

AMBASSADOR CHARLENE BARSHEFSKY
SPEECHES AND TESTIMONY
1996

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Business Council

**North-South Center/
Council on Foreign Relations
Talking Points
Ambassador Charlene Barshefsky
March 6, 1996**

Introduction

- Let me first thank Ambler Moss and Bruce Stokes for inviting me to speak today and for the support the North-South Center has provided the Summit of the Americas process -- particularly the Free Trade Area of the Americas.
- Also, it is a pleasure to return to Florida. Not only is it my mother's home, but it is the perfect place to talk about the challenges and opportunities we face -- as individuals and as a nation, as we approach a new century.
- Florida, and especially Miami, is truly the gateway to Latin America and the Caribbean, and provides an example of both the opportunities and challenges of international trade into the next century.
- But before focussing on our efforts to seize the opportunities and meet the challenges of trade within the Western Hemisphere, let me put trade in the broader context of the domestic economy.
- President Clinton came to office with a vision for setting this nation on a course to rebuild the strength of its economy. His goal is to build a foundation for new jobs and expanded opportunities for our workers. His vision for ensuring our nation's strength in the challenging and competitive global economy has essentially three parts.
 - First, to ensure that the American people have the tools we need to prosper in the new economy -- tools like an outstanding education, safe communities, and a government that creates opportunity, not bureaucracy.
 - Second, to provide fiscal integrity through a fair and practical deficit reduction plan and more efficient government.
 - Finally, to create more opportunities to sell our goods and services in foreign markets.

Restoring the Domestic Economy

- Under President Clinton's leadership over the last three years, America has moved a long way in facing its challenges. By working together, we have made great strides in strengthening our nation. We should all be proud of that record. Let's take a look at how far we have come.
- Our nation has the highest growth of any major economy in the world over the last three years. The economy has created 7.8 million jobs, 93 percent of which have been in the private sector. Unemployment is 5.6 percent. The combination of unemployment plus inflation--the so-called misery index--is the lowest in 25 years.
- We have added nearly one million new jobs in construction, manufacturing, and automobiles, industries that for years doomsayers have pronounced dead or dying. Since the start of the Clinton Administration, we have had the fastest growth of new businesses since World War II. Home ownership is at its highest level in 15 years.
- The federal budget deficit has been reduced three years in a row, for the first time since Harry Truman was President -- the largest three-year reduction in history. We're operating a smaller, smarter government. We've eliminated over 200,000 jobs from the federal government and are eliminating 16,000 pages of obsolete regulations.
- The World Economic Forum judged the American economy to be the most competitive in the world for the second time in a row -- after nine years of not reaching the top -- due to the competitiveness and enhanced productivity of American workers.

Expanding Economic Growth Through Trade

- Trade is a key component of the U.S. competitive success.
- And the President's trade policy has been critical to making international trade work for the American worker.
- President Clinton has consistently articulated an economic vision based on opening new markets to U.S. exports. To achieve this vision, we have entered 180 trade agreements, scrupulously monitored those agreements to ensure our trading partners are living up to their obligations, and vigorously enforced our trade laws.
- Why is trade so important to the President's vision? There are three key reasons:

- First, the days of the Cold War, when we sometimes looked the other way when our trading partners failed to live up to their obligations, are over. Trade has taken its place in the foreign policy agenda alongside strategic and political concerns.
- Second, we live in a new globalized economy. All of you understand this well. Business is truly an international affair now.
 - A new business will use startup capital from London, ship parts to the Caribbean Basin, return the assembled good into the port of Miami, and then sell the product around the world.
- Third, trade is more important than ever to the U.S. economy. In 1967 when President Johnson attended the Punta del Este Hemisphere Summit, the value of our international commerce (imports and exports of goods and services, plus receipts and payments on foreign investment) was equivalent to just 11.5 percent of the U.S. GDP. When President Clinton came to Miami, that percentage had increased to nearly 30%.
 - Twelve million workers in this country owe their jobs to exports. On average, these jobs pay 13 - 17 percent more than non-trade jobs.
 - Every billion dollars of exports supports 15,000 jobs.
 - Clearly, expanding trade is critical to creating good, high-wage jobs.
- And, because the United States has a mature economy and low population growth, to grow and prosper at home we must open the most lucrative markets in the world to U.S. exports -- particularly in the dynamic emerging countries in Asia and Latin America. We must become even better prepared to take advantage of the opportunities those high-growth markets offer.
- To do so, we must build a trading system which links those opportunities with responsibilities.
- The key to this, as the President said in a speech at American University in February 1993 when he outlined his trade policy, is to "continue to welcome foreign products and services into our markets, but insist that our products and services be able to enter theirs on equal terms."
- By basing his trade policy on that simple principle of reciprocity, where everyone plays by the same rules, he is standing up for American workers. This President understands how hard American families work just to break even, and he is

dedicated to ensuring economic security for them.

- This approach is laying the groundwork for an explosion of global trade that will create jobs here at home and promote economic opportunities around the world. The potential for promoting prosperity was very much on President Clinton's mind when he invited the 33 other democratically elected Leaders of the hemisphere to Miami for the Summit of the Americas.

FTAA Progress Continues

- The central element in the Miami Summit was the commitment by all 34 Leaders to conclude the Free Trade Area of the Americas (FTAA) by the year 2005, with substantial progress by the turn of the century.
- This historic commitment was made possible by the dramatic re-orientation in economic policy throughout Latin America and by President Clinton's ability to provide the vision of a truly hemisphere-wide economy.
- About six months later, Ambassador Kantor hosted the first Western Hemisphere Trade Ministerial in Denver.
- The "Joint Declaration" adopted unanimously in Denver launched the FTAA process. The Ministers agreed on several fundamental principles, the most important of which was that the FTAA will be a "single undertaking," i.e., every participant accepts all of the obligations - no freeriders (other principles were: compatibility with WTO obligations; content of FTAA to be balanced and comprehensive, covering all areas in the Summit Plan of Action; and commitment not to raise barriers against non-FTAA countries).
- The Ministers also established seven working groups, as well as agreeing to create four more working groups, covering the major areas of a comprehensive trade agreement, like the NAFTA.
- The seven existing working groups (market access; customs procedures and rules of origin; investment; standards and technical barriers; sanitary and phytosanitary practices; subsidies, countervailing duties and antidumping; and smaller economies) have made very significant progress in preparing for the launching of FTAA negotiations. This work does not generate headlines-- it is not sexy -- but it does constitute meaningful and essential progress on the FTAA's foundation. For example these working groups are creating the first comprehensive data bases on all countries' trade rules and practices - from tariffs to customs regulations to investment protection. This information is needed for negotiations and, when made available to the public, will be of major

benefit to business.

- I have found countries in the Hemisphere to be very enthusiastic about the FTAA process and eager to take the next steps.
- The Vice Ministerial meeting that will begin tomorrow in Bogota demonstrates the region's on-going interest in completing the FTAA in accordance with the Leaders' mandate. We expect to finalize a Cartagena Declaration that will give an additional push to the process.
- What do we hope to see emerge from the Cartagena Ministerial on March 20th?
 - In general, we want to continue an ambitious program for the FTAA. Just as we did in Denver, we want to ensure that the working groups make real progress on preparing for negotiations. Since Denver, each of the Working Groups will have met three times, and they each will provide detailed reports to the Vice Ministers this week. At Cartagena we will establish four additional Working Groups (services, intellectual property, government procurement, and competition policy), and we expect Ministers to request all of the Working Groups to make recommendations on possible approaches to negotiations in their respective areas. These recommendations should be given to the Vice Ministers well in advance of the Third Ministerial.
 - We also believe that Ministers in Cartagena should begin the process of developing the consensus on the paths and timetable for achieving the FTAA, i.e, what will the FTAA look like, how will we get there, when will we launch comprehensive negotiations? We hope that Vice Ministers can develop the consensus further in the months following Cartagena, so that by the Third Ministerial, probably in the second quarter of 1997, Ministers will be in a position to determine when and how to launch the formal FTAA negotiations.

(As Canadian Minister Roy MacLaren stated in Denver, we cannot rely solely on a process that waits passively for existing sub-regional arrangements to converge spontaneously.)

- We also would like to see Ministers instruct the working groups to develop concrete "immediate attention" measures, to use the Summit of the Americas' lingo, to facilitate business in the region. We want the private sector to realize early benefits from the FTAA as a way of generating even more support for completing this complex and difficult undertaking. Certainly there are practical integration steps that countries can take in

1996 and 1997 (e.g., begin to harmonize customs forms and expand the acceptance of electronically transmitted documentation; commit to universal adherence to the ICSID and the N.Y. Convention on the Enforcement of Arbitral Awards; establish principles of transparency and fair procedure in government procurement).

-- Ministers at Cartagena should consider the contributions to the FTAA process from complementary Summit-related activities, e.g., the Labor Ministers' report on economic integration and employment, which is one of the results of last fall's Hemisphere Labor Ministerial in Buenos Aires; the outcome of the Telecommunications "Ministerial" scheduled for October 1996 (which is developing guidelines for competition in value added services and type approval of telecom equipment--these activities should be pulled into the FTAA process, in the first instance for examination by the Working groups in Services and Standards, respectively). There also are an upcoming Ministerial on transportation and the Summit on Sustainable Development. Both will have relevance to the work of the Trade Ministers at their third meeting.

-- And, we want the private sector, as it is broadly defined, to have a substantive and continuing role in the FTAA process. Ministers should actively seek advice from the business community throughout the Hemisphere--on priorities and detailed objectives for the FTAA negotiations, as well as recommendations for the early action items that I mentioned earlier, i.e., steps that we can take in 1996 and 1997 to start the integration in practical terms.

- Let me note parenthetically that the United States does not require fast-track authority to take such steps or to make significant progress in the FTAA. For example, we did not have fast track when we began the Uruguay Round--it only becomes necessary as we approach the final stages of a negotiation.

-- Of course, we will seek fast-track to complete the negotiations of Chile's accession to the NAFTA and thereafter to offer membership in the NAFTA to others. It is very advantageous to us for countries to harmonize their policies with ours by adopting NAFTA disciplines, just as it has been beneficial to the European Union to have Eastern and Central Europe harmonize with EU law and regulations

- Finally, we believe that bringing all elements of the private sector into the FTAA process will promote a better understanding of the benefits of trade and help counter increasing criticisms of trade agreements.

NAFTA Benefits the United States

- Speaking of the increasing criticism of trade agreements, I should say a few words in passing about the NAFTA, which is an example of a comprehensive and reciprocal agreement that will benefit the U.S. economy for years to come.
- The NAFTA has already proven its value to the U.S. in the toughest of economic conditions -- the peso crisis and subsequent 7 percent drop in Mexican GDP.
- Even with an economic contraction in Mexico in 1995 that exceeded the 1982 crisis in its magnitude, Mexico is required by NAFTA to continue to open its market and stick to a market based economic reform program.
 - For example, the average Mexican tariff on U.S. goods before the NAFTA was over 10 percent. It has already been cut more than half.
- We only need to recall the 1982 crisis and its impact on U.S. interests to see the value of the NAFTA. In 1982, Mexico hiked tariffs to 100 percent, imposed import licensing measures and increased state control of sectors. U.S. exports were cut in half and took nearly 7 years to recover to the pre-crisis level.
- In 1995 and 1996 Mexico - because of the NAFTA - did none of these things to U.S. goods, services and investment. On the contrary, Mexico went ahead with two rounds of annual tariff cuts and continued the phase-in of disciplines that opened the economy further, including the privatization of various sectors.
- As a result, the U.S. share of the Mexican import market has increased from 70% in 1993 to 74% in 1995.
- U.S. exports to Mexico are still 11 percent higher in 1995 than they were in 1993 - the year before the NAFTA was implemented - and U.S. exports to both our NAFTA partners increased 31 percent in the same period to \$173 billion (compared to \$124 billion in U.S. exports to the fifteen countries of the EU).
- The NAFTA helped protect over 500,000 U.S. higher wage jobs that rely on exports to Mexico. Furthermore, even in the face of the economic contraction in Mexico, U.S. exports to our NAFTA partners generated an estimated 250,000 jobs since the NAFTA went into effect.
- But the NAFTA is not just about its current members. The NAFTA is a foundation for the Administration's effort to build the FTAA.
- The NAFTA disciplines are in many ways the floor upon which we expect to build

the FTAA. Furthermore, the NAFTA is the "gateway" for our commitment to trade agreement expansion in the hemisphere.

Conclusions

- The United States must lead in a hemisphere that takes 40 percent of total U.S. exports. We must lead in a region that is undergoing an economic transformation as significant as that in Eastern Europe.
- As host of the Miami Summit, President Clinton mobilized the entire hemisphere to adopt the specific goal of the Free Trade Area of the Americas (FTAA).
- As host of the Denver Trade Ministerial, Ambassador Kantor developed the consensus on an ambitious first-stage preparatory process for the FTAA negotiations.
- At the Cartagena Ministerial, even though we are not the hosts, the United States once again will exercise leadership for another ambitious step closer to the FTAA.
- All of you know how important the FTAA is to prosperity and democracy in the Hemisphere and to the economic and foreign policy interests of the United States. I hope that you will support actively our efforts to realize the vision of Miami.

**REMARKS OF CHARLENE BARSHEFSKY TO
THE INTERNATIONAL FEDERATION OF
PHONOGRAM INDUSTRIES (IFPI)**

APRIL 16, 1996

**Introduction: Trade Policies and the Importance of
Intellectual Property Protection**

- It is a pleasure to be here today in my first speech as the USTR to address the Clinton Administration's promotion of intellectual property protection particularly as it relates to your industry.
- I don't think it is an overstatement of our commitment to say that improving the protection of American intellectual property has been, and will continue to be, one of this

Administration's primary trade policy objectives. We are pursuing this objective all over the world.

- We have worked both in the bilateral and multilateral arenas, always with the goal of achieving higher levels of intellectual property protection and more effective enforcement .

Trade and Intellectual Property Protection

- Intellectual property -- or "IP" -- protection has become a critical feature of our trade policy. I don't have to tell you that piracy of intellectual property has been and continues to be a problem in numerous countries around the world. The U.S. copyright industry estimated that suffered losses

last year in excess of \$6 billion; the sound recording industry alone estimated losses of over a billion dollars.

While piracy exists in Europe, the United States and Japan, it is clear that the problem is most severe in developing countries.

- During the Cold War when political concerns were greater, we might have been able to tolerate such practices; but no longer. Now, expanding trade on fair and equal terms with these countries is critical to our effort to create jobs and promote growth in this country. Producing intellectual property, the products of the mind, is something that the United States does particularly well. As President Clinton has said, this is our comparative advantage.

- Negotiating strong IP agreements and enforcing them has taken on new urgency because of the increased importance of our intellectual property industries to our national competitiveness. Our copyright-based industries, for example, are growing at twice the annual rate of the economy. These U.S. industries are employing new workers at almost three times the annual rate of the economy as a whole and they contributed over \$46 billion in foreign sales, more than any other U.S. industrial sector except motor vehicles and auto parts.
- These two reasons -- the increased importance of trade with developing countries where IP piracy is greatest, and the

increased importance of IP industries to our economy -- are why we have made fighting intellectual property piracy a national priority.

- Throughout this Administration, the U.S. Government has been taking our concerns about inadequate intellectual property protection to other countries. We've been engaging these countries aggressively through a complementary mix of bilateral and multilateral initiatives. Bilaterally, our major policy instrument has been "Special 301;" multilaterally, it has been the TRIPs Agreement within the WTO.
- The bilateral approach has been used to persuade and/or

pressure other countries to support and then adopt high standards of protection in the TRIPs Agreement. We are now using TRIPs to encourage countries to adopt stronger standards in their own laws.

Special 301/ Bilateral Approach

- Allow me to say a few words about the Special 301 program.
- Each April, USTR identifies those countries which deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to U.S. persons that rely on intellectual property protection. A

major part of our analysis comes from information provided by the private sector, including RIAA.

- In doing so, those countries whose practices are most onerous or egregious and that have the greatest adverse impact may be identified as “priority foreign countries.”

The USTR may initiate a Section 301 investigation with the potential threat of trade sanctions against such countries. This has been occurring since 1989.

- Over that time we've learned that trade sanctions are often unnecessary to get another country's attention on these matters. We find in some cases that the simple listing of a country as a one which has problems with protecting or

enforcing intellectual property rights can have a significant impact. By publishing a list of such countries, the USTR is warning both the country of our concerns and potential investors that the intellectual property rights in any investment in such countries are not likely to be satisfactorily protected.

- We've made this process more sophisticated by dividing this list into categories called the "priority watch list" and the "watch list" and we've scheduled "out-of-cycle" reviews over the course of the year to ensure the pressure is maintained on countries.
- We rely heavily on our special 301 program to engage

bilaterally countries that deny adequate and effective protection to U.S. intellectual property right-holders and to achieve results in addressing the problems we identify. I think Jay Berman, Neil Turkowitz and other U.S. industry representatives will agree that special 301 has been very successful over a number of years in persuading other countries to improve their IPR protection. Significant gains have been made through this process, particularly in Asia, where major improvements in IPR protection and enforcement have been realized over the last several years in such countries as Korea, Taiwan, Thailand, the Philippines, Indonesia and Singapore.

One aspect of the special 301 process is that, just before we

make our annual determinations, there is a flurry of activity in those countries desiring not to be listed -- IPR laws are suddenly passed or amended, enforcement activities increase. In some cases, this has led to permanent improvement; in others efforts have been merely transitory and cosmetic.

- At the very end of last year's review, for example, we concluded bilateral agreements with Bulgaria on sound recordings and Singapore on patents, and extracted a commitment from Indonesia to strengthen copyright enforcement. Other agreements and unilateral actions occurred at the end of each previous year's review with countries from all corners of the world.

- Two weeks remain in this year's annual review. The conclusion of bilateral agreements or unilateral actions by certain countries are likely over this period. The passage of new patent legislation in Brazil just last week is one example of this.

China

- The single most significant bilateral IPR matter today is China, from which I have just returned.
- Last year -- after 22 months of negotiations -- the United States and China signed a sweeping Agreement to ensure

protection to foreign and Chinese right holders for many kinds of intellectual property.

- The Administration is in the process of evaluating China's compliance with the IPR Enforcement Agreement. The elimination of piracy in China is a long term process. But we expect China to satisfy the provisions of this Agreement. Our officials have met with their Chinese counterparts 19 times in twelve months to ensure compliance with their responsibilities under the agreement.
- The 1995 IPR Enforcement Agreement committed China to (1) take effective measures to protect intellectual property

through enforcement actions, including action against those CD factories producing CDs, CD-ROMs, Video CDs, and LDs; (2) create an effective structure for the enforcement of intellectual property rights, including establishment of intra-ministerial task forces to coordinate anti-piracy efforts throughout the country and an effective Customs enforcement regime; (3) provide market access for computer software, motion pictures, and sound recordings; and (4) extend the so-called "special enforcement period" for problem regions.

- China has taken steps to enforce the Agreement. It has launched over 4,200 enforcement actions against IPR pirates in the year since the Agreement was signed.

Chinese enforcement authorities had more than one million officers engaged in raids and destruction of infringing works. Over the past year, China has seized and destroyed more than two million pirated CDs, CD-ROMs, Video CDs, and laser disks, and hundreds of thousands of pirated videos, audio cassettes, books, and trademarks. While still a problem, China's retail markets are substantially cleaner this year than they were last year.

- The United States has committed considerable resources to ensure thorough implementation of the Agreement. The U.S. Customs Service, the FBI, Department of Justice, Patent and Trademark Office, the Department of Commerce and the U.S. Information Agency have all

offered training and assistance -- and will continue to do so. U.S. industries have been equally generous. All of the major associations, Recording Industry Association of America, the Motion Picture Association, the Business Software Alliance and others have offered training and assistance to Chinese central government agencies and to their provincial affiliates.

- Despite all of these steps, piracy in China continues. While going after retail pirates, the Chinese authorities have yet to take promised action against major producers and distributors. As a result, CD factories in south and central China produced some 54 million CDs and LDs in 1995 for a domestic market that can absorb only two to five million.

U.S. industries report that China continues to import CD production lines, and may soon have a production capacity that is close to 200 million CDs.

- While CD piracy has remained rampant -- particularly in Guangdong Province -- Chinese CD producers have moved upscale, focusing on the export of high value-added CD-ROMs. A single CD-ROM produced in China can hold \$10,000 of U.S. software, and may sell for less than \$10 retail in Hong Kong.
- Make no mistake. This is not just a problem within China's market. Chinese pirates, apparently using Hong Kong as a transshipment point, are exporting pirated CD-

ROMs and CDs to markets in Southeast Asia, Latin America, and North America. Pirated CDs from China are now entering markets in Russia and the CIS states. Even without counting their losses in these third country markets, U.S. industries estimate that they lost \$2.2 billion in 1995 -- more than double the amount lost in 1994.

- China's obligations under last year's agreement boil down to four key areas -- closing pirate factories; reinstating a special enforcement period in Guangdong where piracy is at its worst; providing market access for intellectual property industries; and implementing effective border enforcement.

Multilateral Trade Initiatives

- Now let me explain the multilateral side of our IP policy.
- One of historic achievements of the Uruguay Round was negotiation of the so-called TRIPs Agreement -- the Agreement on Trade-Related Aspects of Intellectual Property, which writes into the global trading system basic rules covering intellectual property.
- The TRIPs agreement is the first international agreement on intellectual property that combines substantive rules with enforcement obligations. All WTO Members will be required to provide high levels of protection for patents,

copyrights, trademarks, trade secrets, layout designs, geographical indications and industrial designs. Of equal importance is that countries must establish a system which permits the effective enforcement of those rights. The TRIPs Agreement also is the first multilateral intellectual property agreement that is enforceable between governments through the WTO's dispute settlement provisions.

- For you and your members of the sound recording industry, one of the great accomplishments of the TRIPs Agreement is the inclusion of Article 14, which provides new levels of protection for performers and producers of phonograms. This Article requires, among other things, that members

must prevent the bootlegging of performances, provide a reproduction and rental right for producers of phonograms, a 50 year term of protection and protection for pre-existing sound recordings.

- While most developed countries were required to complete their TRIPs implementation by January of this year, developing countries could have until January, 2000 to implement most TRIPs provisions.
- This is one place where our TRIPs objectives are complemented by Special 301. We will use the leverage provided by Special 301 (and any other pressure or persuasion we can bring to bear) to accelerate developing

countries implementation of their TRIPs obligations. This is happening already. Many developing countries are accelerating or have announced that they will accelerate the process of bringing their legislation into conformity with TRIPs well before expiration of the TRIPs transition period.

- Developing countries are not without any obligations under the agreement right now. As of January 1, 1995, they may make no changes to their intellectual property regimes that would have the effect of taking them further out of compliance with the agreement. This is called the “standstill” provision.

- And, more importantly, since January 1, 1996, all developing countries have been required to comply with the national treatment and most-favored-nation treatment provisions of the TRIPs Agreement.
- We expect to hold our trading partners to TRIPs obligations. For our developed country trading partners, we expect them, as they expect us, to have had all the obligations of the agreement implemented by January 1, 1996. And we will expect our developing country trading partners to meet their interim obligations.
- To the extent that our trading partners do not live up to these obligations, we will very vigorously use the WTO

dispute settlement mechanism to challenge non-compliance. As you know, we have already initiated the first TRIPs-related dispute over Japan's failure to provide protection for pre-existing sound recordings back to 1946 as required by TRIPs. The Japanese have subsequently agreed that they should provide such protection. We are now working out the details of how this will occur. It is possible that this matter will be successfully settled in the near future.

- We will initiate other dispute proceedings if we learn that other countries are in non-compliance with their TRIPs obligations. We are currently looking at additional cases. Several are in the patent area. In copyright, we are

examining the lack of retroactive copyright protection in countries such as Korea, and the absence of rental rights for sound recordings and computer software in countries such as Singapore. At the end of April, as part of our special 301 announcement, I may announce the initiation of such additional cases.

TRIPs and the Future

- Most of our focus today is on achieving and accelerating TRIPs implementation. However, we must look beyond these existing obligations. IP protection and enforcement can't be static.

- We must develop rules and procedures that accommodate changing technologies. Special emphasis must be placed on digital technologies, where the availability of technology to produce near-perfect quality pirated products are frightening for your industry.
- As we consider these digital issues, we must also strike a careful balance between the competing interests of our domestic producer and user constituencies.
- Such digital issues are being addressed now in WIPO, in the so-called Berne Protocol/New Instrument negotiations. We look forward to a successful conclusion to these negotiations in the near future. When this occurs, we will

give serious consideration to incorporating the provisions of this WIPO negotiation into TRIPs, in part so that these new standards will be subjected to TRIPs enforcement and dispute settlement provisions.

CONCLUSION

- Having strong and effective intellectual property protection is critical to the health and success of the global trading system. It bolsters one of the most competitive aspects of our economy and helps in our effort to create jobs. But it also fuels growth in other countries and confidence in the global trading system.

- One of the most interesting outcomes of our bilateral and multilateral initiatives in this area has been the positive educational effect on other countries. We have seen that countries have learned that protecting intellectual property is a fundamental component of the liberalization of their economy and the development of their technological base.
- We still have a long way to go. In fact, we have seen that bilateral efforts with other governments can be inadequate. In some instances, as one country enacts and enforces modern laws, pirates simply move to another country. We have chased certain pirates across the globe from Singapore to Indonesia to Dubai to Poland and China. Pirate industries have in many instances become well-

established political forces in their country and have worked to block reform legislation.

- Another example of the shortcoming of bilateral pressure alone is the limited result we have achieved in a variety of countries over pharmaceutical patent protection. In some countries we are succeeding after years of effort.

Enactment of patent legislation in Brazil last week is an example. In others, like Argentina, Turkey and India, we have used a variety of bilateral pressures over the years without being able to persuade them to permit the patenting of pharmaceuticals. Now, TRIPs obligates these countries to provide such protection by 2005 at the latest.

- This is why we needed the TRIPs Agreement. This agreement will require all WTO members -- without exception -- to abide by the same rules, be governed by the same dispute settlement procedures and be subject to authorized sanctions if they fail to act against piracy.
- As the nations of the world become more interdependent it is inevitable that we will begin to address the internal policies of each other that affect trade. The price for the opportunities that come with global growth is the need for all countries to accept the responsibility to make the global trading system work for the benefit of all people.
- We must not lose sight of what is at stake: the jobs and

livelihoods of people around the globe.

Testimony

~~Draft 1~~

**Testimony of
Ambassador Charlene Barshefsky
Acting United States Trade Representative
Before the
House Appropriations Committee
Subcommittee on Commerce, Justice, State,
The Judiciary and Related Agencies
May 8, 1996**

I am pleased to appear before you to present the Fiscal year 1997 appropriation request for the Office of the United States Trade Representative. This is my first opportunity to testify before this subcommittee and I look forward to working with you, Mr. Chairman, and the members of the Subcommittee.

As you might expect, the past few weeks have been both difficult and challenging with the death of Secretary Ron Brown, and with Ambassador Kantor's move from USTR to the Commerce Department. Despite this chain of events, the Office of the United States Trade Representative will continue to be an active and effective force in coordinating U.S. trade policy, and in monitoring and enforcing trade agreements and expanding trade. We do not intend to relax our pace nor lessen our efforts through fiscal year 1997.

This morning, I would like to present USTR's program priorities for the next two years, describe our budget request for FY 1997 and respond to questions the Subcommittee may have.

Program Priorities

This year and next will be every bit as challenging as the past three years have been. Working together, the President and the Congress, have achieved a record number of agreements and created economic opportunity for the people of this country.

Merchandise exports have grown 31 percent since President Clinton entered

office. In 1995, for the first time in years, the exports of merchandise grew faster than imports -- a 14.4 percent growth rate for exports versus a 12.1 percent rate for imports. The change is significant. It demonstrates that we have turned an important corner, and that our trade policies are working.

Last year we also hit an all time agricultural export record of \$56.0 billion -- that's a 22 percent increase over 1994's strong performance.

A true measure of our trade policies is the creation on new jobs for American workers. Since 1993, more than one million jobs have been created because of increased exports. Overall, eleven million American jobs are supported by exports. Jobs supported by merchandise exports are better jobs, paying on average 13 to 16 percent more than other jobs.

To capitalize on promising trade and investment opportunities around the world, our priorities and workloads for the next two years will continue to focus on implementation, enforcement and expansion of trade agreements related to market access.

Implementation

A major priority this year is to ensure that the members of the World Trade Organization are fully implementing the commitments they made during the Uruguay Round of multilateral negotiations. In December 1996 the WTO will embark on the first of series of regular ministerial sessions to assure regular, political level review of ministers in the operations of the WTO. We will continue to press for the implementation of Uruguay Round commitments through regional initiatives such as the Free Trade Area of the Americas, the Asia-Pacific Economic Cooperation forum and the TransAtlantic Market Place, and through the use of WTO dispute settlement procedures, where necessary.

We have already used the dispute settlement procedures to compel implementation of intellectual property commitments by Japan, Portugal and Pakistan, and we will invoke those procedures with respect to India and Turkey as well, if they do not take adequate steps to implement their obligations. We also will be paying particular attention to the implementation of key bilateral agreements, including those with Japan, China and the European Union.

Japan: In the past three years we have negotiated 21 trade agreements with Japan. Last year the U.S. trade deficit with Japan fell 9.7 percent. U.S. exports have grown to record levels. Since the beginning of this Administration, U.S. exports to Japan have increased by 34 percent -- more than the 31 percent growth rate for all merchandise exports. We continue to place a high priority on outstanding trade disputes especially in the areas of semi-conductors, insurance and film. We seek to build an equitable relationship with Japan and open Japanese markets to U.S. goods and services.

China. With respect to China, while we have achieved important successes in some areas, we will continue to focus on creation of a better and more fair trade and investment climate. Special attention will be paid to achieving full implementation of the 1995 Intellectual Property Agreement, including the suppression of piracy of computer software, audiovisual works, patent works and trademarks.

Unfortunately, IPR is not our only concern with China. China continues to apply unscientific phytosanitary standards to U.S. wheat, citrus, stonefruit, table grapes and tobacco. We will continue to press these issues until they are resolved. Other sectors in which the United States is extremely competitive also remain restricted, including services such as value-added telecommunications and insurance.

Europe. We will continue to monitor implementation of bilateral agreements with the European Union, primarily on issues of subsidization and market access. Our efforts will cover implementation of agreements on aircraft subsidies, pasta subsidies, fruit subsidies, as well as market access for wine and non-grain feed ingredients and lower tariffs on technology products.

Enforcement

Enforcement of both international trade agreements and U.S. laws underpins the Administration's approach to trade and will be central to our agenda in 1996 and 1997. In accordance with this priority, USTR established at the beginning of the year a permanent Monitoring and Enforcement Unit, using existing USTR personnel and financial resources, devoted exclusively to monitoring the

implementation of U.S. trade laws and trade agreements, determining compliance by foreign government with their agreement obligations, and pursuing actions necessary to enforce U.S. rights under those laws and agreements. We fully expect to use all enforcement mechanisms available to us to ensure that others keep their commitments.

The United States has taken more complaints to the new World Trade Organization (WTO) than any other country -- we have invoked WTO dispute settlement procedures in 12 cases since the WTO was established in January 1995.

We have succeeded in reaching settlements in some cases -- involving Korean shelf-life standards for agricultural products, and our exports of grains to the European Community -- and we are actively pursuing the others through consultations and panel proceedings. Since January of this year, we have initiated six new WTO cases, three of which involve failure by our trading partners to enact laws protecting intellectual property rights, as called for under the new WTO agreements, including a case against Japan on protection of sound recordings, and cases against Portugal and Pakistan involving patents. Our dispute settlement agenda will continue to reflect this Administration's commitment to active enforcement of our trade agreements.

We will also continue to use our trade laws to open markets and ensure reciprocity of benefits. At the end of March, we completed our annual review of telecommunications trade agreements under Section 1377 of the 1988 Trade Act. This year's review focused on U.S. concerns about implementation of bilateral agreements with Korea and Japan, and Mexico's implementation of the NAFTA telecom chapter. Follow-up negotiations are continuing and we will invoke NAFTA dispute settlement procedures if we cannot resolve our concerns with Mexico.

Just last week, we announced our decision in two important areas: "Section 301" on protection of intellectual property rights, and "Title VII" on discrimination in foreign government procurement. Our use of these statutes demonstrates the Administration's continued resolve to take strong measures to ensure comparable market access and intellectual property protection for U.S. products and to promote more open foreign procurement practices -- measures that are key to this Administration's policy of opening markets and creating opportunities for U.S.

companies and jobs for American workers.

Expansion

An important element of our agenda is to build on regional and multilateral market access agreements seeking greater openness worldwide to our goods. In the past six months, we have held regional trade ministerial level meetings with APEC representatives in Japan and with ministers from the Americas in Columbia. The APEC and Latin America regions are the two fastest growing in the world, and will continue to expand markets for American-made products and services. Removing barriers to trade and opening markets will increase the opportunity to export and create new jobs for American workers for years to come.

We also aim to expand the coverage of trade agreements to address practices that undermine the benefits achieved through stronger trade rules and market access commitments: trade distortions created by artificially low labor standards, excessive regulation, the lack of transparency, bribery and corruption, barriers to environmentally sustainable development, and anti-competitive behavior.

FY 1997 Budget

Our FY 1997 budget request will give USTR sufficient resources to meet the tasks that lie ahead: monitoring, enforcing and expanding trade agreements.

For FY 1997, we are requesting \$21,449,000 and 164 Full time Equivalent staff (FTEs). This request provides essentially the same program funding level as the past three years, plus \$560,000 to rewire USTR's headquarters building. Our request also reduces the authorized staffing level by 2 FTEs.

Funding resources will be allocated across the same categories of expense as in recent years, with two-thirds of our budget spent on employee compensation.

The one significant funding change in FY 1997 is the \$560,000 request to replace

the wiring in the Winder Building. USTR now has an excellent computer system, but lacks an adequate wiring plant to sustain that system. The inadequate copper wiring supporting the computer network is some 30 years old, and should be upgraded. Our budget proposes to replace the copper wire with fiber optic cable, which will salvage the computer system and serve the agency's communications and data management needs well into the next century.

With respect to staffing, USTR will continue to do its small part to reduce the size of Government. Since FY 1993, we will have reduced staff by a total of 9 FTEs, a decrease of more than 5 percent in four years. This staffing level will continue to be supported by personnel details from other Federal agencies.

Summary

In past years, this Subcommittee has strongly supported USTR's mission to open markets and to expand trade opportunities. Your continued support remains critical to the success of USTR and America's economic prosperity.

This concludes my formal remarks. I would be pleased to answer questions you may have.

**Remarks before the
Pacific Basin Economic Council
Ambassador Charlene Barshefsky
May 21, 1996**

I'd like to thank Bill Hudson for that kind introduction; and Gary Tooker for his leadership in PBEC and work setting up this conference. It is a pleasure to appear before PBEC today. You have a thirty-year history of promoting trade and investment opportunities in the Pacific Basin and I look forward to working together to expand trade and foster growth in the region.

It is difficult to keep pace with the history in which we live. In the span of less than a decade, we have watched the fall of the Soviet empire, the reunification of Germany, the end of apartheid in South Africa, and the hopeful emergence of peace -- however tenuous -- in the Middle East.

We take for granted the arrival of the much-vaunted "post-Cold War" era. And yet we struggle to articulate the thread that will weave this new era and nations together. In an ironic way, the Cold War made things easy. Fear is a powerful motivator. In Asia and elsewhere, during the Cold War, traditional security concerns were overriding. But as the President noted yesterday, despite the end of the Cold War, the United States continues to have vital strategic priorities in Asia, including a continued military commitment to the region, support for stronger security cooperation among Asian nations, leadership to combat the most serious threats, and support for democracy.

In addition, the President noted that "reinforcing the security pillar of America's relationships in Asia also advances American economic interests. Security and stability unleash resources for human progress." As a result, "With both security and economic interests so deeply at stake, we have pursued from the outset an integrated policy, pursuing both fronts together, advancing on both fronts together."

Today, we have an historic opportunity to create a new system of international relations, a system founded not on mutual fear -- but on mutual prospects; a system animated not by the threat of mutual destruction -- but by the potential for mutual prosperity. International trade is at the heart of this new system.

While the opportunity is clear, so too are the obstacles. Mutual prosperity can occur only in a system of symmetrical relationships -- where all nations accept mutual obligations and reciprocal responsibilities. The strength and prosperity of the United States and the nations of East Asia depend on our joint ability to maintain mutually beneficial trade relationships.

I want to focus on two areas demonstrating both the problems and potential in our trade relations with Asia. We have important issues with a number of countries in the region -- Korea, Vietnam, and, of course, Japan. But I would like to focus today on our dispute with China over

protection of intellectual property rights, and the important work we are doing in the region through the Asia Pacific Economic Cooperation forum.

I don't need to lecture this audience about the potential of the Pacific market. The numbers are stunning. By the end of this century, economists predict that one half of world trade will take place in the Asia-Pacific region.

Despite the obvious potential of this relationship, our mutual ability to reap the benefits remains far from inevitable. From both ends of the U.S. political spectrum we hear calls for isolation and protectionism. We ignore this development at our peril. Calls for isolation and protectionism are like radar -- they only register when they strike something solid. We must ask ourselves why these calls find resonance.

The answer has important implications for American trade policy, and I want to speak frankly about it today. In many aspects of our trade relationship with Asia, Americans rightly perceive imbalance.

Building -- and maintaining -- an American constituency for an internationalist trade policy depends in no small part on establishing greater reciprocity in trade -- where we share both the benefits and the obligations.

When it works, trade is an obvious example of a system founded on mutual benefit. Unfortunately, while Asia is a region of enormous potential, it is also the region where Americans face the greatest obstacles to trade.

Nowhere is this more apparent than in the U.S. relationship with China. China is the world's fastest growing major economy, with real growth of more than 10 percent last year, and average growth rate of almost 10% for each of the past fourteen years. Already possessing the world's largest population, by early in the next century, China may have the world's largest economy.

It is an understatement to say that the U.S.-China relationship is complex and multifaceted. America has a range of issues with China that go far beyond trade. We have a deep and abiding interest in human rights, and are critical when basic international norms are not met. We have continuing concerns in areas ranging from non-proliferation to environmental protection. And increasingly, trade is at the center stage.

The President yesterday announced formally the Administration's support for extension of unconditional MFN to China for another year. The United States' interests in China are best promoted if we maintain MFN as the foundation for our trade relationship.

But the opportunities in our relationship must run in both directions. For China, the potential of the U.S. market is matched by a tangible reality. Roughly one third of China's exports go to the United States, including tens of billions of dollars worth of electronic machinery, textiles, footwear and an ever increasing volume of higher value added products. In

addition, Chinese companies -- like all foreign companies -- are allowed to establish freely in the United States. No one restricts their right to do business with American customers.

For the United States, it is certainly true that China offers unmatched potential. With the largest population on earth, traders for 150 years have dreamed of tapping the China market. Businessmen in 19th century Britain dreamed of adding an inch to the shirt of every Chinese. Today, we dream of putting a cellular phone in the hands of every Chinese.

Unfortunately, while progress has been made, for the United States, the potential of the China market remains unfulfilled in many respects. China continues to maintain one of the most protectionist trade regimes in the world. While the United States accepts one third of China's exports, China accounts for less than 2% of U.S. exports. China blocks access to its markets for many U.S. goods -- especially capital goods -- limits investment opportunities, and discriminates against U.S. and other foreign business people in other respects. In areas of increasing U.S. comparative advantage -- especially services -- China keeps its markets closed while Chinese companies scramble to create monopolies.

China must open its markets. The first step is to ensure compliance with commitments already made. China is falling short in this regard.

As you are well aware, last week the United States announced the publication of a \$3 billion preliminary retaliation list targeting Chinese exports to the United States. This action sets in motion a 30 day clock before any final action occurs. The basis of our action is China's failure to enforce satisfactorily its commitments under the 1995 agreement on intellectual property protection.

We do not take the move toward retaliation lightly. China has taken some steps to protect intellectual property rights, for example, by creating the underlying legal framework. China has worked also to clean up markets in key cities such as Shanghai, and has established intra-ministerial task forces and strike forces to target piracy, particularly at the retail level.

Despite these measures, China has not enforced key areas of the agreement, including halting piracy at its source. As a result, important American industries and broader American and international interests are getting hurt.

The United States has gone the extra mile to solve this problem. Since the signing of the agreement last year, we have sent eight delegations to China and its provinces and conducted more than thirty senior level meetings. China knows exactly what it must do to get back on the compliance track. The issue now is for China to take the necessary measures to dramatically reduce piracy at its source and at its borders.

The United States has worked diligently to provide technical assistance in support of this effort. Key U.S. law enforcement agencies have provided assistance to the Chinese including the Department of Justice, the FBI, the Customs Service, the Patent and Trademark Office, the U.S.

Information Agency, the Library of Congress, and, of course, USTR. Additionally, our private sector officials have hosted dozens of training seminars throughout China. In fact, our companies have gone so far as to donate computer equipment and software to the Chinese customs service.

We sincerely hope that China will take the concrete actions necessary to demonstrate its firm commitment to the agreement and ensure its implementation. There is time for this to happen before the sanctions go into effect. We are prepared to work with the Chinese toward that end. But it is decisive action against piracy that China must now take.

One last point on this: The IPR issue has significance beyond bilateral relations between the United States and China. Last year's Intellectual Property Agreement is an MFN-based agreement. As the world's fastest growing market, whether China enforces its trade obligations matters for everyone. We are not the only nation for which the protection of intellectual property rights is important and this is well known to China. Remember, we have not asked China to do anything more than what other Asian nations are already doing -- indeed what China has already agreed to do. The vitality and success of the global trading system depends on everyone living up to their obligations.

In the interim, we will protect our economic interests.

Although disputes dominate the headlines, we shouldn't lose sight of the ongoing, day-to-day efforts to expand trade and forge closer economic ties in the Asia-Pacific region. We have recently established a new U.S. Commission to assess our trade and investment policies in the region and develop recommendations to further broaden and deepen our trade ties. Bilateral negotiations are important, but equally important is the groundwork for future prosperity which we are laying in APEC and multilaterally in the WTO.

APEC is the vehicle for building a regional economic structure to ensure that we continue to promote prosperity and stability over the long term. After growing from the original dozen countries in 1989 to 18 countries on both rims of the Pacific, APEC is a unique combination of the world's biggest *existing* markets and the world's biggest *emerging* markets.

APEC in its early years did not have a central, defining focus. When President Clinton hosted the APEC Summit at Blake Island in Washington state in November 1993, he was determined to see direction for APEC. At Blake Island, APEC leaders announced for the first time their commitment to a unifying vision -- the reduction of barriers to trade and investment. Having set their course in 1993, APEC leaders met in Bogor, Indonesia in 1994 and with the remarkable leadership of President Suharto, agreed to dismantle barriers that have impeded trade and investment between their economies over the next 25 years. And last year in Osaka, APEC began to tackle the tough nuts-and-bolts issues to implement that vision, the Bogor Declaration.

We have a road map. Now we must follow it. And by basing our efforts on the principles of opportunity, cooperation, and reciprocity, we will move build a future of stability and prosperity together.

This year begins the long and difficult journey of implementing the Osaka roadmap toward the three goals of trade liberalization, cooperation and facilitation in APEC. This week, the U.S. delegation is presenting our draft individual action plan to other APEC delegations in the Philippines and have been working with others throughout the year in developing the collective steps that each APEC economy will take. Among other initiatives, we are proposing specific sectors for early achievement of free and open trade, including information technology, wood products, oilseeds and non-ferrous metals. We hope that APEC can reach agreement on these areas so that they become the basis for broader agreement within the WTO.

We are ready to engage in the real tasks of developing trade and investment regimes that are mutually beneficial -- and we stand ready to help and assist other countries in reaching this regional goal.

We should expect neither too much nor too little. For some, the steps toward opening their markets are many; for others, like our own, the steps are fewer. Our expectations should be shaped by the realization that this year initiates the first in a year-by-year process. And to this end, I pledge our commitment to work with you. PBEC can play a vital role in contributing practical ideas to achieve the Blake Island and Bogor visions of free and open trade in the region. The United States will continue its leadership role.

The importance of APEC as the vehicle for regional economic growth does not detract from the importance of multilateral efforts. Indeed, APEC compliments -- and bolsters -- the World Trade Organization, as do bilateral negotiations. And we will work with APEC as, together, we help define the Singapore WTO agenda.

President Clinton yesterday called for an "Asia Pacific community built on shared efforts, shared benefits, and shared destiny -- a genuine partnership for greater security, freedom and prosperity."

Our vision of engagement and alliance is founded on the prospect of mutual prosperity. It is a vision that is within our reach. But we're not there yet. There is no magic in trade negotiations. This is only frank discussion and hard work. The United States stands ready to do its share of the heavy lifting.

**Testimony Before
The Senate Finance Committee
Ambassador Charlene Barshefsky
June 6, 1996**

Mr. Chairman, it is a pleasure to appear before this Committee today to discuss the U.S.-China relationship and the question of intellectual property rights enforcement.

It is an understatement to say that the U.S.-China relationship is complex and multifaceted. America has a range of issues with China that go far beyond trade. We have a deep and abiding interest in human rights, and are critical when basic international norms are not met. We have continuing concerns in areas ranging from non-proliferation to environmental protection. And increasingly, trade plays a central role in our relationship.

Make no mistake about it. Americans have a commercial stake in China. At least 160,000 Americans owe their jobs to U.S. exports to China. Just as we should not make apologies *for China*, we should not apologize for our economic interest *in China*.

China is the world's fastest growing major economy, with annual growth rates of more than 10 percent for each of the past four years -- and average growth rates of greater than 7 percent for each of the past fourteen years. Already possessing the world's largest population, by early in the next century, China may have the world's largest economy.

On Friday, the President sent to Congress the formal waiver recommending extension of unconditional MFN to China for another year. The United States' interests in China are best promoted if we maintain MFN as the foundation for our trade relationship.

Mr. Chairman, we will never achieve China's full integration into the international community by building walls that divide us. The most repressive periods in modern Chinese history did not occur in times of open exchange -- they occurred in times of isolation. President Clinton believes we must remain engaged with China.

But let me be clear about what we mean by engagement. President Clinton came to office with the strong view that engagement with China does not mean *ignoring* our differences. It means we actively engage China to *resolve* our differences and it means protecting our interests when consultations are not fruitful.

When the President decided to delink human rights and MFN two years ago, he said that we were prepared to use a whole array of legislative and administrative methods to address specific issues with China. With respect to trade, as the President has repeatedly said, we welcome foreign products, but insist that our products be treated fairly overseas. When other countries do not live up to their obligations, we will take action. More than three years ago the President affirmed that, "We must enforce our trade laws and our trade agreements with all the tools and energy at our disposal." We have used all of the tools at our disposal to open China's market.

One area of immediate difficulty, of course, is China's lack of satisfactory implementation of the 1995 Intellectual Property Rights Enforcement Agreement.

Mr. Chairman, as you are well aware, last month the United States announced the publication of a \$3 billion preliminary retaliation list targeting Chinese exports to the United States. This action set in motion a 30 day clock before final action occurs. Today and tomorrow, USTR is holding public hearings on the retaliation list. Following this period for public comment, we will prepare a final list with a value of approximately \$2 billion -- a figure commensurate with the damage inflicted on U.S. industries. Barring satisfactory implementation of the IPR Enforcement Agreement by China, the final list will go into effect on June 17.

We do not take the move toward retaliation lightly. China has taken certain actions to improve IPR protection particularly in the retail sector. Over the past year, China has carried out more than 4000 raids and destroyed approximately 2 million pirated CDs, and hundreds of thousands of pirated books, audio cassettes, and trademarks. Some IPR court cases involving foreign rightholders have also been resolved successfully over the past year.

China has also established a nationwide IPR enforcement structure as required under the Agreement -- a system of more than 30 provincial and municipal level task forces comprised of enforcement agencies and the police. The system -- designed to target piracy, levy stiff fines, and remand infringers for criminal prosecution -- is working in some localities. In Shanghai, for example, officials have made IPR protection a priority and have taken effective action to clean-up the city's markets. Clearly, where Chinese officials have demonstrated resolve, they have shown that piracy can be brought under control.

Despite these measures, China has not enforced key areas of the agreement, including halting piracy at its source. As a result, important American industries and broader American and international interests are getting hurt. Last year, China exported approximately 50 million pirated CDs, CD ROMS, VCDs, and LDs to the world. Today in Hong Kong and elsewhere, \$10,000 software packages can be purchased for as little as \$5. Pirate versions of Microsoft's Windows 95 were on sale in China before it was officially introduced. Motion pictures are often pirated and available on VCD disks before they are released in the United States.

The affect of this activity on the U.S. economy is clear. U.S. copyright industries alone represent more than 5 percent of the U.S. work force -- roughly equal to the U.S. auto industry -- and are growing three times as fast as the rest of the economy. The copyright industries contribute more than \$350 billion a year to the U.S. economy, accounting for more than 6% of GDP. The U.S. computer software industry alone maintains a 75% market share worldwide and created almost 60,000 jobs last year. When China pirates American products, it denies the ideas, the enterprise, and the jobs of these American companies and the workers they represent.

China must take four key actions to remedy the current IPR situation and implement the

IPR Agreement:

First, action against the factories involved in the production of pirate CDs and CD-ROMS. We have an aggressive strategy with China to ensure -- to the best of our ability -- that all CD factories in China are producing legitimate CDs, LDs, CD-ROMs, and Video CDs. The IPR Agreement that we have in place with China calls for the clean-up all factories producing pirated products. We have targeted the worst offenders and have asked the Chinese to close down these factories immediately. In addition, we are working with the Chinese Government to ensure that the remaining factories are cleaned-up or closed down. The point is that we need to see a comprehensive system in place to crackdown on piracy in China.

Second, intensify enforcement in areas of China where piracy continues to be rampant, such as Guangdong Province. While China has raided retail establishments extensively, regions such as Guangdong continue to engage in rampant piracy. Manufacturers and distributors have remained untouched. Major pirates have not been punished, and prosecutors remain reluctant to tackle copyright infringement cases. Penalties are rarely sufficient to deter piracy -- for pirates they are now simply a part of the cost of doing business.

Third, take effective action to protect intellectual property at China's borders -- particularly seizures of bulk cargo shipments. Exports of pirated products -- mainly from Southern China through Hong Kong -- result in huge losses for U.S. companies in third country markets. China's Customs Service has conducted more than 1000 seizures, but mainly against foot traffic at the border. China has yet to target cargo shipments -- the primary export method for pirated CDs.

Finally, permit market access for U.S. computer software, sound recording and motion picture products and companies. China has not yet fulfilled any of the major elements of the market access commitments that it undertook in the IPR Enforcement Agreement. Although China has entered into some revenue-sharing arrangements, US filmmakers still face de facto quotas in China's markets. China has yet to issue regulations allowing the establishment of joint ventures for production of audiovisual products, including the signing and promotion of local artists, as well as other market access steps.

Actions in these areas, all required by last year's agreement, will establish the foundation for bringing the rampant piracy under control. China knows exactly what it must do to get back on the compliance track. The issue now is for China to take concrete and verifiable action to reduce piracy at its source and at its borders.

Let me make two final points on this issue. First, the United States has gone the extra mile to help solve this problem. Since the signing of the agreement last year, we have sent eight delegations to China and its provinces and conducted more than thirty senior level meetings. At the request of the Chinese government, we have a team in China this week for consultations. The United States has also provided technical assistance in support of this effort. Key U.S. law enforcement agencies have provided assistance to the Chinese including the Department of

Justice, the FBI, the Customs Service, the Patent and Trademark Office, the U.S. Information Agency, and USTR. Additionally, the U.S. private sector has hosted literally dozens of training seminars throughout China. In fact, our companies have gone so far as to donate computer equipment and software to the Chinese customs service.

Second, the IPR issue has significance beyond bilateral relations between the United States and China. As the world's fastest growing market, whether China enforces its trade obligations matters for everyone. We are not the only nation for which the protection of intellectual property rights is important and this is well known to China. We have not asked China to do anything more than what other Asian nations are already doing -- indeed what China has already agreed to do. The vitality and success of the global trading system depends on everyone living up to their obligations.

We urge China to take the concrete actions necessary to demonstrate its firm commitment to the Agreement and ensure its implementation. There is time for this to happen before sanctions go into effect. We are prepared to work with the Chinese toward that end. But it is decisive action against piracy that China must now take.

Mr. Chairman, the U.S.-China relationship is as important as any bilateral relationship in the world. But the opportunities in our relationship with China must run in both directions. For China, the potential of the U.S. market is matched by a tangible reality. Roughly one third of China's exports go to the United States, including tens of billions of dollars worth of electronic machinery, textiles, footwear and an ever increasing volume of higher value added products. In addition, Chinese companies -- like all foreign companies -- are allowed to establish freely in the United States. No one restricts their right to do business with American customers.

For the United States, it is certainly true that China offers unmatched potential. Unfortunately, while progress has been made, for the United States, the potential of the China market remains unfulfilled in many respects. While the United States accepts one third of China's exports, China accounts for less than 2 percent of U.S. exports and maintains highly restrictive import policies. China must further open its markets. The first step is to ensure compliance with commitments already made.

We have an opportunity to bridge important gaps in our relationship, so that benefits travel in *both* directions. To make this potential a reality, the United States stands ready to do its share. Renewing MFN, along with a broader engagement strategy, is critical to building a long term, stable relationship with China. But China, too, must bear *its* share. It must respect international norms, open its markets, and fulfill the commitments it makes. Mutual prosperity depends on this.

**Testimony Before
The House Ways and Means Trade Subcommittee
Ambassador Charlene Barshefsky
June 11, 1996**

Mr. Chairman, it is a pleasure to appear before the Subcommittee today to discuss the U.S.-China relationship and the question of intellectual property rights enforcement.

1. It is an understatement to say that the U.S.-China relationship is complex and multifaceted. America has a range of issues with China that go far beyond trade. We have a deep and abiding interest in human rights, and are critical when basic international norms are not met. We have continuing concerns in areas ranging from non-proliferation to environmental protection. And increasingly, trade plays a central role in our relationship.

3. Make no mistake about it. Americans have a commercial stake in China. At least 160,000 Americans owe their jobs to U.S. exports to China. Just as we should not make apologies for *China*, we should not apologize for our economic interest in *China*.

4. China is the world's fastest growing major economy, with annual growth rates of more than 10 percent for each of the past four years -- and average growth rates of greater than 7 percent for each of the past fourteen years. Already possessing the world's largest population, by early in the next century, China may have the world's largest economy.

6. On May 31, the President sent to Congress the formal waiver recommending extension of unconditional MFN to China for another year. The United States' interests in China are best promoted if we maintain MFN as the foundation for our trade relationship.

7. Mr. Chairman, we will never achieve China's full integration into the international community by building walls that divide us. The most repressive periods in modern Chinese history did not occur in times of open exchange -- they occurred in times of isolation. President Clinton believes we must remain engaged with China.

But let me be clear about what we mean by engagement. President Clinton came to office with the strong view that engagement with China does not mean *ignoring* our differences. It means we actively engage China to *resolve* our differences and it means protecting our interests when consultations are not fruitful.

When the President decided to delink human rights and MFN two years ago, he said that we were prepared to use a whole array of legislative and administrative methods to address specific issues with China. With respect to trade, as the President has repeatedly said, we welcome foreign products, but insist that our products be treated fairly overseas. When other countries do not live up to their obligations, we will take action. More than three years ago the President affirmed that, "We must enforce our trade laws and our trade agreements with all the

tools and energy at our disposal." We have used all of the tools at our disposal to open China's market.

One area of immediate difficulty, of course, is China's lack of satisfactory implementation of the 1995 Intellectual Property Rights Enforcement Agreement.

Mr. Chairman, as you are well aware, last month the United States announced the publication of a \$3 billion preliminary retaliation list targeting Chinese exports to the United States. This action set in motion a 30 day clock before final action occurs. Last week, USTR held public hearings on the retaliation list, and we appreciated the range of comments from individuals and companies that we received. We are currently preparing a final list with a value of approximately \$2 billion -- a figure commensurate with the damage inflicted on U.S. industries. Barring satisfactory implementation of the IPR Enforcement Agreement by China, the final list will go into effect on June 17.

We do not take the move toward retaliation lightly. China has taken certain actions to improve IPR protection particularly in the retail sector. Over the past year, China has carried out more than 4000 raids and destroyed approximately 2 million pirated CDs, and hundreds of thousands of pirated books, audio cassettes, and trademarks. Some IPR court cases involving foreign rightholders have also been resolved successfully over the past year.

China has also established a nationwide IPR enforcement structure as required under the Agreement -- a system of more than 30 provincial and municipal level task forces comprised of enforcement agencies and the police. The system -- designed to target piracy, levy stiff fines, and remand infringers for criminal prosecution -- is working in some localities. In Shanghai, for example, officials have made IPR protection a priority and have taken effective action to clean-up the city's markets. Clearly, where Chinese officials have demonstrated resolve, they have shown that piracy can be brought under control.

Despite these measures, China has not enforced key areas of the agreement, including halting piracy at its source. As a result, important American industries and broader American and international interests are getting hurt. Last year, China exported approximately 50 million pirated CDs, CD-ROMS, VCDs, and LDs to the world. Today in Hong Kong and elsewhere, \$10,000 software packages can be purchased for as little as \$5. Pirate versions of Microsoft's Windows 95 were on sale in China before it was officially introduced. Motion pictures are often pirated and available on VCD disks before they are released in the United States.

The affect of this activity on the U.S. economy is clear. U.S. copyright industries alone represent more than 5 percent of the U.S. work force -- roughly equal to the U.S. auto industry -- and are growing three times as fast as the rest of the economy. The copyright industries contribute more than \$350 billion a year to the U.S. economy, accounting for more than 6% of GDP. The U.S. computer software industry alone maintains a 75% market share worldwide and created almost 60,000 jobs last year. When China pirates American products, it denies the ideas,

the enterprise, and the jobs of these American companies and the workers they represent.

China must take four key actions to remedy the current IPR situation and implement the IPR Agreement:

First, action against the factories involved in the production of pirate CDs and CD-ROMS. We have an aggressive strategy with China to ensure -- to the best of our ability -- that all CD factories in China are producing legitimate CDs, LDs, CD-ROMs, and Video CDs. The IPR Agreement that we have in place with China calls for the clean-up all factories producing pirated products. We have targeted the worst offenders and have asked the Chinese to close down these factories immediately. In addition, we are working with the Chinese Government to ensure that the remaining factories are cleaned-up or closed down. The point is that we need to see a comprehensive system in place to crackdown on piracy in China.

Second, intensify enforcement in areas of China where piracy continues to be rampant, such as Guangdong Province. While China has raided retail establishments extensively, regions such as Guangdong continue to engage in rampant piracy. Manufacturers and distributors have remained untouched. Major pirates have not been punished, and prosecutors remain reluctant to tackle copyright infringement cases. Penalties are rarely sufficient to deter piracy -- for pirates they are now simply a part of the cost of doing business.

Third, take effective action to protect intellectual property at China's borders -- particularly seizures of bulk cargo shipments. Exports of pirated products -- mainly from Southern China through Hong Kong -- result in huge losses for U.S. companies in third country markets. China's Customs Service has conducted more than 1000 seizures, but mainly against foot traffic at the border. China has yet to target cargo shipments -- the primary export method for pirated CDs.

Finally, permit market access for U.S. computer software, sound recording and motion picture products and companies. China has not yet fulfilled any of the major elements of the market access commitments that it undertook in the IPR Enforcement Agreement. Although China has entered into some revenue-sharing arrangements, US filmmakers still face de facto quotas in China's markets. China has yet to issue regulations allowing the establishment of joint ventures for production of audiovisual products, including the signing and promotion of local artists, as well as other market access steps.

Actions in these areas, all required by last year's agreement, will establish the foundation for bringing the rampant piracy under control. China knows exactly what it must do to get back on the compliance track. The issue now is for China to take concrete and verifiable action to reduce piracy at its source and at its borders.

Let me make two final points on this issue. First, the United States has gone the extra mile to help solve this problem. Since the signing of the agreement last year, we have sent eight delegations to China and its provinces and conducted more than thirty senior level meetings. At

the request of the Chinese government, we have a team in China this week for consultations. The United States has also provided technical assistance in support of this effort. Key U.S. law enforcement agencies have provided assistance to the Chinese including the Department of Justice, the FBI, the Customs Service, the Patent and Trademark Office, the U.S. Information Agency, and USTR. Additionally, the U.S. private sector has hosted literally dozens of training seminars throughout China. In fact, our companies have gone so far as to donate computer equipment and software to the Chinese customs service.

Second, the IPR issue has significance beyond bilateral relations between the United States and China. As the world's fastest growing market, whether China enforces its trade obligations matters for everyone. We are not the only nation for which the protection of intellectual property rights is important and this is well known to China. We have not asked China to do anything more than what other Asian nations are already doing -- indeed what China has already agreed to do. The vitality and success of the global trading system depends on everyone living up to their obligations.

We urge China to take the concrete actions necessary to demonstrate its firm commitment to the Agreement and ensure its implementation. There is time for this to happen before sanctions go into effect. We are prepared to work with the Chinese toward that end. But it is decisive action against piracy that China must now take.

Mr. Chairman, the U.S.-China relationship is as important as any bilateral relationship in the world. But the opportunities in our relationship with China must run in both directions. For China, the potential of the U.S. market is matched by a tangible reality. Roughly one third of China's exports go to the United States, including tens of billions of dollars worth of electronic machinery, textiles, footwear and an ever increasing volume of higher value added products. In addition, Chinese companies -- like all foreign companies -- are allowed to establish freely in the United States. No one restricts their right to do business with American customers.

For the United States, it is certainly true that China offers unmatched potential. Unfortunately, while progress has been made, for the United States, the potential of the China market remains unfulfilled in many respects. While the United States accepts one third of China's exports, China accounts for less than 2 percent of U.S. exports and maintains highly restrictive import policies. China must further open its markets. The first step is to ensure compliance with commitments already made.

We have an opportunity to bridge important gaps in our relationship, so that benefits travel in *both* directions. To make this potential a reality, the United States stands ready to do its share. Renewing MFN, along with a broader engagement strategy, is critical to building a long term, stable relationship with China. But China, too, must bear *its* share. It must respect international norms, open its markets, and fulfill the commitments it makes. Mutual prosperity depends on this.

Statement of Ambassador Charlene Barshefsky

Beijing

June 17, 1996

China - IPR

we exchanged views not only on IPR but also on broader issues of imp. in bilat relat

I have just come from meetings with President Jiang Zemin and Vice Premier Li Lanqing. These discussions and my other consultations this week have demonstrated what the United States means by engagement ^{concrete} working together to resolve problems by seeking common ground. I am hopeful that resolution of the IPR issue can create momentum in support of a broader goal of the

Administration -- maintaining China's most favored nation trading status.

Intel prop its protection is one ^{constructively} example.

In February, 1995, the United States and China signed an Agreement on the Enforcement of Intellectual Property Rights. Since signing the Agreement, U.S. government delegations have traveled to China nine times to ensure enforcement and held more

than forty formal and informal consultations from Beijing to Shanghai to Guangzhou.

By last November, it had become clear that ~~China~~ ^{China} was not enforcing crucial portions of the Agreement. At that time, we made clear the ^{four} areas in which enforcement was ^{lacking} ~~insufficient~~ and suggested approaches to ensure implementation. By April, progress was still insufficient. At that time, we traveled again to China and outlined in detail those actions necessary to avoid trade conflict ^{trade sanctions} on this issue.

Since that time, China has ^{initiated a} ~~undertaken a~~ major crackdown against IPR piracy. For the past two weeks, a U.S. government team has been in China -- including Guangdong Province -- in order to evaluate and verify China's actions on the ground. We have confirmed that important actions have been taken in all four areas of ^{identified by} ~~importance~~ to the U.S. As a result, trade sanctions

While China had
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will not be imposed.

Before I outline China's specific actions, let me emphasize that halting piracy is a complex and long term process, here virtually everywhere else in the world. We will continue our work with China until its IPR enforcement ^{regime} is self-sustaining. is certainly not there yet. But China's recent actions represent ^{serious} necessary and important steps in that direction.

Let me ~~review~~ ^{review} the 4 areas at issue

CD Factories

First, CD Factories. For many Americans, pirate CD factories have become the symbol of China's failure to protect intellectual property rights. We have confirmed that China has closed 15 of these factories, including [12] factories in

Guangdong. These factories have an estimated production capacity of ~~more than 126 million~~ ³⁰⁻⁹⁰ units a year.

The 1995 Agreement outlines the specific manner in which factories must be closed. We have verified that, ^{for the 1st time,} China has followed these steps in closing the 15 factories, including

- revoking audiovisual permits and local business licenses;
- ~~revoking the local business licenses~~ ^{revoking the local business licenses}
- ~~canceling the certificate of approval for~~ ^{canceling the certificate of approval for}
- seizing and confiscating materials and machinery used to ^{manufacture}

manufacture pirated ~~product~~ pirated products, including destruct
CD molds and liquidation of other equipment;

- investigating and prosecuting those accused of criminal activity in connection with the plants, including at least 70 people in Guangdong Province alone.

In a significant new initiative aimed at the problem of so-called "underground" CD plants, China issued regulatory guidance directing seven enforcement agencies to undertake an intensive search for such factories and close them immediately, ~~whenever~~ they are found. These factories are per se illegal. Three of the recent factory closures are underground facilities.

In another major ~~enforcement~~ action, China on June 12 announced, ~~a current~~ ^{and will} ~~prohibition~~ ^{provide notice, a} on the establishment of any new CD plants, and has prohibited the importation of CD presses for any plants, ^{China will allow} ~~including~~ action against factories using presses whose ^{importations} ~~importations~~ was not authorized. These steps ^{should} ~~will~~ help limit the universe and production capacity of potential pirates in China.

2nd area
Special Enforcement Period

Investigat
~~Closures - Seizures~~

The United States asked China for a second major step --
reinstatement of the "Special Enforcement Period" provided for in
the Agreement. A Special Enforcement Period is a focused
enforcement effort on regions of rampant piracy. In April, I was
very clear with Chinese officials that the United States did not
care what the renewed effort ^{was} ~~is~~ called, but we needed to see
concentrated and sustained action.

When our officials were in Guangdong last week, they learned
that Guangdong Provincial authorities have ~~initiated~~ initiated a major ^{7 month}
enforcement effort. The Guangdong program includes a sustained
crack-down on producers, wholesalers, distributors, retailers,
transporters, ~~underground factories~~ underground factories and laser disc theaters. It
also focuses on major cases and on expeditious completion of
ongoing criminal investigations into piracy, including severe
punishments for infringers.

Our U.S. government officials and U.S. industry officials came away from Guangdong Province impressed with a new sense of commitment to enforcement in Guangdong.

Concerted action is also being taken at the national level. On May 23, the Ministry of Public Security announced that it would make IPR crimes a part of a newly announced national "Campaign Against Crime." This effort has added tens of thousands of enforcement officials to the anti-piracy effort, and has established an important ^{product of} ~~national symbol~~ of China's ~~commitment to crack down on piracy.~~ _{NDP-24 PD}

Effective June 1, China's Ministry of Culture -- with the assistance of Chinese Public Security and other enforcement officials -- initiated a nationwide "Concentrated Enforcement Period." The focus of this effort is wholesale and retail markets, as well as transporters of pirated goods. This

enforcement period will be in force at least until August, or as long as long as piracy remains serious.

Examples of these new efforts include the
~~China's crack-down has gone beyond factories. In addition~~
of
~~to the factory closures, for example, Chinese officials have shut~~
~~down~~ six notorious CD distribution markets in Guangdong,
including the largest -- the *E-fa* Yifa Market.

And, *a lge # of additional*
In another important step, ~~over 5,000~~ so-called "laser disc
showing rooms" have been shut. These mini-theaters have been a
major source of infringement activity.

Border Enforcement

which required
The third area ~~in which~~ the United States asked China for
~~improved enforcement~~ *at the Chinese* of the 1995 Agreement is border enforcement.

The export of pirated IPR products has seriously hurt U.S. industries in third-country markets. And the import of unlicensed manufacturing equipment has contributed to the problem of underground factories.

In particular, we asked China to focus on exports of major cargo shipments and the import of the presses used to manufacture CDs. This is an area in which China Customs has not been active in the past.

Handwritten notes: Of greatest importance, Chinese Customs will cooperate in border enforcement. HK Customs will cooperate.

Chinese Customs officials have scored several important ~~beginning to~~ *beginning* successes in the area of large scale seizures, including the seizure of 20,000 pirate CDs and VCDs at Beijing Airport; 19,000 VCDs seized by Guangdong Customs officials; and a joint Guangdong/Hong Kong Enforcement Action seizing 16,000 CDs on the Guangdong/Hong Kong border. Since the beginning of 1996, China Customs has seized over 80,000 pirated CDs, VCDs and LDs. These

Handwritten notes on right margin: This month... U.S. Customs... border enforcement...

Andy

^ As part of a continuing border enforcement effort, China Customs will be cooperating with its regional and international counterparts, including Hong Kong Customs and U.S. Customs.

Market Access

for our IPR industries

COMIN

The final area of ~~U.S.~~ focus has been market access. As we expected, this issue has been the single most difficult one to address. That said, we made significant progress this week in securing new opportunities in China for American IPR industries - including computer software, sound recordings and motion pictures.

A key goal of our record companies was to enter into cooperative relationships with Chinese publishing houses to sign

to
artists, produce them and ultimately -- through those publishing
houses -- to sell, produce, display and perform. These are new
opportunities created by ^{this} the past week's work.

~~The Chinese have~~ made operational ^{work} exchange licensing procedures so that for the

A key goal of our film companies ^{has been} is the right to the ^{no quantitative restraint} unlimited import of films on a revenue sharing basis. In

addition, U.S. film companies will be able to enter into projects with Chinese companies to coproduce motion pictures and -- for TV -- dramas, plays and motion pictures. This creates new market opportunities for these companies.

On software, the Chinese have reaffirmed that public and private sector entities will use only legitimate software. As a commercial matter, ^{public-private} entities from both the United States and China ^{software usage} have been invited to discuss ~~legitimate purchases~~ at the Joint Commission on Commerce and Trade ^{to} hosted by Secretary Kantor this summer with Minister Wu Yi.

This is really for the record. In →

US record cop can meet system, MKS access for their entire repertoire

New sigs are in place to
to be placed in place to
12

Monitoring and Verification

The actions I have described are important indicators of China's willingness to live up to the terms of the 1995 IPR Agreement. Over the long term, however, the real test of the Agreement lies in the strength of the underlying ^{improved system} ~~system~~ the Agreement establishes. Over the past weeks and months, we have focused considerable attention on the monitoring and verification systems that ^{will} ~~the~~ IPR protection ~~system~~ effective over time.

China will undertake a major effort to improve the functioning of several aspects of the ¹⁹⁹⁵ Agreement, including SID codes, title verification and inspections.

JH
^

One of the key aspects of our verification system is to ensure that CD factories and Chinese publishing houses must demonstrate that the titles that they wish to produce are properly licensed. The Chinese will correct flaws in the current title verification system and have guaranteed that the validity of the license for each foreign title brought to any CD factory or publishing house will be checked with the appropriate U.S. trade association before production can begin. Strictly applied, this system -- which our industries use in many other countries of the world -- will prevent piracy at its source.

SID codes are the "signatures" that identify which CD press produced a particular CD. At a glance, they allow an inspector to determine what factory manufactured a given CD. As you might imagine, pirates don't use them -- making any CD without an SID code an obvious infringing good. Thus, a working SID system is a key foundation of China's IPR enforcement system.

In another key action, the PPA recently issued a new "Notice on Implementing SID Codes." Under ~~this notice~~, any CD sold on the market without an SID code will be deemed per se illegal and ~~subject to immediate~~ seizure^{ed}. This is an important, practical step that will greatly facilitate enforcement of the Agreement.

China has also acted to station inspectors in all CD factories during all shifts, 24 hours a day. The inspectors will be responsible for checking title verification and the presence of SID codes on molds, ensuring that there are not off-hours, illegal runs of pirated CDs and other illegal activities. The inspectors will also keep audits of CD press runs and ensure that the factories keep accurate records. Inspectors are assigned for three month periods by Copyright and Press and Publications Bureaus and act as an in-house enforcement arm of the Chinese Government.

These mat^s will be available to the US at joint periodic consultations.

Conclusion

We believe the 1995 IPR Agreement has resulted in
fundamental change in China ^{in the area of} ~~in the area of~~ IPR enforcement. ^{lead the foundation for} ~~in the area of~~ ^{regime}

Three years ago, intellectual property enforcement was an abstract concept. ^{in China} Last year, our IPR Agreement established the parameters of an enforcement system. Since April, China's actions have animated this system through concrete, tangible actions.

As I said earlier, China's system of IPR enforcement must become self-sustaining. We're not there yet. But the actions taken thus far are an important beginning. With this or any trade agreement, the ultimate test is implementation. China has begun to demonstrate its vigilance through the actions of the past two months. For our part, the United States will continue

Implementation
~~Program~~

, aggressively to work with China, monitor ~~the situation~~, and

ensure that our economic interest^s are protected. American jobs

depend on it.

Lee etc