

REMARKS ON
THE INTERIM TRADE PROGRAM
FOR THE CARIBBEAN BASIN
BY
AMBASSADOR CHARLENE BARSHEFSKY
BEFORE THE CARIBBEAN LATIN AMERICAN ACTION

June 3, 1994

INTRODUCTION

It is a real pleasure to address the Board of Directors of the Caribbean-Latin American Action (CLAA), a group that has contributed substantially to the Caribbean Basin.

I understand that just a few years ago the CLAA was called the CCAA -- Caribbean-Central American Action. Your name change represents the kind of transition that is occurring in this hemisphere -- greater economic integration and an expansion of shared goals and ideals.

The United States sees this period as an historic opportunity. The President has stated his desire "to expand the NAFTA" by reaching agreements with other market-oriented countries in Latin America and the Caribbean. He recognizes that the NAFTA can be a gateway to the rest of the hemisphere.

But, expanding the NAFTA to other countries in Latin America and the Caribbean will take time. Countries in the hemisphere need to become ready for the complex undertaking of negotiating and implementing a comprehensive FTA. They need to understand better the NAFTA's high standards and to be prepared to accept reciprocal market access requirements. World Bank, Inter-American Development Bank and other analyses have demonstrated how important it is for the Caribbean Basin countries to undertake a broad range of reforms to stimulate the private sector so that they can ready themselves for the benefits and obligations of trade expansion.

Because this process will take time, we developed the "Interim Trade Program" to respond to the concerns raised by countries in the Caribbean Basin. Indeed, we deliberately chose this name, instead of the more commonly known phrase, "NAFTA parity." We want to convey the idea that this new program is a transitional arrangement between the current situation under the CBI and some later date when we have worked out a fully reciprocal NAFTA-type arrangement with interested countries in the Caribbean Basin.

Vice President Gore's announcement of our Interim Trade Program on May 24 in Honduras unveiled the results of a process that began over nine months ago, when President Clinton met with leaders from the Caribbean. The President was impressed with the points made by the Caribbean leaders -- which were later reinforced by Central American leaders -- and asked Ambassador Kantor to see what could be done. USTR submitted an interagency report to the President late last year.

While the details of that report are not important, the outcome is. We now have a specific bill before the Congress which would allow the President to implement the Interim Trade Program. The Trade Subcommittee of the House Ways and Means Committee completed a "walk-through" of the bill on May 26.

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The importance the Administration attaches to securing Congressional approval of the Interim Trade Program is shown by the personal interest of both the President and Vice President.

But their commitment alone will not be enough. We hope that as more people understand the Interim Trade Program that they too will embrace it. That is my mission here today.

EXPLANATION OF THE PROGRAM

Summary

Because it is a new program, I recognize that there may be some confusion. USTR tried to summarize the key elements in a two-page document, which I believe all of you have seen. Let me try to explain some of the thinking behind the concepts.

Benefits

Of the \$10 billions of products the Caribbean Basin nations exported to us in 1993, there were only two significant categories of exclusion under the CBI -- textiles/apparel, which accounted for about \$4 billion in imports, and petroleum, which represented under \$1 billion.

Petroleum enters essentially duty-free. The *ad valorem* duty is about a half of one percent.

This makes textiles/apparel overwhelmingly the most important product exclusion. Bringing this area under the CBI would mean that countries in the Caribbean Basin would have essentially unilateral NAFTA "parity" -- indeed, better market access than Mexico has in, for example, many of the agricultural products -- without the obligations, such as reciprocal market access.

The textile/apparel package we are proposing would provide treatment substantially equivalent to NAFTA for products originating in the Caribbean Basin and for products assembled

from U.S. formed and cut fabric. This program will benefit not only Caribbean Basin participants in terms of better access to U.S. markets, but will also benefit U.S. manufacturers of apparel who have substantial investments in the region.

We believe the benefits are very generous. By our very rough estimate, the Interim Trade Program would cover nearly \$3 billion of the \$4 billion of CBI textile/apparel products exported to the U.S. market. ~~The other billion dollars is already in rough parity with Mexico.~~ Also, as this trade expands -- which it has by over 20 percent a year since 1986 -- the value of this program will grow.

Conditions

We recognize that the benefits provided to the Caribbean Basin are, to a large extent, shared by U.S. firms. Most of the input for the apparel shipped to the United States from the CBI nations comes from U.S. companies. On this basis, we could have simply tried to convince Congress to pass a "CBI III" with these new benefits and no new conditions.

But, we were very conscious that our relationship with the CBI nations was in transition, that changes have been taking place which we believe the new program should embrace. Most countries in Latin America and the Caribbean say they are ready for a new, more reciprocal, trading relationship with the United States. They understand that the days of "special and differential treatment" are numbered. As Ambassador Mickey Kantor likes to say, "trade is a two-way street."

The "Gibbons bill" of last year -- which I understand the Caribbean Basin enthusiastically endorsed -- included this concept of reciprocity. NAFTA benefits would be provided up front. Within three years, the United States and a CBI nation would have to conclude an FTA; if not, the trading status reverts back solely to CBI benefits.

Our Interim Trade Program incorporates three key concepts from the Gibbons bill. First, countries would need to undertake commitments to come up to the standards in U.S. prototype agreements in certain areas -- namely investment and intellectual property rights (IPR) -- which I will explain in a minute. Second, conditions would be completed within a specified period of time -- about three and a half years, which is similar to Congressman Gibbon's proposal. Third, countries would provide some additional market access for U.S. products -- but only in the textile/apparel area -- not fully reciprocal market access as in the NAFTA. I would note, however, that "equitable and reasonable" market access is an existing CBI criterion which we expect beneficiaries to live up to.

An additional commitment we are expecting, which was not in the Gibbons bill, is for an Interim Trade Program beneficiary to

become a member of the WTO. We believe a commitment to the multilateral trading system should be expected of countries that want to strengthen their trading relationship with us. Also, this condition should not be a problem for CBI countries because almost all CBI nations are already in the GATT or are in the process of joining.

Market Access

The market access commitments would be negotiated between the United States and an interested country. The products subject to negotiation would be in the textile/apparel area. CBI beneficiaries would expand market access on an MFN basis. In addition, CBI countries would be expected to agree to anti-circumvention provisions.

Investment and IPR

In the areas of investment and IPR, we have adopted a three-stage approach. Within one year after entry into force, we expect a country that has agreed in advance to participate in the program to take certain specific steps toward achieving the standards included in our prototype bilateral investment treaty (BIT) and our prototype IPR agreement. We also believe outstanding issues pertaining to the GSP and CBI criteria, including expropriation, should be essentially resolved. After two years, a country should have concluded agreements covering the standards in our prototype agreements; these agreements should be implemented within 18 months.

First Stage

Outstanding Issues

Let me first clarify what we are seeking in terms of outstanding issues on Special 301, CBI and GSP. We want to signal that it would be very difficult for the United States to provide additional benefits when issues related to existing conditions in U.S. law have not been resolved. In other words, we want a commitment that we would have a "clean slate" within one year before moving forward.

Now, this does not necessarily mean a complete and final settlement of all cases. For example, total resolution of an investment dispute might call for payments over several years. We would not have to wait for final payment before this issue is considered to have been "successfully negotiated."

Also, we are not seeking new petitions. If new disputes come to our attention, each would be examined by the relevant interagency committee to determine whether it should be accepted. Only if it is a valid complaint would the petition be the basis for further action.

Investment Conditions

Regarding the investment commitments, I think the first stage is pretty clear. Countries are expected to commit to international law standards for expropriation -- such as prompt, adequate and effective compensation if an investment is expropriated -- and binding arbitration. Both of these provisions, as well as additional examples of our international law standards, are reflected in our BIT. || (A)

Intellectual Property Rights

The IPR commitments are a little more complex. Let me try to explain.

In the Uruguay Round "TRIPs" text -- which stands for Trade Related Aspects of Intellectual Property -- developed and developing countries are given different deadlines by which to fully implement the agreement. Developed countries must fully implement the agreement within one year of the date on which the WTO enters into force, which is tentatively scheduled for January 1, 1995. As a result, all developed countries would have until January 1, 1996, to meet their TRIPs obligations.

Developing countries have more time to fulfill their obligations. TRIPs contains a general requirement that developing countries implement their obligations within five years of the date on which the WTO comes into effect -- i.e., by January 1, 2000, according to the scheduled entry of the WTO.

TRIPs also allows developing countries an additional five years, or ten years total, to implement the product patent protection requirement found in TRIPs. In other words, developing countries do not have to provide product patent protection -- including patent protection for pharmaceuticals and agricultural chemicals -- until January 1, 2005.

Our Interim Trade Program would require beneficiary countries to forego the developing country "transition periods" and implement TRIPs on the same schedule as developed countries. This would mean that if the WTO and the Interim Trade Program were to enter into effect at the same time -- January 1, 1995 -- participating CBI countries would be on the same schedule as developed countries -- implementing TRIPs by January 1, 1996.

Neither of the developing country "transition periods" is permitted in our bilateral IPR agreement, which sets higher standards than the TRIPs text. Also, the TRIPs text does not protect encrypted program-carrying satellite signals or provide full national treatment with regard to the protection and enforcement of all intellectual property rights -- both of which are included in our first-stage commitments. It is in this sense that we see our first-stage conditions as being a step toward achieving the standards in our prototype IPR agreement.

Second Stage

The second stage is the negotiation of an IPR agreement and a BIT within two years after entry into force of the Interim Trade Program. If a country wishes, it may skip the first stage and proceed directly to negotiation of these agreements.

Third Stage

① The third stage is to implement the BIT and IPR agreement within 18 months after the agreements are negotiated. A country that decides to conclude these agreements within, say, one year, would be expected to implement them 18 months later.

Effective Date

The interim trade program would not take effect for the interested beneficiary nation until:

- (1) the U.S. Congress passed the necessary implementing legislation;
- (2) the United States and the interested CBI beneficiary nation reached an agreement on steps for implementing the program;
- (3) and the President issued the proclamation designating the country as an "interim trade program" beneficiary country.

Since the Interim Trade Program only take effect for a particular country after the U.S. President has issued the proclamation providing trade benefits, the timing of a CBI country's obligations is somewhat up to that country. If a CBI beneficiary wants to wait, say three years, before receiving benefits, that country would have the same phase-in periods from that later date -- one year after that date to complete the first stage, two years to complete the second, and 18 months to implement the negotiated agreements.

We understand fully that countries can delay their participation in the Interim Trade Program and, therefore, postpone the dates for fulfilling the investment and IPR conditions. However, the longer countries wait, the more competitive their neighbors which are participating in the program become. This means the nonparticipants have to worry not only about investment being diverted to Mexico but about investment flowing to other CBI nations.

But, let me stress that a country's decision about whether and when to participate in this Interim Trade Program is up to that country. Current CBI benefits would be maintained for countries choosing not to participate.

Other Commitments

Labor

The need to pursue internationally recognized labor standards is enshrined in the criteria for the CBI. We simply want beneficiaries to understand that the current CBI worker rights criteria apply to the Interim Trade Program.

Environment

CBI beneficiaries would agree to work toward implementing their trade and investment policies based on the principle of sustainable development. We see this commitment as being part of the CBI nations' current eligibility criteria to "contribute to the revitalization of the region" and "to promote [their] own economic development."

RATIONALE

We believe the Interim Trade Program is a consistent package of measures designed to achieve mutually acceptable and beneficial objectives. Countries in the Caribbean Basin expressed their concern about investment flight. The measures in the Interim Trade Program -- market access for textiles/apparel, joining the WTO, investment and intellectual property rights conditions, commitments on labor and the environment -- all enhance the CBI nations' ability to attract investment and to compete on the world market.

We also believe these measures will help prepare countries in the Caribbean Basin for the eventual expansion of the NAFTA. These steps are part of the "building block" approach to improving standards in the region.

Thank you.

SUMMARY OF

AN INTERIM TRADE PROGRAM FOR THE CARIBBEAN BASIN

INTRODUCTION

The "interim trade program" is based on a study USTR Kantor sent to the President.

- o The CBI has provided beneficiary countries (currently 24) unilateral duty-free access to the U.S. market for all exports, except textiles/apparel, petroleum, footwear, some leather goods, and several other minor products.
- o The NAFTA will, on balance, have a positive impact on the Caribbean Basin, offering countries in the region the opportunity to expand exports to markets that will grow as a result of the NAFTA's effect.
- o The CBI nations are most concerned with investment being diverted to Mexico as a result of the NAFTA.

The interim trade program would establish mutually beneficial measures to be taken by the United States and the CBI countries.

SECTIONS OF THE INTERIM TRADE PROGRAM

Textiles/Apparel

- A. NAFTA-like tariff and quota treatment would apply to imports into the United States from CBI beneficiaries for articles which meet NAFTA-like rules of origin;
- B. textile and apparel articles assembled in CBI beneficiary countries from fabrics wholly formed and cut in the United States would receive NAFTA-equivalent treatment into the United States;
- C. goods identified by the United States as Caribbean handmade or folklore articles would receive duty-free treatment;
- D. CBI beneficiaries would expand market access on an MFN basis on specific textile/apparel products and would agree to the U.S. formulation on anti-circumvention.

Investment/Intellectual Property

- A. To begin benefitting from the program, interested CBI countries would agree in writing to provide within one year:
 - 1. international law standards for expropriation and access to binding international arbitration to enforce those standards;

2. TRIPS provisions without subscribing to the transition periods allowed for developing countries, protection of encrypted program-carrying satellite signals, and full national treatment with regard to the protection and enforcement of all intellectual property rights; and
 3. successful negotiation of all Special 301 petitions and issues pertaining to the GSP and CBI criteria that had been submitted or existed prior to entry into force.
- B. Within two years after the program's entry into force, the CBI beneficiaries would have concluded the following in order to continue this program:
1. a bilateral investment treaty, based on the U.S. model, to be implemented within eighteen months;
 2. an IPR agreement, based on the U.S. model, to be implemented within eighteen months.

Environment

CBI beneficiaries would agree to work toward implementing their trade and investment policies based on the principle of sustainable development.

Labor

The need to pursue internationally recognized labor standards is enshrined in the criteria for the CBI and would apply to benefits of the textile/apparel in this interim trade program.

GATT

CBI countries would be expected to become a member in good standing of the GATT and the World Trade Organization.

Effective Date

This interim trade program would take effect after:

- A. the U.S. Congress passed the necessary implementing legislation to authorize the President to proclaim the elimination of tariffs on the textile/apparel products subject to this interim program;
- B. the United States and the interested CBI beneficiary nation reached an agreement on steps for implementing all of the sections of this arrangement;
- C. the President issued the proclamation.

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June 15, 1994

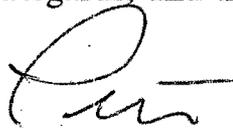
Ambassador Charlene Barshefsky
Deputy United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, D.C. 20506

Dear Charlene:

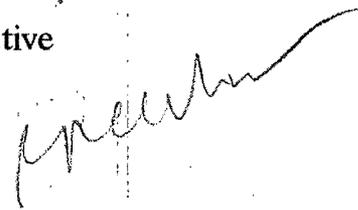
Many thanks for coming by the C/LAA Trustees luncheon on June 3. As you gathered from the questions, the interim enhancement issue is a priority concern for the Board. Your clarity in presentation and receptivity to comments was just great. While we are working on the matter of a non-originating fabric improvement, the Board is fully supportive of the USTR interim step. In fact, mail and calls are being generated in that direction right now.

I hope you will continue to stay in touch as this moves forward.

Regards, and thanks again,



Peter B. Johnson
Executive Director



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REMARKS ON
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FOR THE CARIBBEAN BASIN
BY
AMBASSADOR CHARLENE BARSHEFSKY
BEFORE THE CARIBBEAN GROUP FOR COOPERATION
IN ECONOMIC DEVELOPMENT

June 6, 1994

INTRODUCTION

It is a real pleasure to address this, the Twelfth Meeting of the Caribbean Group for Cooperation in Economic Development. My visit with you today is particularly well-timed in light of Vice President Gore's recent announcement of the Administration's proposed Interim Trade Program for the Caribbean Basin.

Under President Clinton's leadership the United States has experienced the most important year in trade in our history. After an intense fight, the President forged a bipartisan coalition to pass the North American Free Trade Agreement. We established a new framework for negotiations with the Japanese. We hosted a conference of the Asia Pacific nations to facilitate trade in that region, the fastest growing economic area on earth. And, of course, the grand slam was concluding the Uruguay Round agreement. After seven years of gridlock, we were able to conclude an agreement that will create hundreds of thousands of jobs here in the United States and foster global economic growth.

Focussing on this hemisphere, regional integration is moving forward on all fronts. The United States sees the transition that is occurring in this hemisphere -- greater economic integration and an expansion of shared goals and ideals -- as a period of historic opportunity. The doors that are being unlocked or are about to be unlocked as a result of both regional and global trade expansion can only benefit the Caribbean countries in achieving your development goals.

The President has stated his desire "to expand the NAFTA" by reaching agreements with other market-oriented countries in Latin America and the Caribbean. He recognizes that the NAFTA can be a gateway to the rest of the hemisphere.

But, expanding the NAFTA to other countries in Latin America and the Caribbean will take time. Countries in the hemisphere need to become ready for the complex undertaking of negotiating and implementing a comprehensive FTA. They need to understand

better the NAFTA's high standards and to be prepared to accept reciprocal market access requirements. World Bank, Inter-American Development Bank and other analyses have demonstrated how important it is for the Caribbean countries to undertake a broad range of reforms to stimulate the private sector so that they can ready themselves for the benefits and obligations of trade expansion.

Because this process will take time, we developed the "Interim Trade Program" to respond to the concerns raised by countries in the Caribbean Basin. Indeed, we deliberately chose this name, instead of the more commonly known phrase, "NAFTA parity." We want to convey the idea that this new program is a transitional arrangement between the current situation under the CBI and some later date when we have worked out a fully reciprocal NAFTA-type arrangement with interested countries in the Caribbean Basin.

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EXPLANATION OF THE PROGRAM

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categories of exclusion under the CBI -- textiles/apparel, which accounted for about \$4 billion in imports, and petroleum, which represented under \$1 billion.

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In the areas of investment and IPR, we have adopted a three-stage approach. Within one year after entry into force, we expect a country that has agreed in advance to participate in the program to take certain specific steps toward achieving the standards included in our prototype bilateral investment treaty (BIT) and our prototype IPR agreement. We also believe outstanding issues pertaining to the GSP and CBI criteria, including expropriation, should be essentially resolved. After two years, a country should have concluded agreements covering the standards in our prototype agreements; these agreements should be implemented within 18 months.

First Stage

Outstanding Issues

Let me first clarify what we are seeking in terms of outstanding issues on Special 301, CBI and GSP. We want to

signal that it would be very difficult for the United States to provide additional benefits when issues related to existing conditions in U.S. law have not been resolved. In other words, we want a commitment that we would have a "clean slate" within one year before moving forward.

Now, this does not necessarily mean a complete and final settlement of all cases. For example, total resolution of an investment dispute might call for payments over several years. We would not have to wait for final payment before this issue is considered to have been "successfully negotiated."

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Regarding the investment commitments, I think the first stage is pretty clear. Countries are expected to commit to international law standards for expropriation -- such as prompt, adequate and effective compensation if an investment is expropriated -- and binding arbitration. Both of these provisions, as well as additional examples of our international law standards, are reflected in our BIT.

Intellectual Property Rights

The IPR commitments are a little more complex. Let me try to explain.

In the Uruguay Round "TRIPs" text -- which stands for Trade Related Aspects of Intellectual Property -- developed and developing countries are given different deadlines by which to fully implement the agreement. Developed countries must fully implement the agreement within one year of the date on which the WTO enters into force, which is tentatively scheduled for January 1, 1995. As a result, all developed countries would have until January 1, 1996, to meet their TRIPs obligations.

Developing countries have more time to fulfill their obligations. TRIPs contains a general requirement that developing countries implement their obligations within five years of the date on which the WTO comes into effect -- i.e., by January 1, 2000, according to the scheduled entry of the WTO.

TRIPs also allows developing countries an additional five years, or ten years total, to implement the product patent protection requirement found in TRIPs. In other words, developing countries do not have to provide product patent protection -- including patent protection for pharmaceuticals and agricultural chemicals -- until January 1, 2005.

Our Interim Trade Program would require beneficiary countries to forego the developing country "transition periods" and implement TRIPs on the same schedule as developed countries. This would mean that if the WTO and the Interim Trade Program were to enter into effect at the same time -- January 1, 1995 -- participating CBI countries would be on the same schedule as developed countries -- implementing TRIPs by January 1, 1996.

Neither of the developing country "transition periods" is permitted in our bilateral IPR agreement, which sets higher standards than the TRIPs text. Also, the TRIPs text does not protect encrypted program-carrying satellite signals or provide full national treatment with regard to the protection and enforcement of all intellectual property rights -- both of which are included in our first-stage commitments. It is in this sense that we see our first-stage conditions as being a step toward achieving the standards in our prototype IPR agreement.

Second Stage

The second stage is the negotiation of an IPR agreement and a BIT within two years after entry into force of the Interim Trade Program. If a country wishes, it may skip the first stage and proceed directly to negotiation of these agreements.

Third Stage

The third stage is to implement the BIT and IPR agreement within 18 months after the agreements are negotiated. A country that decides to conclude these agreements within, say, one year, would be expected to implement them 18 months later.

Effective Date

The interim trade program would not take effect for the interested beneficiary nation until:

- (1) the U.S. Congress passed the necessary implementing legislation;
- (2) the United States and the interested CBI beneficiary nation reached an agreement on steps for implementing the program;
- (3) and the President issued the proclamation designating the country as an "interim trade program" beneficiary country.

Since the Interim Trade Program only take effect for a particular country after the U.S. President has issued the proclamation providing trade benefits, the timing of a CBI country's obligations is somewhat up to that country. If a CBI beneficiary wants to wait, say three years, before receiving benefits, that country would have the same phase-in periods from that later date -- one year after that date to complete the first stage, two years to complete the second, and 18 months to

implement the negotiated agreements.

We understand fully that countries can delay their participation in the Interim Trade Program and, therefore, postpone the dates for fulfilling the investment and IPR conditions. However, the longer countries wait, the more competitive their neighbors which are participating in the program become. This means the nonparticipants have to worry not only about investment being diverted to Mexico but about investment flowing to other CBI nations.

But, let me stress that a country's decision about whether and when to participate in this Interim Trade Program is up to that country. Current CBI benefits would be maintained for countries choosing not to participate.

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The need to pursue internationally recognized labor standards is enshrined in the criteria for the CBI. We simply want beneficiaries to understand that the current CBI worker rights criteria apply to the Interim Trade Program.

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RATIONALE

We believe the Interim Trade Program is a consistent package of measures designed to achieve mutually acceptable and beneficial objectives. Countries in the Caribbean Basin expressed their concern about investment flight. The measures in the Interim Trade Program -- market access for textiles/apparel, joining the WTO, investment and intellectual property rights conditions, commitments on labor and the environment -- all enhance the CBI nations' ability to attract investment and to compete on the world market.

We also believe these measures will help prepare countries in the Caribbean Basin for the eventual expansion of the NAFTA. These steps are part of the "building block" approach to improving standards in the region.

Thank you.

**STATEMENT OF
DEPUTY U.S. TRADE REPRESENTATIVE CHARLENE BARSHEFSKY
BEFORE THE HOUSE FOREIGN AFFAIRS COMMITTEE
ROUNDTABLE DISCUSSION ON EAST ASIA
JUNE 15, 1994**

Trade is central to President Clinton's vision of our future in the world for, in the President's words, "Open and competitive commerce will enrich us as a nation." He has stated clearly, and continues to believe, that economic security is key to our collective security.

In view of the Roundtable's topic, I have focussed my statement on our policies in the East Asian region. Of course, we cannot ignore the critical importance of ensuring access for our exports to two of the region's most important markets, Japan and China.

It is important to make clear, however, that the Clinton Administration's trade policy toward the region is not a Japan or China trade policy. The region is far too economically diverse and culturally rich to permit such a simplistic approach. The other countries of Asia are economically significant. For example, ASEAN collectively is our fourth largest trading partner, and we export 40 percent more to the rest of Asia than we do to Japan and China combined.

East Asia, like the United States, has an enormous stake in an open trade and investment system. Continued growth in the economies of East Asia depends now, as it has in the past, on access to overseas markets. The share of the world's manufactured goods exports from Singapore, Hong Kong, Taiwan, South Korea, Indonesia, Malaysia, and Thailand jumped by nearly two-thirds between 1980 and 1990. During the same period, the figure for all developing countries rose by only one percentage point.

Ever since President Clinton took office, he has taken action in support of his goal of expanding open trade and investment. Just as the Clinton Administration has pursued expanded trade opportunities globally by successfully concluding the Uruguay Round negotiations, we have not hesitated to pursue higher disciplines on a reciprocal basis with individual trading partners. The North American Free Trade Agreement is evidence of that commitment.

We are actively pursuing bilateral market-opening initiatives with virtually every trading partner in the region. From Japan and China to Singapore and Australia, our agenda ranges from services to standards to tariffs to intellectual property rights. Our efforts to obtain fair treatment and market access for U.S. goods and services in individual countries is a cornerstone of our trade expansion efforts.

Under President Clinton, we also are actively pursuing a supplemental set of initiatives that recognize the vital importance of U.S. regional economic interests and aim at putting in place a structure to expand trade and investment ties on a regional basis.

A significant and innovative program was initiated in the region in November 1993, when the United States and ASEAN -- collectively among the most dynamic and forward-looking economies in East Asia -- agreed to pursue the Alliance for Mutual Growth (AMG).

The AMG is a set of specific programs that merge policy, commercial objectives, and financing opportunities. The goal is to foster economic growth and create jobs. Under the AMG, the United States and ASEAN will cooperate on trade-related programs in six areas, aiming at results within a year. The six areas are: small and medium-sized enterprises, infrastructure, technology cooperation, human resources, standards, and trade promotion. While working cooperatively on AMG programs, we will accomplish many of the trade policy objectives of the United States. Most important, we will increase the volume of trade by reducing the many frictions and barriers standing in its way.

In an even broader regional initiative, we are working with the 17 members of the Asia-Pacific Economic Cooperation process (APEC). U.S. exports to every APEC economy grew by at least 50 percent in the five years from 1987 to 1992. In 1992, our trans-Pacific trade exceeded our trans-Atlantic trade by 50 percent and U.S. exports within APEC now account for almost 60 percent of U.S. merchandise exports.

We see APEC as a cornerstone of our shared commitment to expand trade and investment throughout this region, and APEC has an ambitious work program. Practical programs, such as those in the areas of customs procedures and technical standards, will reduce transaction costs for businesses in the region. Cooperative programs in human resource development and those on behalf of small and medium business enterprises raise the quality of human capital in the region.

APEC activities bring together officials from the region in ways that stimulate collective problem solving and create new communications channels. The most stunning example was the first APEC Leaders Meeting, hosted by President Clinton in Seattle last year. At this unprecedented get-together, leaders exchanged ideas on their visions for the region in a relaxed, informal setting -- representing, as they put it, "the emergence of a new voice for the Asia Pacific in world affairs."

The process of Asia-Pacific cooperation has accelerated since last November. Substantive meetings have taken place at various levels and on various topics: standards, investment, and customs officials; Finance, Environment, Trade, and Foreign Ministers; and academicians and business people. Each has met under APEC auspices and all are forging the links that will accelerate the flow of goods, services, people, and ideas in the region.

Our trade policy toward East Asia is a pragmatic, market-oriented policy aimed at expanding opportunities for U.S. exporters and creating economic growth for the benefit of all countries in the region. The Clinton Administration's regional and bilateral initiatives are complementary means of achieving these objectives.

marks of

DEPUTY U.S. TRADE REPRESENTATIVE
CHARLENE BARSHEFSKY

BEFORE THE
GLOBAL BUSINESS FORUM

Asia has been and will continue to dominate the trade agenda for the next few months. Japan obviously has the attention not only of the public but of the world. China will be the next area of focus when the Administration reviews MFN status. But, I would like to emphasize that there is another Asia besides Japan and China. ASEAN, collectively, is our fourth largest trading partner. We export almost 40 percent more to the rest of East Asia than to Japan and China. To be sure, the sheer sizes of the giants demand our attention, but the other countries of East Asia, while individually smaller, collectively provide a dynamic market for U.S. exports.

Japan

~~The weather on March 3 best describes the U.S.-Japan Framework talks -- frozen -- several inches of solid ice.~~

~~My colleagues tell me~~ ^{We have} used every opportunity leading up to the Clinton-Hosokawa meetings to engage senior Japanese

political leaders in an effort to find a mutually agreeable approach. Early on, we recognized that the bureaucracy would resist any changes. For that reason, Secretary Bentsen visited Tokyo on January 23 to convey the message that cosmetic agreements that yielded no real change in the Japanese marketplace would not be acceptable. Ambassador Kantor visited Tokyo to reiterate that message to the Prime Minister, members of his cabinet and other senior officials.

Despite these efforts and all night negotiations prior to the meeting, the Japanese refused to accept the key Framework principles: tangible results and quantitative and qualitative criteria to evaluate those results. In short, the President felt it was better to have reached no agreement than an empty agreement. We are now assessing the viability of the Framework as the primary means of addressing Japan's economic imbalances with the rest of the world and examining options for dealing with those imbalances.

The cellular telephone case is a clear example of the problem that exporters face in penetrating the Japanese market and a clear example of the frustration over how to resolve issues. For ten years, we have negotiated a series of commitments to open the Japanese market, of which the 1989 agreement was the most recent example. The Japanese government promised U.S. industry "comparable access" to the Japanese cellular telephone market. Yet they consistently supported actions which impeded such access. The market access barriers erected against the highly competitive U.S. industry amounted to an exclusion of U.S. manufacturers from the crucial Tokyo-Nagoya market, a market corresponding in size to the Washington-Boston corridor.

The next step under the 1377 process is to develop a list of Japanese products on which to levy sanctions equivalent to the lost sales to U.S. industry. This list will be published by mid-March, followed by an opportunity for public comment.

While the 1377 review took place largely outside of the U.S.-Japan Framework, Japan's behavior in this sector is an excellent example of why we need to pursue results orientation in our trade agreements with Japan. Key aspects of the 1989 agreement lent themselves to delay and ambiguity in their implementation. Use of criteria such as that proposed within the Framework might well have averted this latest episode of frustration. Had we sought a date by which the Tokyo-Nagoya market would have been open, or other guideposts, both Japan and the United States would have had a clear and unambiguous indicator of comparable access called for in the agreement.

For our next steps, the Administration is reviewing a number of different options. Our response will be prompt and responsible. But our goal remains to open Japan's domestic market to competitive foreign goods and services -- for U.S. companies, for other countries and for the world trading system.

China

The other Asian giant -- China -- presents similar problems. The growth of our bilateral trade relationship with China over the past decade and a half has been dramatic, although largely one-sided. Our two-way trade has grown from \$2.3 billion in

1979 to more than \$41 billion in 1993. The United States is now China's largest export market, with more than 30 percent of China's exports going to the United States. Americans imported \$32 billion of Chinese goods in 1993.

The challenge for China is to ensure that we don't follow the experience of Japan. The China trade agenda will concentrate on four areas: market access, IPR, services, and GATT Accession. In the Textile area, the United States and China already reached a three-year agreement that substantially reduces China's access to the United States and establishes rigorous procedures to prevent further quota violations and strong penalties in the event of such violations by transshipment.

With respect to market access, Ambassador Kantor determined in December that China was substantially in compliance with its 1992 market access agreement. Nevertheless, we need to pursue some specific areas. First, we expect significant liberalization of quantitative restrictions on the remaining products on the Agreement annex dealing with computers, medical equipment and heavy machinery. And second, in agriculture, we need to ensure that sanitary and phytosanitary standards are based on sound science.

But overall, the market access commitments are being met and they will bring about unprecedented access for U.S. companies to China's market in virtually all of our key export sectors.

The problems in the area of intellectual property rights mimics many of the IPR problems in the region. The issue is

not adequate laws or regulations that are consistent with international norms. Rather, the problems relate to enforcement of those laws -- a far more difficult problem to address, especially since those laws are enforced at the local level, not the national level. The extent of those losses are significant. U.S. industry claims that they are losing over \$400 million annually in copyright piracy alone.

If our experiences in the rest of Asia are any guide, continuous pressure is needed to achieve results. Ambassador Kantor placed China on the Priority Watch List in November. If China does not take effective enforcement measures to protect U.S. intellectual property, the danger increases that China would be identified as a priority foreign country.

In the services sector, U.S. companies that have entered China's market are severely limited in their ability to expand and to provide their full range of products and services to Chinese customers. In most instances, U.S. companies cannot offer after-sales service, do not have direct access to sales and distribution networks, cannot wholly-own their own retail outlets, are restricted in their right to operate leasing companies or holding companies in China, and are otherwise restricted in their access to a vast array of business and local customers. If U.S. industries are going to establish a long-term and successful presence in China's markets, they will need to be able to draw on a highly articulated services sector.

The market access agreement sets the stage for the opening of China's potentially extensive market for services. We will begin formal bilateral negotiations with China on services in

Beijing on March 2 and 3. We expect those negotiations to lead to China's market for services opening to U.S. companies.

GATT Accession

GATT Accession could become a major trade issue with China but the timing will depend on China. We have always supported the notion of China entering the GATT. USTR promised to support China's achievement of GATT contracting party status provided China is able to negotiate an "acceptable protocol" of accession. In such a protocol, China would have to agree to eliminate its GATT inconsistent trade practices that will further open its markets. We have been able to write such protocols in a weekend as in the case of Mexico or over 14 years, as in the case of Tunisia.

ASEAN

Our trade agenda with the rest of Asia, while not as visible and contentious as with Japan or China, is just as important in aggregate terms. Exports to ASEAN countries, for example, have grown by almost 20 percent annually over the last six years. Our exports to Taiwan and South Korea have also grown at double digit rates, but more importantly our deficit with Taiwan is half of what it was in 1987 and a quarter of what it was in 1987 with South Korea.

In the past, our Trade agenda with ASEAN has been characterized by individual disputes over IPR and worker

rights issues. While the remnants of those issues remain, substantial progress has been made those areas. For example, Ambassador Kantor a few weeks ago announced that we were suspending the worker rights review of Indonesia. Indonesia has made significant progress and while more remains to be done, this suspension removes an irritant to an otherwise growing trade environment.

As a result, we have reoriented our trade policy with ASEAN through the U.S.-ASEAN Alliance for Mutual Growth. This new program combines our trade promotion and policy objectives so that we are using cooperative programs in ways that will encourage policy reform -- and pursuing policy reform in ways that do not impede our trade promotion objectives. In particular, we will be concentrating on policy reforms that have commercial significance.

What the Alliance does is establish an intermediary mechanism, a more constructive approach, to promote U.S. business and commercial interests along with policy reform.

Indochina

Indochina is the region of high expectations. The lifting of the trade embargo against Vietnam has signalled for many a surge of trade opportunities. However, normalization of trade relations with Vietnam will be a complicated process and could be a long process. First, POW/MIA issues remain a top priority for the Administration. We expect additional progress on these issues as a result of the lifting of the embargo. Second, human rights issues are important. The

State Department's 1994 report spells out our concerns. The report indicates that Vietnam continued to limit freedom of speech, press, assembly and association as well as worker rights. Vietnam has agreed to hold bilateral discussions with us on Human Rights issues and we plan to begin these talks soon.

Assuming progress on all POW/MIA and Human Rights issues, normalization of trade relations will still be complex. Legislation from MFN, to OPIC insurance, to Eximbank loans, to GSP all have restrictions that will affect the normalization process.

But until progress is achieved on the major issues, the trade agenda will remain dormant. The corollary is that once those issues are resolved, the Vietnam trade agenda will be active. In the interim, the lifting of the embargo will create opportunities for U.S. companies and allow them to compete with Japanese, French, Taiwan and Korean companies in this emerging market.

Korea and Taiwan

Our Trade agenda with Taiwan and Korea has taken a turn from product specific trade conflicts toward a broader approach to trade issues. In Korea, the Dialogue for Economic Cooperation, has addressed economic issues from a systemic perspective. The DEC aims at liberalizing the Korean marketplace by reducing regulatory restrictions on all economic activities. Korea's regulatory environment is very much like an onion -- layer upon layer of restrictive

regulations that create a negative business environment for foreign companies. The peeling away of these regulations, although difficult, is a major objective of President Kim Young-Sam's five year plan and therefore we are optimistic that we will be able to deal with many of the product specific issues by addressing the underlying systemic problems.

In Taiwan, we have concluded a Trade and Investment Framework Agreement which will change the dialogue from one of simply addressing current trade problems to working to forestall trade conflicts. This change in approach has been made possible because of the dramatic improvement in protection of intellectual property.

APEC

All these bilateral and subregional initiatives aim at improving the U.S. market share in this dynamic region. Experts predict that East Asia will double its aggregate gross domestic product by the year 2002 to over 12 trillion dollars. By contrast, Western Europe is expected to grow at about a 2 percent rate reaching a GDP of about \$8 trillion. Latin America is expected to grow to a \$2.5 trillion GDP. Even North America's GDP is expected to reach only about \$10 trillion by 2002.

All these statistics demonstrate why so much emphasis is placed on East Asia by this Administration. But the diversity of the individual economies within the region demonstrates why APEC -- the Asia Pacific Economic Cooperation forum -- is so important. Since its establishment in 1989, APEC has

evolved into the most promising forum we have to promote greater economic cooperation and trade liberalization in the region.

APEC's ten working groups concentrate on developing economic cooperation initiatives and activities with real benefits to the private sector. For example, the energy working group is actively promoting clean coal technology, energy efficiency and use of alternative fuels. The Telecommunications working group has worked closely with the private communications sector and members' telecommunications authorities to produce a telecommunications guide. The transportation working group is surveying transportation bottlenecks in the region. These are some of the examples of the type of practical work that APEC is doing.

In the trade area, the APEC Ministerial in Seattle concluded a Trade and Investment Framework and established a Committee on Trade and Investment. APEC's trade committee is concentrating on practical steps to facilitate trade within the region: such as an electronic Tariff Database, descriptions of regional customs procedures and practices, identifying administrative barriers to market access and publishing a guidebook on regional investment regulations. The success of the Committee on Trade and Investment will depend on whether practical results can be achieved.

APEC's Trade Ministers will meet in Marakesh to give further impetus to APEC's trade agenda. And in November, APEC leaders will again meet -- in Indonesia -- to continue

the dialogue that President Clinton started in Seattle. APEC has become the unifying force within the Asia/Pacific region and as the APEC economies further integrate, export and commercial opportunities will expand even further.

Summary

The Trade agenda for Asia represents a shift in focus from the Atlantic to the Pacific. It recognizes that this region is likely to be the most economically dynamic. But that dynamism will achieve no benefits to the United States if we are excluded from the marketplace -- as in the case of Japan, China, or, to a lesser extent, Korea -- or if those economies falter because of infrastructure bottlenecks as in the case of Southeast Asia or China.

NAFTA and the Uruguay Round are behind us. Asia and the Pacific are the next and continuing challenge.



GLOBAL BUSINESS FORUM

June 22, 1994

Speicher

Ambassador Charlene Barshefsky
Deputy U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Barshefsky:

Thank you for a delightful and very substantive interchange on June 15 on U.S. trade policy in Asia, including the relationship between trade and other issues such as labor and environment.

We have always been very impressed with the high calibre of leadership and expertise we find at USTR.

I hope you will some day give us another opportunity to meet with you.

Sincerely,

John A. Erhardt

John A. Erhardt
Executive Director

JAE/lmm

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ORIGINAL

TRANSCRIPT OF PROCEEDINGS

THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

TWELFTH ANNUAL JUDICIAL CONFERENCE

In the Matter of:)
)
International Trade)
Breakout Session)
)

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1 international practice group. In 1993, she was appointed to
 2 her present position as Deputy United States Trade
 3 Representative, with responsibility for a number of regional
 4 and functional areas, including the Asia Pacific Region,
 5 Latin America, intellectual property, and investment. So,
 6 without further ado, let me introduce Ambassador Barshefsky.

7 (Applause.)

8 ✓ HON. MS. BARSHEFSKY: Hi. I'm not sure ^{where} my co-
 9 panelists are, but it's nice to see someone here from the
 10 Clinton administration on time. Also nice to be among
 11 lawyers again. That's something that I miss, ~~particularly~~
 12 ~~just kind of being around ^{people} who speak English.~~ In any event,
 13 I'm SM responsible for Asia Pacific and Latin America in terms
 14 of regional areas, and I thought what I would do is simply
 15 take ^{you} through the two regions, tell you where we are in
 16 trade policy terms, and, ~~you know,~~ SM I'm happy to answer
 17 questions if we have time, ~~and if we have time to fill,~~

18 Let me start with Japan. You know that last July
 19 at the G-7 President Clinton and then Prime Minister
 20 Miyazawa entered into a framework under which Japan made two
 21 ~~generic~~ series of commitments. The first was on
 22 macroeconomic reform, where Japan agreed to spur domestic
 23 demand-led growth, so as to achieve a highly significant
 24 reduction in its global current account surplus and a
 25 significant increase in global imports of goods and

1 services. Japan's global current account surplus is about
2 130 billion dollars, the effect of which is to drain demand
3 and jobs from ~~most of~~ the rest of the world.

4 Japan secondarily agreed that it would negotiate
5 agreements in a variety of sectoral and structural areas
6 which were divided into five "baskets" of issues, groups of
7 issues, among which were government procurement, the auto
8 sector, economic harmonization, deregulation and enforcement
9 of existing agreements. We tabled ^a the series of proposals
10 last September in four priority areas that were designated
11 as the first for agreement; ~~these were~~ Japanese
12 government procurement of medical equipment and technology,
13 Japanese government procurement of telecommunications
14 equipment and services, insurance, and autos and auto parts.
15 Negotiations proceeded on two bases, ^F first, process and
16 procedural issues related principally to deregulation of the
17 Japanese economy, and second, devising a way in which the
18 effect of these agreements could be measured in the
19 marketplace. That is, process and procedural agreements
20 alone were deemed by this ^A administration as not enough, but
21 process and procedural form and deregulation ought to have
22 some beneficial effect in the marketplace [^] on foreign
23 imports, ^g and we wanted a way of measuring that impact. ^{on February 11, 1991}
24 Talks broke down at the first heads of state meeting, the
25 first of two to be held each year at which economic issues

1 were to be discussed. And they broke down principally
 2 because the Japanese had no real intention of negotiating
 3 agreements that would impact its own market. It had some
 4 interest in negotiating modest process and procedural form,
 5 but only modest, and not much interest beyond that,
 6 certainly no interest to effectuate a substantial increase
 7 ⁱⁿ of global imports of goods and services to which it had
 8 committed. The administration, therefore, ~~at that time~~
 9 walked away from the talks, with President Clinton stating to
 10 then Prime Minister Hosakawa that it was better to reach no
 11 agreements than empty agreements, and our view was that the
 12 agreements we could have reached ^{would have been} ~~were~~ empty.

5/24

13 Following that, ^{event} but unrelated to it, Japan was
 14 found in violation of a cellular telephone and equipment
 15 agreement^s which it had entered into almost a decade before.
 16 That agreement was followed by a second, ~~five years before~~,
 17 which was followed by a third, ~~two years before~~, all of which
 18 had been violated. We threatened retaliation, and
 19 subsequently negotiated a very good agreement with the
 20 government of Japan for the build-out (guaranteed by the
 21 government of Japan) of the cellular phone system it had
 22 promised to build in the Tokyo/Nagoya corridor, a system
 23 which would be compatible with North American analog
 24 technology, and one in which U.S. producers figured to win
 25 substantial market share. Following that, ~~of course~~, we

1 issued our annual national trade estimates report, in which
 2 we cataloged trade barriers around the world, ~~but~~ focused ^{on}
 3 very heavily on Japan, ~~and~~ following that, Japan issued its
 4 voluntary action plan -- this is at the end of March this
 5 year, which was a plan designed to promote deregulation in
 6 its economy. We indicated that the plan was insufficient,
 7 vague and unfinished.

8 ^{are} Where ~~we are~~ now, ^{is that} we and the Japanese met
 9 about three weeks ago. They had wished to come back to the
 10 bargaining table. We thought that ~~was~~ we thought that
 11 was desirable, but only to the extent we were going to make
 12 progress. We had no desire to talk just to talk.

13 And we reached an agreement three weeks ago on
 14 three critical issues, without which we said we would no
 15 longer negotiate. The first was that Japan agreed
 16 explicitly that substantial increases in market access and
 17 sales in the Japanese market of foreign goods and services
 18 would be the goal of the sectoral agreements; second, Japan
 19 agreed to the use of both qualitative and quantitative
 20 measures in the marketplace ^{to gauge} of the way in which these
 21 agreements were producing results; and last, Japan
 22 reiterated its commitments on the macroeconomic side to
 23 stimulate domestic demand. ^{have} We ~~are~~ re-engaged in talks, and
 24 those talks are going on now both here and in Tokyo in the ~~the~~
 25 four priority areas. ^{have} We ~~are~~ also re-engaged in talks on

glass,

1 intellectual property rights protection, as well as on
2 financial services, and next week we will re-engage in talks
3 on ~~Bliss~~, a sector characterized by what the Japan Fair
4 Trade Commission called an oligopoly.

5 So we ~~are~~ ^{are} moving along. We ~~do not~~ ^{not} have a deadline
6 in mind ^{for} when these agreements need to be completed. I think
7 both sides feel we ought to proceed apace and see if we
8 can ~~we~~ resolve these issues, but we ~~do not~~ ^{not} want to set any
9 artificial deadline ~~on this~~. Our hope is for good
10 agreements.

11 China. The President, as you know, made a very
12 courageous decision in calling a spade a spade with China,
13 which is to say he delinked human rights from the annual MFN
14 debate, doing so on two bases. One, admitting forthrightly
15 that in the view of the ~~administration~~ ^{administration} China had not made
16 overall significant progress with respect to human rights,
17 but second, indicating, which was also the case, that the
18 MFN linkage was proving counterproductive to any real
19 progress on human rights, ^{The linkage was} not productive ~~toward it and that~~
20 in that situation you ^{have} ~~ve~~ two choices. You either decide the
21 goal was ^{not} ~~is~~ worth pursuing, and of course the goal of human
22 rights in China is absolutely worth pursuing, or you decide
23 the goal is worth pursuing, but the way in which you ^{are} ~~are~~
24 going about it ^{is not} ~~is~~ right and you need to change ^{tactics} ~~that~~, and
25 that ^{is} ~~is~~ what was changed. So we ^{have} ~~we~~ delinked human rights

1 from trade, and will substitute in its place a variety of
2 mechanisms designed to promote human rights on a more
3 sustained basis in China, ^{including} working a little more in concert
4 with the Chinese government.

5 That aside, we have a number of trade issues with
6 China that are on the agenda. On the market access side, we
7 made terrific progress last year in effecting very, very
8 important market access in China for hundreds of industrial
9 products, ^{electronics products} ~~and~~ ^{very} high value-added big
10 ticket items for U.S. producers. We ^{have} also achieved gains in
11 the transparency ^{of} China's trade regime and in its overall
12 regulatory structure. There ^{is, however} a huge amount left to be
13 done, to be sure.

14 On services, we have finally gotten the Chinese to
15 agree to engage in bilateral services negotiations with us.
16 This was something that for years they had refused, and
17 those negotiations began in March in five or six different
18 service sector areas, among which are information services,
19 telecommunications services and the like.

20 With respect to intellectual property rights,
21 while China has almost world-class laws on the books, they
22 ^{not} ~~don't~~ enforce them. ~~And so on the~~ ^{ISSUES} intellectual property
23 rights ^{side} we are very close to designating China as a
24 priority foreign country under special 301 and initiating a ^{special} ~~301~~
25 301 case against China. And we will do that if there is not

1 extraordinary progress ^{by} ~~between and~~ June 30, and we don't ~~do~~
 2 expect extraordinary progress.

3 Last, GATT accession. China would like to, quote,
 4 "resume" its membership in the GATT on the basis ^{of} ~~that it was~~
 5 an original contracting partner and on the basis that as a
 6 resumed membership it can grandfather its existing trade
 7 regime. We, ~~and~~ Europe, ~~and~~ Japan and just about everyone
 8 else in the world has said ^{that China is} ~~well, actually, you're not~~
 9 "resuming" anything. ^{China has} ~~You have~~ to accede anew to the GATT and
 10 the WTO, and that means very substantial alteration to ~~your~~ ^{its}
 11 trade regime, not only on the tariff side but on the non-
 12 tariff side, ^{services}, investment, intellectual property and
 13 the ^{codes} ~~to which as a member of the WTO you must accede~~
 14 Those talks are actually going pretty well. China has made
 15 a lot of movement, certainly not enough, but they are moving
 16 and I think appreciate better that they will not enter the
 17 GATT on their terms; they are going to have to enter the
 18 GATT on GATT terms and on terms consistent with all the
 19 other nations ^{of} the world. So that ^{is} the China situation.
 20 Korea, ^{Korea remains a} ~~very hard place~~ ^{in which} to do business, ~~no~~ Nothing
 21 is res judicata in Korea. You think you resolved the issue,
 22 you're quite sure you resolved the issue, and two months
 23 later there ^{is} the issue all over again. Korea ^{is} ~~in~~ a
 24 difficult situation. It is too high wage for Asia and too
 25 low tech for Japan. So it ^{is} caught betwixt and between and

1 is going to have to make some very significant changes in
 2 its trade regime if its to remain competitive and a magnet
 3 for U.S. investment. Korea is the only country in all of
 4 Asia that has suffered net disinvestment because of its
 5 trade regime, ^a highly regulated economy, highly
 6 discretionary and arbitrary action on the part of trade and
 7 customs officials, corruption, ~~is a problem~~, and ~~I think~~, a
 8 national ~~character~~ ^{culture} that tends to eschew imports and looks
 9 unfavorably upon those who buy imported products. ~~NA~~ Korea
 10 has a ways to go. We have in place a mechanism for dealing
 11 with Korea, ~~negotiating~~ ^a agreements with them. I think we
 12 have achieved modest success using that mechanism, and we
 13 are in the process now of deciding how to proceed next.
 14 ASEAN. The ASEAN countries, Malaysia, Indonesia,
 15 ~~that group of countries~~, is collectively the fourth largest
 16 trading partner of the United States. It ^{is} a very dynamic
 17 region. Markets there, given the level of development, tend
 18 to be rather open. U.S. investment is encouraged, typically
 19 as a counterpoint to ~~the~~ Japanese ^{investment}, and by and large, the
 20 trading relationships in that area are positive, but for the
 21 exception of worker rights issues and GSP, which affects
 22 principally Malaysia and Indonesia.

23 We have in place with the ASEAN nations something
 24 that we inaugurated last November called the Alliance for
 25 Mutual Growth, which is an alliance that for the first time

through
which
we

and so forth

1 puts in one place trade policy, trade promotion and
 2 financing in order to start up joint ventures between U.S.
 3 and ASEAN companies and in order to promote U.S. exports and
 4 investment in ASEAN. We have yet to bear a lot of fruit
 5 under that program because there ^{is still} a lot to set up, but we
 6 are well on the way, and I think that this will
 7 significantly boost U.S. exports and investment ~~exports~~
 8 ~~to and investment~~ in the region.

9 India. Trade relations with India for about the
 10 past decade has been anywhere from marginal to abysmal.
 11 India was always viewed as the permanent recalcitrant in the
 12 GATT. India is the country against whom the U.S. brought
 13 super 301 actions and India basically said ^{NO.} ~~no~~ to you.
 14 India is a country which has persistently violated
 15 intellectual property rights. We took away GSP [^] they said,
 16 that's okay, we don't care. So India has been a persistent
 17 problem. ^{Now, however,} There ^{is} a sea change in India, given the Rao
 18 Administration, and particularly given the Herculean efforts
 19 of ^{her} ~~their~~ finance minister, Minister Sing, in attempting to
 20 reform that economy and in wanting very positive relations
 21 with the United States. There is very strong desire for
 22 U.S. business in India ^{and} U.S. investment in India. In part,
 23 India is being pulled by China, because it sees ^{that} ~~it is a~~
 24 ~~regional power~~ the regional power will be China, not India,
 25 and that's disturbing to India. In part, it is pulled

1 simply because of economic imperatives. Investment is ~~isn't~~ ^{not}
 2 flowing to India the way it is flowing to China and other
 3 regions of the world that are liberalizing, and India ~~can't~~ ^{can not}
 4 afford to be left behind. So there are extraordinary
 5 developments going on there, so much so that we and ~~the~~
 6 ~~Indians~~ will revive and ^{economic} subcommission, which for a
 7 number of years before the mid-80s had been quite effective
 8 in resolving trade disputes ~~with India, in talking about~~
 9 ~~financial matters and so on. That will be revived. I think~~
 10 the agenda will be narrow, focusing on issues largely of
 11 interest to the United States, but also, obviously,
 12 including issues of interest to India, and we look forward
 13 to that being put into place.

14 Vietnam and Cambodia. ^{In} Cambodia we ^{are} ~~are~~ very close
 15 to reaching a ~~very~~ comprehensive trade agreement ~~with~~. The
 16 only ^{question} ~~hangup~~ is ~~the question~~ whether Jackson-Vanick applies
 17 to Cambodia and/or whether Column 2 rates of duty apply to
 18 Cambodia, so that one would need legislation to get ~~them~~ MFN
 19 rates of duty. ~~And that~~ ^{is} a legal issue, but the will is
 20 there to conclude an agreement.

21 Vietnam, ^{you} you know that we lifted our embargo
 22 against Vietnam with what was viewed as ~~reasonably~~ adequate
 23 responsiveness on the POW/MIA issue. We ~~don't~~ ^{not} have full ^{blown}
 24 diplomatic relations with Vietnam, ^{and} we ~~can't~~ ^{will not} for some time,
 25 until those issues are more satisfactorily resolved. But

and we will

1 U.S. business can now do business in Vietnam, ~~will~~ open a
 2 liaison office there for the purpose of business
 3 facilitation, ~~the~~ ^{and} also for the purpose of ~~MON~~ POW/MIA
 4 accounting. ~~and~~ I think we are slowly on our way toward ^{full}
 5 trade relations with Vietnam.

6 That's the Asia side. Two minutes on Latin
 7 America and then you can ask whatever questions you'd like.
 8 The question is, what is our after-NAFTA strategy for Latin
 9 America, and the answer is that we are in the process of
 10 formulating ~~that~~ ^{one}. The issues that arise are actually very,
 11 very complicated. Of course, first and foremost, we need
 12 fast track authority to do anything. Fast track authority
 13 will be appended ^{to} ~~on~~ the Uruguay Round implementing
 14 legislation. The administration will go for very broad
 15 authority to the year 2001. It's ^{is} unclear yet how Congress
 16 will respond to that. You know that Congress tends to be
 17 extremely generous in doling out punitive trade statutes and
 18 not too generous in doling out trade statutes that ^{can} ~~could~~ be
 19 used in more affirmative and comprehensive ways. So we ^{will} ~~will~~
 20 have to see how that comes out, but first and foremost we
 21 need fast track authority.

22 On the policy side, of course, the President is
 23 committed to doing a free trade arrangement with Chile, but
 24 the question arises, ~~what~~ ^{what} beyond Chile? Chile ^{is} ~~is~~ ~~just~~
 25 small, ^{with a} small population, [^] trade flows are quite modest. On

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and

1 the one hand, that's good, not too threatening for the U.S.
 2 and might solidify the beginnings of hemispheric
 3 integration. On the other hand, there are some who feel ^{above}
 4 that hemispheric integration is complete ^{enough} with Chile, and
 5 that ~~is~~ not necessarily the way we would look at it. There
 6 are a number of countries in the region that are not at a
 7 level of readiness ^{for an FTA} as a Chile, but ^{that} approach that level with
 8 some work. The Argentinas, Colombias, the Costa Ricas, ^{and}
 9 Bolivias, countries that are ~~relatively~~ macroeconomically
 10 stable, countries that have undertaken some significant
 11 reform of a unilateral nature with respect to tariffs, with
 12 respect to non-tariff measures, countries that are trying to
 13 curb corruption, countries that are interested in
 14 comprehensive trade and investment agreements. But they
 15 ^{not} are ~~not~~ as ready ^{for an FTA} as a Chile, and they would have to be worked ^{with,}
 16 ^{along} on with ~~all of these countries and~~ others, in order to ^{become} ready,
 17 ~~then~~. So question ^{two} ~~one~~ for an after-NAFTA strategy is, ^{who is} ~~what's~~
 18 next after Chile? And the answer is ^{that it is} ~~it's~~ quite unclear.
 19 ^{Third} ~~Second~~, is this a NAFTA accession strategy or are
 20 these separate FTAs with the U.S. ⁱⁿ ~~sort of~~ a hub-and-spoke
 21 ^{arrangement -} ~~concept~~. ^{is} And there ^{has} been no decision made on ^{this} ~~that~~, in part
 22 because that ~~is~~ a decision that ought to be made neutrally
 23 with the foreign country, not necessarily imposed by the
 24 United States. Marginally, NAFTA accession would appear to
 25 be the desirable course, but on the other hand, do we want

1 to be subject always to what Canada and Mexico would want
2 and whatever add-on countries there are in pursuing other
3 trading arrangements. And the answer to that may be no.

4 Third, what about all the subregional groupings in
5 Latin America. NAFTA is a subregional undertaking. That ^{is} is
6 all it is. It ^{is} more comprehensive than the others, it's
7 more complete, it's more legalistic, it's longer, it's more
8 detailed, but all it is is another subregional arrangement.
9 You have five major subregional arrangements in the area,
10 chief among which is MERCOSUL, dominated by Brazil. What
11 do you do with all ^{of} these subregional arrangements, all of
12 which are different, all of which have different standards,
13 all of which have different rules of origin, all of which
14 have different ~~theories of~~ obligations. Do you work with
15 them? Do you work with key countries in them? Do you
16 establish formal links between them, ^{Informal links between}
17 them? Do you try and do something ^{new that is} comprehensive through the
18 region ^{is} ~~new~~? It ~~is~~ not clear how to proceed.

19 And last, what about Asia? If we focus entirely
20 on Latin America, Asia ^{argues that we are} ~~says, you're~~ creating an economic
21 bloc. And Asia is, after all, the fastest-growing region
22 ~~and markets~~ in the world. On the other hand, what will the
23 political traffic bear? Could we undertake activities in
24 Latin America and in Asia at the same time? And then what
25 about Russia? Or what about the EU? What happens to our

in
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1 relationships with those important trading partners? So
2 there are a variety of policy questions that need to be
3 answered, all of which we ^{are} in the process of looking at.
4 But the legislative imperative is clear for whatever policy
5 is adopted, and that is the need for fast track authority.

6 So with that, let me open it up for questions.

7 AUDIENCE MEMBER: For a year, the pinball in the
8 pinball machine of China has been in play. And now that
9 there's been the delinking to MFN, there's a recent decision
10 of Judge Restani in the Court of International Trade
11 involving the prison labor issue in which he ruled that
12 review would be de novo as opposed to review on the
13 administrative record. I've walked that path before back in
14 1978 when the countervailing duty statutes was also de novo
15 review and ended up trying the last transition case, the
16 Michelin Tire case. Is someone at this point in your office
17 giving consideration to what would be the appropriate
18 standard of review now that the Court has ruled in these
19 cases, or should that be an issue to be looked at, if it's
20 not already?

21 HON. MS. BARSHEFSKY: I don't think there's anyone
22 in our office right now who's looking at the standard of
23 review issue, but it's an important issue. Commerce has
24 looked at that issue some, but whether there would be any
25 pronouncement in legislation is really quite unclear. You

speeches

ADDRESS BY

DEPUTY U.S. TRADE REPRESENTATIVE CHARLENE BARSHEFSKY

HONG KONG GENERAL CHAMBER OF COMMERCE

July 22, 1994

~~(Draft)~~

This is my first visit to Hong Kong, and I have looked forward to it for a long time. In many ways, Hong Kong epitomizes the dynamism, initiative, and entrepreneurship that now marks much of Asia, the most rapidly growing economic region in the world. I particularly applaud Hong Kong's emphasis on the rule of law, its stress on free trade, and therefore, the minimal interference of the Hong Kong government in purely economic and commercial decisions.

Today, I would like to take this opportunity to review with you -- colleagues from Hong Kong's business community -- the United States' trade policy toward China. Clearly, this is an issue that is of interest to Hong Kong. I am only too aware how closely those of you in the Hong Kong business community have followed and are affected by U.S.-China trade relations. I propose to be quite candid with you. I hope that you will do the same for me, and I look forward to exchanging views with many of you here and in other forums over the next two days.

The United States has both an economic and political stake in developing productive, healthy, and stable trade relationships with all countries in Asia, including China. Last fall, President Clinton outlined in Seattle the United States' commitment to the development of a new Pacific community, one in which we share responsibility for solid, steady growth, the development of and improvement in economic and legal institutions and regional stability.

The U.S. market has long been an engine of growth for East Asian economies, much as it is for the Chinese economy today. Today, with the expansion of the American market through the NAFTA, the further reduction of trade barriers through the WTO and the process of trade liberalization and business facilitation through the APEC, U.S.-Asian trade ties should expand substantially.

The United States has kept its markets open even when some trading partners have followed much more restrictive practices, because we believe it is in our economic interest and in the greater economic interest of the region to do so. We are committed to open markets but -- in return -- markets in East Asia must be open to U.S. goods, services, and investment.

We recognize the enormous economic achievements that

*and
now leads to
China's island
prosperity*

China's reform policies have brought. China is now the fastest growing major economy in the world. Up and down China's east coast economic development is proceeding at a breathtaking pace. I have been overwhelmed by the magnitude of the change that has taken place in Beijing alone, much less in Guangdong and the booming provinces in central and south China.

As a trading regime, China has also undergone a remarkable transformation. China is now the 11th largest trader in the world, with two-way trade last year approaching \$200 billion. China's trade with the United States has experienced a similarly rapid growth. Beginning from a minuscule base in the late 1970s, U.S.-China trade grew to \$40 billion in 1993 and could reach \$50 billion by the end of the year.

U.S. Interests

The United States wants to see a strong, prosperous, stable China. That means a ~~more free, more democratic~~ China, where human rights are respected and the dignity of the individual is upheld. In trade and economic terms, it means continuation of steady growth, the development of institutions -- like a sound banking system -- that can help sustain that growth, and adherence to international norms and the rule of law. It also means greater integration of China into the fabric of the world trade regime, and maintenance of responsible and transparent trade practices.

On a bilateral basis, the Clinton Administration would like to see the development of a more healthy, more reciprocal trade relationship. In late May, the President made a fundamental decision to put the annual debate over MFN behind us. In making that bold decision, the Administration took a major step to create a more solid foundation for our overall bilateral relationship, but especially for our trade and commercial relationship. If that decision is to have a positive, long-term effect on our trade relationship, however, China will also have to take steps in trade to open its markets further and protect U.S. intellectual property.

Our trade relationship is now badly out of balance. China exports vast quantities of goods to the United States, but still buys relatively little from us. We have a projected trade deficit of roughly \$28 billion in 1994. No other major trading partner has a deficit in goods of that size with China -- and no other major trading partner's markets are as open to Chinese goods and services as is the United States.

As for services, the United States is the largest exporter of services in the world. U.S. companies in banking, insurance, financial services, travel, advertising and other services are the best or equal to the best in the world. In the communications and information services sectors, U.S. companies are leading a global information revolution and transforming the

way that business is conducted around the globe. Nonetheless, China's market for services is still largely closed and must open. If China is to reform and modernize its economy, it cannot do so without the creation of a sophisticated services sector. And, clearly, it cannot develop an articulated services industry without opening its services market. 9

For its part, it is ⁿChina's interest to take these steps. As much as the United States and other trading partners will gain, the benefits for China in further trade liberalization and market opening are much, much greater. ~~Therefore, we expect that China will take more than just token steps soon.~~

Trade Initiatives

The United States has global and bilateral objectives that it wishes to pursue with China and we believe that we can do so in a mutually agreeable and mutually advantageous manner. We have a global interest in seeing China better integrated into the world trading system, continue to reform its system, and grow its economy. We have a bilateral interest in creating a more reciprocal trade relationship that brings substantially greater benefits to the United States. These interests are intertwined. We are working with China to establish a trade framework that is based on the rule of law. We are therefore pursuing a number of trade initiatives in multilateral and bilateral contexts.

GATT/WTO Accession

In the 1992 market access Agreement, the United States committed to staunchly support China's accession to the GATT. China has quite justifiably asked us to fulfill our commitment and we are doing so. What is most often omitted, however, is our commitment to work constructively with other GATT contracting parties, and to reach completion of an "acceptable protocol." That is a key point and one on which our negotiators are now working with China to achieve. *read and*

The United States views China's GATT/WTO accession process as part of a larger effort to improve our economic relationship with China. China's role in the world trading system is increasing substantially, and, as an important trading partner, China should be a member of the new WTO.

China's accession to the GATT/WTO is important for several reasons. First, accession on acceptable terms will help catalyze and cement the current reform process. The structure of China's economic reforms and the overall direction is quite compatible with the GATT/WTO. Second, accession will assist China in following international trade rules and norms. Of course, all trading nations will benefit. Third, the GATT/WTO will provide an important forum for dispute resolution -- both for China and for China's trading partners. And, fourth, a good protocol for China will lead to substantial, additional market opening and a

much improved trade and investment regime there.

Precisely because its foreign trade regime is so strong -- averaging 25 percent growth over the past five years -- China and the United States, as well as the other contracting parties, have a responsibility to ensure that China's accession is based on solid economic commitments. This is as true for China as for every nation that has acceded or has applied to accede to the GATT/WTO. Maintaining uniform, multilateral disciplines is the bedrock of the GATT system; no country is special and the viability and vitality of the multilateral trading regime must take precedence.

We have accelerated our work bilaterally with China and multilaterally with other contracting parties to develop a protocol package for accession to the GATT/WTO. We have made as much progress as we have because of the hard work of our and China's negotiators. Indeed, the market access MOU and achievements thus far in our bilateral negotiations with China have established a basis for moving ahead.

China's accession creates substantial challenges for the GATT and the new WTO. Its accession protocol has implications for the twenty plus countries and regions that will follow China into the GATT, including Russia, the CIS states, Taiwan, and Saudi Arabia. Therefore, we -- and we hope China and other contracting parties -- are determined to get it right.

China has set an ambitious deadline for completing the accession process. China has stated that it wants to be an original member of the WTO, now estimated to come into force on January 1, 1995. The pace of accession depends, in large part, on China and the commitments that it is willing to undertake as an important member of the multilateral trading system. Membership in the WTO takes more than ambition, however. It requires substantive economic obligations and commitments.)

The United States -- and certainly other contracting parties -- have concerns about China's commitment to some basic GATT obligations. The Chairman of the GATT Working Party on China's accession recently received 96 pages of questions on China's trade regime from a large array of contracting parties -- only 12 of those 96 pages were from the United States. Contracting party concerns include full transparency of laws and regulations -- as well as uniform application of these laws and regulations in the provinces, national treatment, granting foreign firms trading rights, and assuring that its foreign exchange regime is not used as a trade barrier. China must commit to open its market to services, submit a reasonable schedule on agriculture, and protect intellectual property rights. Obviously, we do not expect all of these obligations to be implemented immediately. And, in areas where China genuinely needs reasonable transition periods, they should be negotiated.

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On agriculture, many trading partners -- particularly among the Cairns group -- have raised serious concerns about such Chinese practices as using sanitary and phytosanitary standards, secret guidance, and pricing practices to hinder competition with China in world agricultural markets or to export to China. These are among the issues that must be addressed in the accession negotiation.

Like other contracting parties, the United States is prepared to work with China on some transitional or phase-in measures as needed, but basic GATT/WHO obligations must be implemented at the time of accession. Basic GATT principles to which all contracting partners adhere -- the foundation of the multilateral system -- must be met. That is the case for all countries that wish to accede to the GATT/WHO. It is in the interest of no country to set special rules for one at the expense of all of the others.

Some actions that China is contemplating in the near future -- such as the industrial policy initiatives that China has recently announced -- cause us concern. These policies appear to include many measures that are not compatible with GATT/WHO rules and disciplines. As in other cases, China must be prepared to adjust its policies to make them consistent with the GATT/WHO.

If China accedes to the GATT/WHO on anything less than solid commercial terms, or without firm commitments to take further reform measures, not only the United States but our trading partners will be hurt over time. Nor will our goal of seeing China better integrated into the world trade system be achieved. In addressing China's protocol, we intend to identify each issue that needs to be addressed, and with mutual benefit in mind, work to achieve realistic, pragmatic solutions.

I would like therefore to leave you with three thoughts. First, we are working closely with China and other contracting parties on China's accession. Second, we have intensified our bilateral and multilateral efforts -- including working straight through August. And, Third, we must get China's protocol package right precisely because we are committed to ensuring that the GATT/WHO trade system is strong and viable.

APEC

APEC provides another forum through which, working together with our Asian trading partners, we can create a cooperative, productive means to institute sound standards for trade and investment. APEC is a concrete manifestation of the growing interdependence of the Asia Pacific region. As a new multilateral institution, it holds great promise. It provides an important vehicle for us to understand one another, to listen to each others' perspectives. It also serves as a training ground for many of our technical authority to identify common problems and develop, through consensus, solutions to these problems.

Through APEC, we can also advance concepts and approaches to resolving problems that each of us have found useful and effective in our bilateral or other regional contexts.

APEC also serves a useful role in advancing ideas and issues in the global trading system. In the past, many new trade issues were developed by industrialized countries in the OECD context for years before they were brought to the GATT. The issues of government procurement rules, trade in services, and intellectual property rights are just a few examples of issues that progressed from the concerns of a few countries to acceptance by all contracting parties in the GATT. Over time, APEC can and should play a similar role.

APEC can play an active role in expanding trade and investment in China and the region. We have already begun to develop new initiatives in telecommunications, and, through the Eminent Persons group, we have broached the idea of achieving "free trade in the Pacific." We anticipate that trade and investment will be a significant theme for President Soeharto's Leaders Meeting in November. Here too, we hope to work with China and other regional trading partners to strengthen concepts of fair trade and expand growth and prosperity.

Bilateral Initiatives

While the primary focus of our bilateral trade initiatives is to improve the U.S.-China trade relationship, here too the Clinton Administration places a heavy emphasis on adherence to international norms and disciplines. Thus, all of our bilateral trade talks are founded on the principles of the GATT/WTO. The Administration's aim is to establish a solid foundation for its trade relationship with China -- and hopefully avert more serious problems later on.

The Administration has worked hard, through restoration and revitalization of the Joint Economic Commission and Joint Commission on Commerce and Trade, to engage China in a dialogue on the entire range of economic, trade, and commercial issues. Last January, Treasury Secretary Bentsen and Chinese leaders discussed our mutual interest in seeing China's finance and investment regimes improve, and in the furtherance of China's economic reforms.

In April, Secretary Brown had wideranging exchanges with China's trade minister Wu Yi and her colleagues on a number of business and commercial development issues, including U.S. participation in infrastructure projects in China. The Administration will move now to set specific agendas in transportation, services, information technologies and other commercial areas.

On trade policy issues, we are currently engaged in negotiations and consultations on market access for goods, based

on the 1992 market access Agreement, market access for services, and intellectual property rights protection. Successful conclusion of these negotiations, ^{and} faithful implementation of the existing Agreements, will ~~help~~ ^{help} the United States ~~and~~ China, ~~bilaterally~~, but will also improve the substantive climate for China's GATT/WHO accession. *may only cement more productive ties*

China's implementation of the 1992 market access Agreement has been commendable, although some important exceptions remain. In the Agreement itself, China committed over a five year period to a major reform of its import regime. That includes elimination of 90 percent of all non-tariff barriers -- such as import licensing requirements and quotas, increased transparency along the lines of GATT Article X, elimination of the use of import substitution as a policy or practice, and an end to the use of sanitary and phytosanitary standards as barriers to agricultural imports.

China has taken important strides toward making its trade regime more transparent. China has published a large number of trade rules and regulations in the past year, so many that it has become difficult to keep track of them all. China nonetheless has a long way to go before its trade regime, and its trade institutions, are truly transparent. We are particularly concerned that China's provinces apply Beijing's trade laws and regulations uniformly and that the provinces' trade regimes are transparent.

China has made a major commitment to eliminate non-tariff barriers, and since the end of 1993, has reduced to 400 from the several thousand that existed the number of GATT-inconsistent barriers ~~for which we still do not have schedules for~~ ^{elimination}. That is a major achievement and China should get credit for it. By reducing these barriers, China will open markets for computers, medical equipment, heavy machinery, textiles, steel products, chemicals, pharmaceuticals, and other products.

China has not yet resolved our concerns about the use of sanitary and phytosanitary standards as barriers to imports of agricultural and live animal products. We expect China to move expeditiously to resolve these issues, in accord with the Agreement.

In 1994, we look forward to further elimination of non-tariff measures, the liberalization of quantitative restrictions on products in the MOU, the establishment of a viable administrative appeals process, and the complete elimination of import substitution as a trade policy. Our negotiators are now working with China to achieve these goals.

Market access for services is another, integral, part of the U.S. bilateral trade agenda with China. China's services markets today are still largely closed. While limited experiments are

underway, and a variety of extra-legal services ventures have started, legitimate access for U.S. companies in most instances is not available.

We have asked that China commit to substantial liberalization of its insurance, distribution, advertising, travel, communications, audiovisual and other services. As I noted earlier, these liberalizations are in China's own interest. We expect, for example, that China will license more foreign insurance companies to operate in China on a national treatment basis, will open its enhanced telecommunications sector and its distribution system to U.S. companies, and will liberalize access to its audiovisual markets. As many of you in Hong Kong already know, foreign companies have much to contribute to China's economic development and prosperity. China cannot make the leap from a labor intensive economy to one with a higher technology base without considerable participation by foreign firms in its services sectors.

A vital component of our services agenda with China is improvement of its domestic business climate. Consistent with the obligations that China will assume under the GATT/WHO, we ask that China create a non-discriminatory environment within which both foreign and Chinese firms compete on an equal footing. Adherence to basic investment principles, such as the right of establishment and national treatment along with rights to conduct associated activities in a similar manner, would go a long way toward that end.

Similarly, China discriminates against foreign traders in its pricing practices, often charging foreigners prices that are several times those charged Chinese businessmen. China has indicated that it may take steps to eliminate this discrimination, and we await concrete actions to make these intentions reality.

IPR

Protection of intellectual property rights (IPR) is an area of major concern for the United States. As you are no doubt aware, failure to protect IPR harms China's legitimate research and business interests, as it does those of foreign countries. Through implementation of the 1992 IPR Agreement, China has dramatically improved the legal basis for IPR protection. China has taken important steps in implementing its legal regime for IPR, include strengthening copyright protection by joining the Berne Convention, amending the patent law to include product patent protection for agrichemicals and pharmaceuticals and so on.

In principle, the Chinese government recognizes that protection of intellectual property is important. While the legal regime attests to this recognition, in practice, there is virtually no effective enforcement of IPR in China. Piracy has

escalated in recent years and reached crisis proportions over the past year. I need not remind you in the Hong Kong business community that theft of copyrighted products is omnipresent, with 90-100 percent piracy rates in computer software, motion pictures, videos, sound recordings, and books and periodicals. 26 CD factories, 15 in Guangdong province alone, have a production capacity of 75 million CDs, laser disks and CD-Roms, and are now exporting them throughout Southeast Asia and North America. Hong Kong itself has suffered economic losses due to the huge influx of pirated sound recordings, especially CDs. Many of these pirated works are produced across the border in Shenzhen.

Piracy now constitutes a significant market barrier to computer software producers and others who would like to invest and trade with China but dare not do so now. And, piracy thwarts the development of China's own domestic industry. China will never be a major center for the development of software, for example, if it cannot protect the inventions of its most creative people.

The Clinton Administration has a statutory obligation to protect the intellectual property rights of U.S. companies. We have presented the Chinese with a non-paper that, we believe, could form the basis of an Agreement on this issue. The paper addresses the effective measures that need to be taken to curb piracy, the creation of an effective enforcement regime, and market access for U.S. IP products, including audiovisual works. Without access for legitimate works, the environment for piracy will remain unchanged.

Many months of discussions with China on protection for intellectual property products in 1993 and 1994 produced limited results, with the major producers and distributors of pirated products continuing in operation despite China's many promises to take action. As a result, in fulfillment of his statutory obligations, Ambassador Kantor initiated a Special 301 investigation into China's IPR enforcement practices. I believe it is in our mutual interest to reach agreement on this issue, but time is limited.

Despite all of the challenges that we face, I am hopeful about the future of our trade relationship with China. I believe that, with hard work and good will, the United States and China can achieve our global and bilateral objectives. The Chinese government appears to realize that, in so doing, China's own prosperity will increase. I look forward to working with our Chinese colleagues and with you in the business community here and in the United States to that end.

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STATEMENT OF
AMBASSADOR CHARLENE BARSHEFSKY
DEPUTY UNITED STATES TRADE REPRESENTATIVE
ON TRADE POLICY TOWARD CHINA

BEFORE THE
HOUSE WAYS AND MEANS
SUBCOMMITTEE ON TRADE

July 28, 1994

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In making his decision to renew Most Favored Nation (MFN) trade status for China, the President firmly expressed the Administration's commitment to continue its efforts to improve fundamental human rights in China. The Clinton Administration continues to believe that China must take essential steps toward improving its human rights policy and is committed to elimination of human rights abuses in China.

In that regard, we all agree that improving human rights in China is a top priority of this Administration. We differ only over the means most appropriate to achieve that goal, not over the goal itself. The Administration does not believe that enactment of HR 4590 would further the objective of improving human rights in China. On specific human rights issues, I defer to my colleagues from the State Department. I would note that revocation of MFN for China -- even if limited to MFN tariff status for state enterprises or those of the Chinese Army --

would harm our bilateral and human rights interests.

The bill, as drafted, could not be implemented effectively if it were to become law. The U.S. government does not have the capability or the resources to identify and target in a meaningful way products exported by state enterprises or by those of the People's Liberation Army. Of course, the Administration has already banned exports to the United States of guns and ammunition that are produced by the Chinese Army or its subsidiary organizations.

Before I turn to the approach that the Administration has pursued -- with some success -- on trade policy, I would like to review some of the reasons why we believe that the approach taken in the bill to target state enterprises and those of the Chinese army would simply not work.

In the course of drawing up a list of products that could have been subject to 100 percent tariffs as a part of the 1991 Special 301 investigation on China's intellectual property rights practices, USTR attempted to implement the approach taken in the bill -- to target the products of state enterprises. Despite our best efforts, we found that it was impossible to do. The "retaliation list" that was published in the Federal Register on December 2, 1991 does not represent a list of products produced by state enterprises.

Instead, USTR discovered that, while products of state enterprises could be identified in some cases, in general they could not be separated from products produced by joint ventures or companies run by foreign entrepreneurs and be subject to increased tariffs. For its part, the Customs Service has neither the resources or the ability to identify the vast majority of products made by state enterprises. Were the Administration to take this approach, it would do direct damage to U.S. joint ventures or to the reform elements in China who we would most like to see succeed. Worse, it would harm our trade interests -- while doing relatively little to further our goals in human rights.

It is even more difficult to isolate products produced by factories owned or operated by the PLA. According to some estimates, the PLA has interests in up to 30,000 enterprises in China. So far, U.S. analysts have been able to identify three for which there are identifiable products produced for export. Even there, to affect roughly \$170 million worth of exports, more than \$9 billion in trade would be affected.

In the majority of instances in today's China, the neat lines between "state enterprises," "military enterprises," and "non-state enterprises" have disappeared. China is in the midst of a prolonged transition to a more market-oriented economy and determining ownership of enterprises is often difficult -- even for the Chinese. It would therefore be impossible to draw up a

list of targeted enterprises that would genuinely meet the intentions of the bill.

For their part, genuine Chinese state enterprises would find it easy to defeat the purposes of the bill. In light of the multiplicity of new subsidiaries and various forms of other Chinese enterprises now subordinate to state enterprises, the temptation to commit fraud would be overwhelming. The ability of the Treasury Department to draw up an accurate list of state enterprises would be sorely tested. In sum, while the Administration does not support enactment of HR 4590, we stand ready to work with Congress on the important goal of enhancing human rights in China.

TRADE POLICY

The Administration has several goals that it wishes to achieve on trade with China. First and foremost, we intend to pursue market opening initiatives for U.S. goods and for services. U.S. business should have access to the Chinese market comparable to that available to our trading partners in the United States. In addition, we must work to ensure to the maximum extent possible that China accepts the rule of law as it applies to trade -- that is, that China's trade and economic policies are consonant with international norms.

China's Market Potential

China is now the fastest growing economy in the world. In 1993, its economy grew at an official rate of 13 percent, with growth in the booming cities along the east coast growing at even higher rates.

Over the past decade, China's global trade has grown on average by more than 12 percent annually -- twice the rate of world trade growth -- increasing from less than \$40 billion in 1980 to almost \$200 billion in 1993. While changes in accounting methods have reduced the ostensible size of China's foreign reserves, they still formidable. In trade terms, China is no longer a poor nation.

China needs the products and services that U.S. companies are the best in the world at providing. In addition to supplying China with wheat, fertilizer, and wood -- products that we have long sold to China -- the mix of products that we now export is dominated by the high-technology sectors in which we excel. For some U.S. companies, China is already their most important market and likely will be for the next decade.

In short, the boom in China's economy, support for change within China's leadership, and the enormous potential of China's market for U.S. companies provide the United States with a rare opportunity to press for open and fair markets in China. If we wait, we may find that our industries are placed at a permanent disadvantage in relation to those of our trading partners.

TRADE NEGOTIATIONS WITH CHINA

China maintains one of the most protectionist trade regimes in the world. It has put in place multiple, overlapping non-tariff barriers to imports and maintains prohibitively high tariffs. While China's export regime has undergone a remarkable transformation over the past decade, turning China into one of the world's most formidable export engines, China's import regime remains in part the creature of central planners and state bureaucrats. And China's market for services remains closed to all but a few companies that are allowed in only on an "experimental basis." China has taken impressive strides forward in liberalization of its trade regime since late 1993, and we expect further movements this year.

Trade Agreements. The trade agreements that we have signed with China represent important steps toward creation of a solid framework for the U.S.-China trade relationship. The intellectual property rights Memorandum of Understanding (MOU), signed in January 1992, commits China to establishment of a world-class legal structure for the protection of intellectual property. The market access MOU, signed on October 10, 1992, commits China to make sweeping changes in its import administration over a five year period. Current discussions on market access for services and business facilitation and negotiations over IPR enforcement are aimed at addressing the interests of U.S. companies and building a solid foundation for

the future. Let me take each one in turn:

Intellectual Property Rights. Protecting intellectual property is vitally important if U.S. industries are to maintain their comparative advantage in the high-tech sectors they dominate. The Chinese have taken a number of positive steps to implement the 1992 IPR Agreement by changing and strengthening IPR laws and regulations. Although Chinese leaders have recognized the importance of protecting intellectual property, there is virtually no enforcement of these laws. As a result, there continues to be rampant piracy of U.S. IP products. In addition, China has a number of non-transparent regulations and practices that inhibit the legitimate import of U.S. IP products. Therefore, on June 30, Ambassador Kantor announced the initiation of a Special 301 investigation on China's IPR enforcement practices and market access for U.S. IP products. This investigation will run for six months.

Piracy of copyright and trademark works is endemic in China and the Chinese government has done little to bring it under control, much less eliminate it. China does not have an effective IPR enforcement agency and deterrents to piracy are woefully inadequate. Clearly, on enforcement, China lags well behind most countries in the region.

The International Intellectual Property Alliance notes that

piracy in China of software, books, audio records, and music and motion pictures remains serious. They estimate that, in 1993 alone, U.S. industries lost upwards of \$800 million to copyright piracy alone last year. In addition to market barriers, the absence of effective IPR protection is the greatest hindrance to access to China's market by the recording, motion picture, computer software, and other industries.

In order to resolve the IPR issue, we have asked China to:

- Take immediate, effective action to curb rampant IPR piracy, targeting especially manufacturers and distributors of infringing products, including trademarks;
- Develop a more effective IPR enforcement regime that has effective deterrents to infringement, eliminates conflicts of interest in the system, creates an effective border regime, and so on;
- Open China's markets to IP products, including audiovisual and published works.

We are continuing to hold negotiations on enforcement of intellectual property rights, with the aim of reaching agreement on a strict enforcement regime.

Market Access Agreement: China's implementation of the 1992 market access Agreement has been commendable, although some important exceptions remain. In the Agreement itself, China committed over a five year period to a major reform of its import regime. That includes elimination of 90 percent of all non-tariff barriers -- such as import licensing requirements and quotas, increased transparency, elimination of the use of import substitution, and an end to the use of sanitary and phytosanitary standards as barriers to agricultural imports.

China has taken important strides toward making its trade regime more transparent. China has published a large number of trade rules and regulations in the past year, so many that it has become difficult to keep track of them all. China nonetheless has a long way to go before its trade regime, and its trade institutions, are truly transparent. We are particularly concerned that China's provinces apply Beijing's trade laws and regulations uniformly and that the provinces' trade regimes are transparent.

China has made a major commitment to eliminate non-tariff barriers. Since the end of 1993, China has reduced to 400 from the several thousand the number of GATT-inconsistent non-tariff barriers. That is a major achievement and China should get credit for it, but more needs to be done. By reducing these barriers, China will open markets for computers, medical equipment, heavy machinery, textiles, steel products, chemicals,

pharmaceuticals, and other products.

China has not yet resolved our concerns about the use of sanitary and phytosanitary standards as barriers to imports of agricultural and live animal products. We expect China to move expeditiously to resolve these issues, in accord with the Agreement.

In 1994, we look forward to further transparency in China's trade regime, elimination of non-tariff measures, the liberalization of quantitative restrictions on products in the MOU, the establishment of a viable administrative appeals process, and the complete elimination of import substitution as a trade policy. Our negotiators are now working with China to achieve these goals.

Market Access for Services: Market access for services is another, integral, part of the U.S. bilateral trade agenda with China. China's services markets today are still largely closed. While limited experiments are underway, and a variety of extra-legal services ventures have started, legitimate access for U.S. companies in most instances is not available.

We have asked that China commit to substantial liberalization of its insurance, distribution, advertising, travel, communications, audiovisual and other services. As I noted earlier, these liberalizations are in China's own interest.

We expect, for example, that China will license more foreign insurance companies to operate in China on a national treatment basis, will open its enhanced telecommunications sector and its distribution system to U.S. companies, and will liberalize access to its audiovisual markets.

U.S. companies have much to contribute to China's economic development and prosperity. China cannot make the leap from a labor intensive economy to one with a higher technology base without considerable participation by foreign firms in its services sectors.

Finally, a vital component of our services agenda with China is improvement of its domestic business climate. Consistent with the obligations that China will assume under the GATT/WTO, we ask that China create a non-discriminatory environment within which both foreign and Chinese firms compete on an equal footing. Adherence to basic investment principles, such as the right of establishment and national treatment along with rights to conduct associated activities in a similar manner, would go a long way toward that end.

Textiles: In January, we reached a landmark agreement with China on textiles and apparel. The agreement was one of the most difficult to achieve among all of our bilateral textile agreements. We accomplished a number of important goals in this

agreement, most prominently, the basis to restore stability and predictability to our bilateral textile trade with China -- our single largest supplier of textiles. In addition, we strengthened our commitment to prevent the circumvention of our textile quotas, and established a system of triple charges for any illegal transshipments. Recently, for example, we charged China's quotas in two categories after determining that they had engaged in transshipments. We are proceeding to cooperate with China in the implementation of the agreement to improve administrative arrangements, such as the restoration of an electronic visa verification system, that will help China administer its quotas.

GATT/WTO: The United States is committed to "staunchly support" China's accession to the GATT/WTO and to work constructively with China and other GATT/WTO contracting parties to achieve -- in the words of the 1992 market access Agreement -- an "acceptable protocol" of accession.

Because China's foreign trade regime is so strong -- averaging 25 percent growth over the past five years -- China and the United States, as well as the other contracting parties, have a responsibility to ensure that China's accession is based on solid economic commitments. Maintaining basic multilateral disciplines is the bedrock of the GATT/WTO system. In proceeding with China's accession, the viability and vitality of the multilateral trading regime must take precedence and China must

be held to the same rigorous standard that all new applicants to the GATT/WTO will be held. By the same token, as is the case with other applicants, we are prepared to demonstrate the appropriate flexibility.

China has set an ambitious deadline for completing the accession process. China has stated that it wants to be an original member of the WTO. The pace of accession depends, in large part, on China and the commitments that it is willing to undertake as an important member of the multilateral trading system. We are not interested in setting artificial deadlines, we just want to get it right. And, we intend to work intensively with China to do just that.

The United States -- and certainly other contracting parties -- have concerns about China's commitment to some basic GATT obligations. Contracting party concerns include full transparency of laws and regulations -- as well as uniform application of these laws and regulations in the provinces -- national treatment, granting foreign firms trading rights and assuring that foreign exchange is not used as a trade barrier. China must commit to the progressive liberalization of its services markets, submit a schedule on agriculture, and protect intellectual property rights.

If China accedes to the GATT/WTO on anything less than solid commercial terms, or without firm commitments to take further

reform measures, not only will the United States be hurt, but our partners will be economically disadvantaged. Nor will our goal of seeing China better integrated into the world trade system be achieved. Therefore, in addressing China's protocol, we intend to identify each issue that needs to be addressed, and work to achieve realistic, pragmatic solutions.

Conclusion

In conclusion, while the Administration opposes HR 4590, it is strongly supportive of -- and has put forward a solid agenda for -- the improvement of human rights in China.

As for trade, the Administration proposes to move forward in our efforts to establish a mutually beneficial, reciprocal trade relationship. We have an historic opportunity to expand our trade relations with China and to help create hundreds of thousands of high wage jobs here in the United States through increased exports. We have a great stake, not only from a global, strategic perspective, but also from a domestic perspective, in opening China's markets and ensuring that China plays by the rules. We will make every effort to see that this happens.