3. Negotiating a Western Hemisphere Investment Code; and
4. Beginning negotiations to facilitate the flow of goods, services, information and investments in areas such as customs procedures, product standards and infrastructure.

But going beyond the Western Hemisphere, the U.S. administration and its Asia-Pacific partners in APEC also agreed last November in Bogor, Indonesia to seek to establish a free trade area in that region by 2020. While 2020 may seem a long way off, it is not too early for the U.S. government and all potentially affected elements in the private sector to begin assessing the implications of such a free trade area, identifying particularly problematic issues, and developing strategies for resolving those issues. And as in other cases, credibility is a critical asset our negotiators must have.

The GATT Uruguay Round itself left unfinished a number of business items that will eventually require negotiations. Among them: (1) additional clarification of what constitutes a permissible subsidy under multilateral rules, and (2) possible augmentation or replacement of current antidumping and other trade remedy systems with still inadequately defined "competition policies".

And actions taken by the World Trade Organization (WTO) to broker disputes and enforce discipline under the Uruguay Round will likely require the U.S. and other WTO signatories to negotiate agreements to resolve those disputes. While the Uruguay Round agreement contains provisions for withdrawal from that agreement, such a step by the U.S. would be extraordinary and should be avoided unless the WTO issued a ruling that was truly devastating to U.S. interests -- something that is most unlikely, given the decision record of previous GATT dispute settlement procedures and their impact on U.S. interests.

**WHAT PRICE AND LIMITATIONS ON FAST TRACK?**

First, as noted earlier, it is incumbent upon any Administration to consult regularly with the Congress and the private sector as it plans and executes its negotiating strategy. This is especially important, as trade agreements by their nature entail significant changes in the economic environment and in government-to-government relationships, and Congress has voluntarily acceded its prerogatives to amend implementing legislation as it sees fit and on its own timetables. Confidence in the negotiations cannot be maintained absent such consultations.

Second, the United States should seek to cooperate with other countries in raising labor standards and strengthening environmental protection, but should **not** address these important issues in commercial negotiations whose purpose is to remove barriers to global trade and investment. Making trade cooperation contingent upon reaching agreement on complex labor and environmental issues could seriously damage vital U.S. economic interests while at the same making it more difficult to achieve labor or environmental cooperation than might be possible through separate negotiations. The resort to trade sanctions to enforce labor or environmental agreements would seriously disrupt the global trading system. Under any future Congressional grant of "fast track"

authority to the President for trade negotiations, the objectives should be limited to commerce and not also require resolution of non-commercial issues.

CONCLUSION

Improved U.S. access to foreign markets has long been a bipartisan objective, even if not without controversy. Negotiation and approval of NAFTA and the Uruguay Round Agreements under three U.S. administrations and several Congresses testifies to that fact. But taking advantage of the resulting opportunities and successfully competing in those markets is up to competitive individual companies.

Pro-investment domestic tax and regulatory policies can do much to encourage competitive U.S. companies. And trade agreements can open up a lot of doors. But it is ultimately up to the companies themselves to walk through those doors and compete for the business that is available.

This has been proven at TRC where South America is the largest growth market for our environmental engineering services. We recently were awarded a $1 million contract to design a state-of-the-art municipal landfill in Santiago, Chile. We expect to be awarded a contract for approximately $2 million in Colombia to remediate a pesticide-contaminated property designated to be a residential area. South America should contribute over $5 million in revenues to TRC over the next year.

I appreciate this opportunity to testify and I will be happy to try and answer any questions you may have.

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Chairman CRANE. Thank you, Mr. Cowen.

Mr. Neimeth.

**STATEMENT OF ROBERT NEIMETH, PRESIDENT, INTERNATIONAL PHARMACEUTICALS GROUP, PFIZER, INC., ON BEHALF OF THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA**

Mr. NEIMETH. Thank you, Mr. Chairman. I appreciate the opportunity to testify today at this hearing in support of the renewal of fast track procedures.

In addition to representing my company, Pfizer, I also appear here today on behalf of PhRMA, the Pharmaceutical Research and Manufacturers of America, whose Intellectual Property Task Force I chair. PhRMA is a trade association representing over 100 research-based pharmaceutical companies, including over 40 biotechnology companies. PhRMA and its member companies appreciate the benefits that balanced, well-negotiated free trade agreements can provide for the United States.

Especially important to our industry is the opportunity free trade agreements provide to obtain a commitment by foreign governments to provide adequate, effective and timely protection of intellectual property. With its highly educated and well-trained work force and leadership in research, development, and creativity, the United States enjoys a comparative advantage in industries like ours that depend on protection of their intellectual property. Pirates who are permitted abroad to steal our patents, copyrights, trademarks, and other intellectual property with impunity are stealing America's future prosperity.

Free trade agreements are, thus, a tool for achieving, among other U.S. objectives, protection of intellectual property. Fast track authority is, in turn, a tool for facilitating the legislative implementation of free trade agreements. We, therefore, support the reenactment of fast track procedures which enable the Congress to consider a trade agreement negotiated by the President, in consultation with the Congress as a whole, free from unraveling amendments that otherwise surely would be offered.

We also support legislation reenacting fast track procedures because such legislation is a tool for establishing minimum conditions for a free trade agreement. Fast track procedures should be available only if specified minimum conditions are satisfied, one of which should be the timely availability of adequate and effective protection of intellectual property on an accelerated and nondiscriminatory basis.

Specifically, any future free trade agreement must establish at least NAFTA-level protection of intellectual property. In other words, we simply urge the Congress to exercise its constitutional authority to legislate parameters for trade agreements. We support a bill that would require any trade agreement considered under fast track procedures to meet minimum standards for the protection of intellectual property.

Now, even NAFTA is not perfect as it does not provide adequate protection in the field of biotechnology, and this is an area of increasing importance to our industry in which further improvements are needed.

However, NAFTA, at least, does not suffer from the most glaring deficiencies of the WTO Agreement on trade related intellectual property rights. The TRIPs agreement establishes standards in areas of primary concern to our industry that are generally adequate. Yet the value of these standards is negated by the delays permitted to developing countries before they must conform their laws and regulations to these standards.

TRIPs explicitly permits many of the large emerging markets to continue their piracy of patented pharmaceutical and specialty chemical products for 10 years or more. Falsely described as a transition measure, this provision is nothing less than a shield for continued theft of intellectual property.

Another glaring deficiency of TRIPs is its failure to provide pipeline protection. U.S. patent holders are unfairly deprived of ever, ever obtaining any benefit from an innovation already patented under U.S. law, even for the duration of the original U.S. patent.

In reenacting fast track authority, PhRMA member companies urge the Congress to establish minimum conditions for that fast track eligibility. Specifically, in the intellectual property area, we urge that NAFTA-level protection be the minimum standard, including pipeline protection and the timely availability of adequate and effective intellectual property protection.

If these minimum conditions are established, the new free trade agreements would help remedy the defects of TRIPs, at least for our industry. Through free trade agreement negotiations, the United States can obtain better and faster protection of intellectual property than TRIPs accomplishes. Moreover, renewal of fast track authority with such minimum conditions would help implement section 315 of the Uruguay Round Agreements Act, which establishes as an objective of the United States the accelerated implementation of the TRIPs provisions.

The research-based pharmaceutical industry considers free trade agreements and a renewal of fast track procedures for their legislative implementation, tools for achieving the adequate, effective, and timely protection of intellectual property rights. In fact, these tools may be increasingly effective and important in scope as more and more countries wish to negotiate their accession to FTAs with the United States.

However, to maximize success in achieving our intellectual property objectives, these tools must be part of an overarching strategy. Plurilateral FTAs and fast track procedures must complement multilateral initiatives such as TRIPs, as well as a vigorous bilateral program, based in part on the special 301 legislation enacted in 1988.

A uniform standard must be employed in all negotiations, since any deviation or softening, be it on a country or regional level, would represent a new benchmark of acceptability that would invade all negotiations. The adherence to a uniform set of standards will best enable U.S. trade negotiators to achieve the best results as widely and as quickly as possible.

In conclusion, Mr. Chairman, our industry supports the reenactment of fast track procedures, provided that only FTAs meeting specified minimum conditions would be eligible for fast track consideration. Specifically, we believe that the fast track procedures should be available only for the review of an FTA that provides at least NAFTA-level protection of intellectual property, including pipeline protection of pharmaceuticals and the timely provision of protection without TRIPs-style delays.

Thank you, Mr. Chairman; and I would be pleased to answer any questions.

[The prepared statement follows:]

# Statement PhRMA

**STATEMENT OF ROBERT NEIMETH**
**PRESIDENT, INTERNATIONAL PHARMACEUTICALS GROUP, PFIZER, INC.**

**ON BEHALF OF THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA**

before the
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

and the

SUBCOMMITTEE ON RULES AND ORGANIZATION
COMMITTEE ON RULES
House of Representatives

May 17, 1995

Chairman Crane, Chairman Dreier, and other Members, my name is Robert Neimeth and I am the President of the International Pharmaceuticals Group of Pfizer, Inc. I appreciate the opportunity to testify today at this hearing in support of the renewal of fast track procedures for the Congressional review of certain trade agreements.

In addition to representing my company, I also appear here today on behalf of the Pharmaceutical Research and Manufacturers of America (PhRMA), whose Intellectual Property Task Force I chair. PhRMA is a trade association representing over one hundred research-based pharmaceutical companies, including more than forty of the country's leading biotechnology companies.

I also serve as Chairman of the Intellectual Property Committee of the International Federation of Pharmaceutical Manufacturers Association (IFPMA), based in Geneva, Switzerland.

PhRMA members discover, develop and produce most of the prescription drugs used in the United States and a substantial portion of medicines used abroad. The U.S. pharmaceutical industry is one of the country's most competitive high technology manufacturing industries, exporting $525 million more in U.S. pharmaceutical products last year than were imported into this country.

PhRMA and its member companies appreciate the benefits that balanced, well negotiated free trade agreements can provide for the United States, including for our industry. Free trade agreements open up foreign markets to U.S. exports of goods and services, permitting competitive American companies to reach more customers. They reciprocally open up the U.S. market, thus helping American companies to remain competitive in a global economy through access to inputs at world market prices. They can ensure fair rules for foreign direct investment; this is especially important since studies show that trade and investment flows are closely correlated. Where U.S. firms can and do invest abroad, they tend to succeed in penetrating the market there through exports as well.

Especially important to our industry is the opportunity FTAs provide to obtain a commitment by foreign governments to provide adequate, effective and timely protection of intellectual property. With its highly educated and well trained work force and leadership in research, development and creativity, the United States enjoys a comparative advantage in industries that depend on protection of their intellectual property. Pirates who are permitted abroad to steal our patents, copyrights, trademarks and other intellectual property with impunity are stealing America's future prosperity.

Generally, it takes about twelve years and over 350 million dollars just to get a single pharmaceutical product from the laboratory shelves to the shelves of a pharmacy. For every drug that finally is successfully marketed, the developer has screened from 4,000 to 10,000 chemicals, and has conducted extensive human clinical trials. The regulatory approval process is so lengthy that most drugs enjoy market exclusivity for only eight to ten years, even though the patent term is significantly longer.

It is these huge R&D costs for pharmaceutical products that make our industry so intensely dependent on patent protection. It costs literally millions and millions to discover, test and market a new drug, but virtually only pennies to copy it. The pirates abroad who expropriate our years of effort deny us sales abroad and fair compensation for our innovation. The toleration of piracy by foreign governments, through their failure to enact or enforce adequate laws, impairs our ability to fund the mammoth R&D required to discover new drugs and treatments for the dread diseases of not only today, but also tomorrow.

Can any of us doubt the importance of this research in light of, for example, the recent new outbreak and spread of the lethal Ebola virus in Zaire?

Because FTAs can provide so many benefits, including for the protection of intellectual property, we support the reenactment of fast track authority. The political vulnerability of even the best FTAs is that they are necessarily reciprocal. The United States appropriately not only obtains rights, but accepts responsibilities. The U.S. not only obtains access to a foreign market, but also agrees to provide access to the U.S. market.

Imagine a free trade agreement considered by the Congress under the normal legislative rules. I believe the vast majority of Members would recognize the benefits to the national economic interest of such agreement and support it overall. However, it would be a rare Member who could resist offering at least one amendment advocated by constituents. Every state and nearly all districts have some unique concerns, promotion of which could compel a Member to tinker with the agreement.

The result is that the agreement negotiated by the President would likely be amended beyond recognition. This would undercut dramatically the President's ability to speak with one voice for the United States in trade negotiations, and through such negotiations to advance our national interests. One reason we support the reenactment of fast track procedures, then, is simply to make free trade negotiations, with their potential benefits for the United States, feasible.

Another reason is to establish at the outset, clearly and immutably, minimum conditions for a free trade agreement. Fast track procedures for Congressional review of free trade agreements should be available <u>only</u> if specified minimum conditions are satisfied. One of those conditions should be the timely availability of adequate and effective protection of intellectual property on an accelerated and nondiscriminatory basis.

Specifically, PhRMA believes that fast track procedures should be available only for agreements that establish at least NAFTA-level protection of intellectual property. Even NAFTA is not perfect, as it does not provide adequate protection in the field of biotechnology. This is an area of increasing importance to our industry, in which further improvements are needed.

However, NAFTA at least does not suffer from the most glaring deficiencies of the World Trade Organization Agreement on Trade-Related Intellectual Property Rights (TRIPS). The TRIPS Agreement establishes standards in areas of primary concern to our industry that are generally adequate, including a twenty-year patent term, nondiscriminatory and limited compulsory licensing, with importation allowed to fulfill the working requirements of a product; and patent protection for all fields of technology. Yet the value of these standards is negated by the delays permitted to developing countries before they must conform their laws and regulations to these standards. TRIPS explicitly permits many developing countries to continue their piracy of patented pharmaceutical and specialty chemical products for ten years. Falsely described as a "transition" measure, this provision is nothing less than a shield for continued theft of intellectual property. During the ten-year period, the piracy-haven countries enjoy immunity from the obligations borne by other countries. The so-called "transition" period is nothing more than a long and costly dodge and delay, to the serious injury of U.S. patent holders.

Another glaring deficiency of TRIPS is its failure to provide "pipeline" protection. Under Mexican law prior to the NAFTA negotiations, for example, patent protection was not available for pharmaceuticals and specialty chemicals. Absent a NAFTA pipeline provision, U.S. holders of patents on such products already patented under U.S. law would not be able to obtain patent protection in Mexico even today. With the NAFTA pipeline provision, we may obtain patent protection for such products in Mexico at least for the duration of the original U.S. patent.

In reenacting fast track authority, PhRMA member companies urge the Congress to establish minimum conditions for any agreement that the President proposes for Congressional consideration under fast track procedures. Specifically in the intellectual property area, we urge that NAFTA-level protection be the minimum standard, ensuring that any new free trade agreement provides for pipeline protection and the timely availability of adequate and effective intellectual property protection, without TRIPS-style, decade-long delays.

If these minimum conditions are established for use of any renewed fast track procedures, then new free trade agreements would help remedy the defects of TRIPS, at least for our industry. Through FTA negotiations, the U.S. can obtain better and faster protection of intellectual property than TRIPS accomplishes. Moreover, renewal of fast track authority with such minimum conditions would help implement section 315 of the Uruguay Round Agreements Act, which establishes as an objective of the United States the accelerated implementation of the WTO TRIPS provisions.

The research-based pharmaceutical industry considers free trade agreements and a renewal of fast track procedures for their legislative implementation, tools for achieving the adequate, effective and timely protection of intellectual property rights. In fact, these tools may be increasingly effective and important in scope, as more and more countries may wish to negotiate their accession to FTAs with the United States.

However, to maximize success in achieving our IP objectives, these tools must be part of an over-arching strategy for IP protection. Plurilateral FTAs and fast track procedures therefore must complement multilateral initiatives such as TRIPS, as

well as a vigorous bilateral program, based in part on the Special 301 legislation enacted in 1988. In this respect, a uniform standard must be employed in all negotiations, since any deviation or softening -- be it on a country or regional level -- represents a new benchmark of acceptability that will invade all negotiations. The adherence to a uniform set of standards will best enable U.S. trade negotiators to achieve the best results as widely and quickly as possible.

The need for the creative as well as vigorous use of all tools available to the United States is underscored by the proliferation on intellectual property problems around the globe. In Argentina, for example, President Menem recently derailed enactment of substandard and onerous patent legislation through an eleventh hour veto. However, it remains to be seen whether Argentina finally will act on its many promises to implement effective patent protection for pharmaceuticals.

In Brazil, the government has promised repeatedly for over five years to provide adequate and effective patent protection for pharmaceutical and specialty chemical products. During his recent visit here, President Cardoso pledged his best efforts, but results are what we are still awaiting.

India has long served as a global center for patent piracy, and has resisted efforts to adopt global standards of pharmaceutical patent protection in both multilateral fora and bilateral negotiations with the U.S. Any delay in Indian implementation of TRIPS until 2005 is wholly unacceptable. Moreover, the Indian legislature recently has resisted even implementing the minimum patent provisions required by TRIPS, so that U.S. patent rights holders might at least gain some minimal protection there eventually.

The situation in Turkey shows some progress, but adequate and effective patent protection remains a distant goal. On March 6, Turkey signed a customs union agreement with the European Union, in which the Turkish Government promised to implement TRIPS principles by 1999. While the U.S. should lend support to this agreement we also should maintain bilateral pressure on Turkey to accelerate implementation of TRIPS and provide pipeline protection.

In Egypt, the government has prepared draft legislation that would upgrade considerably the terms of patent protection for pharmaceuticals. Egypt has not yet decided, however, whether it will attempt to delay the implementation of the law for five or ten years at TRIPS permits.

We also have received reports from various sources that Israel is preparing to weaken its intellectual property laws, with specific reference to pharmaceutical patents. We are told that the Government of Israel specifically is considering allowing Israeli manufacturers who do not have any rights to the patent to conduct large-scale manufacturing in Israel, during the life of the originator's patent. This proposal could permit the manufacture and export of tons of patented product before patent expiration. We hope that the Israeli Government will not take this misguided course.

While Singapore does not represent a center for patent piracy, its enactment earlier this year of a new law, containing onerous and unacceptable compulsory licensing provisions, represents a clear violation of TRIPs principles. As Singapore is one of the most developed economies in the world, the new law also represents an abdication of responsibility for demonstrating adherence to global standards of patent protection for pharmaceutical products. We understand that the Singaporean Government has promised to remove the onerous provisions from their law by the end of this year, and not to utilize the current provisions between now and then.

In conclusion, our industry supports the reenactment of fast track procedures for the Congressional review of free trade agreements, provided that only FTAs meeting specified minimum conditions would be eligible for fast track consideration. Specifically, we believe that the fast track procedures should be available only for the review of an FTA that provides at least NAFTA-level protection of intellectual property, including pipeline protection for pharmaceuticals and the timely provision of protection without TRIPs-style delays.

I would be pleased to answer any questions.

Chairman CRANE. Ms. Minette.

## STATEMENT OF MARY MINETTE, STAFF ATTORNEY, NATIONAL AUDUBON SOCIETY

Ms. MINETTE. Thank you.

The National Audubon Society is an organization with more than one-half million members and over 500 chapters throughout the United States and Latin America. Our principal mission is the protection of wildlife and habitat. On behalf of my organization, I would like to thank you for the opportunity to testify today regarding the fast track policy and negotiating objectives.

In the coming months, Congress will consider legislation which will allow the President access to fast track procedures for Chile's accession to the North American Free Trade Agreement and perhaps beyond. In drafting that legislation, we urge Congress to include negotiating objectives which will promote environmental protection, conservation of resources, public participation, and transparency.

We applaud the expansion of the North American Free Trade Agreement to include Chile. However, we believe that trade expansion plans and fast track legislation granting the President authority to turn those plans into trade agreements must include environmental safeguards. Both Canada and Mexico have announced their support for expanding the North American Agreement on Environmental Cooperation to include Chile, and the Chilean Government has repeatedly indicated its willingness to negotiate.

United States trade policy must reflect a similar commitment to the concurrent expansion of trade and environmental protection.

Expansion of trade often has a direct impact on the global environment. The most obvious example of this is the severe pollution in the United States-Mexico border region caused by unchecked industrial growth as a result of the free trade zone which predates NAFTA.

Chile also faces environmental problems caused by economic expansion. Although the country has enjoyed a period of sustained economic growth in recent years, this growth has come with steep environmental costs. Chile faces severe urban air and water pollution and pollution from its extensive mining and agricultural sectors. Its environmental laws are new and lack the enforcement structure to fully address these problems.

Trade without environmental safeguards encourages unsustainable use of resources. Overexploitation of natural resources not only harms species and ecosystems but also prevents future generations from enjoying the benefits of those resources. Biodiversity is an important economic resource. The continued viability of industries such as fishing and forestry depend upon conservation of species.

In addition, a lack of environmental protection controls in developing countries affects the ability of U.S. industry to compete fairly in global markets. Low or unenforced environmental standards not only harm the global environment and jeopardize public health but also affect the competitiveness of U.S. products on the global market with respect to similar products produced in countries with low or unenforced standards. Environmental protection levels the

playingfield by eliminating the comparative advantage of low or unenforced standards.

While we believe that environmental issues should be addressed in future trade agreements, we do not recommend a cookie-cutter approach to future trade negotiations; and we believe that fast track legislation should not impose such constraints on the President's negotiating authority.

For example, Chile is at an early stage in developing a framework of environmental protection laws and lacks many of the necessary structures to fully enforce them. In addition, some provisions of the North American Agreement on Environmental Cooperation relating to border pollution issues may not be relevant for Chile.

Fast track legislation must include basic environmental objectives in order to ensure both trade liberalization and environmental protection. An expanded NAFTA and future trade agreements must continue to address the environmental issues inextricably linked to trade expansion to prevent further degradation of the global environment and depletion of natural resources, and to ensure the competitiveness of environmentally conscious U.S. firms.

Fast track legislation will have a strong impact on the future direction of U.S. trade policy and must reflect the environmental principles developed in the NAFTA negotiations.

The inclusion of nontraditional negotiating objectives in fast track legislation is nothing new. Previous fast track legislation has included objectives relating to worker rights, intellectual property, and agricultural subsidies. Each of these goals is linked to trade expansion, and environmental issues are similarly linked and should be included in fast track legislation.

The North American Free Trade Agreement and the North American Agreement on Environmental Cooperation enjoyed strong bipartisan support in Congress. NAFTA and the North American agreement made considerable progress in addressing the impacts of increased trade on the environment by creating a forum for developing solutions to trade and environment issues and by providing mechanisms for public accountability and public participation.

The principles developed in NAFTA must be reflected in fast track legislation which will strongly influence the direction of future U.S. trade policies. Fast track legislation that does not build upon the environmental and public participation principles incorporated in NAFTA would be a step backward for U.S. trade policy.

Thank you very much.

[The prepared statement follows:]

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**STATEMENT OF MARY MINETTE**
**STAFF ATTORNEY**
**NATIONAL AUDUBON SOCIETY**

BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE, COMMITTEE ON RULES
OF THE
U.S. HOUSE OF REPRESENTATIVES

May 17, 1995

Introduction

My name is Mary Minette, and I am a staff attorney with the National Audubon Society, an international conservation organization with more than a half million members and over five hundred chapters throughout the United States and Latin America. Audubon's principal mission is the protection of wildlife and habitat. On behalf of my organization, I would like to thank the members of the Subcommittees on Trade and on Rules and Organization for the opportunity to testify regarding fast track policy and negotiating objectives.

In the coming months, Congress will consider legislation which will allow the President access to fast track procedures for Chile's accession to the North American Free Trade Agreement, and perhaps beyond. In drafting that legislation, the National Audubon Society urges Congress to include negotiating objectives which will promote environmental protection, conservation of resources, public participation, and transparency.

Audubon applauds the expansion of the North American Free Trade Agreement to include Chile; however, we believe that trade expansion plans, and fast track legislation granting the President authority to turn these plans into trade agreements, must include environmental safeguards. Both Canada and Mexico have announced their support for expanding the North American Agreement on Environmental Cooperation (NAAEC) to include Chile, and the Chilean government has repeatedly indicated its willingness to negotiate. United States trade policy must reflect a similar commitment to the concurrent expansion of trade and environmental protection.

The Link Between Trade and Environment

Expansion of trade often has a direct impact on the global environment. The most obvious example of this is the severe pollution in the U.S./Mexico border region caused by unchecked industrial growth as a result of the free trade zone which pre-dates NAFTA. Chile also faces environmental problems caused by economic expansion. Although the country has enjoyed a period of sustained economic growth in recent years, this growth has come with steep environmental costs. Chile faces severe urban air and water pollution and pollution from its extensive mining and agricultural sectors. Its environmental laws are new, and lack the enforcement structure to fully address these problems.

Trade without environmental safeguards encourages unsustainable use of resources. Overexploitation of natural resources not only harms species and ecosystems, but also prevents future generations from enjoying the benefits of those resources. Biodiversity is an important economic resource--the continued viability of industries such as fishing, forestry, agriculture, and chemical and pharmaceutical manufacturing depend on conservation of species. The Chilean economy is, in part, dependent upon natural resource extraction; however, overexploitation of forests and fishing stocks could lead to depletion of those resources in the future.

In addition, a lack of environmental protection controls in developing countries affects the ability of U.S. industry to compete fairly in global markets. Low or unenforced environmental standards not only harm the global environment and jeopardize public health, but also effect the competitiveness of U.S. products on the global market with respect to similar products produced in countries with low or unenforced standards. Environmental protection "levels the playing field" by eliminating the comparative advantage of low or unenforced environmental standards.

While we believe that environmental issues should be addressed in future trade agreements, we do not recommend a "cookie cutter" approach to future trade negotiations, and we believe that fast track legislation should not impose such constraints on the President's negotiating authority. For example, Chile is at an early stage in developing a framework of environmental protection laws and regulations, and lacks many of the necessary structures and resources to fully enforce them. In addition, some provisions of the North American Agreement for Environmental Cooperation relating to border pollution issues may not be relevant for Chile.

We believe that U.S. trade negotiations with Chile should encourage enforcement of Chile's existing laws, and the development of stronger protections as it benefits from liberalized trade with North America. Liberalized trade will give Chile more resources to use in protecting its environment, but an increase in resources will not guarantee adequate environmental protection in the short term. Thus, Chilean accession to NAFTA must include accession to the NAAEC, with appropriate modifications to reflect Chile's unique conditions. If the U.S. welcomes Chile into NAFTA without obtaining its commitment to enforce and further develop its environmental protection laws and regulations, we will give Chilean industry an unfair advantage over U.S. industry and the Chilean environment, and the Chilean people, will suffer in consequence.

The Need For Environmental Negotiating Objectives

Fast track legislation must include basic environmental objectives in order to ensure both trade liberalization and environmental protection. An expanded NAFTA and all future trade agreements must continue to address the environmental issues inextricably linked to trade expansion, to prevent further degradation of the global environment and depletion of natural resources, and to ensure the competitiveness of environmentally conscious U.S. firms. Fast track legislation will have a strong impact on the future direction of U.S. trade policy and must reflect the environmental principles developed in the NAFTA negotiations.

The inclusion of non-traditional negotiating objectives in fast track legislation is nothing new: previous fast track legislation included objectives relating to worker rights, intellectual property, and agricultural subsidies. Each of these goals is linked to trade expansion; however, none is a traditional subject of trade agreements. Environmental issues are similarly linked to trade expansion, and objectives which address these issues should be included in fast track legislation.

Transparency Objectives

Openness and accountability of decisionmaking institutions is a central tenet of democracy: we believe that the institutions to which the U.S. is a party should reflect our country's democratic values. Closed trading institutions such as the new World Trade Organization, which provides only limited opportunities for public scrutiny and comment, not only harm interested members of the public but also harm U.S. businesses whose livelihood may be affected by WTO policy decisions and dispute proceedings.

The Omnibus Trade Act of 1988 included openness and transparency of international trading regimes as a negotiating objective, and the NAFTA package, including the environmental and labor agreements, represent strong progress towards the goal of open and equitable procedures for trade policy development and dispute resolution. Fast track legislation should include objectives that reflect a continued commitment to more open and accountable trade institutions.

Conclusion

The North American Free Trade Agreement and the NAAEC enjoyed strong bipartisan support in Congress. NAFTA and the NAAEC made considerable progress in addressing the impacts of increased trade on the environment, by creating a forum for developing solutions to trade and environment issues and by providing mechanisms for public accountability and public participation. The principles developed in NAFTA must be reflected in fast track legislation, which will strongly influence the development of future United States trade policies.

Audubon urges Congress to craft fast track legislation which will ensure that U.S. trade policy promotes environmental protection as well as expansion of markets. Fast track legislation that does not build upon the environmental and public participation principles incorporated in NAFTA would be a step backward for U.S. trade policy.

Chairman CRANE. Thank you, Ms. Minette.

I would like to direct my first question to you, Ms. Minette, and to Dr. Starobin and to Mr. Gundersheim.

We have heard the comment from Mr. Neimeth on the essentiality of intellectual property protection. I know that, because that is included in fast track and considered a very viable fast track issue, that there has been an attempt on the part of some to equate labor and environmental issues on a parity with intellectual property. While I can understand the intellectual property argument, because it is a very fundamental part of trade expansion when otherwise you could have people stealing out from under you, I am wondering if you all feel that labor and environmental issues are on the same level, on a parity, if you will, with intellectual property right guarantees.

Mr. Gundersheim, you might start.

Mr. GUNDERSHEIM. No, it is not on the same level, it is on a higher level. If you think it is perfectly legitimate to have 4 year olds chained to a loom, weaving carpets in Pakistan or India or Nepal, I am appalled. If you think it is perfectly legitimate for a competitive advantage in the workings of a free market system to have 8 and 9 year olds mining coal, I just find that incredible, that that is not treated with the same seriousness, the same importance and, in fact, greater importance than any of these commercial interests that are part of the trade agreements.

I think the consequences to human beings is something that our society has traditionally addressed and most societies addressed during the whole industrial revolution, and that is why all these standards of work and the treatment of human beings have arisen. The fact that we have to revisit all these arguments of the last 100 years I find completely preposterous.

Chairman CRANE. Could I put the question to you that I put to Mickey Kantor earlier? What is the cutoff line for abusing a child because that child is working?

Mr. GUNDERSHEIM. The ILO standard is basically 16 years, and we are talking about industrial employment.

Chairman CRANE. Can you elaborate on industrial employment? Is that somebody working in a production line?

Mr. GUNDERSHEIM. Yes, spending 8 hours a day in a factory or traditional work environment where that is their entire basic day, that there is no education, there is no other traditional activities of a child.

Chairman CRANE. Even if that is only part-time labor?

Mr. GUNDERSHEIM. Let me answer it in a slightly different way. I was a newspaper boy when I was 11 and 12, and that was not illegal because it is 2 hours. It is not considered hazardous. It is not—did not interfere with my education and so on. That is a reasonable kind of standard.

Working in a coal mine is not. There are generally recognized agreements in terms of most countries of the world as to what should be the educational process within those countries, what is considered legitimate occupations for children to engage in, and what are not legitimate occupations. We are basically talking about using children as a substitute for adult employment. That is the basic fundamental——

Chairman CRANE. Let me ask you if you have any agricultural ancestors in your family tree, farmers.

Mr. GUNDERSHEIM. Going back maybe many, many generations in Europe, probably so.

Chairman CRANE. The reason I asked that question, and this is what I put to Mickey Kantor, the transition, and this goes back throughout the span of recorded history, between a boy becoming a man was age 12.

Now, to be sure because of advancements, economic advancements in this country we were able to indulge our young people by giving them the addition of what we define as adolescence. Adolescence was a term unheard of. What is adolescence? Adolescence is still time off when you don't have to suddenly grow up and be productive.

I ask you that question because when we were kids on the farm, I mean I am not exaggerating, we worked 10 hours a day, with 5 minutes off on the hour, 10 hours we put in in a day harvesting hay, for example, hay crops.

Now, that was heavy, physical labor, and to be sure it was only a summer job, but the fact of the matter is everybody took that for granted. Nobody ever questioned that. My father encouraged that kind of discipline, and he was brought up in that kind of environment, as was his father. I think that we have managed to indulge ourselves in a luxury because when I got my first union job there was no heavy lifting involved, and I didn't work nearly as strenuously, and I made a whale of a lot more money.

Now, I am not condemning that. That is a good thing. But on the other hand, I am suggesting that there are nations in transition that have not achieved our level, and until they achieve the levels that we achieved 50 years ago, I think it is a little arbitrary to come in and make definitions that 16 is the cutoff point, or that any kid that works in a production line, an assembly line, is being abused if he is only 15 years of age when there may not even be an opportunity for a high school education in that country.

I mean, that may be unheard of yet, and I applaud your concerns about advancing the conditions for labor, and I applaud Miss Minette's concerns about advancing our environmental concerns. But take Superfund, Ms. Minette, I mean look at how many sites we have identified here and how few sites we have addressed with the expenditure of billions of dollars, half of which has gone into lawyers' pockets so far, and we have only barely scratched the surface. Yet we are attempting to impose standards on underdeveloped countries that are equivalent to ours with all of those filthy sites that will not be cleared up in your lifetime.

Again, I applaud your objective in moving toward that kind of a goal. We want to see it happen worldwide, but I think you are inclined to impose some standards that are a little extreme given the nature of a lot of these developing countries.

Ms. MINETTE. If I might, Mr. Chairman, the environmental side agreement to NAFTA in no way imposes U.S. standards, and that is not what we are asking for. What it does is create a process to discuss standards, to discuss raising standards, to discuss enforcing standards, and in no way does it require that Mexico or Chile put in place a system completely like the U.S. system. It may not be

appropriate, it may not be what they need to address their particular problems. That is what I was talking about when I talked about not requiring a cookie-cutter approach to these issues.

Chairman CRANE. Well, having the commitment, all of us, I mean we all have a vital stake in guaranteeing that we try to keep the world clean, just as we have, I think, a civilized stake in guaranteeing that you are not abusing children and you give those kids the best opportunity.

Dr. Starobin.

Mr. STAROBIN. Mr. Chairman, I don't think there is any magic formula in dealing with this question, either the question of child labor, the environment, or worker rights and labor standards. I would not suggest for a moment that it is something that can be done tomorrow morning, that decent conditions, that better working conditions, that the right of workers to express themselves can be accomplished overnight.

On the other hand, you speak of nations in transition, there should also be a policy of transition, a policy that would lead ultimately to a better life for working people in the countries with which we trade. That is, to me, a perfectly obvious kind of thing, but it is not included in any of the trade negotiations.

For example, I am not suggesting in the case of the CBI that wages be brought to American standards overnight. Let them be brought within 5 years, within 10 years to half of the American standard. Then we are talking about a transition. Otherwise we are just playing games with that whole concept.

As far as child labor is concerned, and both my colleague, Mr. Gundersheim, and I have had the opportunity to travel very extensively throughout Southeast Asia where we have seen some of the most frightful examples of child labor.

Child labor takes the place of adult employment in these so-called developing countries. I call them underdeveloped countries because I think that is much more characteristic. Child labor takes the place of adult labor. Children have no ability to really protect themselves. They are pliable, but they are also worn out at an early age, given the hours and the conditions under which they work.

We are talking about a process, I think, and that process has to be embodied in our trade negotiations or our general thinking, our view of democratic development should be meaningful, but there are also economic considerations.

Aside from any human considerations, we do not develop markets in Third World countries, contrary to what Ambassador Kantor says, contrary to the phony figures that continue to be used—the word "phony" is not my term, it is Jules Katz's term. We are not developing markets unless we raise living standards.

It is an elementary economic fact that people do not buy products unless they have the wherewithal. If we really want to create open markets in Third World countries, we have to give the people the opportunity to raise their living standard.

We have to support improved working conditions. We have to support the right of workers to organize and protect themselves. Otherwise we are not really opening markets. We are dealing with a minute elite. Anyone who has visited these countries knows that

this is absolutely the case. We may be shipping capital goods, but we are not shipping consumer goods. Mexico is perhaps the most dramatic example of a country with which we are not really trading consumer goods. We never did, the figures are absolutely clear, the data have been distorted. The data presented to this committee and elsewhere have been terribly distorted, Mr. Chairman.

Chairman CRANE. Well, I am thinking specifically of a trip I made with some of our colleagues over to mainland China about 3 years ago, and one of the arguments I have raised with Nancy Pelosi with her concerns about human rights—and they are very legitimate concerns—is that what more fundamental human right is there than the ability to bring up a family, feed the family, clothe the family, shelter the family? They are making such mindboggling progress on mainland China in the advancement of what Deng Xiaoping likes to call Leninist capitalism, the ultimate oxymoron, but the fact of the matter is you see children now, because of family resources that have greater opportunities for other things than working chained to that thing that you mentioned, Mr. Gundersheim, in production lines. Kids going to school and having downtime for other pursuits, and it is because of the total surge that is going on in terms of the nation's economic growth.

Now, to be sure it is not evenly spread across the entire nation, but mercifully the government over there, even while it calls itself Communist, is committed to this, and is giving the younger generation an opportunity. Not all of them to be sure yet, but giving a younger generation an opportunity that never ever before existed on the Chinese mainland.

Mr. STAROBIN. Mr. Chairman, having been to China on many occasions, having traveled very extensively in China, I would make the point that this may be true in certain sections of the country, but I think it is quite improper to generalize so far as a population of well over 1 billion people are concerned. Once you get away from the major cities, the situation is dramatically different.

Chairman CRANE. I am not disputing that, Dr. Starobin, but they are migrating, contrary to the government's desires, into those urban areas where that growth is going on. The exciting part of it is the commitment of the government to try and extend that. Right now it is concentrated in southern China, no question about it.

Mr. STAROBIN. Well, I would question some of it based on what I have seen in China, Mr. Chairman. I would tell you that over the years that I have had the opportunity to go there I have seen the development of begging, which is something that did not exist, say, 10 years ago.

Chairman CRANE. You can find that in Chicago.

Mr. STAROBIN. We are talking about China. Obviously, you find it in Chicago. We have our own problems as well, but you really have a situation that is characteristic of so-called developing countries in which children fundamentally take the jobs of their parents not because they are looking to do that, but because they are easier to deal with, and the children are worn out at an early age.

This has been discussed endlessly among people who deal much more deeply and much more knowledgeably than I about child labor, but it remains a fundamental factor in the use of children in industry.

Chairman CRANE. Well, with qualifications I am not disputing that. The qualifications are I grew up in that kind of family environment that insisted upon absolute inculcation of that work ethic early on, and we never—now Mickey Kantor said he didn't, either, but we never got allowances. Any money we wanted, my dad would even get Scotch tape and put a nickel up on the window. You want to wash that window, you can take the nickel. But I mean this went back to a very early age, and that has been a part of our entire national experience, and I would hope it continues.

Let me ask one more expanded question, and that is the participation of private sector folks from the business community, I mean all walks of our private sector, including labor and environment, has this administration been more open in encouraging your participation in negotiations that we have conducted in trade matters, and if you have got a question, Mr. Cowen, I noticed you had your hand up there, but you have got an elaboration first, but then I would just like your input. Are we getting the input that we want from all sectors of our economy to guarantee that we make continuing progress?

Mr. Cowen.

Mr. COWEN. Before I answer that, Mr. Chairman, I just wanted to mention when you talked about your growing up on a farm, I grew up in western Massachusetts in a city, but I was a paper boy at age 10. At age 13 and 14 I picked tobacco two summers, and with the ethic that was given to me by my parents and after picking tobacco for 2 years, I am proud to say that I put myself through college, and I wish more youngsters got involved in that kind of work ethic because I think this country would be a much better place for our youth.

I think on the question of has the administration involved us in the process, I think the administration is doing quite a bit to promote business externally, and I would have to say even though there have been discussions with the Commerce Department that they have been more proactive than they have been in the past, but as to the discussion on fast track, we are for fast track, but we are not for the requirement of the side agreements, and in those discussions I don't believe that we have participated.

Chairman CRANE. Does anybody have any other comments on that subject?

Mr. GUNDERSHEIM. I can say from my own experience, which goes back to the Tokyo round, that the administration where the contact and the exchange, the honest exchange in the sense of seriously considering advice from the private sector, that the best period was during the Carter administration with Ambassador Strauss and, in fact, with Dick Rivers and so on.

The second best has been the Clinton administration. I must tell you that the Reagan and Bush administrations treated the advisory process as nothing more than a sounding board for their own policies and their own propaganda and never seriously considered private sector advice with very few exceptions.

Mr. SOBEL. Mr. Chairman.

Chairman CRANE. Mr. Sobel.

Mr. SOBEL. I would just like to make one comment, and it goes back to your initial question. I just wanted to define the distinction

on intellectual properties, and that is that in that specific instance you are dealing with protecting the rights of American companies and American citizens, which is perhaps different, but is actually specific as it regards our Nation and what we are trying to protect.

Chairman CRANE. Are there any questions from you, Mr. Zimmer?

Mr. ZIMMER. Mr. Chairman, I don't have any questions, but I did want to belatedly welcome to the panel a neighbor from New Jersey and a leader in that State, Cliff Sobel, who has been very active in business and civic affairs and has relatively recently taken on the chairmanship of the Alexis de Tocqueville Institution, in which I am sure he will serve with great distinction.

So, Mr. Sobel, I want to give you my greetings and to all of you my regrets that I wasn't here to hear your testimony.

Chairman CRANE. Well, if there are no further questions, I want to thank all of the panelists for their participation today, and we look forward to working with you in the future as we go down the line in the advancement of our common denominator objectives, even though we may have some minute quarrels from time to time. Thank you so much.

Mr. ZIMMER [presiding]. At this time, we will call our last panel today, which includes David Hirschmann, executive vice president, the Association of American Chambers of Commerce in Latin America; I.M. "Mac" Destler, acting dean, School of Public Affairs, and director, Center for International and Security Studies, University of Maryland; Ambassador Ambler H. Moss, Jr., director, the North-South Center, and professor, International Studies, the University of Miami.

I would like to remind the witnesses that the oral testimony will be limited to 5 minutes and that their full written statements will be made a part of the record.

Dr. Destler.

## STATEMENT OF I.M. DESTLER, PH.D., CENTER FOR INTERNATIONAL AND SECURITY STUDIES, SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF MARYLAND

Mr. DESTLER. Thank you, Mr. Chairman. Thank you for including my written statement in the record. I will summarize briefly.

The fast track procedures on trade are one of the great legislative innovations of the past quarter century, and like any important reform, fast track has not worked out precisely as its writers envisaged.

On the positive side, the congressional role has proved more substantive than the statutory language suggests: through the so-called nonmarkup sessions of this and other House and Senate committees where the members offer draft language and recommendations to the administration prior to submission of the President's bill.

Less positive has been the related tendency for trade implementing bills to become thicker and more complex and to include provisions that go well beyond those necessary for carrying out U.S. trade commitments.

Another problem was that in the case of NAFTA, Congress found itself facing up or down votes on an ongoing negotiation that it

never specifically authorized. A third problem with fast track arose in late 1994 when a Senate committee chairman with only limited jurisdiction was able to delay for 45 days the vote on the Uruguay round legislation. The time has therefore come, I think, for significant fast track reform.

Renewal is very important, but change is important also. I have three recommendations and one comment, which are drawn from the new edition of my book, "American Trade Politics." The first important step would be for the Congress to guarantee in law the congressional role that has developed in practice. At present, there is no statutory support for this role embodied in the so-called nonmarkup sessions, no requirement under fast track that the administration consult with Congress prior to submission of a bill implementing a trade agreement.

The fast track renewal, I believe, should include such a requirement, a minimum period, perhaps 60 or 90 days, for a nonmarkup process to proceed between the signing of a trade agreement and the submission of an implementing bill.

This guarantee should be accompanied, however, by a shortening of the time limits for subcommittee review after the implementing bill is introduced, since no amendments are then possible. A total time period of 30 days or perhaps slightly more for House or Senate action would seem sufficient, in contrast to the current 90 days.

The second suggestion I would make for change would be to limit the scope of an implementing bill, as former Congressman Frenzel and others also suggested, to measures "necessary" for carrying out a trade agreement, for example, rather than "necessary and appropriate" as currently provided. The leeway of the broader language has been politically useful. Provisions not required to implement a trade agreement that have been added during nonmarkups have often broadened political support for trade implementing legislation. But the price has been high in adding trade law changes that should come through the normal legislative process; and in delaying congressional action, as happened last year on the Uruguay round, as antidumping and other laws are rewritten far more than is required to carry out U.S. trade commitments.

A particular problem in the implementing legislation has been the intersection of the fast track and budgetary procedures. I personally believe that budgetary discipline and budgetary procedures should be maintained on trade legislation, but there is no reason why the measures which accomplish this should not be subject to floor amendment because they are not part of our agreements with foreign nations.

I understand staff of both subcommittees are working on some specific language or formulas that would allow for a separate and amendable trade revenue bill to appear, to be worked on, to be subject to floor amendment, but still following the required time limits. This seems to be a sensible way to balance the budgetary, trade, and legislative needs.

Third, Congress should rewrite the fast track law to assure that it has the opportunity to authorize any major agreement which is subject to its provisions. This has always been the case for the big GATT negotiations which the laws of 1974 and 1988 explicitly authorized. But free trade talks with Mexico were not anticipated in

1988 when Congress passed the law whose language authorized them, and the fast track renewal bill of 1991 was considered after President George Bush and Mexican President Carlos Salinas had already initiated the NAFTA discussions.

I think the negotiation was important. NAFTA should have been launched only after being authorized explicitly by Congress. How specifically might Congress assume this for future negotiations? One means would be for the Congress to make the general fast track provisions permanent, with no date of expiration, but to provide that they could only be invoked for negotiations that Congress had specifically authorized. Each specific authorization, however, would specify negotiating objectives and include a deadline date, as has typically proved necessary to force hard compromises.

One final thought relates to the substance of trade negotiations. The fast track procedures have worked because there is broad bipartisan consensus in support of liberal trade. The process becomes difficult to maintain when negotiations extend to issues involving labor and the environment for which consensus is lacking.

These issues are increasingly intertwined with trade issues and will become more so as global economic interdependence increases, so it seems unreal and unreasonable to exclude them entirely from trade negotiations. Under present political circumstances, however, explicit authorizing of negotiations on trade related labor and environmental issues is too controversial for fast track to sustain. It is best, therefore, that this year's legislation be silent on this matter.

I am happy, Mr. Chairman, to respond to questions now or later from you or your staff.

[The prepared statement follows:]

*Renewing and Reforming "Fast Track"*

Testimony of I. M. Destler[1]
Before the a Joint Hearing of the
Subcommittee on Trade
Committee on Ways and Means
and the
Subcommittee on Rules and Organization of the House
Committee on Rules
United States House of Representatives

May 17, 1995

The "fast-track" procedures are one of the great legislative innovations of the past quarter-century. When, in the early 1970s, the Nixon administration sought advance Congressional authority to negotiate on non-tariff barriers to trade, it was anything but clear whether the United States could devise a mechanism which would give the administration credibility in trade bargaining, while maintaining Congressional authority over the results. But the Trade Act of 1974 did provide such a formula. It has made it possible for four different administrations to sign major trade agreements, and for Congress to provide for their implementation.

Like any important reform, "fast-track" has not worked out precisely as its creators envisaged. On the positive side, the Congressional role has proved more substantive than the statutory language suggests: rather than simply voting up or down on the President's bill implementing a trade agreement, Senators and Representatives have played active roles in the drafting of the bill, through the so-called "non-markup" sessions of this and other House committees and their Senate counterparts.

Less positive has been tendency for implementing bills to become thicker and more complex, and to include provisions well beyond those necessary for carrying out U. S. trade commitments. Another problem was that, in the case of NAFTA, Congress found itself facing up-or-down votes on an ongoing negotiation that it never specifically authorized. A third problem arose in late 1994, when a Senate committee chair with only limited jurisdiction was able to delay for 45 days the vote on the Uruguay Round legislation.

The time has therefore come for significant fast-track reform. Renewal is important--to build on the landmark achievements of 1993 and 1994. But change is important also.

One important step would be *to guarantee, in law, the Congressional role that has developed in practice.* Congress has established for itself a serious role in implementing comprehensive trade agreements--whereas it had no role at all in the implementation of the tariff agreements concluded in the thirties through the sixties. But at present, there is no statutory support for this role, no requirement under fast-track that the administration consult with Congress prior to submission of a bill implementing a trade agreement. The fast-track renewal should include such a requirement--a minimum period, perhaps sixty or ninety days, for a "non-markup" process to proceed between the signing of a trade agreement and the submission of the implementing bill.

This guarantee should be accompanied, however, by *a shortening of the time limits for committee review after the implementing bill is introduced.* Since no amendments are then possible, a total time period of thirty days for House and Senate action would seem sufficient -- in contrast to the present ninety days.

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[1]Mr. Destler is Professor and Acting Dean at the School of Public Affairs, University of Maryland, where he directs the Center for International and Security Studies at Maryland (CISSM). He is also Visiting Fellow at the Institute for International Economics. This testimony draws upon his *American Trade Politics*, Third Edition, published by the Institute and the Twentieth Century Fund in April 1995.

A second needed change is *to limit the scope of an implementing bill*--to measures "necessary" for carrying out a trade agreement, for example, rather than "necessary and appropriate" as currently provided. The leeway of the broader language has been politically useful, of course: ancillary provisions added during the "non-markups" have often broadened support for the implementing legislation. But the price has been high: in adding trade law changes which should go through the normal legislative process; in delaying Congressional action as antidumping and other laws are rewritten far more than is required to carry out U.S. trade commitments. The more that an implementing bill reaches beyond what a trade agreement requires, the less one can justify special procedural treatment under fast-track.

A particular problem has arisen from the intersection of fast-track and budgetary procedures. Budgetary discipline means that revenues lost from trade agreements should be offset, but there is no reason why the measures which accomplish this not be subject to floor amendment, for they are not part of our agreements with foreign nations. This committee should therefore explore ways to subject the budgetary provisions to less restrictive procedures. *One means would be a separate trade/revenue bill*, subject to time limits but also to amendment, one which would be passed prior to action on the implementing legislation itself.

Third, Congress should rewrite the fast-track law *to assure that it has authorized any major agreement which is subject to its provisions*. This has always been the case for the big GATT negotiations: the laws of 1974 and 1988 were explicitly enacted to provide for the Tokyo and Uruguay Rounds. And when Congress extended the fast-track process to bilateral negotiations in 1984, it did so with Israel and Canada in mind, and it added a committee veto over use of this authority beyond the Israeli case. But free-trade talks with Mexico were not anticipated in 1988, when Congress passed the law whose language authorized them. When President George Bush decided to inaugurate them in 1990, the committee veto still applied, but Congress as a whole got into the act only after the talks were launched, and only through the fast-track extension vote of 1991 which applied also to the Uruguay Round. A negotiation as important as NAFTA should only have been launched after being authorized explicitly by Congress, under procedures allowing an up-or-down vote on its merits.

How might Congress avoid a repeat of this? One means would be *to make the general fast-track provisions permanent*, with no date of expiration, but *provide that they could only be invoked for negotiations which Congress had specifically authorized*. Each specific authorization, moreover, would specify negotiating objectives and include a deadline date--as has typically proved necessary to force the final hard compromises.

In the current situation, Congress could include two things in this year's bill: a comprehensive, permanent reformulation of the fast-track legislation; and specific authorization for certain negotiations which are ripe. The latter would include, at minimum, NAFTA negotiations with Chile and completion of the unfinished business of the Uruguay Round. When the administration is ready to launch further specific negotiations, it would come back to Congress for authority. Consideration might be given to allowing the authorizing legislation for certain types of negotiations to receive fast-track consideration. For example, Congress might endorse--if it chose--the goal of Hemispheric free trade, or free trade among the nations Asia-Pacific Economic Cooperation forum, and provide that bills authorizing specific negotiations to these ends would receive fast-track procedural treatment. But exactly how members choose to structure this process is a matter of detail; what is most important is that, one way or another, Congress gets in effectively at the takeoff of each negotiation.

One final thought relates to the substance of trade negotiations. The fast-track procedures have worked because there is broad bipartisan consensus in support of liberal trade. The process becomes difficult to maintain when negotiations extend to issues--involving labor, involving the environment--on which such consensus is lacking. These issues are often intertwined with trade issues, and will become more so as global economic interdependence increases, so it seems unreal to exclude them from trade negotiations. Under present political circumstances, however, explicit authorizing of negotiations on trade-related labor and environmental issues is too controversial for fast-track to sustain. It is best, therefore, that this year's legislation be silent on the matter.

Mr. ZIMMER. Thank you, Dr. Destler, for your useful and specific testimony.

Gentlemen, as you can hear, we have got a roll call vote coming up. If each of you can spend slightly less than 5 minutes, we will be able to hear the testimony from the entire panel before I have to leave. So, Mr. Hirschmann, if you could proceed.

## STATEMENT OF DAVID HIRSCHMANN, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE IN LATIN AMERICA

Mr. HIRSCHMANN. My name is David Hirschmann. I am executive vice president of the association of 22 American Chambers of Commerce throughout Latin America, and we consider fast track to be perhaps the most important piece of legislation before Congress this year.

Since my full statement is in the record, I will simply summarize some of the reasons we think fast track is needed now and isn't an issue that this Congress can afford to postpone for future years.

Creating a free trade area of the Americas based on the core commercial principles of NAFTA is the best way of ensuring that the gains that have happened in Latin America over the last few years are continued. The change in Latin America has been remarkable, but it is still reversible. In fact, we have seen some of that this year.

If we want to make sure that those trends continue and that the opportunities for American companies continue to open up, I think the best way to do that is to have fast track in place, begin and conclude negotiations with Chile this year as a clear signal to the rest of the hemisphere that we are serious.

Throughout Latin America, clearly the Summit of the Americas was celebrated, but there is still some doubt as to whether the Congress is a partner in what the administration signed in Miami, and I think the best way to indicate that there is a bipartisan consensus moving forward is by approving fast track.

That said, I think there is some danger in trying to link fast track to labor and environmental provisions. As we try to look at what has already happened, I think we would have fast track today if it were not for that debate on labor and environmental issues. That is perhaps the central reason why we should avoid the linkage. In linking other issues to trade agreements we make it more difficult to make progress on the important issues of opening markets.

Labor and environment are clearly important issues. There might be others that come up in Latin America, just thinking of narco trafficking or immigration issues, but they should be separately pursued and not at the expense of moving forward with trade agreements.

Finally, we do have a comment on the issue of pay as you go. This Congress has been debating the issue of baseline budgeting. Congress used to claim that cuts were being made when, in fact, they were really decreases in projected spending.

By our way of looking at it, there is a certain amount of symmetry at least in the logic to claiming that trade agreements don't add revenue and therefore not counting the revenues of future agreements as part of a way of looking at the impacting of a trade agreement. So we think that the current way of accounting or the PAY–GO way of accounting for trade agreements should go the same way as baseline budgeting. Thank you, Mr. Chairman.

[The prepared statement follows:]

Prepared Statement of
David Hirschmann
Executive Vice President

Association of American Chambers of Commerce
in Latin America (AACCLA)

KEEPING TRADE WITH LATIN AMERICA ON THE FAST TRACK

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
and the
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE
COMMITTEE ON RULES

UNITED STATES HOUSE OF REPRESENTATIVES

May 17, 1995

Mr. Chairman, thank you for the opportunity to testify on what both the Association of American Chambers of Commerce in Latin America (AACCLA) and the Chilean-American Chamber of Commerce consider to be one of the most important pieces of legislation before Congress this year. We compliment Chairman Crane and Chairman Dreier for holding these hearings and for the long and determined efforts of these committees to successfully open global markets for U.S. goods and services.

AACCLA strongly urges this Congress to keep trade with Latin America on track by quickly enacting broad fast track negotiating authority, unencumbered by non-trade negotiating objectives.

Founded in 1967, AACCLA advocates trade and investment between the United States and the countries of the region through free trade, free markets, and free enterprise. AACCLA is the umbrella organization for the 22 American Chambers of Commerce (AmChams) in 20 nations throughout Latin America. Our AmChams represent over 16,600 companies and individuals dedicated to facilitating increased U.S. - Latin trade. Our members manage the bulk of American commerce in the region, and are therefore the most knowledgeable executives on doing business there. AACCLA is an unmatched resource for American business looking to become more active in trading with the nations of Latin America.

CREATING THE FREE TRADE AREA OF THE AMERICAS (FTAA)

Mr. Chairman, for the American business community active in Latin America there is no goal more important than fostering, sustaining and making permanent the dramatic gains in market access and economic reform that are underway throughout the region. Creating a Free Trade Area of the Americas, based on the core commercial principles in the NAFTA, is the best means of ensuring the continuity of these gains. If we succeed in seizing this opportunity, it will in large reflect to this Congress' commitment to work with the Administration to move forward this year to initiate and conclude negotiations for Chile's accession to the NAFTA.

To be sure, creating a Free Trade Area of the Americas within 10 years, as announced at the December Summit of the Americas, is an ambitious goal. Despite the tremendous progress in both political and economic reform throughout the region, the hurdles are still formidable.

This is precisely why we applauded the post-Miami Summit announcement by the three NAFTA partners (Canada, the United States and Mexico) that negotiations for Chile's accession to the NAFTA would begin early in 1995. Since then several rounds of preparatory discussions among the four countries have been conducted and the formal launching of negotiations is now expected in mid-June. Yet despite all this progress, many observers throughout Latin America still question the United States' determination and ability to move forward to build the Free Trade Area of the Americas.

FAST TRACK IS NEEDED TO QUICKLY CONCLUDE NEGOTIATIONS WITH CHILE

This uncertainty is primarily caused by the absence of fast-track negotiating authority for the President to negotiate with Chile and other potential partners. In fact, Chilean government officials have said that while they are willing to initiate negotiations without fast track, they believe that it is unlikely that these negotiation can be concluded until this Congress has adopted fast track legislation.

Three consecutive American Presidents -- Republicans Ronald Reagan and George Bush as well as Democrat Bill Clinton -- have strongly supported the vision of a Western Hemisphere united in fair and open trade. They have done so primarily because they have recognized that it is in our overwhelming economic interest to do so. Despite the recent crisis in Mexico, our exports to Latin America are expected to grow more quickly than to any other region of the World. Before the year 2020, the Department of Commerce estimates that United States exports to Latin America will exceed our exports to Europe and Japan combined.

In developing a strategy to forge a free trade area stretching from Alaska to Antarctica, we must not forget that the democratic gains and market reforms in the region are still reversible. Therefore, we must act now to help thwart opponents of economic reform throughout the region from seizing any short-term opportunity to turn back the clock to the days of high tariffs and closed economies.

THE UNITED STATES MUST HELP SHAPE THE HEMISPHERIC TRADE ZONE

Mr. Chairman, AACCLA believes that the creation of Free Trade Area of the Americas must be based on the highest possible levels of discipline, currently embodied in the NAFTA. This is another reason why we must move forward quickly to complete Chile's accession.

The Summit of the Americas declaration lists 13 areas that will be covered by the FTAA. Specifically, they agreed to "maximize market openness through high levels of discipline" in 13 areas, all of which are the basic disciplines included in the NAFTA agreement: tariff and non-tariff barriers affecting trade in goods and services; investment; intellectual property; dispute resolution; agriculture; subsidies; technical barriers to trade (standards); rules of origin; safeguards; anti-dumping and countervailing duties; sanitary and phytosanitary standards and procedures; dispute resolution and competition policy.

Although it is clear that the Summit leaders had NAFTA in mind when they drafted this list, they were not able to agree that NAFTA's high standards should be the minimum for future obligations.

This is one important reason why the United States cannot afford to deal itself out of hemispheric trade initiatives by not having fast track negotiating authority in place. In addition to enabling our negotiators to quickly conclude negotiations with Chile, Congressional approval of fast track will give our negotiators the credibility and authority they need to actively pursue the enactment of the trade commitments made at the Summit of the Americas.

FAST TRACK IS ESSENTIAL FOR SUCCESSFUL NEGOTIATIONS

At its core, fast track negotiating authority is the United States' way of assuring our trading partners that they can negotiate trade agreements with knowing that the United States Congress will either approve or reject the final pact as negotiated. This authority is not a concession from Congress to the executive branch. Instead, it is Congress' way of making sure that our negotiators have the maximum leverage at the bargaining table by ensuring that the United States government speaks with one strong voice. To achieve such a consensus, the Executive Branch must extensively consult with all segments of the Congress before, during and after negotiations.

This process has been a critical factor behind the strong, bi-partisan U.S. trade policy initiatives that have succeeded in opening up markets for U.S. businesses of all sizes, creating new high-wage jobs for millions of U.S. workers while also ensuring that American consumers have access to the high quality, competitively-priced products from around the world.

NEGOTIATIONS WITH CHILE ARE BROADLY SUPPORTED

There is strong bi-partisan support for free trade negotiations with Chile in the U.S. Congress even among Members who did not support the North American Free Trade Agreement itself. Many of the issues that complicated NAFTA's approval are likely to be absent from the debate on Chile.

Chile serves as a model for economic reform and democratization around the world. From El Salvador to the Czech Republic, Chilean economists serve as advisors to many nations seeking to expand economic opportunities for their citizens by moving toward a free market system. Despite the plethora of articles and stories about the "Chilean economic miracle" that have appeared around the world, I have never heard anyone claim that Chile's strengths have been exaggerated.

With a domestic market of only 13.6 million consumers, Chile has nonetheless attracted a remarkable share of foreign investment from around the world, enjoying the highest ratio of foreign investment per capita in Latin America. Indeed, news of foreign investment in Chile is so commonplace that it seldom makes front-page news. Instead, today you are more likely to read about Chilean companies investing in Argentina, Peru, Brazil or Bolivia.

By further opening the Chilean market, the U.S. can solidify its position as Chile's leading trading partner. Between 1987 and 1993, U.S. exports to Chile grew over 200%, largely due to unilateral moves by the Chilean government to open their economy. Negotiation of an accession agreement would knock down remaining barriers while also locking into place access to the Chilean market, thus helping to maintain the steady rise in U.S. exports which creates jobs here at home.

Because Chile's economy is already so open, negotiations for Chile's accession to the NAFTA should not prove to be protracted or difficult. Some trade experts have suggested that absent the important fast track hurdle, negotiations with Chile could be concluded and ready for Congressional consideration in as little as four to six months. But, without fast track, it has been argued that Chile's accession could take years.

LABOR AND ENVIRONMENTAL ISSUES SHOULD BE DE-LINKED FROM FAST TRACK

This possible delay in moving forward to negotiate market opening agreements with Chile and the rest of the hemisphere, highlights an important reason why labor and environmental negotiations should be kept separate from both trade negotiations and the fast track. By burdening trade negotiations with a myriad of other important issues we might want to discuss with our trading partners, (including not only labor and the environment but also human rights issues, narco-trafficking, immigration and others,) we jeopardize progress on both trade and these other issues.

Absent the controversy over labor and environmental linkages with trade, fast track would have most likely been included in the GATT implementing bill and negotiations with Chile could by now be well under way. Simply put, the broadly supported initiative to negotiate with Chile should not be further stalled or delayed by tying Chile's accession to the larger and still unresolved and contentious proposal to link environmental and labor issues to trade agreements.

Political proponents of linking labor and environment to trade have argued that moving in this direction would increase both Congressional and public support for these agreements. The recent experience with NAFTA, and the current fast track debate, show just the opposite.

Furthermore, the initiative to include labor and environmental objectives in the fast track stems from two ill-reasoned premises:

1. That expanded trade is detrimental to both the environment and the rights of workers.

2. That applying trade sanctions on other nations is the only way to improve labor and environmental conditions.

In fact, the opposite is true. As we pointed out in our 1994 "Agenda for the Americas," white paper, jointly produced by AACCLA, the Council of the Americas and the United States Chamber of Commerce, "Free and open markets and sustainable development are not mutually exclusive, but mutually inclusive." By pursuing macroeconomic policies that promote strong growth, including opening markets, nations can generate the resources needed to increase environmental protection. That paper went on to state that "if people of the Western Hemisphere earn rising incomes, they will be able to afford what they often now see as the 'luxury' of environmental protection."

In using trade sanctions to enforce labor and environmental goals, we risk creating new non-tariff barriers to trade that would not only limit the economic benefits of future agreements, but also postpone the day when those developing nations will be able to devote greater resources to acquire environmental technologies that would in turn increase environmental protection.

We therefore urge these committees to separate labor/environmental issues from the up-or-down (no amendments) provisions of fast track.

PAYING FOR TRADE AGREEMENTS

A second issue that has added unneeded controversy to recent trade agreements is the pay-as-you-go provisions of the 1988 Omnibus Budget Reconciliation Act. As you know, Mr. Chairman, these provisions require the Congress offset the loss of potential future tariff revenues resulting from a trade agreement with either budget cuts or tax increases. While these provisions were designed by Congress to provide some budget discipline, they are not unlike the now discredited "baseline" budgeting procedures which allowed the Congress to label reductions in the scheduled growth of federal spending as a "cut."

The pay-go provisions as applied to trade agreements fail to take into account the added revenues that these trade agreements generate simply by stimulating increased trade and economic growth. We believe that the "pay-go" way of calculating the real impact of trade agreements on the federal budget should go the way of "baseline budgeting."

Mr. Chairman, we thank you for this opportunity to share the views of both the Association of American Chambers of Commerce in Latin America and the Chilean-American Chamber of Commerce on this important legislation. We look forward to working with you and the subcommittees to seek timely approval of fast track legislation.

Mr. ZIMMER. Thank you very much.
Ambassador Moss.

**STATEMENT OF HON. AMBLER H. MOSS, JR., DIRECTOR, NORTH-SOUTH CENTER, UNIVERSITY OF MIAMI (FORMER U.S. AMBASSADOR TO PANAMA)**

Mr. MOSS. Thank you very much, Mr. Chairman. I will try to match my friend and colleague, Mr. Hirschmann, in his brevity. I appreciate my written comments being submitted in the record. I think basically my statement can be summarized under four headings.

First of all, leadership and political will. When the countries came together at the Summit of the Americas, 34 freely elected leaders of the hemisphere agreed to put together a "free trade area of the Americas." One thing that has emerged at that process and since is clear. They looked to the United States to lead this movement and to be a part of it, and it won't happen without that kind of leadership. It is a test of our political will and our ability to keep the momentum going.

Second of all, the immediate issue which came out of the Miami summit is the accession of Chile into NAFTA, promised first by President Bush, ratified by President Clinton, and up for immediate consideration. I agree with everything that has been said about Chile's readiness. Basically, if Chile couldn't get into NAFTA, no country could. It is a model country. Everybody simply agrees with that.

The question is will the fast track authority be there to enable the United States to negotiate successfully with Chile to bring it in.

The third rubric in my statement has to do with our competition for this fabulous market of 800 million people. I agree with Ambassador Kantor in what the market is going to become within a few years, more important than Europe, and Europe plus Japan. It is ours to have or ours to lose.

The competition, the European Union and Asia are wasting absolutely no time in negotiating, as in the European case with MERCOSUR, the southern countries. They will move in on the South American free trade area. If the United States sits back and does not act in its own interest, it can lose that market.

Finally, Mr. Chairman, let me come to the controversial issue of the nature of fast track. No one has argued that labor and environmental concerns are unimportant, but the issue is how or whether they should be linked to trade. The proposal of the Declaration of Principles and Action Plan of the summit emphasizes more goals than linkages in that sense, as does the administration's paper which is provided for going to the trade ministers meeting coming up in June, the end of this month.

I would suggest as to how this controversy could be resolved with respect to fast track, there are a couple of possible suggestions. One way might be to exclude labor and the environment from fast track authority by name, but require the administration to submit labor and environmental assessments of conditions in Chile to eventually other NAFTA partners. That would be useful in enabling the Con-

gress to make up its own mind as to whether or not these were qualified and appropriate NAFTA partners.

The second variant on this suggestion would be to include only trade in the fast track authority, but to leave any side agreements on labor and environment outside of that scope to full congressional scrutiny and not make it a part of fast track. I think we have to be realistic, Mr. Chairman, free trade in the Americas—there are now 24 free trade agreements running up and down the Americas, crisscrossing them—will happen with or without the United States. For it to happen in the right way, and in our own national interests, we have to be the leader, and that is, I think, what this debate over fast track is all about, and I urge its passage.

Thank you, Mr. Chairman.

[The prepared statement follows:]

**STATEMENT**
**SUBMITTED FOR THE RECORD**
**BY AMBLER H. MOSS, JR., DIRECTOR**
**NORTH-SOUTH CENTER AT THE UNIVERSITY OF MIAMI**

**to the**

**Subcommittee on Trade, Committee on Ways and Means**
**and the**
**Subcommittee on Rules and Organization of the House, Committee on Rules**
**U.S. House of Representatives**
**Washington, D.C.**
**May 17, 1995**

Mr. Chairman and Members of the Subcommittees:

Last December in Miami, the 34 freely-elected heads of state and government of the Western Hemisphere resolved to construct a "Free Trade Area of the Americas" (FTAA). It is to be negotiated by the year 2005 and involves the progressive elimination of barriers to trade and investment. The countries of the Americas look to the United States to provide the leadership for that commitment. The passage by the Congress of fast-track legislation will be an important early test of that leadership.

The Miami Summit did not draw up a blueprint for the achievement of an FTAA. In its Plan of Action, however, it set a meeting of trade ministers for this June, 1995, to be held in Denver, and the next trade ministerial to be held in March, 1996. These meetings will construct the full game plan. It is critical at this stage that the United States demonstrate a firm political will to maintain the momentum needed to achieve the FTAA, a free-trading system which soon will have over 800 million people. The creation of this open market will be the greatest accomplishment of the Western Hemisphere since its countries won their independence.

Ever since President George Bush made his historic Enterprise for the Americas speech in June, 1990, the North-South Center has been engaged with other institutions throughout the Hemisphere in studies involving the centerpiece of his speech, the economic integration of the Americas. We give great importance to the commitment made at the Miami Summit, to "invite the cooperation and participation of the private sector, labor, political parties, academic institutions and other non-governmental actors...thus strengthening the partnership between governments and society." The North-South Center has a Congressional mandate to improve relations among the United States, Canada, Latin America and the Caribbean. We believe that trade is the most powerful force for integration and prosperity on the planet. It has been an area of our emphasis, therefore, for the past five years.

In my opinion, failure to grant the Administration fast track at this juncture would send a signal to our trading partners that the U.S. government is divided over whether to continue hemispheric negotiations as agreed to at the Summit. They may justifiably question why fast track has been in place for multilateral and for North American negotiations but is not in place for hemisphere-wide negotiations. It would be a crushing blow to U.S. credibility. Our partners in the Hemisphere would wonder at our failure to accomplish something so obviously in our national interest.

I do not want to sound apocalyptic about these matters. It is technically correct that, although failure to enact this authority would make achievement of this objective very difficult, fast track is still only a procedural mechanism; hemispheric integration can be accomplished even if it is not in place. Nevertheless, since 1974, fast track negotiating authority has been synonymous with an American sense of purpose to complete negotiations within a finite time period and to assure the passage of trade accords without change by Congress. Fast track has been used to negotiate and approve such momentous agreements as the Final Acts of the Tokyo and Uruguay Round of Multilateral Trade Negotiations, bilateral free trade agreements with Israel and Canada and the NAFTA with Canada and Mexico. Without it, we would certainly be moving about in uncharted waters, and that could produce uncertain results.

At the Miami Summit, the United States, Canada and Mexico announced that negotiations

would begin with Chile for that country's entry into NAFTA. Recognizing all of the factors that determined Chile's readiness to join NAFTA, that promise had been made originally by President George Bush in 1992 and subsequently reiterated by President Bill Clinton shortly after he took office. Chile has been cited as a model economy in Latin America. It has had an annual growth rate of 7% for the last eight years, low unemployment and exemplary rates of savings and investment. Its imports are growing at annual rate of 26%. Chile also has adopted, in recent years, excellent standards of labor-management relations and of environmental protection.

Basically, it is fair to say that if Chile could not qualify for NAFTA membership, no country could. Nevertheless, although the negotiations will begin next month and probably can be concluded quickly, it is not a foregone conclusion that Chile will enter NAFTA this year. The reason is the absence of fast track negotiating authority. Such legislation may be in doubt because of the political fallout from the Mexican financial crisis, preoccupation by the United States with its own domestic concerns, and political disagreement over the form of fast track authority.

After Chile, there are other potential NAFTA candidates to keep the momentum going. In the Caribbean, Trinidad and Tobago, and Jamaica meet appropriate standards for entry. To admit them would be a positive signal that the United States is moving boldly toward the FTAA. It would also send an important message to all the countries of the Caribbean Basin.

From the North-South Center's vantage point in Miami -- the city which has become the crossroads of the Americas -- it is clear that the failure of the United States to present determined leadership toward Hemispheric integration would play into the hands of those who would prefer not to see a strong, unified FTAA with our full participation. The European Union (EU) has recently announced its intention to complete free trade negotiations with MERCOSUR, the second most important trading group in the Western Hemisphere, as early as the year 2001, four years before the Miami Summit deadline.

The EU has free trade arrangements with more countries than any other entity in the world. It has reciprocal or one-way free trade arrangements with dozens of countries in North Africa, the Arab world, sub-Saharan Africa, the Caribbean Islands and in the Pacific Rim. It now proposes negotiating free trade agreements with the MERCOSUR beginning with an "interregional association agreement" in the near future and is already formulating its negotiating positions for this purpose. Realizing that certain agricultural products may be too sensitive for the Union to agree to include within a free trade agreement, the EU Vice President has stated that WTO rules only require that 84 percent of trade be included. This would allow the most sensitive agricultural products to be excluded from the agreement.

Meanwhile, Brazil has announced its intention to create a South American Free Trade Agreement (SAFTA) this June through a free trade agreement between MERCOSUR and the Andean Pact. MERCOSUR is also negotiating a free trade agreement with Chile. Even if the target date is overly optimistic, past performance has demonstrated that such objectives are eventually attained.

A SAFTA would mean that all major South American countries, including Argentina, Brazil, Chile, Colombia, Peru and Venezuela, would be united into a single undertaking. If such a SAFTA were to be created, the European Union would, in all probability, expand its negotiating mandate to include all of SAFTA as opposed to only MERCOSUR. Given its past experience in negotiating free trade arrangements, there should be little doubt that the European Union will adhere to its objective absent a strong response from the United States.

I would like to make one additional comment regarding fast track at this point. Perhaps as important as passage of fast track is an agreement to end the unfortunate offset requirements for the bill. The case can be made that liberalizing trade by increasing economic activity produces an increase in tax revenues that more than offsets any loss in duty collections from reduced duties. Yet current rules require offsets, either through increased taxes or reduced spending for every dollar of decreased duty collections. This extremely static analysis must be modified to take into account the dynamic consequences of trade liberalization.

The United States now appears to be supporting a two-pronged approach for creating the FTAA. As envisioned in the Miami Summit, the two prongs are the amalgamation or enlargement of existing free trade arrangements and the harmonization of provisions in such agreements so as to create hemisphere-wide building blocks. The key developments in the first part of this process are the following:

-- The process of expanding existing free trade agreements will be the launching in the near future of Chilean accession negotiations to NAFTA. These negotiations should be

completed late this year or early next, with Congressional approval expected before the end of 1996.

--The Brazilian and American Presidents agreed at their recent summit that U.S. Trade Representative Mickey Kantor and Brazilian Foreign Minister Lampreia should meet at least three times over the next two months to begin the process of bringing NAFTA and MERCOSUR together.

--The passage of HR 553, providing for "NAFTA parity", will remove serious impediments to American-Caribbean Basin Trade and launch a serious process of CBI accession to NAFTA. It is an extremely important building block, and it is gratifying that it is achieving so much bipartisan support.

With regard to deepening existing integration within the hemisphere, the OAS is to complete a comparison of trade provisions in each of the major hemispheric integration agreements. This comparison could provide the basis for the eventual harmonization of these provisions throughout the hemisphere.

The United States has proposed that the upcoming Denver Ministerial approve a comprehensive hemispheric negotiating agenda. The proposed agenda covers almost all the issues encompassed in NAFTA and the Uruguay Round, including market access, government procurement, investment, intellectual property rights, standards, antidumping and countervailing duties and dispute settlement. Canada has proposed a particularly ambitious scheme for preferential trade negotiations, including an agreement by the end of 1996 on a ten-year phase-out of tariff and non-tariff barriers beginning in 1998. Colombia, Costa Rica and Peru, among others, have laid out specific items for trade liberalization.

Agreement on a detailed agenda for substantive hemispheric negotiations at the June Ministerial would go a long way towards enhancing negotiations on the FTAA. It would be desirable for all participants to make suggestions of their own for hemispheric negotiations as well.

Although it is not realistic to expect that fast track will be passed by the time of this Ministerial, a bipartisan agreement on the outline of fast track would be helpful. A trade subcommittee markup would send exactly the right signal in this regard.

Let me address the most controversial aspect of fast track, the disagreement on labor and environmental provisions. No one has argued that labor and environmental concerns are unimportant, but the issue is whether, or how, they should be linked to trade. The Miami Summit addressed these concerns in terms of commitments made in its Declaration of Principles. In the section on economic integration and free trade, it states: "Free trade and increased economic integration are key factors in raising standards of living, improving the working conditions of people in the Americas and better protecting the environment. In the U.S. Proposal for Agreement at the Denver Trade Ministerial (quoted in Inside NAFTA, May 3, 1995), goals are stated, with respect to labor, to:

--"reaffirm Summit commitment to raise standards of living and promote worker rights in the region at the June Ministerial;

--recommend that the labor ministers, at their meetings, discuss how to achieve Summit's commitments on worker rights and to share those views with ministers responsible for trade before their next meeting in March 1996;

--by March 1996 establish national procedures for obtaining the views of labor regarding the FTAA process."

and with respect to environment, it states:

--"at the June Ministerial, reaffirm Summit commitment to make trade and environment policies mutually supportive;

--determine by March 1996 ways to consult with appropriate environment and business NGO's and with the appropriate environmental ministry(or ministries) on trade issues."

This proposal of the Administration emphasizes goals rather than linkages. This is consistent with a Latin American viewpoint. Latin American countries are generally supportive

of high labor and environmental goals, and Chile is a particularly good example. They are generally suspicious of linkages, however, as an infringement on sovereignty and often as an excuse to apply protectionist measures.

How can this controversy be resolved with respect to fast track? One way might be to exclude labor and the environment from fast track authority but require the Administration to submit labor and environmental assessments of conditions in Chile and eventually other NAFTA candidates. These assessments would enable the Congress to evaluate the suitability of potential NAFTA partners. A variant on this suggestion would be to include only trade in the fast track authority, but to leave any side agreements on labor and the environment, if entered into, to scrutiny by the Congress without fast-track treatment.

This is no time for the United States to turn inward. This decade has been one of great progress by administrations of both political parties toward a world free trading system based on open regionalism. There has been great continuity. In June 1990 President George Bush outlined the vision, in his Enterprise for the Americas speech, of a free trade system in the entire Western Hemisphere. He began the NAFTA negotiations which President Clinton completed, and for which he fought hard for Congressional approval. A successful Asia Pacific Economic Conference was held in Seattle, now including two Latin American members, Mexico and Chile. By December 1994, the Congress approved the accords resulting from the Uruguay Round of the GATT. At the Miami Summit, the United States took the leadership role in projecting the vision of the FTAA and committing to it.

We must be realistic. Free trade in the Americas will continue with or without the United States. It is a fabulous market, which is ours to have or ours to lose. Of course, there cannot be a FTAA without the United States. It is the best of all options for the entire Western Hemisphere. Fast track is an important step along the way. I urge its passage.

Mr. ZIMMER. Thank you very much, Mr. Ambassador. I would like to thank all the witnesses for their testimony. This concludes our hearings on fast track. The subcommittees are adjourned.

[Whereupon, at 1:45 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

**BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE COMMITTEE ON RULES, UNITED STATES HOUSE OF REPRESENTATIVES**

**JOINT HEARINGS ON EXTENSION OF FAST-TRACK NEGOTIATING AUTHORITY**

WRITTEN STATEMENT IN OPPOSITION TO FAST-TRACK PROCEDURES FOR TRADE AGREEMENTS CONTAINING THE NAFTA CHAPTER 19 BINATIONAL PANEL DISPUTE SETTLEMENT SYSTEM

**SUBMITTED ON BEHALF OF**

AK STEEL COMPANY
ALAMO CEMENT COMPANY
AMERICAN TEXTILE MANUFACTURERS INSTITUTE
ASH GROVE CEMENT COMPANY
ASSOCIATION FOR MANUFACTURING TECHNOLOGY
BETHLEHEM STEEL CORPORATION
CALAVERAS CEMENT COMPANY
CINCINNATI MILACRON
COPPER & BRASS FABRICATORS COUNCIL, INC.
FLORIDA CRUSHED STONE CO.
FOOTWEAR INDUSTRIES OF AMERICA, INC.
GIANT CEMENT COMPANY
INDEPENDENT FOREST PRODUCTS ASSOCIATION
INLAND STEEL INDUSTRIES, INC.
LTV STEEL COMPANY, INC.
LAFARGE CORPORATION
LEATHER INDUSTRIES OF AMERICA, INC.
LEHIGH PORTLAND CEMENT COMPANY
LONE STAR INDUSTRIES
MEDUSA CORPORATION
MUNICIPAL CASTINGS FAIR TRADE COUNCIL
NATIONAL ASSOCIATION OF WHEAT GROWERS
NATIONAL CEMENT COMPANY
NATIONAL STEEL CORPORATION
NORTH TEXAS CEMENT COMPANY
NORTHEASTERN LUMBER MANUFACTURERS ASSOCIATION
PHOENIX CEMENT COMPANY
RIVERSIDE CEMENT COMPANY
RMC
SOUTHDOWN, INC.
SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION
SOUTHERN FOREST PRODUCTS ASSOCIATION
TARMAC AMERICA, INC.
TEXAS INDUSTRIES, INC.
TEXAS-LEHIGH CEMENT COMPANY
THE AMERICAN BEEKEPERS FEDERATION, INC.
THE AMERICAN HONEY PRODUCERS ASSOCIATION
THE COALITION FOR FAIR ATLANTIC SALMON TRADE
THE COLD-FINISHED STEEL BAR INSTITUTE
THE COMMITTEE OF DOMESTIC STEEL WIRE ROPE AND SPECIALTY CABLE MANUFACTURERS
THE FERROALLOY ASSOCIATION
THE SMOKED SALMON ALLIANCE
THE FRESH GARLIC PRODUCERS ASSOCIATION
USX CORPORATION
VALMONT INDUSTRIES

May 11, 1995

## I. INTRODUCTION

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

This system departs radically from traditional international dispute settlement principles whereby international bodies resolve disputes over the interpretation of internationally agreed texts. Unlike any other international dispute mechanism, the Chapter 19 system entails direct implementation under national law, without intervening political review, of decisions rendered by non-judges and indeed by non-citizens.

## II. SUMMARY

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

In addition, the system's ad hoc and fragmented nature dooms it to failure as a replacement for domestic courts. Especially if the system were extended to additional countries, industries attempting to exercise their rights against unfair trade from different points of origin would end up facing a multiplicity of panel and court proceedings likely to yield divergent rulings on identical issues. Neither industry nor the government agencies involved could afford to prosecute so many litigations. The result would be incoherent bodies of law, an unpredictable environment for litigants and businesses, and even the possibility of MFN problems resulting from unequal application of AD and CVD laws. In short, the system would become unworkable (and the Congressionally-mandated U.S. trade remedies unusable).

The Chapter 19 system has already failed in some of its most critical disputes. Panels reviewing U.S. Government determinations have repeatedly disregarded the requirement that they behave like a U.S. court and apply U.S. law, and they have impaired implementation of mandatory U.S. trade remedies. In light of the system's abysmal disposition of the recent softwood lumber subsidy case -- including undisclosed conflicts of interest on the part of two panelists and the express refusal of one panelist to apply U.S. law as called for in the NAFTA -- U.S. industry can have little faith in U.S. trade remedy policies as applied to imports from Canada and Mexico, much less to imports from an even broader array of countries.

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

and, in the long term, in any country.

Accordingly, Congress should direct the Administration to negotiate elimination of Chapter 19 from the NAFTA. At minimum, legislation -- for example legislation renewing fast-track procedures for trade agreements -- should expressly prohibit agreements that extend the Chapter 19 system to trade with additional countries. In addition, fast-track procedures should be expressly inapplicable to bills for the implementation of trade agreements that extend the Chapter 19 system. It is important that this matter be carefully considered at this juncture to prevent Chapter 19 from becoming part of a template for future, broad U.S. free trade agreements.

## III. BACKGROUND ON THE CHAPTER 19 SYSTEM

A primary Canadian goal in negotiating the U.S.-Canada Free Trade Agreement ("CFTA") was exempting Canadian exports from the United States' AD and CVD laws. The United States maintained a diametrically contrary position: the agreement should establish disciplines on unfair trade practices rather than permitting them to go unsanctioned.

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

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

Second, during Congress's consideration of the CFTA, U.S. Justice Department officials advised that the system would be unconstitutional if panel decisions were implemented automatically, as is now the case. United States-Canada Free Trade Agreement: Hearings Before the Senate Judiciary Committee, 100th Cong., 2d Sess. 76-87 (1988) ("Senate Judiciary Comm. Hearing"). Several Members of Congress expressed serious reservations about the constitutionality and workability of Chapter 19, including Senators Grassley and Heflin. See id. at 89-98; S. Rep. No. 509, 100th Cong., 2d Sess. 70-71 (1988).

The Chapter 19 system was ultimately accepted along with the rest of the CFTA based on Executive Branch commitments to Congress that: 1) panels reviewing U.S. agency determinations would be bound by U.S. law and its governing standard of review, just as the Court of International Trade is so bound; 2) there would be strict and fully enforced panelist conflict-of-interest rules; and 3) the system would be in place only a short while and only with Canada. According to one of the primary U.S. negotiators on this issue, the system could only work for Canada. It was

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

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

issue in an historic agreement with our largest trading partner.

United States-Canada Free Trade Agreement: Hearings Before the House Judiciary Committee, 100th Cong., 2d Sess. 73 (1988) (Testimony of M. Jean Anderson).

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

## IV. CHAPTER 19's DESIGN IS FLAWED IN SEVERAL RESPECTS AND HAS SERIOUS CONSTITUTIONAL PROBLEMS

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

### The System is Undemocratic and Unaccountable

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

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

### The System Violates Principles of Impartial Judicial Review

Article III of the Constitution establishes safeguards to assure an impartial federal judiciary, i.e., life appointment and freedom from salary diminution. As noted above, review of trade cases by Article III judges has a long tradition in the United

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

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

States,[4] and dispensing with Article III protections for reviews of AD/CVD determinations is unwarranted. In fact, conflicts of interest on the part of panelists were a major problem in the Chapter 19 review involving Canadian softwood lumber (see below). Even setting constitutional infirmities aside, the conflict-of-interest prone Chapter 19 arrangement creates a serious perception problem damaging to the credibility of the international trading system.

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

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

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

## V. In Practice, the Chapter 19 System Has Been Disastrous

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

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

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

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4/ Supra note 1 and accompanying text.

5/ See S. Rep. No. 189, 103d Cong., 1st Sess. 43 (1993) ("The Committee believes . . . that CFTA binational panels have, in several instances, failed to apply the appropriate standard of review. . . ."); see also H.R. Rep. 361, 103d Cong., 1st Sess. 75 (1993).

The Chapter 19 system also failed conspicuously in the recent case involving subsidized Canadian softwood lumber, the largest single trade case to this point.[6] In that case:

- The lower panel decision and the ECC decision were decided by bare majorities strictly along the lines of the nationality of the panels' members. Certain Softwood Lumber Products from Canada, No. USA-92-1902-1904-01, slip op. (Dec. 17, 1993); Certain Softwood Lumber Products from Canada, No. ECC-1904-01USA, slip op. at 37 (Aug. 3, 1994) ("Lumber ECC"). The United States lost on a "coin flip," pursuant to which the lower panel and ECC contained Canadian majorities.

- Two of the three Canadian members of the lower panel and their law firms were involved in representations of Canadian lumber interests and governments. Contrary to applicable ethical rules, most of these conflicts were not disclosed. See Lumber ECC at 71-86, Annex 1 (Wilkey opinion).

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

- An ECC member relied on a facially wrong understanding of the review standard for panels that is established by the NAFTA and the applicable U.S. statute. See Lumber ECC at 28 (Hart opinion) (indicating that panels need not be as deferential as the Court of International Trade).

The dissenter in the lumber ECC decision was former Federal Appeals Court Judge (and former Ambassador) Malcolm Wilkey, one of the United States' foremost jurists. According to Judge Wilkey, the underlying panel majority opinion "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read." Lumber ECC at 37 (Wilkey opinion). Moreover, Judge Wilkey demonstrated that the lumber case violated all of the safeguards on which Congress based its conclusion that the Chapter 19 system is consistent with constitutional due process protections. Id. at 69-70, citing H.R. Rep. No. 816, Pt. 4, 100th Cong., 2d Sess. 5 (1988).

Recent Mexican statements provide even more reason to fear that respect for national law -- a central feature of the system on which U.S. acceptance was explicitly based -- will continue to be lacking. Appearing before a panel reviewing a Mexican antidumping determination on steel products from the United States, a lawyer from SECOFI (Mexico's AD/CVD administrative agency) directly challenged the common understanding that panels are to review agency determination as national courts would, for consistency with national law:

> The panel, a Secofi lawyer said, can make independent decisions and is not limited to judging whether the dumping investigation was legal under Mexican law. "The question is the nature of the panel's powers. . . . The panel is supposed to resolve disputes," and is not necessarily bound to apply the letter of Mexican law, he told panelists.[7]

Apparently, SECOFI is counting on the binational panel to affirm its determination notwithstanding inconsistencies with Mexican law. Even if SECOFI's arguments are rejected by this particular panel, this statement calls into question the Chapter 19 system's

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6/ The softwood lumber case concerned trade flows totalling around $5 billion per year.

7/ "NAFTA Dispute Resolution Panel Examines Steel Issue in First Hearing," BNA Daily Report for Executives 6-7 (Apr. 21, 1995).

theoretical utility for U.S. exporters as well as (more importantly) revealing an expectation on the part of our NAFTA partner that panels will, explicitly, substitute their preferences for the requirements of national law.

## VI. Relevance for Future Trade Agreements

The infirmities in Chapter 19's design and its failures in practice show that the U.S. Government should belatedly adhere to the CFTA negotiator's admonition noted above and not extend the Chapter 19 system to other countries. Even setting aside these problems with Chapter 19, however, it should not be part of future U.S. free trade relationships because it is not needed. The WTO system fulfills any legitimate need for international AD/CVD dispute settlement.

Unlike the Chapter 19 system, WTO dispute settlement will operate under standard principles of international dispute settlement: WTO panels will resolve disputes over the meaning of the WTO texts, deciding whether the importing country has complied with its international obligations. This process, coupled with access to domestic courts, should satisfy any concerns about securing unbiased review of AD/CVD determinations. There is simply no need for the unworkable and sovereignty-impairing Chapter 19 system.

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

## VII. Conclusion

The U.S. Government should negotiate elimination of the Chapter 19 dispute settlement system as it exists with Canada and Mexico. At minimum, Chapter 19 should not be extended to additional U.S. trading partners.

Congress should:

- Ensure that "fast-track" negotiating authority and implementing procedures are unavailable for trade agreements that extend the Chapter 19 system to additional countries.

- Hold hearings on the Chapter 19 system to investigate: 1) whether the system is constitutional; 2) whether the system is necessary in light of WTO rules and the WTO dispute settlement system; 3) the suitability of the system as a permanent replacement for judicial review of trade cases; and 4) the past performance of the system.

- Direct the Administration to pursue through negotiations elimination of Chapter 19 from the NAFTA.

- Consult closely with the Administration regarding not only U.S. panelist appointments but also consideration of panelists proposed by Canada and Mexico.

**STATEMENT**
**OF**
**THE AMERICAN FOREST & PAPER ASSOCIATION (AF&PA)**

**SUBCOMMITTEE ON TRADE**
**COMMITTEE ON WAYS AND MEANS**
**AND**
**SUBCOMMITTEE ON RULES AND ORGANIZATION**
**COMMITTEE ON RULES**

**U.S. HOUSE OF REPRESENTATIVES**

**"Fast Track Negotiating Authority"**

The American Forest & Paper Association appreciates this opportunity to advise the Committee of our views regarding the extension of fast track negotiating authority.

AF&PA is the national trade association of the forest, pulp, paper, paperboard, and wood products industry. AF&PA represents approximately 400 member companies and related trade associations (whose memberships are in the thousands) which grow, harvest and process wood and wood fiber; manufacture pulp, paper and paperboard products from both virgin and recovered fiber; and produce engineered and traditional wood products.

The vital national industry which AF&PA represents accounts for over seven percent of total United States manufacturing output. Employing approximately 1.6 million people, the forest and paper industry ranks among the top 10 manufacturing employers in 46 states, with an annual payroll of approximately $49 billion. Total sales of U.S. forest and paper products exceed $200 billion annually.

The U.S. is the world's largest producer of pulp and paper and paperboard; it provides 35 percent of the world's pulp, and satisfies 30 percent of its paper and paperboard needs.

In 1994, U.S. forest products exports totalled $ 18.2 billion. Using the Department of Commerce yardstick, these sales support more than 360,000 direct and indirect jobs here in the United States.

Our export sales represent the fastest growing segment of our industry's business, and an important source of growth. For pulp, paper and paperboard, exports represented more than 40 percent of the growth in output during the 1988-1994 period.

This industry is ranked among the most competitive in the world. We have historically relinquished any tariff protection here in the U.S. and relied upon our competitive strength to win markets abroad. Where trade barriers are eliminated, and the playing field leveled, the investments in quality and productivity enhancements our industry has made in recent years has left us very well positioned to take full advantage of market-opening opportunities.

Clearly, the maintenance and expansion of open world markets is vital to our future as a global industry. For this reason, we have historically supported our government's efforts to open world markets and have consistently worked for the extension of fast track negotiating authority. We believe it is self-evident that such authority is an absolute prerequisite for the conduct of credible international trade negotiations.

That remains our position today. AF&PA would support the extension of fast track authority -- but we wish to emphasize that such authority should be granted solely for the purpose of negotiating agreements which will serve to open markets and liberalize trade. We would oppose any attempt to encumber the achievement of open world markets by the imposition of unrelated -- and perhaps inimicable -- environment and labor objectives in such negotiations. Our views are based on two fundamental observations.

The first is the historic basis for the delegation of authority under fast track. In our view, it is entirely inappropriate to accord fast track treatment to any agreement relating to international environmental and labor matters. The legislative history of fast track procedures makes it clear that they are intended only for the conduct of trade negotiations where there is sufficient support for broad market-opening goals and objectives that the Congress is willing to forego the opportunity for specific amendments.

This is not the case for international environmental or labor issues. There is no domestic political consensus regarding the extent to which trade agreements should be used to accomplish environmental and labor objectives, nor indeed, on what those objectives should be. Nor is there any international agreement on how these subjects should be treated in the context of a global system of jurisprudence focused exclusively on trade. Absent any clear sense of direction from the American people, any international agreement in these areas must therefore be subject to full public scrutiny and Congressional review.

The second relates to the underlying calculation of reciprocal concessions and mutual benefit which is at the heart of a good trade agreement. Effective trade agreements must first make economic sense. The introduction of labor, environmental, or other objectives which cannot be quantified necessarily unbalances this equation and--to the extent that the U.S. is the demander--clearly diminishes the economic benefit which the U.S. can request of its partner to the deal.

It should be emphasized here that there is no stronger advocate for high standards of environmental and labor protection than the U.S. forest products industry. It is our view that the environmental and labor practices of our companies are among the highest in the world. We would support efforts by our government to negotiate cooperative agreements with other nations with the objective of achieving mutually agreed goals in these areas. However, we would attach the following conditions to any such agreements:

- o they must be strictly separated from any trade negotiation, to avoid any interpretation that such agreements are integral to performance under the trade agreement, or that such agreements are a legally required part of a trade pact;
- o because they have the potential to impact domestic law and policy in these areas, and as we have indicated, because there is no domestic consensus, any such agreements should not themselves be subject to fast track procedures;
- o they must not provide for trade sanctions as enforcement mechanisms.

In the immediate case, AF&PA would support the extension of fast track authority for negotiations with Chile. Beyond this, we do not have a view on the duration and scope of such authority. However, we strongly recommend that the statement of negotiating objectives make it clear that this would apply only to issues related to traditional trade matters, including tariffs, standards and subsidies, and specifically exclude accession to the NAFTA side agreements relating to environment and labor. We do not believe that Chile or any other future NAFTA partner should be required to accede to the labor and environmental side agreements.

On the other questions regarding fast track, AF&PA would support enhanced Congressional involvement in the process, not just in the formulation of objectives, but on a continuing basis. We would also support a process for separate consideration of the funding mechanism for future agreements. The present pay-go approach not only denies the reality of the long-term fiscal gains from trade expansion, it force companies to choose between the clear long-term gains from trade and potential tax changes which go to the immediate bottom line. These are not the kinds of calculations which U.S. companies should be forced to make if they are to compete in tomorrow's global markets.

Mr. Chairman, the U.S. forest products industry is unshakably committed to free trade. We are also supportive of expanded international cooperation on matters related to the environment and labor. We believe that the effort to marry these two does a disservice to both. We urge you to provide fast track authority which will allow the President to realize the vision of the Miami Summit, and continue to open global markets for American industry. At the same time, we urge you to oppose any attempts to impose a new template on the global trade system which would put at risk the steady expansion of global economic opportunity which has served as the foundation of our post war economic expansion.

STATEMENT OF THE CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION IN OPPOSITION TO AUTHORIZING FAST-TRACK NEGOTIATION OF INTERNATIONAL TRADE AGREEMENTS WHICH INCLUDE BI-NATIONAL PANEL REVIEW IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

The Customs and International Trade Bar Association ("CITBA"), the nation-wide organization of customs and international trade lawyers, opposes an extension of fast-track negotiating authority for any free trade agreement which would include the use of bi-national panels to review administrative decisions in countervailing duty and antidumping duty cases to determine their lawfulness for purposes of U.S. law.

While CITBA has never opposed and does not now oppose any free trade area agreement, CITBA has consistently opposed bi-national panels for review of U.S. countervailing duty and antidumping duty determinations. CITBA now reiterates its opposition and, in addition, opposes extending the bi-national panel system beyond the current NAFTA signatories.

CITBA has approximately 450 customs and international trade attorneys as members. CITBA members practice before all of the courts and agencies involved in U.S. customs and international trade proceedings and litigation, including the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit (CAFC), the United States Supreme Court, and the administrative agencies which make countervailing duty and antidumping duty determinations, the United States Department of Commerce and the United States International Trade Commission. Many of our members have also appeared before the bi-national panels constituted under Chapter 19 of the United States-Canada Free Trade Agreement (US-CFTA), as well as similar panels constituted under NAFTA. Moreover, members of the association also have served as panel members in these proceedings.

CITBA's continuing opposition to bi-national panel review is premised on the following considerations:

1. Bi-national panel review permits and directs the imposition, assessment, and collection of United States government taxes (i.e., imposition and collection of United States countervailing duties and antidumping duties) without the benefit of Article III judicial review. In our view, such a system is both unconstitutional and unwise as a policy matter because (a) the cases are not disputes of an international character and (b) the panels replace the governmental institution which is intended and is best suited to adjudicate the lawfulness of agency actions for purposes of U.S. law -- Article III courts -- with an institution less well suited to perform exactly the same function.

2. Members of the bi-national panels are predominantly a constantly changing ad-hoc array of practicing international trade lawyers (whether United States, Canadian or Mexican citizens) with continuing professional responsibilities to their clients and law practices, who have not been appointed or confirmed by the United States Senate and have not taken the Constitutionally-required oath to preserve, protect and defend the Constitution of the United States. In addition to being unconstitutional, establishment of this pool of decision-makers is unwise as a policy matter because it creates the appearance of a lack of impartiality, thereby undermining legitimacy and confidence in the system.

3. Bi-national panel review creates a dual, if not multiple, system of review which produces two or more separate legal interpretations of the same trade laws, sometimes in the same case. It is constitutionally suspect since it may result in unequal protection of the laws and certainly undermines the constitutional requirement of uniform import duties. Moreover, the multiplicity of decisions is unwise as a policy matter because of the confusion and burdens it inevitably creates.

BACKGROUND

Countervailing duties are imposed by the United States to offset the effects of foreign governmental subsidies conferred on products imported into the United States. 19 U.S.C. § 1671, et seq. Antidumping duties are duties imposed by the United States when foreign goods enter the United States at less than their "normal value." 19 U.S.C. § 1673, et seq. "Normal value" (formerly known as "fair value") is generally the higher of (a) the home-market price of the product or (b) the manufacturing costs of the merchandise, plus overhead, expenses, and profits. Before countervailing or antidumping duties are imposed, the United States International Trade Commission must determine that a United States industry is materially injured or threatened with material injury, or, if such industry does not exit, whether the establishment of an industry in the United States is materially retarded by reason of the subsidized or dumped imports. Because of the method of calculating the countervailing duty or antidumping duty, many such duty determinations have tended to be among the highest of all United States taxes when calculated on an ad valorem basis.

Currently, except in cases involving imports from Mexico or Canada, antidumping and countervailing duty determinations by the Department of Commerce and International Trade Commission are reviewable at the request of importers, exporters, and United States manufacturers and their labor unions in the United States Court of International Trade, an Article III court established by Congress. Decisions of the Court of International Trade are then reviewable by the CAFC, and ultimately by the United States Supreme Court. By virtue first of the US-CFTA and then NAFTA, administrative determinations in antidumping and countervailing duty cases affecting Canadian -- and now also Mexican -- products imported into the United States are subject to review by bi-national panels consisting of experts in the international trade fields from the exporting and importing countries involved. 19 U.S.C. § 1516a(g). These panels have tended to be composed of international trade lawyers who also have clients in other antidumping duty and countervailing duty cases. Antidumping duty cases and countervailing duty cases from Mexico and Canada may be reviewed in United States Courts but only if all sides first waive bi-national panel review. Since 1989, the effective date of the US-CFTA, such a waiver has never occurred.

Bi-national panels were first proposed as a substitute for judicial review of countervailing and antidumping duty disputes in the US-CFTA. They were apparently a last-minute compromise among the parties to overcome their differences as to whether countervailing and antidumping duty measures should even exist between countries who were members of a free trade area. Rather than resolving the fundamental problem, the negotiators decided to study the issue for five to seven years and, in the interim, review countervailing duty and antidumping duty decisions in bi-national panels. The concept of bi-national panels had not been previously discussed publicly, and when it first appeared as part of the final text of the negotiated agreement, CITBA immediately objected.

CITBA's opposition to the bi-national panel provisions of the US-CFTA were set out in its statements of December 3, 1987 and March 3, 1988. By letter dated July 8, 1992, CITBA also objected to the inclusion of the bi-national panel procedure in the NAFTA. On April 25, 1995, CITBA reaffirmed its opposition to such panels. CITBA's December 3, 1987 and March 3, 1988[1] statements in opposition to bi-national panel reviews of countervailing duty and antidumping duty determinations are matters of public record. While we here briefly review and reemphasize these outlined main

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[1] See Hearing Before S. Finance Committee on the U.S.-Canada Free-Trade Agreement, S. Rep. No. 100/1081, at 160-185 (1988).

points, we also readopt and reaffirm all the points we made in our prior submissions without repeating them here.

I.

LACK OF REVIEW BY ARTICLE III FEDERAL COURTS.

A. Elimination Of Article III Judicial Review Of Countervailing Duty And Antidumping Duty Determinations Is Unconstitutional.

1. In General. As stated above, antidumping and countervailing duty cases arise under statutes of the United States to remedy injury to United States industry from dumped and subsidized imports by imposing a supplemental import duty, payable to the United States, on the imported merchandise.

Prior to the adoption of the Constitution in 1787, the continued existence of the United States had become increasingly problematical because the central government under the Articles of Confederation had no compulsory mechanism by which to raise revenue to fund its operations. The various states had repeatedly rejected requests by Congress to give Congress the power to levy import duties. When New York again rejected such a request in 1786, the Constitutional Convention was called, with George Washington acting as its president, to organize the nation's form of government.[2]

Since the main purpose of the convention was to provide the central government with the authority to raise revenue by import duties (see Constitution, Article I, Section 8), each of the major plans first proposed at the convention provided that new federal courts be established (under the Articles of Confederation there were no federal courts at all) to review these customs cases. Thus, for example, the "Virginia Plan," proposed by Governor Randolph of Virginia, provided:

> 9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature...that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all...cases...which respect the collection of the National Revenue...

Farrand, I Records of the Federal Convention of 1787 21-22 (New Haven, 1911, 1936, 1986) ("Records"). Competing plans submitted by New Jersey, Hamilton and Pinckney also each provided for similar new federal judicial review over tax matters. See id. at 136, 223-224, 230, 232, 237, 243, 244, 293 & 305. As the Convention granted more powers to Congress, the functions of the Federal Courts encompassed more subjects and the Judicial power that we know today in Article III became generalized so that, in James Wilson's words (referring to Congress' control over duties and trade), "the Judicial should be commensurate to the legislative and executive authority." Id. at 237, n. 18. (See also George Washington's letter of transmittal at II Records 666.) True to expectations, the first Congress as its first substantive act passed the tariff act, 1 Stat. 24.

Since that time disputes between importer-taxpayers and the government over import duties have been subject to judicial review in Courts of the United States organized under Article III of the Constitution to determine whether the duty assessed is in accordance with law. Such taxes are always levied pursuant to a

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[2] See generally Max Farrand, The Framing of the Constitution of the United States, 4-6, 45-46 (1913, reprinted 1988); Carl van Doren, The Great Rehearsal 45 (1986).

law of the United States passed in accordance with the Constitution, which grants Congress the power to levy duties upon imports. Thus, they fall squarely within federal question jurisdiction provided by Article III, Section 2. This has always been the position of the United States Government and CITBA believes that removal of such review is unconstitutional.

2. Case Law Does Not Support Bi-National Panel Review. In light of these constitutional provisions, it is noteworthy that the decision of the U.S. Supreme Court most often cited in support of the constitutionality of bi-national panels, Cary v. Curtis 44 U.S. (3 How.) 236, 11 L. Ed. 576 (1846), does not in fact provide such support. In Cary, the Court, in a 4-3 decision, interpreted a statute to extinguish one of the available procedures for obtaining judicial review of customs duty assessments: that was the common law action in assumpsit, which was the most commonly used procedure at the time, but not the only one.[3] The Court ruled that the statute as interpreted was constitutional. However, in a passage that subsequently seems to have been often overlooked, the Court majority emphasized that it did not intend to condone the constitutionality of entirely eliminating Article III judicial review in import duty cases: "[n]either have Congress nor this court furnished the slightest ground [for the assertion that under the statute, as interpreted by the Court] the party is debarred from all access to the courts of justice, and left entirely at the mercy of an executive officer." 44 U.S. (3 How.) at 250. Rather, the Court appears to have felt that other procedures for obtaining judicial review remained available. Thus, as the Supreme Court later noted, Cary v. Curtis "specifically declined to rule whether all right of action might be taken away from a protestant, even going so far as to suggest several judicial remedies that might have been available." Glidden Co. v. Zdanok, 370 U.S. 530, 549 n.21 (1962) (citing 44 U.S. (3 How.) at 250).

Accordingly, CITBA reiterates its position that withdrawing Article III judicial review from United States federal tax determinations is unconstitutional.

B. Policy Issues.

1. Review Of Agency Decisions Under U.S. Law Is Not An "International" Dispute. Since bi-national panels are essentially international tribunals, support for such panels may be based in part on the perception -- a false perception, however -- that review of antidumping and countervailing duty determinations pursuant to U.S. statute is an "international dispute" which requires some special form of "international" or "bi-national" settlement. On the contrary, it is important to emphasize that the antidumping statute and the countervailing duty statute reviewed by bi-national panels are tax-levy laws of the United States. Moreover, the bi-national panels review the agency decisions to determine whether they conform to the requirements of U.S. law -- not whether they satisfy an international standard set forth in the US-CFTA, NAFTA, or other international trade agreement.

Equally important, reviews of agency decisions under the antidumping and countervailing duty statutes are not transformed

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[3] In any event, within 36 days after Cary, Congress passed an amendment which overruled the Court's interpretation of the statute and restored the right to obtain judicial review in federal court by action in assumpsit to determine the legality of customs duty assessments. Besides the action in assumpsit, judicial review in nineteenth century customs cases was sometimes obtained by other common law forms of action, such as the writ of trover, e.g., Tracy v. Swartwout, 35 U.S. (10 Pet.) 80 (1836), and sometimes by the importer's refusing to pay the bond given to secure duty and forcing the government to sue to obtain payment on the bond. E.g., United States v. Kid, 8 U.S. (4 Cranch) 1 (1807).

into international or bi-national cases by virtue of the parties to the cases. As noted earlier, the statutes impose supplemental duties on products imported into the United States. The importer is the party responsible for paying these duties. Thus, even from the perspective of the importing interests, antidumping and countervailing duty cases present a conflict between the U.S. government and U.S. taxpayers -- usually corporations. Of course, the cases also present a conflict between U.S. citizens and the U.S. government where the agency decisions are challenged by the domestic industry or labor union petitioner. In contrast, no duties and no penalties are assessed against foreign corporations or citizens, much less against foreign governments.

The non-international nature of the case is not altered by the fact that many of the importers are frequently, but not always, corporate subsidiaries of foreign companies. These corporations are organized under the laws of the states of the United States and, hence, are United States companies subject to the laws of the United States. To argue that collection of import duties from U.S.-incorporated subsidiaries creates an "international dispute" produces two classes of corporations in this country: those which are subsidiaries of foreign corporations and thereby subject to some form of "international dispute" and those which are not. On the contrary, like all citizens of the United States, corporations organized under the laws of the states and doing business here are provided remedy for unlawful imposition of Customs duties in the Court of International Trade and its appellate tribunals, the CAFC and United States Supreme Court.

Even to the extent some of the respondents to the administrative proceedings under the antidumping and countervailing duty laws may be foreign citizens or corporations, the use of bi-national panels to review the administrative decisions in antidumping and countervailing duty cases -- as a substitute for domestic courts -- is not justified under traditional principles of international law. Traditionally, most international tribunals deal with government-to-government claims, and an international claim arising from a decision by an administrative agency affecting a foreign citizen or corporation could not even be raised until completion of normal judicial review of the administrative decision in domestic courts. The Restatement, Third, of the Foreign Relations Law of the United States, § 902, comment k, explains that: "Under international law, before a [country] can make a formal claim on behalf of a private person, ... that person must ordinarily exhaust domestic remedies available in the responding [country]"; accord, e.g., James L. Brierly, The Law of Nations 281-82 (6th ed. 1963); Ian Brownlie, Principles of Public International Law 494-504 (4th ed. 1990)). In other words, before resort to an international tribunal is appropriate, the national courts are given the initial opportunity to review the contested government action (in the case of antidumping or countervailing duties, the administrative determinations resulting in their imposition and assessment) and, if necessary, to correct it for purposes of local law. Thus, for example, it could be appropriate for a foreign government to refer an antidumping duty or countervailing duty case to the World Trade Organization if the foreign government believes that the United States law or practice, as affirmed in an authoritative adjudication by the Article III judiciary, does not meet international norms such as those in the WTO-GATT Subsidies And Countervailing Duty Code or the WTO-GATT Antidumping Code. In contrast, the use of NAFTA-type bi-national panels instead of domestic judicial review introduces an entirely different structure that does not correspond to traditional principles of international law regarding the treatment of foreign citizens. Indeed, the use of NAFTA-type bi-national panels might internationalize a dispute unnecessarily, when the contested issue could readily have been resolved at the domestic level through judicial review; this is particularly true because, as noted earlier, the aggrieved party will not normally be a foreign party at all, but either a domestic industry or labor union petitioner or a U.S. citizen taxpayer.

Accordingly, international tribunals such as the WTO in antidumping and countervailing duty cases should only be considered where judicial review in Article III courts has been fully conducted but, for one reason or another, does not satisfactorily resolve the matter; international tribunals such as NAFTA-type bi-national panels which substitute for domestic courts should not be used.

2. Article III Courts Are The Government Institution Best Suited To Review The Lawfulness Of Agency Action. The premise of the bi-national panels is that, somehow, the Court of International Trade and its appellate tribunals, the CAFC and the United States Supreme Court, do not dispense justice fairly in these situations. The Customs and International Trade Bar Association informed Congress that any such allegations were groundless in 1987-1988. The judges of the Court of International Trade, being Article III federal judges, are, without doubt, the most expert and unbiased arbiters who can be found in these matters. Article III courts, moreover, remain the governmental institution which is intended, and is best suited, to be primarily responsible for adjudicating the lawfulness of agency actions in the United States.

This fundamental importance of judicial review by Article III judges in the American system of government has been articulately expressed in a leading treatise on judicial review in administrative law:

> [T]here is in our society a profound, tradition-taught reliance on the courts as the ultimate guardian and assurance of the limits set upon executive power by the constitutions and legislatures.
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> ...
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> The guarantee of legality by an organ independent of the executive is one of the profoundest, most pervasive premises of our system. ... It is clear that the country looks, and looks with good reason, ... to the courts for its ultimate protection against executive abuse.
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> ...
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> ... [The] availability of [judicial review] is a constant reminder to the administrator and a constant source of assurance and security to the citizen.[4]

As the workings of the bi-national panels have shown, they are not a substitute for a system of jurisprudence worked out in this country over two centuries. At best, bi-national panels arguably might be able to perform the judicial function almost as well as the courts. At worst, the bi-national panels have been accused of being biased and having little or no regard for the law of the United States as interpreted by United States courts, even though it is exactly that law which they are supposed to be applying.

It is true that the judges of the Court of International Trade are reviewing the agency decisions in these matters for purposes of United States law, not international law. That is what was intended by the Constitution and Congress, since the issue is whether the decisions by the responsible administrative agency resulting in the assessment of a supplemental import duty is supported by substantial evidence and is otherwise lawful and in accordance with the will of Congress as set forth in the U.S. statutes. These are clearly judicial functions in common law countries, and they should always be carried out for the United States by federal judges as required by the Constitution.

As explained earlier, however, bi-national panels under NAFTA are supposed to review whether the administrative decisions are

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[4] Louis L. Jaffe, Judicial Control of Administrative Action 321, 324 & 325 (1965).

consistent with U.S. law, and they are supposed to apply exactly the same standard of review as the Court of International Trade and its appellate tribunals. In short, the panels are supposed to undertake the same judicial function as Article III courts, without having the same qualifications and characteristics. This has always appeared to be a poor policy and the passage of time has failed to demonstrate otherwise. See, e.g., Judge Wilkey's dissent in Certain Softwood Lumber Products from Canada, Extraordinary Challenge Committee Proceeding, ECC-94-1904-01USA (Aug. 3, 1994).

II

PROBLEMS RELATING TO PANEL MEMBERSHIP.

A. Constitutional Issues.

1. The Protections Of Independence And Impartiality In Article III. By securing review by Article III courts in litigation between taxpayers and the government in tax matters, the Constitution guarantees the taxpayer (and the government) a fair, impartial, and independent hearing of the matter. Article III, Section I provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuation in office.

Required for such hearing was a federal court with judges appointed for life and with no diminution of salary. These provisions were intended to make the judiciary as apolitical and unbiased as possible. The provisions were intended to allow the judges to hold the scales aright between the government, of which they are part, and the citizenry, of which they are also part. Writing in The Federalist No. 79, Hamilton stated the reason briefly and correctly: "[i]n general course of human nature, a power over a man's subsistence amounts to a power over his will." Outright bribery and blackmail were not what was contemplated. The very existence of easy governmental procedures (diminution of salary or executive dismissal from office, both foreclosed by the constitution) to punish the judge was recognized as a subtle power over his will to judge rightly and fairly. Nothing about human nature has changed from the drafting of the constitution to the present day.

Congress apparently thought that members of the private trade bar from the United States, Canada or Mexico would be able to lay aside all bias, prejudice, and hope for further employment to serve on bi-national panels and render fair and unbiased decisions which could not be appealed to any court. However, we believe that the appearance of a conflict in such situations is a recurring concern. Thus, we believe, as did the framers of the constitution, that persons who are not given as their sole duty in life the activity of being a judge, will not be able on all occasions to act impartially. This is especially so in cases where panel members return to their usual livelihoods of advising clients on international trade. Subconscious bias, at least, will always be a question.

Article III makes it impossible for active federal judges to sit on any bi-national panel. Federal judges are available only in federal courts. They do not give advisory opinions nor do they undertake to adjudicate matters which are not federal cases and controversies. Congress cannot impose such duties upon them, nor can they accept them. Thus, the bi-national panels are condemned to use private parties in rendering their unappealable decisions.

At times these private arbiters may be retired federal judges. Such a situation may be a plus, but it does not make a system which is operating outside the constitution into one which is operating within it.

2. The Appointment And Oath Issue. As we have discussed, the Framers, in the Constitution, guarantee the independence and impartiality of judges by insulating judges from political and economic pressures by virtue of lifetime employment and guarantee of no deduction of pay. At the same time, the Framers insured that those interpreting and enforcing United States laws would be in compliance with both the Constitution and the directive of Congress. This was accomplished in four ways. First, the Constitution provides that all federal officers be nominated by the President and confirmed by the Senate. Second, the Supremacy clause mandates that the Constitution and the laws of Congress be the Supreme law of the land, overriding conflicting state law. Third, the oath clause requires that all federal and state legislators, judges, and executive officers take an oath to be bound by the Constitution. Finally, the impeachments clause grants to Congress the right to accuse and try any federal officer who commits high crimes and misdemeanors, including failure to comply with his or her oath.

In the context of the imposition and collection of duties, these constitutional safeguards are clear: An officer nominated by the President and confirmed by the Senate is responsible for determining the rate or amount of duty to be applied in a certain case. Likewise, anyone reviewing such a determination, specifically a judicial officer, is also subject to such an appointment process. Moreover, under the Constitution, both the administrative or executive officer and the judicial officer must take an oath to preserve the Constitution and if such task shall fall to a state official, the oath is equally applicable, and the Constitution and the laws of Congress are supreme. Finally, if the executive or judicial officer shall commit some crime or misdemeanor, he or she may be impeached and tried.

Thus, under the constitutional scheme both administrators and judges deciding such cases are subject to severe sanctions should they stray from the Constitution or the laws of Congress.

However, under the bi-national panel system there are no such constraints. Indeed, perversely, in some cases, the system is designed to materially thwart these Constitutional protections. First, neither the United States nor the foreign (Mexican or Canadian) panelists are nominated by the President or confirmed by the Senate. These panelists, of course, determine the liability of U.S.-citizen taxpayers for taxes payable to the United States government. Second, the foreign panel members never take an oath to support the Constitution or the laws which were enacted by Congress. This is particularly odd in the context of bi-national panels where such panels' only function is to interpret United States import duty laws. Indeed, many panel members may not in good conscience make such an oath because they have already taken an inconsistent oath to support some other form of government. Finally, of course, while the panelists may be subject to some form of sanction, they are not subject to the constitutional sanction of impeachment. Thus, we feel, that these constitutional defects should preclude bi-national panel review.

B. Policy Issues.

The principal policy objections to the membership of bi-national panels are closely linked to the foregoing constitutional issues. Fundamentally, bi-national panels cannot achieve the independence and impartiality of Article III federal judges. At best, they may hope to come close, but as a practical matter the system has been seriously criticized. First, by virtue of using citizens of different countries, the panels increase the appearance

of politicization and nationalistic bias. Second, by virtue of using practicing trade attorneys, the panels increase the appearance of either client-related or issue-related conflict of interests. In other words, one source of possible conflict, as was alleged in the Softwood Lumber case, is that panel members or their law firms have often represented companies in the industry involved in the case. And even if the panel member has no genuine client conflict, a second possible conflict is that particular practitioners may favor a particular substantive interpretation of the law because it would help a client in a future case. These factors create an appearance of a lack of impartiality, thereby undermining legitimacy and confidence in the system.

Notably, a frequent response to the conflict-of-interest criticism is that, if taken to its logical extreme, it would eliminate large numbers of the international trade bar from membership in panels and, consequently, eliminate the main pool of expertise. In fact, this response illustrates that the panel attempt is fundamentally flawed because the goals of impartiality and expertise are too difficult to achieve simultaneously, forcing one or the other goal to be compromised.

The problem was well stated during the colonial period, when customs and international trade lawyers served on the colonial Vice-Admiralty courts which decided customs and international trade issues:

> this Gentlemen is a constant practicing attorney, in all the King's Courts here, so that when anything comes before him in the Court of Vice-Admiralty, where his clients are concerned, he is under a strong temptation, to be in their favor, to His Majesty's dishonor, and to the great discouragement of His Majesty's Officers of the customs, and should he not so act he must lose a great number of fat clients, who are of much more value to him than his post of Judge of the Vice-Admiralty.[5]

In contrast to these problems with bi-national panels, it is beyond question that Article III judges possess independence and impartiality and, when appointed to the Court of International Trade and CAFC, are able to develop specialization and expertise in the countervailing duty and antidumping duty laws.

III

THE PROBLEM OF DIVERGENT CASE LAW.

By having a system that relies on bi-national panel review for imports from some countries and CIT judicial review for imports from other countries, it is inevitable that inconsistent results and divergent lines of jurisprudence will result. While the panels are supposed to be guided by domestic law standards of review and rules of interpretation, one of the repeated criticisms of the panels is that they misapply U.S. law. See, e.g., Judge Wilkey's dissent in Softwood Lumber, supra. Furthermore, if a panel is presented with an issue of first impression, there is no assurance that the panel would decide the issue in the same way as an Article III court.

An added problem is the differing role of precedent. As courts in a common law system, the Supreme Court, the CAFC and Court of International Trade apply the doctrine of stare decisis, and the courts' legal conclusions are also binding on the agencies. Panel decisions, in contrast, do not have direct legal effect beyond the immediate case. At best, they may constitute a

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[5] Governor Jonathan Belcher of Massachusetts and New Hampshire to the Admiralty, 31 January 1742 (as quoted in M. H. Smith The Writs of Assistance Case, 58-59 (1978)).

persuasive commentary. Although panel decisions are often cited in subsequent panel deliberations, they are not authoritative or legally binding in the way judicial decisions are. The situation is even more complicated under the NAFTA with the addition of Mexico, for Mexico has a civil law system in which the doctrine of stare decisis does not exist at all.

These difficulties are compounded when a petition is filed against multiple countries, some of which are entitled to bi-national panel review and some of which are not. In addition to the legal issues, there is no assurance that panels would reach the same decision as courts under the relatively subjective "substantial evidence" test. Thus, it is entirely possible that the same factual conclusions might be sustained with respect to one country and overturned with respect to another country.

As a constitutional matter, the multiple system of review raises two issues. First, it is arguable that the system of review violates the equal protection of the laws. Second, the likelihood of divergent interpretations of the same statute undermines the requirement in Article I, section 8, that import duties must be uniform throughout the United States. As a practical matter, the multiple system of review can be extremely burdensome and confusing. Where a petition is filed against several countries, the petitioner and the agencies would be forced into the expense of simultaneously defending review proceedings before a different panel for each country involved in the case.

## CONCLUSION

CITBA believed that the provisions for bi-national panel review in antidumping duty and countervailing duty cases under the U.S.-Canada Free-Trade Agreement and the North American Free Trade Agreement were unconstitutional and unwise. We believe that the serious deficiencies in bi-national review should compel Congress to withhold fast-track negotiating authority for any new free trade agreement, with Chile or any other country, which would include the bi-national panel review system.

Respectfully submitted,

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May 24, 1995

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
AND
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
COMMITTEE ON RULES

JOINT HEARING ON FAST TRACK ISSUES

STATEMENT OF THE DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), for inclusion in the printed record of the joint hearing on fast track issues. DISCUS is the national trade association which represents U.S. producers and marketers of distilled spirits.

I. INTRODUCTION

Like many U.S. industries, the distilled spirits is becoming increasingly dependent upon exports. U.S. distilled spirits companies have doubled their export volume over the past five years and now export to more than ninety countries around the world. With the U.S. market for distilled spirits in the midst of a long term decline, expanding exports is the key to our members future economic growth and well being.

Recognizing this fact, DISCUS members strongly supported the negotiation of the North American Free Trade Agreement and its approval by the Congress. As a member of the Zero Tariff Coalition, we worked closely with U.S. trade negotiators to bring about the elimination of tariff barriers in the Uruguay Round of GATT negotiations and we actively campaigned for Congressional approval of the resulting agreements. The existence of fast track negotiating authority enabled U.S. negotiators to secure concessions of great importance to U.S. distilled spirits companies. The existence of fast track approval procedures ensured that our members will have the chance to take advantage of the new export opportunities created by these concessions.

II. DISCUS POSITION

DISCUS strongly supports the early enactment by the Congress of legislation renewing fast track negotiating authority and approval procedures. Such authority and procedures are essential to the efforts of U.S. trade negotiators to forge new trade liberalizing agreements. Without this negotiating authority and accompanying approval procedures, U.S. negotiators will face an infinitely more difficult task in persuading U.S. trading partners to open their markets to U.S. exports. Countries simply will not be willing to make concessions to the United States without the certain knowledge that the agreements entered into will not be amended in a subsequent negotiation with the U.S. Congress.

Ideally, fast track renewal should be sufficiently broad and flexible to allow U.S. negotiators to pursue the conclusion of trade liberalizing agreements in bilateral, regional and multilateral forums. Fast track renewal should authorize negotiations under the framework of the World Trade Organization, with the countries of Latin America in the context of enlarging the NAFTA, and with the countries of the Asia-Pacific region. At an absolute minimum, it should be renewed without any further delay to allow negotiations with Chile on accession to the NAFTA to be completed this year.

Each of these initiatives will lead to expanded export opportunities for U.S. companies, including producers of distilled spirits. In the distilled spirits industry, expanded exports will generate additional jobs at not only the production level, but in related industries, including packaging, distribution and shipping. Without these opportunities, current employment levels will decline as domestic sales continue to contract.

III. FAST TRACK PROVISIONS

In considering the terms of fast track renewal, DISCUS would encourage Congress to include provisions which will generate the needed certainty in the negotiating process while facilitating the subsequent approval process. For example, we suggest that Congress consider enacting a multi-year renewal of fast track, for a period of at least five years. This would ensure that U.S. officials have sufficient authority and flexibility to negotiate agreements while maintaining a set period in which negotiations must be brought to conclusion. It also would remove the need for Congress to revisit the terms and negotiating objectives of fast track on a frequent basis, as has been the case in recent years.

We also suggest that Congress consider limiting fast track approval procedures to only those provisions which are absolutely necessary to implement the agreements concluded during a particular negotiation. The much broader standard used in recent years has led to the inclusion of provisions which have not been directly related to the implementation of the relevant agreements. These measures, which often have been politically sensitive, have unnecessarily complicated the Congressional approval process, while denying Congress the opportunity to consider these provisions under normal legislative procedures.

In addition, DISCUS suggests that Congress carefully review whether the "pay-go" budget procedures should continued to apply to trade agreements. Most economists generally agree that the economic activity created by tariff liberalization far exceeds the loss in tariff revenues collected. Should this not prove possible, at a minimum Congress should provide in the fast track renewal legislation that provisions included in implementing legislation for the purpose of "funding" trade agreements should be amendable. This will ensure that trade agreements and accompanying implementing legislation are considered on the basis of their merits, while enabling the Congress to fashion acceptable funding mechanisms independently.

IV. CHILE AND NAFTA ACCESSION

As mentioned above, DISCUS strongly supports the immediate renewal of fast track for negotiations on the terms of Chile's accession to the NAFTA. We strongly support Chile's accession to the NAFTA because we are convinced that it will lead to new export opportunities for our members and job growth within our industry. As noted in the attached fact sheet, Chile maintains a number of different trade barriers to U.S. exports of distilled spirits. We have been working closely with Executive Branch officials to ensure that these issues are considered in the forthcoming negotiations. However, the success of these negotiations with Chile depends in large part upon the rapid renewal of fast track authority and procedures by the Congress.

Much of the debate over fast track renewal has centered on whether or not labor and environment-related issues, including the use of trade sanctions, should be included in future trade agreements. While these issues are very important, we are deeply concerned that a prolonged debate on the merits of including these issues will result in a further delay in renewing fast track and the loss of opportunities to conclude trade liberalizing agreements, such as with Chile, which will benefit U.S. exporters.

V. CONCLUSION

In conclusion, DISCUS and its member companies urge Congress to enact legislation renewing fast track as soon as possible. Such legislation should provide authority which is sufficiently broad and flexible to allow U.S. negotiators to conclude trade agreements which will create new opportunities for U.S. exporters, while establishing procedures which will facilitate their careful consideration by the Congress.

Thank you very much.

Sincerely,

Fred A. Meister
President/CEO

# Florida Sugar Marketing & Terminal Assn. Inc.

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Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Extension of Fast Track Negotiating Authority for Trade Agreements

Dear Mr. Moseley:

The Florida Sugar Marketing Terminal Association, Inc. located in Singer Island, Florida, submits the following written comments with respect to the captioned matter. Florida Sugar Marketing & Terminal Assn. Inc. is a cooperative association, operating under the laws of the State of Florida, for the marketing and transportation of raw cane sugar processed by its members. The members of Florida Sugar Marketing and Terminal Assn. Inc., each of which is a processor of raw cane sugar are Atlantic Sugar Association, Okeelanta Corporation, Osceola Farms Co., Sugar Cane Growers Cooperative of Florida and United States Sugar Corporation. Florida Sugar Marketing & Terminal Assn. Inc. markets approximately 65% of the Florida sugar crop. The Association's members have generally been supportive of the recently concluded Uruguay Round Agreement on Agriculture, which was negotiated and implemented into U.S. law pursuant to so-called "fast-track" procedures. The agreement, which resulted in a tariff rate quota in lieu of a quota under section 22 of the Agricultural Adjustment Act and some reductions in level of subsidization, is acceptable to Florida growers and processors if coupled with the continuation of the loan program at current or improved levels.

The industry is interested in having the United States pursue an expedited negotiation with the major sugar producing and exporting countries to eliminate in the near future all export subsidies and to harmonize and then reduce or eliminate all domestic subsidies. Our members support such negotiations in the belief that the elimination of the subsidies would reduce the need for the current loan/price support

program and is consistent with the long-term interests of the United States in liberalized but fair trade. Such an approach also lets the United States reduce programs in the U.S. without engaging in "unilateral disarmament" which would simply penalize domestic sugar producers.

INTRODUCTION

Upon acceding to the World Trade Organization (WTO), the United States converted existing quotas and fees applicable to quota products into tariffs or tariff-rate quotes. In the case of sugar, the United States established a tariff-rate quota based on current market-access levels of approximately 1.2 million tons per year, with imports above that level subject to additional tariffs and (potentially) "special safeguards." The United States grants no export subsidies on sugar. Moreover, the U.S. sugar program has been administered by the Commodity Credit Corporation since 1985, by statutory mandate, at "no net cost" to the Government.

Although many countries agreed to reduce the level of export subsidies in accordance with the agriculture agreement, in many cases the subsidy levels (export and domestic) granted to sugar producers will remain exceptionally high in real terms throughout the implementation period. For example, recent OECD data for 1993 confirm that the United States' total support to the sugar sector has a producer subsidy equivalent (PSE) of 51%, as compared to 67% for the EU, a major sugar producer, and 60% for OECD countries in the aggregate. Domestic subsidy levels in other sugar-producing countries will be subject to modest reductions, only as components of the Aggregate Measure of Support (AMS). As a pratical matter, domestic subsidies on sugar and related products may not be reduced at all by our trading partners, provided that "aggregate" reduction commitments are met.

Export subsidies are also an important consideration. The EU, Brazil, and South Africa notified the WTO that they granted substantial export subsidies on sugar. Although such export subsidies are subject to reduction commitments of 21% on a volume basis, and 36% on a budget basis, the absolute level of export subsidies granted by these countries with respect to sugar will remain very large.

Subsidies permeate world manufacturing and trade in sugar. For example, the European Union is the world's largest exporter of sugar yet is one of the world's most cost uncompetitive producers. But for the staggering subsidies, European producers could not participate in world exports. A recent study done for the Florida industry indicates that exports from Europe to "free markets" are at prices equal to as little as 39.6% of the European cost of producing sugar and can be 25% below variable costs. Obviously, these pricing practices are nonsustainable without massive government assistance. Similarly, China's export prices are well below full cost (roughly 50% of cost). Indeed, the study indicates that free market exports from Australia, Brazil, China, Colombia, the European Union, Mexico, South Africa and Thailand of raw and/or refined sugar are below cost in most situations.

Thus, the current "world market" for sugar is merely an outlet for dumped and subsidized exports of excess production, itself the result of mis-allocation of resources.

In sum, although the domestic and export subsidy-reduction commitments in the Uruguay Round Agreement represent a positive development, they will have only limited practical impact on the domestic and export subsidies that have distorted the world sugar market for many years.

PROPOSAL

Conditions of trade that have led to over-production of many agricultural products and depressed world market prices will likely persist, notwithstanding the salutary effect of the Uruguay Round Agreement on Agriculture. In the case of sugar in particular, the Agreement will produce only modest changes of the status quo: substantial transfers by foreign governments to their sugar producers and processors.

Consequently, the Florida industry would propose that if the Congress renews fast track negotiating authority that it provide direction in the form of negotiating objectives that would include, inter alia, the expedited negotiation of a sugar and sugar products agreement to eliminate export subsidies and to harmonize domestic subsidies between the U.S. and other sugar producing countries as ceiling amounts with reductions or even total elimination (other than green light subsidies under the Agriculture Agreement). Subsidies are at the heart of so much of the misallocation of resources in agriculture. We believe that such as agreement would do much over time to permit liberalized trade.

There is ample precedent under the predecessor of the WTO for negotiations seeking "GATT plus" arrangements for a specific sector (i.e., liberalization, beyond that required by prior, multilateral agreements). With varying success, parties have sought sector deals in steel (the "MSA" talks, which continue), civil aircraft (plurilateral agreement), and oil seeds (negotiations terminated). Plurilateral agreements also exist on bovine meat and dairy.

The domestic industry believes that a supplemental agreement would be highly beneficial to the eventual rationalization of world trade in sugar and sugar products. By contrast, unilateral liberalization of sugar programs and tariff-rate quotas, absent parallel commitments by our trading partners, is not in the interest of the domestic industry.

Respectfully submitted,

Fred R. Hill

Florida Sugar Marketing & Terminal Association, Inc.

Newt Gingrich
Sixth District
Georgia

(202) 225-060.

Office of the Speaker
United States House of Representatives
Washington, DC 20515

STATEMENT BY THE SPEAKER OF THE HOUSE

One of the real priority issues the House will consider this year is the extension of fast-track authority to implement trade agreements. This authority, in effect since 1974, represents a partnership between the Congress and the President on matters governing the development of trade policy objectives, the pursuit of bilateral and multilateral negotiations designed to achieve those goals, and the expeditious implementation of agreements brought to fruition.

Fast-track also has unquestionably spurred economic growth and private sector job creation in the United States. Through numerous successful trade agreements over the years, combined with effective enforcement of U.S. trade laws, our country has experienced an explosion of economic opportunity and growth that can be directly related to international trade. Trade has become a major feature of the U.S. economy. The United States is the world's top exporter. Trade in goods and services, plus earning on investment now represents about a third of the U.S. gross domestic product -- more than double what it was in 1970. American workers, firms that hire them, and consumers who buy high-quality products they produce have all benefited enormously from this trend.

I believe the extension of sound fast-track procedures is essential if we are to continue to pursue important trade liberalization initiatives and reap the benefits of a solid, coordinated trade policy. Such procedures serve the dual goals of allowing Congress to fulfill its constitutional responsibility with respect to international trade while at the same time providing assurance that trade agreements will be effectively implemented. It establishes confidence in the ability of U.S. negotiators to successfully conclude and gain Congressional approval of trade agreements that serve American interests.

The fast track procedure is a legislative-executive agreement to facilitate a coordinated policy on international trade. For the system to function effectively, it is critical that consultation and cooperation be the hallmark of the relationship. Therefore, it is important that the Administration clearly lay out its goals and intentions in the area of trade policy, and that this process of consultation and cooperation be ongoing throughout the lifetime of the fast track agreement.

We must also be cautious about how broadly these special legislative procedures are applied. Fast-track was not designed to circumvent regular legislative procedures with respect to matters unrelated to trade agreements or which otherwise should be approved through normal processes. If fast-track becomes a magnet for unrelated provisions, the integrity of the legislative process could be threatened and support for a coordinated policy and procedure for approving trade agreements could be seriously eroded.

I am confident that the Congress and the Administration can once again construct a meaningful process for developing and approving trade agreements. With such procedures in place, the U.S. can continue to exercise its traditional leadership role in the international trade communities and can continue to seek new opportunities for economic growth worldwide.

# # #

[BY PERMISSION OF THE CHAIRMAN]

**STATEMENT OF**
**DR. RICHARD L. BERNAL**
**AMBASSADOR FROM JAMAICA TO THE UNITED STATES**

**BEFORE THE**
**HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE**

**MAY 25, 1995**

**PROPOSALS TO RENEW FAST TRACK TRADE NEGOTIATING AUTHORITY**

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Mr. Chairman, thank you for providing me this opportunity to submit testimony before your Subcommittee on proposals to renew fast track trade negotiating authority. As the Subcommittee moves forward with plans to reauthorize this critically important legislative initiative -- which will have a far-reaching impact on trade relations throughout Latin America and the Caribbean -- I believe it is important to provide you with a Jamaican perspective on some of the issues surrounding fast track.

A. Fast Track in 1995: The March to 2005

Last December, the 34 Democratically elected nations of the Hemisphere came together in Miami to hammer out an agreement to launch a Free Trade Area of the Americas (FTAA) by the year 2005. Next month, the trade ministers of those countries will reconvene in Denver to determine how to take the next steps in this important goal. As the Hemisphere moves to put that vision into practice, it is important that the US Congress pave the way for viable negotiations by quickly passing fast track trade negotiating authority.

Fast track renewal is an important ingredient in the establishment of an FTAA by the year 2005. The difficulties with which both the NAFTA and GATT implementing bills were passed make it clear that future free trade agreements in the Hemisphere will be supported by the American people if the goals and objectives of these agreements are well understood in advance. The fast track consultation procedure will help ensure that the goals of the FTAA be communicated to and understood by the US population, much as similar procedures will communicate the goals to the Jamaican citizenry. But experience has shown that, without fast track procedures, it may be exceedingly difficult to pass free trade implementing bills in a form or a time frame that will help establish the FTAA over the next decade.

In this regard, fast track authority should reflect the ten-year timetable established in Miami to negotiate an FTAA by the year 2005. Without such a timetable, hemispheric negotiations could be prematurely stopped while a mid-term reauthorization of fast track in the US Congress were sought, or worse, denied. Similarly, a short reauthorization -- of say 4 to 6 years -- could discourage some countries from even participating in the free trade process.

With regard to the inclusion or exclusion of labor and environmental principles in fast track legislation, I cannot intrude into the domestic US debate over the establishment of trade negotiating objectives. I can, however, proudly point to Jamaica's outstanding record both in taking steps to ensure sound environmental stewardship and in securing healthy working conditions and unalienable workers' rights throughout

the country. Moreover, there is close cooperation with the United States in combatting illicit narcotics trafficking.

In addition, Jamaica has established concrete achievements in other areas that have been identified as possible trade negotiating objectives in recent years. Jamaica's economic reform program -- which has emphasized tight fiscal and monetary policies to control our inflation, tariff reductions to promote trade-based growth, and privatization of state-owned enterprises to stimulate the private sector -- has set the stage for considerable, and unencumbered, economic linkages with the United States. Taken together with the more traditional trade negotiating objectives -- such as protection of investments and intellectual property -- Jamaica stands ready to participate in free trade negotiations with the United States.

B. The US/Caribbean Basin Economic Partnership: The Basis for Free Trade

With the inevitable focus on trade in the Hemisphere, Congress will consider its trade relations with the Caribbean as an integral element of its fast track debate. The Caribbean, has already established an intensive trade relationship that should help expedite free trade negotiations, once fast track authority is enacted. In the dozen years since it has been enacted, the Caribbean Basin Initiative (CBI) has emerged as an important stimulus of economic development in the Caribbean Basin and of trade linkages throughout the region. The effect has been felt -- not only in Kingston and Montego Bay -- but also in Chicago, Miami, Baltimore, New Orleans, and hundreds of other communities throughout the United States.

Through its combination of trade, investment, and tax policies, the CBI legislation has progressively established a framework that has facilitated mutually beneficial, U.S./Caribbean economic links. In turn, Jamaica and other Caribbean countries have matched the liberalizing reforms enacted by the CBI to launch their own trade and investment economic reform programs. Together, the United States and Caribbean countries have created a trade partnership worth more than $20 billion a year, employing hundreds of thousands of workers throughout the region.

The successes of the CBI legislation are reflected in the figures signalling robust growth in the U.S./Caribbean trade partnership. Since the mid-1980's, U.S. overall exports to the Caribbean have expanded by over 100 percent and Caribbean exports to the United States have climbed by roughly 50 percent. The Caribbean Basin now comprises the tenth largest market for the United States, and is one of the few regions where the United States consistently posts a trade surplus. With combined trade exceeding $24 billion in 1994, U.S./Caribbean commercial links support more than 265,000 jobs in the United States and countless more throughout the Caribbean and Central America. During the past decade, nearly 16,000 American jobs have been created each year as U.S. trade links with the Caribbean have expanded. Throughout the Caribbean, where the economies are much more dependent upon trade, increased exports to the United States has generated hundreds of thousands of additional jobs. Such employment growth has been felt in both export industries, as well as in the many sectors that cater to these industries.

On several occasions, Congress has considered and passed legislation to strengthen the CBI framework to enhance trade links with the Caribbean. In 1990, Congress made the CBI program permanent and extended some of the duty and tax

provisions. In 1995, Congress is considering legislation -- The Caribbean Basin Trade Security Act (HR 553), which has been adopted by this Subcommittee -- to insulate the CBI from unintended adverse affects of the NAFTA. Passage of this measure will simultaneously remove impediments from the US/Caribbean trade partnership and set the stage for greater US/Caribbean economic integration through a free trade arrangement.

C. The Importance of Fast Track: A Commitment to Free Trade

Fast track authority creates a vital mechanism through which the United States can develop a clear, comprehensive, and consistent trade policy. It establishes a formal series of communications and consultations between the Executive and Legislative Branches and the US private sector, enabling various elements of US society to develop a common trade negotiating posture. It also defines a transparent process through which the results of arduous trade negotiations -- the implementing legislation -- can be submitted and enacted into law by Congress in an expeditious manner. In many respects, fast track sets out a process with maximum opportunity for domestic US input and minimum opportunity for domestic political surprises.

This transparency and consistency is of critical importance during trade negotiations. In undertaking trade negotiations, we are less likely to make concessions or agree on sensitive points if we feel that our agreements will be undone by eleventh hour modifications by the US Congress. Similarly, without the assurance of Congressional pre-approval of the consultation process we are less assured that the results of trade negotiations -- which can have domestic political ramifications in our own country as well -- will ever be realized.

Moreover, the fast track framework imposes certain disciplines in the trade negotiating process and in the formation of trade policy. This is especially important in the Caribbean, where US trade policy has often been shaped to fit specific industries and interests. For example, the Caribbean Basin Initiative (CBI) which seeks to encourage industrial diversification through trade, excludes textiles and apparels from duty and quota free treatment even though the garment industry is a principal means of industrial and export diversification for least developed countries. Similarly, the current US/European Union banana quarrel is threatening to undermine the principal market for many banana exporting nations in the Caribbean, even though the United States produces no bananas for export. The fast track process, however, ensures that trade negotiations reflect a US national position as well as the specific needs of individual US industries.

D. Conclusion

As Congress continues its debate on trade measures this year, broad fast track authority should be favorably considered and expeditiously approved. Not only would it signal a US commitment to move forward with the FTAA, but it would also create the necessary mechanisms through which free trade in the Hemisphere could be enhanced.

NAHM National Association of Hosiery Manufacturers
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PHONE: (704) 365-0913 FAX: (704) 362-2056

90th ANNIVERSARY NAHM 1905 1995

April 13, 1995

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: Extension-Fast Track Negotiating Authority

Dear Mr. Moseley:

The National Association of Hosiery Manufacturers (NAHM) is the trade association representing the interests of those companies in the United States that produce all types of men's, women's, and children's hosiery. NAHM members manufacture and market approximately 85% of all the hosiery sold in the United States. The following comments address the joint hearings scheduled by the Subcommittee on Trade of the Committee on Ways and Means and the Subcommittee on Rules and Organization of the House of the Committee on Rules relative to the extension of "fast track" negotiating authority to the Administration for use in negotiating trade agreements.

The Association supports, in principle, periodic multi-lateral trade negotiations under the World Trade Organization which are designed to promote the orderly expansion of international trade. Such talks should be organized as needed around clear objectives and based on the principles of equal reciprocity and market access. The trade agreements arising from such negotiations benefit the economy by opening new markets to U.S. exports and reducing foreign trade barriers to U.S. goods and services. NAHM supports the position that fast track procedures permit Congress to implement vital legislation that reduces trade barriers, promotes private sector job creation, and raises living standards for American families. Critical to fast track negotiating authority is the provision that amendments to implementing legislation are not permitted once the bill is introduced, with committee and floor actions consisting of "up or down" votes on the bill as introduced.

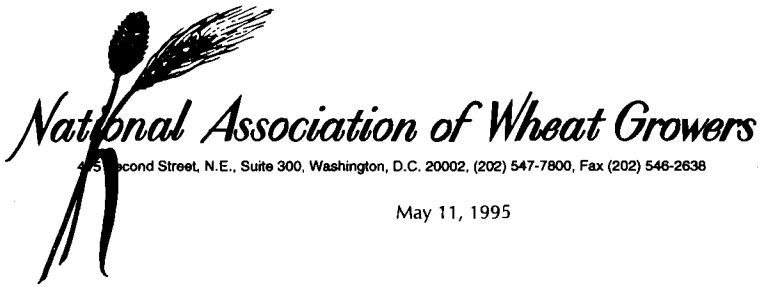
NAHM believes fast track procedures should protect the integrity of the negotiated trade agreement by acting as a safeguard against legislative issues not directly related to trade or the implementation of the trade agreement. Accordingly, the Association would support improvements in fast track procedures which would maintain a consensus in Congress regarding votes on the negotiated trade agreement. This would continue to preserve the constitutional role and fulfill the legislative responsibility of Congress and ensure expeditious action vis-vis the agreement and implementing legislation with no amendments.

NAHM appreciates the opportunity to submit comments regarding the extension of fast track negotiating authority. Please feel free to contact me if I may be of any assistance.

Very truly yours,

Chuck Brooks
Vice President and Secretary

ASSOCIATIONS ADVANCE AMERICA




May 11, 1995

Honorable Philip Crane
Chairman
Subcommittee on Trade
Ways and Means Committee
U.S. House of Representatives
1104 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As your committee begins its consideration of renewal of fast-track negotiating authority, our organization would like to submit the following comments for inclusion in the May 11, 1995, hearing record.

In general, U.S. wheat producers are supportive of initiatives designed to facilitate free trade. Ours is an export-dependent commodity. Each year, U.S. wheat producers export at least fifty percent of their harvested acres to over 130 countries.

With respect to negotiations with Chile in particular, we believe that the agreement to facilitate its integration into the NAFTA will set the standard for additional countries wishing to join the agreement. U.S. negotiators must proceed with caution and sensitivity to how this prospective agreement will affect the trade of wheat within the hemisphere. We urge that special attention be applied to the following areas of concern to our membership:

Chilean Price Band for Wheat: The Government of Chile currently maintains a price band mechanism for wheat and wheat flour. It is our understanding that the stated objective of the price band is to stabilize domestic prices by reducing transmission of international price fluctuations into Chile's domestic market, while at the same time maintaining a long-term linkage between domestic and international prices. In operation, the price band mechanism typically results in the application of a surcharge in U.S. dollars equal to the difference between a weekly reference price and an administratively-set floor price level. These surcharges, when applied, are in addition to Chile's 11 percent ad valorem duty applied on nearly all imports.

We advise the immediate elimination of the existing price band mechanism for wheat and flour and the staged reduction of the 11 percent ad valorem to zero within five years after the accession agreement is enacted.

Export Subsidies: Latin American wheat imports have more than doubled the level of the late 1980's when severe economic difficulties limited import demand. A combination of improved economies, decreased wheat production, sustained rapid population growth, and import liberalization has expanded opportunities for U.S. wheat producers to export to this region. Unfortunately, our competitors have also taken steps to increase market share, largely at our producers' expense. The most egregious exporting practices to date have been committed by the European Union and the Canadian Wheat Board. According to USDA, in 1982/83, the United States maintained 70 percent of Latin American wheat imports. Today's figure is closer to 25 percent.

The Uruguay Round Agreement on export subsidies will in time constrain the export subsidy practices of the Europeans and the United States, although the U.S. use of EEP in Latin America has been limited. In contrast, the discriminatory pricing practices of the Canadian Wheat Board have not been disciplined in any previous free trade agreements -- the U.S.-Canada Free Trade Agreement, the NAFTA, or the GATT. There can be no free trade of wheat until the CWB's pricing practices are neutralized. Therefore, we urge the President to consider the use of EEP and other competitive measures in Chile until price transparency can be achieved with the CWB in all NAFTA countries.

Chapter 19, Dispute Settlement Panels: Under the CUSTA and the NAFTA, Chapter 19 calls for the assembly of ad hoc panels of private individuals to determine whether antidumping and countervailing duties have been imposed consistent with the domestic law of the importing country. This appeal process circumvents U.S. trade laws and is inconsistent with the newly established World Trade Organization dispute settlement procedures which rely on panels to interpret international rules. As part of Chile's accession negotiations, we would like to see the NAFTA Chapter 19 provisions eliminated.

Thank you for the opportunity to comment on this matter.

Sincerely,

Ross Hansen
President

National Grange
of THE ORDER of PATRONS of HUSBANDRY
1616 H Street, N.W., Washington, D.C. 20006-4999 · (202) 628-3507 · FAX: (202) 347-1091
Robert E. Barrow, Master

May 18, 1995

The Honorable Philip M. Crane, Chairman
House Ways and Means Subcommittee on Trade
1104 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

The "fast track" authority that was granted the President in Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, which permits the President to enter into trade agreements that would be subject to the expedited legislative procedures that are set forth in Section 151 of the Trade Act of 1974, has expired.

The "fast track" procedures have expired with respect to any new trade agreements. These provisions required the President, before entering into any trade agreement, to consult with Congress regarding the nature of the agreement, how and to what extent the agreement will achieve its applicable purposes, policies, and objectives, and all matters that concern the agreement's implementation.

America's farmers and other agricultural interests have long supported international efforts to achieve more open markets and more favorable trading rules for agriculture through multilateral trade negotiations, such as the General Agreement on Tariffs and Trade (GATT). The progress that was made in previous trade negotiations in opening markets for agricultural exports has been tremendously important to the United States' agricultural sector and the nation's economy as a whole.

Agriculture must remain a priority for the United States in world trade talks if U.S. farmers are to support the continuation of proposals like the GATT. The National Grange strongly supports granting "fast track" authority to the President provided the authorizing legislation is "clean" and is not encumbered by amendments that would change the premise of the agreement. We urge you to be cautious about how broadly these special legislative procedures are applied. It would be inappropriate to include issues such as workers' rights and the environment in "fast track". "Fast track" authority is essential for forming successful and acceptable trade policies. Without an agreement, America's agriculture will be faced with the very real threat of serious trade conflicts.

We believe that Congress should retain a major role regarding the aims, progress, and conduct of any trade negotiations in accordance with its preeminent constitutional authority. Therefore, we are pleased that Congress has created the "fast track" procedure by which to retain the power to approve or reject a trade agreement. At the same time, Congress has wisely limited its ability to unilaterally amend a trade agreement that would, in any way, undermine any administration's ability to advance the United States' national interests. If Congress could amend a negotiated agreement, our trading partners would be much more reluctant to work with an administration whose decisions could be changed by another form of government. We cannot let internal domestic disputes alter the relationships we have established with our trading partners.

We believe that extending the negotiating authority under "fast track" will result in meaningful and successful future

trade policy. America's farmers have had too much experience in dealing with the results of bad agricultural trade deals or agreements in which agriculture has been ignored. We are afraid that agriculture could be traded off simply to benefit a non-farm sector.

The Grange's trade objectives have included expanding markets through increased market access, reducing trade-distorting domestic subsidies, reducing and phasing out export subsidies, and prohibiting the use of unjustifiable health and sanitary restrictions that are non-tariff trade barriers.

We urge your Committee to approve extending the President's "fast track" authority and to oppose any efforts to deny or amend the extension. We believe that the successful conclusion of trade agreements offers one of the best prospects for the future growth of the United States' economy, industries, exports, and jobs.

Thank you for considering the Grange's views. We respectfully request that this letter be made part of the hearing record.

Sincerely,

Robert E. Barrow

Robert E. Barrow, Master
National Grange of the Order
of Patrons of Husbandry

REB/trh
ccs: House Ways and Means Committee

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May 25, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Re: Press Release TR-6, Joint Hearings on Fast Track Issues Held by the Subcommittee on Trade of the House Committee on Ways and Means and the Subcommittee on Rules and Organization of the House of the House Committee on Rules.

My firm is active in trade matters in the United States and in other countries, largely representing U.S. companies in various matters before federal agencies and courts. In recent years, my firm has participated in a number of challenges to U.S. antidumping and countervailing duty determinations before the binational panel in the U.S.-Canada FTA. At the present time, one of my partners is a panelist in the challenge of a Mexican antidumping determination. One of my partners has also written a book on the NAFTA Chapter 19 dispute settlement process.*

This statement is submitted in my personal capacity and does not necessarily reflect the positions of any of my firm's clients (domestic or foreign) or the positions of any of my partners.

While there are a host of important issues surrounding the question of whether the expired fast track authority should be renewed or extended, this written submission will focus on just two issues: (1) if fast track authority is extended, should Congress restrict the ability of the Administration to extend NAFTA or other agreements to provide non-judicial review of antidumping and countervailing duty actions to determine compliance of U.S. agency action with U.S. law; (2) what type of negotiating objectives should Congress establish if fast track authority is extended.

On the first issue, I add my voice to those who have advocated preventing the further expansion of binational panels to review the compliance of U.S. agency actions with U.S. law and the eventual renegotiation of NAFTA to eliminate binational panel review in such cases.

On the second issue, if multiple year authority is provided, Congress should mandate that the negotiating objectives included in the 1988 Omnibus Trade and Competitiveness Act that were not achieved in the Uruguay Round be pursued as well as all issues that would in fact render our major trading partners' markets accessible to U.S. products. While the long standing difficulties with Japan in autos, auto parts, and many other products makes Japan a critical focus of the negotiating objectives, there may well be other countries where special issues also exist.

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* James R. Cannon, Jr., Resolving Disputes Under NAFTA Chapter 19 (Shephard's/McGraw-Hill 1994).

## 1. Elimination of binational panels for antidumping and countervailing duty cases

### Constitutional issues remain unresolved

Serious constitutional issues were raised at the formation of the U.S.-Canada FTA. Those issues have not been addressed in fact to date and continue to cloud the legitimacy of the binational process -- a process which is not designed to determine whether U.S. (or other country) action complies with international agreements (a potentially useful function) but rather whether U.S. agency action complies with U.S. law. I cannot improve on the statement prepared by the Customs and International Trade Bar Association* prepared by the Trial and Appellate Practice Committee on the constitutional issues and so simply refer the members of the Subcommittees to the CITBA submission. Multiple lines of case authority; application of U.S. law differently to imports from different countries; Article III requirements and other issues all pose significant policy issues that deserve careful consideration by the Congress.

A retired former Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit has also expressed strong doubts about the constitutionality of the binantional panel structure.

### Practical Problems

Many practitioners would agree that for many of the cases that have been brought before the binational panel, the outcome was reasonably prompt and the outcome was probably justified by existing U.S. case law. That has not been true of several politically sensitive cases where concerns have been raised about the propriety of the standard of review used or whether panelists were tainted by conflicts.

To a large extent, the structure of the binational panel process and the limited appeal rights guarantee that when there is an important case before the panel, the parties are likely to be dissatisfied with whatever outcome emerges.

(a) Cultural differences mean terminology may carry different meanings to members of different nations

In one of the lumber panels, concerns were raised about possible conflict of interest issues for one of the panelists. Having discussed the matter with U.S. and Canadian lawyers, I am convinced that much of the problem may flow from the different structure of law firms in Canada, different construction of the term within Canada or other reasons having nothing to do with lawyers deliberately flaunting conflict requirements of the panel process.

While the U.S. and Canada have similar common law systems, the same is not true for Mexico and will not be true for other countries which may join NAFTA in the future. It is questionable whether the member countries can anticipate all of the likely areas of unintended misunderstanding flowing from cultural or practice differences. If the issues are not anticipated, fully articulated with commonly understood standards adopted, the panel process will always be subject to concerns of bias and misconduct.

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* I am currently a member of the Board of Directors of CITBA but was not involved in the drafting of the paper; as a Board member I did provide comments and voted for the paper's adoption.

(b) Many of the panelists in fact have no background in the standard of review used by the national courts

Most of the panels to date have been either challenges of U.S. antidumping or countervailing duty determinations or challenges of Canadian determinations. Many of the Canadian panelists have been non-lawyers who do not necessarily understand either U.S. or Canadian standards of review. But even for the lawyers, one of the often voiced concerns of panelists has been the difficulty in understanding and properly applying the national court's standard of review. Thus, one can anticipate claims that regardless of the verbiage used in a decision, panelists from a different country are in fact applying the standard of review from their home courts. Since the appeals process to date has not proven capable of dealing with claims of an improper standard being applied in fact, there is no institutional way to resolve the problem in an individual case.

Nor does there appear to be significant training done by the Secretariats involved of panelists on how the standards actually work, nor are retired judges from the national courts used as advisors to counsel the panelists on consistency with standards.

Hence, anytime a party loses a panel and one or more of the votes against the party are from nationals from the other country, concerns about the propriety of the decision are likely to be present.

(c) The limited appeal process forces parties to look for signs of impropriety

Because the structure of the binational process assumes the elimination of appeals in most situations, companies who perceive their interests are not protected by a panel decision are left with two unattractive options: accept a decision they believe is wrong; challenge the panel process as tainted. In politically sensitive cases, there is huge pressure to get a second opinion of an adverse ruling. As long as the only way to do that is accuse the panelists of some form of wrongdoing, there will never be respect for the institution.

(d) There is no way to prevent votes along national lines from appearing biased

The panel process does not require unanimity. While many panel decisions have been unanimous and many others do not exhibit panelists voting along national lines, there have been cases and will be cases in the future where votes end up cast with each country's panelists supporting the position of their respective governments. The bona fides of such votes is irrelevant. Such votes will always appear to be tainted.

(e) There is no way to prevent the appearance of impropriety when panelists are practicing trade lawyers

I have had the great privilege to know many of the panelists from the U.S. roster over the years. I have also had the privilege of meeting a number of Canadian panelists. All are, in my opinion, honorable practitioners who have taken the responsibility of serving as a panelist with the utmost seriousness. However, it is highly unlikely that <u>any</u> legal issue (including the application of law to facts) that would arise in a panel proceeding would <u>not</u> be confronted in another case in which the panelist is involved. Thus, no matter how honorable the panelists involved or how objective they have been in carrying out their function as panelists, where a vote

goes against a party, practicing lawyers from either country can be accused of the appearance of impropriety.

The result of these various practical problems of the existing panel process is that antidumping and countervailing duty decisions appear much more political than is good for the system. The panel process exacerbates that problem.

Court proceedings are much more timely now

At the time that the U.S.-Canada FTA was negotiated, some argued that the time to get an administrative decision challenged in the U.S. Court of International Trade was excessively long. Whatever the merits of the claim in the late 1980s, time lines at the CIT are significantly shorter today,* with additional changes being considered which would reduce time lines further. Indeed, the CIT has achieved dramatic results in moving the massive steel litigation through the court for all countries in extremely short time periods.

Moreover, panels have been confronted with the same need for remand and possible reconsideration as face the Court of International Trade, so some of the assumed time savings in panel cases have not materialized.

Thus, there is little justification from a time saving point of view for maintaining binational panels.

WTO is the Proper Forum for Our Trading Partners to Negotiate Changes, if Any, to U.S. Law and Practice

Trade laws are supposed to be applied to all countries equally. Indeed, MFN obligations of the WTO should raise serious concerns about efforts of individual countries to obtain differential treatment under the laws. If Canada, Mexico or any other trading partner is dissatisfied with U.S. law and practice, their remedy is either to seek multilateral negotiations on the matter through the WTO or, where U.S. action is believed to be contrary to existing GATT obligations, to seek dispute settlement in the WTO. Panel review is not the appropriate place to resolve questions over agreement construction.

2. Negotiating Objectives

During the extension of fast track authority in 1988, Congress outlined a broad array of negotiating objectives for the Administration. Many of those objectives were taken up as part of the Uruguay Round. Others had not been included in the Uruguay Round negotiating mandate in 1986 and have been addressed, if at all, in bilateral or other fora.

As Congress considers extension of fast track authority, I believe it would be important to evaluate whether certain of the 1988 objectives have not been addressed to date and if so to include those as objectives identified for the use of fast track authority. See, e.g., my statement to the House Ways and Means Committee's Subcommittee on Trade, Hearings on Uruguay Round, November 5, 1993. Such a list should include 19 U.S.C. 2901(a)(5)(current account surpluses), (6)(trade and monetary coordination -- some advance in WTO; some at G-7 level), (7)(D)(agricultural problems re excess production), (8)(C)(enforcement of GATT rules re state trading enterprises

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* The Clerk of the U.S. Court of International Trade presented information on the reduction in time lines for customs litigation and litigation of trade cases during the Ninth Judicial Conference on November 16, 1994, in New York City.

and acts requiring substantial direct investment -- some progress in WTO), (11)(foreign direct investment), (13)(specific barriers -- some progress made each year), (14) (worker rights), (15)(access to high technology) and (16)(border taxes).

In addition, it is critical that the United States make a top priority to obtain multilateral rules that address the types of border and internal barriers that have frustrated U.S. manufacturing, agriculture and service industries from obtaining greater market access in Japan and other of our trading partners around the world. With binding dispute settlement procedures now in place, the U.S. cannot afford to be locked into a system where market barriers in the U.S. can be addressed through the multilateral system but the barriers of our major trading partners cannot, and cannot be dealt with through U.S. law without threat of WTO challenge and retaliation. The current challenges by the U.S. and Japan on autos and auto parts present a major challenge to the adequacy of the multilateral system to secure fair market access to all markets. While I remain optimistic that the WTO will prove able to deal with the systemic problems in a country like Japan through the dispute settlement process, fast track legislation should authorize tackling such uncovered areas (e.g., trade and competition policy, investment, harmonization of regulatory areas, etc.) on a high priority, so our rights and our trading partners' obligations are clear.

I appreciate the opportunity to provide written comments.

Sincerely,

Terence P. Stewart

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