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PRESIDENT BUSH'S TRADE AGENDA

HEARING

BEFORE THE

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

ONE HUNDRED EIGHTH CONGRESS

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PRESIDENT BUSH'S TRADE AGENDA

WEDNESDAY, FEBRUARY 26, 2003

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

The Committee met, pursuant to notice, at 10:35 a.m., in room 1100 Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE CONTACT: (202) 225–1721

February 14, 2003
FC–4

Thomas Announces Hearing on President Bush's Trade Agenda

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on President Bush's trade agenda. **The hearing will take place on Wednesday, February 26, 2003, in the main Committee hearing room, 1100 Longworth Building, beginning at 10:30 a.m.**

The sole witness at this hearing will be United States Trade Representative Robert B. Zoellick. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

On August 6, 2002, the President signed into law the Trade Promotion Authority Act (TPA) of 2002 (P.L. 107–210), which provides to the President the authority to negotiate trade agreements and bring them back to Congress under certain procedures setting forth detailed negotiating objectives and ensuring extensive consultation with Members. Since TPA became law, the President has notified Congress of his intent to enter into free trade agreements with Chile and Singapore. He has also notified Congress of his intent to enter into negotiations with Morocco, the Central American countries, Australia, and the Southern African Customs Union. In addition, he is continuing negotiations to establish the Free Trade Area of the Americas as well as multilateral negotiations in the World Trade Organization (WTO) to expand U.S. opportunities in trade in agriculture, industrial goods, and services.

In announcing the hearing, Chairman Thomas stated, "Now that TPA is in place, we have the chance to regain our leadership role in trade negotiations and to eliminate foreign trade barriers to our goods and services. The Administration has moved ahead quickly to establish an ambitious agenda for seizing these opportunities. I am committed to ensuring the Administration's adherence to the rigorous consultation process and the detailed negotiating objectives established in TPA. This hearing, which will give Ambassador Zoellick the opportunity to lay out the President's trade priorities within the TPA framework, is an important component of our bipartisan oversight responsibilities."

FOCUS OF THE HEARING:

The hearing is expected to examine current trade issues such as: (1) implementation, under TPA procedures, of the Chile and Singapore free trade agreements, which have been initialed and are expected to be signed at the end of April, (2) other free trade agreements, including those notified by the President (Morocco, the Central American countries, Australia, and the Southern African Customs Union) and the Free Trade Area of the Americas, (3) prospect for trade expansion in agriculture, industrial goods, and services through multilateral negotiations in the WTO, (4) compliance with WTO dispute settlement decisions, (5) the status of Russia and other former Soviet Republics under the Jackson-Vanik amendment, (6) other bilateral trade issues, and (7) legislation to implement U.S. obligations in the Kimberley Process (concerning rough diamonds) in a WTO-consistent manner.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to hearingclerks.waysandmeans@mail.house.gov, along with a fax copy to (202) 225–2610, by the close of business, Wednesday, March 12, 2003.

Those filing written statements that wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the full Committee in room 1102 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

Chairman THOMAS. Mr. Ambassador, welcome once again to the Committee on Ways and Means. We are pleased to know that you are back from another trip abroad. That means you are working hard in carrying out the Trade Promotion Authority (TPA), which became law last August 6. I know you are pressing forward on multiple fronts.

We have been on the sidelines too long. It is nice to know that we are engaged. More important than being engaged, work product is actually being produced. I know that you have concluded negotiations with Chile and Singapore and you are in the process of screening that, and it is before a limited number of eyes and will be before a larger number of eyes very soon.

We are concerned on a number of fronts—World Trade Organization (WTO), we look forward to the Central American Agreement moving forward to a Free Trade of the Americas—and on a number of fronts I think you will find that Members of this Committee are interested in providing you with questions and will be listening carefully to your answers regarding Europe in general and perhaps particular countries within the European Community.

We look forward to your comments, and I would briefly recognize the Chairman of the Subcommittee on Trade, the gentleman from Illinois, Mr. Crane, for any remarks he may make.

[The opening statement of Chairman Thomas follows:]

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

Good Morning. This is a hearing to discuss the United States trade agenda for 2003. Ambassador Zoellick, we are pleased to have you here today to discuss the important progress we have made and will continue to make in expanding international trade.

Since the President signed Trade Promotion Authority (TPA) into law on August 6, you have pressed forward on multiple fronts. The truth of the matter is your assignment has been one of catching-up. After eight years without TPA, the United States remains behind the wave of trade agreements that swept the world economy while American negotiators were sitting on the sidelines. The enactment of TPA has put the United States back in the business of negotiating meaningful trade agreements for U.S. workers, manufacturers and farmers.

Having concluded negotiations with Chile and Singapore, you are moving on to initiate negotiations with other nations. Reaching free trade agreements, even with smaller countries and regions, allows the United States to establish benchmarks for our negotiations within the World Trade Organization and towards a Free Trade Area of the Americas.

Europe, however, continues to be among our most troublesome trading partners. I agree with you that initiating action in the WTO appears necessary to bring the European Union into compliance with existing disciplines that require trade barriers to U.S. exports, particularly in the area of biotechnology, to be justified on the basis of sound science. Europe's stance on agriculture market access and subsidies is also unacceptable and would cement historical inequities, disadvantage our farmers and relegate much of the developing world to perpetual dependence. A WTO agriculture deal along the lines Europe is proposing is a non-starter in Congress.

Recently, I was asked about the possibility of an FTA with the European Union, to which I replied that FTAs today are possible with almost any country **except** the European Union!

Ambassador Zoellick, I look forward to your comments on our difficult problems with Europe and on the many other ones facing USTR this year.

Mr. CRANE. Thank you, Mr. Chairman. I also want to warmly welcome Ambassador Zoellick to the Committee. I am delighted that the administration has pursued trade negotiations on so many fronts. Now that the President has TPA, it is clear that the United States is back again in the driver's seat after a lapse of too many years.

The conclusion of the negotiations on Chile and Singapore is long overdue, and I look forward to considering these bills as part of the TPA process sometime in late spring—the sooner the better, in my book.

These bills will bring tremendous benefits to our farmers, companies, and workers, which should not be delayed any longer than absolutely necessary. I also congratulate the administration on taking seriously during the Chile and Singapore negotiations the consultation requirements that we put into the TPA bill.

I now look forward to the negotiation of more free trade agreements (FTAs) involving Central American countries, Morocco, the South African countries, and Australia. I hope that we will consider additional countries, such as New Zealand, in the coming months. Crucial deadlines and the Free Trade Area of the Americas (FTAA) negotiations for hemispheric free trade by 2005 are coming up fast. I am pleased that the United States has aggressively pursued opportunities in the WTO, most recently on agriculture and on industrial tariffs. We all have serious questions about whether Europe has committed to achieving significant reforms in agricultural trade, as is called for in the Doha negotiating mandate. It is encouraging to see that Ambassador Zoellick has numerous avenues to pursue free trade agreements if the WTO negotiations bog down. I welcome his testimony.

Chairman THOMAS. I thank the Chairman. The Chair now recognizes the Ranking Member of the Committee, the gentleman from New York, Mr. Rangel, for any comments he may wish to make.

Mr. RANGEL. Thank you, Mr. Chairman. I soon will yield to Mr. Levin, but I want to always welcome the Ambassador for representing in the best possible light the United States of America, and also indicate that at some point I would like to discuss with him the possibility of the Dominican Republic being included in the Central American Free Trade Agreement in terms of the reputation of the United States, especially at a time that we are getting a lot of anti-American feeling. I also am concerned with opposition on pharmaceutical patents and its relationship to poor people having access to essential medicine. I am working with Mr. Levin and Mr. Moran and hoping that we can come up with a position that treats our pharmaceuticals fairly, but at the same time that we be known as a country that is concerned to the sensitive question of life-threatening diseases.

Last, and on a more political issue, is the Foreign Sales Corp. (FSC) problem that we are having now with the WTO where our European friends have indicated that we can write the rules as

long as we don't have to abide by them. I am certain that together we can come up with a solution that is equitable and acceptable to the WTO. I know that you say it is a Treasury problem, but to a large extent, your credibility is going to be dependent upon our ability to work this out.

The Administration has been very successful in picking up one or two Democrats and calling these things bipartisan solutions to national problems. I don't think you are going to be able to do that in this particular case, but perhaps you might share with us at some point why the proposal supported by our Chairman in rewarding those people who do business offshore is more equitable than the idea of giving those benefits from the windfall taxes that we will be collecting to manufacturers in the United States.

In any event, I am glad that you are here. Sorry I couldn't make the previous meeting, and I would like to yield, if the Chair would permit, to Mr. Levin.

Mr. LEVIN. Thank you. Thank you, Mr. Chairman. Welcome, Ambassador. I have a full statement, and I want to summarize it as quickly as I could. I ask that the full statement be placed in the record, Mr. Chairman.

Chairman THOMAS. Without objection.

Mr. LEVIN. The prepared statement of the Ambassador, of you, Mr. Zoellick, includes numerous statements like, and I quote, "rebuilding America's leadership on trade," "America is back in the business of promoting open trade," "reversing the retreat at home."

Let me make, if I might, a comment on this. I have made it before. It is a bit pointed, but I wanted to be clear, and I want to be clear on other matters that I state. I think it may be helpful, though it isn't always considered, I think, complimentary.

I think those characterizations of trade policy pre- and post-the current Administration are simply wrong. There was progress under the Clinton Administration, and many of us Democrats on the Committee on Ways and Means, working with Republicans here, were an intrinsic part of that progress: Caribbean Basin Initiative (CBI), African Growth and Opportunity Act (AGOA), China Permanent Normal Trade Relations (PNTR), Jordan FTA, and the Uruguay round, among others.

I don't want to fall into the same pitfall and caricature of the first 2 years of the Bush Administration. There has been some important movement on trade issues, for example, in Doha, the launch of the negotiations, which I supported actively, notwithstanding my concern that the text was unduly ambiguous. The temptation of proponents is to overstate the case and understate the challenges, and I believe this is true of the testimony today.

There have been serious setbacks and disturbing stalemates, and a key point: the major challenges are still ahead of us. I believe in pursuing expanded trade not because more trade is invariably better, but because expanded trade can be a powerful tool to promote economic growth and improve standards of living in our country and around the world. To do so, trade policy must shape the rules by which trade and international economic policy is conducted, just as we do domestically, to maximize its benefits and to minimize its downsides.

The economic backdrop against which you appear today is troubling. For several years now, the U.S. trade deficit has been hitting a new high almost every month. This deficit reflects both a decline in U.S. exports and an increase in imports. The deterioration is occurring in vital sectors where the United States supposedly has a comparative advantage, such as services and advanced technology.

The trade deficit has been felt hard in the manufacturing sector. We have lost 2 million jobs since January 2001. The widening trade deficit has contributed to an already anemic economy. As the Economic Report of the President states, "Trade deficits exert a drag on gross domestic product (GDP) growth." A Washington Post article estimates that the trade deficit sliced one-half of 1 percentage point off the GDP growth last year.

For U.S. trade policy to contribute to economic growth, our policy has to, as I said, shape trade to maximize its benefits and minimize its downsides. In key respects, I think the Administration's trade policy has failed to do that. I start with the FSC issue that Mr. Rangel has mentioned. I think instead of working within the WTO to correct a flaw that disadvantages U.S. exporters, the Administration is now using the threat of retaliation by the European Union (EU) to advance a proposal that would repeal the FSC benefits for American exporters and use the money primarily to pay for reduced taxes on the offshore activities of U.S. firms.

Another area that is of real concern relates to the WTO dispute settlement. You have announced some grand proposals to eliminate tariff barriers while at first, anyway, downplaying non-tariff barriers. In a sense, that has overshadowed the failure to use existing rules to ensure real market access to U.S. firms, in contrast with the approach of our trading partners.

What is even more disturbing is that the actual decisions of the panels clearly violate the WTO mandate. What has been our response, the Administration response to this serious problem?

Chairman THOMAS. The gentleman has 5 minutes.

Mr. LEVIN. Well, I don't think I can finish in 5 minutes.

Chairman THOMAS. Go ahead.

Mr. LEVIN. All right. You are the Chairman.

What has been U.S. Trade Representative's (USTR's) response to this problem? First, USTR agreed to open trade remedies for negotiation of the Doha Round, claiming that there were serious offensive interests for U.S. exporters. If there are such interests, where are the cases? To date, there have been zero cases filed alleging that U.S. exporters have been subject to wrongful unfair trade duties abroad.

Another issue relates to pharmaceutical patents and medicines, as mentioned by Mr. Rangel. Here the Wall Street Journal recently reported, "The Administration engaged in a post-election flip-flop in policy under pressure from the pharmaceuticals industry, thereby stalling progress on an issue so vital to people all over the world," and that you have worked on, Mr. Ambassador.

Let me say just a brief word about the Chile and Singapore trade agreements.

So, far there has been a failure to release the text, and that breaks a precedent that was established, for example, in North American Free Trade Agreement (NAFTA). I want to emphasize

this. Restricting the availability of the text undermines the fundamental purpose of the 90-day notification period—public involvement.

So, let me just suggest, as I close, a few components of the way, as I see it, and I think others on this Committee on the minority side, to move our trade policy forward.

On FSC, take seriously the approach being suggested by Mr. Rangel.

On Russia PNTR, do provide PNTR to Russia, but at the same time ensure a meaningful role for Congress in negotiations to bring Russia into the WTO as a number of us here have suggested and Senator Baucus.

On drug patents and access to medicines, coverage should be broadened to allow developing countries, as we have written to you, that lack manufacturing capabilities to address effectively serious public health problems and not only the infectious epidemics that have now been identified.

Let me just say a brief word about free trade agreements. I think there needs to be a clear, overall strategy. There can't be a cookie-cutter approach to them. In the case of the Central American Free Trade Agreement (CAFTA), a key issue of concern that Mr. Rangel and I have already flagged is the question of labor standards enforcement in CAFTA and the adequacy or lack of the Chile-Singapore approach in that context.

As to the textiles agreement with Vietnam, the USTR should encourage implementation of core labor standards through positive incentives, as in the Cambodia model.

In conclusion, the basic task, as many of us see it, before this Administration and our Committee was not, in quotes, "to re-establish U.S. trade leadership around the globe," but instead to re-establish now a broad bipartisan coalition around U.S. trade policy from which the United States can truly and fully lead.

Thank you, Mr. Chairman.

[The opening statements of Mr. Shaw and Mr. Levin follow:]

Opening Statement of the Honorable E. Clay Shaw, Jr., a Representative in Congress from the State of Florida

Mr. Ambassador, I want to talk to you about a trade dispute involving the Revpower Corporation, which was owned by my constituent, Mr. Robert Aronsson. This matter has been ongoing now for well over a decade, and I ask for your help.

Allow me to briefly state the facts: In December 1989, SFAIC, a Chinese state-owned corporation, confiscated a factory owned by Revpower. In response, Revpower sought in 1993 and won a $4.9 million arbitration award from the Arbitration Institute of the Stockholm Chamber of Commerce against SFAIC.

When Revpower attempted to enforce the award with the Chinese court in Shanghai, that court refused to even acknowledge that the suit had been filed for two years. When the Shanghai court finally adjudicated the suit, it was only after SFAIC transferred its assets to its parent company, The Shanghai Aviation Industry, that the Court then dismissed Revpower's suit on that ground that FSAIC had filed for bankruptcy and accordingly there were no assets against which the arbitral award could be enforced. Four years later, the Xuhui Bankruptcy Court, found that the SFAIC and SAIC "conspired maliciously" to evade the enforcement of the arbitral award by transferring property from SFAIC to its parent SAIC. But by then it was conveniently too late for the Chinese government to grant any relief to Revpower.

As you are aware, China is required to enforce arbitral awards under the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards. As SFAIC and SAIC were owned by the Chinese government at the time of the arbitration award. The Chinese government is bound by treaty to enforce and pay this

award. Moreover, by failing to honor the Revpower award, the Government of China ratified the violative acts of the Shanghai Court and thus breached its treaty obligations under the New York Convention. The net result is that what was initially a small commercial dispute has now become a situation whereby the injury to the U.S.-owned entity stems directly from the Chinese government's willful violation of an international treaty.

This debt to Revpower by the Chinese government has been outstanding now for over a decade, and with interest, now exceeds $11 million. I contacted the previous Administration about this manner in writing on four occasions, with little result. Moreover, I asked your predecessor for her personal assurance that the office of the U.S. Trade Representative would vigorously pursue this matter with the Chinese, during a Ways and Means hearing in 2000, but nothing transpired.

Therefore, Mr. Ambassador, can you appoint a representative in your office to look into this matter, with the hopes of resolving this problem, instead of just endlessly managing a problem. China is ignoring its international treaty obligations, and small American businesses are getting financially hurt. I urge you to be aware of the overall problem of the Chinese ignoring international arbitral awards. I implore you to use your office to work with your Chinese counterparts to finally bring closure to this matter. Thank you.

Opening Statement of the Honorable Sander M. Levin, a Representative in Congress from the State of Michigan

The prepared testimony of Ambassador Zoellick includes numerous statements like, "rebuilding America's leadership on trade, America is back in the business of promoting open trade, reversing the retreat at home."

These characterizations of trade policy pre- and post-the current Administration are simply wrong. There was progress under the Clinton Administration and many of us Democrats on the Ways and Means Committee were an intrinsic part of that progress. To conclude otherwise ignores CBI, AGOA, China PNTR, the Jordan FTA, the Uruguay Round agreements and many others.

I do not want to fall into the same pitfall and caricature the first two years of the Bush Administration. There has been some important movement on trade issues. For example, in Doha I supported the launch of the negotiations notwithstanding my concern that the text was unduly ambiguous. But, the temptation of proponents is to overstate the case and understate the challenges, and I believe that is true of the testimony of the USTR.

There have been some serious setbacks and disturbing stalemates and, a key point, the major challenges are still ahead us.

To begin with, however, I believe that a basic precondition to the U.S. trade agenda operating on the right track at a time when globalization is moving ahead exponentially is having a consistent policy foundation. Most fundamentally, I believe in pursuing expanded trade not because more trade is invariably better, but because expanded trade can be a powerful tool to promote economic growth and improved standards of living in the United States and around the world. To do so, trade policy must *shape* the rules by which trade and international economic policy is conducted—just as we do domestically—to maximize its benefits and minimize its downsides.

The Economic Backdrop

The economic backdrop to Mr. Zoellick's testimony is troubling.

For several years now, the U.S. trade deficit has been hitting a new high almost every month. The trade deficit in December hit a record high of $44.2 billion, which capped a record high $435 billion trade deficit for the year 2002. The widening of the trade deficit was particularly troublesome given that it continued at a time when the dollar's value was weakening.

The vast and record trade deficit reflects **both** a decline in U.S. exports and an increase in imports.

U.S. goods **exports** have declined significantly over the past two years. In 2000, U.S. goods exports stood at $771 billion. That figure declined by more than $50 billion during the first year of the Bush Administration to $718 billion. U.S. goods exports declined further in 2002, falling to $682 billion, a level below that of 1999.

Moreover, the deterioration is occurring in vital sectors where the U.S. supposedly has a comparative advantage: One example is services trade. Here, the surpluses in the U.S. services balance of trade have deteriorated in every year the Bush Ad-

ministration has been in office—declining from $74 billion in 2000, to $69 billion in 2001, and dropping dramatically to $49 billion last year.

The trade deficit has been felt hard in the manufacturing sector, which has seen a steep and steady erosion of jobs. Since January 2001, the U.S. has lost almost two million manufacturing jobs.

In 2000, the United States had a net trade surplus in advanced technology products of $5 billion. In 2001, that surplus shrank by almost 20 percent, and in 2002, the surplus became a deficit of more than $17 billion. This is the first time that the U.S. has ever had a trade deficit in Advanced Technology Products since the Census began compiling data on those products, beginning with data from 1982. A deficit for the first time compared to an average trade surplus in Advanced Technology Products of over $27 billion throughout the 1990s.

The point is not that trade is the sole cause of the country's continuing economic stagnation. There are several sides to the trade deficit, positive and negative. But, overall a poor trade performance has had real adverse effects for U.S. businesses and workers. The widening trade deficit has contributed to an already anemic economy. As the Economic Report of the President states, trade deficits exert a drag on GDP growth. A Washington Post article estimates that the trade deficit sliced one-half-of-one percentage point off the GDP growth rate last year.

For U.S. trade policy to contribute to economic growth in the short and medium term that benefits the widest array of Americans, U.S. policy has to *shape* trade to maximize its benefits and minimize its downsides. In key respects, the Administration's trade policy has failed to do that.

Trade Policy Problems

FSC

Perhaps the most obvious example of where the Administration's trade policy has failed to stand up for American workers, farmers and businesses is in the case of the FSC/ETI dispute with the EU.

The Administration has chosen to ignore the expressly stated policy of the Congress to ensure that international rules do not discriminate against U.S. exporters in the treatment of tax systems. The FSC/ETI rules were designed to correct a flaw in WTO rules on border tax adjustments so that American companies and farmers would not be disadvantaged in competing against companies and farmers in Europe and other places. Realizing this flaw, Congress directed the Administration to work to correct the problem in the WTO negotiations. To date, however, the USTR has ignored Congress' request.

Instead of working to correct a flaw that disadvantages U.S. exporters, the Administration has been using the threat of retaliation by the EU to advance a proposal that would repeal the FSC/ETI benefits for American exporters and use the money primarily to pay for reduced taxes on the offshore activities of U.S. firms. Regardless of the merits of sensible international tax reform standing on its own, to use the FSC benefits as a pay-for in this way is an affront to U.S.-based producers. Given dramatic declines in U.S. export performance, the Administration's response to the FSC/ETI loss stings American workers and manufacturers even harder.

Flawed Approach to WTO Dispute Settlement

Another area where the Administration has failed to act effectively to correct a festering and growing problem is in its approach to WTO dispute settlement. There are serious problems with the enforcement of the WTO agreements—by far, the most important single set of trade agreements in which the United States participates.

At the WTO, the Administration's announcement of grandiose proposals that sidestep key issues (for example, the USTR proposal to eliminate all tariff barriers downplaying the fact that the primary barriers faced by many U.S. industries are non-tariff) has been overshadowing the Administration's failure to use existing rules to ensure real market access for U.S. firms. The failure of the Administration to respond effectively to problems with the tools it already has raises the question: what is the point of concluding a slew of new trade agreements if they are not going to be enforced?

Now in its third year under this Administration, the USTR has filed only five cases, barely more than two per year. This compares with 56 cases in which the U.S. served as a complainant from 1995 to 2000—an average of almost 10 cases per year.

The USTR's failure to push for U.S. rights in WTO dispute settlement stands in clear contrast with the approach of our trading partners. Since the Administration has been in office, there have been 29 cases filed against the United States at the WTO. Of the cases against the United States that have been adopted during the

Administration's tenure, the U.S. has lost 11 out of 13. Ten out of these eleven losses involved the U.S. trade remedy rules—safeguards, antidumping and countervailing duties.

What is even more disturbing is the actual decisions of the panels in the cases. For example, the panels are going far beyond what the WTO agreements provide to pull in new concepts that the United States never agreed to such as "substantive public international law." Going beyond the terms of the agreements clearly violates the WTO's mandate, which states plainly that panels and the Appellate Body not "add to or diminish" the rights and obligations of the United States or other WTO members. Notwithstanding this clear rule, WTO panels are creating obligations that neither the Administration nor Congress agreed to in signing and approving the Uruguay Round Agreements.

What has been USTR's response to this serious problem? First, USTR agreed to open trade remedies for negotiation in the Doha Round, claiming that there were serious "offensive interests" in this area for U.S. exporters. If there are such interests, where are the cases? To date, the USTR has filed zero—zero cases alleging that U.S. exporters have been subject to wrongful unfair trade duties abroad.

Further, last year Congress specifically directed Commerce, consulting with USTR, to develop a strategy to respond to the assault against the U.S. trade laws. Rather than take this duty seriously, the Administration presented Congress with a short paper, almost half of which consisted of an extensive discussion of the history of the WTO dispute settlement system not relevant to Congress' request. Most of the rest of the paper comprised a reprise of case summaries and ideas that had already been submitted to the WTO by the U.S.

The paper contained virtually nothing on strategy, the focus of Congress' request. Rather, the paper spoke vaguely about the Administration's intent "to address these concerns in both the DSU and Rules negotiations" and to "work within the current dispute settlement system to avoid panel or Appellate Body findings that would be of concern." The report contains no strategy, no action plan, not even an indication as to how the Administration intends to "address" the problems in the negotiations or how it intends to "avoid" dispute settlement decisions that come out literally quarterly that undermine American laws.

In fact, next month, the WTO is scheduled to decide the challenges to the steel safeguards applied by the United States in 2002, after nearly four years of record-breaking steel imports. Needless to say, many of us in Congress will be watching those cases very closely.

Intellectual Property and Access to Medicines

Another issue where the Administration has relinquished a leadership role is on the vital issue of protecting pharmaceutical patents while ensuring access to medicines for the world's poorest people. Here, the Wall Street Journal recently reported that the Administration engaged in a post-election flip-flop in policy under pressure from the pharmaceuticals industry, thereby stalling progress on an issue so vital to people all over the world, and setting up the United States as the main obstacle to agreement in the WTO negotiations. Morever, if this dispute remains unresolved into September, it is not clear how it might affect the success of the broader WTO negotiations—which have the greatest potential to deliver for the U.S. economy.

Unnecessary Secrecy—Failure to Release Texts of Chile and Singapore Agreements

The Administration has created unnecessary problems for itself in other areas, as well. This Administration's penchant for secrecy is well known in other contexts, but now it threatens to poison the water in the trade arena, as well. To date, the Administration has failed to release to the public the texts of the Chile and Singapore FTAs. Here, the Administration has broken with the precedents of the NAFTA and other agreements—bipartisan precedents set by previous Administrations.

This unnecessary secrecy has made it difficult for Members of the advisory committees and Congress to do their jobs. Moreover, it undermines a fundamental purpose of the 90-day statutory lay-over period. One of the primary reasons for the 90-day notification period is to ensure a broad consultation process about the agreement itself—not only with Congress and cleared advisors—but with the public at large. Once the agreement is signed, that opportunity is extinguished, leaving the public to evaluate only the question of implementing legislation.

Finally, restricting the availability of the texts runs contrary to common sense. It creates a significant risk of rumor, misinformation and suspicion.

So far, 28 days have gone by—fully a third of the period, advisory committee reports are essentially completed and due to be submitted later this week or early next week, and the texts are *still* not publicly available. Two weeks ago, the Democratic House Members of the COG sent the President a letter urging the immediate release of the texts. Just yesterday, we received a response from you to that letter,

in which you stated that you "anticipate" that the Administration will make the text of the Singapore agreement available to the public in early March, and the text of the Chile agreement in late March or early April.

We are pleased with this apparent progress at moving up the release date, but the letters seem to raise as many questions as they answer. Why is the text of the Chile Agreement, which was completed about a month earlier, not going to be made available until about a month *after* the Singapore text? And, it is notable that even under the new anticipated scenario, neither text, it appears, will be available when the advisory committee reports are submitted this week or next.

FTAs

A strategy of pursuing free trade agreements can be useful for opening markets to American exporters, addressing issues that are more difficult to handle in multilateral negotiations, even keeping the pressure on those negotiations to conclude. However, there has to be a clear and publicly-stated strategy consistent with maximizing the economic benefits to American workers, farmers and businesses of the Administration's and particularly, USTR's limited resources.

To date, the Administration's announced potpourri of FTA candidates does not reflect a clear strategy and raises as many questions as it answers.

It is no wonder, then, that the Chamber of Commerce—normally an unfailing ally of the USTR—has begun to question the Administration's priorities in determining FTA partners. And there is good reason to raise questions. The criteria for allocating the scarce trade negotiating resources of the U.S. government does not seem to place much emphasis on giving U.S. workers, businesses and farmers the most bang for our buck. The combined trade covered by all of the new FTAs announced by this Administration—CAFTA, SACU, Australia, and Morocco—is only a little over 2 percent of total U.S. trade. Even if we were to include the Chile and Singapore agreements, the total would still only be about 3.5 percent. Certainly, no one would deny that there are some commercial benefits that will flow from these agreements; the question is whether and where those benefits fit into the overall priorities of trade negotiations and whether, indeed, they will be effective in pioneering answers to issues that have proven difficult for the largest multilateral areas, including core labor and environmental standards.

Finally, while all these other matters are pursued, a number of problems go unattended. For example, U.S. semiconductor companies in China are facing discriminatory taxes. *In short, China is discriminating against U.S. high tech companies, harming those companies and their workers, and so far USTR has not stopped it.*

The Way Forward

What we need, as globalization moves forward, is a globalization of American trade policy within our own borders. In this era of inexorably expanding trade, we have no choice but to build a broad-based, bipartisan coalition. A trade policy that in fact will tackle the tough issues—agricultural reforms, strong intellectual property protections and access to medicines—can ultimately be successful only if it is based on such a foundation of support in Congress and in our country.

We have readily within our grasp exactly that kind of strong coalition of internationally-minded Members of Congress. As recently as 2000, a real coalition came together to pass China PNTR, the African Growth and Opportunity Act and the CBI enhancement legislation with broad bipartisan support.

We can do that again. Hopefully, the Chile and Singapore agreements do not become another polarized and partisan fight.

The key ingredients of a broad-based approach are a consistent policy foundation and ensuring that U.S. policy shapes trade in ways that maximize its benefits and minimize its drawbacks.

The following are some suggested building blocks for that kind of an approach.

FSC. First, on the FSC, Mr. Rangel has already laid out an approach to domestic legislation and international negotiations that can garner broad support in both parties in the House and Senate, and in the business and labor communities.

Russia PNTR. Second, we should provide immediate Permanent Normal Trade Relations (PNTR) status to Russia as Mr. Rangel and I, along with Senator Baucus, have proposed. Our legislation, which we expect to introduce next week, will also ensure a meaningful role for Congress in negotiations to bring Russia into the World Trade Organization (WTO).

Drug Patents and Access to Medicines. Third, on the subject of pharmaceutical patents and access to vital medicines, a number of us—Mr. Rangel, Mr. Matsui, Mr. Moran and I and others—have proposed an approach that both safeguards our intellectual property and promotes access. We believe that coverage should be broadened to allow developing countries that lack manufacturing capabilities to address effectively serious public health problems—and not only the infectious epidemics that have now been identified.

FTAs—Central American FTA. Fourth, when it comes to negotiating free trade agreements, U.S. policy should have two cornerstones. First, the United States should not take a "cookie-cutter" approach to FTAs. With regard to all commercial issues, agreements should be negotiated on their own merits depending on the circumstances of a particular country or set of countries on issues ranging from agricultural subsidies, to service sector regulations, and IPR standards. In the case of the CAFTA, a key issue of concern that Mr. Rangel and I have already flagged is the question of labor standards enforcement in CAFTA countries, and the adequacy (or lack thereof) of the Chile/Singapore approach in that context.

Second, underlying each decision to negotiate—or not negotiate—there must be a strong economic rationale particularly in light of the resource constraints faced by USTR. No one would suggest that the economic rationale is ever the *sole* reason for pursuing an agreement, but it must be the overriding rationale. In the case of the CAFTA, as Mr. Rangel and I have already stated, it is difficult given the importance of countries like the Dominican Republic to see the rationale for departing from the 20-year tradition of developing trade and commercial relationships *throughout* the Caribbean, rather than hand-picking a few countries with which to negotiate further agreements.

Vietnam "Quota-Plus" Textiles Agreement. Fifth, on the Vietnam bilateral textiles agreement, we have proposed a "quota-plus" approach that both promotes additional access to the U.S. and implementation of core labor standards in Vietnam. We were very concerned to learn that USTR was not intent on negotiating such a provision when your office opened negotiations on a textile and apparel agreement with the Government of Vietnam last week. We understand that those negotiations did not reach agreement. We very much hope you will include a positive incentives labor provision in that agreement—what we call a "quota-plus" agreement.

As we have discussed, some aspects of the Cambodia model will need to be modified to reflect the differences between Vietnam and Cambodia, including the size of their textile and apparel sectors and forms of government. However, the overall approach has great merit and would be an important building block.

Conclusion

In conclusion, the basic task before this Administration and this Committee was not to "re-establish U.S. trade leadership around the globe" as stated in Ambassador Zoellick's testimony. It is, instead, to re-establish a broad bi-partisan coalition around U.S. trade policy from which we can truly lead.

Chairman THOMAS. I thank the gentleman. Apparently, a majority of the Committee greets you, Mr. Ambassador, and your written statement will be made a part of the record, and you can address us in any way you see fit.

STATEMENT OF THE HONORABLE ROBERT B. ZOELLICK, AMBASSADOR, U.S. TRADE REPRESENTATIVE

Mr. ZOELLICK. Thank you, Mr. Chairman and Mr. Rangel, who was here just a minute ago, and Chairman Crane and Mr. Levin. I prepared a rather lengthy statement, so I will try to create a slightly more user-friendly overview to take you through some of the topics today. So, I think you all have a little handout in front of you.

Just to review where we are, from the start of the Administration our focus has been on trying to promote freer trade by moving on multiple fronts: globally, regionally—and that is primarily the Western Hemisphere—and also through small bilateral or regional agreements. I think what moving on multiple fronts has enabled us to do is to take the fact that the United States starts with about 25 percent of the world's economy and leverage it.

It also means that we don't allow any one country to block us, so if we are only in the WTO negotiations and 1 out of 144 decides

to stop us, we can keep moving. Frankly, it also allows us to set the pace instead of being reactive.

So, it is my view, and certainly the view of many people around the world, that over the past 2 years we have regained momentum on trade at home and abroad, and that U.S. leadership is recognized and appreciated around the world.

We have also been able to do this in a way that broadens the message because we have connected trade to some other objectives, not only global growth but development, expansion of the rule of law, open societies, and indeed the values that are at the heart of our country and our political system.

We have also tried to connect trade to the broader realm of security in the world after 9/11. I certainly would never argue that poverty is the cause of terrorism. If you look at the background of most of the terrorists, frankly, they are not from poor families, and it is an insult to millions of poor people around the world that don't turn to terrorism. There is no doubt, if you have been in Indonesia or you have been in Sub-Saharan Africa, that you see that broken societies create the roots of problems because in those societies people that focus on destruction as opposed to creation and want to close as opposed to open find fertile ground. So, part of our longer term security campaign is to create opportunity and prosperity.

In terms of what we have done over the past 2 years, I really want to start by thanking the Chairman and many of you on this Committee for the hard work done over the past couple years to get the Trade Act passed. It not only restored America's negotiating power after an 8-year lapse, but we managed to extend some preferential trade agreements that came at a critical time, given the world economy: the Andean Trade Preference Act, which we expanded; AGOA II, and for those of you—the Chairman led a delegation to Mauritius in Africa where we met with some 35 Sub-Saharan African countries. You could see the fact that the Congress took their considerations into account and passed AGOA II amendments to be a very important sign. The expansion of GSP, the Generalized System of Preferences, for some 140 developing economies; and also, I think very importantly, a trade adjustment assistance package to help American workers through the adjustment; the launch of the Doha Development Agenda, reversing the failure in Seattle in 1999; completing the negotiations, which were not done, in China and Taiwan to bring them into the WTO during the course of 2001, and moving on to the important implementation agenda; and moving forward the FTAA into concrete negotiations.

Steel safeguards, which I know are a controversial topic, but I think has given a breathing space for the industry. We have now seen some of the restructuring that we hoped would start to occur to move the industry back to a competitive posture.

Passing the Jordan Free Trade Agreement; passing the Vietnam bilateral trade agreement; completing the Singapore and Chile FTAs; and launching a series of other FTAs.

Now, let me just review where we are in these key parts. In the WTO, the Doha Development Agenda, this was a negotiation we launched in November of 2001. As Mr. Levin said, he was with us there, and I also appreciated that at some key points I had an op-

portunity to consult with the Chairman on things as we were putting together the mandate.

This involves 144 participants around the world. Our next key meeting will be in Cancun in September, where we will have all the countries come back together, and our target date for completion is January 2005.

With your help, the United States has tried to set the pace by focusing on the heart of the agenda, and that is market access in agricultural goods and services—the meat of what trade negotiations are about.

You see on the next page I have just highlighted the key elements of our agriculture proposal: first, to eliminate agricultural export subsidies. I have noted in the recent press that President Chirac of France has suggested that maybe it would be a good idea to eliminate them for Africa, and we urged him to expand his horizons beyond the hedge rows and see all of the world having the elimination of export subsidies, helping the commission have more ability to negotiate what is an important area for the WTO.

We have also proposed a drastic reduction in agricultural tariffs that would cut the average agricultural tariff from 60 to 15 percent and to cut trade-distorting domestic support by about $100 billion, and an important part of this is removing much of the differential you have between the European subsidy level, which is about 3 times higher than the U.S. subsidy level.

On consumer and industrial goods, we propose that we cut all tariffs at 5 percent or below to 0 by the year 2010. That would open up three quarters of the trade for the United States, Europe, and Japan and make it tariff-free. That is important to our industrial and business sectors. It is also important to a lot of the developing countries.

We would cut all other tariffs to 8 percent by 2010 and eliminate them by 2015. We also proposed quicker zero-for-zero negotiations for key export sectors.

Now, there is no doubt that this is a bold proposal. Not everybody is ready to go this far. It is our strategy to try to set the boundaries and push for liberalization and demonstrate that the United States is willing to cut if others do.

The next page also talks about an area that I think needs increasing attention, which is services liberalization. Today, about two-thirds of America's GDP is represented by services and about 80 percent of employees in America are in service industries. It is not only our country. In East Asia and Latin America, about 50 percent of their economies are in the service industries, but it only represents about 20 percent of world trade.

Now, you have actually seen that this is an important area for the trading system because Ralph Nader's organization just started out this week attacking the services trade. So, it must be something that has promise for opening markets.

Now, why did they attack it? One thing they said is the United States is trying to push privatization around the world. False charge. The United States has not insisted that countries privatize. If they do privatize, however, we hope that U.S. firms have the same opportunities that others have.

We have been accused about trying to interfere with health and safety regulation. Again, false charge. Not any of our proposals interfere with health and safety regulation, and instead what we have suggested is, if there are fields like private education where American university education leads the world, that people open up opportunity for more competition in the private sector, then we should be part of it. It is the same with other areas, as you can see here.

What is important about the services agenda is that it is not just a North-North trade or just a North-South trade. This is an area where you are finding a lot of developing countries find that it is critical to develop their infrastructure. It is critical for business like tourism services. It is critical for education to upgrade the learning levels of their population. So, it is an area that I think will become increasingly important.

The next area is the regional initiatives, and here the key one is the FTAA. This involves 34 countries in the Western Hemisphere. Our target date for completion is January 2005. We are now moving to the key phase, with the United States and Brazil being the co-Chairs, the two biggest economies in the hemisphere other than our North American partners. We now are going to the concrete level of making concrete offers on agriculture, goods, services, investment, which we just did in February. Again, we tried to set the pace. The United States proposed that in the first year 65 percent of our goods market would be open to others and 56 percent of our agricultural market. We are starting to get the responses from other countries. Some are cautious. There is no doubt there is hard bargaining ahead. The next ministerial meeting will be in the United States, in Miami, in November of this year.

Then the bilateral initiatives, and I get the question a lot, and perhaps Mr. Levin is raising this, too. Why do we pursue bilateral initiatives? So, I tried to list some of the reasons here for you.

One, it levels the playing field for the United States. Keep in mind Europe has 30 of these agreements. The United States just has Canada, Mexico, Israel, and now Jordan. So, when we do a free trade agreement with Chile, we are catching up with the EU and Canada that are already on their way to reducing their barriers.

Second, it creates a competitive dynamic to liberalize. Keep in mind if we only operate in the WTO, if one country decides to get up on the wrong side of the bed and slow down the negotiations, we are stuck. I don't want to be stuck. I don't want to give anybody a veto over U.S. trade policy. So, I want to be in a position to say we are moving forward in each of these areas aggressively. If somebody else isn't ready to move, catch up when you can because we are going to keep going.

Then we found another effect, which is that one of the most striking aspects some of you encountered when you were with us in Africa was the AGOA process and our discussion of free trade with the Southern African Customs Union has led other African countries to say: What reforms do we need to make to be able to move toward trade liberalization with the United States?

We can also use these agreements to connect to sectoral reforms. For example, in our Morocco Free Trade Agreement, we are working with the World Bank to try to reform the agriculture sector in

Morocco. It applies to us, too. If we can cut subsidies from Europe and Japan, then maybe we can also cut some of our farm subsidies and we can reform our sector.

It encourages regional integration and investment, and here, if you look closely at the Central American case or the Southern African case, in the case of Southern Africa, keep in mind this agreement doesn't only deal with Southern Africa. It deals with Botswana, Namibia, Lesotho, and Swaziland. Well, Botswana, for example, is a very well-run economy, and the leadership there has had a multi-party democracy for some 40 years. It is only about 1.8 million people. They are not going to make it on their own. They have got to be able to connect to other economies, the same with Lesotho, the same with Namibia.

It is also true in Central America. We have got for the first time five countries that have had very different political traditions trying to work together to unite their economies all because the United States is offering them a goal of liberalization with the United States. I took note of the point that Mr. Rangel made, and I know he has written me about this in terms of some further connection. This is an idea that we can discuss, I have discussed with my negotiators. As we have talked about, we have got some issues we want to move the Dominican Republic on. You have tried to help us with this. They are moving. So, I think we try to look at these ideas, and, frankly, I think you and others have raised the same point about Panama.

Part of this, it is also true—we have talked about this with Southern Africa. We don't want it to hurt our negotiations with the Southern African Customs Union or hurt AGOA, so we need to find a way that pulls along the most advanced but also gives the opportunity of others to benefit from it. That is a good point.

To help cement economic and political reforms, and here, again, Central America—many of you have known the history of this in terms of violence, fragile democracies. Part of what we are helping is to develop open societies. It is true with the Southern African Customs Union, too, where four of the countries are democracies. Swaziland has problems. There is no doubt about it. The best way to get at Swaziland's problems is to try to work with the other countries in Southern Africa to improve them.

It also creates allies for us with the WTO and the FTAA talks, because as we work closely with these other countries, we learn their interests and we develop ways to cooperate.

Frankly, these other agreements break new ground and set higher standards. Many of you have an interest in the digital economy. The Chile and Singapore agreements, which all of you have access to on the Web site and you and your staff saw the documents before the negotiations and you all have access now, as well as the 700 cleared advisers, demonstrate that what we did in the digital economy offers some very important possibilities for the United States, because this is an area of intellectual property (IP) that frankly has moved beyond what occurred in the Uruguay round, in services, in e-commerce, and indeed in environment and labor, where this Committee has, I know, struggled about how to move ahead in environment and labor and trade, and now for the first

time we have got some serious environment and labor provisions that I think can fill a pattern for the future.

Now, on the bilateral initiatives, just to review where we are, with Singapore and Chile we concluded them in the fourth quarter of 2002. We hope for consideration in 2003. In essence, with Chile—I will be happy to go into this in more detail. The key part is it opens up a level playing field from the start. About 85 percent of the goods are tariff-free from duty day 1; 75 percent of U.S. agriculture exports will have zero duties within 4 years. We have removed the price band system that has plagued a lot of our agricultural exporters, and this again shows an interesting development in these smaller agreements.

We are basically getting the Chileans to accept U.S. standards for meat inspection and dairy, which is an increasingly important area with trade. It is not just the tariff barriers. It is issues like this.

Equally important, this free trade agreement with Chile—and I was somewhat surprised by the effect of this. It sent a very important message throughout Latin America because, frankly, some people thought we would never get this thing done. Now, when they realize that we can get it done and we hope with congressional passage, it creates incentives elsewhere.

With Singapore, we had some particular issues related to government-linked corporations. They have corporations that have special government ties. We wanted to make sure we had open competition. It is a major port, and we have some special provisions dealing with customs transparency to combat illegal transshipment. We also have some very important provisions in terms of express delivery and biotech patents. In both these agreements, we have set a high standard for services. We have what is called the negative list, which means everything is covered unless you remove it, which is not the way it is done in the WTO.

In the area of regulatory transparency, we have got some breakthrough possibilities that basically have these countries accepting the key principles of the Administrative Procedures Act in terms of notice for regulations and comment and so on and so forth.

Moving forward, we have launched the Central America negotiations. Mr. Brady has been helpful in terms of forming together a caucus on this. We are going to try to get this done over the course of 2003. There are negotiations going on right now, and Mr. Portman's city of Cincinnati was kind enough to host us. This is the area where we will follow up with Mr. Rangel on the docking issues.

In Morocco, we launched that in January of 2003. We hope to get that done by the end of this year, building on the agreements we have had. Mr. English has been very helpful in forming together a group to support that as well, and I believe Mr. Tanner is also a part of that effort.

Southern Africa, we have launched in January of this year. Those of you who took the trip to Africa saw its importance. This one I think is going to take a little longer because we are going to work with these five countries together, but we hope to try to get it done by the end of 2004.

Australia, again, we launched in February. Here a key issue is the sanitary and phytosanitary issues on agriculture which we continue to work on. Again, I hope we get this done in 2004.

Just a quick sense of a couple other issues. Clearly, we have a lot of follow-through on the China and Taiwan WTO accession. I was in China last week. It is a country of enormous potential, enormous change, but also enormous work to do, and this is an area where I think we can send important messages together.

Russia's accession to the WTO is an item that moves ahead with fits and starts. The most recent efforts of Russia to block some of our agricultural products to me are not a positive move. It is an area where the gains can be great if we can be successful.

The enforcement actions of a host of topics in WTO and NAFTA, compliance with WTO rulings and trade retaliation. Some of you have covered some of this in your opening statement. My statement covers it. I am happy to answer more questions.

I will just make this general point. During the Uruguay round negotiations, this Committee and the Congress urged the creation of the dispute settlement system, and it does serve U.S. national interests because we are the biggest trading power in the world and, frankly, a lot of these cases and the disciplines benefit us. Sometimes we lose, and when we lose, frankly, we have got to figure out a way to come into compliance. I am not only talking about the big ones that some of you mentioned, like FSC, but there are some other issues that have been hanging around for a few years, and, frankly, it doesn't help the United States to be a scofflaw. We have got to figure out a way to try to get these done.

Small business is an area that I think has an increasing opportunity to be linked with trade. Just to take the CAFTA, the Central American negotiations, it turns out that 78 percent of America's exporters to Central America are small- and medium-sized enterprises, and they represent about half the value. I now have a detailee from the Small Business Administration on my staff to try to help make sure we represent those interests and know about the goals of the small business community.

Trade capacity building for developing countries. A lot of you have helped us on this. I have talked with Mr. Rangel about this in both Central America and Africa, and I want to thank Mr. Kolbe. The Appropriations Committee has been very helpful.

We put together about $638 million a year now on trade capacity building, and it is money well spent because it helps these countries to be able to take part in the negotiations and implement it. To me it is not a question of trade or aid. It is a question of how you link trade and aid together.

Other legislative items, those of you that were in South Africa certainly saw the interest in some additions for AGOA, a possible AGOA III. Secretary Powell and I sent a letter up about Laos for normal trade relations. It is the only least developed country without normal trade relations, and it is the only one we have normal diplomatic relations with that we don't have normal trade relations.

Environment and trade and labor conditions and trade, I know this will be a topic we continue to discuss. I am very proud we now have these in our agreements. We are working on cooperative ef-

forts. We have actually got some of the non-government organizations (NGOs) helping us now in terms of the follow-through on these efforts. We are also trying to link with the work of multilateral development banks. So, again, I think we can connect trade to these issues in a way that isn't protectionist if we do it right.

HIV/AIDS and access to medicines and funding. We can talk more if you want about the trade related intellectual property rights (TRIPS) and medicines issue. I assure you I find it a frustrating one, too, as I mentioned to some of the Members. I think part of the problem here is there is a big gap of trust between some of the poorer countries and some of the companies who are afraid that some of their patents will be taken by some of the not-poor countries, and that is the gap we need to try to close here.

I also think the fact that we have made clear that this does not refer to HIV/AIDS, tuberculosis, malaria through our Doha first position, second, the moratorium we put forward, and the President's proposal for $15 billion of support for HIV/AIDS.

Finally, on conflict diamonds, this is one that Members of this Committee but also Chairman Wolf have had a strong interest in. Just to bring you up to date, the Kimberley process did come to an agreement on this. We agreed with all the other countries in the WTO for the appropriate waiver. We also got a UN resolution to be of help, and I again appreciate the Chair's interest in trying to push this forward and move the appropriate legislation to close this out.

Finally, I just want to thank all of you. I know we have different interests on this and we have different views about history. We will let that be decided by historians. I think over the past couple years we have been able to address a lot of the issues people have raised. I have certainly benefited from the insights of the Committee. We may not always agree, but I have certainly learned from the exchange, and we have been able to solve some of these problems.

I remember when I first started out and the minority said, "Mr. Zoellick, the three things you have to get done are Jordan, Vietnam, and a steel 201." I did those. Then they said, "Well, now we have got to get environment and labor done." Well, we did that. Now Mr. Levin, always keeping my feet to the fire, has got a new set, but that is the way the process goes. So, we will work with you.

Thank you.

[The prepared statement of Mr. Zoellick follows:]

Statement of the Honorable Robert B. Zoellick, Ambassador, U.S. Trade Representative

Mr. Chairman, Representative Rangel, and Members of the Committee:

Thank you for the opportunity to testify today, for your support and assistance, and the tremendous work of your staffs during this past year. We are very grateful for your significant effort to pass the Trade Act of 2002, including Trade Promotion Authority (TPA). We greatly appreciate your leadership, Mr. Chairman, and value our partnership with the Congress on trade matters.

Over the past year, working together, we have rebuilt America's leadership on trade. We are now pressing aggressively to secure the benefits of open markets for American families, farmers, workers, consumers, and businesses. President Bush is advancing, in close association with the Congress, an activist strategy "to ignite a new era of global economic growth through a world trading system that is dramatically more open and more free."

A key achievement this past year was the renewal of the Executive-Congressional partnership embodied in TPA. With that authority restored after a lapse of eight years, the Administration has begun to fulfill the vision of open markets and development articulated at the launch of new global trade negotiations in Doha, Qatar, in November 2001. The United States has submitted far-reaching proposals to the World Trade Organization (WTO), including plans to remove all tariffs on manufactured goods, open agriculture and services markets, and address the special needs of poorer developing countries.

Consulting closely with Congress, the Administration capped the year by completing Free Trade Agreement (FTA) negotiations with Chile and Singapore, which, when implemented, will open new markets for American exporters while expanding choice and value for American consumers. By lowering prices through imports and increasing incomes through trade, America's newest trade agreements will build on the success of the North America Free Trade Agreement (NAFTA) and the Uruguay Round, which together already provide the average American family of four with benefits amounting to $1,300 to $2,000—each and every year.

As President Bush has noted, "America is back in the business of promoting open trade to build our prosperity and to spur economic growth."

The Bush Administration looks forward to maintaining a close partnership with Congress in 2003 as we lay a firm foundation for a more prosperous America by passing the free trade agreements with Chile and Singapore; build upon our proposals to open markets in global trade talks; advance negotiations on the Free Trade Area of the Americas (FTAA); negotiate new FTAs with the five countries of the Central American Common Market, Australia, Morocco, and the five countries of the Southern African Customs Union; enforce U.S. trade laws; and monitor and press China's and Taiwan's compliance with their WTO obligations.

Realizing the Free Trade Vision

Following World War II, America successfully employed trade to help shape a positive bipartisan agenda of growth, openness, and security. With the end of the Cold War, however, the Executive-Congressional partnership that fueled that historic progress lapsed, weakening U.S. trade leadership.

To lead globally, President Bush recognized that he had to reverse the retreat at home. He worked successfully with Congress to enact the Trade Act of 2002. This Act included Trade Promotion Authority (TPA), which re-established the authority necessary to credibly negotiate comprehensive trade agreements by ensuring that they will be approved or rejected, but not amended.

The Trade Act of 2002, however, included more than just TPA. As the legislation moved through Congress, pro-trade Republicans and Democrats worked closely with the Administration to incorporate trade-related environmental and labor issues, while simultaneously addressing concerns about sovereignty and protectionism. The Act nearly tripled funding for the Trade Adjustment Assistance program—from $424 million in 2001 to $1.3 billion in 2003—to provide income support, health care, and training to Americans who need to acquire new skills or require temporary assistance due to job transitions in the international economy. The Trade Act also included a large, immediate down payment on open trade for the world's poorest nations, cutting tariffs to zero for an estimated $20 billion in American imports from the developing world by renewing and expanding the Andean Trade Preference Act, the African Growth and Opportunity Act, the Generalized System of Preferences, and the Caribbean Basin Trade Preferences Act.

The Bush Administration is committed to active consultations with Congress to ensure that America's negotiating objectives draw upon the views of its elected representatives, and that they have regular opportunities to provide advice throughout the negotiating process. The Trade Act of 2002 established a new Congressional Oversight Group with bipartisan representation from all the committees with jurisdiction over legislation affecting trade. The Administration will continue to consult regularly with Congress on U.S. trade policy, both through the Oversight Group and through the committees of jurisdiction.

Even as it has rebuilt support for trade at home, this Administration has been working abroad to open markets on all levels: globally, regionally, and bilaterally. By moving forward on multiple fronts, the United States is exerting its leverage for openness, creating a new competition in liberalization, targeting the needs of poorer developing countries, and creating a fresh political dynamic by putting free trade on a global offensive.

Coming to office in the wake of the WTO's 1999 Seattle debacle, the Bush Administration recognized the importance of launching new global trade negotiations to open markets and spur growth and development. Our leadership—in conjunction

with the European Union, many developing countries, and others—was instrumental in launching the Doha Development Agenda (DDA), against long odds. The Administration also played a key role in enlarging and strengthening the WTO by adding China and Taiwan to its ranks. By adding these important economies to the WTO, we are helping to ensure that China and Taiwan commit to a rules-based, open system of trade that will expand opportunities for Americans in these markets. Since 1995, the United States has helped add 17 new members to the WTO—and efforts are in train to add Russia and other nations in the future.

The United States is committed to the goal of completing the DDA by the agreed deadline of 2005. To maximize the likelihood of success, the United States is also invigorating a drive for regional and bilateral FTAs. These agreements promote and reinforce the powerful links among commerce, economic reform, development, and investment, thereby strengthening security and the momentum for free and open societies. Under NAFTA, U.S. trade with Mexico almost tripled and trade with Canada nearly doubled; as important, all three members have become more competitive internationally. NAFTA proved definitively that both developed and developing countries gain from free-trade partnerships. It enabled Mexico to bounce back quickly from its 1994 financial crisis, launched the country on the path of becoming a global economic competitor, and supported its transformation to a more open democratic society.

In the months following the Congressional grant of TPA, the Bush Administration completed FTA negotiations with Chile and Singapore, began new FTA negotiations with the five nations of the Central American Common Market, and announced FTA negotiations with the five countries of the Southern African Customs Union, Morocco, and Australia. We pushed forward the negotiations among 34 democracies for a Free Trade Area of the Americas and will co-chair this effort with Brazil until it is successfully concluded. The United States is once again seizing the global initiative on trade.

Pressing Forward with Global Trade Negotiations

Since the launching of new global trade negotiations at Doha in 2001, the United States has offered a series of bold proposals to liberalize trade in the three key sectors of the international economy: industrial and consumer goods, agriculture, and services. The U.S. leadership demonstrated by these proposals has been instrumental in maintaining forward momentum in the negotiations and in keeping WTO members focused on the core issues of market access.

Consumer and industrial goods. The U.S. proposal for manufactured goods calls for the elimination of all tariffs on these products by 2015. This was the trade sector first targeted by the founders of the General Agreement on Tariffs and Trade in 1947. After more than 50 years' work, about half the world's trade in goods is now free from tariffs. It is time to finish the job.

The U.S. proposal would level the playing field first by harmonizing disparate tariffs at lower levels and then eliminating them altogether. We envision this happening in a two-stage process.

The first phase would take place between 2005 and 2010. During that time, WTO members would eliminate all non-agricultural tariffs currently at or under 5 percent. This step would completely eliminate tariffs on more than three-quarters of imports into the United States, the European Union, and Japan in just five years. It would significantly boost trade among the major industrialized nations and spur developing countries' exports to developed nations.

During the 2005–2010 period, countries could also eliminate non-agricultural tariffs in highly traded goods sectors—such as environmental technologies, aircraft, and construction equipment—through a series of zero-for-zero initiatives with trade partners that are ready to commit to greater levels of openness. In addition, for all other duties the United States is proposing a "Tariff Equalizer" formula, which would bring all remaining non-agricultural tariffs down to less than 8 percent. In order to achieve greater equity, the highest tariffs would fall farther than the lower tariffs.

The second phase of the U.S. proposal would be carried out between 2010 and 2015. During those five years, all WTO members would make equal annual cuts, until their tariffs on goods are eliminated. With zero tariffs, the manufacturing sectors of developing countries could compete fairly. The proposal would eliminate the barriers among developing countries, which pay 70 percent of their tariffs on manufactured goods to one another. By eliminating barriers to the farm and manufactured-goods trade, the income of the developing world could be boosted by over $500 billion.

The U.S. proposal for a zero-tariff world is a major tax cut that would directly save America's working families more than $18 billion per year on the import taxes they currently pay in the form of higher prices. The dynamic, pro-business, pro-consumer, and pro-competitive effects of slashing tariffs would mean that America's national income would increase by $95 billion under the U.S. goods proposal. Together with the tax cut from lower tariffs, that would mean an economic gain of about $1,600 per year for the average family of four.

Agriculture. America's farmers are a key to our economic vitality. Dollar for dollar we export more wheat than coal, more fruits and vegetables than household appliances, more meat than steel, and more corn than cosmetics.

The U.S. goal in the farm negotiations is to harmonize tariffs and trade-distorting subsidies while slashing them to much lower levels, on a path towards elimination. The last global trade negotiation—the Uruguay Round—accepted high and asymmetrical levels of subsidies and tariffs just to get them under some control. For example, the Round set a cap on the European Union's production-distorting subsidies that was three times the size of America's, even though agriculture represents about the same proportion of our economies.

The 2002 U.S. Farm Bill—which authorized up to $123 billion in all types of food-stamp, conservation, and farm spending over six years, amounts within WTO limits—made clear that the United States will not cut agricultural support unilaterally. But America's farmers and many agricultural leaders in Congress back our WTO proposal that all nations should cut tariffs and harmful subsidies together. The United States wants to eliminate the most egregious and distorting agricultural payments-export subsidies. We propose cutting global subsidies that distort domestic farm production by some $100 billion, slashing our own limit almost in half. We would cut the global average farm tariff from 60 percent to 15 percent, and the American average from 12 percent to 5 percent. The United States also advocates agreeing on a date for the total elimination of agricultural tariffs and distorting subsidies.

Services. The United States is by far the world's leading exporter of services. We have submitted requests to our WTO partners that would broaden opportunities for growth and development in this critical sector, which is just taking off in the international economy. Services represent about two-thirds of the U.S. economy and 80 percent of our employment, yet they account for only about 20 percent of world trade. Services liberalization would open up new avenues for trade, benefiting both the United States and our trading partners. The World Bank has pointed out that eliminating services barriers in developing countries alone could yield them a $900 billion gain.

As WTO negotiations have progressed, we are making significant progress in a number of other areas covered by the Doha declaration, including:

Capacity Building. The United States is committed to expanding the circle of nations that benefit from global trade. We listen to the concerns of developing countries and assist in their efforts to expand free trade. This past year, we devoted $638 million—more than any other single country—to help developing economies build the capacity to take part in trade negotiations, implement the rules, and seize opportunities. We have also acted in partnership with the Inter-American Development Bank and other multilateral institutions to provide new capacity-enhancing resources and expertise.

In addition, the Bush Administration is emphasizing the important contributions that small businesses make to the U.S. and global economies. Small businesses are a powerful source of jobs and innovation at home and an engine of economic development abroad. By helping to build bridges between American small businesses and potential new trading partners, these enterprises can become an integral part of our larger trade capacity building strategy. Working with the U.S. Small Business Administration, we have established an Office of Small Business Affairs at the Office of the United States Trade Representative (USTR) that is charged with insuring that American small business concerns are incorporated into our trade policy pursuits.

Intellectual Property. We agreed at Doha that the available flexibility in the global intellectual-property rules could be used to allow countries to license medicines compulsorily to deal with HIV/AIDS, tuberculosis, malaria and other epidemics. We are also committed to helping those poor regions and states obtain medicines they cannot manufacture locally. To keep faith with our Doha obligations, the Administration has issued a pledge: while we pursue a global understanding on how these life-saving medicines can best be provided to countries that cannot produce the medicines themselves, the United States will not challenge in dispute settlement any WTO member that uses the compulsory licensing provisions of the TRIPS Agreement to export such drugs to a poor country in need. The Administration be-

lieves we must strike the necessary balance between protecting life-saving research and patents and helping those truly needy that face infectious epidemics.

Trade Rules. The international rules that govern unfair trade practices should be improved, not weakened. Indeed, the DDA explicitly states that any negotiation of trade remedy laws will preserve the basic concepts, principles, and effectiveness of existing agreements, as well as their instruments and objectives. This clear mandate will enable the United States to press for trade remedies to be applied in a manner consistent with international obligations. Inappropriate and non-transparent application of these laws can damage the legitimate commercial interests of U.S. exporters.

The Environment. Work has progressed well over the past year on the DDA's trade and environment agenda. The United States has urged new disciplines on harmful fisheries subsidies, prompting discussions in the Rules Negotiating Group on the inadequacy of existing rules in preventing trade distortion and resource misallocation in this important sector. The Bush Administration has stood firm against efforts to use so-called non-trade concerns, including using unjustified trade-distorting measures under the guise of environmental policy, to undermine the agenda for agricultural liberalization. At the same time, we helped move discussions forward on increasing market access for environmental goods and services in several WTO fora. WTO members also began to identify avenues for increasing mutual supportiveness of multilateral environmental agreements (MEAs) and the WTO, particularly with respect to cooperation and communication between these institutions.

Electronic Commerce. The United States is actively engaged in the work program on electronic commerce, now being conducted under the auspices of the WTO's General Council. In 2002, two meetings were dedicated to e-commerce and focused on classification and fiscal implications of electronically transmitted products. As the work progresses, the United States will push for a set of objectives to form the basis for a positive statement from the WTO about the importance of free-trade principles and rules to the development of global e-commerce.

Transparency in Government Procurement and Efficient Customs Procedures. The Administration also continues to push for the reciprocal removal of discriminatory government procurement practices in a wide range of multilateral, regional and bilateral fora, including the WTO. The Administration is urging the conclusion of an Agreement on Transparency in Government Procurement that would apply to all members of the WTO. The United States is also taking part in negotiations on new WTO rules to facilitate trade by making procedures at international borders more transparent and efficient.

Labor Issues. The United States has continued to press for increased cooperation between the WTO and the International Labor Organization (ILO). We charted important progress in 2002: the creation of the ILO's World Commission on the Social Dimensions of Globalization, which is undertaking a thorough analysis of the implications of trade and investment liberalization on employment, wages, and workers' rights. We look forward to the Commission's 2003 report.

The Administration's commitment to mutually supportive trade and labor policies has also benefited greatly from a partnership between USTR and the Department of Labor's International Labor Affairs Bureau (ILAB). ILAB has directly supported the work of the ILO, focusing particularly on promoting the 1998 *ILO Declaration on Fundamental Principles and Rights at Work* and the International Program for the Elimination of Child Labor (ILO/IPEC). ILAB is working with the ILO and other international organizations to assist countries in implementing core labor standards and is also providing technical cooperation to strengthen the capacities of developing countries' Labor Ministries to implement social safety net programs and combat the spread of HIV/AIDS. Realizing that child labor can never be fully eliminated until poverty is vanquished, the Administration and ILO/IPEC have focused on the eradication of the worst forms of child labor, including bonded or forced labor, child prostitution, and work under hazardous conditions. We have also bolstered the U.S. trade and labor agenda through ILAB analyses of labor laws and the worker rights situation of our trading partners.

Commitment to Progress within the WTO. To help maintain the momentum after the Doha agreement, WTO members agreed that Mexico would chair the mid-term review of progress at the September 2003 Ministerial in Cancun. This meeting will provide WTO members with the opportunity to chart a course for the final phase of negotiations. We welcome the leadership role that Mexico is playing by hosting this important meeting.

As negotiations progress, the United States will be placing special emphasis on a continued effort to ensure the involvement of the poorest and least developed nations, in order to assist them in securing the benefits of trade and to help keep all

WTO members effectively invested in the process. In 2002, we reaffirmed the U.S. commitment to the principle of special differential treatment for least developed countries in order to better integrate them into the global trading system, and devoted unprecedented resources to help such countries build the capacity to take part in trade negotiations, implement the rules, and seize opportunities. We have acted in partnership with the Inter-American Development Bank to integrate trade and finance, and we are urging the World Bank and the IMF to back their rhetoric on trade with resources.

Monitoring China's and Taiwan's Compliance with WTO Obligations

In 2001, the United States played a key role in breaking through logjams to complete the historic accessions of China (after a 15-year effort) and Taiwan (after a 9-year effort) to the WTO. This achievement built on the work of four U.S. Administrations and several Congresses. To achieve a successful result, we solved many multilateral issues, including those relating to agriculture, trading rights, distribution, and insurance, while navigating the political sensitivities to enable China and Taiwan to join the WTO within 24 hours of one another.

Throughout 2002, the Bush Administration worked closely with other countries, as well as the private sector, to monitor China's and Taiwan's compliance with the terms of their WTO membership. On December 11, 2002—the first anniversary of China's accession to the WTO–USTR published a report, pursuant to section 421 of the U.S.-China Relations Act of 2000, updating Congress on compliance by China with its WTO commitments.

Overall, during the first year of its WTO membership, China made significant progress in implementing its WTO commitments. It gained ground by making numerous required systemic changes and by implementing specific commitments, such as tariff reductions, the removal of numerous non-tariff barriers, and the issuance of regulations to increase market access for foreign firms in a variety of services sectors. Nevertheless, we have serious concerns about areas where implementation has not yet occurred or is inadequate—particularly agriculture, intellectual property rights enforcement, and certain services sectors.

An extensive interagency team of experts closely monitors China's WTO compliance efforts. This effort is overseen by the Trade Policy Staff Committee (TPSC) Subcommittee on China WTO Compliance, which is composed of experts from USTR, the Departments of Commerce, State, Agriculture, Treasury, and the U.S. Patent and Trademark Office. It works closely with State Department economic officers, Foreign Commercial Service officers and Market Access and Compliance officers from the Commerce Department, Foreign Agricultural Service officers and Customs attaches at the U.S. Embassy and Consulates General in China, who are active in gathering and analyzing information, maintaining regular contacts with U.S. industries operating in China and maintaining regular contacts with Chinese government officials at key ministries and agencies.

When confronted with compliance problems in 2002, the Administration used all available means to obtain China's full cooperation, including intervention at the highest levels of government. Throughout the year, USTR worked closely with affected U.S. industries on compliance concerns, and utilized bilateral channels through multiple agencies to press them. The Administration also broadened enforcement efforts by working on China issues with like-minded WTO members through the Transitional Review Mechanism and on an ad hoc basis. Through these efforts, the Administration made progress on a number of fronts. For example, we addressed and continue to work on a series of problems arising from China's new biotechnology regulations that threatened U.S. soybean exports—$1 billion worth in 2001—and other commodities. In the services area, the Administration successfully pressed China to modify new measures that threatened to restrict access by American express delivery firms, and we made progress in dealing with the concerns of U.S. insurance companies regarding China's use of excessively high capitalization requirements and other prudential standards. USTR also established a regular dialogue on compliance with China's lead trade agency, MOFTEC, in September 2002. This dialogue is designed to bring all relevant Chinese ministries and agencies together in one forum to facilitate the resolution of outstanding contentious issues.

Taiwan's accession to the WTO has increased access for a wide range of U.S. goods and services, including agricultural exports, during 2002. However, we continue to track potential compliance problems with Taiwan's WTO commitments, while we work to address existing problems regarding market access for agriculture goods, intellectual property rights protection, and Taiwan's telecommunications services market. Throughout the year, the Administration worked closely with U.S. industries and other agencies on these compliance and other market access con-

cerns. We used all available bilateral channels to press the Taiwan authorities to address shortcomings in these areas.

The Administration will continue this crucial work in 2003, both to address unresolved concerns and to tackle any new problems that arise. The backing we have received from the Congress—in terms of resources and attention—has been and will remain fundamental to the achievement of our mission. We will work closely with U.S. businesses, farmers, and labor groups—and with China and Taiwan—to address problems and take action when necessary.

Advancing Russia's Accession to the WTO

The United States has begun a new era in its relations with Russia. Whether in the realms of security, foreign policy, or economics, President Bush has emphasized the need to move beyond Cold War strictures and stereotypes.

To take another step towards closing out the history books of the Cold War, the President has urged the Congress to finally end the application of the Jackson-Vanik amendment to Russia. It has been over a decade since the unification of Germany in 1990 and the dissolution of the Soviet Union in 1991. Furthermore, Russia has been in full compliance with Jackson-Vanik's emigration provisions since 1994. As we move ahead, the Administration will continue consulting closely with various groups on the protection of freedom of religion and other human rights in conjunction with this action.

In 2003, we will continue our intensified effort to negotiate the terms of Russia's accession to the WTO on commercially meaningful terms. President Putin has made WTO membership and integration into the global trading system a priority. We will support Russia as it promotes reforms, further establishes the rule of law in the economy, and adheres to WTO commitments that support a more open economy. This effort needs to include action by the Duma to establish a fully effective legal infrastructure for a market economy.

To achieve a successful WTO accession, Russia must abide by multilateral trade rules, and the United States and 144 other member nations will insist on that course as talks proceed. Working closely with the Congress, the Administration will stress the need for Russia to offer fair market access in important U.S. export sectors—in agriculture and financial services, for example—and to adhere to international standards in areas such as food safety. Unfortunately, Russia's actions on poultry and other meats have sent a negative signal about the seriousness of its commitment to join the WTO. If Russia continues down this path, it risks losing the benefits of WTO membership—and even current levels of market access for its exports.

Advancing Hemispheric Trade Liberalization: The Free Trade Area of the Americas

On the regional front, the United States has been pressing ahead to create the largest free trade zone in history, covering 800 million people and stretching from Alaska to Tierra del Fuego: the Free Trade Area of the Americas (FTAA). This endeavor will be trying and difficult, yet when completed it will be historic—a fulfillment of a U.S. vision dating to the 19th Century.

In November 2002 in Quito, Ecuador, we energized the FTAA negotiations by agreeing on a firm schedule and deadlines for specific offers to cut tariffs and reduce barriers. Ministers recommitted themselves to the 2005 deadline for completion of negotiations, delivered new instructions to negotiating groups, released an updated draft negotiating text, agreed to tariff reductions from applied rates rather than WTO bound rates, and launched a Hemispheric Cooperation Program to assist in building trade capacity for our poorer partners. Upon the close of the Quito Ministerial, the United States and Brazil assumed co-chairmanship of the FTAA process, providing an opportunity for cooperation with a key partner and economic power as the pace of negotiations accelerates. This month, the United States advanced bold market access proposals for manufactured and consumer goods, agriculture, services, government procurement, and investment. We will also host the next Ministerial meeting in Miami in November 2003.

President Bush, like his counterparts throughout the Americas, knows that the FTAA will be crucial in our quest to build a prosperous and secure hemisphere. Free trade offers the first and best hope of creating the economic growth necessary to alleviate endemic poverty and raise living standards throughout the Americas. The scope of our endeavor is grand: The FTAA will be the largest free market in the world, with a combined gross domestic product of over $13 trillion.

Hemispheric openness is important in its own right, but it will also have a multiplier effect on growth by encouraging fuller participation by those countries in the Americas that have been bystanders in the global trading system. FTAA negotiators are developing provisions that will provide trade capacity building and technical assistance to smaller economies in the Americas, especially in the Caribbean. Our FTAA offers also take into account the special circumstances of these small island nations by building on existing patterns of preferential openness.

Fundamental freedoms and human rights are core principles of the Summit of the Americas process, as reiterated in Quito this year. The FTAA will strengthen democracy throughout the Hemisphere—a proposition that is not just theory, but fact. Time and time again, the world has witnessed the evolution from open markets to open political systems, from South Korea to Taiwan to Mexico. Free trade will likewise bolster young democracies in the Americas and the Caribbean.

During the Quito summit, the governments of the Americas also affirmed their commitment to the observance of internationally recognized labor standards. This echoed the agreement by the hemisphere's heads of state at the Third Summit of the Americas to "promote compliance with internationally recognized core labor standards. The Inter-American Conference of Ministers of Labor (IACML) is responsible for implementing the labor-related mandates of the Third Summit of the Americas and represents a parallel process for addressing the labor implications of economic integration. The Department of Labor represents the United States in the IACML and co-chairs the working group charged with examining the labor dimensions of the Summit of the Americas process.

As we continue building support for the FTAA, it will be important to point to the successful record of America's first regional trade agreement, the decade-old NAFTA. Throughout the months ahead, we will continue to publicize NAFTA's substantial benefits and consider additional ways to deepen integration throughout the Americas. NAFTA has been a case study in globalization along a 2,000-mile border; it demonstrates how free trade between developed and developing countries can boost prosperity, economic stability, productive integration, and the development of civil society.

Pressing Other Regional and Bilateral Agreements

Whether the cause is democracy, expanding commercial opportunity, security, economic integration or free trade, advocates of reform often need to move towards a broad goal step by step—working with willing partners, building coalitions, and gradually expanding the circle of cooperation. Just as modern business markets rely on the integration of networks, we need a web of mutually reinforcing regional and bilateral trade agreements to meet diverse commercial, economic, developmental and political challenges.

In 2002, the Bush Administration completed free trade negotiations with Chile and Singapore. Both of these agreements offer increased opportunities for U.S. businesses, farmers, and workers and send a message to the world that the United States will embrace closer ties with nations that are committed to open markets—whether in the Western Hemisphere, across the Pacific, or beyond the Atlantic. As we moved these FTA negotiations toward completion, we worked closely with the Congress—and the Senate Finance and House Ways and Means Committees in particular—to determine how best to address the concerns and interests of the Congress and the American people. For example, the Chile and Singapore agreements successfully incorporate new approaches to governing e-commerce, labor, investment, and the environment that were articulated in the Trade Act of 2002.

In 2002 we also notified Congress and then launched FTA negotiations with a number of new countries:

- With Morocco, a leading moderate and reformist Arab nation that offers commercial opportunity, which can serve as a model and hub for a region that can gain enormously from economic reforms, and has been a staunch partner in the global effort to defeat terrorism.
- With the five nations of the Central American Common Market—Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua—to encourage economic development and democracy in a region that has shown its potential by already representing $20 billion trade with the United States and which has made great progress over the decade.
- With the five members of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland), which will be America's first free trade agreement with Sub-Saharan African nations. The 48 countries of sub-Saharan Africa represent a largely untapped market for American business. As these countries progress economically, they will require substantial new infra-

structure in sectors as diverse as energy, agriculture, and telecommunications—areas in which U.S. firms lead the world. Thanks to the President's leadership on Africa, there is today a unique convergence of opportunities for us to promote African development and expand commercial opportunities for American businesses.

- And with Australia, our 14th largest trading partner and a growing economy, a key U.S. ally, and an important center in the network of American companies doing business in the Asia-Pacific region.

These regional and bilateral FTAs will bring substantial economic gains to American families, workers, consumers, farmers, and businesses. They also promote the broader U.S. trade agenda by serving as models, breaking new negotiating ground, and setting high standards. Our agreements with Chile and Singapore, for example, have helped advance U.S. interests in areas such as e-commerce, intellectual property, labor and environmental standards, regulatory transparency, and the burgeoning services trade.

As we work intensively on these FTA negotiations, the United States is learning about the perspectives of our trading partners. Our FTA partners are the vanguard of a new global coalition for open markets. These partners are also helping us to expand support for free trade at home. Each set of talks enables legislators and the public to see the practical benefits of more open trade, often with societies of special interest for reasons of history, geography, security, or other ties. The Bush Administration's FTA initiatives have helped shift the debate in America to the agenda of opening markets, and away from the protectionists' defensive agenda of closing them.

Our regional and bilateral free-trade agenda conveys the message that America is open to trade liberalization with all regions—Latin America, sub-Saharan Africa, the Asia-Pacific, the Arab world—and with both developing and developed economies. In October 2002, President Bush laid the groundwork for future market-opening initiatives by announcing the Enterprise for ASEAN Initiative. The EAI offers the prospect of bilateral FTAs between the United States and those members of the Association of Southeast Asian Nations that are ready to meet the high standards of a U.S. FTA and also pledges to assist countries in joining the WTO. This past year we also signed Trade and Investment Framework Agreements with Sri Lanka, Brunei, the West African Monetary Union, Tunisia, Bahrain, and Thailand. In addition, the United States signed a Comprehensive Trade Package with Hungary in 2002 that lowered barriers to $180 million worth of U.S. exports per year.

We look forward to discussing these initiatives with the appropriate committees in Congress, and we will seek continued input on these and other possible FTAs.

Over the coming year, we intend to press the goals articulated in the Trade Act of 2002. The President's regional and bilateral free trade agenda—combined with a clear commitment to reducing global barriers to trade through the WTO—will leverage the American economy's size and attractiveness to stimulate competition for openness, moving the world closer, step-by-step, towards the goal of comprehensive free trade.

Building New Bridges: Preferential Trade Programs and Capacity Building

A free and open trading system is critical for the developing world. As President Bush has pointed out, "Open trade fuels the engines of economic growth that creates new jobs and new income. It applies the power of markets to the needs of the poor. It spurs the process of economic and legal reform. It helps dismantle protectionist bureaucracies that stifle incentive and invite corruption. And open trade reinforces the habits of liberty that sustain democracy over the long term."

Over the past year, the United States has matched its rhetoric on helping developing countries through trade with action. First, the Trade Act of 2002 renewed the Generalized System of Preferences (GSP), which enables some 3,500 products from 140 developing economies to enter the United States free of duties. We have invited countries to submit petitions for products that should be added to the GSP list.

Second, the new Trade Act extended and augmented the Andean Trade Preference Act (ATPA)—first implemented in 1991 by President George H.W. Bush—by increasing the list of duty-free products to some 6,300. ATPA is a vital program for the four Andean democracies on the front lines of the fight against narcotics production and trafficking.

Third, the Act expanded the Caribbean Basin Trade Partnership Act (CBTPA) by liberalizing apparel provisions, providing a vital economic stepping stone for some of the poorest countries in our hemisphere.

Finally, we continued the important implementation of the far-sighted African Growth and Opportunity Act (AGOA), which Congress enacted in May 2000 and ex-

panded with the "AGOA II" provisions of the Trade Act of 2002. AGOA opens the door for African nations to enter the trading system effectively, increases opportunities for U.S. exports and businesses, supports government reforms and transparency, and widens the recognition of the benefits of trade in the United States. It extends duty-free and quota-free access to the U.S. market for nearly all goods produced in the 38 eligible beneficiary nations of sub-Saharan Africa. Moreover, by providing incentives for African countries to open their markets and improve the environment for trade and investment, AGOA has helped to boost American exports to the region. U.S. merchandise exports to sub-Saharan Africa are up by 25 percent since AGOA's enactment, to nearly $7 billion last year, led by aircraft, oil and gas field equipment, and motor vehicles and spare parts.

The second annual AGOA forum in January 2003 provided an opportunity to evaluate AGOA's achievements and address implementation challenges. Gathering in Mauritius, members of Chairman Thomas' delegation, Administration officials, and business representatives learned more about AGOA success stories, such as new jobs and investments in Cape Verde, Senegal, Rwanda, and Uganda. The real, positive experiences of American businesses and their African hosts provide models to emulate and help us better address the challenges inherent in promoting growth and commercial opportunities in Africa—particularly the challenge of maximizing and realizing tangible benefits across all the countries in the region.

Moving forward, the Bush Administration is committed to expanding America's economic links with Africa. Most important, we are asking Congress to extend AGOA beyond its 2008 expiration date. We have opened Regional Hubs for Global Competitiveness in Botswana, Kenya, and Ghana in 2002—each staffed with technical experts who will provide support on WTO issues, AGOA implementation, private sector development, and other trade topics. We are adding a specialist to each Hub from the Department of Agriculture to help African farm exports meet U.S. health and safety standards. Finally, we have designated a new Deputy Assistant Trade Representative who focuses exclusively on trade capacity-building activities.

Through AGOA and our other preferential trade programs, the Bush Administration will lend increasing support to developing countries that desire to take part in trade negotiations, implement complex agreements, and use trade as an engine of economic growth. We will build on current partnerships among agencies of the U.S. Government—such as AID, OPIC, and the Department of Agriculture—and with multilateral and regional institutions. Continued advice, encouragement, and support from Congress are vital to this endeavor.

Monitoring and Enforcing Trade Agreements

For the United States to maintain an effective trade policy and an open international trading system, our citizens must have confidence that trade is fair and works for the good of our people. That means ensuring that other countries live up to their obligations under the trade agreements they sign. Over the past year, we have successfully resolved disputes and aggressively monitored and enforced U.S. rights under international trade agreements and U.S. court rulings in ways that benefit American producers, exporters, and consumers. Sectors that have been affected include entertainment, high-technology, automobiles, and agriculture.

In 2003, we will seek to resolve favorably other trade disputes in a way that best serves America's interests. Among the most prominent cases are: telecommunications and sweeteners with Mexico; softwood lumber with Canada; beef with the European Union; and apples with Japan.

The United States should also live up to its obligations under WTO rules. In particular, the Administration needs the assistance of the Congress to come into compliance in cases dealing with the FSC/ETI law, the 1916 Act, the "Irish Music" copyright violation, the "Byrd Amendment," section 211 of the Omnibus Appropriations Act of 1998, and hot-rolled steel. We recognize that each matter involves sensitive interests. Yet America should keep its word, just as we insist others must do. As the largest trading nation, the WTO rules serve U.S. interests. We will work closely with the Congress to determine approaches to resolve these issues.

We intend to continue addressing unjustified science and health measures that impede farm exports, and undermine safe and productive innovation in agriculture. We will be vigilant in defending the right to market safe agricultural biotechnology products in Europe and elsewhere—the continuation of a long tradition in agricultural progress—which holds out great potential for mitigating the environmental impact of food production, nourishing the world's expanding population, improving health and nutrition, and bolstering farmers' productivity and prosperity around the world, most especially in the developing world.

The current EU moratorium on biotechnology is in violation of both WTO rules and the EU's own laws. The Administration, leaders of Congress, and our agriculture community have made clear that we believe the EU should lift its moratorium on biotech products, and we are working with others to determine the most expeditious way to get it to do so.

Preserving Safeguards and Trade Laws Against Unfair Practices

One of the principal negotiating objectives of the Trade Act of 2002 is to "preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions."

Maintaining public support for open trade means providing appropriate assistance to those industries that find it difficult to adjust promptly to the rapid changes unleashed by technology, trade, and other forces. We will continue our commitment to the effective use of statutory safeguards, consistent with WTO rules, to assist American producers. Used properly, these safeguards—such as Section 201 of the Trade Act of 1974—can give producers vital breathing space while they restructure and regain competitiveness.

For example, on March 5, 2002, in response to a unanimous finding by the U.S. International Trade Commission (ITC) that imports were a substantial cause of serious injury to the U.S. steel industry, the President announced temporary tariffs on imports of certain steel products. The ITC safeguard investigation was part of a three-pronged initiative announced on June 5, 2001, that also included negotiations at the Organization for Economic Cooperation and Development (OECD) to encourage the reduction of excess global capacity and to eliminate the market-distorting subsidies that led to current overcapacity.

The President's approach has given the U.S. steel industry and its workers the chance to adjust to import competition while safeguarding the needs of steel consumers. The Section 201 remedy preserved access to specialty steels by excluding over 700 products from the increased tariffs. In addition, the tariffs did not apply to imports from countries that have committed to the highest level of reciprocal market access—our NAFTA and other FTA partners. Most developing countries have also continued to enjoy open access to the U.S. steel market.

Since the temporary tariffs took effect, domestic steel companies have taken serious steps to restructure and increase productivity. As of January 2003, these steps included: International Steel Group's (ISG) purchase of the steelmaking assets of LTV Corporation and Acme Steel; ISG's offer to purchase the assets of Bethlehem Steel; two competing offers to purchase National Steel Corp.; the negotiation of a groundbreaking labor contract between the United Steelworkers of America and ISG; and numerous mergers and acquisitions in the minimill sector.

We made important progress in the OECD steel negotiations in 2002. Participants established a peer review process to examine global steel capacity closures and decided to immediately develop the elements of an agreement for cutting trade-distorting subsidies in steel.

Given America's relative openness, strong, effective laws against unfair practices are important for maintaining domestic support for trade. This Administration has used and continues to back the use of these laws. At the same time, however, we recognize that the recent proliferation overseas of anti-dumping laws in particular has resulted in abuses against U.S. exporters by countries that do not apply their laws in a fair and transparent manner. Our objective in the WTO negotiations is to curb abuses while preserving the basic concepts, principles, and effectiveness of unfair trade laws. Moreover, the United States has insisted that any discussion of trade remedy laws must also address the underlying subsidy and dumping practices that give rise to the need for trade remedies in the first place.

We continue to advance an affirmative U.S. agenda, targeting the increasing misuse of these laws, particularly by developing countries, to block U.S. exports. From 1995 through the first half of 2002, there were 105 investigations by 18 countries of U.S. exporters. The most frequently targeted U.S. industries are chemical, steel, and other metal producers, although U.S. farm products are increasingly being blocked. The WTO negotiations will help us address significant shortcomings in foreign anti-dumping and countervailing duty procedures by more clearly defining the specific circumstances that give rise to unfair trade, improving transparency in how anti-dumping laws are applied, and strengthening due process.

Aligning Trade with America's Values

America's trade agenda needs to be aligned securely with the values of our society. Trade promotes freedom by supporting the development of the private sector, encouraging the rule of law, spurring economic liberty, and increasing freedom of choice. Trade also serves our security interests in the campaign against terrorism by helping to tackle the global challenges of poverty and privation. Poverty does not cause terrorism, but there is little doubt that poor, fragmented societies can become havens in which terrorists can thrive.

Developing countries have much to gain by joining the global trading system. From Seoul to Santiago, when trade grows, income follows. The World Bank conducted a study of developing countries that opened themselves to global competition in the 1990s and of those that did not. The income per person for globalizing developing countries grew by five percent a year, while incomes in non-globalizing poor countries grew just over one percent. Developing countries that embraced trade and openness sharply reduced absolute poverty rates over the last 20 years, and the income levels of the poorest households have kept up with the growth.

By knitting America to peoples beyond our shores, new U.S. trade agreements can also encourage reforms that will help establish the basic building blocks for long-term development in open societies, including:

- *The rule of law:* Trade agreements encourage the development of enforceable contracts and fair, transparent governance—helping to expose corruption.
- *Private property rights:* These are a necessary ingredient for economic development because they encourage saving, investment, exchange, and entrepreneurship. Trade agreements bolster property rights by safeguarding the right to establish businesses, guaranteeing that investments will not be appropriated arbitrarily, supporting privatization, and fostering knowledge industries.
- *Competition:* Free trade fosters competition, the hallmark of successful economies. Developing countries suffer at the hands of elites who cling to their positions by depriving ordinary citizens of less-expensive, better-quality goods and services that can be had through competition. Free trade agreements attack manipulated licensing systems, state monopolies and oligarchies that keep affordable products off store shelves.
- *Sectoral reform:* Trade agreements drive market reforms in sectors ranging from e-commerce to farming. For example, in our FTA discussions with Morocco, we are examining how we can work with Morocco's World Bank program to restructure its agricultural sector. The United States has also advanced an aggressive agriculture reform proposal in the WTO negotiations that would eliminate $100 billion globally in trade-distorting farm subsidies and lead to better agricultural policies in developed and developing countries alike.
- Regional integration: The lesson of the European Union and NAFTA is that location matters, in economics as in politics. Therefore, as FTA negotiations with democracies in Central America and Southern Africa progress, we will explore how best to support beneficial regional integration and promote growth clusters.

From its first days, the Bush Administration recognized that poor countries cannot succeed with economic reform and growth if they are eviscerated by pandemics. Flexibility on the implementation of intellectual property protection, and lower-priced medicines, must be part of a larger global response to health pandemics, involving education, prevention, care, training, and treatment. The United States is committed to supplying funds for HIV/AIDS, tuberculosis, and malaria assistance, funding related research, prevention, care, and treatment programs, much of which helps to address problems in developing countries.

The United States was the first contributor—and remains the largest—to the international "Global Fund to Fight AIDS, TB and Malaria." The seriousness of the Administration's commitment to battle AIDS was recently underscored by President Bush's dramatic call for a tripling of U.S. AIDS spending—to $15 billion over the next five years—to establish an Emergency Plan for AIDS Relief. This comprehensive program is designed to prevent 7 million new AIDS infections, treat at least 2 million people with life-extending drugs, and provide humane care for millions of people suffering from AIDS, and to meet the needs of children orphaned by AIDS.

Free trade is about freedom. This value is at the heart of our larger reform and development agenda. Just as U.S. economic policy after World War II helped establish democracy in Western Europe and Japan, today's free trade agenda will both open new markets for the United States and strengthen fragile democracies in Central and South America, Africa, and Asia.

Promoting a Cleaner Environment, Better Working Conditions, and Investment Protection

Free trade promotes free markets, economic growth, expanded employment opportunities, and higher incomes. As countries grow wealthier, their citizens demand better working conditions and a cleaner environment. Economic growth gives governments more resources and incentives to promote and enforce strong standards in these areas.

The Trade Act of 2002 gave us detailed guidance on the continued incorporation of labor and environmental issues into U.S. trade agreements, representing a delicate balance across the spectrum of concerns. The Administration has been drawing on this guidance—and would welcome additional insights—as we pursue these topics in our current trade negotiations. Similarly, we are conducting discussions with non-governmental organizations and the business community to ascertain how we can address concerns posed about investment provisions in trade agreements.

The Chile and Singapore FTAs incorporate Congressional guidance into a robust environment and labor packages that place obligations within the text of these agreements and emphasize the importance of cooperative action. These FTAs encourage higher levels of environmental and labor protection, and obligate the signatories to effectively enforce their domestic labor and environmental laws. This "effective enforcement provision" is subject to dispute settlement and backed by equivalent penalties to press full compliance.

In the case of Singapore—a small developed country with limited available land—cooperative efforts will focus on combating the illegal wildlife trade and on building environmental capacity in Singapore's Southeast Asian neighbors. With Chile, we recognized a need for broader initiatives, both to address the special needs of a natural resource-based economy and to build environmental capacity in the Southern Cone. The U.S.-Chile FTA sets out eight initial cooperative projects and calls for the negotiation of a separate environmental cooperation agreement.

On labor, the Trade Act of 2002 directed the Administration "to promote respect for worker rights and the rights of children consistent with the core labor standards of the International Labor Organization." In our FTAs with Chile and Singapore, we reaffirmed our respective obligations as members of the ILO and committed to uphold the ILO Declaration on Fundamental Principles and Rights at Work. We examined carefully the domestic labor laws in Chile and Singapore, and verified that their laws did, in fact, adequately respect the ILO's core worker rights. We also achieved a principal negotiating objective of TPA by including labor provisions that obligate signatories to effectively enforce domestic labor laws when they may affect trade. In support of the goal to promote respect for worker rights, the United States and Chile agreed to move forward on two labor technical cooperation projects—labor justice reform and labor law compliance. In 2003, the United States will seek to negotiate labor and environment clauses in our trade agreements with the five Central American countries, Morocco, Southern Africa, and Australia.

The Chile and Singapore FTAs include an innovative system of monetary assessments to help settle labor and environmental disputes in a manner equivalent to how we resolve commercial disputes. In these agreements, the first course of action in a labor, environmental, or commercial dispute will be consultation. If this fails, however, all disputes will be handled through the same settlement procedures. If these procedures fail to bring an offending party into compliance, fines are a possibility—the funds from which will be earmarked for measures to address the underlying labor or environmental problems. This system creates an incentive to comply to avoid fines, and also serves to reduce the likelihood of future non-compliance by using funds to remedy enforcement deficiencies. Only as a last resort—in cases of non-compliance and a failure to pay a monetary assessment—will FTA signatories have recourse to withdraw trade benefits. And those actions must be, as Congress directed, "appropriate" to the severity of the violation.

The Administration has also addressed Congressional concerns about the intersections among investment, labor, and environmental protections. The Singapore and Chile FTAs provide greater transparency and accountability in the disputes investors can bring against host governments and ensure U.S. investors abroad get the same level of protection afforded under U.S. domestic law. These agreements incorporate foreign investment negotiating objectives from the Trade Act of 2002, including the authorization of *amicus curiae* submissions and public access to investor-state arbitration hearings and documents. In addition, the United States, Singapore, and Chile committed to explore the development and use of appellate mechanisms in investor-state dispute settlement and agreed on provisions aimed at eliminating and deterring frivolous claims. Drawing upon U.S. legal principles and practice, we clarified the obligations on expropriation and "fair and equitable" treatment.

In the Doha Development Agenda, we are taking similar practical steps to demonstrate that good environmental, labor, and investment policies can be economically sound. In addition, we are working to encourage a healthy "network" among multilateral environmental agreements and the WTO, enhance institutional cooperation, and foster compatible, supportive regimes. This precedent will help to interconnect the WTO with other specialized organizations, such as the ILO.

We know the imnportance of these topics for many Members of Congress who want to ensure that the benefits of trade and openness in spurring growth, productivity, and higher incomes are accompanied by enhanced scrutiny and transparency of labor and environmental laws and conditions. Some stress the need to safeguard America's sovereign rights in setting our own standards, while other Members want to deploy trade agreements to compel other nations to accept the standards we prefer. Some believe that the influence and investment of U.S. companies abroad will lead to higher standards and codes of behavior, while others fear the reach of globalized companies. It is our goal to use the guidance Congress has given to bridge the differences, build a stronger consensus, and make a real, positive difference for America and the world.

Conclusion: Pressing the Free Trade Agenda Forward

In the coming year, the United States will continue to make the case for the win-win nature of trade. Expanded trade—imports as well as exports—improves the well being of people everywhere. Trade promotes more competitive businesses, as well as the availability of more choices of goods and inputs, with lower prices.

America's economy depends on trade. Businesses, small and large, sell and ship their products around the globe. At the same time, U.S. manufacturers rely on imported inputs to production to stay competitive with foreign producers. Over the past decade, U.S. exports accounted for about a quarter of our country's economic growth. Our exports support about 12 million jobs—jobs that pay wages 13 percent to 18 percent higher than the U.S. average because they have higher productivity. One in three acres on American farms—accounting for over $56 billion in annual sales—is planted for export. And opening foreign markets is critical to the future growth of America's diverse services sector.

President Bush understands the connection between "a world that trades in freedom" and America's interests in promoting a strong world economy, lifting societies out of poverty, and reinforcing the habits of liberty. Having reestablished U.S. trade leadership around the globe, the President is now working with Congress on an activist agenda to expand economic freedom at home and abroad.

I appreciate the Committee's interest and support in trade and look forward to working with you, Mr. Chairman, and other Members of the Committee to advance a strong, successful trade agenda.

Competitive Liberalization

America's Trade Strategy

for
Committee on Ways and Means
U.S. House of Representatives
February 26, 2003

Executive Office of the President
Office of the United States Trade Representative

Competitive Liberalization

- Promote free trade through multiple initiatives:
  - Global
  - Regional
  - Bilateral
- Moving on multiple fronts allows the United States to:
  - Help U.S. workers, exporters, consumers
  - Exert leverage for openness
  - Put free trade "on offense"

Competitive Liberalization

2001-2002

Overall

- Regained momentum for trade at home and abroad with U.S. leadership
- Connected trade to global growth, development, rule of law, & open societies
- Connected trade to broad concept of security, post-9/11

Competitive Liberalization

2001-2002

- Trade Act of 2002, including TPA, ATPA expansion, AGOA II, GSP extension, Trade Adjustment Assistance
- Launch of new Doha Development Agenda in WTO
- Completed negotiations on accession of China, Taiwan to WTO
- Moved Free Trade Area of the Americas (FTAA) into stage of concrete negotiations
- Steel safeguards
- Passed Jordan FTA, Vietnam bilateral trade agreement
- Completed Singapore and Chile FTAs
- Launched new FTAs

Competitive Liberalization

Global Initiatives

- World Trade Organization – Doha Development Agenda
  - Launched at Doha, Qatar: November 2001
  - 144 participants
  - Next Ministerial Meeting: Cancun, September 2003
  - Target date for completion: January 2005

- Bold U.S. proposals for market access:
  - Agriculture
  - Consumer & Industrial Goods
  - Services

Competitive Liberalization

U.S. Proposals at WTO

Agriculture
- Eliminate agricultural export subsidies
- Cut average world farm tariffs from 60% to 15%
- Agree on date for eventual tariff elimination
- Cut trade-distorting domestic farm support $100b

Consumer & Industrial Goods
- Cut all tariffs at/under 5% to zero by 2010
- Cut all other tariffs to less than 8% by 2010
- "Tariff-free World" by 2015
- Zero as soon as possible in key U.S. export sectors

Competitive Liberalization

U.S. Proposals at WTO

Services - Seek liberalization in key sectors, for example:

- **Telecom services**
- **Financial services**
- **Express delivery services**
- **Energy services**
- **Environmental services**
- **Advertising & audiovisual services**
- **Distribution & retailing**
- **Education & training services**
- **Lodging & tourism services**
- **Professional services**
- **Computer & related services**

Competitive Liberalization

Regional Initiatives

Free Trade Area of the Americas (FTAA)

- **34 participants in Western Hemisphere**
- **Target for completion: January 2005**
- **U.S. and Brazil are now co-chairs**
- **First comprehensive offers for goods, agriculture, services, government procurement, investment in February, 2003**
- **Next ministerial meeting: Miami, November 2003**

Competitive Liberalization

Bilateral Initiatives

Why pursue bilateral initiatives?

- Level the playing field for U.S. firms and workers
- Create competitive dynamic to liberalize
- Link liberalization to sectoral reforms
- Encourage regional integration & investment
- Cement economic and political reforms
- Create allies for WTO and FTAA talks
- Break new ground and set higher standards

Competitive Liberalization

Bilateral Initiatives

- *Singapore & Chile FTAs*
  - Concluded 4Q 2002
  - Congressional consideration hoped for in 2003
- *Central America FTA (CAFTA)*
  - Launched January 2003; completion target – end 2003
- *Morocco FTA*
  - Launched January 2003; completion target – end 2003
- *Southern Africa FTA (Southern African Customs Union)*
  - Launched January 2003
- *Australia FTA*
  - Launched: February 2003

Other Issues

A Look Ahead

- **Follow-through on China, Taiwan WTO accession**
- **Russia's accession to WTO**
- **Enforcement actions in WTO, NAFTA, other agreements**
- **Compliance with WTO rulings/trade retaliation**
- **Small business: trade opportunities**
- **Trade capacity building for developing countries**
- **AGOA III, Laos NTR**
- **Environment & Trade, Labor Conditions & Trade**
- **HIV/AIDS: access to medicines and funding**
- **Conflict diamonds**

Chairman THOMAS. Thank you, Mr. Ambassador.

I am in possession of a news release from the European Union dated today. The European Commission submits to Member States a draft list of products that could be subject to countermeasures. The language goes something like this: This is a necessary procedural step to launch countermeasures if the compliance process does not deliver swift results.

[The information follows:]

EUROPEAN COMMISSION DELEGATION IN WASHINGTON DC
EU NEWS RELEASE

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No. 13/03
February 26, 2003

Foreign Sales Corporations:

European Commission submits to Member States draft list of products that could be subject to countermeasures

The Commission has today communicated to EU Member States a revised draft list of products that could be subject to countermeasures in the FSC case. The list has been prepared on the basis of comments received from economic operators following the public consultation launched in September and it covers products in the amount of U.S. $4 billion, as awarded by the WTO last August. EU Trade Commissioner Pascal Lamy said: *"The EU's objective remains to ensure the repeal of this WTO-incompatible legislation. We are encouraged by President Bush's proposal for such a repeal in his budget for fiscal year 2004. In the meantime the EU is following*

the necessary procedural steps to launch countermeasures if the compliance process does not deliver swift results."

A final list will be drawn after consultation with EU Member States in the coming weeks. When final, the Commission intends to notify the definitive list to the WTO and request authorisation for the imposition of sanctions.

The list of U.S. products which could be the object of countermeasures has been prepared after an unprecedented public consultation with economic operators. The several hundred submissions received from economic operators have allowed the Commission to assess and minimise the negative consequences that any eventual countermeasures could create for European industry.

Background

On 30 August 2002 the European Union was granted by the WTO the right to impose countermeasures in the form of tariffs on imports of certain goods from the U.S. The tariffs can be up to 100 percent ad valorem, to a maximum of U.S. $4 billion per year. On 13 September 2002 the Commission published a list of products proposed to be covered by any retaliatory measures. In line with WTO practice, the list was set at a higher level than the amount set by the arbitrator (U.S. $4 billion) in order to allow for exclusion of products following the consultation procedure. The aim of the consultation, which lasted 60 days, was to minimise the negative consequences that any eventual sanctions could create to EU industry; in that respect, the Commission had included in the list products on which the U.S. import share was low (below 20% import share). The products included cover a wide range of goods selected from the 46 chapters of the Common Customs Tariff already notified to the WTO in November 2000. The exact definition of the CN codes can be obtained via Internet (http://europa.eu.int/eur-lex/ OJ L279 of 23 October 2001).

The actual implementation of the trade sanctions will require action by the Council under Article 133 of the EC Treaty. A Council Regulation needs, therefore, to be adopted following a proposal from the Commission. Under WTO rules, there are no deadlines to implement sanctions.

The EU only needs to request authorisation from the WTO Dispute Settlement Body (DSB). The DSB decision is only a formal step as authorisation is granted unless the DSB decides by consensus to reject the request. There are no legal deadlines within which the request must be made to the DSB.

Swift, of course, is sometimes in the eye of the beholder, but my question is directed to a story in the Financial Times in which Trade Commissioner Lamy says, "He praised Bill Thomas, Chairman of the House of Representatives powerful Committee on Ways and Means, for his determination to draft new legislation."

[Laughter.]

[The information follows:]

Financial Times
February 26, 2003

Lamy Hails Chirac Plan on Farm Subsidies Suspension

BRUSSELS

French president Jacques Chirac's call for rich nations to suspend subsidies on farm exports to poor ones was a positive move that strengthened the European Union's negotiating position in the Doha world trade round, the EU's trade commissioner said yesterday.

Mr Chirac's proposal, made at last week's Francophone African summit in Paris, was "good news and a sign that the potential contradiction between the French position on agriculture and the French position on development is being seriously addressed," Pascal Lamy said in an interview. "It adds to our toolbox in this negotiation."

But Mr. Lamy stopped short of promising to incorporate Mr Chirac's proposal in the EU's formal negotiating position. He said Brussels had already called in the Doha round for better farm trade terms for poor countries and doubted whether the U.S. would accept Mr Chirac's demand that his proposed suspension cover exports credits and food aid.

Until now, many observers have viewed Mr Chirac's outspoken defence of Europe's common agricultural policy (CAP) as in conflict with his claims to champion

developing countries' interests and were surprised by his admission last week that export subsidies harmed the latter's economies.

However, the French president dashed hopes at the weekend that France was softening its opposition to rapid CAP reform, accusing Franz Fischler, agriculture commissioner, of "obstinacy" in pressing for phased reductions in production-related EU subsidies.

Mr. Lamy, who visits Washington next week for talks with President George W. Bush's Administration and leading Members of Congress, struck a conciliatory tone toward the U.S. He said the two sides were co-operating in the Doha round and stressed his determination to seek amicable solutions to bilateral trade disputes.

His visit coincides with EU moves to draw up a final list of U.S. exports worth Dollars 4bn (Pounds 2.5bn) targeted for retaliation if Washington refuses to comply with a World Trade Organisation ruling against the U.S. Foreign Sales Corporation's business tax-break law.

However, Mr. Lamy ruled out early retaliation, insisting the list was only a precautionary measure, in case the U.S. failed to repeal the law. **He praised Bill Thomas, chairman of the House of Representatives' powerful Ways and Means Committee, for his determination to draft new legislation.**

The trade commissioner said he was setting no deadlines for U.S. action, or for compliance with WTO rulings against U.S. laws on anti-dumping, copyright and trademarks. He did not want to take such a step unless it became clear that the U.S. was unable or unwilling to implement the rulings.

Nonetheless, he said, resolving some disputes, such as over the Byrd amendment directing payment of anti-dumping duties to affected U.S. companies, would not be easy. "The worry is that things like this pile up . . . we should remove them from the table one by one, and I'm quite worried that we come to a situation where we have a logjam."

By TOBIAS BUCK and GUY DE JONQUIERES

[Laughter.]

Chairman THOMAS. Before further damage to my reputation occurs, what is your attitude about our ability to negotiate away the FSC problem versus the need to move legislation and the timeliness of moving that legislation?

Mr. ZOELLICK. Well, I agree that it is a powerful Committee on Ways and Means. Well, we have had this discussion among many of us a number of times. The reality is we have lost this case four times, including the appeals. I know that the Committee made an effort with the Extra Territorial Income (ETI) bill in the last Administration to try a fix. It didn't work. I think what Commissioner Lamy was making the point in this article, Chairman, was that his interest is in compliance, not retaliation. This step is putting together the list, and the important part is, as we have all talked about, we figure out a way to get us out of this box with something that we found in violation.

As we have discussed, I personally believe the EC will hold off for a while, but I don't know how long. I told you last year I thought we could extend it through the end of the year if we showed action, and the Chairman did step out. It is clearly not an easy issue. You showed leadership by coming forward with a bill. I think the best advice I can give is that I think it is going to be important to move on this soon this year to avoid retaliation.

Now, I don't necessarily believe you are going to get the full $4 billion, but at some point they are going to start to retaliate.

Some of you have asked on the tax policy issues at various points, so I checked again what our tax policy people at Treasury have said, who obviously have the lead on this. It is that the Chairman's bill is an important first step, and I thank you for it. Frank-

ly, I would be in a much more difficult position internationally if he hadn't gone forward with it.

Tax policy has pointed out that it would help us comply with the ruling and it levels the playing field for U.S. companies. There has been a task force of the Senate and House that I know has tried to come up with ideas. I personally have urged companies to make suggestions. As we have discussed, you are open to various possibilities for amendments.

My bottom line, Chairman, is we can't make this go away, and it has got to get fixed; and if it doesn't get fixed before too long, I think we are going to face retaliation.

Chairman THOMAS. I thank the Ambassador. I want to underscore the Ambassador's statement about the Kimberley process. We are ready to go as soon as we have confirmation that a waiver has been provided. The Chair intends to introduce legislation and put it on the fast track and move it through the House and the Senate. The difficulty, of course, is our interpretation of the WTO and our need for a waiver as opposed to others. My understanding is that a waiver is imminent, but perhaps not yet delivered. As soon as it is delivered, the legislation will move.

Some of us have been reading the Harbinson paper, Chairman Harbinson, on agriculture. Obviously if you are reading for content and looking for areas that are pleasing, the Chair noted that there was no support for the geographic indicators position of our friends who make champagne and other products.

Still, overall it was a kind of ambition-less project given where we are and what we need to do. The Chair's interpretation of what the European Union is doing in laying the groundwork for accepting 10 new members and what appears to many of us a fundamental clash with the common agricultural policy, and that if they are going to absorb the new 10 in 2004, they need to adjust the common agricultural policy in 2003; and how much that would create a more positive atmosphere for the potential of the agricultural subsidy solution through the Doha Round.

Where are you in terms of your comfort level that the Europeans understand and will be able to address the common agricultural policy modifications and, therefore, the obvious linkage to changes to make Cancun and beyond successful in the Doha Round?

Mr. ZOELLICK. Thank you, Mr. Chairman. Let me just start by making sure we all have an understanding of what the Harbinson text is.

Given that you have 144 members in the WTO, the way the process often moves forward is the Chairman of a negotiating group will consult with people and put out a text as a basis. It is thankless task. I appreciate Chairman Harbinson's effort. He is a fine professional. Frankly, we generally felt it wasn't ambitious enough.

It would eliminate export subsidies, and that is a very good thing. As I mentioned, I was pleased to see that President Chirac now partially favors elimination of export subsidies, and we encourage him to follow through for the rest of us in the world and other developing countries.

We would actually like to get it done sooner. We propose that it be done in 5 years. Harbinson talks about 9 years.

In the area of tariffs, we think there should be more ambition in cutting tariffs. This is in part his effort to compromise with countries like Japan that have tariffs on rice of 500 to 1,000 percent and will still object. Frankly, we feel that if we are going to cut subsidies, we are going to need more tariff cuts.

Then in the subsidies area, I think the real challenge is there is still a large gap between the European numbers and the U.S. numbers. At the end of the Uruguay round, there was a compromise made, as you always do when you try to close out a deal. The nature of the compromise was you put a cap on many of the subsidies that existed in the past. The European number for these domestic subsidies that affect trade was $60 billion plus. The U.S. number was $19.1 billion. The Japan number was $30 billion.

Well, we have got to harmonize. We are willing to cut ours, and our proposal would cut ours down to 10.5, but we have got to get the European and Japanese numbers down, too. That gap is still too big.

As for where it leads us, the meeting that I was at in Tokyo was of 22 Ministers, about 7 or 8 days ago, and the unfortunate part is that even though we have our disagreements with the Harbinson text, we thought it was a starting point. Our colleagues in Europe and Japan were more reluctant, and that brings us back to the point that Chairman Thomas was making about agriculture policy in Europe.

I think the fundamental need, if we are going to be successful in Doha, is to have the Europeans be successful in reforming the common agricultural program.

Now, the good news is that the Agriculture Commissioner, Franz Fischler, has put forward a proposal that would take advantage of the WTO rules to move a lot of the subsidies to the green box. Now, I don't know whether it is enough to frankly get Europe to support broad liberalization, but it is an important start. Unfortunately, there are a number of key member States that have resisted this.

So, on this one, frankly, my honest assessment is that Europe and, to a degree, Japan are holding up the agriculture negotiations. Without moving on the agriculture negotiations, I think the Doha Agenda is going to find itself stuck.

Mr. CRANE. [Presiding.] Thank you, Mr. Ambassador. Mr. Rangel?

Mr. RANGEL. Mr. Chairman, let me first thank you for the cooperative spirit in which you have entered into these international agreements by bringing both the majority and minority members to the table to discuss our views on these very complex international issues.

Second, I know that you do want and should want to stay out of an partisan disputes that may exist with this Committee. I know that you have gone out of your way to try to convince us that this FSC problem is a tax problem and not a trade problem, or some mumbling that you don't have jurisdiction but someone else does, and the other person comes and they say it is a trade issue.

I am still going to take the risk to say that if the Chair says that he has a bill and he is going to move the bill, and it turns out that this is a controversial, partisan dispute, I don't see how in God's

name this is going to help you to convince the WTO that we are taking their charges seriously.

On the other hand, if there was an area that you can tell your colleagues in the U.S. Department of the Treasury that the $50 billion that would be available as a result of us repealing existing tax laws in order to be in compliance with the WTO, that we could find some way to encourage our manufacturers through tax incentives to be more competitive as opposed to the Chairman's idea that we reward those manufacturers or those businesses that have decided to operate outside of the United States, it just seems to me, whether you like it or not, that you are going to have to explain these policies.

So, I do hope at some time—because I am not here to make you feel awkward, but if you don't want to see a train wreck here, I advise you to go to Treasury and ask them for some guidance as to how we can make your job easier as we deal with this politically packed argument of FSC.

Lastly, which I could expect an answer now, and that is that I understand that the Administration is supportive of normalizing or granting permanent normal trade relations with Russia. I think you have discussed this with members of both sides, that we want to put the issues that separated us in the Cold War behind us. Is that an accurate statement?

Mr. ZOELLICK. Yes, sir.

Mr. RANGEL. Could you tell me why we would not want to pursue that same foreign policy with Cuba and to put the Cold War behind us and to treat these communists the way we do the rest of these scoundrels in China and North Vietnam to break down their hold on these people through their anti-capitalistic way of thinking and to allow the rays of sunshine, democracy, and free trade to prevail against these formerly evil empires?

Mr. ZOELLICK. Thank you, Mr. Rangel. You made it——

Mr. RANGEL. I have my flag pin on today just in case.

Mr. ZOELLICK. You made it easier for me because I do think there is a very big difference between Russia and Cuba. While Russia is not perfect as a democracy, it does have elections. It has moved towards the rule of law. It has a much more open economy than it did during the days of the Soviet Union. So, they are making progress, and so——

Mr. RANGEL. What about China? Will you share with me the progress? I have a substantial Chinese community in my district. Could you tell me what progress—this is going to be very interesting. Could you give me a paper on the progress that all these communist countries are making? This is really going to test our credibility. Now that we see the progress made by the former Soviet Union, which really makes me feel a lot better, because I didn't know this, would you find the same progress being made in China?

Mr. ZOELLICK. Actually, Mr. Rangel, I first went into China in 1980 when I lived in Hong Kong, and the China of today is vastly different from the China of 1980. In terms of the openness, of course, it is not a democracy. The question is: Is the leadership moving in a direction and do you think the process of openness and

trade is something that they are welcoming to try to open the system? I think that is the difference.

Mr. RANGEL. Which comes first? Which comes first, though? Do you wait for them to make the move, or is trade and commerce supposed to open the door for the people to see the values of a democracy?

Mr. ZOELLICK. Well, I understand. That is certainly a reasonable argument. I think that the record of Castro has not been one where any opening or any money has been used to open up the society, and we have had some 40 years to test it.

Mr. RANGEL. Well, my last question on this issue is that—would you suspect that there would be domestic political objectives involved in this, to wit, the electoral college votes in Florida? Would this be involved in your trade decisions as to whether or not this is the proper time to do it?

Mr. ZOELLICK. Mr. Rangel, as you are well aware, there are views all throughout this Congress that are a combination of politics and economics. I am frequently trying to deal with concerns, for example, the Dominican Republic, where you have a trade concern but you also have a political concern. They are both in commonality. They are a shared concern. I respect that. So, do other people, and that is a balance of what Administrations and Congresses deal with.

I am sure you would share my view that Cuba is a society that remains imprisoned in many ways in the violations of human rights and the cruelties of Castro and the communist regime are not something that anyone would remotely want to affirm or endorse.

Now, you have a different way of approaching it than other people do. People have different experiences. I respect that, and I hope you respect that of mine and others.

Mr. RANGEL. So, what you are saying is my advocacy of free and open trade with the Dominican Republic because of my broad Dominican constituency is the same as those that would come from Cuba who would want to close the trade relationship with Cuba because of their differences with this communist government, that that would be basically the same thing we are talking——

Mr. ZOELLICK. Now, Mr. Rangel, that isn't what I said. What I said is there is a mixture of political and economic interests, and I said I respect it. I share your interest in trying to help the Dominican Republic. It has also had its political problems. It has its political problems today. It is moving in the right direction.

You are trying to bring it in that way. I am trying to bring it in that way. I haven't seen that in Cuba.

Mr. RANGEL. Well, I am not a candidate for President, but if I were the President, I would have asked you to be willing to serve as my Trade Ambassador. I am confident that your views would be more flexible. Thank you.

Mr. ZOELLICK. Well, if you are ever elected President, Mr. Rangel, I will be pleased to serve with you.

[Laughter.]

Mr. CRANE. The gentleman's time has expired. Now, Mr. Stark is not here. Okay. I would like to yield to Mr. Matsui, who has got

an appointment, and he has a short, brief question, I guess, for you, Mr. Ambassador.

Mr. MATSUI. Thank you very much, Mr. Chairman. I appreciate this very much.

Mr. Ambassador, I want to just commend you. I know it is a very difficult job out there in the international market now, and you are obviously trying the very best you can in terms of Doha and some of the other issues you have been working on. Certainly on both sides of the aisle, we want to be active in terms of helping you and supporting you.

I will say, however—and this is my only comment; I don't even need a response from you—that it is a little disconcerting, as Mr. Levin says, when you start off in your second paragraph, "Over the past year, working together, we have rebuilt America's trade leadership"—or "leadership on trade." Now, maybe your staff did it. Who knows? Obviously you read it; it is part of your statement. I would just like to point out that we did have a 201 case in steel last year. Obviously it has been—a lot of waivers have been given, so it is probably about 7 percent effective now. We did have some work on textiles that was taken care of during the discussions on fast track. Certainly there has been a number of retreats in the area of trade. I understand that because you had to get bills passed, the fast track bill in particular. So, obviously nobody would want to take issue with you on that.

The farm bill, obviously that is another one, a $100 billion farm bill. So, some of these issues are out there, and I wouldn't want to have anybody think that there is a purist in the White House in terms of the issue of open and free trade. I would like to just take a moment because I think——

Mr. ZOELLICK. Could I respond to that point, Mr. Matsui?

Mr. MATSUI. Well, let me finish.

Mr. ZOELLICK. It is not a question?

Mr. MATSUI. If I can just finish.

Mr. ZOELLICK. Okay.

Mr. MATSUI. Ambassador Barshefsky and obviously Mr. Kantor I felt did a reasonably good job, a very good job. In fact, I think they were two of the best USTRs we have had perhaps in the history of our country, and, you obviously have done a great job as well given the very difficult times we have had.

I would like to just point this out. They passed NAFTA. Obviously President George H.W. Bush was responsible to a large extent in putting it together. We had a very difficult time because of getting the rule passed, but we passed in December of 1994 the Uruguay Round with over 350 votes. That wasn't an easy thing to do with 350—340-some countries involved annually who passed the PNTR—China trade, the most-favored-nations, and then finally Ambassador Barshefsky negotiated a wonderful agreement that the whole business community was supportive of in terms of China PNTR, which we were all involved in.

We passed AGOA really with both Mr. Rangel and Mr. Crane's leadership. We passed—negotiated the Cambodia textiles agreement. We did negotiate the Jordan Free Trade Agreement and a Vietnam bilateral trade agreement. Obviously these were passed

under the leadership of yourself and President Bush, but these were negotiated by Ambassador Barshefsky and President Clinton.

We had a basic telecom annex to the WTO—telecom, which was a big deal to Americans; negotiated a financial services annex, WTO service agreement; and we also had a number of intellectual property agreements, but particularly with China, and that was an extremely difficult one because I remember years and years ago when Madam Wu came and basically denied that there was even a problem. We negotiated an agreement with China.

So, I would hope that you would help us maintain, to the extent we can, a bipartisan approach to all these issues. It makes it very difficult when—it is almost as if the past 8 years is treated as if it were perhaps not as significant as the last 2 years. I obviously have at least another 2 years to go, so I would hope that in those 2 years you will show the kind of leadership we saw over the last 8 years under President Clinton.

You can respond if you want, but I just wanted to make that observation, because I think it is important that we not diminish predecessors, the people that came before you.

Mr. ZOELLICK. Well, thank you, Mr. Matsui. I don't think anything I have said or have ever said has diminished the people that came before me, who I have respect for. I am the 13th in a long line of people with a tough job. It is an unlucky number. I feel I am successful if I now have both sides of the aisle trying to press the case for why we should open markets, because I often don't hear that.

I do believe we have restored American leadership on trade, so they are my words. I am pleased if you are willing to debate it, because I think the failure to have TPA for 8 years was a big lapse. Many people around the world feel the same thing. I think Seattle was a dismal failure, and I think we have reversed that. I think that that doesn't mean that good things didn't happen, particularly in the first years of the Clinton Administration. I fought for and supported the efforts of the Administration passing NAFTA and the WTO round. I was there in the White House when we closed the agricultural agreement in late 1992, and I think Mickey Kantor and his colleagues did an excellent job in pushing that forward.

I then think things lapsed, and this, as I said, we can debate. You could look at people who served in Democratic Administrations like Fred Bergsten, who has written the same thing. Why don't we just make our case and we will let history judge. I think ultimately if you can support us on some of the efforts to move forward, then we will even do better in the future.

Now, you and I may have some differences about some of these things. You and I may have some differences or Mr. Levin and I may have some differences. I think the steel 201 was an appropriate decision to make. I think it helped the industry get back on its feet. I would point out, Mr. Matsui, that steel imports to the United States actually increased last year from the prior year. We have still given the industry a chance to renegotiate and put itself back on its feet, and I think part of a successful trade policy is dealing with some of these domestic interests.

I also think in the case of textile and apparel that if you actually look at the final bill that was passed from the Trade Act of 2002,

it ended up far expanding our textile and apparel. You are focusing on one aspect of dyeing and finishing. You are right, that was a compromise and it was a compromise because we couldn't get enough Democratic votes. That is a reality. People who supported us before for some reason wouldn't support us this time even though we had environment and labor in the agreements.

So, I hope we can move forward together, and let's debate it. I think part of the democratic process is debating who is moving forward free trade. All I will say is this: If you get a chance to travel, as I have, I have no doubt around the world that Africans, Latin Americans, people in East Asia, and indeed our European colleagues feel this Administration has put the United States back in the leadership role on trade. We will debate it.

Mr. CRANE. Ambassador Zoellick, repealing ETI outright would adversely impact over 3.5 million U.S. jobs and would result in a rather substantial tax increase on U.S. businesses. Given that the United States has lost more than 2 million jobs since July of 2000 and the manufacturing sector has been particularly hard hit, wouldn't you agree that this is the wrong time to raise taxes on U.S. businesses?

Mr. ZOELLICK. Well, I think, Chairman Crane, the question, as we have all talked about, is how we deal with the FSC problem. Mr. Rangel has now left, but since we talked about Cuba, I didn't get a chance to talk about his FSC position.

I think that Chairman Thomas came forward and did a very courageous thing. We all know this is a tough problem. No one is going to like the solution. He came forward with a mark to try to suggest an approach to try to deal with it. Various of you have constituencies that want to try to change the issue in one way or another. What I have tried to do working with our people at Treasury tax policy is offer suggestions. I think, frankly, the Chairman's proposal makes a pretty good start. Now, is it the final one? I am not a tax policy expert to be able to say. I know that our Treasury people have made some positive comments about it.

I do know this as the trade person: If we don't find a solution, some of your industries are going to start to face some of that $4 billion retaliation, and I have tried again and again to say that as straightforwardly as I can while trying to hold it off. Someday that day will come.

So, this is one of the differences between our constitutional responsibilities. I can't pick the tax law. That is going to be up to this Committee to move forward.

Mr. CRANE. Shouldn't we be turning over every stone in an effort to ensure that our response creates incentives for domestic job creation by U.S. companies and foreign subsidiaries operating in the U.S. territory?

Mr. ZOELLICK. Well, I guess, sure.

Mr. CRANE. I understand that you and Singapore are continuing to discuss the details for implementing the chewing gum provisions in the FTA, and I am concerned that a strict proscription requirement for chewing gum would not provide any commercially meaningful market access for consumer chewing gum and at the same time would give Singapore an excuse to allow sales of medicinal

chewing gum such as nicotine gums only. What is the status of these discussions?

Mr. ZOELLICK. Well, Chairman, as you probably know, the ban that Singapore put on dates back to 1992. It is not trade protectionism. It applies to oral gum from any country. For the United States, it is worth $2 million in annual sales. In the final stages of negotiation, we were able to pry it open a bit, as you and I have discussed. We checked with Wrigley before we did so, and we consulted them frequently. They supported that text.

As your question suggests, I think Wrigley is now unhappy with the way that Singapore proposes to try to implement it. There are some 3,000 pharmacies and health clinics that the gum will be available for. We have urged Wrigley to go to Singapore to discuss the implementation.

I will also point out that I checked into the situation of Wrigley with Singapore before this, and it turns out that when it sold gum in Singapore some 12 years ago, it did so from a plant in Singapore. My understanding is that if they want to establish that plant again and re-export from Singapore, the FTA would certainly not interfere with any exports of gum for the region.

So, I wish we could have totally overcome it, Mr. Chairman. We have got an opening here in the process. It wasn't a particular aspect of trade protectionism, but it was something we did try to open up. At the end of the day, I hope at some point the ban will be removed.

Mr. CRANE. In the past, I have strongly supported negotiations for FTAs with Egypt and New Zealand, and I understand the U.S. Chamber of Commerce recently included both countries in its top 10 most coveted bilateral FTAs. Do you have any plans to initiate FTA negotiations either with Egypt or New Zealand?

Mr. ZOELLICK. Chairman, we have got a pretty full plate for the 200 people we have at USTR right now. We have had discussions with both countries. With Egypt, we have something called the Trade Investment Framework Agreement. Frankly, we have been trying to work with the Egyptian Minister of Economics and Trade, Minister Boutros-Ghali, to try to overcome some of the impediments that Egypt has had to a trade regime in the past. This involves some problems that U.S. investors have had. It also involves trying to implement some of their current WTO obligations, like in the customs area. We have actually worked with some of our aid people to try to connect our aid program to this as well.

I have been encouraged, Chairman. We have made some good progress. Egypt has floated the pound. They passed a new intellectual property law. They are going to join the basic telecom agreement of the WTO. This is one that as time moves forward, if they continue to make progress, I hope we can try to figure out ways to support that. We will certainly look at the possibility of an FTA as a means to do that.

Just to be fair with you and the other members of the Committee, one of the other issues here is a workload issue. We are at the point here where—if we are going to start others, we are going to either need some more resources from one place or another or be able to finish some we have got.

On New Zealand, when we sent the letter to the Congress initiating the discussions on Australia, we noted that we would have consultations with the Congress about the interests with New Zealand. Your input and that of others is very valuable as we approach that.

We have some sensitive issues with New Zealand, frankly, with the agriculture community, and part of what we have to do is build support for these agreements. So, I have talked with the New Zealanders about ways that we could try to strengthen the support going forward. So, it is a possibility, but it is not on the front burner at present.

Mr. CRANE. I understand the Administration is seeking permanent normal trade relations for Russia, and given Russia's recent imposition of quotas and tariffs on rate quotas on poultry, beef, and chicken, why should Congress reward such actions by granting PNTR? Would granting PNTR now undermine the U.S. negotiating position on these and other issues in the WTO accession talks?

Mr. ZOELLICK. Well, let me distinguish two points, Chairman.

First, as I referenced in my opening comments, I think that the Russian action on poultry and some of the other meat issues is a bad sign, and I think they ought to recognize it. I think that it is certainly going to make our job harder doing anything with them in terms of WTO accession. I think if need be, at the appropriate point we ought to look at all options that we have with countries that aren't members of the WTO to respond appropriately.

When you refer to PNTR, our focus is on Jackson-Vanik, and I think that is a different issue. This was referenced by Mr. Rangel as well. As I think you know, I served Secretary Baker from 1989 to 1992 at the end of the Cold War. Jackson-Vanik came up a lot during that period. I do think Jackson-Vanik is a vestige of the Cold War.

Jackson-Vanik was passed to focus on immigration, primarily Jewish immigration from Russia. It has achieved its original purpose. Russia has been complying fully with Jackson-Vanik over the course of the past 9 years, and indeed it hasn't even been subject to any annual review during that process.

For the sake of our WTO negotiations, we have leverage. We can say yes or no with them coming in, and so will others along the way. Here is the problem we now run into if we keep Jackson-Vanik on the books. To the Russians, it looks like a sign that we think the Cold War is still going on, because we have 28 other types of negotiations for WTO accession and we don't have anything similar that we are holding over other countries.

So, we do believe we should repeal Jackson-Vanik, but I would distinguish that from saying that means they get an easy ride to come into the WTO. If they keep doing things like this on meat and poultry, it is going to be a long time, in my view.

Mr. CRANE. The Trade and Development Act of 2000, which includes landmark reforms to improve trade relations with Africa and with countries in the Caribbean Basin region, was signed into law on May 18, 2000. The Treasury Department has yet to issue final implementing regulations to guide U.S. businesses and trading partners who are attempting to do business under these new programs.

I think this is unacceptable performance that makes the United States vulnerable to charges that our Customs Service lacks transparency and fails to provide basic information to traders trying to comply with the law.

Is there anything we can do to get the Treasury Department to issue the regulations?

Mr. ZOELLICK. Well, I think your question will help, and I will try to follow up, Chairman.

Mr. CRANE. Thank you, Mr. Ambassador. Mr. Shaw?

Mr. SHAW. Thank you, Mr. Chairman. Mr. Ambassador, I want to talk to you for a moment about a trade dispute involving Rev Power Corporation, which was owned by one of my constituents, Mr. Robert Aronson. Many of my colleagues on this Committee are familiar with the facts of this dispute and have joined me in writing to ask the Chinese Government and the previous Administration for help in resolving this matter, but ultimately to no avail. I have even taken this up personally with the Ambassador from China myself.

Allow me to briefly state the facts of the matter. In December of 1989, SFAIC, a Chinese-owned corporation, confiscated a factory owned by Rev Power. In response, Rev Power sought and in 1993 won a $4.9 million arbitration award from the Arbitration Institute of Stockholm against SFAIC.

I have a longer statement, which I would ask be made a part of the record, that contains more of the facts of this case. In a nutshell, the Chinese courts refused to enforce the arbitral award, and the officers of the State-owned Chinese corporation then proceeded to deplete the company of its assets. This was flagrantly done despite the fact that China is required to enforce arbitral awards under the 1958 New York Convention on recognition and enforcement of such awards.

This debt to Rev Power by the Chinese Government has been outstanding now for a decade and, with interest, exceeds $11 million. I contacted the previous Administration about this matter in writing on four occasions, with little result. Moreover, during a previous hearing, I asked your predecessor for her personal assurance that the Office of the U.S. Trade Representative would vigorously pursue this matter with the Chinese, but nothing happened.

I would ask that you personally look into this matter with the goal of resolving the problem. To be succinct, China is ignoring its international treaty obligations, thus hurting small business. I would urge you to confront your Chinese counterpart in hopes of rectifying this longstanding injustice.

Mr. ZOELLICK. Thank you, Mr. Shaw. I will do so and will follow up with you to get the details.

Mr. SHAW. All right. Well, I appreciate that. I would like now to switch for one moment to the Caribbean region. Tomorrow, I, along with Mr. Crane and Mr. Rangel and fellow Members of the House, Senator DeWine and Senator Graham in the Senate, will introduce legislation to amend the Trade and Development Act of 2000 by granting duty-free status to Haitian apparel articles assembled or knit to shape from fabrics and yarns from countries in which the United States has a free trade or regional agreement.

The Haitian economy is in desperate need of a lifeline. I believe it is tremendously important that we seek avenues to promote job creation in Haiti, which, I might add, is the last least developed country in the Western Hemisphere. I would like your thoughts on the situation in Haiti and specifically the view of the Administration toward the crisis in Haiti.

I personally believe that you cannot try to grow a democracy where you have no economy, and I think we need to work on both avenues in order to try to bring that country around.

Just last night, a boatload of Haitians landed in my district, on Singer Island, which is up in Palm Beach County, and I think most of them were rounded up, if not all of them. It shows how desperate these people are, and we have seen the news clips of the ship arriving in Dade County, Florida, and these people jumping off of the boat and doing all of these things.

Obviously, we have to control our borders, but we also, I believe, have to address the desperate situation in Haiti.

Mr. ZOELLICK. Thank you, Mr. Shaw. I would be pleased to take a look at the bill after you introduce it and will be pleased to discuss it with you further.

I think that the efforts the Congress has made in the Caribbean Basin to try to open U.S. markets have been very important for the reasons you say. It is not only a question of democracy. It is a question of survival for a number of these countries to be able to have some opportunity to make a livelihood.

We have had a challenge in the apparel and textile area for reasons you know, and let me just take the opportunity to make a slightly larger point about this since that is what your bill deals with.

There is no doubt that our apparel industry has struggled with some of the trade liberalization. I think there has been some 700,000 jobs lost over time. One of the points they have made to me is that what they want is reciprocity. In other words, they want other countries to open markets at least the same way we open, which strikes me as fair. So, one way we have tried to balance opening our side is to try to do a better job of getting others to lower some of their barriers.

The other development, Mr. Shaw, is that we have tried to integrate some of our textile and apparel business more. Where a lot of our focus now is increasingly on the textile side, the apparel functions can be done in the Caribbean. I think that is an important development because, as you probably know, all our quotas come off in 2004. I think the most fierce competition is going to come from China, and then there is the question of how the United States and the Caribbean and Central America can be able to compete together.

So, that is the context in which I would be pleased to look at the bill.

Mr. SHAW. Thank you very much. Perhaps by getting a head start on this, we can at least get an industry that is started up in that part of the world prior to the Chinese invasion into the market, as you made reference to.

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

Mr. CRANE. Thank you. Mr. Levin?

Mr. LEVIN. Welcome again, Ambassador. Your last comment, I very much agree with it in terms of integrating the Caribbean market in terms of competition with China and otherwise. You know, it makes me comment again on what you discussed and Mr. Matsui and you discussed. You said let history be the judge, and I simply want to urge that you let history judge.

The comments about re-establishing, the problem with it is it draws the wrong line. The clear majority of people on this Committee and within this institution favor expanded trade. The issues now are within the ambit of the expansion of trade and how you do it and what the terms are.

A number of us struggled hard on CBI to make it happen, and we had to overcome some opposition, to put it mildly. It wasn't so easy. It is not a question of our hurt feelings. It is a question of drawing the line correctly.

A couple other quick comments. WTO decisions, I favored the Uruguay Round agreement, and I still do. I think, though, that when WTO wanders off beyond the language of the WTO, it begins to undermine support for WTO within this country.

The FSC, very briefly, we said in the TPA, it set out a principal negotiating objective, and I think this was in both versions which granted TPA, but we had some differences. A principal negotiating objective of the United States calls for modification of WTO rules which favor nations that rely primarily on value-added service, sales, excise, and other indirect taxes so that U.S. companies are not competitively disadvantaged.

I think what—and this has been the basis of the disagreement, I think. I think Europe is not mainly interested in compliance. They are mainly interested in the leverage it has given them. The question is how we react to that leverage.

Quickly, on Chile and Singapore, I think the 90-day provision means the public should be able to participate for 90 days. Only a few people have access to the documents that are held under secrecy, and that is what happened in previous cases.

As to bilaterals, I agree with you, we should look at them. I think there needs to be a pattern, and also when they break new ground—they can break new ground, and we are going to talk about CAFTA in terms of breaking new ground.

So, let me just ask you just a quick question about some old ground, and that relates to Vietnam. When you renewed the Cambodia-U.S. textile agreement—and I know there was some pressure on you not to do that. In fact, we urged you to reaffirm it. You cited the trade and labor standards in a complementary way. Yet we are now negotiating a textile agreement with Vietnam, and we have been told that USTR isn't pursuing—not the same but a similar or some meaningful kind of incentive provision with Vietnam. Vietnam competes with Cambodia.

So, talking about pioneering or trying to break new ground, why the decision to leave that out of the negotiations?

Mr. ZOELLICK. Mr. Levin, you really raise three points, and I will try to be brief on each of them.

On the border tax issue, as we have discussed, one of the reasons why we have to proceed a little carefully with this is that it is in the exact part of the rules negotiation which your earlier statement

said that you wished we didn't negotiate. So, it is a little bit of a tactical gymnastic exercise to introduce something in a negotiation which you represent we should have not started at all, but at a minimum then try to proceed slowly.

We do still have time to propose it, and, frankly, one of the reasons we didn't go forward was, as we have had in our other exchanges, we were concerned that if the European Union thought that we would have that as an alternative to try to deal with the legislative route, it would actually move more quickly to retaliation, which none of us would want to have.

Also, I would draw to your attention a paper I came across recently—from a professor from the University of Michigan, I might add, and Harvard Business School—that has pointed out that, first off, economic theory has always said that a value added tax (VAT) doesn't increase exports. These two professors decided to test it, and they took 132 countries in the year 2000 and 168 countries between 1950 and 2000, and they found that a VAT was actually associated with fewer exports.

Now, I realize there are many views, but I found this to be rather striking because, frankly, it makes me somewhat cautious to decide what we are going to give away to try to change border taxes that economic theory and now economic evidence suggests wouldn't do what you think it does. So, we are going to need to have a further dialog on that one, I hope.

On the text, I received your letter on this, too, so I want to make sure the record is clear. First off, the text has been available to the Committee and the staff and the 700 cleared advisers, as I think you would acknowledge. We hope to make the Singapore text public in early March, and I hope the Chile text will be by late March or early April. So, this will mean 2 or more months before we sign the agreement or 3 or more months before Congress takes action. There is a reason for this. These are long agreements. They are 300 pages, plus 500 pages of annexes. We want to try to make sure we have got the minimum amount of differences with our counterparts and make sure the negotiators' intent is covered.

You mentioned past practice, and you have talked frequently about the Jordan agreement. The Jordan agreement wasn't even made public until it was signed, so we will be about 2 or 3 months ahead of the Jordan agreement.

Mr. LEVIN. That is not a fast track——

Mr. ZOELLICK. In the case of the Canada Free Trade Agreement, which I worked on, which was under fast track, there was a summary provided to Congress at the time, and about 2 months later the text came. In the Uruguay Round, about 4 months after notification it took for the details to come in.

So, in summary, what TPA does—it doesn't address this point. It just says you make 90 days of notification. I think the key is you as Members of Congress and your staff have the text now. The cleared advisers that we work with, over 700, have the text now. The public will have it months before the President signs it.

Mr. LEVIN. Why shouldn't the public have 90 days?

Mr. ZOELLICK. Pardon?

Mr. LEVIN. Why shouldn't the public have 90 days? You can time——

Mr. CRANE. The time of the gentleman——

Mr. ZOELLICK. I suspect the public will have more than 90 days before the agreement is done.

Mr. CRANE. We will let the Ambassador complete the answer.

Mr. ZOELLICK. So, the question, Mr. Levin, is simply—you have got a balance here. We are trying to—for example, let me give you the set of problems that arise. You have a text that is developed that has been translated from English to Spanish and back to English. We want to make sure before releasing it to the public that we have got to try to get as many of those ironed out as possible. I don't have thousands of lawyers on my staff. We are trying to move through those agreements with the Chileans and Singaporeans. We will get the Singaporeans done first because it is all in English. It will probably take another month later for the Chileans.

For the question of public transparency, as I said, this agreement will be public months before the President signs it and many months before the Congress considers it. So, I think there will be fair time for due deliberation, with due respect.

As for your question on Vietnam—but, look, I agree with you, try to get them out as quickly as possible, Mr. Levin. I push on this as hard as I can because I want to get it out as quickly as I can. So, there is no effort to try to avoid it. It is just that legal work can get done at a certain pace, and believe you me, I hit this every day at my staff meeting to try to get it out earlier, as the colleagues behind will testify.

On Vietnam, what we are in the process of trying to do is now negotiate the textile quotas. As we examined the differences between Cambodia and Vietnam, here were some of the conclusions we made.

In the case of Cambodia, they actually had a pretty good labor law, so, the incentives are linked to performance under the labor law. Vietnam doesn't have that, so that is one basic problem.

Another basic problem is that Cambodia, most of the industry is textiles and apparel. In Vietnam, our labor interests are much broader because textile and apparel is just one part of the industry. So, what we are discussing with the Vietnamese is a possible labor clause. What we are trying to do is meld it with some projects that we are doing with the U.S. Department of Labor and the International Labor Organization with the assistance of some NGOs. This is a good example of how we can try to bring NGOs into the process. We are trying to bring in Social Economy International and RAP and try to make this economy-wide, not just for textile and apparel.

So, that is the approach that we are trying to take, and it frankly fits one of the points that you made before and made today, which is one size doesn't fit all. We will experiment. As you said, I thought the Cambodia approach worked well enough that we should continue it. Our judgment as of now is that the Vietnam approach needs a different solution.

Mr. CRANE. The time of the gentleman has expired. Mrs. Johnson?

Mrs. JOHNSON OF CONNECTICUT. Thank you. Mr. Zoellick, it is a pleasure to have you. It is a pleasure to have a chance to hear how many things you are moving forward and how you are

regaining some initiative on trade issues. I am going to try to make my questions brief because I know my colleagues are—there are just many behind me.

I, too, am concerned about the problem of the repeal of the ETI making major manufacturers in America permanently non-competitive in the international arena. So, what advances have you made—and this may overlap with Mr. Levin's question. Frankly, I couldn't quite tell. What advances have you made on what was a specific negotiating objective in TPA to modify the WTO rules that favor nations that rely on value-added taxes, sales, excise, and other indirect taxes? In other words, on that specific objective of changing the border tax adjustment, what progress have you made on that and its legislative history? If you could be brief, because I have two more questions.

Mr. ZOELLICK. Okay. I think my answer to Mr. Levin, if you get a chance, will cover a lot of it. In essence, we are waiting in this area of the negotiations. We will have time to put something forward if you want, in part because if we put something forward, we think it should best match with whatever the legislative approach that Congress is taking is. Some people——

Mrs. JOHNSON OF CONNECTICUT. I understand that. Some of us are very concerned that you are putting no pressure on Europe. This is the bottom line. You are putting no pressure on Europe on the things that they are doing that put our companies at a disadvantage, while we try to struggle through something that is going to put major manufacturers—not just aerospace but Caterpillar, Microsoft and stuff—at what will be, may be, and certainly for some of their sub-suppliers, may be a terminal disadvantage because the period of down will be so steep and prolonged.

The other question I wanted to ask you along that same line was: When we did the bananas thing, Europe was given, I think, 5 years to comply and a couple of waivers. Now, how can they expect us to comply overnight even if we do repeal the ETI and we get some protocol that we can all tolerate? You know, isn't there going to have to be a transition period at least as long, if not longer? This is a major, complicated part of our code affecting major interests, not affecting just bananas. So, if they had 5 years for bananas, are you prepared to work for a transition of some proportional and appropriate length?

Mr. ZOELLICK. First, Mrs. Johnson, one big difference is the United States had retaliated. So, after we solved the bananas problem, we took off sanctions. The Europeans haven't put the sanctions on.

As for a transition issue, I have heard that discussed, and I am willing to work with this Committee with any ideas that you try to come up and try to sell them. I think the Europeans know this is not an easy issue. That is what Commissioner Lamy's comments suggested today. I think if we can move in good faith toward a resolution, I am certainly willing to work with you together to try to sell whatever we can come up with. That has been part of my message.

I don't have a tax policy solution for you. I am not the Assistant Secretary for Tax Policy. I know it is tough on many of the industries, although, as I said to Mr. Levin, there is certainly an eco-

nomic question of whether it is bad for the U.S. economy. I know for individual companies it is tough.

So, I am pleased to try to work with you if we come up with a solution that involves a transition.

Mrs. JOHNSON OF CONNECTICUT. Then, lastly, would you be willing to meet with me and some of the small manufacturers that are steel users? I think it really is important, first of all, for us to think through how does our law, our trade law—because this was very useful in the eighties—give us the ability to moderate change during a period of surges in imports and things like that, to give our own manufacturers time to adjust? Then I think that some of you need to get a more vivid picture of what has happened to steel users as a result of the steel decision, and I hope their interests will be taken into account as you look at accelerating the re-evaluation of the steel decision.

Mr. ZOELLICK. Yes.

Mrs. JOHNSON OF CONNECTICUT. Thank you.

Mr. CRANE. Mr. Houghton?

Mr. HOUGHTON. Thank you very much. Just a quick question about the dairy business. The farmers in my area continue to be concerned about imports and various products through loopholes and trade agreements, things like milk protein concentrates, things like that. You don't spend a lot of time on this, but it is very important to our area because the dairy production is going down, farms are going out of business, and we just don't like that dumping practice.

Mr. ZOELLICK. There are a couple of—there are different issues in dairy, and one of the things I was pleased about, Mr. Houghton, is that we have got the support of the dairy industry for our Chile agreement, because we tried to take account of some of their interests, but also, as I mentioned, account for U.S. standards with our exports.

In the case of the milk protein concentrates, this issue has been presented to me in two ways, Mr. Houghton. One is that there has been some effort to try to change our tariff obligation, and the problem with that is we would have to compensate in some way, and I think other countries would probably want it in a similar area. So, I am not sure that gets you where you want to go.

The second way it has been presented is that at times there have been discussions about the customs classification issue, and that is something that, again, really goes to the question of whether people are trying to circumvent with a different categorization, and that is something that I believe one should always try to look at. It is the U.S. Bureau of Customs and Border Protection, not me, but I would certainly be pleased to try to work with you on it.

Mr. HOUGHTON. I would like to continue that. Thanks very much.

Mr. CRANE. Mr. Neal. Oh, he is not here. Mr. McNulty.

Mr. MCNULTY. Thank you, Mr. Chairman. Thank you, Ambassador, for your testimony today.

Amo Houghton comes from the western part of upstate New York. I come from the eastern part of upstate New York. We all represent a lot of dairy farmers, and there has been a tremendous decline in the number of family farms in general in this country

in recent years, and dairy farmers in particular. So, we have a deep concern about that.

Now, the WTO ruled in favor of the United States over Canada regarding the dumping of over-quota milk by Canada into the United States, and you have hailed that decision as being a great victory for dairy farmers. So, I just wanted to ask you three quick questions on that.

When do you expect the Canadian Government to comply with the ruling? That is number one.

Number two, what penalties might the WTO assess against Canada for their practices?

Number three, and probably most importantly, is there any chance at all that any of these monetary penalties from Canada milk dumping will find their way to the dairy farmers who were affected?

Mr. ZOELLICK. Okay. Let me take the first and second question together. Under the WTO rules, we have the right to go to seek a retaliation. Obviously our first effort is to try to get them to change the practice.

Mr. MCNULTY. Right.

Mr. ZOELLICK. I think we are making headway with that, and I discussed this, I think, with my staff this week, and I think we have set the next couple months as a period for them to try to come up with a solution. I forget whether it was through April, but it is over the course of the next couple of months, and we will follow up with you on that.

I believe there is willingness on Canada's part to end this export subsidy program, which is what we really want to try to do.

Failing that, we go to the WTO and we get retaliation. The amounts, as I recall, were not that large in the larger trading scheme. I think they were $30 million or something, but we will get back to you on that, the amount of the subsidy. So, again——

Mr. MCNULTY. Are we willing to do that if——

Mr. ZOELLICK. Oh, sure.

Mr. MCNULTY. Okay.

Mr. ZOELLICK. Oh, yes, definitely. Then the third point is that the way that the penalties work would be a withdrawal of trade benefits. So, the $30 million would be blocking their trade of $30 million. It is not $30 million of cash. That is different than it is under some other procedures that you might have under a WTO case.

We will follow up with you, Mr. McNulty, but I think the Canadian Government has been pretty good about trying to come into compliance with these. It is a difficult political issue for them, but I think they are on the path to try to do that. Failing that, we won't hesitate to get retaliation.

Mr. MCNULTY. Thank you, Mr. Ambassador, and I appreciate your commitment to helping to preserve these family farms. Mr. Chairman, I yield back the balance of my time.

Mr. CRANE. Thank you, Mr. McNulty.

Let me remind everyone that we have got to break at 1 o'clock sharp, so let's try and keep the questions as short as possible and the answers as short as possible so as to accommodate everybody here at the dais.

Mr. McCrery?

Mr. MCCRERY. Thank you, Mr. Chairman. Mr. Ambassador, on the softwood lumber issue with Canada, I understand that formal talks have been recessed. Is there any date at which those are to resume? Will there be informal talks while we are waiting on the formal talks to resume?

Mr. ZOELLICK. Well, Mr. McCrery, let me explain where the state of that is. The private timber interests represented by a coalition went and got the countervailing duty suit, basically 27 percent. It hasn't done more for them. It has probably done more for the lawyers. Lumber prices have still come down, and that is in part one of the unintended consequences, which is that it led to more cutting.

So, what the U.S. Department of Commerce has sought to do—and we work closely with them on this—is to try to keep our eye on the underlying, long-term issue of getting the provinces to change the subsidies practices. So, the Commerce Department—and Under Secretary Grant Aldonas has had the lead on this; he has done a very good job—has tried to come up with what is called the standards for a changed circumstances review. That is proceeding, and he has taken input from our lumber interests and also talked to the provinces. They have very different practices. I think British Columbia is in the forefront of trying to do something, and they are the biggest player in this.

What the talks were aimed at was another part of that, which would be if we actually could work out an interim agreement which might put on an export tax that, as they reduced, as they changed the practices, you would remove the export tax. That is where the gaps were too wide given sort of the export tax that our industry was seeking and what they were willing to pay.

So, on the interim agreement, I expect discussions will continue, but I don't want to be over-encouraging because the gap was pretty far. Meanwhile, we will continue to work with the Commerce Department on this changed circumstances review to get at the underlying practices. It is a case where I think we have all learned that that action alone won't help the industry. We have to figure out a way to try to get at these underlying subsidy practices.

Mr. MCCRERY. Thank you. I would like to bring up a topic that you haven't talked about much, which is prescription drugs, not in the context that you have discussed them, but it is my opinion that the United States is basically subsidizing much of the rest of the world with respect to prescription drug prices because prescription drug prices in many developed countries are controlled by the government, and whereas we have basically a free market here in the United States.

So, I am just wondering if you have thought about that. You don't have to answer this now. I just want you to think about it. Could this be an issue that we could discuss with our trading partners in the future to try to get them to share some of the burden of providing prescription drugs to the world's population without us bearing most of the financial load?

Now, a question on steel, and then I am going to yield to my good friend from Louisiana, Mr. Jefferson. I would like for you to be a little more specific to Mrs. Johnson's question. Is it your opinion

that it is appropriate for the International Trade Commission's midpoint review to specifically include a public examination of the impact of the tariffs on steel consumers?

Mr. ZOELLICK. There is a special process by which we can ask for this. I think it is called a Section 337, and the Chairman has inquired about this. I would like to further more about this with the Committee, but it is one that I am positively disposed toward. I think as a general matter, in looking at all these issues, you have to look at their overall effects on the economy.

Mr. MCCRERY. Thank you. It would be helpful, I think, for the U.S. International Trade Commission (ITC) to include that in——

Mr. ZOELLICK. Section 332. I am sorry. I used the wrong number.

Mr. MCCRERY. It would be helpful for the ITC to specifically include that in their midpoint review. Now, for my last minute, I would like to yield to Mr. Jefferson.

Mr. JEFFERSON. I thank the gentleman for yielding. I think as usual, though, he has covered the subject.

My question was along the same line. In Louisiana, we have lost, to the extent we can trace it, something like 300 or 400 jobs. Across the country, there are others who estimate that we have lost 200,000 jobs by steel users. Many people who are in the steel manufacturing business just have lost their jobs because of pressures created by the shortages that have been artificially created in this area. It is critical to us that this matter be looked at from the point of view of those people who are in the steel manufacturing business, the folks who lost their jobs, and the prices that have also gone up for people who have had to use steel products.

All these are questions which I think ought to be covered in the ITC study, and I am glad to hear that you feel that it is important to recommend to the President that he ask the ITC to include this range of concerns in the study that it takes.

Mr. ZOELLICK. Mr. Jefferson, I didn't quite say that, but I was leaning in that direction.

Mr. JEFFERSON. You said you were leaning in that direction? Is that what you said?

Mr. ZOELLICK. I said I didn't quite say that, but I was leaning in that direction in terms of the specific point about recommending to the President——

Mr. JEFFERSON. Do you think it is a good idea or what?

Mr. ZOELLICK. Well, I personally think it is a good idea that we as an Administration, whether or not the ITC looks at it, take account of the role of users of steel as well as producers of steel. I want to talk with some of you more about the 332 idea, but as I said—which would be to ask the ITC to take a look at it. That was done in some of the past 201 cases, with wire rod and line pipe and others. I have a positive attitude toward it. I am just not in a position to say it yet.

Mr. JEFFERSON. The reason I——

Mr. CRANE. The time of the gentleman has expired. Mr. Camp?

Mr. CAMP. Thank you, Mr. Chairman.

Ambassador, I am sort of following up on this same point, and I think we are all interested in this ITC study and the tariff impact on steel users, and I think particularly the automobile industry—

I noted that the Wall Street Journal had a quote yesterday that said, "More Americans lost their jobs in 2002 to higher steel prices than the total number employed by the U.S. steel industry itself." If that is true, I think that is very troubling, particularly in the automobile industry.

I guess I would urge not only a definition of steel user but also consumer, because, for example, what is this doing to the cost of a Ford Explorer? That is certainly having a direct impact on our economy, and I would be interested in the Administration taking a look at this ITC study, incorporating those concepts in it as well.

Then I have another question because I know you have responded to this several times, but I am aware that at the Mexican border there are a number of rail cars that contain beans from around this country that have not been allowed to pass into Mexico. So, in essence, there is a closing of the border that I would think—that I understand violates the trade agreements between our countries. I understand you sent a strong letter to the Mexican Government about this situation. I just wondered if you could update me and the Committee on this issue and where things might be.

Mr. ZOELLICK. Well, on the first point on steel, I take all of your points, and because Mr. Jefferson's time was cut off, let's talk about what you would like to try to have in this. I will make one general point on this, though, which is that it is interesting that steel imports to the United States actually increased a little bit last year from the prior year. So, the exemptions that we made and particularly for the Port of New Orleans, where a lot of the steel is coming up from Brazil in a slab form, I think that helped to at least alleviate some of this.

On dry beans, I agree with you, and basically the best that we have been able to find out, allegedly it has been—the Mexicans told us it was because of some mixture of beans from other countries. Frankly, we are not persuaded. I am intending to follow up with the Mexicans, if I can, this week.

Mr. CAMP. Okay. Thank you. Thank you, Mr. Chairman. I yield back.

Mr. CRANE. Let's see. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Ambassador, thank you very much. It is a pleasure to have you here again. Let me begin by congratulating you on the work that you did on IP matters with regards to TRIPS and just in strengthening our ability to protect intellectual property. I think that what you did in the Singapore and the Chile agreements I hope will become a template that we can use in other agreements as well. It seems like countries are beginning to more and more recognize that if we are going to make progress just in general trade matters, we have to deal with intellectual property. So, I thank you for that.

Mr. ZOELLICK. Thank you.

Mr. BECERRA. I hope you will listen to the entreaties of many of the Members of this Committee and in Congress with regard to the issue of the Dominican Republic when it comes to a free trade agreement with Central America, and also with regard to New Zealand as we move forward with discussions with Australia. I believe a number of us feel very strongly about the necessity of bringing

a country like New Zealand, which is so closely tied to Australia, and to us, into the mix, along with a country like the Dominican Republic, which says it really would like to go further than the CBI provisions in trying to deal with us on a trade basis.

I would like to just mention—I have a question, though I will until the end, but I know we will run out of time if I don't mention these others points.

On the labor provisions on Chile's and Singapore's free trade agreement, I still find it a bit unsettling that we have a two-tier process for dealing with our workers and Singapore's and Chile's workers when it comes to violations of the law and the agreement and how we go about ensuring that workers and the environment are protected, as opposed to, whether it is intellectual property or capital or other resources, we continue to provide more protections to property than we do to workers. I still feel that we should move a lot farther along in trying to ensure that countries abide by all their existing laws and our particular agreements. So, I hope that you will keep that in mind.

I do, by the way, thank you for the work that was done to ensure that at least for Singapore and Chile, which do have fairly good labor laws, that they will be required to enforce those. I just hope that they don't regress.

Prospects for a Central America Free Trade Agreement, I hope that you will try to strive for stronger provisions with regard to labor and environment within those negotiations, simply because we know that in Central America the labor standards are not where they are in Chile or in Singapore. We know that there are numerous problems, and if I have an opportunity, I will read some passages by our own U.S. Department of State Country Report on Human Rights for some of those countries and some of the other reports that have been issued that show that there is still a lot to be done in Central America when it comes to protecting workers' rights to collectively bargain and to deal with our environment.

On immigration matters, it is a novel approach which I guess we find in the Singapore and Chile free trade agreements to now allow for a temporary professional worker provision similar to our H1–B visa program, where you can import workers, professional workers into this country. I hope we have a chance to examine that a little bit more because I know there is a great concern in this country that we will be displacing American workers. I am afraid that there may be some provisions that don't provide the same safeguards as even the H1–B program. I know that you worked hard to try to ensure that we had something similar to the H1–B program, so I thank you for that.

I will just repeat what I said before. It seems like we are willing to protect capital, which we should, intellectual property, which we should, and even now go the novel step of including in a trade agreement immigration provisions which allow us to import workers into this country. We are still not willing to do as much for workers, protecting workers in either country, part of this agreement, in making sure that their rights are protected and they are not abused.

So, I think we are moving forward in the right direction in some of these areas, but I would hope that we would be able to address some of these labor and environmental concerns.

The question I would like to see if I can get an answer on is——

Mr. CRANE. Quickly.

Mr. BECERRA. It involves Trade Adjustment Assistance Program for Workers (TAA) and health coverage. Evidently, the Administration has reinterpreted what was to be a health system or a health coverage system which would provide tax credits to employees who might be displaced as a result of trade.

According to the Administration, if you are out of work for 3 months and you haven't had your health insurance continue, you may not be eligible to qualify for TAA tax credits to continue that health insurance, which I don't believe was our intent. Our intent was that if you get displaced and you had health insurance with your employer, you would continue to have it. If it takes more than 3 months to apply and be certified for TAA coverage, if you have been for more than 3 months without that health insurance coverage, you then lose your benefits. I am hoping you can give us some clarification on that.

Mr. ZOELLICK. On the TAA issue, Mr. Becerra, that is run by the U.S. Department of Labor, but I try to follow up closely with them because I believe part of the terms of our overall deal was to have a good TAA package. So, I will follow up on that and try to get an answer for you on that. Two of the other points here, if I could beg your indulgence, that Mr. Becerra mentioned are ones that come up a lot, so I would like at least to try to give a quick sense of them.

First, on the Chile and Singapore treatment of labor and environment, what I think we tried to do with this, Mr. Becerra, was to refine and customize what we did in Jordan, and let me explain what I mean by that. Contrary to what some people have said, we have the same basic procedures for all the disputes, so that means the consultations, the panels, the timeframe.

Now, it is the case that for Chile, we set up a special process to get labor and environmental experts as part of the panel, which I think is a good thing, and in the case of Singapore some preference for their expertise, so that if it is a dispute you have got technical experts. For all these disputes, the first objective is to eliminate the violation.

Now, again, we made a slight difference for labor and environment, and that is, in a trade dispute if you are found in violation, you can offer compensation. You can offer trade opening somewhere else. We didn't want to grant that for labor and environment because we wanted to solve the environment and labor dispute. So, that is a difference that I think works again in labor and environment's advantage.

We also said that the labor and environment penalty will not be based on just the trade effects, because that is how you would do it under a trade issue, because we thought the trade effects might be too small. So, we wanted to actually put in some other variables that could deal with labor and environment.

Then it is true that we come up with a monetary remedy first for labor and environment, but there, again, our logic is—our real

focus was to try to channel the money back for labor and environment as opposed to just block some trade in some area. If they don't pay, then we can use the withdrawal of trade benefits to collect the money, again, so as to fix the labor and environmental problem.

On the commercial side, you start out with withdrawal of trade benefits, but you have an option of a fine. So, that is why we tried to draw some parallelism here. We also added some improved transparency. So, we will have months, again, to look at this, but I actually think what we tried to do here was to customize and meet some labor and environmental needs in a more specialized way, and we partly did that because we are all in a learning process, and as you say, we would hope to try to apply some of this to CAFTA as well, the Central American. Along with it, as you properly point out, we want to try and we are working with them now to try to upgrade their labor standards, because we know in some countries like Guatemala we have had some problems in that.

The temporary entry issue is another one that has been raised a lot, and here I really think it would be important why we are doing this. A lot of you represent service businesses, and we are hearing a lot more from service businesses. They need to get people in and out of countries. So, there are a lot of U.S. companies that wanted us to get temporary entry.

We do not deal with citizenship. We exclude that. We do not deal with permanent residency. We do not deal with permanent employment. We had a lot of briefings and consultations, and there were three key points that came up to us that we managed to insert in the final negotiations. One is we do have a labor attestation, which we will model after the H1–B. We can work with the Congress on how we do that.

When we work language in these agreements, we sometimes want to leave it a little looser, because what if Congress changes its mind in the future. We want to be able to incorporate that.

Second, we put on numerical caps, 1,400 for Chile, 5,500 for Singapore, and I might note in contrast we have no limits on people going to Chile and Singapore. So, in some ways, the H1–B is something you give the rest of the world, you got nothing else in return. Here we get full access to these countries with limits.

Third, we also ensured that we could collect money, and I talked with Mr. Sensenbrenner about this, Chairman Sensenbrenner, not just to cover the costs but to cover some of the other expenses that you have used for H1–B. Here, again, the current amount is $1,000, but that law expires. So, we didn't want to just be linked to that law, so I think we have language here that, for example, some of that money is allocated to different uses. What if Congress changes the uses?

So, I think we met those interests, but I know that they are points of sensitivity, and so I am glad you gave me a chance to expand on them.

Mr. CRANE. The time of the gentleman has expired. Ms. Dunn?

Ms. DUNN. Thank you, Mr. Chairman. Welcome, Ambassador.

I want to ask a question on the Chilean FTA also. My understanding is that it includes language providing legal status on temporary copies of computer programs and other works currently pro-

tection under the Copyright Act. Since we are all aware that the Chilean FTA could potentially set a precedent for future trade agreements, I would like to get your thoughts or your comments on the intellectual property rights (IPR) provisions in the Chile FTA, and specifically on protection of temporary copies of computer programs.

Mr. ZOELLICK. Okay. Well, as Mr. Becerra mentioned, I was particularly pleased at what we got in the intellectual property area. In the closing rounds of both these negotiations, I probably spent over half my time on these issues because it is a newer area.

Just to give you some flavor of this, we have got an understanding in both cases that you will have statutory damages, because often it is difficult to prove the exact amount of damages. So, they were going to change their domestic laws for statutory damages. Criminal penalties for end user privacy, remedies for technical circumvention measure. Here we tried to build off the Digital Act passed by Congress. Also, provisions to ensure that any government software be used respecting IPR.

Now, I think the issue that you referred to, if I understand it, Congresswoman, is the question of digital property protection where you don't have hard copy. This was something that, again, I think is a very major advance in that the question is: When somebody downloads something to their computer, whether business software or music or video, do you have an intellectual property right even though you have never created any paper aspect of it? We have established that in both these agreements because, otherwise, you could just network it out to somebody else.

So, I think that is a very important development in both agreements. I hope it will be something we can spread worldwide.

Ms. DUNN. Good. Thank you. I also want to ask you about an issue that we have discussed before, the TRIPS agreement out of the Doha Declaration, the TRIPS agreement that has to do with public health. Many of us are concerned about balancing the need for supporting developing countries' approach to solving their health care needs, but also we believe that the commitment to TRIPS is very important and should not be broken.

You have been a great leader in helping the least developed countries get access to low-cost medicines for infectious epidemics like HIV/AIDS and tuberculosis and malaria. I am very concerned that we not dismantle the IPR by expanding this exception to other countries that should not qualify.

So, the TRIPS Council was supposed to report back to the General Council before the end of last year on a solution for helping poor countries with access to drugs, and I am wondering if you could give us an update on the current negotiations on this issue.

Mr. ZOELLICK. Certainly. This was a particularly frustrating issue because I feel there should be a resolution here, but you have a real problem of lack of trust with some poor countries that recall the suits brought by pharmaceutical companies against South Africa on HIV/AIDS, but on the company side, worry about some middle-income countries that, frankly, have stolen their patents.

What we did at Doha—and this has been confused in some of the reporting—was to take the flexibility that exists in the TRIPS agreement and say that countries have the right to compulsory li-

cense certain drugs dealing with HIV/AIDS, tuberculosis, malaria, national emergencies, and it says public health crises. We would have been in a position to do that as a country if we needed to do it for anthrax.

The one issue left over was what happens if you are a country that is too small to compulsory license in your own country, so you need to go outside. Then the problem that developed was that some NGOs in some countries said, well, gee, this covers everything. It covers obesity drugs. It covers health drugs but aren't ones related to infectious disease—asthma, cancer, whatever. Then some countries said, well, if some countries have this, we all need to have it, so expand it in two directions.

This played into the distrust factor, I am afraid, and so what we tried to do was to clarify that it should be only for HIV/AIDS, tuberculosis, malaria, epidemics, but including ones that might arise in the future. That was not accepted by other countries, and so we basically did that by a moratorium to reassure countries. Now the question is: Can we partially get at this issue by clarifying that fewer countries would have access to it. I don't know, Ms. Dunn, because this is an issue that continues to plague us. It is not about HIV/AIDS. It is not about Africa now. I would certainly like to do our best to try to solve it, and I welcome any suggestions.

Mr. CRANE. Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Ambassador, we hear a lot—and you brought it up a lot today—about free trade. There has been an issue of—instead of using the terminology of "free trade," I have heard even you and I have heard the Secretary of Commerce use the words "fair trade." I think that is more or less what the American people are looking for, too, the terminology of "fair trade," because fair trade is an exchange of goods between countries, not just a one-way exchange that sometimes free trade is given the image of.

I don't know of anyone in the district that I represent that doesn't take a lot of pride in producing a product or delivering a service and hopefully that product or service will be purchased somewhere, whether it be domestically or in another nation. So, I would really like to hear you emphasize more the fairness than what we have done.

Speaking of fairness, we are competing in a global market. You and I have had this discussion on a number of occasions. There are some areas that we are not competitive in with other nations, and one of those, as we have discussed—and it was part of the TPA Act—and that is dealing with currency. There is often concern that currency in other nations where we have a lot of trade, particularly China, is not valued at what the currency should be valued at. When we have the dollar that is valued more so higher than their currency, it puts an imbalance in the trade.

The provisions in the TPA require that we discuss currency valuations up front, not as an afterthought or an after-reaction to a devaluation or contingency not valuing the currency as it should be. What have you done there? What is going on in the negotiations, the trade agreements that you are bringing forth now that involves currency?

Mr. ZOELLICK. Well, Mr. Collins, this is an area that the President has been pretty adamant about currencies being the province of the Secretary of the Treasury just because you get people commenting on it, you send different messages.

I would say at this point that clearly currencies do have an effect, and as we have seen, there has been some effect on the dollar, particularly with the euro, which I think will have some positive effect in terms of our trade competitiveness.

In the case of China, the Chinese have fixed their currency at a certain level. There have been reports about whether that is over- or undervalued. In the 1997 financial crisis, it actually was a kind of point of stability for the region.

The Chinese have talked about moving toward a more flexible exchange rate system at the appropriate time, and that would leave it more subject to market changes. I frankly don't expect that to happen in the near term because, given their economy, they don't want to have happen to them what happened to the rest of East Asia in 1997. It is a point I will just share with you that when Secretary Snow came on and we were talking about some of the issues on the agenda, I had mentioned, in addition to the domestic tax issues, this is one that we need to talk about for the Treasury to work with, because I know it affects a lot of industries.

Mr. COLLINS. Well, it does and it is a big concern. I hope we are not going to be timid about our discussion of currency within our negotiating of trade agreements, fair trade agreements.

One other area that I would like to bring to your attention is the area of poultry in Russia. You have been trying to, attempting to get a change of heart from the Russians about the poultry and what they have done with the moratorium on U.S. products for poultry. Georgia, the poultry capital of the world, is really hurting from the fact that they have an embargo on our poultry products.

What is an update there?

Mr. ZOELLICK. Well, first off, I appreciate your support on this. We have worked very closely with the poultry industry, and poultry, many people don't know, was I think our biggest export to Russia.

When we worked with you before, we had a problem with sanitary and phytosanitary standards, which we achieved a resolution, and the Russians were here inspecting some of the plants. The most recent action has been that they have put on a safeguard, a limit of the amount, and they have done some things in the other meat quota area. This just happened a short time ago. We have communicated to them, but so has the rest of the world, our unhappiness with this. As I alluded in another question, my own view is that we need to get things opened up for these producers, or else we need to look at all the options that we have to let them know what the other side of the coin looks like.

Mr. COLLINS. Well, there are a lot of jobs, particularly in the South, in Georgia, that pertain not only to poultry but to textiles, and I want to encourage you to continue to work on the efforts for our people.

Mr. CRANE. Mr. Doggett?

Mr. DOGGETT. Thank you, Mr. Chairman.

Ambassador Zoellick, I never cease to be impressed by your ability to give lip service to openness in international trade while engaging in what seems to me to be utter contempt for openness, for genuine public access, and for meaningful public participation in the process that produces our trade agreements.

If your accomplishments are so beneficial to American families, it would seem to me that you would want to share them with the public instead of to hide them. The specifics of these recent agreements that you negotiated are certainly not any secret to the foreigners you negotiated them with. They are not any secret to the 700 industry advisers that were selected to discuss this process with you. They have been kept secret from the American public, and even from most of their elected representatives here in the Congress who have little more than your happy talk about the success of the negotiations upon which to rely at this point.

In the Singapore agreement, to be specific, the position of Singapore was basically that they would accept whatever you proposed on labor and environment standards and on ensuring that investment enforcement provisions don't undermine American health and safety laws. Unfortunately, what you offered was very, very modest in changing anything on these important topics.

Typical is the provision that you testified about on page 30 of your testimony that Chile and Singapore agreed to discuss "appellate mechanisms in investor-state dispute settlement. . . ." As best I can determine, what you secured through hard negotiation on this very important topic is to get exactly what we had before the negotiations began, and that is the right to talk about inconsistent investor-state decisions at some time in the future.

Looking more closely at this issue with which you and I have had a long history, on March the 6th of last year I requested your office to supply all notices of intent to arbitrate under Chapter 11 of NAFTA, whether the filing culminated in arbitration or not. That is because too often these notices of intent are notices to intimidate government officials to abandon health and safety regulations, whether they lead to arbitration or not.

On May 2, I reiterated my initial request, and no reply was received.

On September 10, I met with you personally in the Capitol after you met privately with this Committee and asked that you act on that request.

Finally, I received a letter following that meeting which did me the great service of printing the Web site of the State Department, which was available to any citizen, and totally ignored my request to get those notices that had not yet led to arbitration.

I wrote you about that on September 30, and, of course, you have not responded to this date.

I have a threefold question, because I believe this history of denial and lack of cooperation hardly demonstrates a commitment to what you call improving the transparency of investor-state dispute procedures.

I realize that you and your staff view this as much less important than chewing gum in Singapore, but it seems to me that now a year later after my request, with the fast track debate over, that I would simply ask you if you will provide within a month a copy

of all notices of intent to arbitrate—or all notices of intent to which USTR has access that have been filed at any time under Chapter 11.

Second, I would ask you if I understood correctly your prior testimony that you committed that the American public will have at least 90 days to review the Chile and Singapore text before the President signs these agreements, and if I misunderstood, exactly how much time will the public have before the Presidential signature.

Third, and finally, you ridiculed the concern over the privatization of services, but exactly when will USTR make available to the public what is apparently the response to the European proposal for privatization that it plans to make in March? When will that be available for the public to see? Similarly, when will the public see the position of USTR set forth on the investor provisions, the investor protection provisions that the Europeans have asked to have placed on the agenda at Cancun?

Mr. ZOELLICK. Well, that is a rich list. I will do my best, Congressman.

Mr. DOGGETT. Thank you.

Mr. ZOELLICK. First, on the investor-state issue and on the environment and labor issue, we followed the guidance of the majority signed by the President in the TPA bill. For example, we have improved an investor-state—the transparent investor-state dispute settlement hearings, provisions to have elimination or deterrence of frivolous claims, including additional attorney's fees and costs in something like a 12(b)(6) motion; efficient selection of arbitrators and expeditious disposal of claims; appellate body or similar mechanisms we have done through four different steps. I am afraid you are incorrect because we do have provisions that allow tying into future multilateral appellate mechanisms and oblige the parties to consider the establishment of an appellate body within 3 years.

One of the issues we face, Mr. Doggett, is we have very few of these cases, and so in a case of judicial economy, there was a question of whether you should form an appellate body if you don't have any cases. We thought we could review that after 3 years.

In terms of the availability of the materials, they should be available to you as a Member of the Committee on Ways and Means.

Mr. DOGGETT. Well, they have not——

Mr. ZOELLICK. If I could keep going——

Mr. DOGGETT. Let me——

Mr. ZOELLICK. In fairness to me——

Mr. DOGGETT. Let me interrupt——

Mr. ZOELLICK. As a witness to this Committee——

Mr. DOGGETT. They have not been made available.

Mr. ZOELLICK. Mr. Chairman, could I answer?

Mr. DOGGETT. You know they have not been—my question is just: Will you make them available? If you won't, just say you won't.

Mr. ZOELLICK. You have asked so many things to make available. Let me—can I continue——

Mr. DOGGETT. This is the same thing I asked you last March——

Mr. ZOELLICK. To follow up on your questions, Mr. Doggett?

Mr. DOGGETT. If you feel you can't make them available, just say so.

Mr. ZOELLICK. Mr. Doggett, we gave you copies of all notices involving the United States. The State Department Web site has notices not involving the United States. So, that is not an area which I deal directly with. We gave you all the notices that we have involving the United States.

You have given me a long list. Unless you prefer just to give a speech, I would like to try to continue to respond to your question——

Mr. DOGGETT. No, just that one——

Mr. ENGLISH. Regular order, Mr. Chairman.

Mr. CRANE. Yes.

Mr. DOGGETT. Just that one question. The notices——

Mr. ENGLISH. Regular order, Mr. Chairman.

Mr. DOGGETT. Arbitration has not been——

Mr. ENGLISH. Regular order, Mr. Chairman.

Mr. CRANE. Mr. Portman?

Mr. PORTMAN. Thank you, Mr. Chairman. I have waited for a couple hours to have the opportunity to ask the Ambassador some appropriate questions about trade, but I feel that having been subject to that prosecutorial questioning from my colleague that I should give the opportunity to further respond to him. If we have time at the end, I have some questions, I would like to ask you. Please proceed to answer the questions from Mr. Doggett, should you——

Mr. ZOELLICK. Well, in addition, as we were in the process of saying, Mr. Doggett, in terms of the variety of other provisions, for example, the investment provisions with the EU in the process of negotiations, all we have at this point is the mandate that came out of Doha. We have just had very preliminary discussions. I will point out that in none of those discussions are we looking at an investor-state mechanism. It is looking at a much more basic process of trying to create rules, for example, transparency and non-discrimination in investment.

In the areas of our 90 days, I don't recall making a representation about 90 days other than the fact that TPA has a 90-day notice requirement before the President signs. As I explained, I believe that we will make all the materials public in Singapore in early March, Chile will be done in late March or early April. So, since the signing, the earliest would be around May 1. That will have a time before signing, and we also would have a period before the Congress takes action. So, I think there will be plenty of time for public exposition, and I believe you and your staff should have availability now, as do the 700 cleared advisers.

The reason is what I tried to say earlier. We have got a lot of pages of text. We are trying to reconcile any differences before we make it public. Some people have raised issues in the course that we have been able to try to clarify. So, it is a process that has been done before, and I think it is a reasonable balance in terms of trying to clarify the documents before public release. Frankly, some of you have raised issues that we are trying to deal with in the same course.

So, I hope I have been able to answer many of your questions. It was a long list, and I apologize if I couldn't cover them all.

Mr. PORTMAN. Mr. Ambassador, thank you for that answer, and I think you have shown to me an extraordinary detail of the subjects, command of the subjects. I am very impressed with your energy and enthusiasm you bring toward opening markets. It is not something that is shared by all Members of this Committee. The benefits of trade can only be obtained by the United States and our trading partners if we do indeed focus on opening markets and not creating more obstacles.

Just quickly, I had a number of questions. I will change it and make it a few comments, if that is all right. The Doha Round, I congratulate you on what you have done on reducing agricultural subsidies, particularly establishing caps. I encourage you to continue to work on the issue of genetically modified organisms. I know we have not filed a case, but that is a very important one to our country, and I think it is one that also has implications for Africa and other less developed countries in terms of our food aid.

With regard to FSC and ETI, I know you are not a tax policy person, nor should you take over Treasury's role. I encourage you to stay as involved as possible in that, and particularly looking at some of the more fundamental issues of border adjustability and really our international tax system. Our current system of worldwide taxation rather than territorial is a big disadvantage to our companies, and I think we ought to take advantage of this opportunity the Europeans have given us to look more carefully generally at our international tax system and coming up with more competitive ways, which are entirely consistent with WTO and which would help our exporters and our manufacturers in particular.

We are honored in Cincinnati to have the latest round of the Central American Free Trade Agreements. We think it is going well in Cincinnati, but if you could possibly tell us why you think it makes sense to extend some of the NAFTA-type benefits to our Central American trading partners, why this is beneficial to the United States, that would be most helpful.

Mr. ZOELLICK. Thank you, Mr. Portman.

Well, with the Central American countries, we have a situation now where about 70 percent of their products come in duty-free under the Caribbean Basin Act. So, one of the things we would like to try to do is get better reciprocity. Many people are unaware, I think, that we already export about $9 billion worth of trade to Central America, import about $11 billion. So, this is an opportunity to improve markets for the United States.

You might ask: Well, why do the Central Americans want to have a more reciprocal arrangement? That is where actually a number of the points that have come up in the discussion are at the heart of it, which is that they see this as a way of improving their standards, their rule of law. By opening their service market and integrating more effectively, they expect to get more regional growth. So, it is a good example of how this can become a win/win venture, and particularly in some areas in the apparel industry where the CBI has already developed some linkage between U.S. textile and their apparel to help compete with China.

Also, there is another part, which is that these are countries that have fragile democracies. Blood has been spilled. I remember the negotiations in the late eighties and early nineties. It really is a chance to try to help strengthen the foundations for open societies, and that is where some of the other issues we will try to deal with in terms of environment and labor can also help us because I think we can strengthen the rule of law in those areas, too.

Mr. PORTMAN. Thank you, Mr. Ambassador, Mr. Chairman.

Mr. CRANE. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. I will try to keep my questions brief.

Mr. Ambassador, I met previously with your staff to raise issues about a very strategic sector in American manufacturing, and that is the tool and die industry, which is heavily concentrated in my district, Mr. Manzullo's district, and several parts of the Central States of the United States. Clearly, part of the problem facing the tool and die industry is the general slowdown in the economy, but a significant part is trade-related.

Do you see an opportunity for your office to raise tool and die issues within some of the existing negotiations that currently you are participating in?

Mr. ZOELLICK. Yes, Mr. English. I think they primarily would relate to the goods sector, and what we have been trying to do—this goes to the points about sort of fairness in trade—is that our tariffs are generally low in these areas. Many other countries' are still high. So, our proposals in the WTO to try to eliminate tariffs would frankly give us additional opportunities, but in the meantime, some of the free trade agreements that we have discussed also allow us to open markets where barriers are higher, for example, in Morocco, where you are helping us, where it is like a 20-percent average tariff.

Mr. ENGLISH. Thank you. Let me say in response to some of the remarks earlier by my colleague, Mr. Levin from Michigan, I would like to offer the opinion that USTR, while it was a very strong agency under your predecessor, has, nevertheless, clearly been given the support in this Administration to go forward and to open some new areas. One of the areas where I think the Administration has been particularly proactive on trade has been steel. If I may say so, I recognize that the Administration has been willing to expend a great deal of political capital in support of the domestic steel industry. This has, I know, been controversial, but I believe it was very important for you to do it on behalf of the entire manufacturing sector in the United States.

In your view, looking at the steel 201, do you believe that this investigation, which is now being reviewed by a WTO panel, was conducted in accordance with our international obligations? Do you believe that the remedy that the President provided comports both with our domestic law and with WTO Agreements?

Mr. ZOELLICK. We do, and that is being contested in the WTO, and we will have determinations later during the course of the year. In the meantime, like you, I am pleased that the industry has taken some advantage of this, as you have seen in the case of ISG and Bethlehem.

Mr. ENGLISH. Yes.

Mr. ZOELLICK. Some of it has involved changes in labor contracts, which I have talked about with the head of the United Steelworkers. They are not easy, but they are the key to making this work.

Mr. ENGLISH. At the Cancun ministerial, undoubtedly the issue of the WTO antidumping code is going to be raised again. I salute the Administration for its repeated commitment to defend our right to have antidumping laws and to police our markets.

What do you anticipate will be the agenda on antidumping when the WTO has an interim meeting in Cancun?

Mr. ZOELLICK. Mr. English, the way that we negotiated this, this actually is at a slower pace than some of the other items. It is what I cross-referenced in the other discussion. So, we are at an initial stage of identifying issues here. One of the issues that we have tried to identify is an offensive agenda because these procedures are increasingly being used against the United States. There were some 105 investigations of the United States in past years, and I have a list of items where we are concerned about the inconsistent procedures, the lack of transparency, no due process, public record, so on and so forth. So, one area that we are making—a point we are making is people have to clean up other operations before we go to other changes.

Second, as you worked with us on, you can't just deal with the rules unless you deal with the underlying problem. So, we have to deal with some of the problems of subsidies around the world. This is also linked to the area of fish subsidies, so you find a country like Japan that is very interested in changing some of the rules but not in dealing with the whole question of fish subsidies. So, that is going to be connected to it.

So, the heart of our position has been that we need to preserve the strength and effectiveness of U.S. laws in this area. At the same time, we are increasingly finding that U.S. exporters are also finding themselves vulnerable to some of these actions. We have had a number of actions with Mexico and agricultural exporters recently.

So, we are going to try to push an offensive agenda, and, frankly, Mr. English, the point I just made a week ago was we are not going to be moving forward on these issues until we get the ones that have earlier deadlines, like agriculture, goods, and services, which are supposed to be done before Cancun.

Mr. ENGLISH. Thank you. My time has expired, and I thank the Chair. I particularly thank you, Mr. Ambassador, for coming before our Committee and outlining such a strong vision for trade policy.

Mr. CRANE. Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman. Mr. Ambassador, it is good to see you this afternoon—no longer this morning. You have put some good time in today responding to our questions, and I thank you for that.

I also want to commend you for being an effective spokesman for free trade and economic opportunity around the globe, which is good for Americans.

I have several questions, and I am going to submit some of them in writing to you, and I would appreciate if you could respond in

a timely way. I would appreciate that because my time is limited and I realize we are past the scheduled conclusion of our hearing.

We have some negotiations under way, and many times when these negotiations are under way, some of the tough issues, particularly agriculture, which is important in portions of my district, as many districts across this country, tend to be the most complicated and the toughest issues. At the same time, with Australia and the upcoming WTO negotiations, we have those tough issues, but there are other issues such as the area of intellectual property and digital downloading and content issues and information technology issues. How can we ensure that we do not lose sight of those priorities as well as some of the tougher issues, that they are all included in a timely way and negotiations not get bogged down?

Mr. ZOELLICK. Well, on the first one, the agriculture area, when I took this position, the President emphasized the top priority that he wanted to put to agriculture trade. So, that was the genesis of the proposals that we have come up with because we found that we could get support in the agriculture community to make cuts if we could get others to cut, too. So, my chief agriculture negotiator is in Geneva right now following up on this Harbinson paper. So, frankly, Mr. Weller, unless we get movement by Europe and Japan on these agriculture issues, I just see the thing not moving forward. We are just firm about that, and it is backed by the fact that there are many other countries, developing countries, Cairns Group countries, that are emphasizing the same point.

As for intellectual property, we are making our biggest dent in this area with some of these bilateral free trade agreements, because the intellectual property rules really came out of the Uruguay Round, and since that was finished in the early 1990s, you have had a tremendous change in the whole industry. So, as I answered to Ms. Dunn's question, we are actually able to update the rules more effectively and then try to spread them through other agreements. So, that is one reason why I think we have gotten some strong support and appreciation for the headway we are making in these first agreements, because we hope to spread it.

Mr. WELLER. Some of the questions I have to submit are similar to Ms. Dunn's questioning, so rather than duplicate her areas of interest, I will submit those in writing.

Let me just conclude with just this last question. It has been suggested that some of our bilateral agreements, that the order of priority has been a part of our foreign policy rather than from a commercial and economic standpoint. I was just wondering: How do you set the priorities for determining which of our trading partners to initiate bilateral trade agreement negotiations? What type of input do you get from the private sector?

Mr. ZOELLICK. Well, I appreciate your asking that because Mr. Levin, I think, or Mr. Matsui made a general reference to this, too.

We can't do all at once, one thing we thought was important was to try to make sure we proceeded with different regions so we didn't look like we were just looking at one region. So, you will see we are moving ahead with Central America, Africa, North Africa and the Arab world, as well as Australia. We also have developed—as well as developing countries, to emphasize that.

A third point is really their willingness to accept these changes. Our free trade agreements have a higher level of complexity than you get in the normal WTO negotiations, as my answer to your question on intellectual property succeeded. So, we need partners that are willing—not just say they want to do it, but are really willing to undertake these obligations and, frankly, as we talked about with the Dominican Republic, that can show us a little record as we move forward. The Dominican Republic has been strengthening its cooperativeness on this.

We also look to how to give us leverage. So, for example, with the FTAA, part of the signal is we want to do it with all 34 countries, but if some go slow, we will keep going with others. Part of it is also in the case of the Southern African Customs Union. This was a goal established by Mr. Crane and others as part of the AGOA bill, so it was urged by Congress to set a model to start to do free trade agreements with Africa. Frankly, the Caribbean Basin Act did the same thing for Central America. So, those two had urgings from Congress.

So, it is a balance of that plus resources and willing partners.

Mr. WELLER. Thank you, Mr. Chairman.

Mr. CRANE. Ms. Jones?

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

Good afternoon. This is my first opportunity to make inquiry of you, and I want to focus in on the steel industry. I come from the city of Cleveland where steel was the undergirding of our economy for many, many years. I am wondering whether or not—and I am a supporter of steel tariffs, so I recognize to some extent it has an impact on other people using steel. I view it as an opportunity for the United States to come up with an overall steel policy, or how do we engage the steel industry in our country to be able to support it and at the same time move into the 21st century.

Can you tell me, have you had any thoughts or discussions about what else do we do to assist the steel industry in this country from your perspective in addition to tariffs to help them be successful?

Mr. ZOELLICK. Well, I am glad you asked that because when we launched the initiative, we actually had a number of prongs, and one that I haven't referred to today is we have also tried to deal with some of the issues on the international front. Both are questions of capacity, but some of the subsidies. We have made some progress in these discussions in the Organization of Economic Cooperation and Development on subsidies practices, and it is my hope that we may be able to take some ideas of disciplines and integrate them into the Doha negotiation we are discussing. So, part of it is an international component.

A second part of it, as the question I think Mr. Becerra asked, is that it is a question of how you help with the adjustment, and part of this was done through the Pension Benefit Guaranty Corporation. There were also some provisions in the Trade Adjustment Assistance to help.

Then I guess the one other point is that while we wanted to provide the opportunity, we felt it was important to let the private sector—and by private sector, I don't just mean business; unions—come to the conclusions themselves, because it shouldn't be directed by us. It should be something they come to. This is an area

where particularly in the case of Cleveland, I am pleased to see the development with ISG. I know that following on the LTV this has not been an easy course, but I have talked to both the companies and the steelworkers involved, and they believe—and from what I have seen—they now have the basis of a competitive company moving forward.

This is now spreading to Bethlehem, and now the question is whether some of these same ideas will also spread to National Steel, because there are now two bidders for National Steel: U.S. Steel and AK Steel.

So, I guess what we were trying to do, Ms. Tubbs Jones, was to create a framework and a breathing space for this to happen. Like you, I believe it is starting to happen. So, therefore, I hope that we can count this as a success at the end of the day.

Ms. TUBBS JONES. My final question—Mr. Chairman, I thank you for the time—is what do we do—I heard you mention the Pension Guaranty board. What do we do—or if this is out of your bailiwick, then say it is out of your bailiwick in terms of dealing with the other legacy cost of health care and so forth. Have you thought about that at all?

Mr. ZOELLICK. It is generally out of my bailiwick, but the one thing that——

Ms. TUBBS JONES. You have an idea anyway. Go ahead.

Mr. ZOELLICK. Well, it did come up in the process of passing the Trade Act, and the point that Mr. Becerra addressed—and the Chairman has looked at some of these in some other areas, have focused on particular some ways to try to help on the health care side. Then also I think some of the work that Mr. Portman and—I am trying to remember who else was working on this. Mr. Cardin had focused also on some of the long-term pension issues, too.

Ms. TUBBS JONES. Lastly, I would just ask you, as you are thinking through this process, to talk about or think about the impact that all of this has on small businesses operating in the city of Cleveland and across the country and how we can assist with that.

I thank you, Mr. Chairman. I yield back the balance of my time. Thank you for testifying.

Mr. CRANE. Mr. Hulshof?

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Ambassador, thanks for your patience. About two and a half hours ago, the Ranking Member made a point to urge you to work in a bipartisan fashion, and I certainly share that thought. That would be the preferred path. Yet to somehow suggest or insinuate, as I think he did, that a 218–217 vote on the House floor somehow weakens our credibility abroad, I find that proposition to be absurd. I think TPA is a good example of something that was very divisive in the House, and yet a tool that you have been using aggressively, and I support you on that.

Another comment I would make with Mr. Matsui taking you to task for your language of rebuilding America's leadership on trade, without making derogatory comments about your predecessor, Ms. Barshefsky worked well and we worked with her on this Committee. Yet I do commend you on your strong stance regarding agriculture. A former Member of this Committee, Mr. Wes Watkins

of Oklahoma, and I were the ones, in fact, who worked to put a chief ag negotiator within your office. So, I want to commend you on the progress you have made.

Having said that now, let me ask you about progress on biotechnology and phytosanitary guidelines. Again, each one of us has interesting issues that we bring to you, and this is one that you and I have talked about before, not only because corn and soybeans are a big part of my district, but because the University of Missouri in Columbia is a premier biotechnology institution, making some great strides in life sciences. I am increasingly troubled by the efforts of some of our trading partners to use biotechnology that has been scientifically proven to be safe as an excuse to block access of our American products abroad.

No one wants an all-out trade war, and yet I am here to tell you publicly that I would support a formal complaint against the European Union or other trading partners because of their reluctance.

So, a general question and then a specific one, the specific one first, perhaps. Were you able to get any sort of commitment from China as far as a final safety approval on our U.S. soybeans exported to China? Then the more broad question: What is the latest on biotechnology and phytosanitary guidelines? I will yield you the balance of my time to respond.

Mr. ZOELLICK. On the first one, I got a positive response from the Chinese, and I raised the issue with both When Jiabao, who is the incoming Prime Minister, and also with my trade counterpart, and this is an issue, as you probably know, that the President raised with Jiang Zemin. What that means now, as you undoubtedly know, is that the Ministry of Agriculture said we need to do additional field tests. Therefore, the temporary permit system that runs through September, we are worried about whether that is extended or we address the issue in time so that there is not uncertainty. I pointed out, since I am from Illinois where soybeans are grown, that it takes time to grow the crop and you need some certainty as you move forward.

In those meetings, again, I got a sense that the problem would be solved, but I never pocket it until I see it. As we followed up—my staff followed up as I went on to other parts of China—they affirmed that sense. So, we have got more work to do, but I come away with a positive sense on that one.

Not so in the European context, and my views on this subject are very clear. I will take some note that I was pleased that the French Academies of Science and Medicine also supported the use of biotech and thought the moratorium should be lifted.

Here is where I think we stand on this: There is a united sense that this is a moratorium that has been in place for four years. It violates the WTO rules. It violates the EU's own rules.

My concern about this, frankly, increased even more when I saw not just its effect in Europe, but its effect of spreading around the world, in Africa in the most poignant case. You can see it in all different markets. It is being used as an excuse for protectionism in some cases, and in some it is just ill-informed fear.

I adamantly believe that this development is important for issues of nutrition and health and environment and productivity for farming. Therefore, my sense is that we are agreed about the need to

get the moratorium lifted. Right now we are working with other countries in terms of determining the best way to proceed. That has to be part of the strategy, which is that this is not just a question of bringing a legal case or not. We need to bring a public case, because we have to make the argument—and, frankly, this is some of the things that I have been spending my time doing—with scientists and others to explain that we are not forcing something on somebody. This is a tremendous opportunity for the world. One positive sign that I got after my earlier comments was I read a report of African scientists in Brussels that were saying the United States should bring a case; this is a terrible thing that Europe is doing to Africa. As I was coming back from China, there was a meeting of Asia Pacific Economic Cooperation countries in Thailand talking about biotech.

So, part of what I think we have to do here, frankly, is we have got to reverse the momentum, and my view is that at the appropriate point, legal action should be part of that if the Europeans don't change. We also have to win the public debate.

Mr. CRANE. Mr. Pomeroy?

Mr. POMEROY. Thank you, Mr. Chairman. Mr. Ambassador, it is a pleasure to listen to you. You carry around more darn detail than I think any other official in Government who I have heard testify here, and I really admire that.

Continuing with the questions of my colleague on agriculture matters in trade discussions, we very much appreciate the action brought by the USTR against the Canadian Wheat Board. If I understand, part of the process involves consultation between the governments so that indeed the first formal consultation has been held. Would you bring us up to date?

Mr. ZOELLICK. You are right, Mr. Pomeroy. As you and I discussed, there are different elements of this, and one element is bringing the WTO case. We are in the consultation phase. We posed various questions. We are to get this information back from Canada. If the issue isn't resolved to our satisfaction, then we are free to go on to the next stage in the WTO process in terms of bringing the case.

In addition, knowing of your interest in this, I thought you would be pleased that this paper that we referred to, the Harbinson paper, also took up this issue of State trading enterprises and monopolies. While it is, again, a draft paper the European Union hasn't agreed to, it shows another element of our strategy, which is it incorporated a number of the arguments that we said we wanted to make about the problems of State trading enterprises and using the Canadian case as an example.

Then the third element is that we talked about filing of, I think it was, a countervailing duty or antidumping case, and that is also proceeding.

Mr. POMEROY. So, the discussions to date—I have been amazed at how intransigent they have been, for example, keeping their books closed. Any headway that you care to illuminate at this time, or is it really at a point in the discussions where this may not be strategically beneficial to discuss in this forum?

Mr. ZOELLICK. There is some discussion in Canada, as you are probably aware, in the Wheat Board itself, and there were some

elections that this debate came up. So, I think we have stirred a little debate in Canada. I don't want to mislead you in terms of their willingness to change absent the pressure I think we need to put on them.

Mr. POMEROY. Great. Now, as we proceed with Australia, what about the Australian Wheat Board?

Mr. ZOELLICK. Well, in the letter that we sent to Congress putting out our objectives, we included that State trading enterprises part of it. It is my understanding—but we can get back to you—that the Australian enterprise has changed a lot of its practices. It doesn't operate in the same way as the Canadian Wheat Board in terms of it gives private sector the ability to go outside it. So, some of the concerns we have had in Canada do not apply to Australia. I do know we flagged it as an issue that we want to discuss in the negotiations.

In addition, what you and a number have also raised is in the case of Australia we are also trying to focus on a lot of the sanitary and phytosanitary issues. We have made some initial headway on that, and that is going in parallel in the negotiations.

Mr. POMEROY. Sugar—what is the state of sugar discussions with Mexico?

Mr. ZOELLICK. We made some progress with the Mexicans about trying to arrange a balance here with our sweetener interests, because we have got cane sugar, beet sugar, but we also have high-fructose corn syrup that is being disadvantaged by now a discriminatory tax.

We are not there yet, and, part of this is that we have got some balance on our own side in terms of the sweetener interests, which are slightly on different sides of the issue. One of the questions also would be sort of the term of this agreement and how it fits into the present arrangements, because, as you probably know, one of the dangers here is the tier two aspect of prices can start to kick in before long, and so you are going to have an aspect of Mexican sugar that could come in under tier two, even though we haven't—the tier one issue was never subject to dispute settlement.

So, I would like to try to get this done. It is one that Al Johnson and I are continuing to try to work on. We have had a little bit of a throw-off in that my counterpart in Mexico, who was the Economic Minister, just became the Foreign Minister, but he is trying to keep the trade portfolio with him. So, I hope to follow up with him, if possible, even this week.

Mr. POMEROY. I believe time is really of the essence in terms of joining the issues and getting something done. I am very fearful about the future without some agreement relative to domestic sugar production.

Finally, with agriculture constantly being such a difficult component of your talks, trade adjustment assistance for farmers ought to be very helpful, I think, to you in terms of allaying some of the fears in farm country. The U.S. Department of Agriculture (USDA) is charged with bringing a package forward. They were to have had a report early in February. Nothing yet. I am wondering if you have an information in terms of USDA's advancing anything particularly relative to trade adjustment assistance for farmers.

Mr. ZOELLICK. I don't. I remember Chairman Grassley had an interest in this, too, and since I am going to see him next week, I will try to check with USDA in the meantime.

Mr. POMEROY. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

Mr. CRANE. The time of the gentleman has expired, and, Mr. Ambassador, I think we have made your deadline. We want to express appreciation to you for your appearance today, and we look forward, in a pretty heavy schedule, to working with you throughout this entire session. So, thank you for being here today, and all our colleagues.

With that, we stand adjourned.

[Whereupon, at 1:29 p.m., the hearing was adjourned.]

[Questions submitted from Messrs. Rangel, Herger, Jefferson, and Doggett to Mr. Zoellick, and his responses follow:]

Question Submitted by Representative Rangel

Various countries have blocked the U.S. efforts to obtain commitments to liberalize trade in AV services in the WTO. Your office has had success in liberalizing trade in AV services in bilateral trade agreements. What is your strategy for moving this important issue forward in the multilateral arena?

Response:

Considerable controversy surrounded audiovisual (AV) services at the conclusion of the Uruguay round. Since then, we have worked in consultation with our industry to create a more receptive environment in which to negotiate AV and AV-related issues. In addition, in the current services negotiations, the United States is helping to build a coalition of developed and developing countries with strong commercial interests in liberalizing AV services. Such a coalition has the potential for becoming a force in preventing a de facto carve-out of AV services in the current negotiations.

The United States is pursuing several avenues in seeking to liberalize AV services. First, as stated in the U.S. WTO negotiating objectives paper for AV services, our primary objective is to ensure "an open and predictable environment that recognizes public concern for the preservation and promotion of cultural values and identity." Consistent with this objective, we have requested that virtually all countries schedule commitments that reflect their current levels of market opening. Only in a few instances do we expect to request countries to remove existing restrictions on AV services.

Ensuring that countries schedule existing regulation of the AV sector will serve to enhance transparency and preclude extension of existing regulations to new activities, which are important objectives given the rapid technological changes taking place in this sector. Such predictability is also important in a sector where timing is essential for commercial success. In addition, scheduling commitments in the AV sector will underscore that GATS disciplines apply to AV services, as they do to virtually all services.

Second, we are seeking to increase demand for and access to content by encouraging countries to schedule commitments for transmission services (i.e., the pipes). As part of this effort, we are leading the way by offering to make new commitments in the GATS negotiations, including with respect to cable service.

Third, in WTO accession negotiations, including those with the Baltic States and China, we have succeeded in obtaining commitments in areas related to, although not technically part of, AV services, such as ownership and operation of cinema theaters. While less sensitive than services considered "audiovisual," such commitments are nonetheless important to our industry.

Question Submitted by Representative Herger

Ambassador Zoellick, I want to commend you for the ambitious trade agenda you outlined in your testimony before the Ways and Means Committee. As you know, open markets are incredibly important to America's

farmers and ranchers, many of whom sell as much as half of what they produce overseas. In my district in Northern California, we produce large amounts of rice, almonds, dried plums, and other products that rely on the elimination of export barriers—both tariff barriers and non-tariff barriers—in order to successfully export to foreign markets. I want to commend the Bush Administration and you personally for your efforts to lower barriers to the sale of our products overseas. I look forward to working with you and the President on the host of bilateral and multilateral Free Trade Agreements currently being negotiated.

I also want to point out that there are sectors of the agriculture economy—such as the canned fruit industry for example—that have been forced to deal with extraordinary market distortions as a result of EU subsidies, and are now also facing an elimination of U.S. tariff protection against competitive suppliers. Many of us who represent producers or products that are highly sensitive to import competition believe it is important that our trade agreements recognize these products as import-sensitive and treat them appropriately.

Ambassador Zoellick, is this view consistent with your negotiating objectives and could you please outline how USTR plans to address the concerns of import-sensitive products in future free trade agreements?

Thank you for your responding to my inquiry.

Response:

With the Administration's support, the Congress appropriately highlighted in the Trade Act of 2002 (TPA) the need to give special consideration in trade negotiations to import sensitive agriculture products. Consistent with TPA, we have identified U.S. import sensitive products for which the U.S. International Trade Commission prepares probable economic effect advice prior to negotiations on market access and on which USTR consults with Congress throughout the negotiating process. In addition, a key negotiating objective in our multilateral, regional and bilateral trade negotiations, consistent with TPA, is to provide reasonable adjustment periods for U.S. import sensitive products. In the case of the U.S.-Chile FTA, for example, canned fruit products received the longest protection for phasing out the U.S. tariff. We will continue to ensure that special consideration is given to import sensitive agricultural products.

Question Submitted by Representative Jefferson

The duty drawback program is the last remaining export promotion program that provides our exporters the needed competitive advantage for competing in the global marketplace against our trading partners who have significantly lower costs of production, even when we enter into free trade agreements. Thus, drawback would be phased out on its own as tariffs are eliminated through the negotiating. Could you please advise whether one of USTR's negotiating objectives during the negotiations for the CAFTA, FTAA and future trade agreements, will be the maintenance of full duty drawback rights for U.S. exporters in each FTA?

Response:

The United States and other countries have traditionally sought elimination or curtailment of duty drawback and deferral programs under free trade area agreements. Under duty drawback programs, duties on imported inputs are refunded when these inputs are used in a good that is exported, and duties are deferred when inputs are processed in free trade zones and then exported. During the NAFTA negotiations, there was a strong consensus in the United States, including among most Members of Congress and U.S. labor unions, that failure under the agreement to curtail Mexico's use of duty drawback and deferral programs would have an adverse impact on the United States by allowing Mexico to become an export platform into the United States rather than encouraging North American economic integration. The original U.S.-Canada FTA also contained such restrictions.

In an FTA, companies that produce goods in the United States for sale in the U.S. market cannot benefit from the refund or deferral of duties on inputs, whereas (absent negotiated restrictions) companies could get such refunds if they establish in the partner country. Disciplines on drawback under an FTA are about ensuring an equal opportunity for domestic input suppliers in each of the countries and encour-

aging economic integration between the FTA partners. In addition, availability of duty drawback and deferral programs for third country inputs lowers the incentive to source inputs from the FTA partner country. Finally, with duty drawback and deferral programs in place, countries' incentives to lower their duties and open their economies are reduced, to the detriment of their populations. Since the United States has much lower average duty rates than other countries, our companies benefit from these programs less than their competitors in other countries.

Questions Submitted by Representative Doggett

Doggett Request:

1. **All correspondence from NAFTA investors, their attorneys, or other representatives regarding an intent to file a claim under NAFTA's Chapter 11 against the United States, Canada, or Mexico.**

   Zoellick Response: (check the box as appropriate)
   - **USTR has none of these documents.**
   - **USTR has documents that fulfill this request, but will not provide them to you because (all/some) (circle one) are protected by secrecy obligations. (Please identify the secrecy obligations.)**
   - **USTR will provide all the requested documents to you by the following date: ———————— (note date, including year).**

Zoellick's Response 1:
Response is being made under separate cover.

Doggett Request:

2. **All documents transmitted with such requests (the notices of intent to arbitrate).**

   Zoellick Response:
   - **USTR has none of these documents.**
   - **USTR has documents that fulfill this request, but will not provide them to you because (all/some) (circle one) are protected by secrecy obligations. (Please identify the secrecy obligations.)**
   - **USTR will provide all the requested documents to you by the following date: ———————— (note date, including year).**

Zoellick's Response 2:
Response is being made under separate cover.

Doggett Request:

3. **All notices, regardless of whether arbitration was later initiated. (Those notices where arbitration was already initiated and that are already on the Department of State website need not be included.)**

   - **USTR has none of these documents.**
   - **USTR has documents that fulfill this request, but will not provide them to you because (all/some) (circle one) are protected by secrecy obligations. (Please identify the secrecy obligations.)**
   - **USTR will provide all the requested documents to you by the following date: ———————— (note date, including year).**

Zoellick's Response 3:
Response is being made under separate cover.

[For questions 1–3, an attachment is being retained in the Committee files.]

4. **Determining the total number of notices of intent to arbitrate under NAFTA.**

   (a) How many total notices of intent to arbitrate have been filed under NAFTA Chapter 11?
   (b) In how many of these cases was arbitration later initiated?
   (c) If the USTR declines to provide separate numbers for (a) and (b), how can the USTR claim to be effectively monitoring NAFTA?

Zoellick's Response 4:

(a) Thirty-four Notices of Intent to Arbitrate have been filed under NAFTA Chapter 11.
(b) Arbitration was initiated in seventeen times.

5. Open trade. In the February 26, 2003 full Ways and Means Committee hearing you indicated that the public will likely not get 90 days to review the Chile and Singapore Free Trade Agreement before they are signed by the President, as was done with NAFTA. As you know, the time for meaningful public review if before the President signs because once the agreements are signed by the President the terms of the agreements are locked.

(a) I will guarantee public review of the U.S.-Chile FTA for: (check one)
- **90 days plus 2 weeks as was allowed for public review of NAFTA**
- **60 days**
- **30 days**
- **Under 30 days**
- **I am not willing to make any guarantee of public review.**

(b) I will guarantee public review of the U.S.-Singapore FTA for: (check one)
- **90 days plus 2 weeks as was allowed for public review of NAFTA**
- **60 days**
- **30 days**
- **Under 30 days**
- **I am not willing to make any guarantee of public review.**

Zoellick's Response 5:

The proposed U.S.-Singapore FTA was publicly released on March 7. The proposed U.S.-Chile FTA was publicly released on April 3. These agreements will be in the public domain for at least 1–2 months before signature and 3–4 months before Congressional action. As you may be aware, the U.S.-Jordan FTA was not available to the public until it was signed.

6. On March 31, 2003, only 1 month from now, the U.S. response is due to EU proposal that could open public services, including municipal water service and the postal service, to foreign investors.

(a) How long have you had EU request?

(b) I will guarantee public review of the U.S. response for (check one)
- **two weeks**
- **one week**
- **I am not willing to make any guarantee of public review.**

Zoellick's Response 6:

The U.S. presented its offer in the WTO services negotiations on March 31, the date mandated in the Doha Ministerial Declaration. The offer was made public and posted on USTR's website that same day.

We have rejected any request by the EU or others to privatize public services. As I stated in October 2002, trade agreements are not the appropriate vehicles to pursue privatization in the United States. It is the responsibility of the Congress and other relevant Federal and sub-federal authorities to make determinations about any new privatization in the United States. In addition, in the ongoing GATS negotiations, we have not requested that our trading partners privatize any service sectors.

With respect to municipal water supply, the offer specifically excludes water for human use. With respect to postal services, the U.S. offer applies only to services open to private sector participants ("express delivery services") and does not give foreign service suppliers the right to acquire or invest in government monopolies supplying services. Specifically, the offer proposes no commitments in the monopoly area of the U.S. Postal Service and would in no way privatize any aspect of U.S. traditional postal activity.

In preparing the offer, we conducted extensive consultations mandated by the Congress through trade advisory groups representing business, labor, environmental, and sub-federal interests. Moreover, because services often are regulated at the sub-federal level in the United States, we went beyond our statutory requirements and communicated directly with a wide array of sub-federal level officials to make them aware of requests we have received and to solicit their views. In January, we sent to all 50 states plus a number of elected officials and associations of state, county, and municipal governments a package of materials summarizing all

requests, including the EU request, received as of that date that implicated state-level laws and regulations.

We did not ask states to change their laws; we conveyed the requests and asked states to let us know if they had removed (liberalized) any laws or regulations for which we had listed GATS limitations on their behalf in earlier WTO negotiations. In those cases, we asked for their concurrence to include that liberalization in our offer. We have prepared our GATS offer based on states' responses. Where responses have not yet been received, we have not acted.

7. When will the USTR release to the public the U.S. position on investor-protection provisions that will be on the WTO agenda for Cancun?

USTR's Response 7:

The United States has not yet offered an investment negotiating proposal for the Cancun Ministerial. The Administration plans to consult further with Congress, with domestic stakeholders, and with key WTO members before developing and presenting a negotiating proposal.

During the Doha Ministerial, WTO members agreed that negotiations on investment would begin after the next ministerial. The Doha Ministerial Declaration also asked the WTO Working Group on Trade and Investment (WGTI) to examine seven issues in the period between the ministerials. These issues include the scope and definition of investment; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; and consultation and the settlement of disputes between members.

Several countries have presented papers to assist exploration of these seven issued in the WGTI. The United States has submitted only one formal paper. The United States took the position that investor protections should cover portfolio as well as direct investment.

8. I understand that in response to a recent lawsuit under the Freedom of Information Act where the court ruled that USTR release certain documents from the U.S.-Chile negotiations, your office is now considering a move to classify such documents in the future in order to thwart the public's right to view them.

(a) Can you confirm that this is true?
(b) If this is true, what documents are you considering classifying?
(c) Please provide any USTR guidelines regarding when public access to documents should be barred by classifying them.

Zoellick's Response 8:

USTR's policy is to achieve the greatest possible degree of transparency in our trade negotiations while optimizing our ability to strike the best possible deals in America's trade interests. As I am sure you can appreciate, in order to achieve the most favorable results for America's workers, farmers, and firms in our trade negotiations, we need to be able to provide our trading partners with assurance that they can exchange views and proposals with us in confidence.

For that reason, it is longstanding USTR practice to maintain the confidentiality of trade negotiating texts. As you may know, the Freedom of Information Act provides that the government may keep confidential a wide range of government records, including agency deliberative records. In a recent lawsuit, a Federal court ruled that the negotiating texts we exchanged with Chile could not be considered agency deliberative records. However, the court also upheld the longstanding principle that classified documents can be kept confidential, and specifically affirmed USTR's classification of documents related to our negotiations with Chile.

The Executive Order governing national security information specifically contemplates that information sent to or received from foreign governments on a confidential basis may be classified. We have included with this response a copy of the Executive Order, and have noted the portion relating to "foreign government information," for your convenience. Pursuant to the Executive Order, USTR classifies negotiating texts on the basis that they contain "foreign government information," when it is our expectation and that of our trading partners that the texts will be kept confidential.

At the same time, to achieve the greatest possible degree of transparency concerning our trade negotiations, USTR routinely makes available to the public summaries of our negotiating positions in every area of the negotiation. In addition, as the negotiations progress we consult with the Ways and Means Committee, other Congressional Committees of jurisdiction, the Congressional Oversight Group, the more than 700 members of our official trade advisory committees, and a broad spec-

trum of groups from the NGO and business communities. These consultations are precisely what Congress called for in last year's TPA legislation.

9. Government Procurement. Would a U.S. law disqualifying a bid on a government procurement contract solely because the good was manufactured with child labor violate any existing trade agreement to which the U.S. is a signatory? Assume that foreign company bidders would be excluded from bidding if their goods were manufactured with child labor.

Zoellick's Response 9:

The main international agreement relating to government procurement in the United States is the WTO Agreement on Government Procurement ("the GPA"). Not all WTO members are Parties to the GPA. The GPA is binding only on WTO members that are Parties.

Outside of the GPA, WTO rules expressly carve out government procurement. Thus, basic WTO principles, such as most-favored-nation treatment and national treatment, do not apply to government procurement, unless covered by the GPA.

The GPA (Article III:1) commits Parties to "provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favorable than: (a) that accorded to domestic products, services and suppliers; and (b) that accorded to products, services and suppliers of any other Party."

A law that prohibits a supplier of a GPA Party from bidding on a U.S. contract, based on the process by which the goods it proposes to supply were manufactured, could be interpreted as a violation of GPA Article III:1. That is because products of a GPA Party would be treated less favorably than like products of other GPA Parties or like products of domestic manufacturers. For this purpose, products would be compared based on their physical characteristics, not based on the processes by which they were manufactured.

It is conceivable that the process by which a good is manufactured would be relevant to an analysis under Article XXIII:2 of the GPA. That provision is similar to GATT Article XX. Under certain specified conditions, it permits a GPA Party to impose or enforce measures "necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour."

It might be argued that a prohibition on procurement of goods manufactured by child labor is designed to protect human life or health (i.e., the life or health of the children in the Parties where the goods are manufactured). However, Article XXIII:2 probably would be interpreted as referring the life or health of humans in the Party that is doing the procuring.

Provisions similar to the foregoing GPA provisions are contained in Chapter 10 of NAFTA, as well as in proposed FTAs with Singapore and Chile.

10. Would such a child labor law violate any proposed agreements, including under (a) the FTAA, and (b) WTO?

Zoellick's Response 10:

As noted in the response to question # 9, disciplines similar to GPA disciplines are contained in proposed FTAs with Singapore and Chile. In fact, Singapore is already a Party to the GPA. Thus, the FTA simply incorporates by reference disciplines that already apply between the U.S. and Singapore under the GPA. The U.S. is likely to seek similar disciplines in other FTAs, including the FTAA.

Regarding the WTO, please see the response to question 9. It should be noted that, under a mandate contained in the GPA itself, that agreement is being revised for greater clarity. The basic disciplines described above are likely to be preserved.

11. Investment provisions in Chile and Singapore FTAs. In your written testimony to the Ways and Means Committee, your comments concerning investment provisions in trade agreements did fully and completely address the congressional mandate in the Trade Act of 2002 that investment rules must not grant foreign investors greater substantive rights that U.S. investors are afforded under U.S. law.

(a) Please explain for each agreement how you "clarified the obligations on expropriation" and "fair and equitable" treatment.

Zoellick's Response 11(a):

The expropriation provisions in the Chile and Singapore FTAs contain several innovations to comply with the objectives set forth in the Trade Act of 2002:

Only Direct and Indirect Expropriations Covered, Not Measures "Tantamount" to Expropriation: Some litigants in NAFTA cases have claimed that NAFTA's expropriation provision covers (1) direct takings; (2) indirect takings; and (3) a new category of measures "tantamount" to expropriation. The Chile and Singapore FTAs eliminate this confusion and clearly state that only direct takings and indirect takings (i.e., measures "equivalent" to direct takings) are covered. This is consistent with U.S. law and the traditional bilateral investment treaty expropriation provision, which has not been controversial.

Scope of Coverage: Consistent with U.S. takings and due process protections, the Chile and Singapore FTAs clarify that only property rights or property interests in an investment are entitled to expropriation protection. This provision addresses the concern that panels may define certain economic interests that are not "property," e.g., market share, as an investment that can be expropriated. This provision is not in NAFTA.

Regulatory Authority: The Chile and Singapore FTAs clarify that nondiscriminatory regulatory actions designed and applied to protect the public welfare generally do not constitute indirect expropriations. This is consistent with U.S. law. This clarification is not in NAFTA.

Penn Central Factors for Indirect Expropriations: The Chile and Singapore FTAs state that, in determining whether an indirect (i.e., regulatory) expropriation has occurred, panels must examine the factors cited by the U.S. Supreme Court in *Penn Central*, the seminal U.S. Supreme Court case on regulatory expropriation. Further drawing on *Penn Central*, the provision instructs the panel that the determination of whether an expropriation has occurred requires a case-by-case, fact-based inquiry. This provision is not in NAFTA.

The fair and equitable treatment provisions in the Chile and Singapore FTAs also contain several innovations to comply with the objectives set forth in the Trade Act of 2002:

Minimum Standard: In line with the NAFTA clarification, the Chile and Singapore FTAs make it clear that the general treatment protection prescribes "the minimum standard of treatment" under customary international law. The FTAs further clarify that this standard includes all customary international law principles that protect the economic rights and interests of aliens. This clarification ensures that the decisions of arbitration panels are rooted in international law principles that the United States has advocated and adhered to for decades, and are not based on subjective determinations of the arbitrators. This clarification is not in NAFTA.

Due Process: The Trade Act of 2002 requires the Administration to seek to establish "due process" standards consistent with U.S. law. The Chile and Singapore FTAs define fair and equitable treatment to include the obligation not to "deny justice" in criminal, civil, or administrative adjudicatory proceedings in accordance with "due process" protections provided in the principal legal systems of the world. The due process protections in U.S. law are consistent with this standard. This provision does not appear in NAFTA.

Define Customary International Law: The Chile and Singapore FTAs include a statement of the FTA parties' understanding that customary international law must be rooted in the practice of nation-states that they follow from a sense of legal obligation, and is not subjectively determined by the panel. Like the clarification of the minimum standard of treatment, this clarification ensures that the decisions of arbitration panels are rooted in international law principles that the United States has advocated and adhered to for decades, and are not based on subjective determinations of the arbitrators. This provision does not appear in NAFTA.

(b) Does this "clarification" differ in any way from the obligations under Chapter 11 of NAFTA?

Response 11(b):

See answer to 11(a).

(c) Do the agreements include the recognition by a majority of Supreme Court justices that a regulatory action requiring the payment or expenditure of money cannot constitute a taking? See Eastern Enterprises v. Apfel, 524 U.S. 498 (1998), as confirmed in Commonwealth Edison Co. v. United States, 271 F.3d 1327 (Fed. Cir. 2001) (en banc), cert. denied (2002).

Response 11(c):

The Chile and Singapore FTAs reflect an understanding that determining when a person should be compensated for adverse consequences flowing from regulatory action is inherently a case-by-case, fact-bound inquiry. That understanding is con-

sistent with principles of U.S. law as articulated by the U.S. Supreme Court, including in the *Eastern Enterprises* case. The Court, in this case and others, has shunned absolute, bright-line tests on this subject.

Certain guiding principles on the question of compensation for regulatory action can be drawn from U.S. cases. Consistent with the objectives of the Trade Act of 2002, those principles have been incorporated into the Chile and Singapore FTAs. Thus, the FTAs direct arbitration panels to refer to those principles in determining whether a foreign investor is entitled to compensation by a host government.

12. Tobacco.

(a) Please provide a list of all tobacco-trade matters since July 2002 that have involved your office.

(b) Please provide a list of all foreign governments in the above list.

(c) Please provide a summary of the dispute involved for all the items in the above list.

(d) Please confirm or deny that USTR consulted with any Federal agency regarding whether the policy would adversely affect public health.

(e) Please provide me with a copy of the Federal agencies' recommendation regarding the effect on public health.

Zoellick's Response 12:

USTR's Office of Congressional Affairs will respond in writing to this request.

[For question 12, attachments are being retained in the Committee files.]
[Submissions for the record follow:]

American Drawback Service, LLC
Englewood Cliffs, New Jersey 07632

Dear Sir or Madam,

I wish to comment on any restrictions to drawback in free trade agreements. I am a licensed customs broker and the president of the American Drawback Service, LLC. I am also retired from U.S. Customs. I believe my viewpoint comes from a background of practical experience.

It is now the common view of those involved with the NAFTA agreement that is poorly conceived, drafted, and implemented from an operational perspective. It is ineffective and cumbersome from the government view and actually keeps companies from taking full advantage because of its complexity. It actually seems to do more harm than good. Using that as basis for the future is a terrible idea, which should not be supported.

I assure you allowing full drawback possibilities for shipments around the world regardless of any trade agreements only helps producers and exporters. This is historically accurate and especially important in these downturn periods. It is my direct experience with clients that Americans continue to have jobs with the refunds generated who would otherwise be unemployed. This is the historical benefit and it is especially true now. You should be looking to expand the possibilities, not diminish them. That would be the height of counterproductive and absolutely not the congressional intent.

Furthermore, drawback is not a subsidy and has never been considered that since the First Continental Congress. It is fully sanctioned by the GATT/WTO and does not initiate countervailing duty actions by any trading partners. In my view, anyone who considers it a subsidy is simply not well informed. In fact, our companies would be at a disadvantage to foreign competitors without it.

Very truly yours,

Tom Ferramosca
President

Statement of American Textile Manufacturers Institute

This statement is submitted by the American Textile Manufacturers Institute (ATMI), the national trade association for the domestic textile mill products industry. ATMI welcomes the opportunity to offer the following comments on the Admin-

istration's trade agenda since international trade is the single most important variable affecting the domestic textile industry's well-being and future.

Since the rise in the value of the dollar began in 1997, particularly against those countries that control or manipulate their currencies, the U.S. textile industry has undergone its most wrenching period of economic distress since the Great Depression. This has included:

- The closing of over more than 250 textile mills during just the last five years
- The loss of over 196,000 jobs during the same period of time
- The economic devastation of entire communities, most located in the Southeastern states, but in Mid-Atlantic and New England states as well.

None of this is the result of the industry's failure to exercise good corporate stewardship. The American textile industry is the most modern, productive and efficient in the world. It is also one of the most forward-looking and export-oriented. From 1990 to 1997, U.S. textile exports increased faster than almost every other country's—indeed, they increased at such a rate that the U.S. textile industry now ranks sixth among world exporters.

This growth was not accidental. Over the past two decades, the U.S. textile industry has worked within the framework of government trade policies that have directly encouraged the development of preferential trading areas for textiles and apparel within the Western Hemisphere. The industry supported the 807A program with the Caribbean, the Special Regime Program with Mexico and the NAFTA agreement. Over this time period, the industry also spent billions of dollars to modernize and improve its U.S. plants and equipment in order to integrate the U.S. textile industry into a new Western Hemispheric framework.

As such, the industry fulfilled its portion of the bargain—to provide quality textiles at a competitive price to growing apparel sectors in the Western Hemisphere. Between the late 1980s and late 1990s, trade in textiles and apparel between the United States and its immediate neighbors skyrocketed as textile exports from the United States topped $12 billion and apparel imports from Mexico and the CBI more than tripled in size. In 1996–97, the U.S. textile industry recorded two of the best years in its history.

U.S. Textile Crisis

However, since 1997, when Asian currencies collapsed and sent a shockwave of artificially low-priced textile and apparel products into the U.S. market, the competitive premise that the U.S. preferential trade areas were founded on has been severely shaken. With Asian prices for textile and apparel products dropping as much as 25% over the past five years and Asian imports more than doubling, U.S. textile manufacturers and workers have suffered extraordinary distress.

The Asian currency problem has been greatly exacerbated by anti-competitive currency practices by major Asian exporting nations, particularly China, Taiwan, India and Korea. These countries, which accounted for $17 billion in textile and apparel exports last year, have illegally manipulated their currencies to gain an artificial export advantage. They have done so by stockpiling enormous amounts of U.S. dollars—over $500 billion since 1997—and thus flooding world markets with their own currencies, dramatically depressing their value and gaining an unfair advantage over U.S. domestic manufacturers.

In the case of China, a study by the Manufacturing Alliance[1] concluded that China's currency was 40% undervalued. Other estimates regarding China have ranged from 15% to 50% while the other Asian countries are put in the 20% range. In any case, with U.S. manufacturing's return on sales running at 4% and U.S. textile's return even lower at around 2%, these currency schemes have put over one hundred thousand U.S. textiles workers out of their jobs over the past several years.

ATMI notes that such activities are not only anti-competitive but they are in violation of the World Trade Organization and International Monetary Fund rules. Further, and just as importantly, they are also in direct contravention of President Bush's own stated policy that markets, not governments, should determine currency exchange rates.

Commitments of Assistance by the Bush Administration

Since the textile crisis began, the Bush Administration has made a number of important commitments regarding the industry. On March 28th, 2002, President Bush said that "minimizing the impact of future trade deals on the domestic textile industry was at the top of the Administration's agenda."

[1] For a copy of a report go to: http://www.mapi.net/html/prelease.cfm?release_id=393

On January 2, 2002, Commerce Secretary Don Evans said that the government "understands that this industry is a cornerstone of the American manufacturing industry" and reiterated that "these aren't just words. You'll see through our deeds and works that we will deliver."

On January 26, 2002, Secretary Evans stressed that "I don't believe there is a level playing field for the textile industry in America, and we want to help fix that." He promised that the industry "will now get results from the federal government."

On February 4, 2002, Commerce Undersecretary Grant Aldonas reiterated the Administration's firm commitment "to ensure that our textile and apparel industries can compete in global markets."

The domestic textile industry has been heartened by the many public statements of support by the Bush Administration. These statements have reassured the industry during this time of unprecedented distress that the U.S. government understands the industry's turmoil and is willing to help.

To date, the Administration has acted to support the U.S. textile industry on a number of key issues, including: insisting on a yarn-forward rule of origin for free trade agreements; refusing to accelerate the phase-out of textile quotas; and not using the industry as a bargaining chip in the war on terrorism. These actions are important in assisting the U.S. textile industry during its time of need and the industry is grateful.

However, in other areas that have an even greater impact on the industry's long-term competitiveness, not to say its very survival, government actions to date have been more disappointing. In particular, the government's tariff proposal for textiles under the Doha Round, its refusal thus far to act against Asian currency manipulators (particularly China), and its long delay in reacting to ATMI's request to utilize the China textile safeguard provision all pose issues of survivability for the entire industry and make strategic business planning difficult, if not impossible.

ATMI looks forward to working with the Bush Administration and Congress on all of these issues in order to ensure that the U.S. government keeps its commitments to minimize the impact of trade agreements on the domestic textile industry, to level the unfair international playing field and to ensure that the U.S. textile industry can compete in global markets.

Doha Textile Tariff Offer

The textile tariff offer made by the U.S. government in the Doha Round of world trade talks has caused enormous concern in the domestic textile industry. Simply put, the proposal to bring U.S. textile and apparel tariffs to zero over a ten year phase-in period would eliminate the textile industry as a major manufacturing entity in the United States.

As a corollary, it would also hand over the enormous U.S. textile and apparel market to China and devastate the enormous apparel industries that have been built up in Mexico, Central and Latin America under preferential trade programs and partnership arrangements that the United States has actively promoted for almost twenty years. It would also devastate the rapidly growing African apparel industry, which also depends on tariff preferences to remain a viable exporter to the United States.

Thus, while the tariff proposal appears to require genuine reciprocity from exporting countries, by removing all tariffs on imported products as well as all preferential tariff benefits for Canada, Mexico, Central and Latin America and Sub-Saharan African countries, the proposal also literally sentences textile and apparel manufacturers in those countries to extinction. Reciprocity is of no benefit if your factory has gone out of business and you have been forced to lay off all your workers.

For those who study textile and apparel trade, there is little question that if this proposal becomes a reality, China, which is already by far the world's largest textile and apparel producer, would gain control of the world's largest consuming market for textiles and apparel. In developed country markets such as Japan and Australia, where duties are currently close to zero and there is no quota protection, China already controls more than 75% of the import market for textiles and apparel. No country, no matter how low its wage rates—not Bangladesh, India, Vietnam or Pakistan—has been able to compete with China at the scale and range of textile goods that China produces.

Closer to home, in textile and apparel product categories recently decontrolled from quota, China has quickly moved to gain the lion's share of trade. Of the five categories of products[2] in which China has caused serious damage to U.S. textile manufacturers, in just twelve months time, China has soared to a level of market share now twice as large as its next largest competitor. China has accomplished this

[2] Brassieres, dressing gowns, gloves, knit fabric and luggage.

while competing head-to-head with some of the largest exporting countries in the world, such as Thailand, Malaysia, India, Pakistan and Indonesia.

None of this should come as a great surprise. A United States International Trade Commission study on the impact of the Uruguay Round in 1994 concluded that, even with paying full tariffs, once China's quotas were removed it would quickly trounce much of its competition. Other studies—by Nathan Associates, by the United Nations, and by China itself—have come to the same conclusion.

Thus, if China is a severe threat under a full duty regime, how much greater a threat will China be if it gets zero duties? As a start, such an occurrence would take away the advantages we have given to the preferential trade countries of Mexico, Central America and the Caribbean, the Andean, Israel and Jordan and those of Sub-Saharan Africa, and instead put them on an equal footing with the world's greatest textile and apparel power. As mentioned earlier, none of these countries—or in fact any country—has been able to compete with China when duties are reduced to very low levels.

Given the cool reception in Geneva since November to the U.S. textile proposal, ATMI hopes to work with the Administration to craft a new proposal that fulfills the President's commitment to minimize the impact of future trade agreements on the domestic textile industry. In this context, ATMI has suggested to the U.S. government that other countries should first reduce their tariffs to U.S. textile tariff levels before proceeding to a sectoral negotiation on individual tariff rates. In addition, countries would be required to remove all their non-tariff barriers with two years.

A sectoral approach would also permit the consideration of such issues as WTO rules and disciplines on intellectual property for textile designs and copyrights, and enforcement of prohibitions against duty evasion and other customs fraud. These issues will not be negotiated elsewhere in the WTO and only a sectoral approach will permit them to be considered.

ATMI's approach has the benefit of enabling countries with preferential access to remain competitive, and it addresses existing inequities in market access while meeting the U.S. government's commitment "to ensure that our textile and apparel industries can compete in global markets."

China and Other Asian Currency Manipulators

A key, if not *the* key, component in the economic distress experienced by the domestic industry, has been the sustained depreciation of Asian currencies against the U.S. dollar. This decline in currency values, which has averaged 40% over the past five years, has allowed Asians to drop their export prices by as much as 25% and caused an enormous surge in imports from Asia. The end result has been the closure of over 150 textile plants in the United States and the loss of over 100,000 textile jobs in just the last two years.

While other currencies—notably the euro—have strengthened recently against the dollar, the Chinese yuan, the Korean won and the Taiwan dollar have remained dramatically undervalued. All three of these major exporting countries manipulate their currencies to gain an anti-competitive advantage over U.S. manufacturers. These countries have compiled over $500 billion in foreign reserves over the past five years; China, which pegs its currency at 8.26 yuan/$1, has accumulated almost $275 billion and is adding to its cache at the rate of $6 billion per month.

The effect of these reserve accumulations is to make U.S. dollars scarce vis a vis these Asian currencies, thus driving down the value of Asian currency vis a vis the dollar. The end result has been record imports from those countries of manufactured goods at artificially depressed prices. Chinese exports of all goods to the U.S. jumped 20% last year with China, at $102 billion, surpassing Japan as the single biggest slice of the U.S. trade deficit. According to the MAPI study mentioned earlier, China benefits by getting a 40% subsidy on the goods its exports from its undervalued currency. And as shown earlier, this outright subsidy becomes the basis for making China literally unbeatable in world textile and apparel markets.

ATMI, as well as the National Association of Manufacturers, among others, has pressed the United States government to take action against these anti-competitive currency practices. ATMI has noted that these activities are in violation of both the WTO and the International Monetary Fund rules as well as in direct contravention of the President's own stated policy that governments should not intervene in currency markets. However, there has been no attempt by the Treasury Department, the Commerce Department or the United States Trade Representative's Office to confront this behavior, which has been so costly in terms of U.S. jobs.

A comprehensive, effective trade policy must react to currency manipulation, particularly to the extreme degree it is being practiced today by major trading partners. When currencies trump the effects of tariffs by multiples of degrees, then trade pol-

icy must recognize and confront the fact of manipulation. Indeed, while Ambassador Zoellick is now required by law to take currency movements into account when negotiating agreements under the Trade Promotion Authority provisions of the Trade Act of 2002, we have not yet seen any actions by our government to address the inequity that exists. ATMI continues to urge that the government take on, as a high priority, the elimination of illegal currency manipulation to gain export advantage. Until this manipulation is stopped, it will be impossible to assert that a level playing field exists for U.S. textile companies (or for many other U.S. industries).

Special China Textile Safeguard

The special China textile safeguard was agreed to by China as part of its WTO accession package and was designed to protect domestic textile manufacturers from surges in imports from China once quotas were removed. However, over the past twelve months, imports of decontrolled Chinese goods have increased at the fastest rate in history—a 600 percent increase—and yet the U.S. government has thus far refused to invoke the China textile safeguard.

This lack of response comes at a time when U.S. textile mills are still closing, U.S. textile jobs are still being lost and the U.S. textile industry is still under great distress. It is occurring when China, in the space of single year, has overtaken Mexico and Canada to become far and away the biggest exporter of textile and apparel products to the United States.

It is difficult to conceive of a more direct, clear, and specific instance of the need for the U.S. government to act to "minimize the impact of trade agreements on the domestic industry"—yet, despite repeated pleas on behalf of the American textile industry for the government to fulfill its commitment, the China textile safeguard remains unused.

Industry Outlook Uncertain

Because of this triad of issues—the need for the government to work with ATMI to modify the U.S. tariff proposal, the government's failure to react against blatant and illegal currency manipulation by leading Asian exporting nations and, finally, the government's failure to utilize the very tools that it negotiated in the China WTO accession agreement—the American textile industry remains concerned about its long term outlook. Indeed, while the government is to be praised for the positive actions mentioned earlier, ATMI is worried that these benefits could be entirely washed away by a flood of duty-free, currency-depressed imports from China if they are not restrained by use of the textile safeguard.

Implementation of Chile and Singapore Free Trade Agreements

Regarding the Chile and Singapore Free Trade Agreements, the potential benefits to the domestic textile industry are welcome, but are likely to be small. The purchasing power of both countries is less than that of New York City. Furthermore, since Singapore lies at the crossroads of the various large, export-oriented Asian economies—China, South Korea, Taiwan, Indonesia, etc.—it is doubtful that the United States will develop significant sales opportunities in Singapore. For the record, U.S. exports of textile products to Singapore and Chile last year were $41 million and $23 million, respectively. Nonetheless, U.S. textile companies will work to take advantage of the agreements' yarn-forward rule of origin and will seek customers in both markets.

Future Trade Agreements

As models for future free trade agreements, ATMI supports the inclusion of the NAFTA yarn-forward rule of origin. This rule, which is not only in the NAFTA agreement but also exists with respect to the CBI and Andean preferential trade areas, ensures that free trade agreements benefit manufacturers in the participating countries or region, rather than third country manufacturers. ATMI has consistently opposed the incorporation in free trade agreements of relatively (to the trade) large exceptions to the rule of origin in the form of tariff preference levels (TPLs), and has urged the government not to include these in future agreements. ATMI believes that a short supply provision adequately provides the flexibility needed to address inputs unavailable within any free trade region.

ATMI notes with concern that the U.S. government has failed to include a "kick-out" clause in free trade agreements already negotiated. Such a clause would permit the United States to withdraw tariff benefits if a country did not adequately enforce its textile rule of origin. Currently, there is no means to force a country to actually enforce its textile rule or other agreed upon measures. This has been a long-standing problem regarding quota agreements and is a particular concern regarding Singapore, which has a long history of permitting illegal transshipments through its territory.

In sum, ATMI has commented often to various branches of the Administration and Congressional committees with regard to the essential elements of any and all free trade agreements, and ATMI will review each future trade agreement with these objectives in mind. These essential elements include:

1. *Strong rules of origin* which discourage, to the greatest extent possible, the use of raw materials, semi-manufactures and other inputs from third countries not party to the agreement. Providing such opportunities to other countries which paid nothing for the privilege is simply bad trade policy. As such, any exceptions such as tariff preference levels that permit Asian manufacturers should not be included in any free trade agreement. With regard to free trade in textiles and apparel, the rules of origin should be no less rigorous than those incorporated in NAFTA.
2. *A completely reciprocal and balanced tariff phase-out schedule*—To permit one partner to a free trade agreement a longer phase-out of tariffs than the other is, again, bad trade policy, and NAFTA may serve as the model.
3. *Clear and strong provisions relating to customs enforcement measures* intended to ensure full compliance with all terms and conditions of the agreement. These include the unequivocal right of the importing partner to audit and conduct inspections of exporters in the partner country as well as the inclusion of the "kick-out" clause described above.

Vietnam Bilateral

In its Commerce Department Textile Working Group Report issued last September, the U.S. government assured the American textile industry it would move quickly to conclude a bilateral textile agreement with Vietnam. However, because of intransigence on the part of the Vietnamese government, it is now March and an agreement is still not in place. According to trade figures released last week, imports from Vietnam totaled nearly one billion dollars in 2002, compared to just $50 million in 2001. During the same period of time, the U.S. textile industry shed 46,000 jobs—ten percent of its workforce—and closed at least 37 textile mills.

The 2002 trade figures confirm a long-held concern on the part of the industry that imports from Vietnam would quickly mushroom once normal trading status was granted. AMTI notes that no non-WTO member country has ever been allowed to grow so dramatically before restraints have been imposed. Indeed, during the last major U.S. bilateral negotiation in 1999, Cambodia had comprehensive quotas imposed when trade was less than one-third of Vietnam's current level.

According to the U.S. International Trade Commission, since October, monthly textile and apparel imports from Vietnam have leapfrogged over those of two major U.S. textile exports markets—Guatemala and Costa Rica—as well as other substantial suppliers such as Turkey, Sri Lanka, Cambodia, and Malaysia. Yet, we note that these countries have literally dozens of quotas in place while Vietnam remains quota-free. This raises an important equity issue—why is a country that is not a WTO member being given more favorable treatment by the U.S. than WTO members receive?

As a point of contrast, during these same three months, the U.S. textile industry closed two knitting plants, one yarn plant and one weaving plant. In addition, two textile mills—Flynt Fabrics and Johnston Industries—filed for bankruptcy. It is clear to ATMI that Vietnam is playing a successful game of "delay and build textile trade" at the expense of U.S. producers and workers. ATMI strongly urges the government to impose unilateral restraints immediately on all products where such action is warranted. Whether or not these actions convince Vietnam to negotiate is irrelevant—these actions are justified and necessary.

Other Bilateral Trade Issues

There has been an increasing amount of agitation and pressure generated by our trading partners (and, most regrettably, within certain quarters in the United States) to weaken international disciplines and U.S. laws applicable to subsidies and dumping. Under no circumstances can this be allowed to happen. In fact, both international disciplines and U.S. laws must be expanded and strengthened in this regard. For example, injured domestic parties should be allowed to attack and receive relief from "upstream" subsidies and dumping and to attack subsidies and dumping in third country markets, which displace U.S. exports. The following example of the latter demonstrates why this is necessary.

One of the domestic textile industry's largest export markets (in fact, its second largest, after Mexico), is the Caribbean Basin Trade Partnership Act (CBTPA) countries. The U.S. industry exported $4.5 billion worth of yarns, sewing thread, fabric and cut fabric pieces to this market last year, nearly all of which was used to assemble apparel for return to the United States.

However, at the same time, several Asian countries exported unfairly traded (dumped, subsidized) yarns and fabrics to these same countries to be assembled into apparel for export to the United States. The CBTPA countries do not object to this trade because the goods enter foreign trade zones duty-free and are (almost) immediately re-exported without ever having entered their domestic market. Meanwhile, U.S. textile firms that lose valuable export sales as a result are powerless to do anything about it. This is a multi-billion dollar problem that needs to be addressed.

Conclusion

As this statement makes clear, the U.S. government's trade agenda is vitally important to the future well being of the domestic textile industry. ATMI welcomes the government's many actions in support of the U.S. industry during this particularly difficult period of time and looks forward to working with the Bush Administration and the Congress on the vitally important trade issues that remain to be addressed. These include the creation of an equitable Doha Round tariff and non-tariff barrier market access proposal, prompt use of the China textile safeguard, action against illegal Asian manipulators and the imposition of unilateral quotas on imports from Vietnam.

Carmichael International Service
Seattle, Washington 98104

Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Comments on the Trade Promotion Authority Act (TPA) of 2002 (P.L. 107–210). Committee on Ways & Means Advisory of February 14, 2003.

Dear Sir or Madam:

The above advisory invites comments on the implementation of the Trade Promotion Authority Act and we wish to take the opportunity to voice our concerns on the affects implementation will have on Duty Drawback in the United States on exports to countries with whom we enter into free trade agreements.

Drawback is 200 year old trade policy whose stated purpose in 1789 is the same as it is today—to promote U.S. exports and enhance the competitiveness of U.S. business simply be refunding duty paid on imports that are subsequently exported. Court cases dealing with drawback rarely fail to reiterate these purposes. The WTO's Agreement on Subsidies and Countervailing Measures has ruled that duty drawback is not an export subsidy. Yet with the implementation of NAFTA in 1993, drawback was severely restricted on exports to Canada and Mexico driven in part by misguided definitions of what the drawback law means by "substitution drawback." The result is that drawback that is available on exports to our worst trading partners is eliminated completely in the case of Manufacturing Drawback and curtailed in the case of Unused Merchandise Drawback on exports to our best trading partners.

Free trade acts that are implemented at punitive costs to U.S. exporters are not free, particularly when those costs are not present prior to free trade. We vigorously oppose the elimination or change of any of the present drawback law or regulations in any free trade agreement entered into with any country.

Yours very truly,

Steve Orton
Manager, Drawback Services

Statement of the Carnegie Endowment for International Peace

Trade, Equity, and Development Project
February 2003

Opportunities and Challenges to Advance Environmental Protection in the U.S.-Central American Free Trade Negotiations

By John Audley

Trade negotiations between the United States and Costa Rica, Guatemala, El Salvador, Honduras, and Nicaragua hold the potential to forge a new U.S.-Central American framework for trade that strengthens democracies; promotes respect for workers' rights; establishes sound, properly enforced environmental laws; and creates economic opportunities through trade for people living in developing nations. Accomplishing this challenging agenda will take bold leadership from all six countries.

Central American governments have for some time recognized the importance of conserving natural resources and protecting their environment. Unfortunately, existing environmental infrastructures are inadequate to mitigate environmental damage stemming from urban, rural, and industrial activities. The Inter-American Development Bank has found that deteriorating investment in natural resources and environmental protection has put Central America's natural resources, as well as community health, at risk. Nearly 75 percent of Central America's population lives in conditions where vehicular congestion, industrial and vehicular emissions, depleted water sources, water pollution, and land and housing scarcities reduce productivity, increase violence, and diminish public health.[i]

Recent reports by researchers from the United Nations Development Program and Oxfam also show that trade-led growth alone does not build healthy dynamic economies.[ii] In addition to trade, societies need infrastructure, education, and basic public health services before communities can begin to benefit from expanded economic activity. As the Oxfam report shows, without programs to promote access to better health care and education for children, trade liberalization in such key sectors as Central American coffee has resulted in plummeting commodity prices, thereby contributing to an increase in pressure on rural families to rely on their children's labor to earn a living wage.

Relatively weak governing systems in most Central American nations raise doubts that increased trade and investment liberalization will lead to the necessary conditions for sustainable growth unless the United States makes achieving this objective a primary goal in negotiations for a U.S.-Central American Free Trade Agreement (CAFTA). Fortunately, the U.S. Congress and George W. Bush's Administration recognize the important relationship between U.S. trade policy, environmental protection, and more equitable growth. In *The National Security Strategy of the United States of America,* the Administration argues:

A strong world economy enhances our national security by advancing prosperity and freedom in the rest of the world. Economic growth supported by free trade and free markets creates new jobs and higher incomes. It allows people to lift their lives out of poverty, spurs economic and legal reform, and the fight against corruption, and it reinforces the habits of liberty. . . . We will incorporate labor and environmental concerns into U.S. trade negotiations.[iii]

Congress makes the link between trade and environmental policy as well. U.S. Trade Promotion Authority (TPA) instructs U.S. negotiators to foster a healthy national economy, freer markets, and improvements in labor conditions and environmental protection.

To fulfill both Congress's and the Administration's commitments to environmentally responsible trade agreements, the Office of the U.S. Trade Representative (USTR) must accomplish three goals in the CAFTA negotiations. First, it should integrate future technical assistance and capacity-building efforts into the existing framework of assistance offered to Central American nations to enhance their national, regional, and international levels of environmental protection. Second, in a manner consistent with TPA instructions, the U.S. negotiating positions should build upon existing trade and environment linkages to encourage its Central American trading partners to implement and strengthen environmental laws. Third, CAFTA should be negotiated and implemented in a manner that fosters good governance and reinforces democracy in Central America.

BUILDING ON EXISTING ENVIRONMENTAL PROTECTION EFFORTS

In passing Trade Promotion Authority, Congress emphasized for the first time the important role negotiations must play to "strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable

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[i] Inter-American Development Bank, *Facing the Challenges of Sustainable Development: The IDB and the Environment: 1992–2002*. (Washington, D.C.: Inter-American Development Bank, 2002).

[ii] See Kamal Malhotra, *Making Trade Work for People*. (London: Earthscan Publications Ltd, 2003); "Rigged Rules and Double Standards" (Oxford: Oxfam International, 2002).

[iii] *The National Security Strategy of the United States of America* (Washington, D.C.: White House, 2002), pp. 17, 19.

development."[iv] This objective should be achieved through the existing framework of technical cooperation to avoid redundancy and to facilitate the coordination of technical assistance efforts already under way.

The existing framework for environmental cooperation is based upon the work of the Comisión Centroamericana de Ambiente y Desarrollo (CCAD), established by the Central American governments in 1988 to create and strengthen national organizations dedicated to environmental protection and development. Work orchestrated by CCAD is assisted by foreign governments and intergovernmental organizations, including the United States. Their combined contributions help provide technical expertise and capacity building in important areas such as climate change, endangered species protection, responsible forestry, and environmental protection.[v]

To ensure that the framework for existing technical support is incorporated into negotiations, ***federal agencies, Congress, and interested citizens should be made fully aware of the technical assistance and capacity-building work already under way in Central America***. In TPA, Congress created a special oversight group to monitor the trade negotiations on a day-to-day basis; this Congressional Oversight Group should seek summary reports from federal agencies involved in ongoing technical support projects.[vi]

Central American governments should be encouraged to consult with CCAD, PROARCA, and CONCAUSA as they develop their hemispheric cooperation programs. On the basis of a review of the national action plans for trade capacity building recently released by the Central American governments, such interaction has not yet occurred; as a result, these draft national action plans fail to fully incorporate environmental infrastructure and capacity-building needs.[vii] Costa Rica is an exception; in its draft plan of action, it emphasized the need to develop and strengthen solid waste disposal, wastewater treatment, and hazardous waste management throughout the country.

Given the large loads and small staffs of these negotiating teams, this is not surprising. U.S. embassies should be instructed by the Department of State to contact Central American environment and development agencies and promote interaction between Central American trade policy makers and these programs. Along with the long-term benefits of better coordination between international trade and domestic policy, State Department Foreign Service offices can also explain that including environment and development concerns in their plans of action will actually help U.S. negotiators achieve the broader goals for trade liberalization outlined by Congress in TPA.

Finally, relationships between Central American officials and the staffs of relevant U.S. federal technical support agencies (e.g., USAID, the Environmental Protection Agency, and the Department of Agriculture) are critical to the long-term success of technical assistance projects. Such direct working relationships between donor and client help tailor U.S. assistance to meet the needs of countries receiving assistance. Because long-term technical assistance and capacity building will not be the USTR's responsibility, ***to help foster appropriate intergovernmental relationships, the USTR should assign officials from such agencies as USAID and the Department of State to negotiate technical assistance agreements***. The U.S. Departments of State, Commerce, and the Treasury historically have taken

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[iv] U.S. Trade Promotion Authority, Article 2102(b)(11)(D).

[v] Since 1995, under the auspices of the U.S. Agency for International Development's (USAID's) Ambiental Regional para Centroamerica (PROARCA) project, U.S. federal agencies have assisted Central American nations to increase the effectiveness of regional stewardship of the environment and key natural resources in target areas. In particular, U.S. support has emphasized coastal water protection and maintaining the biodiversity of the region's key forest systems. PROARCA's contribution to the enhancement of Central American environmental protection efforts is consistent with the goals of the Central American-United States of America Joint Accord (CONCAUSA), which was signed on the margins of the 1994 Miami Summit of the Americas and renewed in 2001. This accord made the United States the first extraregional partner in the already existing Central American Alliance for Sustainable Development (ALIDES). For detailed information on targeted CCAD areas and sources of support, see http://ccad.sgsica.org. See http://www.ard-biofor.com/proarca.html for additional information regarding the PROARCA project. See the Department of State fact sheet at http://www.state.gov/r/pa/prs/ps/2001/3325.htm.

[vi] The U.S. Agency for International Development is responsible for the Administration of Central American technical assistance under PROARCA. The U.S. Environmental Protection Agency has implemented many PROARCA technical assistance projects, e.g., to develop integrated solid waste management and wastewater treatment infrastructure, to reduce the inventory of obsolete pesticides stockpiled throughout the region, and to improve food quality for fresh produce exported from Central America.

[vii] National action plans (as of February 2003) for El Salvador, Guatemala, Honduras, and Nicaragua can be viewed at www.USTR.gov.

the lead in negotiating areas of trade agreements in which they have particular expertise. Reallocating USTR officials to assist negotiations in other areas would also help to lessen the burden shouldered by USTR staff to engage in a growing number of trade negotiations.

TRADE-RELATED INCENTIVES FOR ENVIRONMENTAL PROTECTION

Under work orchestrated nationally and in such regional efforts as CONCAUSA, Central American governments have taken important steps toward establishing an effective environmental protection regime. That said, many important challenges remain. In addition to supporting ongoing capacity-building efforts, the United States should negotiate a free trade agreement that creates direct, trade-related incentives for environmental protection.

Promoting Green Product Exports

There is a growing demand for goods produced in an environmentally sustainable fashion. The European Union estimates that its environmental "industry" generates 54 billion euro a year, and employs more than 2 million people, or 1.3 percent of its total paid labor force. Roughly 1.5 million people are employed in pollution management activities, and another 650,000 in resource management. Investors in industrial countries have also begun to tailor their own investments to promote environmentally sustainable production. The value of managed investment funds that now use one or more social-screening criteria—of which environmental criteria are among the most prominent—increased from $1.49 trillion in 1999 to more than $2 trillion in 2001. Today, nearly one in every eight dollars under professional management in the United States is invested in socially responsible firms.

In its Doha Declaration, the World Trade Organization's (WTO) reflected this shift in interest in environmental goods by instructing its Members to reduce or eliminate tariff and nontariff barriers to environmental goods and services.[viii] Congress supports this initiative in its trade instructions to the USTR.[ix] Unfortunately, the current focus in WTO negotiations is on high-technology environmental goods, such as pollution scrubbers and wastewater treatment equipment.

Although the high-technology environmental goods sector is important for promoting sustainability, these products are produced and traded by industrial countries, so there is little incentive for such developing countries as Honduras, Guatemala, El Salvador, or Nicaragua to support the negotiations. Conversely, along with Costa Rica, these countries enjoy a competitive advantage in environmentally sensitive agricultural products. ***The United States and Central American countries must take the innovative step of proposing favorable trade terms for Central American agricultural products that are produced in sustainable ways***.

Along with technical assistance programs to help Central Americans resolve nontariff issues related to food safety or technical barriers, facilitating trade in "green" agricultural products by eliminating all tariffs and tariff-rate quotas on these products would help the U.S. government achieve a number of objectives. Industrial countries resist expanding the definition of an environmental good, fearing that the temptation is too great to exploit this language to protect domestic industries. Both industrial and developing countries also fear the use of product labels necessary to distinguish green products.

Though conscious of these constraints, negotiating a solution to both the problem of how to define a green good and the use of product labels among a smaller number of countries first would enable the United States and its neighbors to propose unified solutions in multilateral negotiations. Preferential or accelerated trade liberalization in organic products also demonstrates to the public that trade rules can encourage trade in products that make sense economically and socially. Finally, due to its more labor-intensive nature, sustainable agriculture will help keep farmers working, and thereby promote healthy rural communities. And given the growing number of consumers willing to pay a premium for organic products, trade liberalization in green agricultural products would pose minimum competition for U.S. farmers.

Making Binding Commitments to Protect the Environment

Congress also instructed U.S. negotiators to ensure that the country's trading partners do not fail to effectively enforce their labor and environmental laws to gain a competitive advantage. Unfortunately, to date this approach has achieved little in

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[viii] World Trade Organization, Fourth Session of the World Trade Organization Ministerial Declaration, adopted in Doha, Qatar, on November 14, 2001.

[ix] U.S. Trade Promotion Authority, Article 2102(b)(11)(F).

the environmental sphere. Parties have never implemented Part V of the North American Agreement on Environmental Cooperation (NAAEC), making it virtually impossible for one party to file a complaint against another. U.S. trade agreements with Jordan, Chile, and Singapore mark an important shift in U.S. trade policy because they move the commitment to enforce environmental laws into the body of the trade agreement. Yet even this kind of "enforceable" environmental language is unlikely to be applied effectively without public involvement in its implementation.

To strengthen the linkages between trade commitments and environmental policy goals, the United States should negotiate several additional provisions for CAFTA. First, besides insisting that Central American governments enforce their national environmental laws, ***the United States and Central American countries should agree to two things. First, they should agree that all trade measures found in multilateral environmental agreements are consistent with international trade obligations, and therefore immune from WTO challenges from CAFTA parties. Second, the United States and Central American nations should make a commitment to implement the multilateral environmental agreements (MEAs) containing trade measures to which they are a signatory***.

Although the World Trade Organization has not yet finalized a list of MEAs containing trade measures, the United Nations Environment Program (UNEP) and the International Institute for Sustainable Development (IISD) identify only about twenty MEAs that contain trade provisions, of which even fewer are significant for the environment-trade interface.[x] The United States argues that there are no inconsistencies between WTO rules and MEAs; one way to support this position is to encourage the CAFTA parties to work with UNEP to determine and implement all trade measures found in MEAs to which they are a party.[xi]

U.S. technical assistance also should be directed to assisting Central American governments to fully implement their MEA obligations, whether or not the United States has signed or ratified the same treaty. For example, the Montreal Protocol, which all CAFTA parties have ratified, has successfully controlled trade in ozone-depleting substances and trade in products containing these substances; to help accomplish this goal, it established a fund to assist developing countries in their transition away from controlled substances. The United States should likewise assist its Central American trading partners to build the capacity necessary to comply with their MEA obligations, even if—as in the case of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal—the United States itself has not yet ratified a particular agreement.

Second, ***the United States and Central American countries should make a commitment to take the necessary legislative, regulatory, and other measures to collect and publicly disseminate environmental information***. For the Central American countries, this provision should include taking steps to establish progressively—with U.S. technical assistance—a coherent, nationwide pollutant release and transfer register, which is similar to the U.S. Environmental Protection Agency's Toxic Release Inventory.

International demand is growing for pollution "right to know" legislation similar to that applied in the United States. Other governments are responding to public demand as well. The government of Mexico recently modified its General Law of Ecological Balance and Environmental Protection to require states, the Federal District, and municipalities to keep a release and transfer register for air, water, soil and subsoil pollutants, materials, and wastes under their jurisdictions, as well as those substances determined by the corresponding authority. Changes in Mexican law are directly the result of technical assistance provided by the North American Agreement on Environmental Cooperation, to which the U.S. is a party. Other examples of the move to public disclosure can be found in the Aarhus Convention, which to date has been signed by 40 European governments.[xii] Accessible and trans-

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[x] The United Nations Environment Program (UNEP) Division of Technology, Industry and Economics, Economics and Trade Unit, and the International Institute for Sustainable Development (IISD), *Environment and Trade: A Handbook* (Winnipeg: ISSD and UNEP, 2000).

[xi] MEAs relevant to trade regimes include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Convention on Biological Diversity; the Montreal Protocol; the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal; the Framework Convention on Climate Change; the Convention on Persistant Organic Pollutants; the Rotterdam PIC Convention (not yet in force); and the Cartagena Protocol on Biosafety (not yet in force).

[xii] Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters, signed June 25, 1998, at Aarhus, Denmark. Though the U.S. government has raised concerns about the compliance regime of the Aarhus Convention, the spirit of the convention is in line with U.S. domestic policy and international priorities, and as such it should be recognized as a basis for negotiations.

parent information will provide moral suasion incentives for CAFTA trading partners and investors to uphold national environmental laws, as well as permit stronger analyses of trade-related environmental impacts.

Third, ***CAFTA parties should negotiate language encouraging private industry to follow voluntary guidelines for environmental management and reporting, including Responsible Care, the International Standards Organization's ISO–14000, and the disclosure guidelines found in the Organization for Economic Cooperation and Development's Guidelines for Multinational Corporations***. As important as negotiated text is, perhaps the most effective way for private firms to influence environmental protection is to demonstrate that businesses can and will be responsible Members of both international and local communities.

In this regard, many U.S. and Canadian firms have records to be proud of, because they are leaders in the use of green technology to lowers costs and increase productivity while improving the environment. These companies also have adopted responsible policies for releasing public information regarding chemical use, emergency response programs, and other environmental management practices. With proper encouragement from governments, disclosing information regarding environmental practices should be a small step for business to take—with tremendous potential for positive gain.

Finally, the policy steps recommended here must be supported by the creation of an objective reporting mechanism to ensure that new laws are effective and enforced. The United States and its Central American trading partners can break new ground in this area by instructing UNEP to conduct independent reviews of U.S. and Central American trade-related environmental laws and their implementation. In the short term, information of this kind would be useful to focus U.S. technical assistance and capacity building in preparation for CAFTA's implementation. More generally, environmental protection performance reports would provide information useful for the Bush Administration's efforts to promote good governance, and perhaps help in determining whether a particular Central American country is eligible for additional U.S. development assistance.

GOVERNANCE AND TRADE

The Bush Administration rightly emphasizes the link between good governance and healthy societies. In his speech announcing the Millenium Challenge Account, the president said:

> Countries that live by these three broad standards—ruling justly, investing in their people, and encouraging economic freedom—will receive more aid from America. And, more importantly, over time, they will really no longer need it, because nations with sound laws and policies will attract more foreign investment. They will earn more trade revenues. And they will find that all these sources of capital will be invested more effectively and productively to create more jobs for their people.[xiii]

Trade agreements can contribute to achieving the goal of good governance if they involve the public in their negotiation and administration. The United States should negotiate CAFTA to include three good governance provisions: dispute settlement proceedings, environmental reviews of trade agreements, and participation and transparency measures.

Dispute Settlement Proceedings

The record of international trade dispute settlements underscores the impact that these decisions can have on domestic policies. In some instances, public health or food safety regulations developed through public notice and comment are being challenged as inconsistent with trade disciplines. Just as in cases where the government considers amending a U.S. law in response to litigation, the public has standing in such cases. Citizens should be able to

a) offer their opinion on the case through *amicus curiae* submissions;
b) have access to all nonproprietary documents related to the dispute;
c) observe the presentations before the dispute settlement panel;
d) have immediate access to the findings; and
e) be eligible for an appeal process that enables governments to correct for improperly decided cases.

[xiii] "President Proposes $5 Billion Plan to Help Developing Nations," remarks by the U.S. president on global development, Inter-American Development Bank, Washington, D.C., March 14, 2002.

These recommendations are consistent with congressional instructions to promote openness at the WTO and other international institutions, and they currently make up the USTR's formal position offered in WTO Geneva discussions.[xiv]

Environmental Reviews of Trade Agreements

The United States should actively encourage its trading partners to conduct environmental assessments of trade liberalization. A 1999 report commissioned by the environmental ministry in Brazil underscores the level of interest among Latin American governments in this kind of analysis.[xv] Efforts by the Organization of American States and such private organizations as the World Wildlife Fund and World Resources Institute have shown that conducting environmental assessments builds long-term capacity to enact and enforce national environmental laws.

Participation and Transparency

In her work on behalf of the Inter-American Development Bank, recognized trade scholar Sylvia Ostry has shown that few countries in the Western Hemisphere have a trade policy-making process that adequately and fairly consults with ministries, parliaments, or affected constituencies.[xvi] Simultaneously, citizens' groups around the world are asking their governments to develop and implement trade policy in a more open and transparent fashion.

The United States has an opportunity to increase good governance by incorporating certain transparency and public participation provisions into the CAFTA agreement. In particular, the United States should insist that CAFTA

a) ***Grants citizens a right of petition***: The United States has been severely criticized for using trade agreements to grant industries the right to seek compensation for actions resulting in property expropriation by parties to a trade agreement. Although I do not believe that this approach to ensuring property rights protection is unnecessary, citizens should be given the same opportunity to petition for their rights. Such a right of action should lead either to a formal case brought against a government—for example, for failure to enforce its own national and international commitments to protect the environment—or to an independent study similar to that provided in NAAEC Article 14 for enforcing laws affecting trade policy.

b) ***Includes a public advisory body:*** One of the most effective models for including citizens in the administration of a trade and environment agreement is the Joint Public Advisory Committee (JPAC), part of the governing council of the North American Commission for Environmental Cooperation. JPAC has played a constructive role in the side agreement's implementation, serving to guide both government officials and interested citizens toward responsible balances between trade and environmental policy priorities. The administrative body to the CAFTA agreement should include a private advisory body similar to JPAC, with two individuals from each CAFTA country selected to serve on its board.

c) ***Provides for data collection and dissemination:*** Data on the implications of economic integration for the environment and health should be gathered and widely disseminated. As was discussed above, UNEP is a good candidate to aggregate, evaluate, and distribute this kind of information, provided it receives adequate support to do so from the CAFTA parties. The cooperative work plan and information gathering projects under way at the North American Commission for Environmental Cooperation also provide a good model to follow.

PROGRESS TOWARD RESPONSIBLE TRADE

Designing trade regimes that promote environmental protection, strengthen the rule of law, and encourage good governance is not an easy challenge to meet. That said, the CAFTA negotiations present a timely opportunity to accomplish these ob-

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[xiv] U.S. Trade Promotion Authority, Article (2102)(b)(5); "Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO Related to Transparency" (Washington, DC: Office of the U.S. Trade Representative, August 9, 2002; available at: http://www.USTR.gov/enforcement/2002–08–09-transparency.pdf).

[xv] Luciano Togiero de Almeida, ed., *Trade and Environment: A Positive Agenda for Sustainable Development*, Preliminary Document for the XIII Meeting with the Latin American and Caribbean Environment Ministers (Brasilia: Brazilian Ministry of Environment, Secretariat of Policies for Sustainable Development, 2001).

[xvi] In a project funded by the Inter-American Development Bank, Ostry researched and wrote reports on Argentina, Brazil, Columbia, Mexico, Costa Rica, and Uruguay. Interested parties may request drafts of these reports by contacting John Audley.

jectives and to help put the U.S. and Central American governments on a path toward ecologically sustainable trade and investment liberalization.

The proposals offered here present negotiators, interested citizens, and national and subnational legislators with a roadmap to navigate these challenges and deliver a trade agreement that will win the support of people throughout Central America and the United States. The repercussions of these negotiations for the six countries is great; the example they can set for other negotiations may be even greater.

U.S. trade representative Robert Zoellick has demonstrated that he understands the importance of factoring environmental issues into trade agreements. Looking forward, the United States must now negotiate and implement the proposed CAFTA in a manner that integrates future technical assistance and capacity-building efforts into the existing framework of environmental cooperation, creates trade-related incentives for sound environmental protection, and fosters good governance.

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Trade, Equity, and Development Project
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Central America and the U.S. Face Challenge—and Chance for Historic Breakthrough—on Workers' Rights

By Sandra Polaski

The negotiations between the United States and five Central American countries for a free trade agreement present an important, even unique, opportunity to build and buttress the rule of law, human rights, and democracy in Central America, as well as to invigorate the region economically. In fact, the deep integration that a free trade area would foster between the United States and Costa Rica, Guatemala, El Salvador, Honduras, and Nicaragua *requires* a strengthening of basic law and institutions in a region with a troubled history and a troubling present in terms of human rights and the rule of law.[1] Few informed observers—from U.S. trade representative Robert Zoellick to the State Department to many in Central America—doubt that serious deficiencies exist in the region. These deficiencies must be addressed if a trade agreement is to produce positive results.

Nowhere are the deficiencies of present-day Central America—and the opportunities for progress through a well-constructed free trade agreement—more apparent than in the area of workers' rights, labor law, and labor institutions.[2] Central America has been the scene of continuing abuses of workers' rights. These abuses include the ongoing suppression of workers' right to organize in export-processing zones, physical threats, beatings, kidnappings, and even assassinations of trade union leaders. Child labor is a serious problem, including in dangerous occupations. Employment discrimination against women and indigenous workers is rife. Given that a free trade agreement is meant to encourage greater investment in the region and an expansion of production for the U.S. market, these ongoing violations must be addressed at the outset. Otherwise, an agreement would further entrench and expand current systemic violations of workers' rights.

A free trade agreement offers the opportunity to create political space in Central America for needed legislative reforms that have eluded government efforts until now. The terms of a trade agreement also can strengthen government enforcement of laws and provide incentives for the private sector to voluntarily comply with labor legislation.

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[1] See U.S. Department of State, *2001 Country Reports on Human Rights Practices*, http://www.state.gov/g/drl/rls/hrrpt/2001/; reports for previous years are available at http://www.state.gov/www/global/human_rights/hrp_reports_mainhp.html. These authoritative reports describe serious problems with human rights abuses and inefficient or corrupt judiciaries in four of the five countries and continuing problems of somewhat lesser severity in Costa Rica.

[2] See U.S. Department of State, *2000 Country Reports on Human Rights Practices* and *2001 Country Reports on Human Rights Practices*,section 6, "Worker Rights."

BACKGROUND

Ongoing labor problems have been such a concern to the United States that Congress has fashioned policy instruments to deal with these abuses through current unilateral trade preference programs. The Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), and the Caribbean Basin Trade Partnership Act (CBTPA) all extend market access benefits unilaterally to the Central American countries on the condition that they respect workers' rights. In fact, 74 percent of Central American products entered the United States duty free in 2002 under these unilateral preference programs. The programs require that recipient countries accord the following internationally recognized workers' rights to their citizens: freedom of association; the right to collective bargaining; protections against child labor; freedom from forced labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. If countries fail to respect these rights, they run the risk of losing the trade preferences for some or all of their products.

These provisions have been invoked frequently with respect to these five Central American countries, both by the U.S. government and by private human rights and labor groups. At least eighteen petitions alleging violation of these rights in Central America have been filed by private groups in recent years. Several petitions are currently pending. In eight separate instances, the U.S. government itself has initiated reviews of labor conditions in Central America or decided to continue reviews that originally were undertaken in response to petitions by the public. In each case, the reviews have been based on U.S. concerns over continuing rights violations in these countries.[3]

The GSP and other instruments have not solved the basic problem of the lack of rights and rule of law for workers in the region. But they have at least reversed the most egregious violations of rights and threats to lives and arguably have prevented many more such abuses by the very fact of their existence.

A free trade agreement with Central America would eliminate these existing policy instruments because it would replace the unilateral preference programs. At the same time, market access to the United States would be expanded. This would leave existing problems to fester and invite further abuse.

There is little chance that a free trade agreement will be negotiated that contains *no* labor provisions. The Trade Act of 2002 spells out chief negotiating objectives on labor, including several provisions similar to those contained in the U.S.-Jordan Free Trade Agreement. But unlike Jordan, which has reasonably good labor laws, relatively effective enforcement, and the overall rule of law, Central American countries have glaring weaknesses in their laws, inadequate enforcement, and judicial systems that fall short of any reasonable standard for the rule of law.

THE CHALLENGE

Therefore, the parties must fashion labor provisions in the U.S.-Central American free trade agreement that accomplish four indispensable goals. First, the agreement must ensure that trade benefits continue to be conditioned on adequate respect for workers' rights, to avoid backsliding and to maintain the accountability of Central American governments that currently exists under the GSP and CBTPA. Second, the agreement must address the problem that existing laws are inadequate when measured against agreed-on international standards and ensure that laws are upgraded to such international norms. Third, the agreement must include provisions to strengthen labor law enforcement and to create the true rule of law with regard to the rights of workers. Fourth, the agreement must devise a way to verify that all of the above steps are being taken and maintained.

The trade negotiations with the Central American countries will be the most challenging that the United States has faced with regard to labor rights. The four critical goals listed above may seem difficult to achieve in these negotiations. However, this paper presents a proposal for the labor provisions of the agreement that would enable the parties to meet each goal. This proposal builds on lessons that have been learned through other trade agreements that the United States has negotiated in recent years. Both the United States and its developing-country partners have gained experience through the implementation of those agreements. Although accomplishing the four goals will be a challenge, it is fortunate that there has been

[3] Sources include the "Public Worker Rights Summaries" prepared by the U.S. government interagency GSP subcommittee and issued by the U.S. trade representative (USTR) from 1988 to 1995 and USTR press releases.

a wealth of experimentation that now can guide the U.S.-Central American negotiations.

PROPOSAL FOR A SOLUTION

This section offers an overall framework for an agreement that can achieve the four crucial labor goals outlined above. It also offers suggestions as to what labor obligations or commitments should be required of the parties; how the dispute settlement mechanism should work; and other proposals regarding transparency, oversight and the role of the public.

Framework

The framework for an agreement on labor rights must begin with the establishment of a transitional period before full free trade would be phased in. Of course, such a phase-in of tariff reductions and other liberalizations is the norm under free trade agreements and will undoubtedly be a part of the structure of this proposed agreement. But a U.S.-Central American Free Trade Agreement (CAFTA) must include a specific provision that the benefits of the agreement can be accelerated—or delayed—for each Central American country and each sector within those countries on the basis of whether the country and sector have met the agreement's obligations with respect to workers' rights.

Four factors argue for establishing a transitional period that can be accelerated or delayed depending on the performance of each country and each sector in promoting labor rights. First, this approach will replace the conditionality of current unilateral preference programs such as the GSP with an equally potent incentive for countries and firms to comply with the labor terms of the agreement. Thus the United States will not sacrifice an existing lever for progress on labor rights without substituting an equally effective instrument.

Second, having the transitional period will create healthy competition between countries to actually carry out the promised reforms of labor legislation, enforcement, and the rule of law, because each country can accelerate its enjoyment of valuable trade advantages by doing so. Third, the approach will align the incentives of the private sector with those of the public sector, because neither the government nor firms can gain trade privileges without the cooperation and support of the other. Fourth, the failure of firms in a particular sector to comply with their obligations will not halt or delay the benefits for other sectors that have met their obligations. To illustrate, if agribusiness firms refused to abide by labor laws but apparel firms demonstrated compliance, the apparel sector would receive accelerated benefits and not be held back by any intransigent sector.

How long should such a transitional period run? As a rule of thumb, the fifteen-year phase-in of the North American Free Trade Agreement (NAFTA) or the twelve-year phase-in of the recently negotiated U.S.-Chile Free Trade Agreement are probably useful guides. Countries and sectors that chose to fulfill the labor terms of the agreement could enjoy benefits promptly, perhaps as soon as one year after the agreement enters into force, thus providing a very substantial incentive for compliance. Conversely, countries and sectors that refused to shoulder their obligations would have to face the prospect of a continuing denial of benefits.

Such a system will require credible, neutral oversight to determine the actual degree of compliance by different sectors in each country. Although this might sound like a very large undertaking, a similar system has already been created with remarkable success and efficiency under another U.S. trade agreement: the U.S.-Cambodia Textile Agreement. This agreement established that Cambodia can receive the incentive of additional apparel quota if it meets its obligations under the agreement to protect the rights of workers and enforce its labor laws in the textile and apparel sector. The agreement obviously required oversight, as would CAFTA.

In the case of the U.S.-Cambodian agreement, the parties agreed to ask the International Labor Organization (ILO) to monitor the factories in the sector and report its findings to the parties as a basis for decisions on any quota increase. The ILO agreed to undertake a monitoring program and established a credible, efficient, and transparent system. ILO monitors (most hired locally) inspect factories, report the results to factory managers and to the two governments, and allow a reasonable period for remediation. After the remediation period, a second inspection is conducted, and a report is issued as to whether the factory is in compliance.

This system has provided the information needed by the parties to the U.S.-Cambodian trade agreement to make decisions on incentives. The parties also take other factors into account, such as progress on labor legislation and the rule of law with respect to labor rights. The monitoring program is funded jointly by the U.S. govern-

ment, the Cambodian government, and the Cambodian textile and apparel sector; the United States provides about 70 percent of the funding, and the other parties provide about 15 percent each. A tripartite committee—consisting of representatives of the Cambodian government, textile and apparel firms, and trade unions representing the workers—oversees the program. The striking improvements in working conditions and compliance with law that have been achieved in this sector suggest that this has been one of the most successful and cost-effective programs to promote worker rights abroad that the U.S. Government has ever funded. The agreement and the monitoring program were deemed so successful by both governments that when the initial agreement expired it 2001 it was renewed for three more years—with an expanded potential quota bonus for further progress on labor rights.

This U.S.-Cambodian model would be well suited for adaptation in CAFTA. All the governments involved are Members of the ILO. The ILO could draw upon the signal experience it gained in Cambodia to construct a similarly well-run program in Central America. U.S. firms that import products from Cambodia have been impressed favorably by the ILO program, the improvements it has induced in the factories from which they buy, and the protection it provides for their own reputations. Because many of the same firms import from Central America, their familiarity with the approach would help ease the introduction of such a program in that region.

Obligations

What labor obligations should be included in CAFTA? The United States has developed two relevant models for labor obligations in the context of trade arrangements. Both should be applied in this proposed agreement.

The first model operates in the GSP and CBTPA programs, which require that beneficiary countries afford protection for internationally recognized workers' rights, as defined above. This model encompasses the enforcement of existing labor laws and, where the labor laws are deficient compared with international norms, it has also been used to require improvements in labor legislation.

Typically, the United States has looked to the ILO experts to determine whether a country's labor laws meet international norms. ILO experts have judged that all five of the Central American countries involved in these negotiations have deficiencies in their basic labor laws.

Therefore, it is essential that the five countries be obligated to reform their labor laws to correct these shortcomings. This should be a threshold obligation of the agreement. In requiring legal reform, the United States would follow a pattern it has already established in negotiations over intellectual property rights, where it has insisted on legal improvements to further protect those rights.[4] Similarly, the United States must insist on improved protections for labor rights, given the inadequacy of current laws.

The second model pioneered by the United States requires that its trading partners effectively enforce their labor laws. This model was employed in the labor side agreement to NAFTA, and is one aspect of the approach in the U.S.-Jordan free trade agreement. Once Central American labor laws are amended to meet international norms, there must be an ongoing obligation to enforce them, as there is with other trading partners.

Dispute Settlement

The Trade Act of 2002 instructs U.S. trade negotiators to subject labor provisions of trade agreements to the same dispute settlement procedures as other disputes arising under the agreements, with equivalent remedies. CAFTA should follow that guidance. Such dispute settlement procedures would take effect once a country and a sector had been determined to be in compliance with the terms of the agreement and had been extended full free trade benefits on the basis of the criteria and monitoring procedures discussed above.

Dispute settlement panels should comprise experts on international labor norms and comparative domestic labor laws. Time frames for dispute settlement should be identical to those for commercial disputes. Possible penalties for noncompliance with panel rulings should cover the same range as penalties for noncompliance with rul-

[4] In his October 1, 2002, letter of notification to Congress of the Administration's intent to enter into free trade negotiations with Central America, USTR Zoellick wrote that the negotiations would be used to address "inadequate protection of intellectual property rights" in those countries' laws. Specifically, he wrote that the United States would seek levels of patent protection in line with U.S. practices and provisions for strengthened legal enforcement, including through criminal penalties and compensation of rights holders.

ings in commercial disputes, with the specific provisions tailored to provide meaningful remedies for nonenforcement of labor laws.

Transparency, Oversight, and Public Petitions

CAFTA will replace the current U.S. system of unilateral trade preferences for the Central American countries. That system includes the ability of the public and affected workers to raise concerns directly to the U.S. government when labor rights are violated. This mechanism has been used repeatedly under the GSP and CBTPA programs, as discussed above, leading to the resolution of some egregious problems and arguably forestalling worse or more frequent abuses. Therefore, a new free trade agreement between these parties must replicate that important public oversight mechanism.

The specific mechanism could vary, but elements of a model can be found in the North American Agreement on Labor Cooperation (NAALC)[5] and the existing GSP system. At a minimum, any public petition mechanism should provide a specific, standing venue for the submission of petitions or requests for review. Any individual or organization in any of the countries that is a party to the agreement should be able to file a petition or request in any of the other countries, as is the case under NAALC. Upon receipt of such a filing, the United States and other governments should guarantee a thorough, unbiased review of the allegations in the petition within a defined period of time, certainly no more than six months. The mechanism should guarantee the right, at a minimum, to a public hearing on the allegations.

Where the claims of a public submission are deemed to have merit, the issues raised should be referred for intergovernmental consultations to attempt to remedy the problems, as has been the practice under NAALC. If these consultations fail to produce a meaningful remedy for the problems within a defined time frame, the problem should be referred to a dispute settlement panel under the terms outlined above in the discussion of dispute settlement.

This procedure will ensure that those who have the best information about violations of labor rights—the workers themselves—have meaningful input into government oversight processes. This provides both healthy transparency for the implementation of the labor provisions of the agreement and reinforcement for the efforts of Central American governments that may be committed to full enforcement of labor laws but strapped for adequate resources.

SUCCEEDING WHERE OTHER EFFORTS HAVE FAILED

Improving labor laws to meet international standards, enforcing those laws, and strengthening the rule of law in general have proven to be difficult tasks in Central America. The legacy of long-standing undemocratic traditions and interest groups in some of the countries, along with the aftermath of civil wars, have combined to leave the region lagging in both economic and democratic development.

The CAFTA negotiations present an excellent opportunity to make real progress in correcting these deficiencies and putting Central America on a course for sustained development in the coming decades. The prospect of full access to the U.S. market offers great leverage to induce reform from both governments and private-sector actors in Central America. Conversely, if this opportunity is wasted, it is hard to see how labor rights and the rule of law will be realized in the region in the foreseeable future.

The proposal presented in this paper offers a roadmap for dealing with challenges that have been intractable until now. A key reason that this approach can succeed where Central American governments alone have not is that it aligns private sector incentives with public interests regarding good governance and rule of law. Under this proposal, the sooner firms comply with labor laws and provide acceptable treatment for workers, the sooner they will enjoy the benefits of full access to the U.S. market. This linkage of commercial rewards to firm behavior has been one of the key elements in the success of the U.S.-Cambodia Textile Agreement, and it can succeed in Central America as well. The successful, workable Cambodian model should be replicated in CAFTA.

Real progress on labor rights and the rule of law in Central America demands a regional approach. Central American governments, in explaining the repeated failures of the rule of labor law in the region, have said that if they were to enforce their laws effectively, firms would simply move across the border to a neighboring country that did not. The proposal offered here reverses that dynamic by creating competition for successful labor law enforcement. If the country next door fails to

[5] NAALC is the labor side agreement to NAFTA.

enforce its laws or to meet international standards, access to the U.S. market will be delayed. Timely rewards will flow to countries that comply with their legal obligations, and those that do not will lose customers and investment.

This proposal also benefits from using elements of other agreements and models that are already functioning effectively. These regimes can be examined. The governments involved can confer with one another. Private-sector actors, including firms and workers' organizations, can discuss experiences with their counterparts. The sharing of best practices by those who have already implemented the different aspects of these procedures can also help Central America move quickly up the learning curve. This will expedite the realization of the rewards that are possible through CAFTA, both in market access and in the more fundamental rewards of good governance and the wide enjoyment of the benefits of trade.

Sandra Polaski is a senior associate with the Trade, Equity, and Development Project at the Carnegie Endowment for International Peace. She served from 1999–2002 as the Special Representative for International Labor Affairs at the U.S. Department of State, the senior official handling labor matters in U.S. foreign policy.

Carnegie Endowment for International Peace
Washington, DC 20036
January 15, 2002

Regina Vargo
Assistant United States Trade Representative for the Americas
Office of United States Trade Representative
Winder Building
Washington, DC

Communicated Electronically

Dear Ms. Vargo:

Federal agencies responsible for conducting environmental reviews of U.S. trade agreements are faced with a difficult challenge, but also with a chance to facilitate the development of trade agreements which contribute to the broader goal of sustainable development. Unfortunately, unless the United States Government modifies its approach in conducting the environmental review of the proposed U.S.-Central America Free Trade Agreement (CAFTA), in all likelihood it will be the fourth bilateral or regional trade agreement for which the U.S. determines that increased trade liberalization will result in a *de minimis* impact on the environment. While the direct effects of CAFTA on the U.S. environment may be *de minimis*, for Central American countries just the opposite will be true. As recent reports by the Inter-American Development Bank and the draft national action plans submitted by the governments of Costa Rica, Guatemala, and El Salvador demonstrate, our Central American trading partners recognize the importance of protecting their environment, but have not yet developed adequate infrastructures—such as sewage systems, waste water treatment plants, or solid waste disposal systems—necessary to mitigate the negative environmental impacts associated with export-led growth.

We therefore urge you to broaden the scope of the U.S. environmental review of CAFTA to include the agreement's potential transboundary and global environmental impacts, arising from effects in the Central American region. We further recommend that the United States Government encourage our Central American trading partners to conduct their own environmental review of CAFTA, with financial and technical assistance offered by the U.S. for this purpose. Finally, we offer a number of steps that federal officials can take to make the CAFTA environmental assessment(s) a more meaningful tool for policy makers and other interested stakeholders in both the United States and Central American.

Why Broaden the Scope of CAFTA's Environmental Review?

1. Build Public Support for Environmental Reviews and Trade Policy

Developing the implementation guidelines for the U.S. environmental review of trade agreements was a significant contribution made by the Members of the Trade and Environment Policy Advisory Committee (TEPAC). TEPAC Members and others within the environmental community concluded that the policy of conducting envi-

ronmental reviews of trade agreements represented an important step towards reconciling trade and environmental policies. Since then, however, the environmental reviews conducted of the Jordan, Singapore, and Chile agreements have all found a *de minimis* effect on the U.S. environment.

Repeated *de minimis* findings from environmental reviews run the risk of undermining public support for this potentially significant policy tool, one that was codified into law with the passage of trade promotion authority in the Trade Act of 2002. This is especially true when the potential for negative environmental consequences of trade liberalization among less developed U.S. trading partners is very real. Citizens in the United States and elsewhere want government officials to take seriously the implications of trade liberalization on environmental quality, but officials cannot do so if they are only given half the picture—that is, if they are only provided with information on a trade agreement's domestic environmental effects.

The failure to broaden the scope of the U.S. CAFTA review to include transboundary and global environmental impacts—as well as the failure to support Central American countries' efforts to conduct their own environmental assessments for consideration—would represent a missed opportunity by the United States to demonstrate that trade and environmental policies can and should work together. Ten years ago the United States demonstrated leadership in this area by conducting environmental reviews of the North American Free Trade Agreement. That leadership fostered similar review policies in the European Union and Canada. More recently, by encouraging the Hashemite Kingdom of Jordan, Chile, and Singapore to conduct their own environmental reviews of FTAs, the United States is demonstrating to its trading partners and their citizens that trade policy negotiations can and should take the environment into consideration.

2. Promote Win-Wins for Trade and the Environment

U.S. commitment to considering CAFTA's potential environmental impacts both domestically and within the Central American countries would better facilitate the joint consideration of appropriate policy responses to these effects. Given the size of the U.S. economy, expanding trade with small Central American economies will rationally have no measurable effect on the United States' domestic environment, at least directly. On the other hand, the expanded production within Central America of goods for export to the U.S. market likely will have environmental consequences in the region. The U.S. and Central American countries have an established history of working together to promote sound environmental management in the region, most notably under the auspices of the USAID *Ambiental Regional para Centroamerica* (PROARCA) project. Environmental assessments of the proposed CAFTA should be used to strengthen existing partnerships for environmental protection, by suggesting areas where attention will be required to mitigate negative environmental impacts, as well as by highlighting ways that trade can be harnessed to directly promote sustainable development.

U.S. interest in promoting international sustainable development stems in part from the recognition that environmental challenges are often regional or global in scale. The geographic proximity of Central America and the U.S.—as well as our significant imports of Central American produce and the increasing movement of people across our national borders—signal that some environmental problems arising in Central America will directly affect the environment and public health in the United States. In order to correctly identify domestic impacts, the U.S. must address potential transboundary and global issues in its environmental review of CAFTA.

Transboundary pollution—for example from industry, pesticide use, or the open burning of solid waste—can contribute to ecosystem degradation, negative health effects, and the transport and deposition of persistent organic pollutants (POPs) in the United States. Current U.S. Environmental Protection Agency (EPA) programs in Central America lend insight into what types of issues might need additional attention in the context of CAFTA. With funding from USAID, the EPA has helped to:

- improve food safety for fresh produce imported from Central America;
- reduce the inventory of stockpiled obsolete pesticides throughout the region;
- launch projects on municipal wastewater treatment and integrated solid waste management;
- introduce cleaner production practices for private firms;
- and establish regional networks of environmental lawyers, experts, and environmental engineers.

Exploring the intersections between trade and environmental policy should not be limited to mitigating negative environmental impacts. As one example, the U.S. environmental review should consider the possible consequences of supporting Central

American farmers to engage in sustainable agriculture for export to the U.S. niche market of organic foods. Research conducted by International Center of Economic Policy (CINPE) suggests that this would allow farmers to achieve a higher standard of living, while reducing the use of harmful pesticides and fertilizers. Supporting sustainable development and poverty alleviation in Central America is again sound foreign policy, as the U.S. will benefit from having more stable, prosperous neighbors.

3. Promote Good Governance and Capacity Building

The Bush Administration rightly links technical and financial support to its belief in good governance. Most of our Central American trading partners do not have a strong history of public involvement in policymaking, supporting their efforts to conduct a national environmental assessment of CAFTA would be an important step towards better governance. Conducting an environmental assessment involves engaging the public in discussion about trade's possible impacts on the environment. Public involvement in turn results both in stronger immediate data and in more effective implementation of subsequent policy. Through its domestic and international experience with environmental protection efforts, the EPA has "clearly demonstrated the importance public participation . . . in assuring meaningful and sustainable results."[1]

Beyond promoting democratic governance, conducting environmental reviews builds the capacity of our trading partners to protect their environment for two additional reasons. First, the assessment process involves a transfer of skills and technology from one country to the other, as scientists, government officials, and civil society organizations explore the environmental implications of trade liberalization. Second, assessments encourage better interaction among government ministries, thereby improving efforts to coordinate policy. The draft national action plans submitted by the governments of Costa Rica, Guatemala, and El Salvador each demonstrate the need to strengthen interagency cooperation and coordination on trade policy, as well as to increase public involvement.

Steps Forward

Executive Order 13141 Section 5(b) states that, "As a general matter, the focus of environmental reviews will be impacts on the United States. As appropriate and prudent, reviews may also examine global and transboundary impacts." With these instructions in mind, we recommend the following steps:

1. Broaden the Scope of the U.S. CAFTA Environmental Review to Include Global and Transboundary Impacts: Executive Order 13141 Guidelines Section IV(B)(4) enables the Trade Policy Staff Committee to place a high priority on global and transboundary impacts of expanded trade. These impacts are at this writing not likely to be identified as part of the International Trade Commission's report on the potential impacts of trade liberalization with Central America, so federal officials should not wait for this report to initiate their own examination of the broader implications. Instead, consistent with Guidelines Section IV(B)(2)(f)(3), the Environmental Review Group should consult with environmental experts from Central America and the United States to obtain information that will help determine the potential global and transboundary environmental impacts of CAFTA.

2. Coordinate Technical Assistance: Under the auspices of the United States Aid for International Development's *Ambiental Regional para Centroamerica* (PROARCA) project, since 1995 U.S. federal agencies have assisted Central American nations to increase effectiveness in regional stewardship of the environment and key natural resources in target areas. PROARCA's contribution to the enhancement of Central American environmental protection efforts is consistent with the goals of the Central American-United States of America Joint Accord (CONCAUSA), signed on the margins of the 1994 Miami Summit of the Americas. Renewed in 2001, CONCAUSA covers cooperation in four major areas under an action plan: conservation of biodiversity, sound use of energy, environmental legislation, and sustainable economic development. As discussed above, a comprehensive environmental assessment of CAFTA has the potential to utilize and strengthen this existing cooperation. The Environmental Review Group should be in contact with U.S. PROARCA participants, and use their relationships to liaison with government officials and environmental experts in Central America. This exercise should take place as soon as possible.

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[1] U.S. Environmental Protection Agency (November 1999), "Best Practices for EPA's International Capacity-Building Programs."

3. Communicate through U.S. Embassies: It is important to conduct the U.S. review of global and transboundary impacts in a manner respectful of sovereignty issues that may be raised as a result of an extra-territorial review. Likewise, it is essential that the United States clearly communicate the types of support it is able to provide to help trading partners conduct their own environmental assessments. With these two objectives in mind, U.S. Central American embassy officials should be instructed to contact government officials at economic, environmental, and development agencies to discuss U.S. interest in a more comprehensive environmental review process.

4. Report findings early to Congress: Members of the Congressional Oversight Group should be briefed regarding this initiative. USTR and relevant federal agencies should also brief other committees with interest in this effort, in particular, the Senate Environment and Public Works Committee and the House Resources Committee.

USTR Ambassador Robert Zoellick has demonstrated that he understands the importance of factoring environmental issues into trade agreements. In our opinion, under his leadership the United States government has made progress in this regard and helped to overcome the interagency tensions that repeatedly surfaced during the administration of President Bill Clinton. To continue to move forward, the United States must now expand the scope of its environmental review process for trade agreements, both by considering global and transboundary impacts in all U.S. reviews, and by supporting U.S. trading partners' efforts to conduct and share their own assessments for joint consideration.

Sincerely,

John J. Audley
Senior Associate

Vanessa Ulmer
Junior Fellow

[BY PERMISSION OF THE CHAIRMAN]

Statement of CENCIT, Guatemala, Guatemala

In 1994 the Coordination Committee of Agricultural, Commercial, Industrial and Financial Associations, CACIF, created the CENCIT. The CENCIT is aspecialized commission formed from the Guatemalan private sector and maintains an entrepreneurial structure as a counterpart to the governmental entities in charge of the negotiations, as well as to apply the international trade negotiation policies in an efficient and orderly way. The Members of the CENCIT are entrepreneurs and professional staff from each of the Guatemalan private associations and chambers[1].

The participation of the Members of the CENCIT in the negotiations of free trade agreements and within the framework of the World Trade Organization, WTO, has fostered the development of an adequate consultation and information exchange system between the private sector and the responsible government officials. Over the years, the CENCIT has developed a comprehensive information system regarding production chains, statistics and trade-related issues. Additionally, our team of specialized professionals has accumulated precious experience and understanding of current trade issues and their effect on Guatemala.

From the time when President Bush proposed the negotiation of a new free trade agreement with the Central American countries, the CENCIT has been working intensely to reach a consensual position among the Guatemalan private sector. We are also working on strengthening the communication channels with the current Administration, aiming to exchange information on the production chains of the country and how they would benefit, or be affected, by trade liberalization.

Traditionally, the United States has been our most important trade partner and the Central American countries are our second largest export market. Therefore, we consider the negotiation of the Free Trade Agreement between the United States and the Central American Countries, CAFTA, as the current most important trade policy undertaking. Certainly, the negotiation and successful conclusion of the Agreement will intensify the Central American integration process, which has been staled over the last years. Furthermore, it should become a building block of the

[1] AGEXPRONT, AZAZGUA, Cámara del Agro, Cámara de Comercio, Cámara de Finanzas, Cámara de Industrustria, Cámara de la Construcción, FEPYME.

Free Trade Area of the Americas, FTAA, and strengthen the global trade liberalization process taking place in the framework of the WTO.

Since the Caribbean Basin Initiative, CBI, and the Generalized System of Preferences, GSP, entered into force for Guatemala, the great majority of our export products has benefited from preferential access to the U.S. market. Undoubtedly, these preferential schemes have fostered the growth of our exports and played a key role in the economic diversification and growth of the country. Moreover, the CBI and GSP have contributed to the generation of employment, creating more than 400,000 export-related jobs. In the light of the CAFTA negotiations, one of our main objectives is to consolidate and improve the benefits that both preferential schemes have generated and to broaden the scope of preferential access of Guatemalan products to the U.S. market.

In Guatemala, agriculture-related activities account for 24% of the Guatemalan Gross Domestic Products, GDP. Taking into account the plummeting of the international market prices of our traditional commodities, the diversification of the agricultural production, as well as the negotiation of stable market access conditions for our products have become a national priority. In order to guarantee market access for our agricultural fresh and processed products, the Guatemalan private sector is working together with the responsible governmental entities to create state of the art certification bodies and laboratories of analysis, as well as train accredited inspectors, in order to comply with international sanitary and phytosanitary requirements.

The industrial sector has also taken steps towards modernization, manufacturing a wide range of products, from wooden furniture to pharmaceutical products. The implementation of world-class quality assurance and modern production systems has guaranteed the competitiveness of Guatemalan manufactured products all over the world. Due to our geographical location, Guatemala is a potential industrial hub for U.S. companies, which can take advantage of the short distance between Guatemala and major U.S. cities.

During the last years, the growth of the apparel and textiles industry has been remarkable, generating more than 130,000 jobs. The CBI enhancement has benefited not only the Guatemalan industry, but also the U.S. textile-related industry as shown by the yearly imports of components, totaling U.S. $111 millions. Taking into account the benefits generated by this sector, we aim to improve the market access conditions of the Guatemalan textile and apparel products to the U.S. market.

Guatemala has also carried out the modernization and liberalization of the services sector. Nowadays, the liberalization of telecommunications, as well as electric energy generation and distribution have benefited consumers all over the country, since more people have access to these services, mainly in the countryside. Moreover, our Telecom Act has been presented in several occasions as an international example for a modern and efficient legal framework and Guatemala has received large amounts of foreign investment due to the privatization and liberalization of services. We expect that the CAFTA will offer better, more efficient and affordable services, which are the backbone of our business activities.

We expect that the negotiation and subsequent entering into force of the CAFTA will encourage U.S. investors to establish operations in Guatemala. Definitely, as the experience of many other countries shows, foreign direct investment will create new and better jobs, accelerate technology and know-how transfer, as well as diversify our economy and broaden the export supply. However, we would like to highlight the fact that special national interests and needs, as well as corporate ethics, should be taken into account when promoting foreign direct investment. The organized private sector is working permanently on the improvement of the business environment and also to streamline the proceedings required to start operations in the country. We also look forward to strategic alliances and cooperation among companies.

The implementation of international labor standards has already started in Guatemala, as the creation and application of the "Code of Conduct" of the apparel and textiles industry shows. Currently, this trend is spreading rapidly to other sectors such as agriculture and the manufacturing industry. Furthermore, private companies have developed state of the art labor standards as part of their corporate responsibility. We are certain that we will advance social development in Guatemala through better employee-employer relationships and we look forward to an efficient and correct enforcement of labor standards throughout the country. Therefore, we would like to request the inclusion of a positive incentives labor provision in the CAFTA, emulating the "quota-plus" approach, which was proposed during the Hearing by the Honorable Sander Levin for the Vietnam Textiles Agreement.

Guatemala is a small country, but it is enormously rich in biodiversity and natural resources. Tourism is our second source of foreign currency and most of the tourists come to visit our natural and cultural treasures. On the other hand, we still have to discover the uses and benefits of the majority of tropical natural products, as well as preserve our fauna and flora. Consequently, preserving the environment is a crucial factor to achieve sustainable development. We are keen to undertake the protection of our environment, but without turning these protection efforts into unnecessary barriers to trade.

On the issue of the protection of intellectual property rights, Guatemala has developed a modern legal framework in order to comply with the acquired international obligations. Nevertheless, in the light of the current U.S. patent-protection policy, there is a deep concern regarding the access to affordable drugs and essential medicines, as well as reasonably priced technology products. These issues are being discussed at the multilateral level, within the framework of the WTO and the World Intellectual Property Organization, WIPO, and developing countries have urged industrialized countries to reconsider their patent—related negotiating positions. For this reason, we would like to urge your committee to recommend the United States Trade Representative to consider the special health and developing needs of the Central American countries in the light of the protection of intellectual property rights.

A further topic that we would like to bring to your attention is transparency. Since the launching of the CAFTA negotiations last January, our concern has grown due to the lack of information and access to U.S. proposals resulting from the confidentiality requirements set out by the United States Trade Representative. This unnecessary secrecy has undermined the advisory and consultation functions of the CENCIT and creates room for misinterpretations and rumors. Certainly, the CENCIT would like to have a more active participation in the CAFTA negotiations in order to reach fruitful results for Guatemala. Observing the delay in the publication of the texts from the free trade agreements already signed by the U.S. with Singapore and Chile, we would like to encourage your Committee to strengthen and oversee transparency in U.S. trade policy, as well as in ongoing and future negotiations.

Considering that the CAFTA will have medium and long-term effects in our economy and trade relations, we would like to express our sincere interest in presenting proposals for cooperation projects designed to tackle the asymmetries between our economies and to increase the competitiveness of our products and services. We are very interested in the U.S. experience dealing with structural changes, which have resulted from the trade diversion generated by the liberalization of certain sectors. Additionally, we are looking forward to the U.S. experience on the implementation of an efficient competition policy, which will certainly have a positive impact on the Central American economies. The private sector has successfully carried out several projects with international funding, as well as social responsibility projects funded by enterprises, chambers and associations, which have delivered palpable results and progress for Guatemala. We are willing to sit down with cooperation officers to design viable projects and to carry out their execution until the objectives are reached.

We see the CAFTA as an Agreement having a great potential to foster the sustainable development of Guatemala and our fellow Central American nations, as well as an instrument to reduce poverty all over the region. Taking into account our experience in the negotiation of other free trade agreements, like the ones with Mexico, the Dominican Republic and Chile, we believe that this agreement should balance the different levels of economic development and special needs of each of the negotiating parties so as to deliver an Agreement that is beneficial for all. Indisputably, trade is the correct manner to attain economic development for small economies such as the Central American countries and thus we are committed to keep working on the CAFTA negotiations.

Statement of William A. Hagedorn, Comstock & Theakston, Inc., Oradell, New Jersey

I. Inclusion of Full Drawback Rights in FTAs Will Provide Significant Benefits to U.S. Companies

Many imports are subject to Normal Trade Relations (NTR) duty rates when imported into the U.S. Therefore, to include in any FTA a restrictive drawback pro-

gram like that in NAFTA, and thus limit drawback, would place U.S. companies at a significant competitive disadvantage against our trading partners.

Duty drawback reduces production costs and operating costs by allowing manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported either as finished products or as component parts of a finished product. This advantage *must* be maintained as part of U.S. policy to foster growth and development within the U.S. and to increase U.S. export competitiveness abroad.

II. Drawback Encourages Growth in U.S. Manufacturing and Exports

The legislative policy underlying the duty drawback program is to increase the competitiveness of U.S. industry in the global market when competing against lower-priced exports from our trading partners. The drawback program benefits U.S. manufacturers and exporters by enhancing their competitiveness in providing an advantage either at the margin for pricing goods in the export market or at the lower overall costs of production.

The drawback program was initiated to create jobs and encourage manufacturing and exports. Customs recognizes this by stating that

> The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.

Clearly, the intent of Congress is to grant drawback when and wherever possible to the benefit of U.S. companies, not to limit drawback simply because the U.S. enters into a FTA that reduces import tariffs with the FTA partner. To do so defeats the purpose of the program and the FTA, which purpose is to provide the greatest overall benefits to U.S. exporters.

III. The Rationale for Restricting Drawback Rights in FTAs No Longer Exists

The rationale for restricting drawback rights in FTAs no longer exists, and no empirical evidence has surfaced that would lead one to believe otherwise. There were two primary reasons for restricting drawback in a FTA, both of which have been proven false. First, it was believed that drawback restrictions were necessary to create a disincentive for the development of export platforms, yet such restrictions have had an effect adverse to that intended. Second, it has been said that drawback is an export subsidy that should be eliminated. However, according to the WTO's Agreement on Subsidies and Countervailing Measures, drawback does not constitute an export subsidy.

A. Restricting Drawback Actually Encourages, Rather than Discourages, the Creation of an Export Platform

The continued proliferation of free trade agreements makes the U.S. position about export platforms a moot point, with no empirical evidence to substantiate the premise. The negotiating position of the U.S. in NAFTA was that the elimination of duty drawback was necessary to create a disincentive for Asian and European countries to establish export platforms in Mexico or Canada to the detriment of U.S. manufacturers and suppliers of inputs. However, in anticipation of the restrictions on duty drawback, a number of companies with Maquiladora and PITEX operations in Mexico convinced suppliers in Asia and Europe to establish parts production facilities in North America to replace imports from non-NAFTA sources. Furthermore, many maquiladora representatives from Japan, Korea, Taiwan, *the United States*, and Mexico have been unable to locate suitable component suppliers in North America. These officials requested Mexican officials to consider additional financial incentives. Without incentives to compensate for increased costs due to the drawback restrictions in NAFTA Article 303, some companies using maquiladora operations have searched for opportunities in other countries.

Over time, and with the imposition of NAFTA Article 303 drawback restrictions, our NAFTA trading partners have instituted trade policies to diminish the financial impact on domestic manufacturers of the duty drawback restrictions contained in the NAFTA. The U.S. has done nothing to counter the same adverse impacts on U.S. manufacturers and exporters. For example, in anticipation of the adverse economic impact on its maquiladoras that Article 303 would have, Mexico instituted its Sectoral Promotion Programs ("PPS"). Under the PPS, Mexico reduced many of its NTR duty rates so that domestic manufacturers could obtain non-NAFTA inputs

with the least adverse economic impact as drawback became restricted. In addition, Canada reduced its NTR duty rates so that the imposition of the drawback restrictions under NAFTA had the least adverse economic impact upon domestic manufacturers. These actions not only circumvent the original intent of drawback restrictions as relates to the creation of an export platform, but also demonstrate that the premise is fallible. It is expected that if drawback restrictions are included in other FTAs, our trading partners will take similar actions to ensure that their domestic companies can obtain the necessary inputs at the lowest possible cost rather than obtain them from the U.S. Thus, the analysis for the need to restrict duty drawback based on the creation of export platforms has proven false over time.

B. Duty Drawback is Not an Export Subsidy, and It Creates Incentives and Advantages for Domestic Manufacturers and Exporters

Almost every country has a drawback program. Duty drawback is one of the few GATT/WTO-sanctioned programs used by the U.S. The WTO has commented that the drawback programs in other countries, as well as that in the U.S., have the following positive effects: "Creates an export incentive; counteracts the negative effects of high import tariffs; establishes a strong magnet for export-oriented foreign direct investment; provides benefits to exporters and manufacturers; and, removes a bottleneck to private sector development".

According to the WTO, as well as to the intention of Congress and over 200 years of experience, duty drawback promotes, encourages and benefits exports. Workers in exporting industries have greater productivity and higher wages than do workers in other industries. Export promotion programs such as drawback are necessary to encourage exports and enhance U.S. competitiveness abroad.

IV. It is Illogical for the U.S. Government to Remove Export Incentives for U.S. Manufacturers and Exporters

The U.S. should not remove WTO-legal export incentives for U.S. companies, but rather strengthen the existing incentives and provide any additional incentives and competitive advantages to U.S. companies that would allow them to win contracts for the sales of goods and services abroad.

The U.S. strategy for entering into FTAs is to lower the overall tariff burden for U.S. companies when exporting to the particular trading partner, thereby making U.S. companies more competitive in the particular market or region. However, as in the case of Mexico and Canada when countries lower their own NTR duty rates to rates that match the level contained in a free trade agreement with the U.S., any drawback limitations becomes punitive to U.S. companies, as the advantage provided to them by the FTA is diminished when foreign exporters receive the same or similar benefits (plus drawback, in many instances). The result is a decrease in the competitiveness of U.S. companies.

E.I. du Pont de Nemours & Company
Wilmington, DE 19868

Dear Sir:

Thank you for providing us with the opportunity to comment on issues relating to current trade issues. E.I. DuPont de Nemours and Company is a Fortune 500 Company operating as a global enterprise in 70 countries around the world. Our U.S export sales in excess of $4.6 billion represent 19 percent of sales, making DuPont one of the largest U.S. exporters. As such, it is incumbent on us to address one of the aspects of the trade agreements, specifically, duty drawback.

While the initial U.S. duty drawback law dates back more than 200 years, the underlying concept remains the same today—to encourage American commerce. It permits industry to compete in foreign markets without the added burden of including import duties in its costs and sales price. Duty drawback reduces production and operating costs by allowing manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported either as finished products or as component parts of a finished product.

Industry should not be penalized by the reduction or elimination of duty drawback simply because the U.S. enters into a FTA that reduces import tariffs. Drawback should be maintained as part of the agreements to continue to foster growth and development within the U.S. and to increase U.S. export competitiveness off-shore.

We hope you consider this perspective as you develop additional trade agreements.

Sincerely,

J.S. Kempf
Manager, Duty Drawback

Electronic Industries Alliance
Arlington, Virginia 22201

Ways & Means Committee
U.S. House of Representatives
Via E-mail

Members of the Committee:

The Electronic Industries Alliance (EIA) appreciates the opportunity to comment on the Committee's February 26 hearing on U.S. trade policy and on the U.S. trade agenda. Our comments today focus primarily on the Chile and Singapore free trade agreements but in many areas are likely to apply to broader trade policy as well.

EIA is an alliance of high-tech associations and approximately 2,500 Member companies whose products range from the smallest electronic components to the most complex systems used by government and industry, including the full range of consumer electronic products. U.S. electronics is a $430 billion industry that provides 1.8 million jobs for U.S. workers. In 2001, about 40% of U.S. produced electronics—more than $170 billion in goods—was exported overseas.

We would like to express our pleasure on the recently completed negotiations to enter into free trade agreements (FTAs) with Singapore and Chile. EIA appreciates USTR's release for public review the U.S.-Singapore FTA text and looks forward to the similar release of the U.S.-Chile FTA text, which we hope will be in the very near future.

Based on the texts and summaries released by USTR, the U.S.-Singapore and U.S.-Chile FTAs embody a broad range of market-liberalization commitments that will facilitate international trade and investment with these countries and are necessary to promote long-term economic growth. Both FTAs will benefit the electronics industry as a whole and are noteworthy for the following commitments:

Tariff Elimination: Singapore's commitment to immediate duty-free treatment for U.S. exports to Singapore and Chile's commitment to eliminate tariffs immediately on 85% of imports—in key sectors such as computers and other information technology—provide immediate benefits to U.S. manufacturers. It is noteworthy that the FTA with Chile marks the first time that a major South American country has embraced the duty reduction commitments reflected in the 1996 Information Technology Agreement (ITA). In future FTAs, EIA suggests that for certain sensitive product areas USTR and Congress consider flexible mechanisms for reducing tariffs, such as the ITA that reduces tariffs equally in staged reductions.

E–Commerce Liberalization: Both agreements contain commitments in this area that are more advanced than any negotiated under the World Trade Organization. The FTAs provide non-discriminatory treatment to products delivered electronically, which will benefit U.S. firms that sell digital products over the Internet. Parties to the agreements also agreed to prohibit customs duties charged on these electronically delivered products.

Intellectual Property Protection: We appreciate the strong protection for copyrighted works that permits the growth of digital technologies and products while still protecting the legitimate rights of copyright owners, reflecting the balance struck in the U.S. Digital Millennium Copyright Act. Moreover, strong enforcement provisions criminalize end-user piracy and commit both Singapore and Chile to seize, forfeit and destroy counterfeit and pirated goods and the equipment used to produce them. These protections will apply to goods-in-transit and mandate both statutory and actual damages under Chilean and Singaporean law for IPR violations.

Telecommunications Market Access: Both agreements provide for open markets and non-discriminatory access to telecommunications networks. We are particularly pleased that specific provisions in the Singapore agreement have been included to ensure national treatment among service providers, protection against anti-competitive behavior, transparent procedures for access to unbundled network elements and transparency in licensing procedures. Moreover, we strongly support the affirmation of the principle of technology choice by public telecommunications service providers.

These and other provisions will contribute to open and transparent telecommunications markets for both service providers and equipment suppliers.

While we are pleased with most aspects of the Chile and Singapore FTAs and with the potential that both offer for economic growth and improved trade relations, we do have two areas of concern:

Rules of Origin: There is a general consensus that the NAFTA rules of origin are highly complex and that rules of origin for future FTAs need to be much simpler. Complex rules of origin impose unnecessary administrative burdens on companies and raise the cost of doing international business. Moreover, we understand that the rules of origin for the U.S.-Chile FTA may serve as the model for future agreements. Accordingly, we recommend that the rules of origin for the U.S.-Chile and U.S.-Singapore FTAs be simplified so that companies that are entitled to the benefits will not be deterred from capitalizing on them because of prohibitively high administrative costs. This simplification can be accomplished through a straight tariff shift-only approach, whereby an item moves from being one good to another in the course of manufacturing. We would note that a straight tariff shift-only approach might include a minimum regional value content (RVC) requirement.

Duty Drawback: The duty drawback program, administered by the U.S. Customs Service, is one of the last remaining export promotion programs to help U.S. companies compete in the global marketplace against trading partners that have significantly lower costs of production. We understand from the U.S.-Chile FTA summary released by your office that drawback will be phased out over a 12-year period. We believe that by phasing out drawback in each FTA, the elimination of this program is being accelerated as it relates to tariff elimination worldwide, since we do not know when, or if, tariffs will truly be eliminated. At the very least, the European Union-Chile FTA language would be preferable as it has an opt-out provision allowing exporters and importers to choose between drawback and a duty preference. By eliminating drawback in the U.S.-Chile FTA, the U.S. will be placed at a competitive disadvantage against our E.U. trading partners that have more preferable drawback language in the E.U.-Chile FTA.

FTAs such as those negotiated with Singapore and Chile ensure that U.S. manufacturers and exporters remain competitive in the global marketplace and enhance the prospects for successful multilateral trade talks, including the Free Trade Area of the Americas and the Doha round of WTO negotiations.

In light of these future negotiations, we would like to note one final concern. Although it is not addressed in either the Chile or Singapore FTA, we feel the issue of foreign levies on digital products is one that must be raised now because of the potential for these agreements to be used as models for future negotiations. The propagation of levies on digital products—including PCs, audio/visual products and other electronics—is emerging as a worrisome trade barrier. These levies are being imposed by E.U. countries, Canada, Mexico and others and are a threat to U.S. manufacturers' ability to offer products at lower prices. With this concern in mind, we would urge USTR and Congress to include the prohibition of levies on digital products in future U.S. trade negotiations.

Thank you for the opportunity to comment.

Respectfully submitted,

Brian Kelly
Senior Vice President
Government Relations and Communications

[BY PERMISSION OF THE CHAIRMAN]

Embajada De Honduras
Washington, DC 20008
March 12, 2003

The Honorable William Thomas, Chair
The Honorable Charles Rangel, Ranking Minority Member
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Sirs:

Honduras applauds President Bush and Ambassador Zoellick's commitment to negotiate a Central American Free Trade Agreement (CAFTA) by the end of the year. Honduras is prepared to do its part to make that happen. Honduras also thanks the Congress, this Ways and Means Committee, and the other Members who helped make the United States-Caribbean Basin Trade Partnership Act (CBTPA) a reality in both the Trade Development Act of 2000 and the Enhanced CBTPA which was enacted in the Trade Act of 2002. The negotiation of a commercially viable CAFTA will expand on the substantial benefits which have been realized by the U.S. and Central American textile and apparel industries as a result of the passage by the Congress of CBTPA.

This testimony focuses on the textile and apparel industry in Central America. This is not to minimize the importance of agriculture, or the other sectors, but to highlight the importance of the prompt negotiation and implementation of CAFTA as it applies to textile and apparels. The expiration of the WTO's Multi-Fiber Arrangement in January 2005 will dramatically change the rules in international trade that govern the textile and apparel industry. Therefore, it is crucial to the economic survival of the U.S. and Central America textile and apparel industries that CAFTA be negotiated promptly.

Honduras is the third largest exporter of apparel to the United States after Mexico and China. It's textile and apparel industry, according to 2002 statistics, represents over 26% of the employment in Honduras. In 2002, it employed 107,396 Hondurans. The 2002 employment figures are reduced from the height of maquila employment in 2000 of 125,608 employees.

This Committee, the Congress, and previous Administrations' vision and support have had a major beneficial impact on the U.S. industry and the industries of Honduras and the other Central American and CBI countries. The growing strategic relationship among our industries indicates your support for both CBTPAs and demonstrates the fallacy of the positions taken by protectionist industries in the United States which held up the passage of CBTPA and the expansion of the textile and apparel sectors for approximately seven years. Negotiations between the Central American countries and the United States for CAFTA will significantly impact Honduras', the Central American, and the U.S.', world textile markets post-January 1, 2005. For this reason, and the facts set forth in this statement, Honduras urges the Congress and the Administration to support a commercially viable CAFTA that is agreed to by the end of this year.

I. Current Situation

While the passage of CBTPA, in 2000, was expected to give a boost to employment in textiles and apparel in Honduras, and the other Central American countries, the delayed implementation of the 2000 Trade Development Act, coupled with the U.S. Customs Service contradictory interpretations, and worldwide economic slowdown prevented this. This situation was caused by the efforts of some of the protectionist companies and groups in the U.S. textile and apparel industry to undercut the pro-trade provisions. In fact, it cost Honduras approximately 15,000 jobs in the maquila sector. A similar situation occurred in other Central American countries, and in the United States.

The passage of enhanced CBTPA in 2002 and changes in the worldwide textile and apparel market, however, seem to have reversed that trend. It appears that 2003 will return to a level of activity that will result in employment for over 120,000 workers. The textile and apparel industry in 2004 and 2005 are projected to grow and the Asociación Hondurenã de Maquiladores (Association of Honduran Maquiladors, or AHM) projects that approximately 130,000 workers will be employed in 2004 and 143,000 in 2005.

It should be noted that each maquila employee creates substantial multipliers. For example, the employment of 107,396 Hondurans in 2002 supported another 536,980 direct dependents. It also supported 1,073,960 indirect jobs in Honduras. For purposes of these figures the company workers work directly for the manufacturing companies; while direct dependents include employees for service companies that provide services to the maquila companies and other similar supporting jobs; and lastly indirect jobs include businesses such as restaurants, laundries, home construction, banks, which provide general services that depend on the economic activities of the maquilas or the support industry. It must be understood that in 2002 the annual per capita income in Honduras is $850, while AHM calculates that the average annual salary for maquila workers was $3,717.62. Textile and apparel workers in Honduras are paid substantially more than other Honduran workers who lack advanced degrees, technical training, or education.

Total textile and apparel exports from Honduras in 2001/2002 to the United States had a customs value of $2,287.6 billion dollars. In exports of apparel alone to the U.S., Honduras was ranked number three worldwide, after Mexico and China, with a custom value of $2,284.2 billion. Comparing Square Meter Equivalents (SMEs) of apparel to the United States for the year ending 2002, Mexico exported 2.14 billion SMEs of apparel to the United States, China 1.14 billion SMEs and Honduras 990 million SMEs. In terms of SMEs of apparel, Honduras was followed by Bangladesh, Hong Kong, the Dominican Republic, El Salvador, Korea, and Taiwan. Comparison data demonstrates the importance of the Central American and CBI region in terms of total U.S. imports of textiles and apparel for the year ending June 30, 2002. The CBI region was second to Mexico in SMEs, and first in terms of customs value. For apparel alone, the CBI region was first in terms of both SMEs and customs value; with Central America second in SMEs.

It is also clear that CBI, CBPTA, and enhanced CBPTA are, at least partially, responsible for the growth of this industry. In 1990, 27% of Honduras' exports to the United States were non-traditional (textile and apparel) and 73% were traditional imports (bananas, coffee, sugar, fish, etc.). By 2001, the figures were reversed with non-traditional products (textiles and apparel) representing 70% and traditional exports (bananas, coffee, etc.) representing 30%.

These statistics demonstrate that January 1, 2005 is a watershed period of potential dislocation for Honduras and the other Central American and CBI countries. On the world stage, in textile and apparel, Honduras and the other Central American republics are competitive and major players in the United States market under existing laws, regulations, and programs. While no one can accurately predict what January 1, 2005 (less than two years from now) will bring, it is clear that any change could be dramatic and detrimentally impact the current economies of the Central American and CBI countries, including Honduras.

In this context, Honduras would like to point out that in the launch of the CAFTA negotiations on January 8, the United States Trade Representative (USTR) made the point that the United States intends to model CAFTA on the U.S.-Chile Agreement. This is of great concern to Honduras because at least in the textile and apparel sector, such a negotiating position by the United States could be potentially damaging to Honduras and to Central America. As I have previously pointed out, Honduras and the other Central American and CBI countries are major players in the world textile and apparel manufacturing industry, exporting between 14 and 16% of the world production to the United States. This amount is comparable to Mexico and China. Chile, on the other hand, is not comparable. It is 103rd in worldwide rankings and not a factor in the worldwide textile and apparel industry. For example the customs value of Chile's exports of textile and apparel to the United States are insignificant with a total customs value of $11 million while Honduras' exports are significant and amount to $2,287.6 billion.

Comparing Chile's textile and apparel industry to Mexico demonstrates the need to model CAFTA on NAFTA, not Chile. Following Chile's model in textile and apparel is a path that could make Central America's industry uncompetitive after January 1, 2005 when the Multi-Fiber Arrangement expires and quotes are lifted. The export activity of the existing industry demonstrates the need for the USTR, in the CAFTA negotiations, to integrate Honduras and Central America with Mexico, Canada, CBI, and eventually the Andean regions. Only such integration of the textile and apparel industries in this hemisphere will allow the industry to remain competitive.

II. CBTPA/Honduras and Its Partnership with the U.S. Industry

When reviewing the aforementioned facts, Congress and the Administration must understand that major portions of the U.S. textile and apparel industry are principal beneficiaries of CBTPA, and its enhancement in 2002. In the CAFTA negotiations, the trade policy concessions made by the United States to the Central American countries, including Honduras, will have major ramifications for the U.S. industry. While some companies, or associations, may view textile and apparel trade policy narrowly, the facts demonstrate that the expansion of textile and apparel trade in Central America has been beneficial both to the U.S. industry and the Central American industry and is critical to that industry's future competitiveness.

A case in point where protectionism hurt the U.S. industry as much as the Central American industry is the dyeing and finishing prohibition that Congress and the Administration included in CBPTA enhancement. It takes approximately three weeks for knitting machines to be palletized, shipped to the region, and set up for operation. While some in Congress, and the industry, argued that preventing dying and finishing of U.S. fabrics in the CBI region benefited U.S. textile and apparel

employees, we now know that was not true. In its December 2, 2002 statement to Ambassador Zoellick, the American Yarn Spinners Association (AYSA) pointed out that the limitations on the ability to dye and finish U.S. fabrics hurt U.S. greige goods manufacturers. We now know a number of U.S. greige good knitters were put out of business. Perhaps some vertically integrated U.S. companies may have benefited, but many more, who did not have dying and finishing facilities were put out of business. Thus, a politically created artificial impediment hurt both the U.S. industry and Central American and CBI industries. We cannot have similar market dislocation provisions in CAFTA. Instead, CAFTA must correct these bad policy choices.

Prior to the passage of the Trade Development Act of 2000, which included CBTPA and AGOA, U.S. yarn exports to the CBTPA countries were basically flat. The U.S. International Trade Commission (ITC) data demonstrates that as soon as CBTPA was passed, U.S. yarn exports to Honduras doubled in the period from 2001 to 2002. This was also true for U.S. yarn exports to all CBTPA countries. Thus after 5 years of controversy in Congress over including broad provisions, from the time of its passage in 2001 the amount of the U.S. cotton yarn exported to Central America, and the Caribbean doubled. As a result, after one year, the U.S. industry supported doubling the caps in 2002 and virtually eliminating them over the next two years. Only one year after implementation of the 2000 Act there was a need by the U.S. cotton yarn and other textile manufacturers for higher "caps" and more flexibility. In its written statement submitted to the ITC on October 17, 2002, the American Yarn Spinners Association stated:

> "The attached charts are based on data from the U.S. International Trade Commission. As you will note, the producers of yarn and knit fabrics in the U.S. dramatically increased their exports to the CBTPA countries last year. In an otherwise dismal year for the U.S. textile industry, the benefits offered by CBPTA have preserved a number of U.S. jobs and companies that otherwise would have been lost."

U.S. industry statistics for 2001 establish that 58% of all U.S. cotton yarns that are exported to the CBI region are exported to Honduras, 17% to Guatemala, 16% to El Salvador, 5% to the Dominican Republic and 4% to Costa Rica. Similarly, the statistics for exports of U.S. cotton yarn to the countries in both NAFTA and the CBI regions establish that 42% of U.S. cotton yarn is exported to Canada, 22% to Mexico, 21% to Honduras, 6% to El Salvador, 6% to Guatemala, 2% to the Dominican Republic, 1% to Costa Rica, and the remaining percentages to the other CBI countries.

In addition to the extensive use of U.S. cotton yarns, the overall U.S. trade statistics highlight the strong partnership between Honduras' apparel industry, the CBI region, and the United States industry. An analysis of the amount of U.S. value added in apparel exports from the region to the United States demonstrates the tie. This is particularly important for the U.S. industry as we look to January 1, 2005. 73.97% of Honduras' exports to the U.S. in SMEs contain some U.S. inputs; and 63.6% of all of Central America's exports and 68.07% of all the CBI region's exports similarly consist of U.S. inputs. On the other hand, the rest of the world's exports to the United States do not demonstrate the same use of U.S. inputs. For example, China's exports to the U.S. only contain 0.26% of U.S. inputs. In the year ending June 30, 2002, China exported $7.2 billion in textile and apparel to the U.S, but $7.16 billion of that did not contain U.S. content. In other words, the U.S. manufacturers do not benefit from China's production of textile and apparel but they do from Honduras' and the other countries in Central America, and the CBI region.

Any negotiating strategy by the USTR in CAFTA that undermines competitiveness or fails to integrate the Central American, CBI and NAFTA regions, will not only hurt Honduras' textile and apparel industry post the Multi-Fiber Arrangement, but it will also seriously damage the viability of the U.S. industry.

The other factor that Congress and the Administration must consider in looking at the textile and apparel industry in Honduras is the origins of the investment and ownership. An analysis of established companies in Honduras demonstrates that 40% of the investment is from the U.S. and 31% from Honduran nationals. Another 15% of the investment is from the Korean countries, 4% from Hong Kong, and 2% from the Taiwanese. There is another 8% of foreign direct investment in the Honduras textile and apparel and sector spread among a variety of countries.

III. Factors that will allow Honduras to compete after January 1, 2005

It is Honduras' belief that it has a number of competitive advantages, one of which is its strategic partnership with the U.S. yarn, textile and apparel industry.

In addition, Honduras has a key geo-strategic location, with excellent port facilities only two or three days away from parts of the Gulf Coast, Miami, New Orleans, and Galveston. Honduras is only a two hour flight from Miami and Houston. This results in a competitive turnaround time and ease of doing business for U.S. companies.

Honduras also has excellent relationships with the U.S. and other countries, and is politically and socially stable. President Maduro is the 7th consecutive President of Honduras to be elected democratically. Honduras has a skilled labor force and strong relationships between the business and labor sector. Coupling these attributes with Honduras' export incentives and free zones leads us to believe that Honduras can continue to be competitive

While there may be U.S. protectionist pressures, such as those affecting CBTPA's implementation, in the negotiation and ratification of CAFTA, history demonstrates that allowing these pressures to control the process is bad policy and bad business for Honduras, the U.S., and the region. CAFTA must be a clear, simple, and flexible mutually beneficial commercial agreement if the United States and the region are to remain competitive after January 1, 2005 in the textile and apparel sector.

IV. CAFTA Negotiation

The hearings before the ITC on January 22nd demonstrated both the potential pitfalls and the opportunities that must be balanced in CAFTA if the Central American countries, including Honduras, and the U.S. textile and apparel industries are to remain competitive in the post Multi-Fiber Arrangement world. On behalf of Honduras, and its textile and apparel sector, I would like to highlight a number of positions which we believe the Administration and the Congress should support in CAFTA:

- CAFTA must integrate the textile and apparel industry in this hemisphere and create a seamless hemispheric industry.
- Congress needs to understand the detrimental impact to U.S. and the region's trade that the faulty post-CBTPA implementation caused. This was the result of the protectionist efforts to restrict textile and apparel growth in the region. The U.S. industry has benefited greatly from both CBTPA and enhanced CBTPA. Protectionist efforts, when combined with a protectionist bureaucracy, resulted in financial harm to Honduras, the United States, and the region. CAFTA must be implemented in a business friendly, pro-trade manner. If not, U.S. government policies will be, at least partially, responsible for a loss of competitiveness post-January 1, 2005 in Honduras, Central America, and the United States.
- There must be an integrated customs compliance procedure and security program. While security programs like the Container Security Initiative (CSI) will provide expedited clearance for goods from Asia and Europe, it presently is not expected to include those goods coming from the CBI region. This could have a very detrimental impact on our industries post January 1, 2005.
- In order to be competitive, CAFTA must provide for dying, finishing, and printing of both U.S. and regional fabrics in the region.
- Wovens should also be allowed preferential access as well as knits. Regional fabrics should be allowed free movement in the region and enjoy preferential access to the U.S. market.
- Provisions, such as the short supply provision, need to be clear and based on commercial reasonable criteria. Artificial impediments interfere with the partnerships which are evolving and create uncertainties over what are qualifying products. This forces sourcing decisions to other countries' preference programs which either have more flexible origin rules or to Asia where the products are price competitive, even after the payment of duties and tariffs.
- The rules of origin must be flexible enough to allow the use of fabrics produced in NAFTA, CBI, Central America, or Andean countries. The rules of origin should also include provisions through the use of different mechanisms such as TPL's, required percentages of regional and U.S. fabric, or inputs (accumulation); or other similar mechanisms so that the textile and apparel industry in the United States, Honduras and Central America can use cost competitive fabrics. This will allow the region's industry to grow and be competitive in world markets. The rules must also be clear, transparent and unambiguous. They also must be commercially reasonable.

V. Conclusion

Honduras thanks the Ways and Means Committee for the opportunity to provide this written testimony. Honduras and its industry looks forward to the negotiation and ratification of a CAFTA that will be commercially reasonable and advance the integration of the hemisphere by integrating the textile and apparel industry of the NAFTA countries with the Central American and CBI countries. We ask the Administration and the Congress to support a commercially reasonable CAFTA in the textile and apparel industry that is negotiated, approved, and implemented by the end of 2003, or early in 2004.

Sincerely,

Mario M. Canahuati
Ambassador of the Republic of Honduras to the United States

[BY PERMISSION OF THE CHAIRMAN]

Statement of the Embassy of the Government of the Dominican Republic

We would like to take this opportunity to congratulate the Administration on the innovative strategy taken by the USTR with the simultaneous pursuit of bilateral, regional as well as multilateral negotiations. It is a way of generating pressure on other countries to cooperate on the process of market liberalization. That is why we believe that the U.S. should remain open to bilateral trade arrangements with countries such as the Dominican Republic (D.R.) that are important to the U.S. in terms of trade and security and that are ready and willing to negotiate.

The Dominican Republic has been the success story of the Caribbean Basin Initiative (CBI); with the best economic performance and the strongest tradition of democracy. This country is the fifth trading partner of United States in Latin America and the Caribbean, and trade with the D.R. is bigger than trade with Russia.

The exclusion of the Dominican Republic in the bilateral free trade agreement, initiated between the United States and Central America at the beginning of 2002, created a high level of anxiety in the Dominican economy. This exclusion places the Dominican Republic in a disadvantage *vis a vis* Central America. As a result companies installed in the DR are currently moving their operations to Central America and new investments are being diverted. There are no reasons why the leader of the CBI should have been excluded from these negotiations.

Negotiating a free trade agreement between the D.R. and the U.S. will reinforce cooperation in non-trade sectors, specifically in the areas of common security interest. The U.S. and the D.R. have, and will continue to, closely cooperate on the war against terrorism, drug control and migration policy. Also it is to be considered that the Dominican population in the United States and Puerto Rico is calculated to approximately 1.4 million, 62% of which are U.S. citizens. It is also important to note that, the uncertainty created by the current situation directly affects both sides of the island of Hispaniola. Without a strong economy and a stable political situation in the Dominican Republic it will be more difficult to find a solution for the Haitian problem.

In the case of the Dominican Republic, different alternatives have been examined. One of them is a bilateral agreement in which negotiations would be treated as a different undertaking as the Central American negotiations. Under this alternative, the negotiations should take place in tandem with the Central America in order to conserve resources; one might view them as a negotiation under the same roof in different rooms. The Dominican Republic is aware that there are other formulations that could achieve the same objective and we are willing to consider them and to discuss them with the USTR.

The current U.S. position towards a U.S.-D.R. free trade agreement (FTA) is still static, since the declaration given by Amb. Robert Zoellick, on October 29, 2002, that *"the Dominican Republic is in the short list for a bilateral FTA with the U.S."* The U.S. has not yet agreed on, or declared its intention to begin negotiations with the D.R. The objective of the Dominican Republic is to begin negotiations of a U.S.-D.R. free trade agreement no later than July 1st, 2003, and to conclude the negotiations simultaneously with the Central Americans.

Our country has demonstrated that it is better prepared than any other country to start negotiating a bilateral with the U.S.A. We are only looking for equal treatment so we may compete with Central America on the same terms and therefore protect the interests of both American and D.R. investors and workers.

Statement of the Honorable Eni F.H. Faleomavaega, a Representative in Congress from American Samoa

Mr. Chairman:

I want to commend you for holding a hearing on the President's trade agenda which includes implementation of the Free Trade Agreements with Chile and Singapore, proposed Free Trade Agreements with Morocco, the Central American countries, Australia, the Southern African Customs Union, and the Free Trade Area of the Americas.

As Ranking Member of the House International Relations Subcommittee on Asia and the Pacific, I want to say from the outset that I support U.S. efforts to promote international trade. However, I also want to say that I believe trade agreements should be based on principles of fairness. First and foremost, I believe we should be fair to American workers. I also believe we should be mindful of workers' rights at home and abroad.

In no way do I believe we should support trade agreements that displace one set of workers for another simply because corporate America is looking for cheaper labor costs. I mention this because last year my district faced one of its most critical hours as a result of aggressive efforts by the H.J. Heinz Co., and its then subsidiary StarKist Seafoods, to include canned tuna in the Andean Trade Preference Act (ATPA). Although StarKist was very aware that duty-free treatment for canned tuna from Ecuador and other Andean countries would bring about massive unemployment and insurmountable financial problems in American Samoa, many of my colleagues were unaware that more than 85% of American Samoa's economy is either directly, or indirectly, dependent on the U.S. tuna fishing and processing industries.

At the time of the debate, many of my colleagues were also unaware that the largest tuna cannery in the world is located in American Samoa, and it is owned and operated by StarKist. For more than 40 years, Samoan workers have helped StarKist to become the number one brand of tuna in the world. However, after more than a 40 year relationship with StarKist, cannery workers in American Samoa continue to be paid well below U.S. minimum wage standards. Samoan workers are paid at $3.60 and less per hour. StarKist workers in the Andean countries are paid $0.60 and less per hour. Given this disparity in wage rates, I do not believe now and I did not believe then that StarKist's interest in the ATPA was to curb drug production in the Andean countries. On the other hand, I believe StarKist fought the matter for one reason and one reason only—to displace $3.60 per hour workers for $0.60 per hour workers.

I do not believe this is what free trade should be about and I am pleased that my colleagues agreed with me on this point and excluded canned tuna from the ATPA. Mr. Chairman, I thank you and Congressman Rangel for your support and leadership on this issue. Parenthetically, I would also like to note that StarKist has since changed ownership and I am hopeful that our new corporate partner, Del Monte Foods, will be more considerate of American Samoa's needs and more appreciative of our contributions.

With this said, I want to speak specifically about the U.S. Central Free Trade Agreement that is now before us. I raise this as an issue because the United States does more than $200 billion in trade with Latin America. I won't go into a country by country analysis but I will say that if the U.S. wanted to export canned tuna or textiles to Central America we would have to pay a duty, or tariff rate, of some 20% or more. In my book, this is not fair trade. This is not fair for textile workers in North Carolina or cannery workers in American Samoa.

Furthermore, I continue to have serious concerns about how the International Trade Commission (ITC) conducts its investigations regarding the probable economic effects that the U.S. Central America Free Trade Agreement may have on the U.S. tuna and fishing processing industries. Once again, the ITC is bypassing a section 332 investigation and providing Members of Congress with a piecemeal assessment of the effects this trade agreement may have on the U.S. tuna industry. As I have repeatedly stated, American Samoa's economy is more than 85% dependent, either directly or indirectly, on the U.S. tuna fishing and processing industries. A decrease in production or departure of one or both of our canneries could devastate our local economy resulting in massive layoffs and insurmountable financial difficulties.

Simply put, anytime there is an attempt to include canned tuna in a free trade agreement, American Samoa is at risk. As such, I believe American Samoa's views should be considered and taken seriously by the ITC. Unfortunately, the ITC continues to dismiss American Samoa's concerns and has once more submitted a report to this Committee without soliciting information from the American Samoa Government (ASG). The ITC informed my office that its failure to solicit information from ASG was an oversight. Given that the ITC is very aware of my office and its involvement during the ATPA debate, I find it inexcusable that the ITC failed to re-Member that American Samoa is a critical player in any discussion involving the probable economic effects that any trade agreement may have on the U.S. tuna and fishing processing industries.

Mr. Chairman, as these discussions move forward and as the issue of canned tuna is considered in the context of any trade agreement that comes before this Committee, I am hopeful that you will once again be an advocate for American Samoa. I am also hopeful that the rights of workers at home and abroad will be protected as the U.S. moves to promote its trade agenda at this difficult time in our nation's history.

Florida Citrus Mutual
Lakeland, Florida 33802
March 12, 2003

U.S. House of Representatives
Committee on Ways and Means
Washington, DC 20515

INTRODUCTION AND SUMMARY OF POSITION

This submission is filed on behalf of Florida Citrus Mutual (FCM) of Lakeland, Florida, in response to the invitation for comments on the President's Trade Agenda in the Ways & Means Committee's Advisory of February 14, 2003, and following the testimony of the United States Trade Representative before the Committee on February 26, 2003. FCM is a voluntary cooperative association whose active membership consists of 11,676 Florida growers of citrus for processing and fresh consumption. FCM represents more than 90 percent of Florida's citrus growers. FCM's membership also accounts for as much as 80 percent of all oranges grown in the United States for processing into juice and other citrus products.

The President's Trade Agenda is of singular concern to Florida orange growers, one of the largest unsubsidized agricultural industries in America. Growers and the many support industries in Florida listen carefully to every detail of the Administration's agenda, since the maintenance of the current U.S. tariff on orange juice from Brazil is absolutely essential to the survival of the second largest industry in Florida. It is not an exaggeration to say that many growers look to the Administration's WTO and FTAA market access proposals as the pronouncements on whether their groves will pass on to the next generation in their families. Florida citrus growers will continue to work with Congress and the Administration to make it clear that this industry is truly unique in the context of traditional economic theory, and any reduction in the current tariff will be both economically damaging and anti-competitive.

The U.S. orange juice tariff offers the most efficient Florida orange growers the opportunity to exist as the sole large volume competitor in a global industry dominated by five huge producers in Brazil. The tariff does not ensure survival, as many bankrupt Florida growers can attest, but it counteracts some of the extreme pricing pressure inflicted by frequent devaluations of Brazil's currency, the predatory pricing behavior of the Brazilian orange juice oligopoly, and the sheer market power of a highly concentrated industry selling globally a dollar denominated commodity made with progressively devalued local inputs. Furthermore, the tariff gives Florida growers a fighting chance to make a living in a country that properly places tremendous value on costly worker rights and environmental integrity, in the face of competition from a country that does not.

The global orange juice industry is highly unique. World orange juice consumption is concentrated chiefly among only 2 regions: the United States and the European Union. Aside from the United States and, to a lesser extent, Canada,[1] there are no other significant orange juice consuming countries in the Western Hemisphere.

[1] The United States already enjoys dutyfree access to the Canadian orange juice market.

Thus, the U.S. orange juice industry is not in a position to benefit from FTAA trade liberalization.

Global orange juice production is also concentrated chiefly among only 2 countries: Brazil and the United States. Brazil's production is controlled by 5 very large processors,[2] which control roughly 80 percent of Brazil's FCOJ production. Given that they also operate and control Brazil's tank ship distribution system, these companies indirectly control nearly all of Brazil's FCOJ exports. The large Brazilian processors benefit from advantages brought by past subsidization and dumping, lax environmental protection, weak and largely unenforced labor laws, frequent national currency devaluation (which reduces the relative cost of production inputs and provides false incentives to overproduce), and oligopoly price manipulation.

Florida orange growers are not the only U.S. agricultural industry pitted against the unfair advantages of Brazil's agricultural exports; however, they are one of the few industries that the U.S. FTAA proposal threatens with demise. U.S. soybean farmers claim that on account of Brazil's currency devaluation, they were receiving 40 percent less for their soybeans in 2002 than in 1997, while Brazilian farmers were receiving over 36 percent more.[3] Brazil is the world's second largest soybean producer after the United States, so this is very significant. However, soybeans are consumed throughout world and new export markets are highly sought after by the U.S. industry. So, it makes sense that the U.S. soybean industry contends with the unfair advantages of Brazil's devaluation chiefly via domestic subsidies. While subsidies are used to help level the playing field for agricultural industries whose top markets are abroad, tariffs are used to level the field for industries, like orange juice, whose top markets are in the United States. The U.S. industry that grows oranges for processing is unique among U.S. agricultural industries in that it does not receive any production or trade distorting (WTO-designated "amber box") domestic subsidies. Its only offsetting tools are the tariff and enforcement of the unfair trade laws.

FCM believes that the Administration's FTAA proposal on agriculture is lop-sided to the extent that it puts all U.S. agricultural tariffs on the table, while leaving all domestic subsidies off the table. In so doing, the Administration's proposal effectively, if unwittingly, singles out agricultural industries for demise based exclusively on the location of their markets, without consideration of the effect on the U.S. economy. Not only is an unsound approach to the policy of trade negotiations, it is also guaranteed *not* to meet any of the stated objectives of trade liberalization: foreign industrial growth, lower prices to consumers, and increasing living standards.

FCM asserts that any reduction in the U.S. orange juice tariff applying to Brazil would devastate the U.S. industry that grows oranges for processing. Furthermore, any tariff reduction would critically damage the entire Florida citrus industry, the economic impact of which has recently been estimated at $9.13 billion in industry output, $4.18 billion in value-added activity, and 89,700 jobs.[4] Perhaps even most damaging to the U.S. economy is the fact that, since this Florida industry is Brazil's only competitor of global significance, its demise would not bring cheaper orange juice to the U.S. breakfast table, but would eventually unleash the Brazilian oligopoly to raise U.S. orange juice prices. For all of these reasons, FCM strongly opposes any reduction in U.S. orange juice tariffs under the FTAA or any trade agreement to which Brazil is a party.

CONCENTRATION OF GLOBAL PRODUCTION AND CONSUMPTION

The polarization of global orange juice consumption in the United States and the EU, and the polarization of production in Brazil and the United States are unique and defining characteristics of this industry (see charts below). Because these factors are strong determinants of the negative outcome of trade liberalization, it is imperative that they be understood by all U.S. agricultural trade negotiators.

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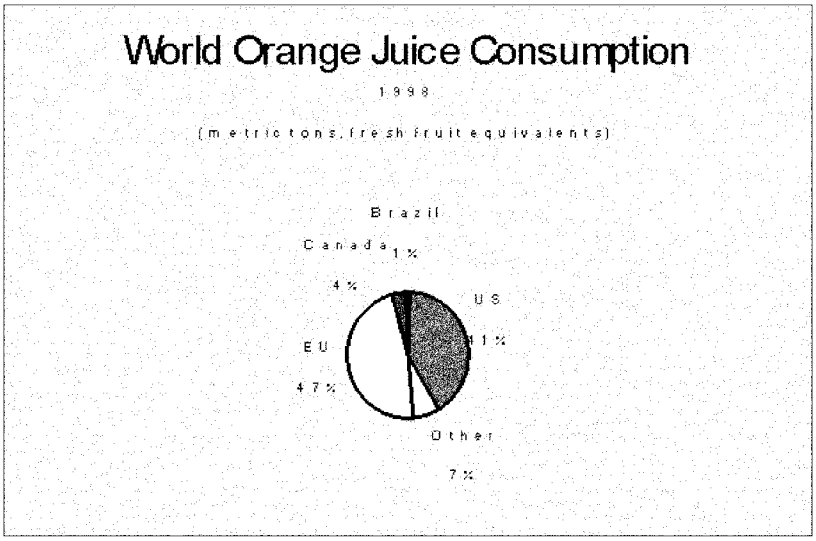
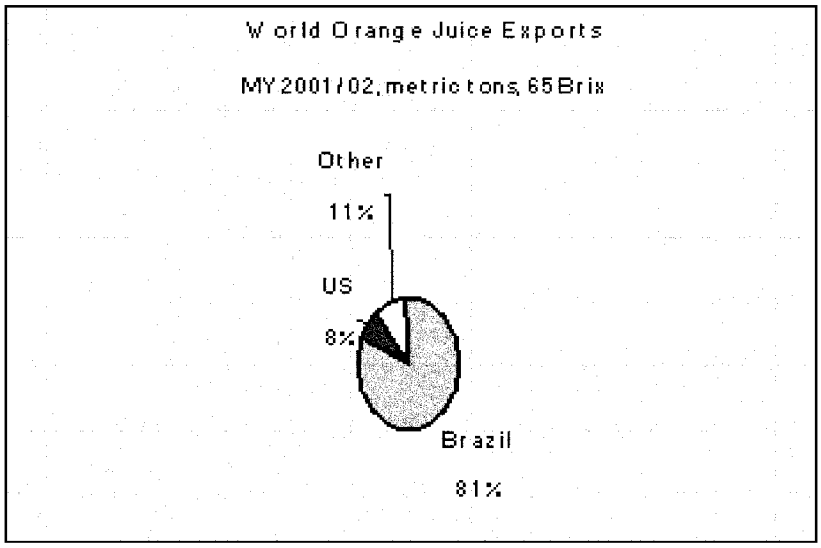
[2] These dominant Brazilian processors are Cargill Citrus Ltda., Citrosuco Paulista S.A., Citrovita Agro Industrial Ltda., LouisDreyfus Citrus S.A., and Sucocitrico Cutrale Ltda.

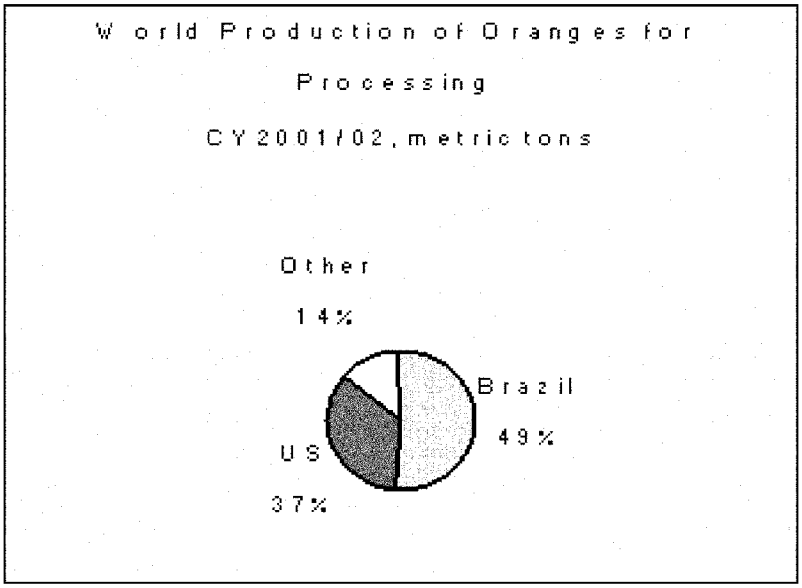
[3] "ASA Emphasizes Importance of Maintaining $5.26 Soybean Loan Rate to Help Offset Effects of Currency Devaluations in Argentina & Brazil," American Soybean Association, January 7, 2002 (http://www.soygrowers.com/newsroom/releases/2002%20releases/r010702.htm).

[4] Alan Hodges, et al., "Economic Impact of Florida's Citrus Industry, 1999–2000," *Economic Information Report,* EIR 01–2, University of Florida, Institute of Food and Agricultural Sciences, Food and Resource Economics Department, July 2001, p. 3.


World Orange Juice Consumption
1998
(metric tons, fresh fruit equivalents)
Brazil
Canada
1%
4%
US
11%
EU
47%
Other
7%

Source: FAO.

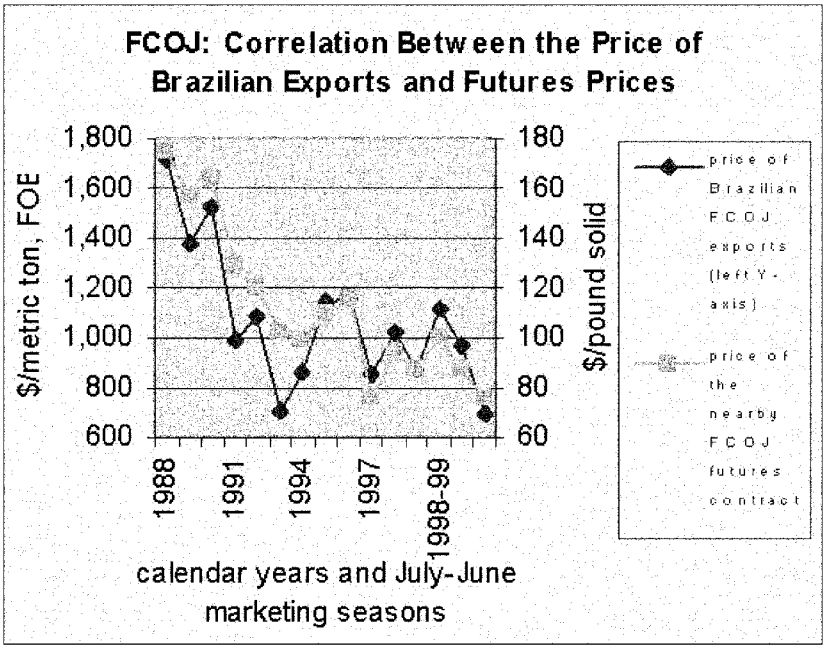

World Orange Juice Exports
MY 2001/02, metric tons, 65 Brix
Other
11%
US
8%
Brazil
81%



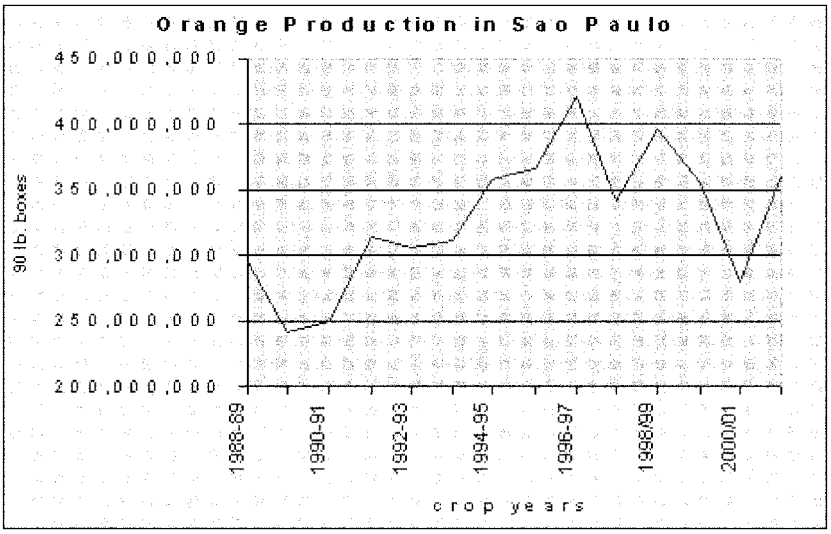
Source: "Situation and Outlook for Citrus" and "Situation and Outlook for Orange Juice," Horticultural & Tropical Products Division, FAS, August 1, 2002.

BRAZIL'S CONTROL AND MANIPULATION OF THE GLOBAL ORANGE JUICE MARKET

The concentration of production among these 5 large Brazilian orange juice processors has enabled them to place tremendous downward pressure on processing orange prices in Brazil. In addition, the Brazilian orange juice processors' oligopoly dominates and manipulates the global orange juice market. As seen in the charts below, the price of Brazilian frozen concentrated orange juice (FCOJ) in the United States and the commodity futures price of FCOJ (which is considered one of the most accurate indicators of the U.S. price of wholesale FCOJ) have declined in lock step during the past decade, in tandem with the expansion and concentration of Brazil's orange juice industry.



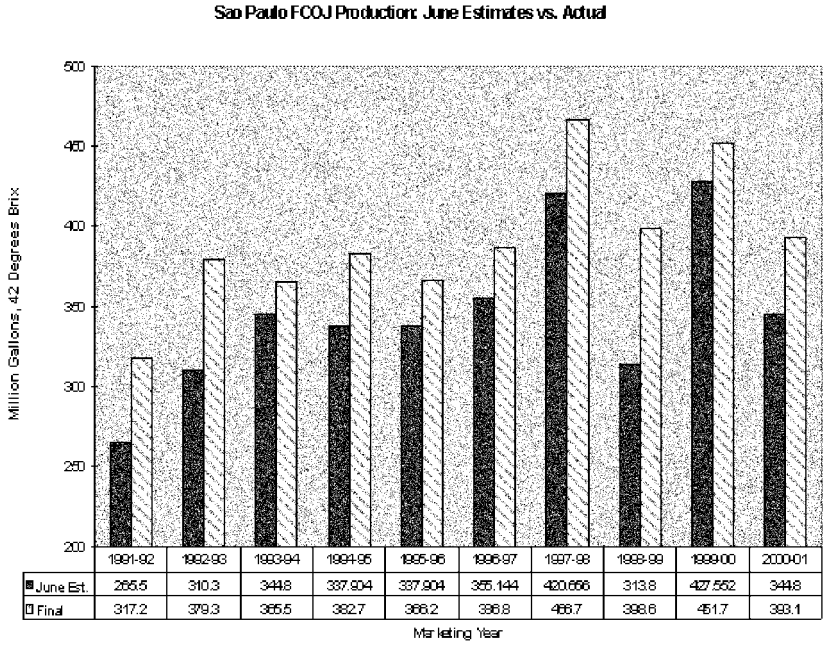
Source: Compiled by Barnes, Richardson & Colburn with futures prices from the NY Board of Trade; and Brazilian FCOJ export prices from CACEX, DECEX, FAS.



Source: U.S. Agricultural Trade Office, FAS, USDA, São Paulo.

Not only does the Brazilian orange juice oligopoly control prices on an annual basis, but they appear to be attempting to manipulate world orange juice prices on a seasonal basis in order to maximize orange juice prices during their peak harvesting season (June through September) by continually underestimating the size of their orange crop and juice production. For nine straight seasons from 1991/92 to 2000/01, initial Brazilian estimates of FCOJ production, which are made at the

beginning of Brazil's peak orange harvesting season,[5] have understated actual output by 4–27 percent (see chart below).



	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
June Est.	265.5	310.3	344.8	337.904	337.904	355.144	420.666	313.8	427.552	344.8
Final	317.2	379.3	365.5	382.7	366.2	386.8	466.7	398.6	451.7	393.1

Source: Compiled by Florida Citrus Mutual from estimates reported in "Brazil Citrus Annual," GAIN Report, FAS, USDA.

Then towards the end of the Brazilian harvest (in November and December) when the market finally learns that Brazil has harvested many more oranges than was previously estimated, the market price falls to a new equilibrium just in time for the peak Florida orange harvesting season (December through April). Although market analysts and futures traders are increasingly becoming aware of this deception and are beginning to factor it into their decision-making, the fact that it has occurred speaks loudly of the powerful market control and predatory capabilities of the Brazilian oligopoly.

Brazil is the world's largest producer of oranges by a substantial margin; while the United States is the largest orange juice consuming country in the world. The United States is also Brazil's only truly global competitor. Brazil has enormous incentive, as well as potential, to cripple the U.S. industry so that it can dominate the U.S. orange juice market. For the same reasons we enforce antitrust laws in this country, we must uphold the U.S. tariff on orange juice from Brazil. "Free" trade in orange juice will not lead to greater competition, consumer benefits, or overall global industry growth as might occur in other agricultural industries whose production is more widely distributed. It will lead to the rapid demise of Brazil's only remaining global competitor—Florida—and Brazil's realization of an airtight global monopoly on orange juice.

Brazilian industry has already been found by the United States to have engaged in both injurious sales at less than fair value prices (including less than cost of production), and injurious sale of subsidized juice. As a result of an affirmative Sunset Review determination in 1999, an antidumping order remains in effect on frozen concentrated orange juice from Brazil, and the applicable dumping margins for the suppliers still covered by the order are significant.

[5] The U.S. agricultural attache in São Paulo reports these estimates during June of each year in "Brazil Citrus Annual," *GAIN Report*, Foreign Agricultural Service, USDA.

U.S. orange juice markets, particularly those throughout the EU, have also been increasingly plagued with Brazilian orange juice prices that appear to be well below their cost of production. During September 2000 through April 2001, the price of bulk Brazilian FCOJ in the EU was often less than $700 per metric ton (including ocean freight). In Spring 2001, in his appeal to the European Commission for protection, the President of the Italian Consortium of Citrus Processors (CITRAG) stated,

> We believe that these [Brazilian] prices, which include freight cost from Santos to Europe, and for some deals also include the cost of drums, closely resemble 'dumping', since the production and overhead costs incurred by the Brazilian industry are certainly beyond these levels.[6]

As seen in the chart above, the long-term annual average trend in the price of Brazilian orange juice exports has been downward during the past decade and a half. Such constant downward price pressure in foreign markets makes the exporting of U.S. orange juice nearly impossible. Current levels of U.S. orange juice exports are more a function of the export incentives provided by the import duty drawback program, than of the ability of U.S. producers to earn a fair price in export markets. Even if there existed lucrative orange juice markets in the Western Hemisphere outside of U.S. and Canadian borders, and even if orange juice tariffs were liberalized in these markets, the U.S. orange juice industry would stand little chance of competing with Brazil at these extremely low price levels.

BRAZIL'S UNNATURAL ADVANTAGES

Florida orange growers understand the virtues of free trade and the importance of negotiating trade agreements that are sensitive to the interests of developing countries with infant and emerging industries. However, Brazil's orange juice industry is one of the most advanced agricultural industries in the world. According to the Brazilian Association of Citrus Exporters (ABECITRUS), "[the orange juice industry] is one of the main sectors of Brazilian agribusiness, employing the latest in technology, with the best logistics and transport system available in the world today."[7] The Brazilian oligopoly owns an entire fleet of tanker ships, which haul over 80 percent of the orange juice offered on the world market, generating for Brazil approximately $1.5 billion in U.S. currency each year. These are not the marks of a "developing industry," but a highly industrialized, state-of-the-art industry that resides in a developing country where it can exploit the underdeveloped economic, political, and social conditions that persist there.

It is a well-documented fact that the Brazilian citrus industry is not subject to enforcement of the same child labor laws and other labor standards that are enforced in the United States. In its 1998 report to Congress,[8] the U.S. Department of Labor reported,

> The harvesting of oranges also presents its own unique dangers. According to Brazilian welfare groups and unions, close to 150,000 children are employed during the country's six-month orange harvesting season. They pick oranges in severe heat for as long as 12 hours a day. The children's hands are dyed green and their fingertips are sometimes eroded by citric acid from the oranges and toxic pesticides sprayed even while children are in the orange groves. In some cases, damage to their fingertips is so severe that children are later refused identification cards due to a lack of fingerprints.[FN]

The U.S. Department of State reports in its *1999 Country Report on Human Rights Practices in Brazil:*[9]

> A report published by the Sergipe state government in 1997 stated that 10,000 children and adolescents between the ages of 6 and 18 were part of the labor force in the orange-growing region, with 54 percent between the ages of 7 and 14.

Without competition-equalizing tariffs, U.S. orange growers cannot and should not be made to compete with such an exploitative foreign industry.

Brazil ratified International Labor Organization (ILO) Convention No. 138 on the Minimum Age for Employment on June 28, 2001, and ILO Convention No. 182 on

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[6] "Italian Industry Slams Brazilian Processors," *FOODNEWS*, Agra Europe Ltd., Volume 29, No. 15, Apr. 6, 2001, p. 12.

[7] Http://www.abecitrus.com.br/abecus.html.

[8] *By the Sweat & Toil of Children, Volume V: Efforts to Eliminate Child Labor*, U.S. Department of Labor, 1998 (http://www.dol.gov/dol/ilab/public/media/reports/iclp/sweat5/).

[9] Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, February 25, 2000.

the Worst Forms of Child Labor on February 2, 2000. In addition, Brazil's Ministry of Welfare and Social Assistance (MPAS) has listed the harvesting of oranges among the "worst forms of child labor" in Brazil.[10] However, as of March 2003, legislation that would fully implement these Conventions has still not been made law in Brazil.

There are a few rather weak anti-child labor laws on the books in Brazil. For instance, under the Brazilian Federal Constitution, employing children under the age of eighteen to work at night or in "any dangerous or unhealthy job," and employing children under sixteen, unless they are apprentices, is punishable by a $320 fine.[11] However, the practice of child labor remains rampant in Brazil's citrus industry, either because the fines are too low to be a deterrent or the laws are simply not being enforced. Even if Brazil eventually strengthens its anti-child labor laws, lack of enforcement will render the laws powerless.

In discussing the FTAA, Representative Zoellick testified at the hearing on President Bush's Trade Agenda that the hemisphere's heads of state agreed at the Third Summit of the Americas to "promote compliance with internationally recognized core labor standards."[12] The Inter-American Conference of Ministers of Labor (IACML), which was set up to implement the labor-related mandates of that Summit, produced the "Declaration and Plan of Action of Ottawa" during their most recent meeting in October 2001. This Declaration says, "We will work to bring all national laws, regulations and policies into conformity with this convention [No. 182] and will take immediate action to eliminate the worst forms of child labor.[13]

In addition, the U.S. Department of Labor's International Child Labor Program has contributed $112 million, since 1995, towards the International Labor Organization's International Program on the Elimination of Child Labor.[14] Rewarding Brazil's exploitative orange juice industry with a reduction in U.S. orange juice tariffs would not only contradict a decade of effort by the U.S. Department of Labor, it would contradict the current Administration's own trade agenda, while punishing U.S. orange growers who obey the stringent labor laws of the United States.

The Florida Division of Agriculture and Consumer Services (as required by the U.S. Department of Labor) conducted 2,700 Worker Protection Standard (WPS) inspections in the State of Florida during 2000. Approximately half of these inspections were to ensure the protection of workers in citrus groves.[15] The labor standards in Florida orange groves are high and heavily regulated by State and Federal agencies. Minimum age and wage regulations are rigorously enforced. Field workers and harvesters are subject to a schedule of routine training to ensure safe operation of mowing, pruning and harvesting equipment. They are also trained to ensure safe use and mixing of field chemicals such as pesticides and fungicides, etc. They are required to wear appropriate protective gear in the groves and to observe strict rules for re-entering the groves after chemical applications. Grove owners are also required to meet stringent housing standards for their field and harvesting workers who require housing, such as migrant workers from abroad employed under the H2A program. We are not aware of any such regulations being enforced in São Paulo, Sergipe or other citrus growing regions in Brazil.

In addition, Florida orange growers are held liable for any degradation to the land, water or air that may result from their operations. They are required to use field chemicals in compliance with the environmental regulations and warnings on their labels. They are also responsible for protecting surrounding land and water from fertilizers and chemical run-off. Pursuant to the run-off regulations, many growers in South Florida must dedicate on average 20 percent of their acreage to retention ponds and ditches that prevent run-off and allow for the safe treatment of grove water. Brazil's environmental standards for citrus groves are considerably more lax, if existent at all.

Florida orange growers are also prevented from using a number of generic-brand field chemicals that are readily available in Brazil. In the United States, the process of getting generic field chemicals registered is much more lengthy and expensive than in Brazil, because EPA has more stringent requirements and the chemicals must undergo more rigorous testing to ensure their safety than in Brazil. In Brazil,

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[10] U.S. Embassy-Brazil, unclassified telegram no. 001439, September 18, 2000. Reported by the U.S. Department of Labor at http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/brazil.htm.

[11] "Child Labor Law Changes in Brazil," Global March Against Child Labor, Jan. 25, 1999, http://www.globalmarch.org/cl-around-the-world/child-labor-law-changes-in-brazil.html.

[12] Statement of the Honorable Robert B. Zoellick, United States Trade Representative, Testimony Before the Full Committee of the House Committee on Ways and Means, Feb. 26, 2003.

[13] "Declaration and Plan of Action of Ottawa," XII Inter-American Conference of Ministers of Labor, OEA/Ser.L/XII.12.1, COTPAL/doc.3/01, Oct. 19, 2001.

[14] http://www.dol.gov/ILAB/programs/iclp/about—iclp.htm.

[15] Estimate by economists at Florida Citrus Mutual.

the average cost of registering a generic field chemical is about $45,000 to $100,000. Whereas in the United States, such registration costs are in excess of $5,000,000. The end result is that U.S. grove owners are forced to use the more expensive brand name chemicals which have already been registered with EPA, while Brazilian grove owners are able to cut costs substantially by using generic chemicals that have not yet been proven safe in the United States.

Lax, unenforced and nonexistent labor, environmental and health and safety laws are, however, not the only reason why Brazil is able to sell its orange juice at such low prices. Ronald Muraro and Thomas Spreen at The University of Florida recently calculated comparative cost of production estimates for processed oranges in Florida and São Paulo, Brazil. They estimate that in crop year 2000/01 labor costs (including wages, salaries and social taxes) were 45¢/box in Florida and only 17¢/box in São Paulo.[16] A substantial portion of this wide discrepancy is due to the many currency devaluations Brazil has experienced during the last few decades.

Brazil's orange juice export sales to all markets are denominated in U.S. dollars. When the Real is devalued, the cost of labor and other domestic production inputs, which are denominated in Real, become cheaper relative to the price paid for the orange juice. For instance, in marketing year 1996/97, the currency conversion was $1.04 Real = $1 U.S. As of July 1, 2002, the conversion was $2.84 Real = $1 U.S.[17] Thus, a unit of labor that cost $1 Real or 96¢ U.S. in MY 1996/97, would only cost 35¢ U.S. on July 1, 2002. So the cost of grove labor as a percentage of the export price of Brazilian orange juice shrinks each time the Brazilian Real loses value against the U.S. dollar, thus, increasing the profit margin obtained by the Brazilian processor. The increase in profits then sends false market signals throughout the Brazilian citrus industry causing it to overplant and overproduce. The overproduction gives way to lowered international orange juice prices, which reduce the value of Florida's processing oranges and diminish growers' profits. However, further devaluation prevents the Brazilian industry from feeling the squeeze of lower international prices, and the cycle continues. This is just one more way the Brazilian orange juice oligopoly is able to benefit from residing in a country with an underdeveloped and inflationary economy.

In an ideal free market world economy where basic and equivalent labor, environmental, and health/safety laws exist and are enforced, where world production and prices are not controlled by a single oligopolistic industry, and where currency devaluations do not tip the scales dramatically in favor of the foreign exporters, the law of natural advantages might outweigh arguments for tariff protection. But the Florida agriculture sector in general, and citrus in particular, cannot defer to that logic, because Brazil's advantages are not "natural" and the playing field is grossly skewed. The tariff is the only offset on which this unsubsidized U.S. industry can rely to counter these "unnatural" advantages.

NEGATIVE ECONOMIC EFFECTS OF TARIFF REDUCTION

If U.S. orange juice tariffs are reduced or eliminated, the price of U.S. imports of bulk FCOJ from Brazil, as well as the futures contract prices of FCOJ and the U.S. wholesale price of orange juice, would fall rapidly. At the same time, the volume of U.S. FCOJ imports from Brazil would increase significantly. The supply of U.S. juice oranges and orange juice, however, would remain constant in the short term, as they are not responsive to price.

It is important to understand that the U.S. supply of juice oranges is highly inelastic, because they are a natural, perishable product whose supplies are primarily dictated by the number of productive citrus trees in the United States, air temperature, amount of rainfall, and citrus tree diseases. Capacity utilization in citrus groves is always near 100 percent, because all wholesome citrus fruit is picked. Since it takes at least 4–5 years for an orange tree to begin bearing fruit and 25 years for it to stop bearing fruit, supplies cannot be manipulated in the short-run in response to price. Thus, given the inability of orange supplies to respond to juice prices, the U.S. on-tree price of juice oranges would immediately plummet and, in turn, cause grower rates of return to fall well below the break-even point, resulting in widespread grove closures.

The grove closures would leave unemployed over 42,000 citrus grove workers in Florida alone, and jeopardize the existence of all U.S. juice extractors and processors

[16] "Cost for Processed Oranges: A Comparison of Florida and São Paulo," Ronald P. Muraro and Thomas H. Spreen, IFAS, The University of Florida, presented at the Florida Citrus Industry Economics Meeting, July 8–9, 2002.

[17] *International Financial Statistics*, International Monetary Fund.

that depend on domestic citrus. It would also have grave consequences for the following upstream suppliers of the U.S. juice orange industry:

- nurseries that supply replacement trees to citrus groves,
- suppliers of fertilizer, fungicide, herbicide and insecticide to citrus groves,
- suppliers of irrigation and spraying systems, mechanical harvesters and farm implements,
- financial institutions, especially merchant banks that have citrus exposure,
- insurance companies that serve the citrus industry, and
- freight companies that haul citrus to processing plants.

Since the land on which processing oranges are grown consists of very sandy soil with little agricultural value outside of citrus production, and the volume of all other fruit juices extracted in the United States combined pales in comparison to orange juice, the above upstream industries could not exist if orange juice production were no longer viable. In addition, because the production of about 75 percent of all processing oranges is concentrated in Central and South Florida, entire counties in these regions would be ravaged and their real estate values would tumble as thousands of groves would be abandoned, with no practical alternative land utilization.

INCREASED SALES OF NOT-FROM-CONCENTRATE (NFC) JUICE IS NOT A SOLUTION

Those wishing to reduce U.S. orange juice tariffs have suggested that U.S. orange growers should shift their production primarily to the fresh, pasteurized, Not From Concentrate (NFC) juice market, in which Brazil has not traditionally been a significant competitor, due to the costs of transport over extended distances. Unfortunately, this is not a viable solution.

U.S. growers of oranges for processing do not determine the product into which their oranges are processed. The utilization of the oranges (whether in concentrate, fresh pasteurized juice, or for further processing of juice and non-juice beverages) is the sole decision of the Florida processors, some of which are owned and controlled by the large Brazilian processors. Growers simply harvest and sell all the fruit that their trees produce. Growers, therefore, subsist by means of the returns on the sale of juice made from deliveries of their fruit, no matter how utilized.

If tariffs on orange juice from Brazil were reduced or eliminated, U.S. orange juice processors, reprocessors and blenders that already reprocess and blend varying amounts of Brazilian orange juice would likely purchase even larger volumes of Brazilian FCOJ because its price would be even lower compared to the cost of purchasing and processing U.S.-grown oranges. This would cause the price paid to U.S. growers for processing oranges to decline. The decreased price of Brazilian FCOJ may even cause U.S. processors to decide to produce less NFC orange juice, and more concentrated orange juice due to its lower cost, bringing the price of processing oranges grown in Florida down even further. Since U.S. growers cannot reduce their crop size in the short term (meaning less than a period of about 5 years) and can only reduce it marginally over the longer term on account of the long life span of orange trees, the impact of any tariff reduction on processing orange prices in Florida would be dramatic and immediate.

If U.S. orange juice duties were reduced, it is possible that at least a few of the U.S. processors who currently process only U.S. oranges (i.e., cooperatives and U.S. grower-owned processors) would continue to do so and would process them exclusively for the NFC market. While this demand for U.S.-grown oranges for use in the NFC market might provide a limited amount of support for orange prices, it would never be enough to off-set the strong price-depressing influence of Brazilian FCOJ and, therefore, could not prevent widespread grove closures.

The increasing level of foreign presence in the U.S. NFC market is yet another reason why the NFC market is not a viable solution for Florida orange growers. While foreign producers have not traditionally been competitive in the U.S. NFC market, a reduction in U.S. tariffs on Brazilian orange juice could cause Mexican and CBERA producers to enter this niche market in greater volume as it would likely be the only one in which they could compete against Brazil. The Del Oro orange juice processing company in Costa Rica and Belize already supplies NFC orange juice to the EU market via a joint venture between Del Oro and Dohler EuroCitrus.[18] In addition, the presence of U.S. NFC in the EU market, as well as

[18] CDC Group plc Report and Accounts 1999 at http://www.cdcgroup.com/publications/R&A1999.pdf.

the presence of Brazilian NFC in the U.S. market indicate that transportation costs are not as prohibitive as had been assumed.[19] Brazilian processors have now built tank ships designed to transport NFC in a more cost-efficient manner, and thus are expected to compete more directly with Florida processors in this product sector.

In short, both the FCOJ and NFC markets are necessary to assure economic operation of U.S. groves and sufficient volume of production. U.S. orange growers are currently operating at margins very close to or under their break-even point, and are simply too vulnerable to withstand the massive and immediate orange price decline that the onslaught of Brazilian FCOJ would cause should U.S. orange juice tariffs be reduced.

EXPERIENCE UNDER NAFTA IS NOT A MODEL FOR AN FTAA

Those wishing to reduce U.S. orange juice tariffs have also pointed to the experience of U.S. orange growers after Mexican orange juice was granted preferential tariff treatment under the NAFTA, implying that because NAFTA imports did not damage U.S. orange growers to the extent that many industry members had expected, a reduction in orange juice tariffs applying to Brazilian juice would be equally benign, or the same protections built into the NAFTA would be equally effective in an FTAA. These implications are completely misinformed.

U.S. imports from Mexico have fallen short of expectations primarily due to damaging droughts in Mexico since the passage of NAFTA, as well as an outbreak of citrus tristeza virus (CTV) throughout most southeastern Mexican citrus groves. While the Mexican government has been working to eradicate this virus at both the state and federal levels, progress has been slow. These natural events have moderated what appeared, pre-NAFTA, to be a sharp escalation in Mexican orange production. Undoubtedly, the strong Mexican peso and heavy competition from Brazilian FCOJ, not to mention duty-free CBERA orange juice, in the U.S. market have also impeded Mexico's orange juice exports in recent years.[20]

Despite the natural, currency and competitive difficulties Mexican producers have faced, U.S. imports of frozen orange juice from Mexico have still exceeded the NAFTA TRQ in every year, except 2001.[21] Thus, Florida orange growers have still had to contend with significant competition from Mexico, which has contributed to the price pressure Florida growers are currently struggling with.

It is important to explain, however, that although the U.S. orange-growing industry has considered, and still considers, orange juice from Mexico to be a serious threat, the experience of Mexican orange juice imports into the United States resulting from NAFTA cannot be used as a model of the potential impact of Brazilian orange juice imports into the United States should U.S. tariffs on Brazilian juice be reduced or eliminated. In short, Mexico is not Brazil. Brazilian orange juice production dwarfs that of Mexico (see chart below). Brazil has more than twice as much land dedicated to orange production as Mexico and more than 3 times as many trees. Plus, unlike Mexico, Brazil has extremely low rates of fresh orange consumption. Therefore, Brazil processes 23 times as many oranges as Mexico.[22]

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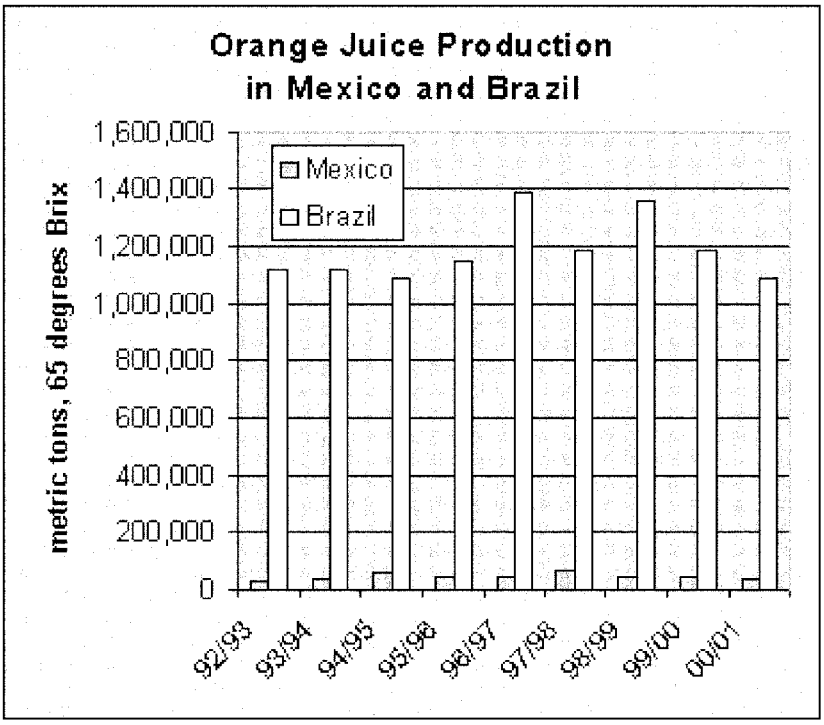
[19] In 2002, U.S. exports of NFC to the EU (under subheading 2009.12.0000) were over $6 million, and U.S. imports of NFC from Brazil (under subheading 2009.12.2500) were over $11 million.

[20] "Mexico, Citrus: Mexican Government Hosts Citrus Forum, 2001," *GAIN Report*, FAS, USDA, June 13, 2001.

[21] "Mexico Citrus Semi-Annual Report," *GAIN Report*, FAS, USDA, April 25, 2002.

[22] Data in this and the previous sentence reflect Mexico's 2001/02 orange crop and Brazil's 2000/01 orange crop (from "Mexico: Citrus Semi-Annual," *GAIN Report*, FAS, USDA, Apr. 25, 2002, and "Brazil: Citrus Semi-Annual," *GAIN Report*, FAS, USDA, Nov. 20, 2001).



Source: World Horticultural Trade & U.S. Export Opportunities, FAS, USDA.

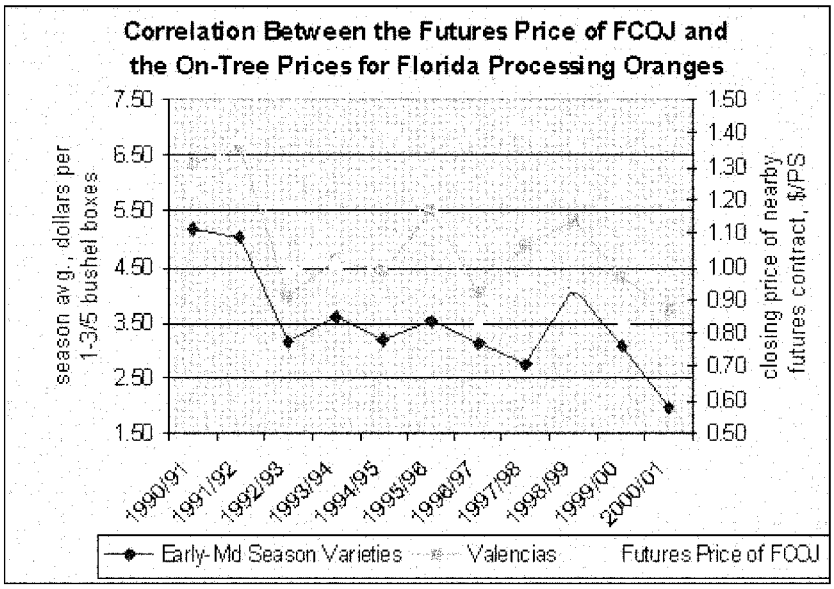
The United States is currently Mexico's largest export market for orange juice. Mexico has the ability to divert fruit from fresh domestic consumption into orange juice processing for export to the United States; however, Mexico would not be able to shift very large quantities of orange juice from other foreign markets into the United States. This situation is quite different, however, in Brazil's case. In marketing year 2001/02, Brazil exported more than 7 times as much juice to foreign markets outside the United States as it exported to the United States.[23] If U.S. FCOJ tariffs applying to Brazilian FCOJ were reduced or eliminated, Brazilian processors would have the ability to divert massive quantities of FCOJ from European markets into the United States on very short notice, potentially flooding the U.S. market and decimating U.S. grower prices overnight.

ECONOMIC EFFECTS ON THE CONSUMER

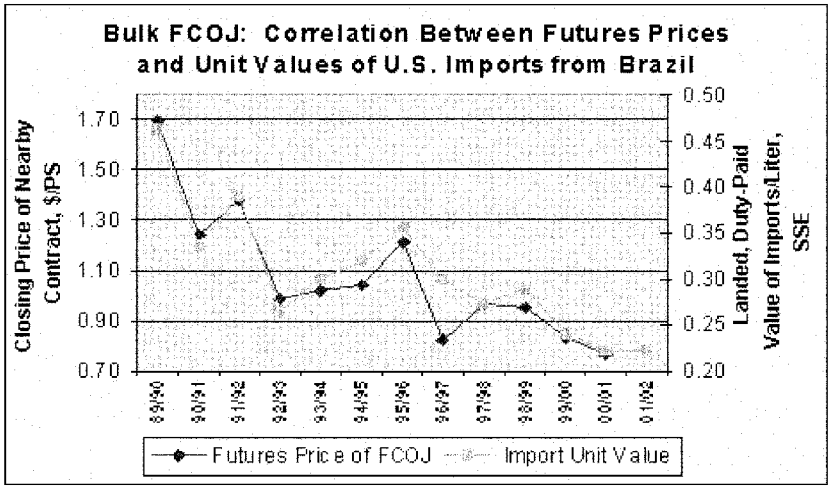
Aside from the impact of unrestrained orange juice imports on the U.S. orange growing industry, the most highly touted benefit of free trade agreements—lower prices to consumers—would not be realized in the case of orange juice. Increasingly, the price of retail orange juice has not tracked the declines in processing orange prices nor the declines in wholesale and futures prices of FCOJ. On the contrary, retail prices have skyrocketed while processing orange and FCOJ prices have collapsed.

As can be seen in the charts below, processing orange prices have fallen dramatically during the past decade, causing grower profits to plunge to levels barely above the break-even point. Processing orange prices fell as a result of the declining wholesale price of FCOJ during the past decade (which is most accurately reflected in the futures price of FCOJ), and the wholesale price of FCOJ fell as a result of the falling price of Brazilian FCOJ.

[23] ABECITRUS/SECEX at http://www.abecitrus.com.br/expyus.html.

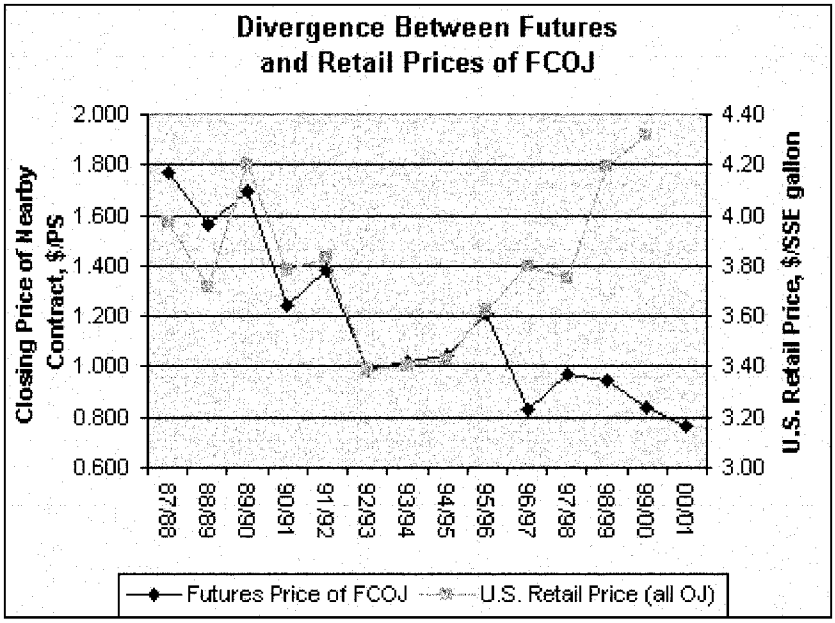


Source: On-tree prices from Florida Agricultural Statistics Service (FASS) and futures prices from the New York Cotton Exchange (2000/01 figure is preliminary, based on Dec. through Mar. data).



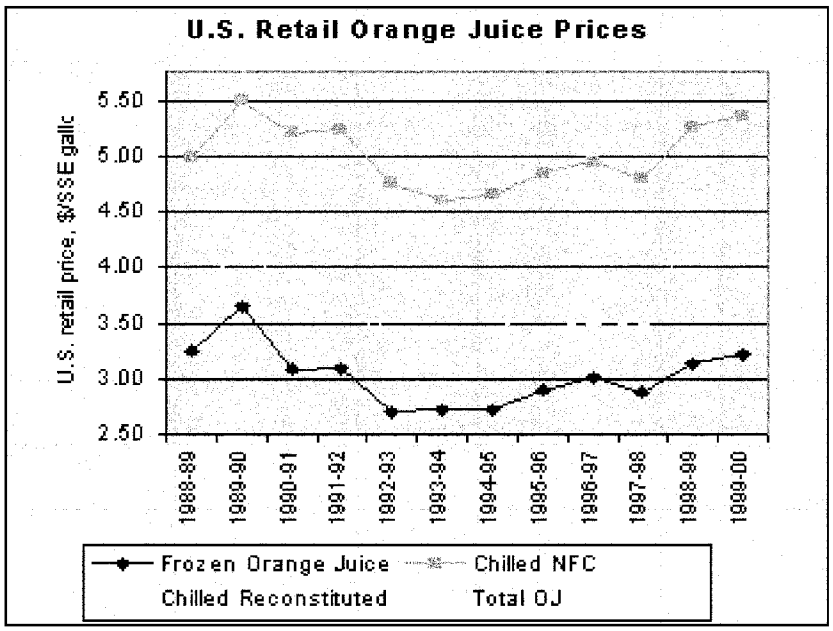
Source: Futures prices from the New York Cotton Exchange (2000/01 figure is preliminary, based on Dec. through Mar. data); and import unit values from official statistics of the U.S. Department of Commerce (01/02 figure represents only Oct. through Jan.).

At the retail level, however, U.S. orange juice prices no longer track the declining wholesale and grower prices, but have increased sharply in recent years (see chart below).



Source: Futures prices from the New York Cotton Exchange (2000/01 figure is preliminary, based on Dec. through Mar. data), and retail prices from A.C. Nielsen.

The increase in retail prices cannot be explained away by the growth in U.S. NFC sales. The chart below demonstrates that retail prices of chilled reconstituted, frozen, and NFC orange juice have all increased substantially during recent years.



Source: A.C. Nielsen.

What has happened is that orange juice retailers are charging the final consumer what the market will bear, which is apparently higher and higher each year, while the processors, reprocessors, and blenders, who buy their raw materials (FCOJ from Brazil or processing oranges from Florida growers) at plunging prices, all share in pocketing the significant juice mark-up. This pricing situation benefits the oligopolistic Brazilian processors two-fold because 1) they now own some of the processors in the United States that are benefiting from the mark-up, and 2) their low-priced FCOJ exports to the United States depress the prices received by U.S. growers thus forcing many of them out of business and expanding the Brazilian processors' control over world orange juice supplies and prices.

Should U.S. tariffs on orange juice from Brazil be reduced or eliminated, this situation would be exacerbated, as the U.S. processors, reprocessors and blenders—the first consumers of imported orange juice—would reap the benefits of tariff reduction, while Florida growers of processing oranges would take a heavy hit. The final consumers of the imported orange juice would never see the price break supposedly derived from the tariff reduction. However, as the Brazilian processors amass greater and greater global market power, U.S. final consumers would eventually suffer the consequences of unrestrained orange juice prices.

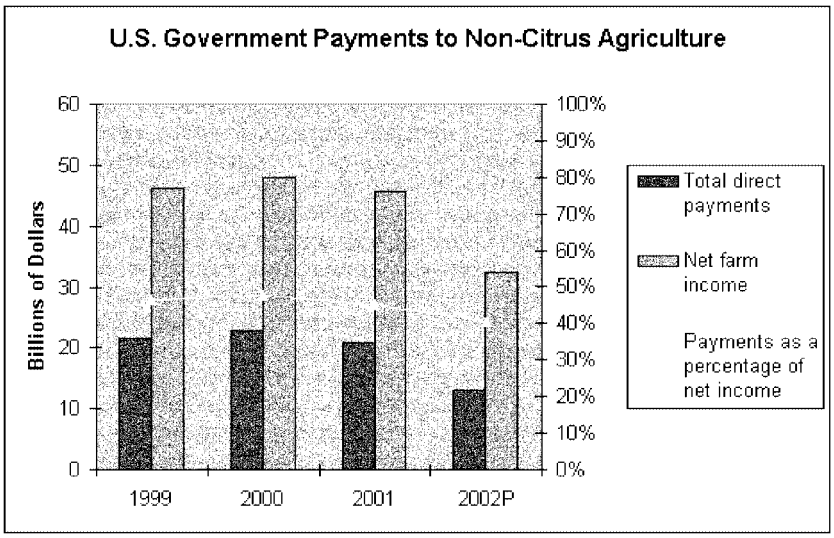
In order to get a glimpse of the likely impact of tariff reductions in the market, one need only look at the record of bulk juice prices, returns to growers, and prices to consumers over the past ten years. As the U.S. tariff decline of 15% was forced on the market under the Uruguay Round Agreements, the global bulk juice price and average return to Florida growers declined steadily over that time, while the price of the finished product to consumers rose, seemingly disconnected from those underlying factors. The reason is that a dramatically concentrated global industry with almost limitless cheap resources will take full advantage of any declining constraint on its power represented by tariff cuts, to minimize its competition and maximize its profits, at the expense of consumers.

THE U.S. ORANGE JUICE TARIFF

For far too long, the U.S. tariff on orange juice has been unfairly criticized and targeted for reduction because it is considered a "tariff peak." For this reason Florida Citrus Mutual now finds itself in the position of defending its tariff in the face of opposition from some U.S. agricultural sectors that have as their goal the reduction of overseas barriers to exports.

It must be understood that the U.S. citrus tariff is the only form of assistance U.S. orange growers receive, and it costs U.S. taxpayers nothing. Furthermore, because most duties paid on U.S. orange juice imports from Brazil are subject to duty drawback, the Brazilian processors effectively pay only about $1.5 million, or 2.3 percent ad valorem, in orange juice duties.[24] At the same time, non-citrus U.S. agriculture is now receiving over $20 billion annually in direct government payments.[25]

It is ironic that some U.S. agricultural advocates assert "free trade" principles and criticize the only form of "assistance" the orange growing industry gets, while standing on the wealth of these huge and growing farm subsidies. The most recent WTO notification that the United States made on domestic agricultural subsidies showed that, in marketing year 1998, the following U.S. commodities received production and/or trade-distorting "amber box" subsidies: barley, corn, cotton, dairy, canola, flaxseed, oats, peanuts, sorghum, soybeans, sugar and wheat; with citrus receiving nothing.[26] The subsidies that non-citrus agricultural industries receive have ranged above 40 percent of their net farm income for several years (see chart below).



Source: "Farm Income Forecast," ERS, USDA (http://www.ers.usda.gov/Data/FarmIncome/finfidmu.htm).

FCM does not take issue with U.S. agriculture's receipt of subsidies. We know only too well the difficulties involved in competing against heavily subsidized EU commodities (i.e., Spanish clementines) and unfairly traded Brazilian commodities. However, we believe it is unfair to suggest that taxpayer-funded support payments are a more acceptable or less distortive means of government support than a non-taxpayer funded, pro-competitive tariff.

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[24] Estimated by FCM based on the assumption that duties are drawn back on an amount of FCOJ imports from Brazil equal to 90 percent of U.S. FCOJ exports. In 2002, U.S. domestic exports of bulk FCOJ (2009.11.0060) were 441,664,083 liters. If we assume that 90 percent of these exports resulted in drawback, then import duties were drawn back on 397,497,675 liters of imports. In 2002, the import duty was 7.85¢/liter. Since 99 percent of import duties are drawn back, the amount of duties drawn back on 397,497,675 liters of imports would have been $30,891,532. In 2002, 411,577,471 liters (valued at $61,658,753) of bulk FCOJ were imported from Brazil, and $32,308,827 in duties were collected on these imports. So, post-drawback, U.S. Customs netted only about $1,417,295 ($32,308,827 – $30,891,532) in duties on Brazilian bulk FCOJ during 2002. This means that the tariff really only cost U.S. importers .34¢/liter ($1,417,295/411,577,471 liters), which equals only 2.3% ad valorem ($1,417,295/$61,658,753) in 2002.

[25] "Farm Income and Costs, Direct Government Payments, ERS, USDA (http://www.ers.usda.gov/briefing/farmincome/data/GP_T7.htm).

[26] "Notification concerning domestic support commitments for marketing year 1998," received from the delegation of the United States on June 22, 2001, WTO Committee on Agriculture, G/AG/N/USA/36.

It is by no means true that the United States has the highest agricultural tariffs in the hemisphere. According to the FTAA Hemispheric Database, the following figures represent the percentages of tariff lines in each country's tariff schedule that have duties equivalent to 10 percent ad valorem or above:[27]

Brazil	68%
Argentina	67%
Venezuela	66%
Colombia	63%
United States	11%

Regarding "tariff peaks," while the United States has 22 tariff lines equivalent to 35 percent ad valorem or above, Brazil has 57 tariff lines in this range. Brazil has not yet put any of these tariff lines on the negotiating table.

The U.S. tariff on orange juice must be understood as more than just a "tariff peak." It is an "agricultural offset," parallel in some ways to those that U.S. taxpayers fund directly for other farm commodities, but tailored for an industry whose chief market is in the United States. The beauty of this "tariff program" for orange juice is that it does not tap taxpayer dollars. It places a limited burden on the unfair or oligopolistic market players, Brazilian processors, which is where the burden belongs; and has a net positive impact on the federal budget.

CONCLUSION

The U.S. market is by far the most significant market we have. Unlike dairy and crop commodities, which are consumed throughout the world, orange juice is consumed primarily in the highly developed market economies of the United States and Europe. With Brazilian juice firmly entrenched in Europe at rock bottom prices, it only makes sense to concentrate on sales at home. Our growth in exports of specialty products, such as NFC, must necessarily be incremental and secondary to the domestic market for FCOJ. While the Florida industry will continue to seek out new export markets, both for fresh and processed products, it is myopic to think that we are likely to be as large a factor in foreign markets as Brazil. We simply do not have the domestic subsidies we would need to compete with the Brazilians and Europeans in Europe. Furthermore, we cannot be there to develop those new foreign markets slowly over the many years it will take them to achieve higher disposable incomes, if the Florida industry is forced out of existence by the elimination of the tariff. We want to serve the U.S. market and we can do so without the huge government payments that other agricultural sectors receive. However, the U.S. orange juice tariff is necessary to offset the unfair or artificial advantages that lower the price of Brazilian juice.

Florida Citrus Mutual understands that free trade in many industries, including many agricultural industries, leads to increased competition, eventual price benefits to consumers, and overall global economic growth. Unfortunately, free trade cannot deliver these rewards to such a concentrated and polarized global industry, especially one in which the developing country's industry is, in fact, already the most highly developed in the world. Florida Citrus Mutual appreciates the opportunity to explain to the House Ways and Means Committee the unique global structure of the orange juice industry and the negative economic effects that would occur as a result of U.S. tariff reduction or elimination.

Respectfully submitted,

Andy W. LaVigne
Executive Vice President & CEO

Matthew T. McGrath
Counsel to Florida Citrus Mutual

[27] FTAA Hemispheric Database online at http://198.186.239.122/chooser.asp?Idioma=Ing.

[BY PERMISSION OF THE CHAIRMAN]

Government of the Commonwealth of Puerto Rico
San Juan, Puerto Rico 00936
March 12, 2003

Congressman Bill Thomas
Chair
Committee on Ways and Means
United States House of Representatives

Dear Mr. Chairman:

In response to your Committee's request for written comments on President Bush's trade agenda, we are enclosing herewith the following document with various points of particular interest to the Government of Puerto Rico as related to our economic characteristics, our relative position in the region and the Hemisphere as a result of free trade agreements such as the FTAA and CAFTA, and our comments with respect to some of the ongoing negotiations.

The following document explains some of the features and characteristics of Puerto Rico's foreign trade, especially the type of linkages that exist between the Island's external sector and the overall economy. These linkages are then placed in the context of FTAA working committees and some aspects of the trade negotiations that are of particular importance to the Commonwealth of Puerto Rico's government and the private sector. Our subsequent comments focus on market access issues, intellectual property, investment, and services.

Our Governor Sila María Calderón, and myself personally, take this opportunity to reaffirm our commitment to the FTAA process and to free and fair trade in the Americas.

Sincerely,

Hon. Milton Segarra
Secretary of the Department of Economic Development and Commerce
Commonwealth of Puerto Rico

PUERTO RICO AND THE FREE TRADE AREA OF THE AMERICAS: SOME GENERAL CONSIDERATIONS AND POLICY COMMENTARIES

The systematic elimination of barriers to the movement of goods and services contemplated in the FTAA Agreement will effectively create the largest free trade area in the world, linking more than 500 million consumers from 34 different countries. The Commonwealth of Puerto Rico welcomes such openness and commercial liberalization. Like many other economies in the Caribbean, Puerto Rico has been an open market and active international trader for more than fifty years. The elimination of tariff and non-tariff barriers to trade in the Americas, as well as the harmonization of rules of conduct governing international commercial transactions in the region, will certainly create further opportunities for trade and investment in Puerto Rico and in the entire Caribbean region.

Given our position as a Caribbean island that is also part of the United States customs territory, however, we believe it is important to note certain features of Puerto Rico's economy that differentiate us from other U.S. jurisdictions. We believe that such peculiarities should be taken into consideration in the overall position of the United States regarding the FTAA, so that we may perceive the benefits of freer trade while ensuring that any negative impact will have been contemplated in the negotiations stage.

I. *Puerto Rico's economy—general characteristics*

Puerto Rico is a relatively small, open, industrialized economy with a highly skilled labor force. Like many open economies, trade occupies a significant portion of economic activity, reaching an equivalent of 68% of GDP, and thus placing foreign trade at the top of the agenda of the Island's government. Puerto Rico's GDP of $67,897.1 billion makes it one of the largest economies of the Caribbean region, although it is small in comparison with U.S. states of comparable population size.[1] Exports totaled $46,900.8 billion, a figure that places the Island as the fifth largest exporter in the Americas (after the United States, Canada, Mexico, and Brazil). In

[1] Unless otherwise noted, all figures represent 2001 numbers, as listed in the *Annual Report to the Governor*, Puerto Rico Planning Board.

2001 Puerto Rico was the 8th largest trading partner of the United States, and the 13th largest market for U.S. products.

Manufacturing is the largest sector in Puerto Rico's economy, occupying 39.9% of all productive activities and employing almost 14% of the workforce. Like many other open, industrial economies, manufacturing activity is extremely linked to foreign trade and investment: it is responsible for 99.6% of the total value of exports, compared with much lower values and percentages for most Caribbean and Central American countries (ECLAC 2001). Given the degree of openness of Puerto Rico's economy, any changes in the international commercial environment and its regulatory framework tend to have larger immediate consequences for the island's economy (for instance, employment and fiscal revenues), especially in manufacturing activities, than in most other U.S. jurisdictions.

Much of Puerto Rico's manufacturing activities are based on foreign direct investment in capital-intensive, technologically advanced industries such as pharmaceuticals, biotechnology, and IT. A substantial portion of this investment (more than 75%) originates in the United States. Indeed, investments in Puerto Rico have yielded higher returns to investment than in many countries of comparable size and characteristics. Like many neighboring countries in Latin America, industrial exports originating from foreign investment constitute almost 95% of all exports. Nevertheless, contrary to other cases of foreign direct investment (FDI) in the Caribbean and Central America, such as the EPZs in the Dominican Republic, FDI in Puerto Rico possesses multiple backward and forward linkages to local capital industries and services (through sub-contracting, joint venture agreements, supply chains, and banking, among other activities). These linkages allow local companies to develop a strong and productive industrial and services platform. Exports from local capital companies constitute only 5% of total exports, but at a total of over $2 billion in 2001, their sales already exceed in value the entire export amounts of other Caribbean and Central American countries. It also means that changes in the foreign investment environment tend to have economies-of-scale effects in the industrial platform and economic performance of Puerto Rico.

Considering these characteristics, Puerto Rico must continuously strive to maintain a substantial degree of competitiveness over neighboring countries and territories that also vie for foreign investment and pursue aggressive export policies. Our competitive scenario is compounded by the fact that, as an insular economy subject to U.S. minimum wage, environmental, and industrial regulation laws, as well as high shipping costs, Puerto Rico must compete for foreign investments and markets with low-wage, low-cost countries in Central and South America that also have advantages in natural resources, large domestic markets, and other endowments. Indeed, as a result of economic liberalization and other changes in the international economic landscape, in the last six years Puerto Rico has lost over 26,000 manufacturing jobs to low-wage countries, proportionally more than any other U.S. jurisdiction.

In this sense, under an FTAA we would already possess a competitive advantage in productivity, industrial quality standards, labor skills, and international best-practices in much of our industrial production. These advantages bring us closer to the U.S. market and will position us favorably to enter further markets in Latin America. Nevertheless, given some of our economic particularities as described above, any changes in the international trade system that introduce further competitive challenges for our Island will have a pronounced, immediate impact in our economy. This impact is qualitatively and quantitatively different from the effects the FTAA will have in other U.S. jurisdictions.

II. *Economic sectors in Puerto Rico under an FTAA*

Like any other economy, Puerto Rico is subject to advantages and disadvantages resulting from a free trade agreement such as the FTAA. Most of our advantages lie in sectors involving capital-intensive industries and services, a skilled labor force, high quality standards, management skills, and productive flexibility. Our challenges lie mainly, but not exclusively, in labor-intensive industries where foreign competition from low wage producers is fierce, and themes such as market access, economies of scale, and foreign investments.

We believe that the FTAA introduces substantial incentives for activities such as financial services, chemicals and pharmaceuticals, biotechnology and IT, and in some industries linked to the food and beverages sector. These industries already comprise a large portion of Puerto Rico's current exports, both to the United States and markets in Latin America and the Caribbean. For instance, 20 out of the 30 most widely purchased drugs in the United States are manufactured in Puerto Rico. Under an FTAA our exports of drugs and drug-related products would be better able to enter newly opened markets in Latin America, and thus expand drug production

significantly, by competing with other low-cost producers (such as Brazil). Recent investments in Puerto Rico by large pharmaceutical companies such as Abbott seem to confirm this forecast.

A similar scenario may occur in banking and financial services, where Puerto Rican firms, already subject to the strong regulatory framework of the U.S. federal government, can export such services to Central America and the Caribbean. Given the virtual dollarization of the Caribbean region that may result from an FTAA, the potential for growth in the Puerto Rican banking sector is considerable.

Labor-intensive industries, such as the food and beverage sector, are particularly prone to adverse competition resulting from an FTAA. The key element is the schedule of tariff reductions for such products, and the progressive growth of U.S. imports from low-wage, resource-rich countries. Puerto Rico's exports of food and beverage products, for instance, are mainly targeted at the Hispanic market of the United States (and some selected niches in the Caribbean and Europe). While many of these exports depend on consumer preferences for Puerto Rican products, rapid entry from other Caribbean and Central American products in the United States may represent formidable challenges for Puerto Rican exporters.

Cases where Puerto Rican food and beverage producers have been exposed to aggressive competition from Latin American countries can be found in the recent decision of the U.S. Congress in re-authorizing the Andean Trade Preferences Act with respect to the tariff treatment of rumand canned tuna. Recognizing the critical importance of the rum industry to Puerto Rico's economy, Congress last summer reaffirmed long-standing U.S. policy by voting to exclude low-valued rum for tariff preferences under the Andean bill, while continuing trade liberalization in the higher valued segments of the rum market not dependent on price sensitivity. This wise decision by Congress reaffirmed the Solomonic framework for rum tariffs reached by the United States, the European Union, Canada and Japan in the 1997 Singapore zero-for-zero agreement on distilled spirits. It also recognized that rum provides a key source of revenue for the Commonwealth's Government. Under longstanding principles governing the tax relationship between the United States and Puerto Rico, the United States returns to Puerto Rico's treasury federal excise taxes collected on Puerto Rican rum, which currently exceed one-third of a billion dollars annually.

Congress also took similar action in the context of the Andean legislation with respect to trade in canned tuna. It recognized, based on a study by the U.S. International Trade Commission, that tariff liberalization in the canned tuna sector would quickly lead to the demise of the U.S. canned tuna industry in Puerto Rico, California and American Samoa, and the loss of thousands of jobs in this sector. Accordingly, Congress wisely decided to maintain existing tariff treatment of canned tuna in the Andean bill, while permitting duty-free treatment of pouched tuna—a separate and distinct product not directly competitive with canned tuna.

A special mention must be made with respect to tourism. This industry is widely perceived by analysts as possessing some of the largest potentials for expansion in upcoming years. Tourism occupies approximately 6% of Puerto Rico's GDP, a proportion that is much lower than other Caribbean islands (in Jamaica, for instance, tourism is approximately 12% of GDP). Nevertheless, considering the size of our economy, the total value and output of Puerto Rico's tourism industry far exceeds that of most Caribbean and Central American countries. Competition in tourism is quite fierce in the Caribbean, and Puerto Rico has specialized in several market niches, especially those involving upper class and business executive tourism. Nevertheless, as economies in the region become more open, there will be tougher competition for some of the same clients that Puerto Rico currently attracts. Aggressive competition is expected in terms of attracting foreign investment in tourism, once room capacity and other such matters give way to product diversification and further market segmentation.

III. *Puerto Rico and the FTAA negotiations*

Although Puerto Rico maintains a keen interest in all committees of the FTAA, it is in market access, investment, intellectual property rights, and services where our most immediate and medium-term interests are focused.

A. Market access issues

In 2002 Puerto Rico's exports totaled $46,900.8 billion dollars, a figure that places the Island as the fifth largest exporter in the Americas (after the United States, Canada, Mexico, and Brazil). Indeed, as stated in a previous section of this document, foreign trade activities in the Island reach an equivalent of 68% of our GDP. Although our most important trading partner by far is the United States, we possess important trading relationships with some of our neighbors in Latin America,

notably the Dominican Republic, Panama, Mexico, Costa Rica, Trinidad and Tobago, Venezuela, Brazil, and Argentina (see Table 1).

Like the United States, Puerto Rico has a negative balance in most of our trade with Latin America and the Caribbean. Various factors lie behind this deficit, including supply and demand matters in foreign markets and the composition of Puerto Rico's exports, the adverse economic environment in the region since 2001, and the U.S. tariff schedules and regional preferences conceded to various Latin American countries through programs such as the CBTPA and the Andean Trade Act. In this sense, Puerto Rico encounters the same circumstances as any other U.S. jurisdiction in its commercial exchange with Latin America: average U.S. tariffs for a large portion of imported products is 1.6%, while the average bound duty for exports to Latin America and the Caribbean is 35%.

A Free Trade Area of the Americas would help Puerto Rico "level the playing field" with respect to matters such as duties and non-tariff barriers that currently hamper some of our exports to Latin America and the Caribbean. For instance, our most important export items, pharmaceutical preparations and medical devices, encounter high tariff bound rates in South American markets such as Brazil, Argentina, and Peru. Although effective tariff rates (at 7.6% weighted average) are lower than these bound rates, substantial scope for tariff hikes or other duty changes within levels permitted by the WTO remains. Eliminating these tariffs would not only help our exports to these markets, but we would also increase our market share and diversify activities in the region (since European pharmaceutical companies currently possess a larger share of the Latin American market than U.S. companies).

While Puerto Rico's pharmaceutical and electronic technology exports are competitive on a global scale given intra-industry trade patterns and other aspects of foreign direct investments in the Island, the competitiveness of other Puerto Rican industries based on local capital remains concentrated in the Caribbean Basin region. Many of these industries are small and medium-sized firms whose productive capacity enables them to maintain a presence in regional markets where they possess advantages such as geographical proximity and knowledge of consumer preferences. Yet these industries encounter substantial tariff and non-tariff barriers in the Caribbean region. For instance, in 2002 Puerto Rico exported more than $86 million dollars to the Caribbean Basin in food and beverage products (see Table 2). The average Caribbean tariff for such items is 86%. A substantial tariff reduction would enable Puerto Rican food and beverage firms to increase their exports to the region, to increase their production, to generate employment, and ultimately to become more competitive in international markets.

Other market access issues that Puerto Rican exporters encounter in the Caribbean Basin region involve inconsistent practices in matters such as customs valuation and cumbersome customs procedures, excessive import permits and other legal hurdles, discretionary product labeling requirements, and import payments and financing. In this sense, we believe it is important to incorporate trade facilitation discussions as a central topic in FTAA market access negotiations.

We want to make special mention of the foreign trade zone (FTZ) regime operating in Puerto Rico and how such special trade regimes may be affected by FTAA negotiations. Puerto Rico's Foreign Trade Zone 61, and its sub-zones, constitutes the largest such trade zone under U.S. customs territory. Total value of forwarded merchandise from FTZ 61 for fiscal year 2002 summed $130,602,231. More than two thirds of this merchandise (69.46%) was forwarded to other parts of the U.S. Customs Territory. The FTZ regime is a key feature of a new international trade strategy in Puerto Rico that seeks to transform the Island into the largest and most complete center for international merchandise distribution and transshipment in the Caribbean Basin. Yet special regimes such as FTZs have been recently criticized as unfair export practices in certain academic and policy venues, and their future configuration and functions will most certainly be a matter of discussion in the current FTAA negotiations. Consequently, we propose that the USTR also take notice of the importance of our FTZs as it negotiates market access issues.

B. Intellectual property

Some of Puerto Rico's most important export products, especially those associated with advanced biological, chemical, or electronic technology, suffer from severe problems with respect to intellectual property rights in many countries throughout Latin America. In this sense, Puerto Rico supports all efforts to strengthen the enforcement of copyrights and patents, as well as pursuing other related matters affecting the proper implementation of intellectual property rights through FTAA negotiations.

While some of Puerto Rico's most technologically advanced exports face intellectual property issues that are being addressed through the efforts of national associations such as the Pharmaceutical Research Manufacturers of America (PHRMA) and the National Association of Manufacturers (NAM), local Puerto Rican makers of indigenous products have trademark concerns with respect to trade liberalization in Latin America and the Caribbean. In particular, producers of rum and coffee, who face fierce competition from other Caribbean and Central American countries, do not possess geographical indications for their products such that these may be indistinctly recognized and marked as "rums of Puerto Rico" or "Puerto Rican coffee" under a free market regime. In such circumstances it is possible for any producer in the region to dump surplus output within the free trade area for the product to be processed and sold later elsewhere under the denomination of another country. In this sense, we believe that discussions about rules of origin and trademark procedures should be an important part of intellectual property and market access discussions in the FTAA negotiations.

C. Investment

The link between free trade and foreign direct investment has been extensively documented and empirically corroborated, particularly within free trade agreements comprising developed and developing countries. Latin America's proportion of U.S. foreign direct investment in 2000 amounted to 25%, a figure that has dropped slightly in the years 2001 and 2002 as a result of the slowing world economy and macroeconomic instability in countries such as Argentina, Brazil, and Uruguay. Nevertheless, based on the effects of NAFTA on foreign investment in Mexico, and after taking into consideration the gravitational direction of trade flows and the possibilities of intra-industry trade in the Americas, some increase in the level of investment to the region is to be expected as a result of the FTAA.

Foreign investment has been the backbone of Puerto Rico's industrial development and its current role in participation in international trade. Investments in Puerto Rico have yielded higher returns to investment than in many countries of comparable size and characteristics. Like many neighboring countries in Latin America, industrial exports originating from foreign investment constitute almost 95% of all exports. Nevertheless, as had been stated previously, contrary to other cases of foreign direct investment (FDI) in the Caribbean and Central America, such as the EPZs in the Dominican Republic, FDI in Puerto Rico possesses multiple backward and forward linkages to local capital industries and services (through sub-contracting, joint venture agreements, supply chains, and banking, among other activities). These linkages allow local companies to develop a strong and productive industrial and services platform that serves both the foreign and domestic sectors of Puerto Rico's economy. Exports from local capital companies constitute only 5% of total exports, but at a total of over $2 billion in 2001, their sales already exceed in value the entire export amounts of other Caribbean and Central American countries (especially if domestic industry is measured separately from foreign-capital production). It also means that changes in the foreign investment environment tend to have economies-of-scale effects in the industrial platform and economic performance of Puerto Rico.

Tax incentives and other fiscal instruments have been powerful tools the Commonwealth of Puerto Rico has used for attracting foreign investment. As indicated in Article 13 of the Draft Text on General and Institutional Issues, the FTAA's potential member nations will provide for special and differential treatment for various jurisdictions and sectors as circumstances dictate. While certain preferences regarding investment and competition policies may become abolished as a result of the FTAA negotiations, Puerto Rico respectfully requests that its specific circumstances and concerns be fully considered and addressed by the USTR in negotiating FTAA investment matters.

D. Services

Like many other countries in the Caribbean region, services constitute an important part of Puerto Rico's economy. We possess regionally competitive service industries, particularly tourism, telecommunications, banking, health and professional services. These industries would benefit from a reduction in import duties, taxes, and other trade obstacles, as well as efforts at harmonization of the legal framework governing the movement of naturals and the provision of professional services throughout the Caribbean and Central America. The successful entrance of Puerto Rican firms in the Dominican Republic once the government of that country liberalized its national telecommunications market may serve as an example of potential gains for Puerto Rican firms under an FTAA services regime in the region.

Inadequate maritime transport in the Caribbean and Central America, however, has been a persistent problem in the region, especially in the case of smaller island countries. The costs of merchandise shipping from Puerto Rico to other destinations in the Caribbean region are higher than the rates for maritime transport to the United States. Although most of our exports go to the United States (see Table 1), shipping costs in the Caribbean is an important matter for Puerto Rico's small and medium sized producers whose natural markets lie in the Caribbean area. An important reason for such expensive maritime transport is the lack of economies of scale for shipping products to the small islands in the Eastern Caribbean, market fragmentation, and trade facilitation problems. However, there are other obstacles, such as deficient port and maritime infrastructure to support merchandise movement in both the Caribbean islands and Central America. These factors hinder Puerto Rico's export potential in the region. In this sense, we believe that the problems of maritime and air transportation in the Caribbean and Central America should be addressed in the Services Negotiating Committee of the FTAA.

In closing, we would like to reiterate Puerto Rico's commitment to trade liberalization in the Western Hemisphere. We strongly believe that the FTAA negotiations present a unique opportunity to open markets and to create common trade rules that will foster a more prosperous economic environment for all countries and regions involved. We look forward to working with the Administration, Congress and our trading partners to ensure that the FTAA will provide both free and fair trade for Puerto Rico.

Table 1: Puerto Rico's main trading partners, 2002

PUERTO RICO'S IMPORTS, TOP 20 COUNTRIES OF ORIGIN

COUNTRY	CODE	VALUE
1. United States	———	$14,561,281,964
2. Ireland	4190	6,260,429,348
3. Japan	5880	1,435,648,062
4. Dominican Republic	2470	706,476,540
5. U.S. Virgin Islands	———	687,183,238
6. Germany	4280	424,912,507
7. United Kingdom	4120	385,301,239
8. Italy	4759	339,939,640
9. France	4279	336,303,381
10. Mexico	2010	288,060,915
11. Brazil	3510	287,614,800
12. Venezuela	3070	284,877,430
13. China, People's Rep.	5700	258,827,241
14. Trinidad and Tobago	2740	257,907,864
15. Belgium	4231	233,930,201
16. Canada	1220	220,062,959
17. Switzerland	4419	207,700,495
18. Costa Rica	2230	156,434,658
19. Spain	4700	151,840,863
20. Argentina	3570	141,701,515
21. Others	———	1,358,158,025
	TOTAL	$28,984,592,885

PUERTO RICO'S EXPORTS, TOP 20 DESTINATIONS, 2002

COUNTRY	CODE	VALUE
1. United States	———	$41,739,694,192
2. United Kingdom	4120	731,169,566
3. Netherlands	4210	655,516,382
4. Dominican Republic	2470	633,492,403
5. Belgium	4231	424,569,643
6. Japan	5880	319,499,547
7. Germany	4280	316,237,347
8. France	4279	287,933,750
9. Italy	4759	292,341,881
10. Ireland	4190	236,629,230
11. Canada	1220	200,439,684
12. Israel	5081	122,025,446
13. India	5330	104,746,194
14. Switzerland	4419	82,082,528
15. Panama	2250	77,807,445
16. Mexico	2010	75,548,916
17. U.S. Virgin Islands	———	69,741,694
18. South Korea	5800	50,336,232
19. China, People's Rep.	5700	41,848,842
20. Australia	6021	41,303,513
21. Others	———	669,290,880
	TOTAL	$47,172,255,315

Table 2: Puerto Rico's main export and import products, 2002

Exports from Puerto Rico to Foreign Countries		
Description	SIC	Value
1. Pharmaceutical Preparations	2834	$2,220,333,795
2. Medicinal Chemicals and Botanical Products	2833	640,588,895
3. Industrial Organic Chemicals, Not Elsewhere Classified *	2869	432,332,557
4. Flavoring Extracts and Flavoring Syrups, Not Elsewhere Classified *	2087	178,753,244
5. In Vitro and In Vivo Diagnostic Substances	2835	177,122,111
6. Electronic Computing Equipment	3573	143,694,660
7. Surgical and Medical Instruments and Apparatus	3841	138,019,881
8. Men's and Boy's Underwear and Nightwear	2322	104,341,490
9. Computer Storage Devices	3572	97,597,599
10. Orthopedic, Prosthetic, and Surgical Appliances and Supplies	3842	92,463,406
11. Pesticides and Agricultural Chemicals, Not Elsewhere Classified *	2879	64,299,376
12. Brassieres, Girdles, and Allied Garments	2342	48,677,526
13. Noncurrent-Carrying Wiring Devices	3644	47,386,457
14. Radio and TV Communications Equipment	3662	44,158,165
15. Telephone and Telegraph Apparatus	3661	40,406,964
16. Relays and Industrial Controls	3625	37,296,065
17. Petroleum Refining	2911	33,641,031
18. Primary Smelting and Refining of Nonferrous Metals, Except Copper and Alum.	3339	33,015,725
19. Miscellaneous Plastic Products	3079	32,909,142
20. General Industrial Machinery and Equipment, Not Elsewhere Classified *	3569	32,205,560
21. Others	———	723,575,780
TOTAL		$5,362,819,429

Imports to Puerto Rico from Foreign Countries		
Description	SIC	Value
1. Medicinal Chemicals and Botanical Products	2833	$5,591,083,171
2. Industrial Organic Chemicals, Not Elsewhere Classified *	2869	2,370,657,695
3. Petroleum Refining	2911	850,385,434
4. Pharmaceutical Preparations	2834	779,431,637
5. Motor Vehicles and Passenger Car Bodies	3711	672,505,608
6. Crude Petroleum and Natural Gas	1311	217,123,226
7. Surgical and Medical Instruments and Apparatus	3841	195,482,712
8. Men's and Boy's Underwear & Nightwear	2322	147,999,306
9. Nonclassifiable Establishments	9900	109,104,469
10. Switchgear and Switchboard Apparatus	3613	104,285,493
11. Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	3312	100,846,323
12. Meat Packing Plants	2011	93,579,977
13. Miscellaneous Plastic Products	3079	81,615,783
14. Prepared Fresh or Frozen Fish and Seafoods	2092	77,448,681
15. Brassieres, Girdles, and Allied Garments	2342	69,376,931
16. Paper Mills	2621	67,623,331
17. Wood Household Furniture, Except Upholstered	2511	64,420,109
18. Malt Beverages	2082	63,406,291
19. Ceramic Wall and Floor Tile	3253	50,499,285
20. Boot and Shoe Cut Stock and Findings	3131	50,401,411
21. Others	———	1,978,850,810
TOTAL		$13,736,127,683

Statement of Edward P. Denninger, Sr., J.G. Eberlein & Co., Inc., West Islip, New York

TO: HOUSE COMMITTEE ON WAYS AND MEANS

SUBJECT: TRADE AGENDA COMMENTS

The legislative policy underlying the duty drawback program is to increase the competitiveness of American industry in the global marketplace when competing against lower priced exports from our trading partners. The existing drawback program benefits American manufacturers and exporters by increasing their competitiveness by providing an advantage either at the margin for pricing goods in the export market or at the lower overall costs of production.

The drawback program was initiated to create jobs and encourage manufacturing and exports. U.S. Customs has acknowledged this by stating that

> The rationale for drawback has always been to encourage American commerce or manufacturing or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in its costs and consequently in its sales price, the duty paid on imported merchandise.

Clearly, the intent of Congress it to grant drawback when and wherever possible to the benefit of American companies, not to limit drawback simply because the United States enters into an FTA, which purpose is to provide the greatest overall benefit to American exporters.

Many imported items are subject to Normal Trade Relations (NTR) duty rates when imported into the United States. Therefore, to include in any FTA a restrictive drawback program like that in the NAFTA, and thereby limit drawback, would place American companies at a substantial competitive disadvantage as compared to our trading partners.

Duty drawback lowers production costs and operating costs by allowing manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported either as finished products or as component parts of a finished product. This advantage *must* be maintained as part of U.S. policy to foster growth and development within the United States and to increase United States export competitiveness abroad.

National Association of Foreign-Trade Zones
Washington, DC 20036
March 12, 2003

Trade Agenda Comments to the Committee on Ways and Means

The National Association of Foreign-Trade Zones recommends that the "National Treatment-Market Access Chapter" of prospective free trade agreements incorporate a modified version of NAFTA's Article 303 paragraph 6. This proposed modification would add a seventh set of circumstances for which restrictions for so-called duty drawback rules should not apply. This seventh set would cover:

(g)(1) Any good manufactured in the territory of a party and subsequently exported to the other party where the importing party's effective external rate of duty is zero, or
(2) Any part, component, or material used in the manufacture of any good in the territory of a party that is subsequently exported to the other party where the importing party's effective external rate of duty for the part, component of material is zero.

This recommendation flows directly from the experiences observed during the negotiation of NAFTA and measures initiated by our NAFTA partners upon the agreement's inauguration.

So-called anti-platforming measures are sine qua non for the conclusion of foreign trade agreements such as the North American Free Trade Agreement and the recently concluded U.S.-Chile Agreement. These measures usually include:

- Rules of Origin that direct the flow of economic benefits to the national economies of the trade agreement's participating nations or parties.
- Restrictions on the use of duty deferral and/or duty drawback measures that extend the flow of benefits upstream to supplier industries, and
- The Agreement's rate reduction staging schedule that (is not strictly speaking an anti-platforming measure that nevertheless) creates background pressure or guidance for deciding how strenuously origin rules and drawback restrictions should be imposed for any given product or industry.

Large amounts of effort were undertaken by U.S. negotiators during the NAFTA negotiations to provide an efficient set of anti-platforming measures. The Agreement's provisions are a self-evident statement on the results of their efforts. Nonetheless, these efforts were greatly undermined by our NAFTA partners by the stroke of their proverbial pen, upon the inauguration of their NAFTA anti-platforming commitments. This diminishment of the rules was put into effect because there was one matter beyond the reach of U. S. NAFTA negotiators that was and is the foundation upon which all the rules are based, i.e. how our partners adjusted or modified their external tariff rate structure to offset the consequences NAFTA's rules imposed.

NAFTA's current roster of anti-platforming measures combined with the tariff suspension/elimination measures initiated by Mexico and Canada (at the time their respective 303 responsibilities commenced) are a hardship on all U.S.-based manufacturing activity. These measures are unassailable under NAFTA and/or the provisions of the WTO. Nevertheless, these Canadian and Mexican measures, combined with NAFTA's article 303, have created unanticipated and uncompensated trade benefits in the U.S. market by non-NAFTA parties, while at the same time diminishing the anticipated export opportunities for U.S. manufacturers in the Canadian and Mexican markets. Both of the unanticipated consequences are due to non-NAFTA participants' exports to our NAFTA partners under conditions more favorable than those available to U.S. based manufacturers.

We agree with those recommendations put forward to you that state all of our nation's FTA's should adopt effective anti-platforming measures. We believe our collective experiences with NAFTA provide guidance on how effective anti-platforming measures should be defined. We suggest the proposed seventh exemption from any future FTA's duty drawback limitations will demonstrate a lesson learned.

Regards,

Donnie B. Barnes
President

National Association of Manufacturers
Washington, DC 20004
March 12, 2003

Ways & Means Committee
House of Representatives
Via E-mail: hearingclerks.waysandmeans@mail.house.gov

Members of the Committee:

The National Association of Manufacturers appreciates this opportunity to submit comments for inclusion in the official record of the Committee's February 26, 2003 hearing on U.S. trade policy and the U.S. trade agenda.

Manufacturing in our country is challenged today as never before. Our 14,000 companies find themselves on the front lines of the most intense global competition in history, a competition that makes it virtually impossible for them to raise prices even as costs continue to rise appreciably. Despite outstanding productivity, innovation and efficiency gains by U.S. manufacturers, the current economic climate has yielded the slowest manufacturing recovery in decades and a decline in manufacturing employment of more than two million jobs.

Many factors have led us to these sobering circumstances, and the NAM's Board of Directors in February 2003 approved a multi-pronged, comprehensive strategy to tackle a broad range of problems through persistent governmental policy reform and action. One of the major challenges is the continued existence of international trade and investment barriers that inhibit manufacturing exports and the conduct of business abroad. The reduction and removal of those barriers can only be achieved through a proactive U.S. trade policy that includes strong American leadership in negotiating trade agreements. It is on this aspect of U.S. trade policy that we wish to concentrate our remarks.

The NAM supports the Bush Administration's aggressive policy of competitive liberalization, which aims to maximize U.S. leverage by pursuing free-trade negotiations simultaneously at the multilateral, regional and bilateral levels. We concur with the notion that it is in the interest of the United States to have multiple negotiating options and partners so as not to be held hostage to foot-draggers in any one particular negotiation and in order to set trade-liberalizing precedents that can be transferred from one set of talks to another.

We do believe, however, that optimal implementation of this pro-active multi-front strategy may require additional human and budgetary resources if it is to be sustained or expanded. The Ways & Means Committee should take this into account and make appropriate funding recommendations to its colleagues on the Appropriations Committee. If the United States is to obtain high-quality trade agreements, it must make available sufficient negotiating resources.

Beyond the raft of negotiations currently underway, the NAM would be most enthused by an effort to obtain significant gains for U.S. manufacturing exports by extending the cutting-edge disciplines of the Singapore agreement to other Asian economies. In this regard, the Enterprise for ASEAN Initiative announced last year by Ambassador Zoellick remains of strong interest to the NAM.

The NAM also wishes to point out one section of the Trade Act of 2002 that does not seem to have been implemented yet. The Trade Act's Paragraph 2102(c)(12) explicitly calls for consultative mechanisms to be established among parties to trade agreements to scrutinize whether a foreign government has manipulated its currency to promote a competitive advantage in international trade. The NAM has not seen this paragraph utilized by the Administration, and urges this be rectified. There is widespread concern, particularly regarding Asian currencies, that countries are intervening to maintain their currencies at deliberately low rates, which puts U.S. agricultural, industrial, and services producers at a disadvantage.

The remainder of our comments will focus on U.S. manufacturing priorities in the ongoing WTO, FTAA, and bilateral negotiations.

WTO and the Doha Development Agenda

The NAM acknowledges agriculture's prominent place atop the Doha Development Agenda (DDA). Without progress on agricultural reform, a successful round is all but impossible. We recognize that to obtain the enthusiastic participation of the developing countries in the WTO talks, the United States, Europe and Japan must engage each other and the rest of the world on agriculture. The Committee should remain concerned, as are we, that there appears to be little progress toward making the March 31, 2003 deadline on establishing modalities for agricultural market access negotiations. A failure or postponement there will no doubt reverberate

throughout all other aspects of the talks, including those of most importance to makers of industrial goods.

Nonetheless, the NAM reminds the Committee that U.S. agricultural exports will total to a little more than $50 billion a year, whereas our manufacturing exports total nearly $50 billion each month. And this tilt toward manufacturing trade is not exclusively an American phenomenon. Nearly eight out of ten export sales across the globe are also manufactures. What this means, of course, is that there are many trading partners in the WTO who should share our interest in further liberalizing trade in manufactured products.

However, U.S. industrial exports continue to face disproportionately high trade barriers overseas. Whereas U.S. industrial tariffs average less than 2 percent, we often face bound tariff levels averaging 18 percent in the developing countries of Asia or 31 percent in South America. This is a reality that the nation's senior trade policymakers simply must take into account in determining the optimal strategic approach for achieving the broadest possible U.S. gains in trade negotiations.

Likewise, the NAM recognizes that a failure by the United States to comply with the WTO decisions regarding the Foreign Sales Corporation/Extraterritorial Income regime could also prejudice a successful outcome to the WTO negotiations. However, repeal of ETI should be coupled with an alternative, WTO-compliant benefits regime that preserves as much of the benefit as possible for U.S.-based manufacturers that currently employ ETI.

Another factor of concern to the NAM is the need to insist on strict compliance by China and other new entrants to the WTO with their accession commitments. Failure to insist on complete compliance and fair practices would risk undermining support for the WTO among U.S. business, Congress, and the American public.

The interests of U.S. manufacturers run throughout the entire Doha Development Agenda of world trade negotiations. Here we will highlight five areas of particular importance: industrial tariffs, non-tariff barriers, transparency in government procurement, customs facilitation, and intellectual property rights.

Industrial Tariffs

The WTO non-agricultural market access negotiations should aim at achieving the broadest and deepest possible reductions in tariffs and non-tariff measures, with the particular objective of *totally eliminating as many tariffs as possible.* In the absence of substantial gains in genuine non-agricultural market access, the DDA simply could not be considered a success. Merely bringing bound rates down to the level of existing applied rates, for example, would be an unacceptable outcome—for no genuine improvement in market access would result.

We therefore are very pleased with the Administration's historic WTO non-agricultural market access proposal calling for the total elimination of all industrial tariffs by 2015. Achieving this ambitious result would speed global economic growth and living standards worldwide. Many of our members are especially pleased that the Administration not only set forth the visionary goal of complete tariff removal, but also incorporated some key intermediate steps designed to move the world toward that goal in a pragmatic way.

As the Administration's proposal recognizes, a combination of negotiating methods ("modalities") is needed to achieve this bold objective. This combination involves a sectoral tariff elimination modality (STE—often referred to as "zero-for-zero"), wherever possible, supplemented by a more general approach that would rely principally on an overall formula cut. Any formula, however, must result in genuine reductions in tariffs—i.e., reductions in the actual applied rates. Additionally, the modality combination must include a request-offer approach for those industries whose complexities cannot be addressed appropriately by a formula approach.

Many NAM members believe that the most practical method of obtaining the greatest non-agricultural market access gains is through the STE, or zero-for-zero, modality. STE is a proven approach that solves negotiating problems other modalities cannot manage—particularly in resolving the problem of the huge disparity between the generally low U.S. industrial tariffs and the high tariffs in developing countries. For more detailed information on how an STE modality would work, we refer you to the submission from the Zero Tariff Coalition, which is comprised of 25 U.S. industrial sectors that believe this approach would work for them. That coalition, brought together by the NAM in 1999, is now working closely with USTR and the Commerce Department to promote support for a zero-for-zero modality among other nations' industries and governments.

As not all sectors will participate in the STE approach, that modality should be accompanied by a formula approach to ensure that tariff cuts are made across the board in all sectors. The aggressive U.S. formula proposal is ideal in this respect. It would be calculated based on applied rather than bound rates and would slash

all tariffs to no more than 8 percent after five years and then eliminate them over five more years.

The complexity of the market-access situation in some sectors, moreover, means that there must be provision for some exceptions to this overall guideline—including providing for a request-offer approach for industries that view such an approach as more likely to achieve the results they seek. The request-offer modality is necessary to provide appropriate flexibility to U.S. negotiators in dealing with some sectors and industries. Failure to mention this modality is perhaps the only shortcoming, in NAM's view, to USTR's outstanding industrial market proposal last November.

Non-Tariff Barriers

Negotiations on non-tariff barriers (NTBs) are explicitly provided for in the Ministerial Declaration and need to be addressed as an essential feature of the non-agricultural market access negotiations. NTBs have been rising in importance as trade-distorting factors, including such measures as discriminatory standards, conformity assessment requirements, pre-shipment inspections, custom valuation practices, regulatory requirements, port procedures, and security procedures. Building on the incomplete NTB work of previous multilateral trade negotiations, a strong effort should be made to reduce or eliminate the trade-impeding effects of non-tariff measures.

Care must be taken, however, to ensure that any such effort in no way is used to undermine legitimate health, safety, and environmental protections that are WTO compliant and based on strong scientific justification. Additionally, as noted above, WTO-consistent trade remedies are not non-tariff trade measures.

A realistic way to proceed with NTB negotiations may be via a request-offer process, in which countries develop lists of other countries' practices that impede trade, and then exchange commitments to eliminate or alter those practices. A rules-based approach may also prove useful, reexamining issues such as customs valuation, pre-shipment inspection, standards and conformity assessment, and others. There may be considerable opportunity for improvement without reopening previous agreements, particularly through the device of agreeing on clarifications or interpretations to increase the effectiveness of existing agreements. NTB concessions should be quantified in an agreeable fashion, enabling their resulting reductions to be taken into effect in calculating the overall balance of concessions.

Transparency in Government Procurement

Another Doha priority for the NAM continues to be the achievement of an effective agreement for transparency in government procurement. Government procurement represents nearly fifteen percent of the world's GDP, a potentially massive global market. U.S. firms compete very strongly and effectively in that market when purchasing decisions are based on cost, quality and other competitive factors. Our exporting firms are less successful when government purchasing decisions are made behind closed doors—in non-transparent ways that allow bribery and corruption to come into play. Unfortunately, the latter situation describes the procurement process in many developing countries today, where public notification and due process with respect to tenders are often the exception rather than the rule.

Developing countries have not signed on to the existing WTO Government Procurement Agreement, but the proposed new WTO agreement on transparency of government procurement is one that would address many of the problems in a way that we believe can be accepted by the developing countries. Transparency in government procurement would benefit not just U.S. exporters in competing against other exporters on a more level playing field, but would also be a major factor helping developing countries. It would be a strong force making corruption more difficult and would channel much more of their resources into efficient purchases and away from bribery.

The NAM was disappointed that the Doha Declaration pushed off negotiations on transparency in government procurement until after the Cancun WTO ministerial this coming September. The Committee and the Administration should focus on ensuring that there is no further delay in launching and concluding this critical aspect of the overall negotiating round.

Customs Facilitation

Another area in which the start of negotiations has been delayed until Cancun is that of business facilitation—agreement on simpler and less costly customs and other trade rules. This is of particular importance to the 95 percent of American exporters who are small and medium-sized and see current trade rules as expensive trade barriers. Additionally, small firms as well as large would benefit from WTO rules that would ensure cyberspace would remain a tariff-free area permitting the

further rapid growth of global e-commerce. As with transparency in government procurement, the Committee and the Administration should act in coming months to ensure that formal negotiations move ahead in Cancun.

Intellectual Property Rights

The competitive advantage of American manufacturing relies increasingly on its advanced technology and the protection of that technology—in other words, on effective enforcement of intellectual property rights. In that regard, the United States should continue to press our WTO trading partners for full and timely implementation of the Agreement on Trade-Related Intellectual Property Rights (TRIPs) negotiated in the Uruguay Round.

Lessening the protection of intellectual property would have profound negative consequences not just for our global competitive position, but also for the flow of new inventions that will allow people all over the world to enjoy a higher quality life. President Abraham Lincoln's reminder that "the patent system added the fuel of interest to the fire of invention" applies as well to the TRIPs agreement.

Further, the rampant counterfeiting and piracy of consumer products that occurs in many developing countries also poses a severe risk of personal injury or loss of life related to customer use. Legitimate U.S. manufacturers have no control over the safety or quality of ingredients that are formulated into these fake products. The risk to consumers' health and safety, coupled with the severe economic harm done to U.S. producers, warrant a higher level of attention by the Committee to this issue.

Free Trade Area of the Americas (FTAA)

The NAM is strongly supportive of actions the Administration has taken to move the Free Trade Area of the Americas negotiations forward. The FTAA is the critical regional piece of Ambassador Zoellick's "competitive liberalization" strategy, and it is imperative that the hemispheric talks stay on track for conclusion by early 2005. The Committee should know that the NAM estimates that an effective FTAA would result in a tripling of U.S. exports to Central and South America within a decade of implementation—from today's $60 billion of annual exports to nearly $200 billion.

The FTAA therefore represents a major challenge and a major opportunity for the U.S. government, U.S. business, U.S. society, and the Western Hemisphere as a whole. The process of obtaining Trade Promotion Authority was a difficult, drawn-out struggle that cost the United States in terms of its policy credibility in the hemisphere. While congressional approval of the Trade Act of 2002 has helped reduce concern about U.S. trade views to some extent, suspicion of U.S. commitment to open markets is at an all-time high in the Americas. When coupled with the recent period of financial volatility and political uncertainty, the doubts about the U.S. commitment to open markets has reduced the political constituency in favor of free trade in virtually every Latin American country.

As in other negotiations, we believe a principal focus must be on removing developing country tariffs on industrial goods as expeditiously and comprehensively as possible. Our preliminary understanding of the initial market access offer tabled by the United States last month is highly positive. We look forward to learning more about it and about the initial offers of other FTAA countries, and our members plan to intensify their engagement with USTR in the months leading up to the June 15 deadline for submitting requests for improved offers.

The Administration's proposal calls for a wide range of industrial sectors to have their duties eliminated immediately under the FTAA. NAM members from those sectors applaud that initiative and expect the Administration to follow-up its initial offer with aggressive pursuit of other countries' agreement to up-front duty elimination. The NAM and others in the U.S. business community continue to do their part through active participation in the Americas Business Forum and in bilateral discussions with foreign counterparts.

In the NAM's view, a successful FTAA must accomplish at least six goals that are particularly critical for U.S. manufacturing. They are: 1) rapid removal of industrial tariffs; 2) design of simplified and uniform rules of origin; 3) removal of non-tariff barriers, including technical barriers to trade and customs-related measures; 4) elimination of barriers and conditions on investment; 5) improved protection of intellectual property rights, especially by stepped-up enforcement; and 6) comprehensive, transparent, and effective access for bidding on government contracts from a broad range of federal and sub-federal entities.

Bilateral Agreements

The NAM strongly supports congressional passage of the recently concluded free trade agreements with Chile and Singapore. We are playing a leadership role in the

U.S.-Chile Free Trade Coalition and are also a principal member of the U.S.-Singapore FTA Coalition. Both agreements provide front-loaded tariff removal for industrial and consumer goods. They are largely state-of-the-art, cutting edge agreements that advance disciplines of interest to manufacturers in the areas of intellectual property rights, customs facilitation, access to competitive services, investment protection, and electronic commerce. They also faithfully implement the TPA compromise on labor and environmental issues related to trade by incorporating labor and environmental provisions into the dispute settlement provisions of the core agreement, while emphasizing cooperative action and monetary fines over resort to removal of trade benefits.

With respect to the upcoming crop of negotiations just getting underway, the NAM takes strongest interest in the Central America and Australia accords. Central America is of interest because of its role in catalyzing the FTAA negotiations. Australia holds much promise because elimination of its average 4.7 percent tariff on U.S. goods could produce an estimated additional $1.8 billion in annual sales of U.S. manufactured products.

Conclusion

The NAM appreciates this opportunity to inform the Ways & Means Committee about its views on the U.S. trade policy agenda.

Respectfully yours,

Frank Vargo
Vice President
International Economic Affairs Dept.

Statement of the National Electrical Manufacturers Association, Rosslyn, Virginia

Worldwide Tariff Elimination for All NEMA Products

- **Objectives:** The world-wide elimination of tariffs on electrical products is a basic NEMA goal. We are founding members of the Zero Tariff Coalition, and earlier played active roles in pushing for the APEC EVSL and ATL initiatives. We therefore urge the U.S. to pursue tariff elimination for electrical products in all fora, including through sectoral talks under the World Trade Organization "Doha Development Agenda" (DDA) round of negotiations, and through regional and bilateral negotiations. WTO members should agree to implement so-called "zero-for-zero" agreements to eliminate tariffs on electrical products as soon as possible, preferably on an early provisional basis with immediate effect until these "Free" tariff rates are bound into the DDA round's final concluding agreement.

  NEMA also urges the U.S. to push for completion of the second phase of the Information Technology Agreement (known as "ITA–2"), which would eliminate tariffs on a wide range of IT items, including some NEMA products. NEMA also supports continued efforts by U.S. officials to expand the membership of the existing ITA.
- **Benefits:** While U.S. electrical exports have been generally growing around the world over the last ten years, they have increased most dramatically in two instances where tariffs were eliminated: (1) to Mexico since the NAFTA agreement came into being; and (2) for medical devices worldwide following the WTO Uruguay Round medical devices sectoral zero-for-zero tariff elimination agreement. We would like to see these stories emulated elsewhere; they don't just benefit our companies, they serve to make the best, most price efficient products available to consumers and companies in other countries.

Negotiate and Ratify Free Trade Agreements (Bilateral, Regional and Multilateral) that Further Open Commerce in Electrical Goods While Upholding NEMA Principles

- **Free Trade Agreements:** NEMA lobbied long and hard for Trade Promotion Authority, and we now urge Congress to quickly ratify the bilateral FTAs recently negotiated with Chile and Singapore. We also encourage the Administration to pursue NEMA priorities such as the following in the many other multilateral (as in the WTO Doha Development Agenda), regional (as in the Free Trade Area of the Americas), and "bilateral" (e.g., Morocco, Central America, Australia and Southern Africa) negotiations it is pursuing:
  - Tariff Elimination

- No Mutual Recognition Agreements (MRAs) For Non-Federally-Regulated Products
- Energy Services Liberalization
- Openness and Transparency in Government Procurement
- Protection of Intellectual Property Rights
- Reduction in Technical Barriers to Trade (TBTs) and Compliance with all World Trade Organization (WTO) TBT Agreement Requirements
- Inclusive Definition of "International Standards"
- Voluntary, Market-Driven Standards and Conformity Assessment
- Effective Monitoring and Enforcement Mechanisms
- Free Trade Benefits Not Encumbered By Labor Or Environmental Provisions
- As Many Other Market Opening Measures As Possible

- **Free Trade Area of the Americas (FTAA) Talks, Particularly the Negotiating Group on Market Access (NGMA):** As talks toward the 2005 creation of an FTAA shift into a higher gear in early 2003, NEMA looks forward to continued leadership from the Administration and Congress. NEMA also encourages all FTAA countries to implement customs facilitation measures to which they have already agreed. Moreover, NEMA urges the U.S. to convince the Hemisphere that any standards and conformity assessment provisions included in an FTAA must mirror the WTO TBT Agreement. NEMA will continue to be engaged in the process, and exchange views with its industry counterpart associations throughout the Americas.
- **Opposition to Mutual Recognition Agreements (MRAs):** In NEMA's view, the use of MRAs should be limited and considered only as an alternative for conformity assessment needs when applicable to federally regulated products such as medical devices. MRAs are not the answer to conformity assessment needs in non-regulated areas; if anything, they serve to encourage the creation of unnecessary product-related regulation. In this regard, while we strongly objected to the inclusion of an electrical safety annex in the U.S. MRA with the European Union a few years ago, we are pleased that the Administration has either excluded electrical products from subsequently negotiated MRAs or refused to sign on to any such accords that include them. We look forward to a continuation of that stance, and trust that the Administration will not entertain intergovernmental MRAs as a part of current free trade negotiations.
- **"International" Standards:** In addition, the U.S. government must continue working to dispel the misinterpretation that the use of the term "international standards" in the WTO TBT agreement applies only to International Electrotechnical Commission (IEC), International Standards Organization (ISO) and International Telecommunications Union (ITU) standards. An interpretation should also include widely-used norms such as some North American standards and safety installation practices that meet TBT guidelines. Misinterpretation can be disadvantageous to U.S. businesses' efforts to sell in global markets. Moreover, the importance of openness and transparency are lost when focus is placed only on those three standards bodies.
- **Energy Services Liberalization:** NEMA supports liberalization of trade in energy services, in order to allow more people worldwide to enjoy high quality, affordable energy, and also to provide new opportunities to those energy service and electricity providers who use the equipment made and services provided by NEMA's members. Thus, NEMA is an active member of the industry coalition campaigning for the inclusion of commitments on energy services in the WTO's ongoing negotiations on services under the DDA. NEMA's primary perspective is that of the industry that provides the equipment and products used to build and maintain electrical energy systems, but many NEMA members are active providers of energy services as well. The liberalization that is good for utilities is also good for our manufacturers, service suppliers, and for the users of electricity. USTR has included energy services in its proposals for the WTO services negotiations and, in the run-up to the WTO Cancun Ministerial, we look forward to continued efforts from the Bush Administration and support from Congress to secure commitments from our trading partners in this crucial area.
- **Transparency in Government Procurement:** Around the world a lack of transparency in awarding contracts has served to unfairly exclude U.S. companies on countless occasions. It is time for U.S. entities to be able to compete on equal footing with domestic suppliers.

  While the U.S. has been a leader of efforts to achieve a WTO agreement to make government procurement more open and transparent, at Doha WTO members put off beginning negotiations on this topic until the fall 2003 Cancun

Ministerial. We look forward to even more leadership from USTR and Congress in pursuing a WTO agreement.

NEMA also urges the Bush Administration to increase efforts to obtain full implementation and enforcement of all signatories to the 1999 OECD Anti-Bribery Convention and the 1997 OAS Convention on Corruption.

An End to Section 201 Tariffs on Foreign Steel Inputs

- **An End to Section 201 Steel Tariffs:** NEMA strongly opposes the tariffs on foreign steel products imposed by the President last year, and is working to see them eliminated as soon as possible. Most of our members are steel consumers, and these duties serve to threaten a very large number of jobs in our industry. (In this respect, NEMA believes the Administration's initiative to bring together global steel producers under the auspices of the Organization for Economic Co-operation and Development [OECD] should receive international support.) We are keeping our members fully updated on developments related to the exemptions process and applaud those exemptions that have already been granted.

Help member Companies Benefit from the Emergence of China as a WTO member

- **China:** NEMA members continue to be intensely interested in the Chinese market, lobbying hard in recent years for the U.S. to grant permanent MFN/NTR status pending Beijing's entry into the WTO. Our industry's sales to China have been growing rapidly over the last decade, now exceeding exports to all but a handful of countries. We are excited about future possibilities as the Middle Kingdom's economy continues to expand impressively—though our members' products continue to face a variety of tariff and non-tariff barriers.

  In this respect, while Beijing committed upon entering the WTO to change its conformity assessment procedures so as to accord non-Chinese product "national treatment," for many electrical products it has also recently made erroneous moves to only accept goods built according to either Chinese national standards or those "international" standards developed and published by the International Electrotechnical Commission (IEC) and International Standards Organization (ISO). (ISO and IEC standards still frequently do not include products built to North America-based international requirements.) Up to now, the Chinese have also frequently accepted "North American" items that are compliant with the National Electrical Code (NEC).

  Like many other sectors, the U.S. electrical industry also continues to have fundamental, ongoing concerns about intellectual property protection in the People's Republic. Our members continue to be victimized by vast and repeated trademark infringement abuse. NEMA seeks continued strengthening of China's anti-counterfeiting measures and enforcement.

Minimize European Union Penalties on Electrical Goods Stemming from the FSC/ETI Dispute and Other Issues

- **Foreign Sales Corporation/Extraterritorial Income (FSC/ETI) Dispute:** The electrical industry strongly encourages Congress to enact an appropriate WTO-compliant reform to the FSC/ETI program. NEMA does not take a position on the form this revision should take, except that the revised law should not undermine the financial position of the U.S. electrical sector. The European Union has indicated no immediate plans to impose the tariff retaliation authorized by the WTO, but the fact that the EU is moving into a position to implement sanctions inherently raises the stakes. A wide swath of our product scope is threatened with retaliation that would run into the millions of dollars and likely price our members' goods out of the market. It is worth noting that we have enjoyed very good working relations with European electrical industry counterparts on this matter, since their members have little interest in seeing the many U.S.-source inputs they use become more expensive or unavailable.
- **Suspension of the Electrical Safety Annex of the U.S.-EU MRA:** NEMA is pleased that the EU Commission has moved to suspend implementation of the Annex, since our feeling is that it adds no value to the existing electrical safety systems in the U.S. and EU. The historical record of electrical safety, based on a private-sector-promulgated standards and conformity assessment system, is a good indicator that private-sector approaches are successful. The U.S. Occupational Safety and Health Administration (OSHA) NRTL (Nationally Recognized Testing Lab) Regulations call for OSHA accreditation of conformity assessment bodies (CABs). EU CABs can be accredited by OSHA for testing and certifying EU products to U.S. voluntary standards for OSHA recognition in the workplace. In 2001, OSHA granted NRTL-status to a German lab and thereby demonstrated the integrity of its approach, in which EU applicant CABs are given the same consideration as U.S. CABs. The Bush Administration should continue to maintain this OSHA NRTL independence while working with the

given the same consideration as U.S. CABs. The Bush Administration should continue to maintain this OSHA NRTL independence while working with the EU to achieve better understanding of the U.S. position.

Build on 2002 U.S.-EU Principles of Regulatory Cooperation to Address Various European Regulatory Proposals such as Those Relating to Chemicals and End-use-Equipment (EuE)

- **Regulatory Cooperation:** NEMA applauds the Bush Administration and the European Union for their 2002 agreement on Guidelines on Regulatory Cooperation and Transparency. We ask that pilot projects adopted for implementation of the Guidelines include the current EU regulatory initiatives relating to Chemicals, End-Use-Equipment (EuE) and Restriction of Hazardous Substances (ROHS). For reasons elaborated in the previous paragraph, we do not think that electrical safety is an appropriate pilot project.

  As we and other industry associations noted in a June 2001 paper for U.S. Trade Representative Robert Zoellick, and as noted in greater detail below, the EU is increasingly establishing regulations that are not justified by available technical evidence and by sound science and whose cost is not proportionate to intended consumer or environmental benefits. Typically, these regulations are developed with procedures that are not transparent to all stakeholders, including the U.S. electrical manufacturing industry and other trading partners. Further, stakeholders find they have no way to hold EU authorities accountable for the regulations produced. In short, EU legislation does not always meet the requirements of the WTO Agreement on Technical Barriers to Trade.

  Our industry is committed to working with the Administration, through engagement with the EU on questions of governance and regulatory disciplines, to find solutions to its systemic regulatory problems, ensuring justification, transparency and openness in development of directives, decisions and regulations, as well as "national treatment" and accountability in their application.
- **Proposed EU Directives Relating to Chemicals and End-use-Equipment (EuE):** Brussels will continue work on these two proposals in 2003. The Chemicals Directive as envisioned would have wide-ranging reporting implications for downstream users such as the electrical industry. The End-use-Equipment directive, an earlier version of which was known as the Electrical and Electronic Equipment (EEE) directive, would mandate eco-friendly design and require manufacturers to comply with a series of requirements throughout the life-cycle of a product. The planned EuE and its envisioned implementing measures would feature product energy efficiency requirements, a concept NEMA has supported in proposed U.S. energy legislation.

  We very much would like to avoid a repeat of 2002, during which the EU completed two new directives that create difficulties for U.S. electrical and electronics products by raising costs and allowing differing standards and procedures among the 15 member states. The first directive addresses take-back and recycling of Waste Electrical and Electronic Equipment (WEEE) while the second, known as the ROHS (Restriction on the Use of Hazardous Substances) directive, imposes bans on the use of certain substances currently used in manufacturing without providing sufficient basis for processes to identify any needed substitutes.

  NEMA urges the Bush Administration and Congress to clearly identify these four measures as serious potential trade barriers and to seek an accommodation that would emphasize rational, cooperative and science-based measures as alternatives to broad-brush regulatory mandates.
- **EU Initiatives Regarding Electromagnetic Fields (EMF):** In 1999, the EU Council issued a Recommendationthat set EMF exposure limits for the general public over a range of frequencies. Although it has been acknowledged by some supporters that the limits include an excessive safety factor, EU member states may provide for a "higher level of protection" than in the Recommendations, and thus can adopt more strict exposure limits. Extensive U.S. Government research on extra low frequencies (ELF) has concluded that "the scientific evidence suggesting that ELF/EMF exposures poses any health risk is weak." Similar conclusions have been reached by health risk studies in other countries.

  A series of emerging EU initiatives also lacking sufficient justification pose additional EMF-related challenges to our industry: the aforementioned EuE proposal, a forthcoming proposal to regulate EMF exposure in the workplace only, and the ongoing revision of a safety directive for low voltage equipment (known as the LVD). Each of these will likely draw on the same excessive limits used in the Recommendation.

  Manufacturers on both sides of the Atlantic have warned their authorities

Manufacturers on both sides of the Atlantic have warned their authorities through the TABD process that EMF could become a major point of contention between the U.S. and Europe. NEMA has notified the Commerce Department that EU member state implementation of the EU Council EMF recommendations would create a substantial barrier to trade by restricting the free movement of goods, which would severely affect U.S. electrical manufacturing interests. In the face of political pressures to adopt EMF regulations, NEMA believes that standards for human exposure to ELF–EMF are only warranted if a credible scientific basis can be established for adverse effects. NEMA supports the TABD position that EMF exposure standards must be harmonized globally. The U.S. government must continue its efforts to work with the leaders in the EU Commission and in the member states to avoid another trans-Atlantic trade dispute over a sensitive issue.

Ensure that Prospective and Current WTO members Comply with International Agreements Relating to Technical Barriers

- **WTO Accessions:** NEMA also hopes for greater progress in bilateral negotiations with WTO accession candidates. Particularly with regards to **Russia,** NEMA hopes that standards and TBT fundamentals are not sacrificed for the sake of geopolitical expediency. In the case of **Saudi Arabia**, NEMA appreciates and urges continuing emphasis on standards and TBT issues in the ongoing negotiations. NEMA representatives have traveled to Riyadh and established an effective cooperative relationship with Saudi Arabian Standards Organization (SASO) officials. A former NEMA employee now serves in place as the U.S. standards attaché in Riyadh.
- **WTO Technical Barriers to Trade (TBT) Agreement:** NEMA supports the concepts outlined in the WTO TBT Agreement and believes that all countries should implement, to the fullest extent, the obligations outlined there. These obligations include: standards development processes that are transparent and include participants from all interested parties; a conformity assessment system that upholds the principles of most-favored nation treatment (meaning equal treatment in all countries); and national treatment (meaning equal treatment of domestic and foreign products, as well as test laboratories conducting conformity assessment services) in the application of testing and certification procedures.

Resist Efforts to Give Supplier's Declaration of Conformity Legal Standing at the Expense of Third-Party Certification

- **Let The Market Decide:** NEMA strongly believes that market conditions should determine the appropriate means of certifying that a product conforms with safety requirements, be it Third-Party Certification or Supplier's Declaration of Conformity (SDOC). In this respect, efforts to give SDOC legal standing should be resisted and kept in perspective, since such moves could have significant repercussions for the existing, successful U.S. electrical safety system—the latter being largely set up along Third Party lines.

Ensure that NAFTA Parties Comply with Their Commitments

- **NAFTA Implementation Issues:** NEMA member sales to Mexico have boomed since the inception of the NAFTA, and most remaining Mexican tariffs on U.S. electrical products have reached zero in 2003. Also, with an office in Mexico City, NEMA is well positioned to work with U.S. authorities to monitor and influence the Mexican standards development process for electrical products, ensuring that Mexican norms do not act as barriers to U.S. products.

  In this respect, NEMA is becoming very involved in the standards and conformity assessment processes in Mexico. The country is developing 20 to 30 new national electrical product standards (known as NOMs) each year and is moving in the direction of making all of its standards mandatory. The authorities do accept and take into account public comments on proposed standards; however, a document that has been substantially revised based on public comments may not be circulated for final public review prior to publication as a mandatory standard. Moreover, a standard adopted as mandatory can incorporate by reference another voluntary standard without any public review or comment opportunity. NEMA would welcome the Mexican standards authority's application of consistent and transparent procedures in the consideration and adoption of NOM standards, which directly affect market access for many proven commercial products.

  Mexico was required under its NAFTA obligations starting January 1, 1998, to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. However, so far no U.S. or Canadian conformity assessment bodies have been

no less favorable than those applied to Mexican conformity assessment bodies. However, so far no U.S. or Canadian conformity assessment bodies have been recognized by Mexico for conducting conformity assessment on most products that are exported from the U.S. and Canada to Mexico. Mexico has indicated that it is willing to conform to these obligations only when the Government of Mexico determines that there is additional capacity needed in conformity assessment services. This procedure does not meet the intent of Mexico's NAFTA obligations, serving to protect their conformity assessment bodies and Mexican manufacturers from fair competition from U.S. and Canadian exports into Mexico.

Continue Technical Exchanges with APEC Standards Officials

- **APEC Standards:** NEMA is actively involved in bringing a greater understanding of conformity assessment alternative processes to the Asia-Pacific region. We have been presenters at two meetings of APEC's Sub-Committee on Standards and Conformity Assessment, and we have so far collaborated with the National Institute of Standards and Technology on two workshops for APEC member country representatives.

Revise "Buy America" Procurement Regulations in Line with International Commercial Realities

- **"Buy America" Procurement Regulations:** U.S. government "Buy America" restrictions on non-sensitive electrical products should be re-evaluated in the context of both the increasingly global economy and potential savings. By restricting access to the U.S. market, these restrictions also have the reciprocal effect of disadvantaging U.S. companies seeking to sell into foreign markets. The United States should consider entering into bilateral and regional agreements providing reciprocal access to government procurement in countries that are not members of the WTO Government Procurement Agreement.

Secure Adequate USG Resources for Negotiations, Monitoring, Enforcement and Overseas Presence

- **Monitoring, Enforcement and Overseas Presence:** NEMA applauds the Administration and Congress for their successful efforts to bring **China** and **Taiwan** into the WTO. NEMA welcomes the opportunity to help our member companies take advantage of the market-opening entry of China and Taiwan into the rules-based international trading system and is working with USTR, the Commerce Department, and Congress to monitor and ensure compliance.

  The U.S. Government needs to do more than simply reach favorable trade accords; it also needs to be vigilant in making sure that other countries live up to their commitments to foster openness, transparency and competition. In this regard, our view is that the Commerce Department's Standards Attaché program should be expanded and fully funded. Likewise, we greatly appreciate the assistance provided by Foreign Commercial Service (FCS) offices abroad, and hope that FCS activities will receive ample support in FY 2004 and the years ahead.

  With the support of a Market Development Cooperator Program (MDCP) grant from the Commerce Department, NEMA opened offices in São Paolo, Brazil and Mexico City, Mexico in 2000. The MDCP is an innovative public/private partnership whose grant budget should be expanded so that more organizations can enjoy its benefits. NEMA looks forward to continuing its close cooperation with the Commerce Dept. on this project.

  Similarly, the Bush Administration and the 108th Congress should approve a generous increase in funding and staff for the U.S. Trade Representative's Office, allowing it to even more effectively negotiate, monitor and enforce trade agreements.

Economic Sanctions

- **Reform:** NEMA supports passage of legislation that would establish a more deliberative and disciplined framework for consideration and imposition of economic sanctions by Congress and the Executive Branch. In addition, existing economic sanctions should be reviewed to determine if their effectiveness justifies the costs to U.S. jobs and industries.

***About NEMA*:**

The National Electrical Manufacturers Association is the largest trade association representing the interests of U.S. electrical industry manufacturers. Its mission is to improve the competitiveness of member companies by providing high quality services that impact positively on standards, government regulation and market economics. Founded in 1926 and headquartered in Rosslyn, Virginia, its more than 400

ices that impact positively on standards, government regulation and market economics. Founded in 1926 and headquartered in Rosslyn, Virginia, its more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products, by and large unregulated, are used in utility, industrial, commercial, institutional and residential installations. Through the years, electrical products built to standards that both have and continue to achieve international acceptance have effectively served the U.S. electrical infrastructure and maintained domestic electrical safety. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRT, C–T, x-ray, ultrasound and nuclear products. NEMA members' annual shipments exceed $100 billion in value.

2003 Trade Priorities for the Administration and Congress

Highlights

- Worldwide **tariff elimination** for all NEMA products
- Negotiate and ratify **free trade agreements** (bilateral, regional and multilateral) that further open commerce in electrical goods while upholding **NEMA principles** *(see below right)*
- An end to Section 201 tariffs on foreign **steel** inputs
- Help member companies benefit from the emergence of **China** as a WTO member
- Minimize European Union penalties on electrical goods stemming from the **FSC/ETI** dispute and other issues.
- Build on 2002 U.S.-EU Principles of Regulatory Cooperation to address various **European regulatory proposals** such as those relating to chemicals and end-use-equipment (EuE)
- Ensure that **prospective WTO members** such as **Russia** and **Saudi Arabia** comply with existing international agreements relating to technical barriers
- Resist efforts to give **Supplier's Declaration of Conformity** legal standing at the expense of **Third-Party Certification**
- Ensure that all parties to the **NAFTA** comply with their **commitments**
- Continue technical exchanges with **APEC** standards officials
- Revise **"Buy America"** procurement regulations in line with international commercial realities
- Secure **adequate USG resources** for negotiations, monitoring, enforcement and overseas presence
- Reform **economic sanctions**

NEMA Principles for FTAs

- Immediate Tariff Elimination
- No Mutual Recognition Agreements (MRAs) For Non-Federally-Regulated Products
- Energy Services Liberalization
- Openness and Transparency in Government Procurement
- Protection of Intellectual Property Rights
- Reduction in Technical Barriers to Trade (TBTs) and Compliance with all World Trade Organization (WTO) TBT Agreement Requirements
- Inclusive Definition of "International Standards"
- Voluntary, Market-Driven Standards and Conformity Assessment
- Effective Monitoring and Enforcement Mechanisms
- Free Trade Benefits Not Encumbered By Labor Or Environmental Provisions
- As Many Other Market Opening Measures As Possible

NEMA is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products total $122.5 billion. Its mission is to improve the competitiveness of member companies by providing high quality services that impact positively on standards, government regulation and market economics. Our more than 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products, by and large unregulated, are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRI, C–T, x-ray, ultrasound and nuclear products.

Preis, Kraft & Roy, PLC
New Orleans, Louisiana 70130
March 12, 2003

U.S. House of Representatives Committee on Ways & Means
1102 Longworth House Office Building
Washington, D.C.20515

RE: Written Comments Concerning the Hearing on President Bush's Trade Agenda

We hereby file these comments for the printed record in response to the above referenced hearing. We strongly urge that the U.S. negotiating objective, during negotiations for the Central American Free Trade Agreement, the Free Trade Area of the Americas and future trade agreements, be for the inclusion of full drawback rights for U.S. manufacturers and exporters, pursuant to the duty drawback program as established under 19 U.S.C. 1313, in each free trade agreement ("FTA"). FTAs should not restrict, limit or otherwise eliminate drawback for U.S. manufacturers and exporters when exporting to U.S. FTA member countries. These comments describe in detail and with specificity the position taken on the above issue with supporting evidence provided herein.[1]

I. The U.S. Must Support the Inclusion of Full Duty Drawback Rights for U.S. Companies in FTAs

Drawback restrictive language in FTAs must be removed in favor of text that has no limitations or restrictions on drawback. Until all tariffs into the U.S. are eliminated, U.S. exporters and manufacturers require and should be granted every possible advantage to not only compete on a level-playing field against their foreign competitors, but to win in the global market.

The American Association of Importers and Exporters in its September 2002 statement to the Trade Policy Staff Committee, when commenting on the FTAA, best described how drawback should be treated in FTA negotiations:

> **The FTAA should not repeat those arbitrary restrictions [of NAFTA], but rather should allow each country to maintain its own duty drawback program that has proven effective in encouraging manufacturing, expanding exports and increasing profitability. The simplest way to do this is to ignore this subject completely in the FTAA, thereby allowing each member country the freedom to continue its own duty drawback program that has proven its value for that country. Unrestricted drawback and free trade are designed to operate side-by-side. To impose arbitrary restrictions on duty drawback is antithetical to the concept of free trade itself. Let's keep it simple and allow each member country the unrestricted freedom to use its own duty drawback program to its fullest extent.[2]**

Our major trading partners with whom we have FTAs, such as Mexico and Chile, have started negotiations on drawback with the premise that full drawback rights should be included within the FTA. Clearly, these countries recognize the significant benefits that drawback provides to domestic manufacturers and exporters even when exporting goods to trading partners with whom they have entered into FTAs. The U.S. should adopt this position dur-

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[1] These comments are submitted on behalf of Danzas/AEI Drawback Services, Inc., 1718 Fry Road, Suite 240, Houston, Texas, 77084, which company is a drawback service provider to U.S. manufacturers, producers and exporters. Similar comments were filed by Danzas/AEI Drawback Services, Inc., in response to the following: Request for Public Comments on the Second Draft Consolidated Texts of the Free Trade Area of the Americas Agreement, 67 Federal Register 79232–79234 (December 27, 2002); Request for Comments and Notice of Public Hearing Concerning Proposed United States-Australia Free Trade Agreement, 67 Federal Register 76431–76433 (December 12, 2002); Request for Comments and Notice of Public Hearing Concerning Proposed United States-Central America Free Trade Agreement, 67 F.R. 63954, 63955 (October 16, 2002); and, Request by USTR on February 27, 2002 to Industry Sector Advisory Committees regarding the United States-Chile FTA negotiating objectives as they specifically relate to the duty drawback program. Such comments also were submitted to the U.S. Senate Committee on Finance, Subcommittee on International Trade, and the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Trade.

[2] See Attached STATEMENT OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS TO THE TRADE POLICY STAFF COMMITTEE SEPTEMBER 9, 2002, MARKET ACCESS IN THE FREE TRADE AREA OF THE AMERICAS.

ing FTA negotiations. Restrictive drawback programs would cause harm to our U.S. exporters.[3]

II. Inclusion of Full Drawback Rights in FTAs Will Provide Significant Benefits to U.S. Companies

The inclusion of full drawback rights in FTAs would be of great benefit to U.S. companies that rely in large part on foreign inputs to manufacture or produce finished goods. Many foreign imports are subject to Most Favored Nation ("MFN") duty rates when imported into the U.S. for inclusion in the manufacturing process. Eliminating or restricting drawback in future FTAs as in NAFTA or the U.S.-Chilé FTA would place U.S. companies at a significant competitive disadvantage against other trading partners that export to the Americas.

NAFTA-like, or any other, restrictions on export-conditioned duty drawback and deferral programs do not best serve U.S. interests. In fact, the potential opportunity costs of extending such restrictions in future FTAs for U.S.-based firms significantly outweighs the possible benefits of disciplines on the activities of producers in Australia. In sum, the U.S.-proposed NAFTA-like restrictions do not best represent U.S. interests, particularly those of the U.S. manufacturing, refining and exporting communities.[4]

For example, if drawback were allowed to Canada and Mexico today, U.S. manufacturers and exporters ("U.S. companies") would be more competitive when making sales in those markets. First, many MFN rates are still in place and U.S. manufacturers often require foreign imports (non-originating NAFTA goods) to manufacture finished products that are exported to our NAFTA trading partners. Second, many situations exist today in which Canada's or Mexico's MFN rate is duty-free for product categories; therefore, a NAFTA duty preference does not distinguish U.S. from other non-NAFTA imports. Yet, drawback for U.S. companies is restricted under NAFTA.

Consequently, the purpose of the NAFTA duty deferral program and the benefits it provides to U.S. (or originating) goods is defeated. As our NAFTA partners' lower MFN rates on an accelerated basis to provide other countries' exporters with the same or similar market access that the NAFTA grants to U.S. companies, U.S exporters become less competitive in exports. This situation would apply to any FTA entered into by the U.S. in which NAFTA-type drawback restrictions exist. In either of these situations, the incremental benefit at the margin that drawback provides to U.S. manufacturers and exporters means the difference between making a sale, and thus competing in the importing country's market.

Duty drawback reduces production and operating costs by allowing manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported either whole or as a component part of a finished product. This advantage must be maintained as part of U.S. policy to foster growth and development within the U.S. and increase U.S. export competitiveness abroad.

III. Drawback Encourages Growth in U.S. Manufacturing and Exports

Drawback is the refund of U.S. Customs ("Customs") duties, certain Internal Revenue taxes, and certain fees that are lawfully collected at importation.[5] Customs administers the refund after the exportation or destruction of either the imported or a substituted product, or the article manufactured from the imported or substituted product.[6] The establishment of the duty drawback program, and U.S. policy underlying the program, is to increase the competitiveness of U.S. industry in the global market when competing against lower-priced exports from our trading partners. In sum, the drawback program benefits U.S. manufacturers and exporters by increas-

[3] The U.S. currently has FTAs with Canada and Mexico (two of its three largest trading partners), Chile, Singapore, Israel, Jordan, and sub-Saharan Africa. With respect to the proposed FTAs with Central America, Australia, Philippines, Taiwan, and Egypt, as well as the FTAA, we request that the U.S. negotiating objective be for the inclusion of full drawback rights.

[4] The drawback limitations agreed to in the U.S.-Chile FTA are positive only insofar as the limitations: (1) are phased in over a twelve-year rather than a briefer period; and, (2) include NAFTA Article 303.6 exceptions relating to same condition substitution drawback. If all U.S. MFN rates are not reduced to zero by the year 2012, at which time the Chile FTA drawback limitations take full effect, the drawback restrictions within the Chile FTA will become detrimental to many U.S. manufacturers and exporters that require drawback to remain competitive when exporting to Chile. In fact, the recent Communication from the United States to the WTO Negotiating Group on Market Access states that the U.S. proposes that all tariffs be eliminated by 2015. See Market Access for Non-Agricultural Products, TN/MA/W/18 (5 December 2002).

[5] See http://www.customs.USTreas.gov/impoexpo/impoexpo.htm.

[6] See Id.

ing their competitiveness either at the margin for pricing goods in the export market or through lower overall costs of production.[7]

The drawback program also was initiated to create jobs and encourage manufacturing and exports.[8] Customs recognizes this by stating that

> The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.[9]

The intent of Congress is to grant drawback when and wherever possible to the benefit of U.S. companies. The purpose of both FTAs and the drawback program is to provide the greatest overall benefits to U.S. exporters. To limit drawback in the context of FTAs would thus defeat the purpose of both FTAs and the drawback program.

IV. The Rationale for Restricting Drawback Rights in FTAs No Longer Exists

The U.S. policy, or rationale, for restricting drawback rights in FTAs no longer exists, and no empirical evidence has surfaced that would lead us to believe otherwise. There were three primary reasons for restricting drawback in a FTA, all of which have been proven false. First, the U.S. believed that drawback restrictions were necessary to create a disincentive for the development of export platforms. Yet, such restrictions have had an effect adverse to that intended. Second, the U.S. has said that drawback is an export subsidy that should be eliminated. Drawback is not an export subsidy. Third, the U.S. has stated the removal of tariff barriers through FTAs eliminate U.S. companies need for drawback. This is false because drawback continues to make a significant difference at the margin when exporting to FTA partners that have low or zero MFN duty rates.

The above stated rationale for restricting drawback are not viable and are inconsistent with the overall policy of the U.S. government, which is to encourage U.S. exports with our trading partners. The removal of WTO approved export promotion programs such as the drawback program simply decreases what would otherwise be an enhanced competitive advantage that U.S. companies would have under a FTA. The U.S. historically, and before NAFTA, had FTAs with Jordan and Israel with no restrictions on drawback. It is our understanding that the U.S. negotiating objective for drawback, along with many other objectives, in this and future FTAs is based upon the NAFTA. However, the rationale developed for the inclusion of drawback restrictions within the NAFTA and thus within FTAs is no longer viable, as addressed in detail below.

A. Restricting Drawback Encourages, Rather than Discourages, the Creation of an Export Platform

The continued proliferation of free trade agreements makes the U.S. position on export platforms a moot point, with no empirical evidence to substantiate the premise. The U.S. position in NAFTA was to eliminate duty drawback and thus create a disincentive for the establishment of export platforms in Mexico or Canada by Asian and European countries, to the detriment of U.S. suppliers of imports and manufacturers. This position was developed a decade ago, when the U.S. had very few FTAs, and was based in large part on theoretical assumptions.[10]

Over time and with the imposition of NAFTA Article 303 drawback restrictions our NAFTA trading partners have instituted trade policies that diminish the financial impact on domestic manufacturers of the duty-deferral mechanism and draw-

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[7] See *Supra Note 4*. It is of interest that the World Trade Organization ("WTO") has commented that the effects of drawback programs in other countries create an export incentive, counteract the negative effects of high import tariffs, create a strong magnet for export-oriented foreign direct investment, benefit exporters and manufacturers, and remove a bottleneck to private sector development.

[8] See *Supra Note 4*. The Continental Congress first established drawback in 1789, and it was initially limited to specific articles, such as salt used to cure meats, that were directly imported and exported. Since that time, drawback has been expanded to include numerous products as U.S. production and manufacturing has grown in different industrial sectors.

[9] See Id.

[10] It was also alleged that not limiting or restricting the duty drawback program in the context of a FTA creates an incentive to move manufacturing out of the U.S., but there has been no empirical data compiled to prove this theory. In addition, the government's "manufacturing relocation incentive" is greatly diminished when the country with which we have the FTA is not a border country. The U.S. has the lowest tariff burdens in the world. Thus, the presumption that companies would relocate to save duties would have been proven by now.

back restrictions contained in the NAFTA. The U.S. has done nothing to counter the same adverse impacts on U.S. manufacturers and exporters. For example, in anticipation of the adverse economic impact on its maquiladoras that Article 303 would have, Mexico instituted its Sectoral Promotion Programs ("PPS").[11] Under the PPS, Mexico reduced many of its Normal Trade Relation ("NTR") duty rates in order that domestic manufacturers could obtain non-NAFTA inputs, primarily from Japan and Korea, as drawback to the U.S. became restricted. In addition, Canada reduced its NTR duty rates in order that the imposition of the drawback restrictions under NAFTA had the least adverse economic impact upon domestic manufacturers when exporting to the U.S. These actions not only circumvent the original intent of drawback restrictions as relates to the creation of an export platform, but also demonstrate that the premise is fallible. If drawback restrictions are included in other FTAs, our trading partners will likely take similar actions to ensure that their domestic companies can obtain the necessary inputs at the lowest possible cost rather than obtain them from the U.S. Thus, the analysis for the need to restrict duty drawback based on the creation of export platforms has proven false over time.

B. Duty Drawback is Not an Export Subsidy, and It Creates Incentives and Advantages for Domestic Manufacturers and Exporters

Almost every country has a drawback program. Duty drawback is one of the few GATT/WTO sanctioned programs that, as commented by the WTO about the effects of drawback programs in other countries, has the following positive effects: Creates an export incentive; Counteracts the negative effects of high import tariffs; Establishes a strong magnet for export-oriented foreign direct investment; Provides benefits to exporters and manufacturers; and, Removes a bottleneck to private sector development.

According to the WTO, as well as the intention of Congress and over 200 years of experience, duty drawback promotes, encourages and benefits exports. Increased trade through FTAs does not reduce jobs in the U.S., but rather moves them to those industries that export. Workers in exporting industries have greater productivity and higher wages than do workers in other industries. Export promotion programs such as drawback are necessary to encourage exports and enhance U.S. competitiveness abroad.

C. It Is Illogical for the U.S. Government to Remove Export Incentives for U.S. Manufacturers and Exporters

The U.S. should not remove WTO legal export incentives for U.S. companies, but rather provide any additional incentives and competitive advantages to U.S. companies that would allow them to win contracts for the sale of goods and services abroad.[12]

The U.S. strategy for entering into FTAs is to lower the overall tariff burden for U.S. companies when exporting to the particular trading partner, thereby making U.S. companies more competitive in that market or region. However, as in the case of Mexico and Canada, when countries lower their own NTR duty rates to rates that match the level contained in a free trade agreement with the U.S., any drawback limitations become punitive to U.S. companies. The advantage provided to the U.S. companies by the FTA diminishes when foreign exporters receive the same or similar benefits (plus drawback, in many instances). The result is a decrease in the competitiveness of U.S. companies. The intent of the duty deferral program is to ensure that exporters would obtain duty-free entry for originating goods.

For example, when U.S. goods enter Canada or Mexico free of duty without NAFTA origination because the NTR duty rate is zero, there is no benefit accruing to the U.S. export due to the restrictive nature of NAFTA's duty-deferral program. Drawback restrictions are not contingent upon NAFTA origination and thus apply to any exports—whether originating or non-originating goods. Thus, any goods exported from the U.S. that do not receive the benefits intended under NAFTA are denied any drawback benefit when competing against foreign goods subject to a zero MFN rate of duty. This places U.S. companies at a significant competitive disadvantage compared to foreign companies when the importing country has a FTA with

[11] See Attached U.S. International Trade Commission, Industry Trade and Technology Review, Integration of Manufacturing, Regulatory Changes in Mexico Affecting U.S.-Affiliated Assembly Operations, Publication 3443 (July 2001).

[12] Other U.S. programs exist that provide export incentives for U.S. companies, such as the USDA's Dairy Export Incentive Program ("DEIP"), Export Enhancement Program, and the Market Access Program. Although it is currently under attack by other WTO member countries, the U.S. continues its attempt to resolve the disputes surrounding the Foreign Sales Corporation ("FSC") program in a manner having the least adverse effect on U.S. entities.

the U.S. and a FTA with other countries in which drawback is retained, i.e., the Chile-E.U. FTA. In addition, this competitive disadvantage increases when the importing member has a zero rate of duty for the product categories in which U.S. exports compete against third country exports.

V. NAFTA Article 303 Created Many Problems Associated With the Drawback Restrictions Imposed on U.S. Companies

Drawback restrictive provisions in future FTAs will pose the same or similar problems created by Article 303 of NAFTA. Article 303 of NAFTA created significant problems in both the interpretation of the NAFTA drawback restrictions by Customs, leading to the inability of many U.S. companies to obtain drawback on necessary foreign inputs.

A. Customs Misinterpreted the Application of Article 303 of NAFTA in Regard to Same Condition/Unused Merchandise, Substitution Drawback

The exclusion of the Article 303-type language will alleviate the problems associated with Customs' interpretation of Article 303 as it relates to same condition/unused merchandise, substitution drawback. In interpreting Article 303, Customs improperly eliminated same condition, substitution drawback in all instances, even where the only substitution that takes place is foreign for foreign merchandise. If the above issue is not properly addressed within FTAs, then U.S. exporters will likely face the same obstacles and problems as they face with NAFTA Article 303.

1. Article 303(2)(d) of NAFTA and Customs Interpretation

Article 303(2)(d) of NAFTA prevents a party from refunding "customs duties paid or owed on a good imported into the territory and substituted by an identical or similar good that is subsequently exported to the territory of another [p]arty." However, 303(6)(b) specifically states that Article 303 (and the substitution prohibition) does not apply to "a good exported to the territory of another [p]arty in the same condition as when imported into the territory of the [p]arty from which the good was exported processes such as testing, cleaning, repacking or inspecting the good or preserving it in its same condition, shall not be considered to change a good's condition." Where same condition goods have been commingled with fungible goods, the treaty provides that origin may be determined using one of the inventory accounting methods in Schedule X to the treaty. Where there is 100% foreign product, there is no need to perform an origin determination and the exported good should be excepted from Article 303 all together. 19 U.S.C. Section 1313(j)(4) and 3333(a) recognize the interplay of this language and make it clear that substitution is still available for exports of same condition goods.

NAFTA negotiators were apparently concerned that a claimant exporting NAFTA-eligible goods could claim drawback on the NAFTA-eligible shipment by substituting those goods with commercially interchangeable goods that were previously imported. Thus, the claimant would receive the benefit of NAFTA and drawback at the same time. Attached is a copy of U.S. Customs Headquarters Ruling No. 228209, dated April 12, 2002 that is the best statement by Customs to date as to how the agency has interpreted Article 303 in relation to unused merchandise, same substitution drawback. Essentially, Customs has taken the position that an export using substitution does not qualify as a "same condition" good (and, thus, is not excepted from Article 303) because the exported item is not the actual item that was imported. Of course, this presents a result in which an exporter of 100% foreign goods is prevented from claiming drawback, contrary to NAFTA.

2. Recommend Changes to Article 303(2)(d) of NAFTA

If Article 303 or similar language is included in FTAs, which we oppose, it is extremely important to ensure that the treaty text itself provides clarifying language to address the problem described above. Based on the information below, we would be pleased to provide proposed changes in language to Article 303 of NAFTA as it relates to same condition/unused merchandise, substitution drawback. Any proposed language should clarify NAFTA Article 303(2)(d) by making at least two changes to the implementing laws.

First, the treaty text must state that a party is only prohibited from refunding duties on imported goods substituted with originating, identical or similar goods that are then exported to the trading partner. Thus, a party should not be prohibited from refunding duties where the export is of non-originating goods. If a company has 100% foreign goods, there is never an issue as to whether export is origi-

nating. If the company does commingle originating and non-originating goods, it must first use an acceptable inventory accounting method to determine origin, and then it can use substitution drawback only for those shipments deemed non-originating.

Second, any Article 303(6)(b)-type language referring to same condition exports must be changed to address the use of the term "same condition," as a term used under the old drawback law, versus "unused merchandise," as a term used by Customs today. "Same condition" was changed to "unused merchandise" under the Customs Modernization Act ("Mod Act"). Unfortunately, because the Mod Act and NAFTA were developed at the same time, the NAFTA text did not include the term "unused merchandise" and instead, uses the archaic term "same condition." This causes confusion and complexity under the drawback law. In addition, Customs eliminated the term "same condition" in the U.S. drawback law because it did not adequately define this type of drawback, creating ambiguity where certain products were not subject to drawback. Accordingly, Article 303(6)(b)-type language of NAFTA must be revised to bring it in line with current drawback terminology.[13]

B. Article 303 Drawback Restrictions Increases Production Costs for Certain U.S. Industry Sectors

Certain industry sectors within the U.S. cannot claim drawback under NAFTA although they must import and pay duty on inputs that they cannot obtain in the U.S. The result is that many U.S. entities are disadvantaged when competing against foreign competitors in importing countries' market. This situation is commonplace in U.S. petroleum refining. These same drawback restrictions, if extended in FTAs, will continue to place our petroleum refiners at a competitive disadvantage compared to foreign refiners.

Many petroleum refiners will continue to pay MFN duty rates for inputs even as the U.S. enters into FTAs. The cost competitiveness of U.S. refiners in the global market depends on each additional incremental advantage that can be obtained. U.S. petroleum refiners use a combination of foreign and domestic feedstock in order to meet domestic petroleum derivative production needs. U.S. petroleum refiners pay Most Favored Nation ("MFN") duty rates importing into the U.S. because they import a large portion of feedstock from foreign sources other than Mexico and Canada. Our refiners therefore face increased costs in the form of duties not subject to drawback due to NAFTA Article 303. This often makes U.S. refiners' product non-competitive in the North American market relative to finished product imported directly into North America from non-NAFTA sources. To remain as competitive as possible when competing for sales of refined product exported by foreign producers to our FTA partners, eligibility for drawback is a necessary part of decreasing costs of production to win sales and contracts.[14]

Any extension of Article 303-type language to FTAs would continue the prejudice against U.S. petroleum refiners and exporters created by NAFTA.[15]

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[13] We also recommend that this issue be corrected under NAFTA as it is currently implemented and administered.

[14] It is important to note that the NAFTA and U.S. Rules of Origin compound this problem by restricting the ability of U.S. petroleum refiners to claim a NAFTA duty preference for their exports. For example, molecules of crude oil cannot be traced through the refining process (unlike the use of parts for the manufacture of goods) to determine whether NAFTA crude or foreign crude was the input for the final product. The use of NAFTA crude as the input establishes whether the petroleum product is of NAFTA origin. Thus, it is all but impossible to establish through the NAFTA rules of origin that the final product is a NAFTA originating good under 19 U.S.C. Sec. 3332 that is eligible for NAFTA preferences upon export. Additionally, petroleum FTZs are prohibited from using the NAFTA origin rules to establish that non-originating goods undergo a tariff shift that would classify the final product as a NAFTA good under 19 U.S.C. Sec. 3332 (a)(2). Finally, FTZ accounting methods for petroleum refiners also prohibit or greatly restrict NAFTA duty deferral benefits when exporting from the U.S.

[15] Based on the discussion set forth in V.B. above, we recommend that merchandise within Chapter 27 of the Harmonized Tariff Schedule of United States ("HTSUS") be exempt from any limitations on drawback in FTAs. Precedent already exists in Article 303, Paragraph 6, and Annex 303.6 of NAFTA for not subjecting goods to drawback restrictions in FTAs entered into by the U.S. The exemption of petroleum products under Chapter 27 of the HTSUS from drawback limitations is necessary due to constraints placed on petroleum exports and benefits derived from FTAs under current U.S. law.

Recommended language for such an exemption is as follows, "An imported good used as a material in the production of, or substituted by an identical or similar good used as a material in the production of, a good provided for in Harmonized Tariff Schedule of the United States Chapter 27, that is subsequently exported to the territory of another Party." We would be pleased to discuss this matter with the TPSC, upon request.

Other U.S. companies are placed in a similar situation insofar as they pay duty on necessary foreign inputs. Thus, exemptions from drawback limitations for products in Chapters 84, 85 and

VI. A Possible Alternative to Full Drawback Rights

If the U.S. will not pursue the inclusion of full drawback rights in FTAs, at minimum, a FTA provision on drawback should include the Chile-E.U. FTA language on drawback, not the U.S.-Chile FTA drawback language that eliminates drawback after the FTA is in force for twelve years. Attached is a copy of the Chile-E.U. language, Final Text, 11.06.02, Annex III, Title IV, Drawback or Exemption, Article 14, Prohibition of drawback of, or exemption from, customs duties. The language of the Chile-E.U. FTA would provide significant benefits to U.S. manufacturers and exporters, increasing their competitive advantage when making sales in the Americas. First, the Chile-E.U. FTA has no limitations on unused merchandise drawback and thus does away with the problems associated with unused merchandise drawback that has resulted from NAFTA Article 303. Second, as all countries begin to reduce their MFN rates after a new round of GATT negotiations, there will be situations where companies will not claim originating status under the treaty and thus drawback will benefit our exporters. Thus, companies will pay a smaller MFN rate when exporting within the Americas and file for drawback on high value/high duty rate imports, allowing them to be more competitive in making sales against E.U. and Asian exporters.

We do recommend a slight change in the language of the Chile-E.U. FTA regarding Paragraphs 1 and 3. These Paragraphs do not discuss the situation when proof of origin is not issued for an exported good, and the language must address the situation of when no proof of origin is issued. For example, the following sentence should be included in Paragraph 2, which sentence would state that

> "The prohibition in paragraph 1 shall not apply when a proof of origin is not issued."

With this change, Paragraph 1 would limit drawback rights only if a proof of origin is issued. If proof of origin is not issued, the treaty prohibition does not apply and each country is free to provide full drawback rights pursuant to that country's program. Further, acceptance of the Chile-E.U. provision should be clear in stating that there is no additional limitation for unused merchandise drawback.

VII. Conclusion

If U.S. trade policy is to identify and provide mechanisms with which to pursue greater market access for U.S. exports of goods and services,[16] then drawback should not be restricted in FTAs. Drawback comports with U.S. trade policy in a number of areas, including export promotion, export growth and increased productivity and development in U.S. manufacturing and refining operations. The inclusion of a full and unrestricted drawback right in FTAs will strengthen U.S. competitiveness and productivity.

Please do not hesitate to contact the undersigned by telephone at 504–581–6062 or by email at mhebert@pkrlaw.com if you have any questions or would like additional information concerning the comments herein. Thank you.

Respectfully submitted,

Marc C. Hebert, Esq.

Attachments

STATEMENT OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS TO THE TRADE POLICY STAFF COMMITTEE

SEPTEMBER 9, 2002

MARKET ACCESS IN THE FREE TRADE AREA OF THE AMERICAS

The American Association of Exporters and Importers (AAEI) is pleased to offer its comments on a proposed Free Trade Agreement of the Americas (FTAA), and we

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90, which products often involve assembling a large number of foreign components in the United States, would be beneficial to those manufacturers competing against our trading partners in regions or countries in which we have entered into FTAs. This includes assembly operations for computers and other high technology equipment. The intent is to grant full drawback rights to refiners and exporters of petroleum products, similar to those exemptions provided for in NAFTA Article 303.

[16] See NAFTA Sec. 108. Congressional Intent Regarding Future Accessions.

thank the Office of the U.S. Trade Representative and the members of the Trade Policy Staff Committee for providing us with this opportunity.

Negotiation of a trade agreement tying together the many and diverse nations of the New World is an undertaking of extraordinary scope and complexity. It is all the more important, therefore, to remain focused on a few goals that will best assure the success of a FTAA.

(1) Commit to a Genuine Effort to Remove Trade Barriers

The conventional objective of any free trade agreement is, of course, to eliminate direct tariffs and quantitative restrictions (quotas) on trade in goods. High tariffs and quotas not only restrain wealth-generating trade among nations, they also commonly distort the domestic economies of nations by perpetuating industrial and agricultural inefficiency. Any country's tariff peaks are invariably reliable indicators of its least competitive industrial or agricultural activities.

AAEI members compete globally in a wide variety of economic sectors, but we shall not use this opportunity to catalog the specific areas in which we would hope to obtain early elimination of other countries' tariffs and quotas, although you will hear more about this from us in the future. Rather, we shall here state our strong support for a readiness to offer our own high tariffs, including those embodied in tariff-rate quotas, for reciprocal elimination.

Beyond elimination of high tariffs, they should be prepared to accept some modification of the strong pro-petitioner bias in our unfair trade remedies regime. Being in favor of "free but fair" trade requires that both issues be addressed in a meaningful fashion. The United States has been on the losing side of most recent WTO challenges to its antidumping and countervailing duty determinations, for many reasons, including dumping calculation methodologies and subsidy presumptions, which are highly prejudicial to foreign exporters. Therefore, the United States must be willing to engage in negotiations to correct these procedural deficiencies, as circumscribed in WTO panel decisions. Otherwise, many commodities in which our FTAA partners are most competitive may be locked out of free trade area benefits by a perennial barrier of "unfair trade" allegations that neutralize the hemispheric advantages of the agreement.

We fully comprehend that removal of protectionist barriers is widely perceived to be politically difficult, but removal will strengthen the competitiveness of companies that depend on imported materials, reduce living costs for American consumers, and reduce pressures for foreign and international assistance as the economies of our trading partners improve. We urge our negotiators to use the FTAA as an opportunity to dismantle our own protectionist regimes.

(2) Keep It Simple

It is a gross misconception to believe that regional free trade can be achieved simply by eliminating tariffs. *Because free trade in the context of a regional trade agreement is necessarily conditional, the cost of complying with the conditions replaces the cost of tariffs as the measure of the extent to which trade is actually "free".* If governments lose sight of this fact they will accomplish nothing meaningful in terms of stimulating trade with a FTAA, because only those very large companies with the resources, organizational systems, and full access to upstream cost accounting records will be able to take advantage of the FTAA, and the growth will not come to the small- and mid-sized businesses that are the backbone of any economy.

We reiterate a point that AAEI made in our memorandum to you of June 11, 2001: the North American Free Trade Agreement (NAFTA) rules of preference for trade in goods are immensely complex and have limited the benefits that could have been obtained from the NAFTA. One Canadian study concluded that the "tendency to trade" of Canadian businesses is twelve times greater east-west than north-south, over almost any distance. Because the NAFTA has comprehensively eliminated duties, the study's conclusion indicates that other factors are restraining north-south trade. Those factors almost certainly relate to the complexity of the NAFTA's preference rules, complexity that should be avoided in a FTAA.

Specifically, governments should seek to limit to the extent possible the use of regional value content as a criterion for preferential treatment. In general, value content rules under the NAFTA have been extremely onerous for traders. They rival the most arcane and prolix sections of the tax code in complexity. The FTAA is unlikely to reach its full potential for success if similar cumbersome value content rules are adopted in the FTAA. Therefore, AAEI urges the USTR to work towards an agreement based on more straightforward tariff shift rules.

There are reasons for rejection of the value content criterion in a FTAA other than the burden it imposes on traders:

- It is highly unstable because of its sensitivity to fluctuations in currency exchange rates. In fact, the month before the NAFTA went into effect, Mexico devalued its peso from approximately three to the U.S. dollar to five to a dollar, upsetting at the last moment plans made for qualifying goods for preference under the NAFTA. In June of this year, after the Government of Uruguay announced that it would allow the peso to float against the U.S. dollar, the Uruguayan peso dropped by nearly 20 percent in a few hours. The Argentine peso has lost more than 70 percent of its value since it was freed from a one-to-one exchange rate with the dollar in January. Exchange swings of this magnitude significantly affect value content calculations, upsetting the terms of contracts between parties in different countries and invalidating compliance assessments performed by government agencies.
- It is also unstable because of its sensitivity to fluctuations in the world price of key commodities, such as oil, animal hides, sugar, coffee, all produced in quantity within the hemisphere.
- There can be a lack of reciprocity of results. If an article with a certain value is processed in one country with low costs for labor, energy, and capital the value added by processing may not qualify the finished good for preference, whereas the same processing performed on the same article in another country with higher costs may meet the value content standard.
- Regional value content rules can actually operate as a disincentive to improved productivity. A producer of goods who narrowly qualifies for preference under a value content criterion may be reluctant to make process improvements that could reduce local costs.
- Finally, regional value content claims are difficult for customs administrations to verify because they can be examined only by trained auditors acquainted with the accounting rules of the country in which a producer is located, and an examination can require weeks of effort. This is a strain both on governments and on the companies that are subject to audits, which must tie up records and key personnel while the audit is ongoing.

Tariff shift rules, on the other hand, can in many cases be verified by persons who know nothing about accounting and only the basic rules of tariff nomenclature and classification. The participating countries will be able to verify preference qualification without extended delays or the variations of personal judgment. This simplicity makes it possible for even those countries with very modest resources to undertake a reasonable level of verification, while verification of a regional value content standard is within the means of only the most affluent Administrations that can afford to send auditors abroad for weeks on end.

Another area that calls for simplicity is that of duty drawback. Virtually each of the countries involved in the FTAA has its own existing duty drawback program, the rationale for which is to encourage commerce and/or manufacturing. Duty drawback permits companies in each of the FTAA countries to compete in foreign markets without the handicap of including in their costs, and consequently in their sales prices, the duty paid on imported merchandise. Stated more positively, duty drawback adds profitability to those companies and countries that export their goods.

NAFTA imposed arbitrary restrictions on the drawback programs of each of the member countries, with the unfortunate result of reducing companies' profitability. The FTAA should not repeat those arbitrary restrictions, but rather should allow each country to maintain its own duty drawback program that has proven effective in encouraging manufacturing, expanding exports and increasing profitability. The simplest way to do this is to ignore this subject completely in the FTAA, thereby allowing each member country the freedom to continue its own duty drawback program that has proven its value for that country. Unrestricted drawback and free trade are designed to operate side-by-side. To impose arbitrary restrictions on duty drawback is antithetical to the concept of free trade itself. Let's keep it simple and allow each member country the unrestricted freedom to use its own duty drawback program to its fullest extent.

(3) Keep Your Eyes on the Prize

A hemispheric free trade agreement is an opportunity not only to stimulate trade and economic growth but also to solidify commercial and political models that serve the long-term interests of the people of the hemisphere. These are extremely important outcomes that have been objectives of diplomatic policy in our hemisphere for over half a century. But this opportunity will be fully realized only if governments can resist their characteristic reaction to trade agreements as benefiting only tax cheats and unscrupulous traders.

It is beyond dispute that governments have a right to prevent tax fraud, and that they are entitled to deal with it aggressively. But setting up draconian consequences for clerical errors, reasonable mistakes of fact or misinterpretations of law, or even simple negligence creates a chilling effect that may significantly reduce use of the FTAA to expand trade, particularly if a trader's exposure to liability is dependent on the comprehension of a foreign exporter.

To employ an analogy, the benefits of replacing an old road with a new multi-lane superhighway will be minimal if police seize the opportunity to line the new road with speed traps from end to end. Similarly, if traders see the FTAA operating as a grand law enforcement sting the enormous potential benefits of the FTAA, including the revenue windfalls governments could enjoy as a result of expanded trade, will be put in jeopardy.

Governments should not let the possibility that small amounts of revenue may slip from their grasp cause them to lose sight of the real prize: the enormous economic growth and political stabilization that will result from a heavily-used free trade agreement.

(4) Use the FTAA To Begin To Build A Zone of Confidence

A free trade agreement will function most efficiently and deliver the greatest benefits if goods are able to flow freely throughout the free trade area with minimal cost and delay at national borders. Border delays are likely to be exacerbated as trade volumes expand more rapidly than the resources of government border regulatory agencies. This divergence of workload and resources makes it necessary for governments to re-think their approaches to functions such as trade documentation, enforcement of products standards, and cargo security.

The key component of this new thinking is a willingness of FTAA governments to work together to create an environment in which goods arriving from a trusted trading partner will ordinarily not require new documentation and physical inspection because the necessary documentation and verification of compliance with standards has occurred in the country of production. In other words, the FTAA should aim to build a zone of confidence in which, based on shared responsibility and mutual trust, interruption of trade at the border of an importing country is the exception, not the norm.

Trade Documentation and Certifications. Building this zone of confidence can begin with trade documentation generally and preference certifications specifically. In any modern economy, import documentation is almost invariably a restatement of information provided to importers by foreign exporters. Customs officials worldwide acknowledge that it is impractical to expect importers to open freight containers at ports of arrival and verify the contents prior to filing import documents. Governments continue to demand trade documents from importers not because they are the best sources of information but because they can be held accountable and, it is believed, exporters cannot.

The NAFTA began to depart from this model by placing primary responsibility for certifying eligibility of goods for preference on producers and exporters, tacitly acknowledging the futility of placing that responsibility on importers. The FTAA governments can expand on it by allowing basic export documentation, filed under penalty of law in the exporting country, to be used with the endorsement of importers as the import clearance information in the country of import. Such an arrangement would not only reduce the need for redundant filing it would also allow customs administrations concerned about import fraud and/or cargo security to obtain the same information filed in the exporting country. This will enhance the complementary law enforcement efforts of the trading partners.

A similar approach may help USTR to deal with the issue of government or business chamber endorsements of export certificates. Many of the countries that are potential participants in a FTAA currently participate in trade agreements under which exporters' certificates are required to be endorsed by a government agency or a business chamber. The United States, in its trade agreements, has not followed this practice for several reasons. Our experience is that the endorsements are of minimal value, they are too frequently occasions for extraction of petty bribes, and a challenge to a claim for preference endorsed by a foreign government agency could become a diplomatic incident (seen as questioning the integrity of another government) rather than a routine act of revenue enforcement. Additionally, there is no entity in the United States that is prepared to offer reciprocal endorsement services.

However, these endorsement arrangements are deeply entrenched in the business cultures of many countries, in large part because of the revenues they generate for the endorsing agents. One option for retaining them in a way that would add real value is to allow private business chambers to guarantee the integrity of certificates executed by exporters from their countries. This guarantee would be in the form of

a commitment to indemnify any importer in another FTAA country who is required to pay duties on merchandise because of a false or invalid exporter certification.

This would be a marked improvement over the NAFTA, which generally allows an importer who relies on an invalid NAFTA exporter certificate to avoid penalties but not regular duties. In a sense, the proposed guarantees would operate along the lines of surety bonds obtained by importers. An FTAA exporter would remain liable for compensating foreign customers injured by his invalid export certificates (under indemnification clauses typically in contracts); however, if an exporter is unable to pay compensation the guarantor (business chamber in the exporting country) would pay. Such an arrangement would preserve a traditional role (and revenues) for business chambers in South American countries, it would give real value to that role, and it would stimulate greater trade by allowing purchasers of goods exported from a FTAA country to do business with full confidence that they will not suffer financial harm as the result of false or invalid exporter certificates of eligibility for preference.

Business Confidential Information. Another key to building a hemispheric zone of confidence is scrupulous handling by government agencies of business confidential information. Timely submission of data relating to movement of cargo is key to its efficient conveyance around the world. Traders acknowledge the needs of governments to document and review trade movement information for revenue collection, health and safety protection, effective and efficient port operations, and border security. However, businesses need from the governments to which they entrust this data a commitment to ensure its confidentiality. FTAA governments need to acknowledge and respect business concerns that this information should not be publicly shared. A commitment from governments to provide security for intangible assets such as business data is paramount for traders. Agreements with suppliers, partners, and business associates typically require that they abide by confidentiality agreements. Traders do not expect less of from the governments in the countries in which they operate.

Product Standards. Finally, governments can add to a zone of confidence by improving cooperation on establishment and enforcement of product standards. It is unlikely that any government takes lightly its responsibility to protect the health and safety of its citizens, its agriculture, and its environment. But it is certain that no government wishes to lose privileged access to another country's market (certainly if that other market is the United States) by allowing exports of substandard products.

There is an opportunity here for regulatory agencies to work with their counterparts in other countries to assure that regulated products traded among FTAA countries move with a guarantee that they meet mutually-recognized standards. The result will be reduced costs and delays as goods cross borders, a larger percentage of low or unknown-risk products in trade (and arriving at U.S. borders), and an opportunity for the regulatory agencies of the U.S. and other countries to perform their critical missions in a more effective manner that is less resource-intensive and time-sensitive than border enforcement.

Summary

For businesses in the or elsewhere, a decision to import materials or goods from another country or to seek markets in other countries is heavily influenced by supply chain costs. Direct duties on goods are only one of the costs that must be taken into consideration. Costs of recordkeeping, compliance with conditions for obtaining preferential treatment, border delays, certification requirements, a multiplicity of product standards and labeling requirements, the risk that goods certified as duty free by exporters will be determined by governments to be dutiable with no recourse for importers, all of these factors go into making the decision. A FTAA that accomplishes only elimination of duties addresses only one of the costs that a business must take into account. We urge USTR and the representatives of the other governments of the hemisphere to build a New World free trade area that goes well beyond mere elimination of duties, and that addresses all of the obstacles to free trade. AAEI looks forward to the opportunity to work with USTR as it moves forward on these issues and as it crafts and negotiates FTAA rules of origin that avoid the pitfalls and complexities that have come to be associated with NAFTA.

Gracias.

Regulatory Changes in Mexico Affecting U.S.-Affiliated Assembly Operations

By Ralph Watkins

NAFTA Article 303 and Restrictions on Duty Drawback

On October 30 and December 31, 2000, the Government of Mexico issued changes to the decrees governing the Maquiladora and PITEX programs (published in the Diario Oficial),[27] bringing Mexico into compliance with Article 303 of NAFTA, which restricted duty drawback[28] for goods traded between Mexico and its NAFTA partners effective January 1, 2001. As a result, companies importing machinery and components originating from outside North America for use in assembly plants in Mexico began paying duties on such imports.

In compliance with Article 303, Mexico will reduce the duty owed to it on the importation of non-North American inputs by the lower amount collected by either Mexico or the other

NAFTA party (table 1). That is, if the assembled product is exported to the United States and U.S. duties are higher than those calculated when the inputs entered Mexico, no duty will be owed to Mexico on the non-North American inputs. However, if the duties on the inputs in Mexico are higher, Mexico may or may not exempt any duties of its own, depending on the amount of duties collected by U.S. Customs on the assembled product. Duties owed to Mexico must be paid to Mexican Customs (Aduanas) within 60 days of export to the United States.[29] Mexican duties on non-North American inputs imported by companies not registered under either the Maquiladora or PITEX Programs are collected by Aduanas at the time of entry into Mexico.[30]

Table 1

Illustrations of duty payment on non-North American inputs under NAFTA duty drawback restrictions

(U.S. dollars)

Case	Import duties payable to Mexico on "X" inputs from Taiwan	Import duties payable to U.S. or Canada on "Y" end product	Duties exempted by Mexico: the lesser of the two values	Final duties payable to Mexico (within 60 days)	Total amount of duties paid by exporter
A	11	2	2	9	11
B	5	6	5	0	6
C	5	0	0	5	5

[27] For additional information on changes to the Maquiladora Decree, see Charles Bliel, "Main Reforms to Sector Promotion, PITEX and Maquiladora Programs," in North American Free Trade & Investment Report, vol. 10, no. 21, Nov. 30, 2000, p. 7ff and Baker & McKenzie, "Latest Amendments to the Maquiladora and PITEX Decrees," Client Bulletin 09/00. For example, terms for registering under the Maquiladora Program were liberalized to include companies whose annual export sales are greater than $500,000 or whose exports equal 10 percent or more of its annual production. By 2000, the share of a company's annual production that had to be exported to maintain eligibility to operate under the Maquiladora Program was reduced to 15 percent, from 100 percent prior to NAFTA. However, there were no value threshold requirements. In order to import machinery and equipment temporarily under the Maquiladora and PITEX Programs in 2001, a company must invoice exports equal to at least 10 percent of its total invoicing (maquiladoras) or make annual sales abroad equal to a minimum value of 30 percent of its annual sales (PITEX).

[28] Under drawback, duties on imported components used in the manufacture of products that are eventually exported could either be waived or refunded. The NAFTA parties restricted duty drawback to reduce the likelihood that one NAFTA party would be used by non-North American companies as an export platform for duty-free assess to other NAFTA parties.

[29] Julia S. Padierna-Peralta, Changes in Mexico's Maquiladora Industry 2001: Sectoral Development Programs, Neville, Peterson & Williams, panel presentation at the U.S.-Mexico Chamber of Commerce, Nov. 14, 2000.

[30] Julia S. Padierna-Peralta and George W. Thompson, "Maquiladoras and Mexico's Sectoral Programs in 2001," Neville, Peterson & Williams memorandum dated Dec. 2000.

Source: Prepared by Julia Padierna-Peralta, Neville Peterson LLP (formerly Neville, Peterson & Williams) and reprinted with permission.

The new regulations governing the Maquiladora and PITEX Programs allow companies registered under these programs to continue to import inputs for their assembly plants originating in the United States or Canada free of duty, even if the staged NAFTA rates for these inputs are not yet "free." Inputs originating outside North America that are imported into Mexico's Maquiladora and PITEX sectors are not subject to duty on entry into Mexico because these imported components are eligible for duty-free treatment if the assembled product is exported to a country other than the United States or Canada. If the assembled good is exported to the United States, the higher of the U.S. or Mexican duty would apply.

Mexico's Sectoral Promotion Programs

In anticipation of the restrictions on duty drawback, a number of companies with Maquiladora and PITEX operations have convinced suppliers in Asia and Europe to establish parts production facilities in North America to replace imports from non-NAFTA sources. Some have found or developed alternative suppliers in North America. Nonetheless, non-North American sources supplied 18 percent ($17.3 billion) of the imported inputs used by Maquiladora and PITEX companies in 2000, led by Japan (4 percent), Germany (3 percent), and Korea (3 percent) (table C–4).

Maquiladora and PITEX operations that continued to rely on non-North American inputs expressed concern to the Ministry of the Economy[31] that Article 303 of NAFTA would increase their costs to the point of making their goods noncompetitive in the North American market relative to finished goods imported directly into the United States and Canada from sources other than Mexico. Many also claimed that they could not find North American producers of certain parts required in their assembly operations.

To ease the burden emanating from the effects of Article 303 of NAFTA, the Ministry of the Economy established the Sectoral Promotion Programs (PPS), effective November 20, 2000, for exports from companies registered under the Maquiladora and PITEX Programs, and effective January 1, 2001, for products exported from all other companies.[32] The PPS unilaterally reduced Mexico's General Import Tariff (GIT) rate of duty for thousands of tariff rate lines in 22 industrial sectors. Import duty rates under the PPS on most qualifying inputs and capital equipment are either free or 5 percent, although a number of products have duty rates of 3, 7, or 25 percent.[33] Most of the product categories for which rates were reduced under the PPS had previously been dutiable at rates that varied between 13 percent and 23 percent. Each "Program" sector lists certain qualifying end-products and inputs by tariff number. If the non-North American inputs are used to manufacture any of the end-products listed, the non-North American inputs may be imported at the import duty rate specified in the particular Program.[34]

The Mexican Ministry of the Economy based its list of articles eligible for reduced duties under the PPS on requests from the assembly industry and reaction from the domestic industry in Mexico.[35] Critics of the PPS have expressed concern that it mitigates the impact of the restrictions on NAFTA duty drawback and may reduce the incentive for maquiladoras still importing parts from suppliers in Asia to find alternative sources in North America.

Despite the reduction or elimination of Mexican tariffs under the PPS, maquiladoras using parts that are not of North American origin will be subject to the U.S. duty on the value of those imported parts contained in the assembled article when it enters the United States. If the U.S. rate of duty is lower than the PPS

[31] The Ministry of Trade and Industrial Development (SECOFI) was renamed the Ministry of the Economy in December 2000.

[32] For an overview of the Sectoral Promotion Programs, see David Bond and Esther Moreno, "SECOFI Publishes Automotive Sectoral Program and Modifies Electric and Electronic Program," North American Free Trade & Investment Report, Nov. 15, 2000, p. 8ff.

[33] Mexico has 10 free-trade agreements. Most components used by the maquiladora industry that are imported from Israel and 30 countries in Europe and the Western Hemisphere subject to these agreements currently are eligible to enter Mexico free of duty or at reduced tariffs. The temporary reduction or elimination of tariffs under the PPS primarily affects imports from Asia. See "New Maquiladora Rules Leave Asia Out in the Cold, but Asian Firms Pin Hopes on Fox Administration," in Mexico Watch, Dec. 1, 2000, p. 9. Also, Padierna-Peralta, Neville Peterson LLP, telephone interview with USITC staff, July 11, 2001.

[34] Padierna-Peralta and Thompson, "Maquiladoras."

[35] For a brief overview of the operation of the PPS, see "Sectoral Promotion Programs: Frequently Asked Questions," in Trade Commission of Mexico Newsletter, Mar. 2001, available at http://www.mexico-trade.com.

rate, the maquiladora must pay duties to Mexico's Aduanas calculated at the PPS rate minus duties paid to U.S. Customs.[36] In addition, because a country's temporary duty relief, including the new PPS tariff reductions, are not bound at the World Trade Organization (WTO), the Government of Mexico can again raise duties (to the higher bound or intermediate rate) without violating WTO rules.[37] According to an industry observer, a key feature of Mexico's Sectoral Promotion Programs is that they are policy instruments often subject to change; frequent revisions of existing programs should be expected.[38] Domestic producers in Mexico can ask the Government to remove specific articles from the PPS, and industry observers suggest that the Ministry of the Economy is likely to remove articles from the PPS list if a request is made by a company that initiates production anywhere in North America.[39] At the same time, manufacturing companies can seek the inclusion of their critical inputs in the Programs.[40]

Many maquiladora representatives from Japan, Korea, Taiwan, the United States, and Mexico reportedly have been unable to locate suitable component suppliers in North America. These officials claim that the PPS as currently constituted is inadequate to meet their competitive needs, and have requested Mexican officials to consider additional financial incentives. Without incentives to compensate for increased costs due to NAFTA Article 303, some companies currently using maquiladora operations reportedly will start searching for opportunities in other countries. For example, industry observers point to an assertion by the president of the Korean Maquiladoras of Baja California that Article 303 forces some maquiladoras to purchase raw materials from suppliers that do not meet required quality standards. However, Mexico's Economy Minister reportedly has encouraged the maquiladora industry and members of the Industry Chambers Confederation to design a program to develop suppliers for the industry.[41]

Maquiladora Taxation

U.S. companies operating under Mexico's Maquiladora Program have expressed concerns about changes to Mexico's tax laws that went into effect on January 1, 2000, that reclassified many maquiladora operations as permanent establishments and could have resulted in double taxation.[42] Mexican and U.S. tax authorities reached agreement on an "Addendum to the United States-Mexico Competent Authority Agreement on the Maquiladora Industry" that entered into force on August 3, 2000. The addendum provides for an indefinite extension of the previously agreed exemptions from Mexican asset tax and permanent establishment exposure for U.S. companies that use the processing services of a maquiladora. The initial agreement, signed in October 1999, had established new standards for Mexico to impose in determining the income tax liability of a Mexican maquiladora company as a condition for maintaining the Mexican tax exemptions for the U.S. company.[43] That agreement only provided for application of the specific standards through taxable year 2002, and created uncertainty for maquiladora operations which the Addendum announced in August 2000 was intended to address. Some experts on Mexican tax law note that significant uncertainty still remains regarding the manner in which Mexico will implement the terms of the mutual agreement for 2000 and later years, and

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[36] For many goods in the electronic and electrical products sector, which accounts for the majority of imports from Asia by companies operating under the Maquiladora and PITEX programs, the U.S. rates of duty were reduced to free under the multilateral Information Technology Agreement (ITA). Mexico is not a signatory to that agreement.

[37] David Bond and Esther Moreno, "New Versions of the Electric, Electronic and Automotive Sectoral Promotion Programs Published," North American Free Trade & Investment Report, Jan. 31, 2001, p. 4.

[38] Padierna-Peralta, Neville Peterson LLP, telephone interview with USITC staff, July 11, 2001.

[39] Bond and Moreno, "SECOFI," p. 10.

[40] Padierna-Peralta, Neville Peterson LLP, telephone interview with USITC staff, July 11, 2001.

[41] David Bond and Paola Santos, "Ministry of Finance Extends Rectification of Import Duties for PPS; Ministry of Economy Refuses to Modify NAFTA Article 303," North American Free Trade and Investment Report, June 15, 2001.

[42] For background on U.S. industry concerns about maquiladora tax issues, see Larry Brookhart and Ralph Watkins, "Production-Sharing Update: Developments in 1999," Industry Trade and Technology Review, USITC Publication 3335, July 2000, posted on USITC Internet server at www.usitc.gov ("publications").

[43] For information on the addendum and remaining concerns, see John A. McLees and Jaime Gonzalez-Bendiksen, "Maquiladora Tax Issues Need Careful Attention as Mexico Extends the Current Maquiladora Tax Regime Beyond 2002," Tax Notes International, Sept. 11, 2000, p. 1189.

the industry awaits the outcome of talks between the United States and Mexico on this subject.[44]

Phase-In of Domestic Market Access for the Maquiladora Industry

Mexico committed in NAFTA (Annex I for Mexico, p. I–M–34) to "phase out" the Maquiladora Program by each year increasing the share of its production that a maquiladora operation could sell to the domestic market in Mexico, until a maquiladora could sell 100 percent of its production domestically on January 1, 2001. Instead of being a "phase out" of the Maquiladora Program, the NAFTA provision appears to have resulted in further evolution of the maquiladora industry's access to the Mexican market. This provision facilitated intramaquiladora sales, which were not allowed prior to NAFTA. Further, the ability to sell to both the U.S. and Mexican markets attracted additional investment in the industry, particularly among parts producers and companies in the durable goods sector. Instead of the Maquiladora Program being phased out, employment in the maquiladora industry grew from 468,000 at the end of 1993 to 1.3 million in December 2000.[45]

To comply with NAFTA, the Maquiladora Decree published in 1998 ordered the termination of all restrictions regarding maquiladora sales to the domestic market as of January 1, 2001.[46]

In order to maintain certification as a maquiladora operation and, therefore, be eligible for exemption from the value-added tax,[47] a company's exports in the current year must be equivalent to at least 10 percent of the value of its previous year's production.[48] If a maquiladora is not involved in the manufacture of goods for export markets, then a U.S. company that owns machinery and equipment used in the maquiladora operation cannot claim eligibility for exemption from Mexican asset tax and from Mexican income tax applicable to permanent establishments; moreover, value-added tax applies on sales of finished products into the domestic market.[49]

April 12, 2002

John S. Rode, Esq.
Rode & Qualey
55 West 39th St, 6th floor
New York, NY 10018

Re: 19 U.S.C. 1313(j)(2); 19 U.S.C. 1313(j)(4); 19 U.S.C. 3333(a); 19 CFR 181.41; 19 CFR 181.42(d); NAFTA

Dear Mr. Rode:

This is in response to the ruling request submitted by your letter dated September 29, 1998, on behalf of Konica Business Technologies Inc. ("Konica"), in connection with Konica's claims for unused merchandise substitution drawback filed upon the exportation of certain office machines and related products to Canada, after January 1, 1994.

FACTS:

The following are the facts as described in your submission. Konica imports a variety of office machines, including electrostatic copying machines, accessories, and supplies therefor (referred to collectively as "office products"), which Konica purchases from its parent company in Japan. The office products are manufactured in Japan, China, Thailand and the Philippines. After importation, the office products are placed in inventory at Konica, where they are held until sold and shipped to related and unrelated purchasers in the U.S., Canada, Mexico, and other countries.

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[44] John A. McLees and Jaime Gonzalez-Bendiksen, "Mexico Lags in Implementing Mutual Agreement on Maquiladora Taxation," Tax Notes International, May 7, 2001, p. 2371.

[45] "Maquiladora Scoreboard" in Twin Plant News, June 1994 and July 2001.

[46] See article 16 of "Mexico's Decree for the Development and Operation of the Maquiladora Industry for Exports," Diario Oficial, June 1, 1998.

[47] According to Padierna-Peralta (Neville Peterson LLP) and John McLees (Baker & McKenzie) in telephone interviews with USITC staff, July 11 and July 23, 2001, imports of components and materials entered under Mexico's Temporary Import Programs (Maquiladora and PITEX) are not subject to the value-added tax, but there are requirements for imposition of value-added tax on temporarily imported machinery and equipment if it is later determined to be a definitive import.

[48] Based upon an amendment to the Maquiladora Decree issued December 31, 2000. Bliel, "Main Reforms," p. 7.

[49] John McLees, Baker & McKenzie, telephone interview with USITC staff, July 23, 2001.

When imported, all Konica office products are marked with a model number, for example, "Model 4040," which denotes the physical characteristics, specifications, and capabilities of that particular article. Konica in Japan assigns a "PCUA number" to each article, which is applied to the carton in which the article is packed for shipment to the U.S. When the article is received into inventory at Konica in the U.S., Konica enters the model number and PCUA number on their inventory records. All office products which bear the same PCUA number have identical model numbers.

The PCUA numbers are used to distinguish between Konica products which bear the same model number, but which differ in certain other respects. For example, a Model 4040 copying machine imported by Konica from the manufacturer in Japan will bear one PCUA number on its carton when it is received in inventory at Konica. If that copying machine is placed in service upon rental, lease or sale to a customer, and is thereafter returned to inventory, it will be given a new PCUA number to distinguish that particular Model 4040 copying machine from others which have not been used. Similarly, a Model 4040 copying machine remanufactured by Konica after it has been in service, to restore that machine to its original factory specifications, will receive a new PCUA number when it is returned to inventory.

In preparation of drawback claims, the following merchandise is excluded from consideration for drawback:

1) all exported office products which bear a PCUA number which indicates they were not last imported into the U.S. by Konica, from the manufacturer in Japan, China, Thailand, or the Philippines;

2) all exported office products with PCUA numbers which indicate a previous withdrawal from inventory at Konica, and rental, lease or sale to customers in the U.S., followed by return to Konica after having been removed from the unit cartons in which those articles were originally imported from Japan; and

3) all office products having PCUA numbers which show that prior to exportation to Canada, they had been returned to Konica's inventory after remanufacture to restore them to original factory specifications.

After the foregoing review, for the exported office products not excluded under the review, the import and inventory records at Konica are searched to determine whether, on the date of exportation to Canada of the exported articles identified through their PCUA numbers as being potentially eligible for drawback, Konica's inventory included an equal or greater quantity of commercially interchangeable machines, i.e., products bearing the same model and PCUA numbers.

If the import and inventory records do reflect the presence at Konica of the requisite quantity of commercially interchangeable articles as of the date of exportation, and show that such articles were imported less than three years before the date of exportation in question, Konica's employees select an import entry or entries upon which such articles were imported within the previous three year period. The corresponding quantity of commercially interchangeable articles imported on the entry or entries is then designated on the claim for drawback; the import and inventory records are then annotated to reflect the quantity designated on the drawback claim, and to indicate the remaining quantity, if any, which may be designated in the future.

Konica was advised by Customs in Boston that drawback cannot be paid to Konica under 19 U.S.C. 1313(j)(2) upon exportation of office products to Canada, subsequent to January 1, 1994, the effective date of the implementation of the North American Free Trade Agreement ("NAFTA"). It is your understanding that the opinion of Customs in Boston is based on two conclusions: 1) because Konica's claims are based upon exports to Canada, payment is precluded by section 203 of the NAFTA Implementation Act, and 2) the claims in question cannot be paid because Konica does not employ any of the inventory methods described in Schedule X of the Appendix to Part 181 of the Customs Regulations.

Comments on the foregoing were requested from Customs in Boston, and none were received, other than a reference to HQ 228446, dated July 3, 2000.

ISSUE:

Whether under the facts described, the law provides for drawback under 19 U.S.C. 1313(j)(2), on exports to Canada.

LAW AND ANALYSIS:

Under 19 U.S.C. 1313(j)(1), drawback is authorized if imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation is, within 3 years of the date of importation, exported or destroyed under Customs supervision and was not used in the United States before such exportation

or destruction. Substitution of unused commercially interchangeable merchandise, subject to certain conditions, is authorized under 19 U.S.C. 1313(j)(2), but 19 U.S.C. 1313(j)(4) limits that authorization.

Under 19 U.S.C. 1313(j)(4):

Effective upon the entry into force of the [NAFTA], the exportation to a NAFTA country . . . of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of [19 U.S.C. 3333(a)], shall not constitute an exportation for purposes of [section 1313(j)(2)].

In pertinent part, 19 U.S.C. 3333(a) provides:

For purposes of this Act . . ., the term "good subject to NAFTA drawback" means any imported good other than the following:

(2) A good exported to a NAFTA country in the same condition as when imported into the United States.

Under 19 U.S.C. 3333(a), an imported good subsequently exported to a NAFTA country in the same condition as when imported, is not a "good subject to NAFTA drawback". Similarly, an imported good exported to a NAFTA country in the same condition as when imported, is merchandise described in paragraphs (1) through (8) of section 3333(a), therefore it is not merchandise other than the described merchandise, for purposes of 19 U.S.C. 1313(j)(4). Therefore, an exportation of a good to a NAFTA country in the same condition as when imported is not precluded from constituting an exportation for purposes of section 1313(j)(2), under section 1313(j)(4). The limitation of section 1313(j)(4) is applicable only to goods subject to NAFTA drawback.

In this case, the good exported to Canada, is not the imported good upon which the drawback claim is based, but is the substituted good. The designated imported merchandise, which is not exported is the basis for the drawback claim. As it is not exported, it is not merchandise described in paragraph (2) of section 3333(a), which describes an exported good, and cannot be the basis for a claim under section 1313(j)(2).

This reading of the statutory limitation is supported by the legislative history to the NAFTA, with respect to 19 U.S.C. 1313(j)(2). The House Report states as follows:

Subsection (c) eliminates, effective upon entry into force of the Agreement, "same condition substitution drawback" by amending section 1313(j)(2) of the Tariff Act of 1930 (19 U.S.C. 1313(j)(2), thereby eliminating the right to a refund on the duties paid on a dutiable good upon shipment to Canada or Mexico of a substitute good, except for goods described in paragraphs one through eight of [19 U.S.C. 3333(a)].

See House Report (Ways & Means Committee) No. 103–161(I), pp. 39–40, 103d Cong., 1st Sess. (1993 (reprinted at 1993 U.S.C.C.A.N. 2552, 2589–2590). (Emphasis added). According to the legislative history, drawback under section 1313(j)(2), is not eliminated for imported goods described in paragraphs (1) through (8) of section 3333(a), which are also goods "not subject to NAFTA drawback". As the imported good was not exported, it is subject to NAFTA drawback.

In your submission you refer to the potentially confusing double negative language in 19 U.S.C. 1313(j)(4)) and 3333(a)(2), and conclude that the mandate of the two provisions is as follows:

'The exportation to a NAFTA country . . . of merchandise that is fungible with and substituted for imported merchandise . . . shall . . . constitute an exportation for purposes of paragraph (2) [of section 1313(j)(2)]' if the exportation consists of 'merchandise described in paragraphs (1) through (8) of section 3333(a) of this title.' Similarly it is evident that section 3333(a) effectively provides that an 'imported good—[which is] exported to a NAFTA country in the same condition as when imported into the United States . . . ' is not a 'good subject to NAFTA drawback.'

We do not agree that the limitation in (j)(4) applies to the substituted merchandise which is not the basis of the drawback claim, but find that the limitation applies to the imported good which is the basis of the drawback claim.

Given the admittedly confusing language of the statute, we turn to the NAFTA, to determine the intent of the statute. Customs construction is consistent with paragraph 2 of Article 303 of the NAFTA, which specifically provides:

No Party may, on condition of export, refund, waive or reduce:

(d) customs duties paid or owed on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party.

Clearly, the NAFTA prohibits the refund of duties paid on imported merchandise on the basis of an exportation to Canada or Mexico of substituted identical or similar goods. Paragraph 6 of Article 303, describes the goods Article 303 does not apply

to, and therein describes certain goods described in 3333(a), paragraphs (1) through (8), including:

(b) a good exported to the territory of another Party in the same condition as when imported into the territory of the Party from which the good was exported (processes such as testing, cleaning, repacking or inspecting the good, or preserving it in its same condition, shall not be considered to change a good's condition). Except as provided in Annex 703.2, Section A, paragraph 12, where such a good has been commingled with fungible goods and exported in the same condition, its origin for purposes of this subparagraph may be determined on the basis of the inventory methods provided for in the Uniform regulations established under Article 511 (Uniform regulations);

The imported merchandise which is the basis for drawback in this case, the office products, are not exported goods under subparagraph (b) above, therefore, Article 303 does apply to them, and the drawback for substituted merchandise is precluded under the NAFTA.

The Customs Regulations implementing the NAFTA Implementation Act are found in 19 C.F.R. Part 181. Subpart E of Part 181 contains the regulations providing restrictions on drawback and duty-deferral programs. According to section 181.41, which is the first section in Subpart E:

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a "good subject to NAFTA drawback" within the meaning of 19 U.S.C. 3333. Except in the case of 181.42(d, the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001.

(Emphasis added). As the imported office machines, on which the drawback claim is based, are not goods exported to a NAFTA country in the same condition as when imported, they are a "good subject to NAFTA drawback," and Subpart E is applicable to such good, and therefore the limitations therein are also applicable to such good.

The pertinent limitation, implementing 19 U.S.C. (j)(4), is in Subpart E, 19 CFR 181.42, which provides for duties not subject to drawback:

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(d) Customs duties paid or owed under unused merchandise substitution drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

The emphasized "except" in section 181.41, pertains to the dates as of which the limitations apply. Generally, subpart E applies to imported goods exported to Canada on or after January 1, 1996, and to imported goods exported to Mexico on or after January 1, 2001. However, section 181.42(d), applies to goods exported to Canada or Mexico on or after January 1, 1994.

This position has been previously taken in Customs decisions. In HQ 227272, dated May 1, 1997, 19 CFR 181.42(d) was cited as authority for the statement that "[i]t is clear from the above provisions that, with the exceptions specifically provided for in 19 U.S.C. 3333(a)(1) through (8) (e.g., [goods not subject to NAFTA drawback]), substitution drawback under 19 U.S.C. 1313(j)(2) no longer exists for shipments to Canada or Mexico of merchandise imported into the United States."

Based on the foregoing analysis, we conclude that drawback under 19 U.S.C. 1313(j)(2) may not be claimed for drawback on the basis of a good subject to NAFTA drawback, in this case an imported good for which a substituted good is exported to a NAFTA country, in the same condition as when imported. This conclusion is consistent with prior Headquarters decisions. In prior Headquarters decisions, Customs has addressed the limitation in 19 U.S.C. (j)(4). See HQ 227272, dated May 1, 1997; HQ 227876, dated August 21, 2000; and HQ 229027, dated August 13, 2001.

In HQ 226541, dated July 24, 1998, this office stated in an information letter, that there can be no substitution unused merchandise drawback for commercially interchangeable merchandise of non-NAFTA origin exported to Mexico. One of the grounds for the conclusion was that paragraph 2(d) of Article 303 of the NAFTA expressly provides that no Party may, on condition of export, refund Customs duties paid on a good imported into its territory and substituted by an identical or similar good that is subsequently exported to the territory of another Party. As discussed above, Article 303 applies to all merchandise unless it is exempted in paragraph 6 of Article 303. Paragraph 6 does not exempt the imported merchandise, which is not exported to a NAFTA country.

As the substitution drawback of unused merchandise is not permissible with the goods described in this case, we do not need to address the issue of allowable inventory methods with respect to the specific merchandise at issue. The issue of the use of inventory methods described in Schedule X of the Appendix to Part 181 of the Customs Regulations, was addressed in HQ 227272, dated May 1, 1997, and HQ 227876, dated August 21, 2000 (copies enclosed).

HOLDING:

Under the facts described, the law does not provide for drawback under 19 U.S.C. 1313(j)(2), on exports of substituted goods to Canada, unless the imported goods on which the drawback claim is based are described in paragraphs (1) through (8) of 19 U.S.C. 3333(a).

Sincerely,

John Durant
Director, Commercial
Rulings Division

CHILE-EUROPEAN UNION FREE TRADE AGREEMENT
FINAL TEXT, 11.06.02

ANNEX III

TITLE IV

DRAWBACK OR EXEMPTION

Article 14

Prohibition of drawback of, or exemption from, customs duties

1. Non-originating materials used in the manufacture of products originating in the Community or in Chile for which a proof of origin is issued or made out in accordance with the provisions of Title V shall not be subject in the Community or Chile to drawback of, or exemption from, customs duties of whatever kind.
2. The prohibition in paragraph 1 shall apply to any arrangement for refund, remission or non-payment, partial or complete, and of customs duties, as defined in Article 59 of this Agreement, applicable in the Community or Chile to materials used in the manufacture, where such refund, remission or non-payment applies, expressly or in effect, when products obtained from the said materials are exported and not when they are retained for home use there.
3. The exporter of products covered by a proof of origin shall be prepared to submit at any time, upon request from the customs authorities, all appropriate documents proving that no drawback has been obtained in respect of the non-originating materials used in the manufacture of the products concerned and that all customs duties applicable to such materials have actually been paid.
4. The provisions of paragraphs 1 to 3 shall also apply in respect of packaging within the meaning of Article 7(2), accessories, spare parts and tools within the meaning of Article 8 and products in a set within the meaning of Article 9 when such items are non-originating.
5. The provisions of paragraphs 1 to 4 shall apply only in respect of materials, which are of a kind to which this Agreement applies. Furthermore, they shall not preclude the application of an export refund system for agricultural products, applicable upon export in accordance with the provisions of the Agreement.
6. The provisions of this Article shall be applied as from 1 January 2007.

Statement of the U.S. Tuna Foundation

The U.S. Tuna Foundation (USTF), in response to the February 26, 2003, House Ways and Means Committee hearing on President Bush's trade agenda, requests the following statement be included in the record:

The U.S. Tuna Foundation is a trade association representing the interests of the U.S. canned tuna industry, including all U.S. canned tuna processors—Bumble Bee Seafoods (a wholly-owned subsidiary of ConAgra), StarKist Foods (H.J. Heinz), and Chicken of the Sea (Thai Union)—as well as all U.S. purse seine vessels that harvest tuna for the canned tuna market.

The U.S. Congress and the U.S. International Trade Commission have deemed canned tuna to be an "import sensitive" product. Within the ITC, Section 201 (1984) and Section 332 (1986, 1990 and 1992) investigations reiterated that canned tuna is import sensitive. The facts that made canned tuna an import sensitive product then still apply today. For this and several other reasons, **canned tuna should not be included in the products deemed eligible for duty-free treatment in any upcoming Free Trade Agreement**.

Background on industry:

- Canned tuna is consumed by 96 percent of U.S households (Source: A.C. Nielsen Homescan data)
- Canned tuna represents the number three item in U.S. grocery stores (behind only sugar and coffee) based on dollar sales per linear foot of shelf space (Source: A.C. Nielsen and industry analysis)
- The U.S. represents the largest single country market for canned tuna in the world. It is estimated that the U.S. canned tuna market represents 28 percent of global consumption. (Source: U.S. Department of Commerce—National Marine Fisheries Service, Eurostat, Foodnews, industry analysis)
- Three U.S. brands, Bumble Bee, StarKist and Chicken of the Sea represent more than 85 percent of U.S. tuna consumption (Source: A.C. Nielsen)
- Canned tuna represents a tremendous value versus other sources of canned protein. In May of 2000, lightmeat tuna retail prices were $0.10/ounce while albacore tuna retail prices were $0.23/ounce. Competitive proteins were significantly more expensive (canned chicken—$0.40/ounce, canned turkey—$0.40/ounce, SPAM—$0.33/ounce, corned beef—$0.20/ounce). (Source: Industry market basket survey, May 2001)
- Domestically canned tuna is currently processed in California, American Samoa, and Puerto Rico.

U.S. Pack of Canned Tuna:

Year	11,000 Pounds*
1992	608,981
1993	618,743
1994	609,514
1995	666,581
1996	675,816
1997	627,032
1998	680,860
1999	693,816
2000	671,330
2001	507,417
*Canned weight	

Source: Fisheries of the United States, 2001, Department of Commerce, National Marine Fisheries Service

- The quantity of canned tuna imports between 1990 and 2000 increased by 10.0 percent while imports of frozen tuna loins increased by 67.3 percent. (Source: U.S. Department of Commerce—National Marine Fisheries Service)
- During the same ten-year period, U.S. tuna processors moved towards heavier utilization of imported tuna loins (which carry a negligible import duty) taking advantage of low cost labor in Southeast Asia and Andean Pact countries. This led to reduced employment in U.S. factories.
- During the ten-year period between 1990 and 2000, one of the two remaining tuna processing facilities in California closed and four of the five tuna processing facilities in Puerto Rico closed. The two U.S. factories in American Samoa continue to operate, as they are not obligated to pay the U.S. minimum wage rate.
- With the advent of canned tuna imports from low wage rate countries, retail pricing of canned tuna, when adjusted for inflation, has decreased by 53 percent between 1980 and 2000 (Source: Federal Trade Commission and industry data and analysis)

2003 Canned/Pouched Tuna Tariffs:	General	Special
1604.14.10 (canned/pouched tuna in oil)	35%	FREE (A+,CA,D,IL,J+) 11.6% (MX,R) 24.5% (JO).
1604.14.22 (canned/pouched tuna not in oil, below quota*)	6%	FREE (A+,CA,D,IL,J+) 2% (MX,R) 1.5% (JO).
1604.14.30 (canned/pouched tuna not in oil, above quota*)	12.5%	FREE (A+,CA,D,IL,J+) 4.1% (MX,R) 5% (JO).

*The tariff rate quota for tuna in airtight containers not in oil (water pack) is based on 4.8 percent of apparent U.S. consumption of tuna in airtight containers during the preceding year.

A+ = GSP least-developed beneficiary countries
CA = NAFTA—Canada
D = Africa Growth and Opportunity Act
IL = Israel
J+ = Andean Trade Promotion and Drug Eradication Act. Only pouched tuna is granted duty-free status. The tuna from which the pouched tuna is prepared must be caught by U.S.-flagged or ATPDEA-flagged vessels.
JO = Jordan
MX = NAFTA—Mexico
R = Caribbean Basin Trade Partnership Act

Canned/Pouched Tuna Tariff Impact:

The current import tariff provides critical and necessary benefits to what is left of the U.S. tuna processing and fishing industry:

- Support for more than 10,000 U.S. tuna processing jobs in California, Puerto Rico and American Samoa, which jobs would be in jeopardy if the tariff were to be significantly reduced or eliminated
- Support for the American Samoa economy where 88 percent of private sector employment is provided by the U.S. canned tuna industry
- Support for the U.S. tuna fishing fleet of approximately 33 vessels that operate out of American Samoa and supply the U.S. tuna processors located there. These vessels enable the United States to have a strong voice in fishery conservation and regulation activities in the Pacific Ocean, the largest tuna fishery in the world.
- The U.S. canned tuna industry has maintained for years that there should be international parity regarding tariff rates. We understand the desire of the United States to work toward the elimination of tariffs in the future. However, it makes no sense to us to unilaterally reduce tariffs when this causes an even greater disparity between the major world markets for a product like canned tuna that has repeatedly been found by the ITC to be import sensitive.

International:

- An import tariff of 12.5 percent is well below import duties on canned tuna imposed by other major canned tuna markets. The European Union, the largest canned tuna market in the world, maintains a tariff of 24 percent on all canned tuna products and on all imports of tuna in any other form; Mexico, our NAFTA trading partner, imposes a tariff of 20 percent on canned tuna; and most other Latin American markets maintain tariffs on canned tuna at 20 percent or more. These tariffs obviously provide an unfair trade advantage against U.S. tuna processors.
- The U.S. trade deficit in fishery products has reached an all time high. The U.S. canned tuna market, once the most dominant canned tuna market in the world, has recently been surpassed by the European Union and continues to steadily decline in volume.
- As importantly, it is estimated that there is currently a 50 percent over-capacity in the international tuna processing sector. Encouraging new processing capacity without cutting the existing over-capacity situation makes absolutely no sense.
- The U.S. represents the largest single country market for canned tuna in the world. It is estimated that the U.S. canned tuna market represents 28 percent of global consumption. (Source: U.S. Department of Commerce—National Marine Fisheries Service, Eurostat, Foodnews, industry analysis)
- Due to the intense competitive environment caused by low cost foreign imports, retail prices of canned tuna in the United States are the lowest among all developed nations of the world. Comparison includes Australia, Canada, France, Germany, Italy, Spain and the United Kingdom (Source: Industry analysis)
- U.S. canned tuna processors face significant wage disparities when compared with major tuna exporters. Average hourly wage rates in U.S. processing facilities in California, Puerto Rico and American Samoa are approximately $11.00, $6.50 and $3.75, respectively. The average hourly labor rate in the key exporting country of Thailand is approximately $0.60.
- Most canned tuna processors in foreign nations are not required to abide by the same health, welfare, safety, regulatory, conservation or environmental standards imposed on U.S. processors. In addition, they often receive government and other financial subsidies that provide an unfair economic advantage.
- U.S. tuna vessel owners are similarly disadvantaged as they are required to abide by strict regulatory, environmental and conservation standards that are rigorously enforced by the U.S. Department of Commerce—National Marine Fisheries Service and the U.S. Coast Guard. Many of these standards are not observed by foreign flag vessels and are not enforced by their respective governments.

Conclusion:

For all of the above reasons, **canned and pouched tuna should not be included in the products deemed eligible for duty-free treatment in any upcoming Free Trade Agreement.**

Verizon
Washington, DC 20005
March 19, 2003

The Honorable William Thomas
Chairman
House Ways and Means Committee
Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Thomas:

Verizon appreciates having the opportunity to submit comments to the House Ways and Means Committee as a follow-up to the Committee's February 26 hearing on the Bush Administration's trade agenda.

As one of the world's leading providers of telecommunications services, Verizon applauds the Bush Administration's efforts to pursue new trade agreements at the multilateral, regional and bilateral levels. The liberalization of global markets and the elimination of trade barriers will be critical to ensure the long-term growth of the telecommunications industry, both in the United States and overseas. We be-

lieve that robust trade will stimulate necessary investment in the telecommunications sector, and in turn fuel the expansion of all industries and sectors that rely immeasurably on the telecommunications infrastructure.

During the course of the past few years, Verizon has worked closely with the Office of the U.S. Trade Representative to discuss goals and objectives for the negotiation of telecommunications commitments in trade agreements. We have advised USTR that the most appropriate approach to negotiating telecommunications commitments would encompass the following:

- Full market access to permit U.S. telecommunications companies to develop telecommunications facilities and services in the markets of parties that are subject to trade agreements;
- Elimination or significant reduction of foreign ownership restrictions;
- Commitment to pro-competitive regulatory principles, such as those contained in the Reference Paper of the WTO Agreement on Basic Telecommunications Services;
- Application of trade principles such as non-discrimination, national treatment and transparency to telecommunications commitment.
- Provide mechanisms for "institution building," including the strengthening of the independent telecommunications regulator through strong enforcement authorization and dispute resolution procedures.

Additionally, we remain firmly committed to the view that trade commitments made for the telecommunications sector should not encompass regulatory obligations that are more specific or prescriptive than the principles articulated in the Reference Paper. The inclusion of detailed telecommunications regulatory provisions in trade agreements would be damaging for several reasons. First and foremost, the parties to any such trade agreement could be bound in perpetuity to regulatory obligations that are likely to become outmoded as technologies advance and market forces change the nature and scope of the telecommunications sector. As we have witnessed in the U.S., there are multiple regulatory proceedings under consideration at the Federal Communications Commission that are the subject of tremendous controversy. At a time when the U.S. is struggling to determine appropriate levels of regulation versus forbearance in its domestic markets, it would be wrong to require our trading partners to adopt a mirror image of the U.S. telecommunications regulatory regime as a trade obligation.

Furthermore, overly prescriptive regulations may inadvertently tip the competitive balance in favor of one form of telecommunications competition, such as resale, over facilities-based development. Given the fact that so many of the U.S.' trading partners urgently require the deployment of telecommunications facilities to provide universal telecommunications services and support advanced electronic commerce applications, every effort must be taken to ensure that trade agreements encourage investment in, and development of, telecommunications infrastructures.

There is no question that in order to achieve full liberalization in the telecommunication sector, many countries will find it necessary to undertake substantial regulatory reforms. Be that as it may, Verizon does not believe that the achievement of open market access can be realized through overly stringent regulations. The advantage of using a Reference Paper approach to regulatory reform is that it provides meaningful guideposts for the establishment of pro-competitive regulatory regimes, while at the same time, ensuring that each country retains sufficient flexibility to develop regulations in a manner that responds to specific economic and market conditions on the national level.

On a final note, Verizon encourages the USTR to negotiate with our trading partners to ensure the elimination of any barriers that may impede the development of electronic commerce. One important aspect of e-commerce negotiations will be efforts to establish a balanced model for protecting intellectual property rights (IPR) in an on-line environment. We have advised USTR that any trade agreements pertaining to on-line IPR protection must carefully balance the interests of all rightsholders, network operators, service providers and users, including limiting the liability of online service providers in accordance with the U.S. Digital Millennium Copyright Act (DMCA).

In conclusion, Verizon is confident in the capabilities of U.S. trade negotiators to secure vibrant trade agreements that will benefit U.S. corporations and citizens, as well as serve the interests of our foreign trading partners. We also believe that the U.S. Congress will continue to play an extremely important role in the trade arena, and we encourage the House Ways and Means Committee to work closely with the USTR as negotiations proceed in the WTO Doha Development Round, the Free

Trade Area of the Americas (FTAA), and the bilateral free trade agreements that have been initiated.

Sincerely.

Karen Corbett Sanders
Vice President, International Public Policy and Regulatory Matters

Statement of the Zero Tariff Coalition

Members of the Committee:

Thank you for the opportunity to provide these written comments as part of the official record of the February 26, 2003 hearing on U.S. trade policy.

The Zero Tariff Coalition represents 25 sectors of the American economy that believe that the most practical method of obtaining the greatest non-agricultural market access gains for their sectors in the World Trade Organization Doha round is through a Sectoral Tariff Elimination (STE) approach. A list of the Zero Tariff Coalition sectors is attached to this submission.

STE is a proven approach that solves negotiating problems other modalities cannot manage—particularly in resolving the problem of the huge disparity between the generally low U.S. industrial tariffs and the high tariffs in developing countries. The approach is basically the same as the Uruguay Round's successful "Zero-for-Zero" initiative and the WTO Information Technology Agreement (ITA), though modifications have been incorporated to broaden its applicability.

The Ways & Means Committee endorsed such an approach in its report on the Trade Act of 2002. We urge the Committee to join us in pressing U.S. negotiators to 1) ensure that zero-for-zeros, i.e. STEs, are incorporated as a modality for the non-agricultural market access group negotiations in any decisions reached on modalities, as called for by the current deadline of May 31, 2003; and 2) that U.S. priority sectors, including all the sectors of our coalition, be listed as sectors that will pursue STE agreements at the WTO ministerial meeting this September in Cancun, Mexico.

Under STE, countries comprising a satisfactory "critical mass" of trade in a particular sector would agree to eliminate tariffs in that sector at the earliest feasible time. Countries would only agree in those instances in which their specific sectors wanted to participate in particular sectoral arrangements. By requiring only a critical mass of countries in each sector, the STE modality provides flexibility to exempt least developed countries as well as others that want to be excluded, while ensuring that the sectoral agreement remains commercially meaningful. To assure flexibility, the definition of "critical mass" must be sector-specific rather than an overall grouping of countries that participates in all sectors.

Flexibility would be maximized by avoiding defining these sector-specific "critical masses" early in the negotiations. Moreover, product coverage for any given STE sector would be determined by the participating countries. Further flexibility can be gained by allowing longer transition periods for some countries and for certain sensitive products. Moreover, for some sectors, a critical mass of countries may be unable to agree on the goal of zero duties, but ultimately might be able to decide on a harmonized rate that is significantly lower than current applied rates.

The possibility of negotiating an initial STE package of sectors as an interim result prior to the conclusion of the DDA should be considered as an option, as is provided for in the Doha ministerial declaration. An interim STE result could be provisional and should be taken into consideration in determining the DDA's final balance of concessions.

To ensure wide interest, all WTO members should be encouraged to recommend sectors for STE treatment. Maximum attention should be given to STE candidates raised by developing countries. Additionally, the Doha Declaration calls for environmental goods and services barriers to be cut, and this sector should be an STE candidate.

In addition to new STE's, country and product coverage should be expanded in existing sectoral measures initiated in the Uruguay Round. Emphasis should also be given to increasing the country participation and product coverage of the Information Technology Agreement (ITA), and to gaining complete elimination of tariffs (as opposed to harmonization) in the chemical sector by more countries than just those currently party to the Chemical Tariff Harmonization Agreement (CTHA).

Most of our sectors also want their products included in the "immediate elimination" basket of the tariff phaseout schedules negotiated in the Free Trade Area of the Americas or any bilateral or sub-regional trade agreements.

Attachment

U.S. Sectors Advocating Sectoral Tariff Elimination (STE) in WTO's Doha Development Agenda Non-Agricultural Market Access Negotiations

chemicals

crop protection chemicals

construction & mining equipment

copper & copper alloy brass mill products

cosmetics

distilled spirits

electrical equipment

energy products

environmental products

fertilizer

fish & seafood products

information technology & electronics products

gems & jewelry

medical equipment

paper products

pharmaceuticals

printing, publishing & converting technologies

processed foods

soda ash

sporting goods

steel products

toys

wood machinery

wood products

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