

# U.S. TRADE AGREEMENTS WITH LATIN AMERICA

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
THE WESTERN HEMISPHERE  
OF THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS

FIRST SESSION

APRIL 13, 2005

**Serial No. 109-85**

Printed for the use of the Committee on International Relations



Available via the World Wide Web: [http://www.house.gov/international\\_relations](http://www.house.gov/international_relations)

U.S. GOVERNMENT PRINTING OFFICE

20-648PDF

WASHINGTON : 2005

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## **U.S. TRADE AGREEMENTS WITH LATIN AMERICA**

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**WEDNESDAY, APRIL 13, 2005**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:20 p.m. in room 2172, Rayburn House Office Building, Hon. Dan Burton (Chairman of the Subcommittee) presiding.

Mr. BURTON. Good afternoon. A forum being present, the Subcommittee on Western Hemisphere will come to order.

I ask unanimous consent that due to the number of witnesses before us today the Chairman and the Ranking Member will offer oral statements, and other Members will be allowed to submit their statements to be included in the record. Without objection, so ordered.

I ask that witnesses keep their oral statements to 5 minutes, but can submit their full testimony for the record. Without objection, so ordered.

I ask unanimous consent that all articles, exhibits, and extraneous or tabular material referred to by Members and witnesses be included in the record. Without objection, so ordered.

I ask unanimous consent that any Member who may attend today's hearing be considered a Member of the Subcommittee for the purpose of receiving testimony and questioning witnesses after Subcommittee Members have been given the opportunity to do so. Without objection, so ordered.

Today the Subcommittee will receive testimony on several pending trade agreements and their impact on the economies of the Western Hemisphere, including the United States. Specifically, we intend to look into the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), the Andean Free Trade Agreement (Andean FTA), and the umbrella Free Trade Agreement of the Americas (FTAA).

Since we have several panels of expert witnesses, I will make my comments brief so we can get to the meat of this hearing. This hearing is particularly timely because Congress may soon be asked to vote on one or more of these trade agreements.

From the outset though, I would like to make it clear that this Subcommittee's job is not to second-guess the wisdom of the negotiators, nor are we here to negotiate or renegotiate these agreements. Rather, we are here to explore their value as one part of the solution to the challenges of poverty, political, and economic in-

stability and the many other ills which face the people of our hemisphere.

Our intention is solely to determine the merits of free trade within the hemisphere and, as best we can, whether or not these trade agreements have the potential to live up to their promises of greater prosperity, and the development of stronger democracies in the region. I am cautiously optimistic that they can, although we do have some problems with some of the fledgling democracies in Latin America.

Spreading prosperity throughout the Western Hemisphere is of course a key long-term goal of the United States. Over the course of the last few weeks, this Subcommittee has heard from several witnesses, in other hearings, that our ability to achieve this goal is under threat. Latin American democracies are still fragile, and many people remain in poverty in their region, leading them to start doubting whether democracy is the right vehicle for promoting a better way of life.

While I do not believe that trade agreements, alone, are the panacea to cure the ills of our hemisphere, I do believe that the economic prosperity that these agreements can provide would, in fact, create the conditions by which we can alleviate poverty, promote the rule of law, and strengthen democratic and civil institutions, and thereby improve the lives of millions who now live in poverty. I know that many of my colleagues would argue that trade agreements in fact do just the opposite; that free trade accelerates the slide into poverty. But the reality is that throughout history, long-term economic prosperity has come through trade and the economic activity which supports it. Therefore, supporting DR-CAFTA and the Andean Free Trade Agreement may be essential to achieving overall United States policies in Latin America.

In addition to eliminating poverty, I think CAFTA and the Andean Trade Agreement will have a tremendous impact on stabilizing those fledgling democracies in Central and Latin America. Without proper trade agreements within our hemisphere like the ones we are discussing today, unfair competition from elsewhere, like China, will destroy this region's ability to compete both in our own hemisphere and around the globe. I know that many people have reservations about the labor and environmental protections in these trade agreements, and I would ask these people a simple question: Which country would do a better job of protecting the rights of organized labor and safeguarding the environment, the United States or Communist China?

It is important to note that the benefits of free trade are not confined within the borders of Latin America. These trade agreements are also potentially very good for our economy. For instance, while today's Central American countries have virtually duty free access to United States markets for most goods, duty free access for American goods is not reciprocated. DR-CAFTA, in particular, will level the playing field across the board, and allow U.S. businesses better access to markets now protected from our manufactured and agricultural exports. In addition, increased U.S. exports can potentially boost productivity for U.S. companies and in turn lead to higher wages for U.S. workers. Trade agreements that reduce tariffs and

dismantle other barriers to U.S. exports can only benefit American business and the American consumer.

Before I conclude, I would like to add one note of caution. Before any free trade agreement is ratified, we should be satisfied that the countries involved demonstrate the ability to properly handle current and future investment disputes which are likely to arise.

For example, both Ecuador and Peru, who wish to be partners in the Andean Free Trade Agreement, along with Colombia, are embroiled in a number of disputes with American companies or investors. While these disputes vary in degrees, it has become quite clear that the governments involved may not have made the appropriate efforts to resolve them in a timely and equitable manner.

While I understand that legal systems differ from nation to nation, it is not clear to me why some of these disputes still linger. We talked to the Peruvian Ambassador in particular yesterday about some of these.

For example, it has been 5 years since the Government of Peru expropriated \$30 million from Engelhard Corporation, and I know you are going to talk about that. Despite a number of rulings in favor of this company, the Government of Peru continues to dispute the issue.

In Ecuador, I have been informed that an American company, Occidental Petroleum, is in danger of having its nearly \$1 billion in assets expropriated over a dispute with the Ecuadorian Government, which corporate and legal experts believe has no merit.

In closing, I would like to thank our witnesses for joining us today, and I look forward to hearing their testimony. I am disappointed that a witness from the U.S. Trade Representative's (USTR) office could not be here to update us on DR-CAFTA and the pending negotiations in Lima, Peru, on the Andean Free Trade Agreement.

However, without objection, questions for the USTR can be submitted by Members for the record. I intend to arrange a briefing by USTR for Members of the Subcommittee so we can further discuss these issues with them on these important issues.

I also want to thank my good friend and Ranking Member, Bob Menendez, and his staff for their usual excellent support in preparing for this hearing. Before I recognize Mr. Menendez for his opening remarks, again in the interest of time, I would like to ask him to be as brief as possible, but that is okay. Please take your time, Bob. I now recognize Bob.

[The prepared statement of Mr. Burton follows:]

PREPARED STATEMENT OF THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

Today the Subcommittee will receive testimony on several pending trade agreements and their potential impact on the economies of the Western Hemisphere, including our own. Specifically, we intend to look into the Dominican Republic—Central American Free Trade Agreement, DR-CAFTA, the Andean Free Trade Agreement or Andean FTA, and the umbrella Free Trade Agreement of the Americas or FTAA.

This hearing is particularly timely because Congress may soon be asked to vote on one or more of these trade agreements. From the outset though, I would like to make it clear that this Subcommittee's job is not to second-guess the wisdom of the negotiators, nor are we here to negotiate or renegotiate these agreements. Rather, we are here to explore their value as one part of the solution to the challenges of

poverty, political and economic instability, and the many other ills which face our hemisphere. Our intention is solely to determine the merits of free trade within the hemisphere and, as best we can, whether or not these trade agreements have the potential to live up to their promises of greater prosperity, and the development of stronger democracies in the region. I am cautiously optimistic that they can.

Spreading prosperity throughout the Western Hemisphere is of course a key long-term goal of the United States. Over the course of the last few weeks, this Subcommittee has heard from several witnesses, in other hearings, that our ability to achieve this goal is under threat. Latin American democracies are still fragile, and many people remain in poverty in the region, leading them to start doubting whether democracy is the right vehicle for promoting a better way of life.

While I do not believe that trade agreements, alone, are the panacea to cure the ills of our hemisphere, I do believe that the economic prosperity that these agreements can provide would, in fact, create the conditions by which we can alleviate poverty, promote the rule of law and strengthen democratic and civil institutions, and thereby improve the lives of the millions who now live in poverty. I know that many of my colleagues would argue that trade agreements in fact do just the opposite; that free trade accelerates the slide into poverty. But the reality is that throughout history, long-term economic prosperity has come through trade and the economic activity which supports it. Therefore, supporting DR-CAFTA and the Andean FTA may be essential to achieving overall U.S. policies in Latin America.

Without proper trade agreements within our hemisphere, like the ones we are discussing today, unfair competition from elsewhere, like China, will destroy this region's ability to compete both in our own hemisphere, and around the globe. I know that many people have reservations about the labor and environmental protections in these trade agreements, and I would ask these people a simple question: Which country would do a better job of protecting the rights of organized labor and safeguarding the environment; the United States or Communist China?

It is important to note, that the benefits of free trade are not confined within the borders of Latin America. These trade agreements are also potentially very good for our economy. For instance, while today Central American countries have virtually duty-free access to U.S. markets for most goods, duty-free access for American goods is not reciprocated. DR-CAFTA, in particular will level the playing field across the board, and allow U.S. businesses better access to markets now protected from our manufactured and agricultural exports. In addition, increased U.S. exports can potentially boost productivity for U.S. companies and in turn lead to higher wages for U.S. workers. Trade agreements that reduce tariffs and dismantle other barriers to U.S. exports can only benefit American business and the American consumer.

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While I understand that legal systems differ from nation to nation, it is not clear to me why some of these disputes still linger. For example, it has been five years since the Government of Peru expropriated \$30 million from Engelhard Corporation. Despite a number of rulings in favor of this company, the Government of Peru continues to dispute the issue.

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I also want to thank my good friend and Ranking Member Bob Menendez and his staff for their usual excellent support in preparing for this hearing.

Mr. MENENDEZ. Thank you, Mr. Chairman. I do not think I will be any longer than your opening statement.

Mr. BURTON. Okay. Touché.



Mr. MENENDEZ. I appreciate the opportunity, and I appreciate the continuing great working relationship that we have together.

I appreciate you holding this hearing today on what I think is a critical part of the public policy of the United States toward Latin America and the Caribbean and certainly to the witnesses who are going to appear.

As you know, Mr. Chairman, this Subcommittee held a hearing on the Andean Free Trade Agreement last October under our former colleague's leadership, Mr. Ballenger, who I am really pleased to see here today, over 6 months ago, where I raised serious concerns over the treatment of United States companies, particularly in Peru.

Unfortunately, in the over 6 months since that hearing, this situation has not been resolved. I simply, for one, cannot and do not know how our Government can support an Andean Free Trade Agreement that includes Peru unless these cases are resolved.

Now, I am not simply speaking about companies that either reside in my State or are just American companies. If they had no merit, I would be the first to tell them tough luck. But when Peruvian law and Peruvian courts decide in the favor of a United States company and still they cannot get justice, then something is fundamentally wrong. I know that we are going to have a panel on that issue, and I will discuss this in more depth a little later.

With reference to DR-CAFTA, Mr. Chairman, I, like many Members, have not decided exactly whether I will support CAFTA, and I am here to listen and to discuss. However, just as the European Union has done, the United States should send a clear message to other countries that we must meet all standards on labor, the environment, rule of law and transparency. At the same time, the United States has to send a message that we are committed to working with other countries to help make those standards a reality.

Now, I do have a series of concerns about CAFTA, and hopefully some of them will be addressed during the course of the hearing. The labor laws of Central America fall far short of meeting the basic international standards in at least 20 areas, particularly, the right of association and the right to bargain collectively, and I would like to submit a letter for the record which details these problems.

I understand that in response to criticism, Central American Governments have recently committed to strengthening the enforcement of their workers' rights laws, and I encourage them to do so. While I am an optimist, I am also a realist. Since the release of the ILO report in 2003 which detailed issues such as Central American countries' labor laws, only one country has strengthened those laws, and other countries have actually weakened theirs.

To those who would argue that CAFTA is the way to get these countries to fix the problems with their labor laws and enforcement, I would ask the question: If that were true, then why have they not fixed these issues now before the vote in Congress?

What motivation will they have to fix them after the agreement has passed since the agreement only requires them to meet the standard of their existing labor laws? What motivation will they have, since unlike all of the other commercial aspects of this agree-

ment, the United States cannot bring sanctions against them for violating the labor chapter of this agreement?

To those who would argue that the problem is not really the laws, but rather enforcement, I would say that the problem is not only the laws. Throughout the region unions are suppressed. Workers who intend to unionize are harassed, beaten, fired, and blacklisted, and sometimes even assassinated.

I am deeply troubled over other serious labor law enforcement problems in the region, which include child labor, mandatory overtime, the lack of formal contracts, and an unenforced minimum. Understaffed or underfunded ministries of labor frequently cannot handle complaints and conduct inspections while the legal decision cannot enforce their decisions.

We must also be cautious about entering into free trade agreements with countries which lack strong legal systems, transparency, and accountability. According to Transparency International, four out of the six CAFTA-DR countries received a corruption perception index score which indicates rampant corruption.

All Latin American countries ranked in the highest third of countries reporting that the interpretation of regulations are unstable. In Guatemala, for example, almost 90 percent of firms report that regulations are not interpreted consistently. Clearly, this is an investment environment that we must be concerned about.

Lastly, given that Central American countries remain significantly rural and agricultural, and based on what happened with NAFTA in Mexico, I am concerned that DR-CAFTA will exacerbate the problems of rural poverty and unequal distribution of wealth.

A report by the Carnegie Endowment points out that under NAFTA, Mexico lost 1.3 million agricultural jobs and gained less than half that number in manufacturing. Mexican wages have not caught up with United States wages, and that productivity growth has not meant that wages have gone up. The Mexican rural population was the hardest hit. We cannot allow the same disaster to devastate the rural poor in Central America.

Before I close, I must mention the case of Jose Gilberto Soto, a member of the Teamsters from New Jersey who was murdered in El Salvador last November while he was working with local unions and truck drivers. While the authorities have attributed the murder to a family dispute, the Salvadorian ombudswoman, Dr. Beatrice Alamanni de Carrillo, who I met with personally, has raised serious concerns about the investigation into this case. She herself has received threats in response to her report on this case. I cannot determine who carried out this murder, but I can make it clear that we expect a full, complete, and clean investigation into his death.

Let me be clear. I am not saying that the Central American countries do not deserve CAFTA. I am saying that the Central American countries and the people of Central America deserve the highest possible standard of living that we would want them to enjoy and the most significant and transparent rule of law that we would want any people to enjoy, no matter where they come from. That is what I hope our goal of this hearing ultimately is, and with that, Mr. Chairman, I thank you for the opportunity.

I did not object, Mr. Chairman, when you asked for statements to be entered into the record as it relates to or by some of the governments who do not submit themselves before the Committee, but I will look forward very aggressively to your representation that they will be asked to answer in writing on those questions. I fully expect to submit questions based on what they have said and I expect that we will get answers to our questions.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Menendez, and I share your concern that those countries were not willing to testify today. We have their letters to be submitted for the record, and we will ask them also to answer questions in writing that we come up with at the hearing today.

Also, I ask unanimous consent that the letter you mentioned in your opening remarks be included in the record, and without objection so ordered.

We are going to go now to our panelists. Would you please rise and raise your right hand?

[Witnesses sworn.]

Mr. BURTON. It is very nice to see our former Chairman here with us today. Cass Ballenger is now out there in the private sector making a lot of money, and so, Cass, we envy you, but we miss you.

Mr. MENENDEZ. I thought he was making it before he left.

Mr. BURTON. Menendez says he thought you were making it before you left. If you were doing it with your salary, you sure were not.

We also have with us the Honorable Kevin Brady, who is one of our dear colleagues here in the Congress. Kevin, thanks for being with us today. And the Honorable Becerra, who is also a Member of Congress. Thank you very much for being here today.

Let us just start with Mr. Brady, and we will go right down the line.

**TESTIMONY OF THE HONORABLE KEVIN BRADY, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BRADY. Thank you, Mr. Chairman, Mr. Ranking Member, Members of the Subcommittee. As a former Member of the Western Hemisphere Subcommittee, I want to thank you for having this important hearing on the Latin America trade agenda.

I am pleased to be here with Congressman Weller, who has played a key role in this; former Chairman Ballenger, who has for many decades supported this region; and my good friend, Xavier Becerra.

As you know, this Subcommittee has made clear that the progress in Latin America really depends on progress in a whole number of areas, from counterterrorism to drug trafficking, corruption endemic in governments, in cultures, and then finding ways to improve the trade capacity for Latin America.

The trade agreement we are talking about is a tool to enhance trade and prosperity. As a Member of the Ways and Means Committee, I strongly support President Bush and former U.S. Trade Representative Bob Zoellick on their strategy for achieving trade agreements in our hemisphere.

Through nation-to-nation in the regional agreements we have an opportunity to strengthen our neighbors to the south and help move toward the bigger goal of a free trade area of the Americas that unites our trading power in order to compete successfully against other regions in the world.

While I strongly support the concept of the U.S.-Andean Free Trade Agreement and the U.S.-Panama Free Trade Agreement, they are being negotiated. I would like to focus on the U.S.-Central American-Dominican Republic trade agreement.

I am pleased that in the coming months Congress will vote on trade with the Centrals. In fact, next week we will begin formally moving this proposal through the legislative process when the Ways and Means Committee holds its hearing on the agreement.

I strongly disagree with those who believe that Central America is somehow too small, too poor, not worthy of further trade with America. Central America deserves this trade agreement and this trade agreement deserves bipartisan support in Congress. It will create jobs by lowering trade barriers and finding new customers for U.S. goods and services.

This agreement means more than increased economic opportunity. It is a statement that the United States will continue to be a strong partner in encouraging economic growth and the spread of democracy in the Western Hemisphere.

Mr. Chairman, I know that you and other Members of the International Relations Committee will remember that during the 1970s and 1980s, our neighbors in Central America experienced a terrible period of violence, political and economic instability. Dealing with Central America was our Nation's number one foreign policy issue at the time.

In 1983, the United States took a leadership role in promoting peace and democracy by unilaterally opening our markets to imports from the region through the Caribbean Basin Initiative. As a result of unwavering support from Republicans and Democrats together, that initiative created economic growth that stabilized the domestic political conditions in the region.

Trade with the Centrals is the next step in this partnership and is a true win/win. It will level the playing field for United States farmers, businesses and workers, increasing access to the second largest market in Latin America.

Currently, over 75 percent of exports from the Central American countries enter the United States duty free, while U.S. exports to the region face high tariffs and other barriers to entry. In other words, we have one-way trade today. The Central America Trade Agreement will create a two-way trading relationship, bringing into balance by immediately eliminating tariffs on 80 percent of our consumer industrial exports and on more than half of U.S. ag exports.

As someone who represents a part of Texas that is heavily dependent on trade and open markets, I can tell you this agreement is key for building a strong economy and creating jobs.

For the Central American countries, it will update CBI, giving the region the tools it can count on to compete in the global economy, and it will lock in the remarkable political and economic re-

forms of the past decade, ensuring long-term progress in the region.

Let me make this point on labor. As a result of the negotiations, our Central American Governments have developed new labor laws, which the objective International Labor Organization has deemed to be compliant with international core labor standards, and have passed more ILO labor conventions than we have in the United States.

The countries have also demonstrated an unprecedented commitment, as we saw last week, to working with the U.S. Government and organizations such as the Inter-American Development Bank to identify ways to improve the capacity to enforce these laws.

I will tell you it was historical last week when we saw 16 countries come forward to America to pledge their commitment on strong labor laws that many of them have in their Constitution—not just statutory; in their Constitution. They are using the American model—strong laws, more inspections, strong fines and solving the problems, even yanking licenses if companies will not treat their workers the right way. That is a commitment we want to be embracing and not pushing away.

I will conclude with this, Mr. Chairman: I think we have witnessed in the past 15 years a remarkable progress in Central America. I would defy anyone in this room to say that they have not made tremendous progress in labor rights, human rights, rule of law, and democracy.

They have pulled themselves painfully up the ladder of democracy. This is absolutely no time for America to kick them back down that ladder. We ought to be extending our arm and helping them move toward the progress and the labor rights and environmental standards that they are already making progress on, and I think failure to pass CAFTA would be a major foreign relations blunder in a region that we ought to prize as a partner with the United States.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Brady follows:]

PREPARED STATEMENT OF THE HONORABLE KEVIN BRADY, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, Mr. Ranking Member, members of the Subcommittee, I want to thank you for having this important hearing on the Latin America trade agenda.

As a member of the Ways and Means Committee, which has jurisdiction over our trade agreements, I strongly support President Bush and former USTR Zoellick on their strategy for achieving trade agreements in our hemisphere. Through bilateral and regional multilateral agreements, we strengthen our neighbors to the south and help move towards the bigger prize, the Free Trade Area of the Americas.

While I strongly support the U.S.-Andean Free Trade Agreement and the U.S.-Panama Free Trade Agreement, they are still being negotiated so I want to focus my testimony on the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR). As you know, our government signed this agreement with five of our Central American and the Dominican Republic.

I'm pleased that in the coming months, Congress will vote on CAFTA. In fact, next week we will begin moving CAFTA through the legislative process when the Ways and Means Committee holds its hearing on the agreement.

CAFTA deserves bipartisan support in Congress. It will create jobs by lowering tariff barriers and increasing market access for U.S. goods and services to growing markets in our hemisphere. However, this agreement means more than increased economic opportunity—it is a statement whether the United States will continue to

be a partner in encouraging economic growth and the spread of democracy in the Western Hemisphere.

Mr. Chairman, I'm sure you and other members of the International Relations Committee will remember that during the 1970's and 1980's our neighbors in Central America experienced a period of violent political and economic instability. Dealing with Central America was our nation's number one foreign policy issue at the time.

In 1983 the United States took a leadership role in promoting peace and democracy by unilaterally opening our market to imports from the region through the Caribbean Basin Initiative (CBI). As a result of unwavering support from Republicans and Democrats, CBI created economic growth that stabilized the domestic political conditions in the region.

CAFTA is the next step in this partnership and is a true win-win. It will level the playing field for U.S. farmers, business and workers, increasing access to the second largest market in Latin America. Currently, over 75 percent of exports from the CAFTA countries enter the U.S. duty free, while U.S. exports to the region face high tariffs and other barriers to entry. CAFTA-DR will bring this trade relationship into balance by immediately eliminating tariffs on 80 percent of U.S. consumer and industrial exports and on more than half of U.S. agricultural exports. As someone who represents a part of Texas that is a heavily dependent on international trade and open markets, I can tell you that this agreement is key for building a strong economy and creating jobs.

For the CAFTA countries, it will update CBI, giving the region the tools to compete in the global economy and lock in the political and economic reforms of the past decade, ensuring long-term progress in the region.

As a result of the CAFTA negotiations, the governments have developed new labor laws, which the International Labor Organization deemed to be compliant with international core labor standards, and have passed *more* ILO Labor Conventions than the United States. The countries have also demonstrated an unprecedented commitment to working with the U.S. government and organizations such as the Inter-American Development Bank to identify ways to improve the capacity to enforce those laws. These steps, when combined with the labor chapter of CAFTA that goes beyond what was included in past trade agreements, will ultimately improve working conditions in the region.

As CBI helped encourage political stability and encourage domestic reforms, it has also given the CAFTA countries the tools to diversify their economies and become globally competitive in manufacturing and textile production.

Also important, the regional textile industry relies heavily on yarn and fabric exports from the U.S., supporting jobs in both regions. For example, a t-shirt that says "made in Honduras" probably has 60%-90% U.S. content, but a t-shirt that says "made in China" has less than 10% U.S. content.

Without CAFTA, these jobs will evaporate. With global textile quotas expiring at the beginning of this year, the region's producers are facing stiff challenges from Asia and many companies are contemplating moving production out of the region to parts of the world that do not rely on U.S. imports. Considering that 80 percent of the content in Central American apparel imports originating in the United States and imports from Asia containing as little as *one* percent of U.S. content, a shift in production out of Central America would deal a fatal blow to workers and business in the United States and the CAFTA countries. The passage of CAFTA will prevent this outcome by deepening the economic integration and creating a textile sector that can compete in today's global economy.

For more than 20 years Republicans and Democrats have joined together to make the United States a partner in the economic and political development of the Central America and the Caribbean countries. In the past this partnership was vital in replacing civil wars and dictatorships with stable democracies and increased economic opportunities.

The choice is clear—failing to pass CAFTA could erase the progress of the past decades and send a message that the United States is no longer interested in advancing economic opportunity and democracy in the Hemisphere. Without question, Congress has an obligation to pass CAFTA and continue to play a leadership role in the development of the region.

Mr. BURTON. Thank you, Mr. Brady.  
Mr. Becerra?

**TESTIMONY OF THE HONORABLE XAVIER BECERRA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BECERRA. Mr. Chairman, Ranking Member Menendez, and Members of the Subcommittee, thank you very much for the invitation.

Trade is important. I agree with my colleague, Mr. Brady, and I am glad Mr. Ballenger is here because both are respected Members of the Ways and Means Committee and thoughtful and experienced Members on trade.

Certainly trade in Central America is important. Exports to Central America are greater than our exports to Russia, Indonesia, and India combined. Compare this to what we have with China today, where in 2004 our United States trade deficit was a record \$160 billion just this past year, and only one out of every six ships laden with goods from China returned to China with United States exports.

In the heat of competition for new markets and expanded economic opportunity, America loses if trade becomes a race to the bottom. Remember that the United States average wage is \$21.45 per hour. In China, it is 64 cents per hour.

In Mexico, with whom we have a trade agreement, we find that in 10 years since NAFTA's implementation, the Mexican minimum wage—not the average, but the minimum wage—which one out of every four Mexican workers earns, declined 20 percent in the last 10 years and hovers at about \$4 for the entire day's work.

I submit that the biggest losers in a race to the bottom would be the American companies that follow the rules. In a race to the bottom, these companies would have to choose between competing as part of the vanguard in their treatment of workers and stewardship of the environment or competing the way others do at the margins.

Unfortunately, the current CAFTA agreement sets us on a course toward the lowest common denominator and competition at the margins. It is not that we could not have done better. Our trade negotiators are some of the toughest in the world. They can come out guns blazing when they are serious about defending American interests.

Take intellectual property. CAFTA mandates that each party have—and if you do not you must enact—criminal laws and penalties for violations of intellectual property rights. Not only that, but the full range of economic trade sanctions is available to a country that feels that its intellectual property rights have been violated.

Contrast that to labor and the environment. The only thing we have in the agreement is a provision that says that a country shall not fail to effectively enforce its own laws. If the laws on the books are deficient, no worries. If a country weakens its existing laws, no worry.

If there is a violation of the weak labor and environmental provisions, the only real consequence is a fine that can be no more than \$15 million, and that fine is paid by the country to itself. So if a company, country, or an industry decides that it is the cost of doing business to pay a \$15 million fine, we are done. We can do no more

to that violator in our agreement with CAFTA and through CAFTA.

I think we can all agree that there are certain basics, certain minimum standards on internationally recognized treatment of labor for all workers. Those internationally recognized standards include prohibitions on the worst form of child labor, discrimination, forced labor, and the rights of association in collective bargaining. That is it. Basic minimum standards.

Most of the CAFTA countries are trying to move in the right direction toward these basic standards on both labor and the environment. I am aware of the side agreements that the parties have signed on the environment, the white paper that the Central American countries have issued on labor standards.

Frankly, Mr. Chairman, if the countries are generally interested in making lasting progress in the areas of labor and the environment, and can be held accountable to the terms, they should be included within the four corners of the CAFTA agreement itself. Anything else, whether side agreements or white papers, come up very short. We need only examine the fruits of the NAFTA side agreements some 10 years ago on labor and the environment for dispositive proof of this.

President Ronald Reagan is famous for having said, "Trust, but verify." On CAFTA, that is all we are asking. The truth is, if we were to tell the American public that we were opening up our markets to further international competition based on an express promise, or the good intentions of our competitors, the American people would run us out of Washington.

Just as no consumer today would buy or sell a house on a handshake, neither should we open up our markets with one. I agree wholeheartedly with my Central American colleagues who assert that investment in the region is really the key to a trade agreement that can work, but as we talk about capacity building, we have to put our money where our mouth is. We cannot encourage our trading partners to enforce their labor and environmental laws, but starve the very programs that would build capacity for countries to enforce those laws.

The Department of Labor's International Labor Affairs Bureau (ILAB) is being funded, according to the President's own budget this year, at only \$12 million. Compare that to just 3 years ago, when we in Congress provided it with \$147 billion.

Mr. Chairman, in conclusion I would state that nobody wins in a race to the bottom. The vast majority of people in the CAFTA countries—the workers, the farmers, the small merchants—would not win, and U.S. businesses certainly would not win in the long run.

It is better to lift all boats so that we can trade as equals. I recognize the importance of trade in this hemisphere and the importance of this CAFTA. I have supported implementing legislation for every free trade agreement that has come before me in my 12 years in Congress. Regrettably, this current CAFTA is not a trade agreement that I can support.

Mr. Chairman, Members, thank you very much.

[The prepared statement of Mr. Becerra follows:]



PREPARED STATEMENT OF THE HONORABLE XAVIER BECERRA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA

Chairman Burton, Ranking Member Menendez, and Members of the subcommittee, thank you for inviting me to testify this afternoon regarding US Trade Agreements in Latin America. Trade in this hemisphere is robust, and its importance is growing by the day. U.S. exports to Central America in 2000 exceeded \$8.8 billion. That is more than U.S. exports to Russia, Indonesia, and India combined. Since 1990, trade between Central America and the United States has nearly tripled. Looking to our neighbors farther south, U.S. exports to the Andean region in 2003 were reported at more than \$5 billion, which is more than double US exports to Russia (\$2.4 billion) during the same time period.

These statistics stand in sharp contrast to the burgeoning U.S. trade deficit with China. In 2004, the deficit was over \$160 billion, which is an increase of more than 30% over the previous record set in 2003. Only one out of every six ships laden with goods from China returns with U.S. exports. And five out of the 10 fastest growing US exports to China from 2001–2003 were waste products like recyclable plastic, metals, aluminum, fiber, and paper.

In the heated competition for new markets and expanded economic opportunity, America loses if trade becomes a race to the bottom. The U.S. average wage per hour is \$21.45 with benefits, and \$14.67 an hour without benefits. The U.S. Bureau of Labor Statistics reports that the average hourly wage in China is 64 cents an hour, with that number being lower in rural areas. In the ten years since NAFTA's implementation, the Mexican minimum wage, which approximately 25% of the country's 40 million workers earn, has declined 20% and hovers at \$4 a day. The reported job loss in the U.S. as a result of NAFTA is close to 900,000 jobs and job opportunities.

I submit that the biggest loser in a race to the bottom would be American companies. Many are already established in Latin America as responsible corporate citizens with standards that in some cases exceed the laws on the books in their host countries. In a race to the bottom, these companies would have to choose between competing as part of the vanguard in their treatment of workers and stewardship of the environment or competing the way others do at the margins.

Unfortunately, the current U.S.—Dominican Republic—Central America Free Trade Agreement (DR–CAFTA) misses an opportunity to meaningfully elevate the quality of life as well as the economies of our Central American—DR neighbors. Instead, it sets us on a course towards the lowest common denominator and competition at the margins.

It's not that we couldn't have done better. Our trade negotiators are some of the toughest in the world. They can come out "guns blazing" when they are serious about defending American interests such as the protection of the intellectual property rights of US companies. Yet the same tenacity is not applied to protect human beings or the environment.

To be clear, I am pleased with many of the state-of-the-art intellectual property rights protections in the DR–CAFTA. Intellectual property rights are important to the entertainment industry and the economy of my city of Los Angeles, and indeed to the rest of the country. Motion picture and television production adds \$50 billion a year to our economy and means jobs for more than 630,000 Americans. And our recording industry sells upwards of \$14 billion a year in the U.S. alone.

In sections 15.5:7(a) and 8(a) of the DR–CAFTA the parties agreed to language that mandates that each party have or enact domestic laws that "provide for criminal procedures and penalties" when there is a willful infringement of copyright and related rights. These provisions could be described as one side of the "double-barreled shotgun" the U.S. holds over its trading partners under the DR–CAFTA. The other barrel comes in the form of the full range of economic trade sanctions which can be imposed for violation of the agreement.

In contrast, the only provision in the chapters on labor and environment that is enforceable through a dispute settlement process is a requirement that each country "shall not fail" to effectively enforce its own laws. The DR–CAFTA countries must merely enforce their existing laws, substandard or otherwise, with no worry that they must improve deficient laws to reflect even the most basic of international norms of decency and fairness for working people. In fact, the DR–CAFTA countries could weaken their labor laws at any time and face no firm consequences.

Moreover, unlike the intellectual property and other commercial provisions in other chapters of the DR–CAFTA, the primary mode of enforcing the labor and environmental provisions is not through trade sanctions. Instead, in section 20.17 of the current DR–CAFTA, there is a separate and far weaker dispute resolution mechanism for labor and environmental violations.

Thus, if a panel finds that a country has failed to enforce its own labor or environmental laws, the country may be directed to pay a monetary fine up to \$15 million. The violating country effectively pays the fine to itself, as monies are to be spent on appropriate labor or environmental initiatives in the territory of the country complained against. The fine is to be paid into a fund and expended at the direction of a Commission comprised of cabinet-level representatives of the United States and DR-CAFTA countries. If the country fails to pay the fine, the country that brought the complaint may take “other appropriate steps” to secure compliance, including seeking the right to impose trade sanctions.

Some would argue that the identical recourse of trade sanctions exists for labor and environment violations as for any other commercial aspect of the agreement. However, the way these dispute settlement provisions are written, it is unlikely that trade sanctions would ever be imposed by countries for labor or environmental violations. With the only penalty being a fine capped at \$15 million per year, a trading partner could decide that paying the fine is just the cost of doing business. Compared to the double-barreled shotgun employed for intellectual property, this fine could be called the equivalent of a peashooter.

I make note of my next example with all due respect for the representatives from our friend and neighbor Guatemala. I have visited their country and am aware of and applaud their efforts to strengthen their nascent democracy. I outline the following facts to illustrate the stark contrast between U.S. demands on Guatemala’s labor standards versus their intellectual property standards.

In 2000, the U.S. reviewed Guatemala’s eligibility for trade preferences under the Generalized System of Preferences program and the Caribbean Basin Initiative, and expressed concern regarding labor violations. In April 2001, Guatemala enacted major labor reforms. However, aspects of the 2001 reforms were challenged by employers in court. Twelve articles of the labor code were deemed to be partially or wholly unconstitutional by the Constitutional Court of Guatemala in August 2004. Of specific concern, the ruling overturned the power of the General Inspector of Labor to impose administrative fines for labor-rights violators. To date, some five years after the U.S. conveyed its concerns, there is still no enforceability of the labor standards that passed constitutional muster, and no legislation has been introduced to resolve this current vacuum of enforcement in a constitutional manner.

In notable contrast, in December of 2004, the Guatemalan Congress approved a law that would give generic drug companies access to clinical trial data used by patented drugs to secure marketing approval. Our Administration argued that this law was contrary to the negotiated DR-CAFTA, which requires five years’ worth of protection for clinical trial information. It was reported that the Administration said it would not present DR-CAFTA to Congress until Guatemala repealed that legislation. By the end of January 2005, in little more than one month, the Guatemalan government had introduced legislation to re-instate the 5-year protection for patented pharmaceuticals. And last month—only three months after hearing U.S. concerns—the bill became law. In this instance, the Administration did not use a double-barreled shotgun, it threatened to use the “nuclear option” and blow up the whole agreement. I do not blame our friends in Guatemala for making these changes. I only wish we had the same enthusiasm for protecting human beings and the environment.

There are some very basic, minimum, internationally-recognized standards on labor that we all can support for workers. They are prohibitions on the worst forms of child labor, discrimination, and forced labor, and the rights of association and collective bargaining.

In December 2003, I joined with my colleagues Congressmen Rangel and Levin in sending a letter to then-USTR Ambassador Robert Zoellick identifying 26 separate areas in which CAFTA countries’ laws were deficient in relation to basic international labor standards. The letter was based on published reports by the U.S. Department of State, the International Labour Organization (ILO), and other credible sources. We never received an answer from the USTR to the listing of legal shortcomings. Nine days ago, on April 4, 2005, joined by Congressman Cardin, we sent a follow-up letter to the Administration, identifying the 20 areas in which the CAFTA countries are still out of compliance with basic ILO standards.

On April 5, 2005, Ministers responsible for Trade and Labor from the DR-CAFTA countries released a “White Paper” that outlines the Ministers’ views of labor conditions in their countries and a work plan to improve enforcement of labor laws. The report asserts that the countries’ laws “generally provide high levels of protection for the core labor standards,” although the report also notes several areas where the ILO has found deficiencies. It also provides a series of recommendations about where resources from regional and international donors could be used to improve the capacity of the countries to implement and enforce labor standards. Finally it

asks the Inter-American Development Bank to convene a meeting of the relevant donors and technical assistance agencies to discuss the recommendations in the report.

Most of the DR-CAFTA countries are trying to move in the right direction toward basic standards on both labor and the environment. On February 18, 2005, the DR-CAFTA countries signed two side agreements designed to complement and facilitate the implementation of environmental provisions in the DR-CAFTA. But, frankly, if the countries are genuinely willing to make lasting progress in the areas of labor and the environment and be held accountable, the terms for this should be included within the four corners of the trade agreement. Anything else, whether side agreements or "white papers," comes up short. We need only examine the fruits of the NAFTA side agreements on labor and the environment for dispositive proof of this.

President Ronald Reagan is famous for having said, "Trust, but verify." We should trust our DR-CAFTA neighbors to raise their labor and environmental standards, but we should also have the means to verify.

The truth is, if we were to tell the American public that we were opening up our markets to further international competition based on an expressed promise or the good intentions of our competitors, the American people would run us out of Washington. Just as no consumer today would buy or sell a house on a handshake, neither should we open our markets with one.

Along with accountability, I agree wholeheartedly with the DR-CAFTA Ministers' assertion that investment in the region is key. The integration of the European Union (EU) provides a good example. Last May, 10 new members acceded to the EU which is the largest trade area in the world. The EU demonstrated a commitment not only to market liberalization, but also to reducing inequality. From its inception in 1957 to 2001, the EU has funneled approximately \$353 billion in development grants to member states. This is roughly 10 times the total US economic assistance grants to all of Latin America in the same time period. When approaching trade from a holistic view, the goal should not be limited simply to access to new markets, but also to lifting up our trading partners so that we can trade as equals.

Likewise, as we talk about capacity building, we have to "put our money where our mouth is." We cannot encourage our trading partners to enforce their labor and environmental laws, but starve the very programs that would build capacity for countries to enforce the laws on their books. For example, the Department of Labor's International Labor Affairs Bureau, (ILAB) operates programs to promote core labor standards internationally and support efforts to combat child labor. Yet the Administration's budget request for fiscal year 2006 for this important bureau is only \$12 million. This represents a precipitous drop from past years and, unfortunately, a disturbing pattern from this Administration. Congress appropriated \$94 million in fiscal year 2005, \$110 million for fiscal year 2004, and \$147 million in fiscal year 2003.

In conclusion, I would state that nobody wins in a race to the bottom. The vast majority of people in the DR-CAFTA countries—the workers, the farmers, the small merchants—would not win, and U.S. businesses certainly would not win in the long run. It is better to lift all boats so we can trade as equals. I recognize the importance of trade in this hemisphere, and the importance of a DR-CAFTA. I have supported implementing legislation for every Free Trade Agreement that has come before me in my 12 years in Congress. Regrettably, the current DR-CAFTA is not a trade agreement that I can support.

Mr. BURTON. Thank you, Mr. Becerra.  
Mr. Ballenger?

**TESTIMONY OF THE HONORABLE CASS BALLENGER, A  
FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE  
OF NORTH CAROLINA**

Mr. BALLENGER. Mr. Chairman, Mr. Ranking Member, it is a pleasure to be back. It is kind of a strange situation for me to be sitting down here. I think, when I sit up there I am protected by the law, but when I am down here, I am not sure what I say will not get me in trouble. Some of you know I have a tendency to sometimes shoot my mouth off.

Let me thank you for inviting me to testify this afternoon. As you know, I served as Chairman of the Subcommittee during the past 4 years before I retired from Congress.

We all know, Mr. Chairman, that Central America has come a long way. Over the 35 years that I have been active in this region, I have seen a bloody civil war give way to peace, brutal dictatorships become democracies, and hope springs from hopelessness.

I would just like to add that I called up Secretary Condoleezza Rice about a month ago and said, "Do you realize we are fighting a war in Iraq to give a chance to that country to develop a democracy?" You back up 15 or 20 years ago when you and I first got involved down in Central America, we did exactly the same thing.

Now, because we have given them economic aid and assistance, we have had four elections, four democratic elections in both Salvador and in Nicaragua, and we have developed a real democracy. Now, they are not terribly stable, and I would say that if we do anything to weaken those democracies, you are going to see it go back to the disaster that we had when you and I used to go down there and hope we would not get shot at.

While Central America still suffers from chronic problems of poverty and other social ills, it seems ready to turn the page and begin a new chapter, one where political stability and economic opportunities take the place of violence and economic stagnation. In my considered opinion, we have a real opportunity to do some good in Central America, and that is why I believe Congress should pass DR-CAFTA now.

After the wars in Central America came to a merciful end and the United States began developing strategies to improve the economies of Central America and the Caribbean, trade agreements, such as the Caribbean Basin Initiative (CBI), were ratified, generously giving Central American and Caribbean nations duty-free access to American markets as a way to build them up. Such access allowed these nations to produce and export a variety of goods to this country without facing crippling tariffs. This strategy seemed to work, but now it is time for all nations to share a duty-free access.

I would like to skip back just a little bit to the fact that I was in the manufacturing business. I have been supplying the textile industry for 40 years, and at the time—before NAFTA, I counted it back—I had 25 customers that made pajamas for Penney's and lady sanitary napkins, baby diapers, shirts, blouses, and so forth. Twenty-five of these companies either went bust or left the country and went somewhere else and made sweaters, and so forth.

The basic idea was that NAFTA came along and did not kill it. The industry was dying already, because industries that had heavy labor costs moved to where it was cheaper, and this was working out. I was in Guatemala, where there was a sewing plant that was sewing Manhattan shirts. Two hundred sewing machines were sewing there. Two weeks after NAFTA was passed, those sewing machines moved to Mexico.

I see the same thing. If we do not pass CAFTA here, there are about 1,000 or 1,500 sewing machines down there that will be in China or Bangladesh within a month. Then, we do not have to worry about whether we give the proper labor laws. There will not be any jobs down there.

As usual, I am not following my speech and I will go back to it.

In my home in North Carolina, for example, textiles were once the primary product. Over the years, competition from China and other places steadily reduced the number of jobs in this vital industry.

Even before DR-CAFTA, jobs were being exported. Under DR-CAFTA, sewing machines now in Central America will likely stay there if we pass it, making the clothes that we wear today. The clothes we wear that say "Made in El Salvador," "Made in Honduras," that material, and that yarn, and that thread is made by textile industries in this country.

DR-CAFTA will keep textile jobs both here and in Central America and the Dominican Republic. Without DR-CAFTA, these jobs will most certainly go to China or elsewhere, taking our jobs, and those of our neighbors with them.

There was a gentleman, who may later be a Member of this Committee, who made several speeches in North Carolina in Charlotte and in Raleigh. And his statement, I think, fits about as well as anything I have seen. His statement that made all the newspapers back home is, "A vote against CAFTA is a vote for China." Now, if you stop and think about it, that is exactly how those of us that have jobs to look out for feel.

I thank you, Mr. Chairman. I do not think I said anything wrong.

[The prepared statement of Mr. Ballenger follows:]

PREPARED STATEMENT OF THE HONORABLE CASS BALLENGER, A FORMER  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Thank you Mr. Chairman,

It's a bit strange for me to speaking from this side of the dais. But, I suppose it is a relief too!

Mr. Chairman, thank you for inviting me to testify this afternoon. As you know, I served as the Chairman of the Subcommittee during the past four years before I retired from Congress in January. As you know, Mr. Chairman, Central America has come a long way. In the over 35 years I have been active in the region, I have seen bloody civil wars give way to peace, brutal dictatorships become democracies, and hope spring from hopelessness.

While Central America still suffers from the chronic problems of poverty and other social ills, it seems ready to turn the page and begin a new chapter, one where political stability and economic opportunities take the place of violence and economic stagnation. In my considered opinion, we have a real opportunity to do some good in Central America. That is why I believe Congress should pass DR-CAFTA now.

After the wars in Central America came to a merciful end, the United States began developing strategies to improve the economies of Central America and the Caribbean. Trade agreements such as the Caribbean Basin Initiative or CBI, were ratified, generously giving Central American and Caribbean nations duty-free access to American markets as a way to build them up. Such access allowed these nations to produce and export a variety of goods to this country without facing crippling tariffs. This strategy seemed to work. But, now it is time for all nations to share duty-free access.

I believe that DR-CAFTA is the ideal way to continue our good economic relationships with Central America and the Dominican Republic. It provides a level playing field whereby goods from either region can have equal access to the markets. While some have criticized DR-CAFTA as a threat to American jobs, I believe it will actually protect the jobs we already have and maybe even provide more jobs as the agreement goes into effect.

In my home state of North Carolina, for example, textiles were once the primary product. Over the years, competition from China and other places steadily reduced the number of jobs in this vital industry. Even before DR-CAFTA, jobs were being exported. Under DR-CAFTA, sewing machines, now in Central America will likely stay there, making the clothes we wear today. DR-CAFTA will continue to require American yarn and fabric to be used to sew clothing bound for the American mar-

ket. DR CAFTA will keep textile jobs both here and in Central America and the Dominican Republic. Without DR-CAFTA, these jobs will most certainly go to China or elsewhere taking our jobs, and those of our neighbors with them.

Mr. Chairman, if we are intent on keeping American jobs here, and help keep jobs in Central America, we must pass DR-CAFTA now.

Thanks You Mr. Chairman.

Mr. BURTON. I am not going to mess with that one, Cass.

I think you made some very valid points, and I in particular liked the comments you made about those sewing machines in Guatemala that moved to Mexico because of NAFTA, and the comparison you made with that being a possibility that we would lose those to China or Bangladesh or someplace else, which would cause us to lose some employment, or cause these countries to lose employment down in Central America.

Some of the opponents of CAFTA say that it will undermine enforcement of domestic environmental standards. How do you counter those arguments? Mr. Brady?

Mr. BRADY. Mr. Chairman, this agreement has something pretty amazing in it. It is a state-of-the-art process where average people in Central America can raise environmental issues and have them go through a process that enters into this trade agreement, so we are not only setting some good, strong processes there. We have set up a public participation to ensure the environmental standards are not only met, but approved. That is the first time that has ever been seen in any trade agreement, ever.

I can tell you too, Mr. Chairman, having come from Texas, I watched NAFTA firsthand in the years since that agreement occurred, and this one is 10 times better than that. We have \$1 billion in environmental projects, clean air, clear water, clean wastewater, clean sewer projects along our Mexico border that never would have occurred without the opportunity for increased trade.

We have a chance with CAFTA, I think, and this new mechanism to do even more, because when you have jobs, when you have revenues, communities and countries pay more attention to strong environmental standards. That is what we have that opportunity for.

Mr. BURTON. Cass, do you have anything you want to add to that?

Mr. BALLENGER. Yes. We are worried about whether they take care of the atmosphere and atmospheric warming. It seems to me that the damage that we are doing that we are saying they cannot do, we are doing it so much more rapidly here that it is kind of hypocritical to say we have to change our rules and make it tough on a country that does not have anything and does not have jobs and has very little to feed their people.

We are making it tough on them and not doing anything about our situation, atmospheric warming here in the United States or in China. That is kind of childish, but it sounds political.

Mr. BURTON. One of the things that concerns me is that we have the Caribbean Basin Initiative, and there is some question about whether or not that is going to be renewed or continued in the event that CAFTA is not successful.

What do you think would happen if we did not have the CBI and CAFTA failed? I know you touched on that in your opening remarks, but if you can give us a little additional comment we would appreciate it.

Mr. BRADY. Well, I think without CAFTA, I will predict CBI will expire, and all the good works that this country—Republics and Democrats together—joined to do to give Central America a chance to pull themselves up by their bootstraps, I think we will start to see a backslide there.

I will tell you, too, I think it was absolutely the right thing to open our markets to Central America, but over time I think it is fair to ask that they open their markets to our farmers, our manufacturers, our workers, and I am convinced—I think Mr. Ballenger said it the best, but in the textile industry we either partner up with Central America or we perish.

We have already lost five plants, textile plants, in America since China has had open access, duty-free access. The Dominican Republic has lost 19,000 jobs already. Those are our customers. That is where our customers, that is where our fiber, that is where our yarn is going.

We have a real stake for American workers to keep our customers sound, and this agreement gives us the flexibility to do that. So from a job standpoint, both in Central America and here, we have a lot at stake in this agreement.

Mr. BURTON. Cass, do you want to follow up on how this is going to be a positive thing for American workers?

Mr. BALLENGER. Well, the truth of the matter is—

Mr. BURTON. Because there are a lot of people that think CAFTA is going to cost Americans jobs rather than create more jobs.

Mr. BALLENGER. I speak specifically about the textile industry. We have already lost all the jobs that apply to this particular area in the rest of the world. They are gone.

What we have left is technologically advanced things like yarn plants, cloth plants, and so forth where we can actually compete with the Chinese with some help of people running the sewing machines for us.

Now, if we are going to move them in assistance by using our material, and demand that they get \$10 an hour, and still try to compete with the Chinese, I think we are crazy because business does not operate that way.

The basic thing that we have is, if we do not have CBI as well, either/or—both is what we need. If we do not have either one of them, I would say that you are going to see the dictatorships that were in El Salvador, Nicaragua, things are kind of shaky in Venezuela, so forth and so on.

You are going to see things get really bad, because the opportunity to create new jobs and so forth and so on or keep the jobs that they have—

Mr. BURTON. Yes.

Mr. BALLENGER [continuing]. Depends on both of those two things.

Mr. BURTON. That is one of my major concerns, that political stability down there depends upon economic viability as well, and unless we have some incentives down there for their economies to grow and create new jobs and eliminate some of the poverty down there, I think you are absolutely right. The re-emergence of dictatorships and totalitarian governments is a very real possibility.

Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman. I appreciate this panel of both present and former colleagues being here. You are all tremendous advocates for your point of view, and I have a great deal of respect for each and every one of you.

I welcome the former Chairman, who I had the opportunity to work with for quite some time. You did not say anything that is going to get you in trouble, at least legally in trouble.

Mr. BALLENGER. Yes, right.

Mr. MENENDEZ. However, we have a few disputes here. But, Mr. Chairman, it is great to have you back and looking so healthy and good. I am glad to see you are doing well.

I just want to ask a few questions, and I was going to let this panel go by as colleagues and listen to it, and not say anything, but some of you are so compelling that you have compelled me to say something.

Mr. BRADY. Feel free to go with your instincts.

Mr. MENENDEZ. No. I am going to go with my present instinct, Mr. Brady. You were part of my inspiration.

Let me just say there are some undeniable facts. We can sugar coat them. We can put them on the side, but there are some undeniable facts. Mexico lost 1.3 million agricultural jobs and replaced them with less than half of that number in manufacturing jobs. That is a fact.

Mexican rural poor were most affected by NAFTA, and then we wonder why they are coming across the border so that we have minutemen lining the border with guns, thinking about why people come. They come because of economic desperation, and NAFTA still has not produced the opportunities for a good start.

I also wish that our colleagues who are strong advocates of trade, and I believe trade is an important aspect, but when unmatched by economic assistance, development assistance, we widen the gulf between those who have and those who do not have, and these trade agreements largely fuel that ever-extending gulf, which is a big part of the problem of Latin America, and the movements by Latin American people to make change.

Mr. Brady suggests that these are countries that have labor standards in their Constitution, that they have more ILO agreements in the United States. Yet, I do not think there is a worker in the world who would argue that it is better to be a worker in the United States than certainly any Central America country.

The other thing I think about is when we hear language that says let us not kick them back down the ladder that they have worked for. Certainly we admire what the Central American people have done, but by the same token, when we cut the development assistance for the last 2 years consecutively, the only part in the world in which we cut development assistance to is Latin America, several of which are Central American countries. We are certainly kicking them down the ladder of the opportunities that fulfill their hopes and dreams and aspirations.

When I hear my distinguished former Chairman say a vote against CAFTA is a vote for China, I do not know if that is compelling considering how many people have voted here for China in a wide variety of ways. I am not sure that Mr. Walton would like to hear you say that at WalMart.



I just think that we have to be a little balanced in our arguments here, and with reference to dictatorships in Latin America, some of the greatest unrest in elements of Latin America are taking place in countries with enormous wealth, with enormous natural resources that could see unlimited potential for its people.

Trade agreements, and commercial activity with them, has not promoted the opportunity for the peoples of those countries to achieve a degree of economic success that gives them and their families the hopes, dreams, and aspirations to be realized. Hence, they begin to move away from democracy, and they actually are willing to accept authoritarianism if that ultimately improves the quality of their lives.

I think there are many different dimensions to this issue. I do not think we can say that those who do not or may not support this agreement will certainly be putting the people of Central America down, or their countries, or their democracies, especially when we cut development assistance, especially when we do nothing as it relates to narrowing the gulf, and especially when we still look the other way on labor standards and do not, as Mr. Becerra suggested, produce enforcement provisions.

I would just like to ask one question in closing. Maybe Mr. Becerra can comment on it. Even if we were to pass this, is China not going to be an enormous competition for these countries anyway? And what are we doing in terms of, if we do that, we do not guarantee their being secure? And, lastly, at the same time we have a whole host of consequential facts that flow from that.

Mr. BECERRA. I think you raised a good question. In Central America, the only country that could probably survive, even with CAFTA, against the onslaught from China, is Nicaragua, and the reason we are given is because Nicaragua's wages are so low right now that they might be able to compete.

But, even with the depressed wages that you see in Central America, they still cannot compete with the Chinese wages, and so you ultimately find yourself, especially if you are an American company, having to make the decision if you wish to engage in this race to the bottom to compete with a 64-cent-an-hour wage in China.

All we are saying is, and I agree with what my colleagues have said with regard to trying to help Central America and develop with trade, but we have to verify that the fruits of that trade, that commerce, will go to all the people in Central America.

As we saw with Mexico, the fruits of NAFTA have gone to just a very few, and in fact, Mexican workers have seen their wages decline in the 10 years since we have seen NAFTA.

Mr. WELLER [presiding]. Thank you. Thank you, Mr. Menendez.

First let me just give my greetings to my two current colleagues and my former colleague and leader of this Subcommittee.

Mr. Brady and Mr. Becerra, who I serve with on Ways and Means, as well, I appreciate your commitment to the region. Mr. Brady, I agree with you 100 percent. Mr. Becerra, I disagree with most of what you have said, but I admire your commitment.

Mr. Ballenger, we miss you sitting up here. I want you to know that. You were not turned down as Subcommittee Chairman. You could have stuck around a little longer. You personally made the

choice to go home. There is no one in the current Congress that has had the lifelong commitment to Latin America that you have, the leadership, the time that you have invested, and the commitment to democracy as a whole, but also to the little people of Latin America, particularly in areas of health and the hospitals, the clinics, and the schools that you personally have invested in.

I think we all owe you a tremendous depth of gratitude for your leadership, but also what you have done for our best friends, and those are our next-door neighbors in this hemisphere.

You know, one thing I found very interesting as we have gone through the process of talking about trade agreements here in our own hemisphere, particularly with the Dominican-Central American Free Trade Agreement, with our friends in Panama that is still under negotiation, with our friends in the Andean region still under negotiation, is some have come out in opposition to trade agreements solely because they do not solve every social and economic problem in their home countries, or those of us in the outside looking in, do not feel we have solved every problem.

Of course, I know Mr. Brady and Mr. Ballenger feel this way, and, Mr. Becerra, I believe you do too, that trade agreements are just one component of raising the tide which helps lift all boats.

As we look at the DR-CAFTA, as we look at the Andean Trade Agreement, as we look at Panama, I can support and recognize these trade agreements are just one component of our relationship in the hemisphere, and we cannot expect them, nor should anyone expect they are going to solve 100 percent of the problems that we all challenge.

Plus, the trade agreement is a compromise. I have constituents that are not 100 percent happy with it because for their particular commodity, and they would like something a little better, but it is a good, fair and, I believe, balanced agreement.

I know, Chairman Ballenger, you more than anyone have traveled Latin America, and you have seen, as you referred to, what I also believe is the future if we fail to ratify the Dominican Republic-Central American Free Trade Agreement.

Mr. Becerra, I believe you were with me. We visited Charles Company in San Salvador, El Salvador, a company in which there were 1,800 sewing machines, and the day we were there there were no workers at those sewing machines because they were being packed up and being shipped to Sri Lanka. Because at that time, there was doubt whether or not we would have a Dominican Republic-Central American Free Trade Agreement.

I really believe that this is the future if we fail. If you are concerned about what some people call undocumented immigration, or what others call illegal immigration, our failure to ratify this agreement is only going to create more who wish to, or need to, or desperately want to come to our shores to look for a job, rather than having one at home.

I think it is important to note, as Mr. Brady did, that the Caribbean Basin Initiative is a temporary thing. It is a pretty sweet deal for our friends in the Caribbean, and it is a sweet deal for our friends in Central America, but it is temporary. If we fail to ratify DR-CAFTA, the odds are CBI will not be continued.

Of course, right now the Caribbean Basin Initiative is a one-way street. Our friends in the Caribbean, our friends in Central America, have reduced barriers coming into the United States, but there is no reciprocity. So for those Caterpillar bulldozers made in my district, those yellow bulldozers, they face a 15 percent tariff going into Central America and the Dominican Republic.

That \$14,000 tariff, for example, on a small one, is a pretty tough barrier to put in place when trying to compete with bulldozers made in Canada or Europe where they have trade agreements with these markets that we would like access to. Again, the Dominican Republic-Central American Free Trade Agreement makes it a two-way street, and it is a fair and balanced agreement.

One area, Mr. Ballenger, where you have been a real tremendous leader, of course, was that you recognized early on the importance of coffee, for example, to the economies of the Andean region, as well as Central America. Because of your work, the Bush Administration rejoined the International Coffee Organization. Whether you get all the credit or not, coffee prices are up over \$1.25 a pound, but that is part of our commitment.

Mr. BALLENGER. Sorry about that.

Mr. WELLER. For those who would like the perfect, when we look at an agreement, we have to recognize that that commitment is separate from the trade agreement, and that commitment to help the economies of Latin America by being part of the International Coffee Organization is another part of our commitment to the region, just one more component.

You know, you think about it. I have been to Honduras. Our commitment to the compasinos. Someone said that somehow CAFTA is going to hurt the small farmers. I grew up in a farming family. We raised pigs. The pork producers in my district, they support the agreement because they feel there is an opportunity for a new market and an opportunity to raise their prices and support their families.

At the same time, and we have seen in much of Latin America, there are compasinos growing crops that really do not make much money. They are traditional crops. Their grandparents, their granddad, their uncles, they grow sugar, they grow corn, but they cannot make any money.

One thing I have been very proud of in the support we are giving is one example that I saw in Honduras where USAID is working to help demonstrate the technology of shifting alternative crops, crops such as jalapenos or tomatoes that can be grown for the export market, plantains where farmers have the opportunity to make a much higher income and support their families. Those who make the switch have seen an increase in income from 5 to 10 times what they were making before.

All in all, the trade agreement is a good one, but it is just a component of what we want to do to strengthen our own hemisphere. Particularly, as you look at the economic challenges we have with Asia and with China, it is important, I believe, that we work together.

You know, Mr. Brady, perhaps you can outline this, but many in this Congress, I have seen quoted, voted for the Moroccan Trade Agreement, but then they turn around and say they are going to

oppose the Central American Free Trade Agreement based on labor. You know, what are the differences between those two agreements?

Mr. BRADY. Mr. Chairman, Central America is good or better in labor standards and enforcement than Morocco, and the market is frankly bigger than Australia, two trade agreements that passed with overwhelming bipartisan support.

Again, we can sort of debate how strong they are in labor issues, but the International Labor Organization was invited in to assess their laws and standards. They did an excellent job, came back and basically said just very forthrightly, you know, they have strong laws on the books. In some cases it is in the Constitution, embedded there, and we think they are compliant in all the core labor standards.

We think they need to work on enforcement, which, by the way, America and almost every other country has to do the same thing. Where they focused, Central America focused on, was more inspectors, increases—double digit increases—in their own labor budgets, more inspections.

Guatemala threatened export companies that would not live up to labor standards in the Makea areas in their country. El Salvador takes 35 people signing a petition to create a labor union in El Salvador. Guatemala has raised the minimum wage three times in the last 4 years. You are seeing remarkable progress there.

So if you voted for Morocco, were satisfied with those labor standards and progress being made, there is no question about Central America, if that is what you are looking at. From a market standpoint for farmers, manufacturers, the competition against China, hands down, this is a better agreement for America as well.

Mr. WELLER. Just a quick question. Our six friends, the Dominican Republic and the Central American countries, are they all democracies?

Mr. BRADY. Yes.

Mr. WELLER. Is the Government of Morocco a democracy?

Mr. BRADY. No, sir.

Mr. WELLER. They have a King, right?

Mr. BRADY. Yes.

Mr. WELLER. Okay. Thank you.

Mr. Delahunt?

Mr. DELAHUNT. Thank you. I had to come back so I could cross-examine Mr. Ballenger. Cass, it is great to see you.

I think all Members of Congress want to promote democracy, there is no debate about that, but what I have seen over the course of time is a growing disparity of wealth and income in the Central American countries, as well as all of Latin America.

I think it was my Ranking Member, Mr. Menendez, that said words to this effect; that the Central American people have a right to have a good living standard, but the truth is that is not happening. It is not happening. That is the reality on the ground.

Now, are there benefits, economic benefits, as a result of trade? Of course. I guess my question is: Where do those benefits go? Who gets the benefit?

Kevin, you were speaking about improvement in terms of core labor laws, yet when I meet with labor leaders from the Central

American countries, they will tell you that they maybe have the laws, but they are not enforced.

Mr. Menendez indicated that I think it was less than a month ago there was an assassination of a labor leader—I think it was a Teamster—in El Salvador, which is a democracy, so I guess my concern is: How do we help the people of Central America achieve a stable democracy?

Someone else on the panel said, and I think it maybe was the Chairman, Mr. Burton, that we have to put our money where our mouth is. We have attempted to do that. The former Chairman, Mr. Ballenger, and Bob Menendez have made every effort, and it has fallen on deaf ears, to increase assistance in terms of social and economic development for Latin America. We hear nothing except “Gee, it is a good idea” from the Administration. Nothing.

As importantly as us putting our money where our mouth is, it is time that these governments invest in the infrastructure of their own nations to promote social and economic development. For me, the gauge is how much or what is the tax revenue in terms of a percentage of the GDP? Here in the United States it is 20 or 21 percent. Secretary Noriega was here testifying that in Guatemala it is 8 percent.

I think what we are trying to do is we are trying to break that. We are trying to break that cycle in Latin America where these societies become “have” and “have nots.” I think we have an obligation as Members of this Congress, if we are sincere about promoting democracy in terms of our negotiations and the leverage, that we have to insist that there be appropriate investment in terms of social and economic development by these governments—by these governments, these six governments—so that education and healthcare and not just giving workers rights, but giving them real opportunities, that that is part of the agreement too.

I requested, and I have not received it yet, but I requested from Secretary Noriega the percentage of GDP that is supported of these various countries in terms of what goes back into society and what goes back into the infrastructure. You know, the truth is that I find it a moral obligation to help the people in Central America, not just the economic elite and make them richer. That is not my role.

I am concerned about the stabilization of democracy and human rights, not just making the wealthy class more wealthy. I want to see a commitment beyond this agreement in terms of investment in social and economic development.

Mr. BRADY. If I could, so much of what Bill said is right on the mark. These are fledgling democracies that in 15 years or less have made remarkable progress, but they are not there. You know, we opened up our markets and said, “Sell your products and goods into America. This will help you build and stabilize your economy,” and it has.

They have said, “That has helped us. Now we want to go to the next level. Help us lock in the investment reforms, the rule of law, the property rights protections to allow us to go to the next level and bring even more investment in.”

You are seeing progress in Honduras. The average worker, \$750 a year wages. To work in a textile plant tied to the United States, it is \$3,000 to \$4,000 a year. You are seeing healthcare and dif-

ferent avenues traded with these companies that never existed before, but you are right. It is nowhere near where it needs to be. Forty-seven percent of the people in Central America live in poverty.

If you look at the Presidents of those countries talk about what it will take to get them out of poverty, they know exactly what it takes. Access to our market long-term, new investment in their countries long-term, the stability so they do not backslide, but in fact accelerate that progress is what we are trying to get to.

Mr. DELAHUNT. But if I can, Kevin, the reality is that it is growing inequality. There is more poverty in Central America today than in the past 10 years, okay, with the advent of democracy in terms of the aspect of elections.

What I am saying is the lack of a political will by those, particularly those in the economic elite, to be willing to pay their fair share so that the benefits of trade are allocated throughout these societies.

I mean, I have sat down with individuals from Guatemala. It is a joke. No one pays any taxes down there. It is a joke. Until that happens and until all of the people in Guatemala get the benefit, I have real problems supporting this agreement.

Mr. WELLER. Thank you, Mr. Delahunt, and I want to thank the panel.

Cass, did you have something? A courtesy to the former Chairman. I will give you a brief response.

Mr. BALLENGER. Yes. One thing is I think we are expecting the world to change completely down there. Trade, and you said this, is one of many things.

Those of us that have been down there and seen the operation of the Napoleonic Code, it is so designed that nothing can ever get done. I think the only country down there that has actually seriously changed their legal system has been El Salvador with a great deal of money invested by us to help them change their system.

The Napoleonic Code is designed so that nothing can legally happen, and so I do not care what your law is. As long as I can go to court and string you out for 2 or 3 years, nothing is going to happen.

I hate to be that negative about what is going to occur, but I think the best we can do is get a trade system going and hope that somewhere along the line they will recognize that there are other things they have to change too.

Mr. BECERRA. Mr. Chairman, if I could just have a final word since my colleagues did as well?

I think what Mr. Ballenger has just said is absolutely true. We do not have institutions that are dependable in Central America, and the fact is you can read the entire DR-CAFTA agreement, and you will not find anything that strengthens the opportunities to bolster those institutions that people need, as Mr. Delahunt said, to be able to reach a middle class standard, which will of course give them then the opportunity to buy American products because you are not going to have a poor Central American buy a Caterpillar bulldozer.

What we need to do to strengthen institutions and create those Central American middle classes is not in this agreement, and that

is the problem. When you simply tell a country, "Enforce your existing laws," and those existing laws are deficient to begin with, and even the Central American countries will acknowledge to you that they are deficient in some respects. Then you have set yourself up for failure in that race to the bottom, which we cannot win because those American companies that make and are paying better wages than other non-American companies in Central America will be forced to compete not at American wages in Central America, which means Central Americans being paid at a higher standard, but they will be forced to compete at the wages that are being paid by those ruthless employers in Central America, which we saw when we were in those maquilas, Mr. Chairman.

We saw that these were women, mostly all women, operating in stifling heat. When we tried to pose questions to them—I think you may have; I know I tried to speak to them—they would not look up from their sewing machines. I tried to talk to them.

After we visited that company that was empty, which by the way the employers never said that they left because there was no CAFTA. They just left because they found lower wages in Indonesia. The other company we went to that was a different company that had workers that were trying to work with their employers, they talked about the fact that they have very few opportunities to try to increase their standard of living under current labor conditions in their country.

Mr. WELLER. Thank you. I would note, since you referred to my home district company, Caterpillar, I would note that there are not very many Americans who buy bulldozers either, but there are Americans and there will be Central Americans who will buy those bulldozers.

There are workers who get the jobs because those products are created, and there are workers who are going to service that bulldozer, and there are workers that are going to operate that bulldozer. There are other workers who are going to support the activities that result from that bulldozer. That is what economic growth is all about.

I want to thank my two colleagues, my former colleague, my former leader, Chairman Ballenger, for joining us today. You have been very generous with your time. In my experience, usually when a Member panel has come in, you make a statement and you are dismissed without a question. You have been very generous in responding, so we appreciate your time.

I would like to invite the next panel to come forward.

Again, thank you for the courtesy of appearing before the Subcommittee.

[Pause.]

Mr. WELLER. Please stand and raise your right hand to take the oath.

[Witnesses sworn.]

Mr. WELLER. Thank you. As Chairman Burton had noted earlier, to make the best use of our time and out of courtesy to others that are testifying, as well as to the Members, we ask those who are witnesses today if you would summarize your statements. Please stay within the 5 minutes that each witness has been allotted.

Of course, we will submit them for the record and then, of course, make it open for questions from Members of the Subcommittee.

Let me just quickly introduce the members of this panel. First, Mr. Jerry Cook, Vice President of International Trade with Sara Lee Branded Apparel of Sara Lee Corporation. Our second witness is Mr. Michael Massey, Senior Vice President, General Counsel, and Secretary for Payless ShoeSource.

Our third witness is Ms. Linda Chavez-Thompson, Executive Vice President, American Federation of Labor and Congress of Industrial Organizations, and our fourth witness, and of course we welcome you to our capital, the Most Reverend Alvaro Leonel Ramazzini, Bishop of San Marcos, Guatemala, and President of the Bishops' Secretariat of Central America and Panama.

Thank you all for participating today, and we will begin with Mr. Cook.

Mr. DELAHUNT. Mr. Chairman? I am right here to your left.

I thought we were going to have a representative, the Assistant U.S. Trade Representative, as the second panel.

Mr. WELLER. It is my understanding this was discussed before you arrived that apparently they were not available, and we are submitting questions to them. We have discussed this at length already, Mr. Delahunt.

Mr. DELAHUNT. Thank you.

Mr. WELLER. You are welcome to add any comments later if you would like.

Mr. Cook?

**TESTIMONY OF MR. JERRY COOK, VICE PRESIDENT OF INTERNATIONAL TRADE, SARA LEE BRANDED APPAREL, SARA LEE CORPORATION**

Mr. COOK. Thank you. Thank you, Representative Weller and Congressman Menendez, Members of the Committee. Good afternoon. I am Vice President of International Trade for Sara Lee Branded Apparel, and I will summarize my written testimony.

I welcome the opportunity to appear before you today to discuss United States trade agreements with Latin America and to express strong support in particular for the U.S.-Central America-Dominican Republic Free Trade Agreement, CAFTA, not only on behalf of Sara Lee Branded Apparel, but also as Co-Chair of the steering group of the Business Coalition for U.S.-Central America Trade and on behalf of the Emergency Committee for America Trade (ECAT), which serves as the Secretariat to the Business Coalition, and the American Apparel & Footwear Association.

Our brands include Playtex, Bali, WonderBra, Hanes, Champion, and Just My Size and have operation and sales throughout the region and more than 80 nations. We have a highly developed supply chain that includes United States textile assets, as well as extensive investments and partnerships in the communities throughout the Western Hemisphere.

Free trade agreements in the Western Hemisphere promote economic growth, the reduction of poverty, high standards of living that are vital to support the stability that countries need to estab-



lish and sustain democracies and the rule of law, and to provide viable alternatives to illegal activity.

Nowhere is this linkage more apparent than our relations with Central America. Twenty years ago this Subcommittee and the Congress were considering a range of issues related to Central America—Communist insurgency, military dictators, and regional instability. The possibility of a free trade agreement with any of these countries was simply not in the realm of anyone's imagination.

In 1983, at a time when insurgencies were still being confronted, President Reagan proposed, and the U.S. Congress overwhelmingly approved on a bipartisan basis, the Caribbean Basin Initiative (CBI) that created new economic incentives for the soon to be emerging democracies of Central America.

CBI, including subsequent legislation, have been enormously helpful to promote economic growth, opportunity, stability, and democracy in these countries. It has created a unique opportunity for large scale U.S. exports and U.S. port operations. The region's textile and apparel industry is largely an outgrowth of those programs, and it has developed into the region's second largest employer providing better paying jobs for 500,000 workers.

Under the leadership of CBI legislation, we have been able to weather hurricanes, infrastructure issues, port issues, and turmoil in the region. Our ability to succeed has been and remains dependent on this U.S. policy that fosters good partnership, but that openly encourages predictable growth and change.

The temporary and limited unilateral preference programs can no longer keep pace with the global changes in the marketplace. Consider the following: United States yarn and fabric exports have expanded by \$2 billion between 1999 and 2004. Adding North and Central America together, 75 percent of United States yarn and fabrics go to the region.

Despite the unilateral preferences, the CAFTA countries' share of apparel imports has steadily declined since 1999. A new and more modern permanent and reciprocal relationship is needed; in short, CAFTA.

CAFTA will open to U.S. goods markets. It will open services and agriculture from U.S. companies. It will improve protections for investment in intellectual property, promote transparency and greater accountability by the governments. It will incorporate the most concrete capacity-building mechanisms and, most importantly, it is an opportunity to change this erosion.

The status quo in the United States-Central America-Dominican trading relationship is not the answer. Status quo will be a resulting loss of jobs in the sector, accounting for the second largest group of workers and a loss of U.S. exports.

For Sara Lee Branded Apparel and many others, CAFTA presents an essential opportunity to grow and develop this highly successful economic partnership. CAFTA is a concrete step and will set important precedence for our economic engagement with the rest of Latin America and developing countries throughout the world.

I urge the Members of this Subcommittee and the U.S. Congress to continue that engagement and improve and implement the CAFTA as soon as possible.

Thank you.

[The prepared statement of Mr. Cook follows:]

PREPARED STATEMENT OF MR. JERRY COOK, VICE PRESIDENT OF INTERNATIONAL TRADE, SARA LEE BRANDED APPAREL, SARA LEE CORPORATION

Mr. Chairman, Congressman Menendez, Members of the Committee. Good afternoon. My name is Jerry Cook. I am Vice President of International Trade for Sara Lee Branded Apparel.

I welcome the opportunity to appear before you today to discuss U.S. trade agreements with Latin America and to express strong support in particular for the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA) not only on behalf of Sara Lee Knit Branded Apparel, but also as Co-Chair of the Steering Group of the Business Coalition for U.S.-Central America Trade and on behalf of the Emergency Committee for American Trade (ECAT), which serves as the secretariat to the Business Coalition, and the American Apparel & Footwear Association (AAFA), another leading member of the Coalition.

- Sara Lee Branded Apparel is the largest U.S. apparel company. Our Brands include Bali, Playtex, WonderBra, Hanes, Champion, Just My Size, and Loveable and span across all segments of intimate wear, underwear, sleepwear, casual wear and athletic wear for consumers throughout the region and more than 80 nations. We have a highly developed supply chain that includes U.S. textile assets as well as extensive investments throughout the Western Hemisphere. We are focused on servicing our customers where they are throughout the Hemisphere and the world. We invest in building communities by volunteering and providing financial support as well as investments where we have operations and consumers.
- The Business Coalition for U.S.-Central America Trade comprises over 400 companies and associations representing all major sectors of the economy with members in all 50 states that have come together to support implementation of the CAFTA. The Business Coalition was formed to support the negotiation of a comprehensive and high standard agreement. Once those negotiations were completed, the Business Coalition has worked to support the implementation of the CAFTA by the U.S. Congress.
- ECAT is an association of chief executives of major American companies with global operations who represent all principal sectors of the U.S. economy. ECAT was founded more than three decades ago to promote economic growth through expansionary trade and investment policies. Today, the annual sales of ECAT companies total \$2 trillion and the companies employ approximately five and a half million people.
- AAFA is the national trade association representing apparel, footwear and other sewn products companies, and their suppliers, which compete in the global market. AAFA's mission is to promote and enhance its members' competitiveness, productivity and profitability in the global market by minimizing regulatory, commercial, political, and trade restraints.

The Subcommittee's hearing today is particularly timely as the United States is involved in several important trade negotiations in Latin America and prepares to consider the most recently negotiated agreement, with Central America and the Dominican Republic.

At present, the United States has two free trade agreements (FTAs) with Latin American countries in force:

- The North American Free Trade Agreement (NAFTA), with Mexico and Canada, which entered into force on January 1, 1994; and
- The U.S.-Chile FTA, which entered into force on January 1, 2004.

The United States has also completed negotiations and is awaiting implementation of the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA) with six Latin American countries (Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua). And it is in the midst of one bilateral, one sub-regional and one regional negotiation as follows:

- U.S.-Panama FTA negotiations, which began in April 2004;
- U.S.-Andean FTA negotiations, with Colombia, Ecuador and Peru, which began in May 2004; and
- Negotiations to create a Free Trade Area of the Americas among the 34 democracies in the region, which were launched in 1998.

In addition to these free trade agreements and negotiations, the United States has extended duty-free unilateral trade preferences to many countries in the region through the Generalized System of Preferences and the Caribbean Basin Initiative, as expanded through the Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership.

I would like to focus my remarks this afternoon on three topics:

1. The interrelationship between trade and investment, economic growth and living standards, and democracy and the rule of law
2. Lessons from NAFTA; and
3. The Importance of CAFTA.

THE INTERRELATIONSHIP BETWEEN TRADE AND INVESTMENT, ECONOMIC GROWTH AND LIVING STANDARDS, AND DEMOCRACY AND THE RULE OF LAW.

Trade and investment liberalization are vital elements that support economic growth here at home and throughout the global economy. In turn, that economic growth helps to promote better living standards, to reduce poverty, to increase stability and to bolster democracy and the rule of law.

The United States is the world's largest trading nation, accounting for approximately 14 percent of world goods trade and 17 percent of world services trade. In 2004, U.S. trade and investment, including imports and exports and payments and receipts on foreign investment, increased by 16 percent to \$3.7 trillion. As a share of the U.S. economy, U.S. trade and investment has grown from 13 percent of GDP in 1970 to 31.5 percent in 2004.

For the United States, trade and investment have improved our living standard. Jobs directly supported by exports equal over 12 million, 2.9 million more than in 1990. These jobs pay between 13 and 18 percent more on average than other jobs. Imports help support another 10 million domestic jobs. Imports have improved the variety, quality and availability of products throughout the United States, have increased the competitiveness of U.S. companies, and have been a significant factor in dampening inflationary pressures. Inward and outward investment has improved the competitiveness of U.S. industries and support jobs domestically.

At the same time, programs, such as the Trade Adjustment Assistance program that was renewed and expanded in the Trade Act of 2002, address the reality that even while the United States as a whole benefits from trade and investment liberalization, some parts of the economy will face adjustments that require focused and appropriate assistance.

Globally as well, trade and investment play critically important roles in promoting economic opportunities and growth, helping to reduce poverty and increasing standards of living. Trade and investment liberalization, including the World Trade Organization (WTO) and its predecessor (the GATT or General Agreement on Tariffs and Trade) have played pivotal roles in promoting U.S. and global economic growth and lifting hundreds of millions of people out of poverty over the past five decades. Since the founding of the multilateral trading system and the eight successful rounds of trade negotiations, the world economy has grown six-fold and per capita income worldwide has tripled.

With regard to foreign direct investment (FDI), the United Nations Conference on Trade and Development explained in its 2001 report, *FDI in Least Developed Countries at a Glance*, that increased foreign direct investment is of "particular importance" to achieve sustainable poverty-reducing growth and development in the poorest countries.

Economic growth, the reduction of poverty, and higher standards of living are important to support the stability countries need to establish and sustain democracy and the rule of law and to provide alternatives to their citizens to illegal activity, such as illegal narcotics distribution, gangs, or illegal arms trafficking.

Central America has been, in particular, an important example of this interrelationship. Some twenty years ago, this Subcommittee and the Congress were considering a range of issues related to Central America.—communist insurgencies, military dictators and regional instability. Even the possibility of a free trade agreement with any of these countries, let alone one FTA with all five Central American countries that make up the CAFTA and the Dominican Republic, was simply not in the realm of anyone's imagination.

But in 1983, at a time when insurgencies were still being confronted, then President Ronald Reagan proposed and the U.S. Congress overwhelmingly and on a bipartisan basis approved the Caribbean Basin Initiative—CBI—that created new economic incentives for the soon-to-be emerging democracies of Central America and the broader Caribbean region. I think most will agree that CBI, including its expan-

sion through the Caribbean Basin Economic Recovery Act in 1990 and the Caribbean Basin Trade Partnership Act (CBTPA) in 2000, have been enormously helpful to promote economic growth and opportunities, stability and democracy in these countries.

As the region's stability has grown, we have been able to expand our partnerships during the 20 plus years that we have invested in the region. Sara Lee Branded Apparel invested in both partnerships and self-owned operations in the region. The ability to grow our operations successfully was dependent on:

- U.S. partnership with the region;
- Expanding democratic and economic transformation; and
- Predictable and near-by supply chain centers.

The success of the region to provide the foundation for our ability to achieve a competitive platform has enabled us to sustain many competitive models from around the world. The ability to continue to foster the relationship over-time has been challenging. We have weathered hurricanes, infrastructure issues, port issues and other turmoil in the region. Our ability to succeed in the Hemisphere is dependent on U.S. policy that not only fosters good partnerships, but openly encourages advancements and predictable growth and change.

As I will discuss in a few moments, however, these programs can no longer keep pace with the global environment and a new, more modern relationship is needed.

#### LESSONS FROM NAFTA

Any discussion of trade agreements with Latin America will, for many, start with the first comprehensive free trade agreement—the NAFTA, which joined the economies of the United States and Canada (already integrated in many ways through the prior U.S.-Canada FTA) with Mexico's economy. During Congressional consideration of the NAFTA, proponents and opponents alike made enormous claims of the potential effect of the NAFTA on the economies of our countries, our jobs, our labor and environmental conditions and our futures in the global economy. Now more than 10 years after its implementation, an intensive debate continues on its effects for the United States and Mexico.

Critics like to focus on increased U.S. imports from Mexico and trade deficits, and the challenges faced by workers and farmers in Mexico. They typically ignore the very significant (and unrelated) impact of the 1995 Mexican peso crisis on the Mexican economy and how NAFTA helped Mexico recover more quickly than it otherwise would have.

For the U.S. economy, NAFTA has, in fact, had important positive effects: It has expanded an already vibrant trade relationship. Since 1993, the value of two-way U.S. trade with Mexico has more than tripled, from \$81 billion to \$267 billion. Canada and Mexico are now America's number one and two trading partners and export markets, respectively. And contrary to the critics, employment in the United States rose—from 120 million in 1993 to 135 million in 2001, before some recent declines, caused not by NAFTA, but by broader economic circumstances in the U.S. and global economies.

For Mexico, the results have been even more important. At the end of 2003, the World Bank published an extensive study on the NAFTA, *Lessons from NAFTA for Latin American and Caribbean (LAC) Countries: A Summary of Research Findings*, by Daniel Lederman, William Maloney, and Luis Servén, that analyzed the effects of NAFTA on the Mexican economy, separating out the effects of the peso crisis. The key conclusions of this comprehensive study include the following:

- "NAFTA has brought significant economic and social benefits to the Mexican economy."
- "Contrary to some predictions, NAFTA has not had a devastating effect on Mexico's agriculture. In fact, both domestic production and trade in agricultural goods rose during the NAFTA years." The report goes on to explain why, citing factors as increased demand and productivity.
- "In spite of popular perception, there is little ground for concerns that NAFTA, or FTAs more generally, are likely to have a detrimental effect on the availability and/or quality of jobs. . . . In fact, Mexican firms, as those of the region, more generally, that are exposed to trade tend to pay higher wages, adjusted for skills, are more formal, and invest more in training."

While citing the positive impacts, the report also noted that the NAFTA was insufficient to ensure "economic convergence" of the economies, concluding that the "key constraints" resulted from institutional gaps and deficiencies in education and

innovation policies of the Mexican government and, to a lesser degree, constraints *within* the NAFTA that lowered benefits, particularly strict rules of origin in textiles and apparel and trade remedy laws.

As the U.S. Congress prepares to consider approval and implementation of the CAFTA and the Administration continues negotiations with the Andean Pact and Panama, these conclusions are particularly relevant.

#### HOW CAFTA IMPROVES UPON THE NAFTA MODEL

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

CAFTA will move our countries from outdated unilateral preference programs to two-way free trade, opening up Central America's and the Dominican Republic's markets to U.S. goods, services and agriculture. Many of these benefits for U.S. farmers, manufacturers and service providers are immediate, including:

- duty-free access immediately for 80 percent of U.S. consumer and manufactured goods;
- duty-free access immediately for 50 percent of U.S. agricultural goods;
- the immediate elimination of key non-tariff, services and investment barriers.

For consumer and industrial goods, the region's remaining tariffs phase out over ten years; for agricultural goods, the phase-out is longer, typically, 15 or 18 years. Many of the agricultural access provisions were the result of work by industries on both sides of the "border" that reached agreement on how best to enhance opportunities for U.S., Central American and Dominican farmers.

CAFTA also includes important protections for investment, intellectual property, transparency in customs administration and services regulation and new access and transparency for government procurement. These provisions are important not just to promote trade and investment, but also to promote accountability, transparency and adherence to the rule of law.

It is also clear that CAFTA makes some important improvements upon the NAFTA-model, including the following.

- CAFTA incorporates the most concrete capacity-building mechanism of any FTA. As the CAFTA was being negotiated, the Administration provided technical assistance to promote agricultural diversification and other activities in the region. At the end of last year, Congress made an even greater commitment, through the appropriation of \$20 million for labor and capacity building in the CAFTA countries.
- CAFTA provides for more gradual phase-outs of sensitive agricultural tariffs than the NAFTA, helping to promote a better transition than the Mexican Government implemented.
- CAFTA also includes stronger procurement and greater transparency provisions than the NAFTA, helping again to promote accountability and greater respect for the rule of law.

#### CAFTA AND TEXTILES AND APPAREL

Most importantly for my company, but also, I believe, the region, CAFTA also includes much more commercially meaningful rules of origin for textile and apparel products than either the NAFTA or the current CBTPA preferences, which as a result of changes in the global marketplace—most notably the elimination of global quotas on January 1, 2005—have seriously undermined the viability of the current textile and apparel rules.

U.S. unilateral preference programs have been extremely important in establishing an integrated textile and apparel trade partnership between the United States and the countries of the Caribbean Basin, including Central America.<sup>1</sup> The

<sup>1</sup>In 1983, Congress approved Caribbean Basin Economic Recovery Act (CBERA or CBI as it is commonly known) to provide duty-free access for a finite period of time for many imports from the Caribbean Basin region provided the country undertook various economic and political commitments. In 1986, the Reagan Administration created a program to provide for guaranteed quota-access for garments imported from the region made entirely from U.S. components that

Continued

textile and apparel sector is now the second largest employer overall in these six countries, providing some of the better paying jobs in a region where subsistence agriculture engages the predominant part of the workforce. Without CAFTA, these jobs will increasingly be lost—as they are already starting to be in several countries, signaling increased poverty in a region where 47 percent—almost half—of the population lives in poverty today.

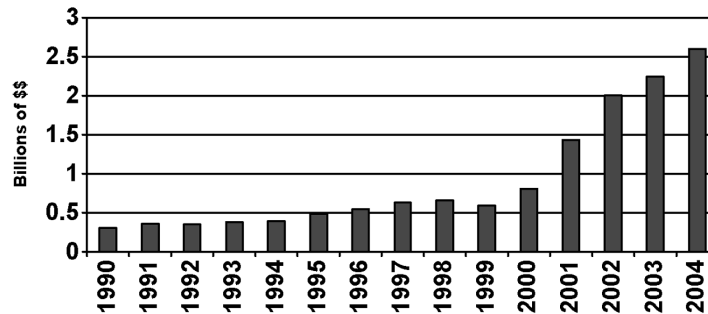
*Textile and Apparel Benefits Provided Through Unilateral Preference Programs*

Under U.S. unilateral preference programs with the Caribbean Basin, U.S. fabrics or U.S. yarns, made primarily with U.S. cotton or other U.S. man-made or natural fibers, are exported to textile and apparel firms in Caribbean Basin countries. That fabric is cut and sewn or otherwise assembled into garments and exported back to the United States. Increasingly, companies have co-mingled U.S. inputs with those from the Caribbean Basin or other parts of the world to maintain competitive supply chains.

U.S. yarn and fabric companies have responded to this partnership with enthusiasm. U.S. textile companies maintain sales and service offices throughout Central America, and several have established joint ventures to create vertical supply chain relationships to ensure more integrated use of their products by their customers. Many are frequent exhibitors at the various trade shows in Central America, such as the Vestex show in Guatemala, or Material World in Miami.

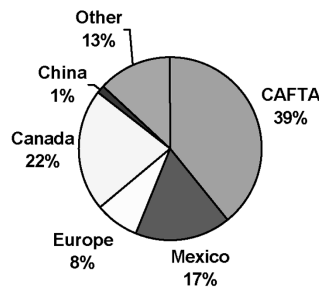
As a result, the U.S. yarn and fabric industries have become increasingly dependent upon the Caribbean Basin, particularly Central America and the Dominican Republic, for their exports. From 1999 to 2004, U.S. fabric and yarn exports grew significantly in response to Congressional passage of CBTPA, which created fresh incentives for the export of U.S. yarns and fabrics to the Caribbean Basin for processing into fabrics and garments. (See Figure 1). During that time, U.S. yarn exports grew 442 percent while U.S. fabric exports grew 365 percent. Combined, U.S. yarn and fabric exports to the CAFTA countries alone expanded by about \$2 billion between 1999 and 2004, representing in that period nearly all growth of U.S. yarn and fabric exports worldwide.

**Figure 1: U.S. Yarn and Fabric Exports to the Caribbean Basin**

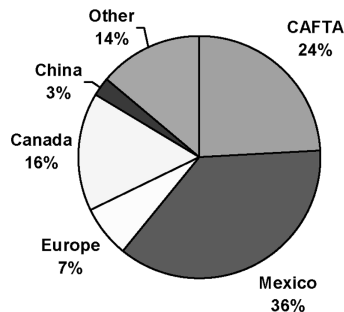


Through this partnership, U.S. yarn spinners and U.S. fabric mills have become dependent upon their export relationship with the CAFTA region. In 2004, U.S. yarn exports to the CAFTA region surpassed \$560 million, making it the destination for nearly 40 percent of all U.S. yarn exports (see Figure 2). Counting Canada and Mexico, total U.S. yarn exports to North America and the CAFTA countries equaled about 78 percent of total U.S. yarn exports.

were made from U.S. fabric and U.S. yarn. Although guaranteed quota-free access, these garments still had to pay duty on any foreign value added, such as the value of the regional assembly operations. In 1990, Congress modified CBERA to make the non-textile and apparel provisions permanent. In 2000, Congress created a special eight-year program to provide for duty free-access to the U.S. market for garments made primarily with U.S. fabrics and U.S. yarns through the Caribbean Trade Partnership Act, enacted as part of the Trade and Development Act of 2000.

**Figure 2: Destination of U.S. Yarn Exports - 2004**

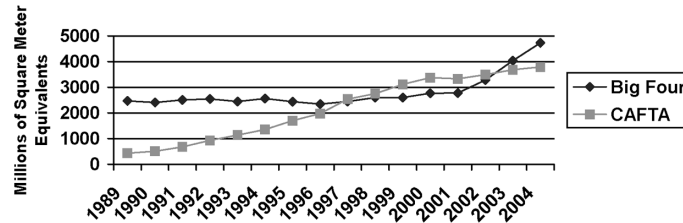
A similar story exists with respect to U.S. fabric exports. Total U.S. fabric exports to the CAFTA region in 2004 approached \$2 billion, representing about a quarter of all U.S. fabric exports worldwide (see Figure 3). Including Mexico and Canada, total U.S. fabric exports to North America and the CAFTA region equaled 76 percent of total U.S. fabric exports worldwide.

**Figure 3: Destination of U.S. Fabric Exports -- 2004**

*Challenges to the U.S.-Central America-Dominican Textile and Apparel Partnership*

Only one percent of total U.S. yarn exports and three percent of total U.S. fabric exports were shipped to China in 2004, even though that country represents more than 14 percent of all U.S. apparel imports. That last point is particularly troubling given the incredible growth that China (and Taiwan, Macau, and Hong Kong—traditional outward processing partners of China) has had over the past decade. Figure 4 shows the growth in apparel imports from the CAFTA countries and China since 1989. While imports from the Caribbean Basin region steadily increased for the first 10 years of that period, imports over approximately the same period from the so-called “Big Four” remained largely stable. In 2001, as two of them—Taiwan and China—entered the WTO, and as the quota removals began to take effect in more significant apparel categories, imports from the Big Four increased, while the rate of increase in imports from the CAFTA countries, even with the CBPTA duty-free preferences, decelerated.

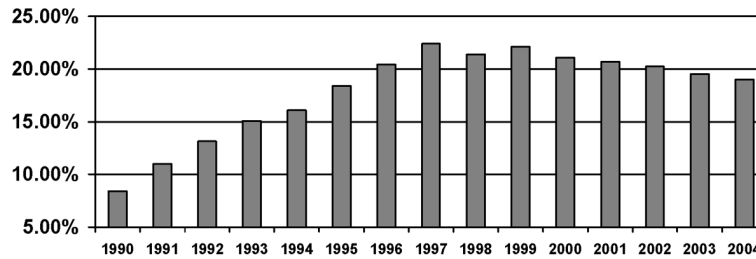
**Figure 4: Annual Apparel Imports  
(CAFTA Countries and Big Four)**



Source: US Department of Commerce

When examined from the perspective of market share, as is seen in Figure 5, the situation grows even more dire with market share attributed to CAFTA country apparel imports—that is apparel imports with predominately U.S. content—losing grand rapidly.

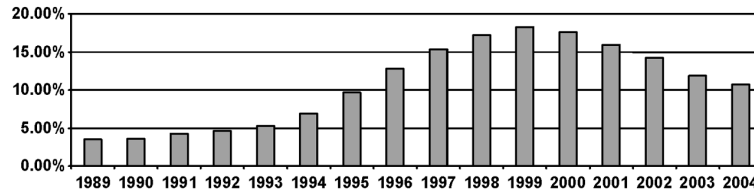
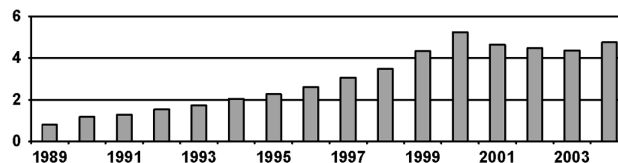
**Figure 5: CAFTA Share of U.S. Apparel Import Market**



The bad news gets worse when we examine the experience of textiles and apparel under NAFTA. That textile and apparel trade relationship—once praised as a model of regional integration—has fallen into disrepair through a combination of burdensome and unpredictable regulatory hurdles that have been pushed by both the U.S. and the Mexican governments. Somebody once said that the NAFTA is like the computer you had on your desk 10 years ago. When it came out of the box, it was top of the line. But without upgrades, it has grown irrelevant.

Figures 6 and 7 show how U.S. exports and imports have grown, and then withered, as public policies and national interests have conspired to keep NAFTA free of the necessary upgrades. Apparel imports from these two countries—again with predominantly U.S. content—are declining and have been for several years. U.S. exports, although up somewhat in 2004, have been declining for several years as well. Recalling that Canada and Mexico, in addition to the CAFTA countries, were the other top markets for U.S. yarns and fabrics make for a very bleak picture.



**Figure 6: Market Share of Apparel Imports under NAFTA****Figure 7: U.S. Exports of Yarns and Fabrics to NAFTA Countries (Billions of Dollars)**

In short, both the U.S.-Central American-Dominican and the NAFTA textile and apparel partnerships are eroding as the global marketplace has changed, but the rules of origin have remained the same.

For Sara Lee Branded Apparel, success in the marketplace is based on servicing our customers with the right product at the right time. As a result, we have grown to become a \$4.5 billion apparel group in the Americas. When we first went to the CAFTA region over 20 years ago, the region was lacking most of the core development and democracy achievements of today. Twenty years later, we are operating in vibrant democracies, nations that have achieved significant reforms via economic partnership with the United States and U.S. companies.

Our investments in Costa Rica, Honduras, El Salvador and the Dominican Republic have not only secured our future, but have been a critical part of their development and benefited the U.S. economy as well. The increasing respect within these countries for intellectual property rights, investor rights, and transparency in government and on-going developments to provide better opportunities for their citizens have been cornerstones to our success in the marketplace. Our strong presence in the Dominican Republic and Central America also has led to stepped up purchases of U.S. cotton, U.S. yarns and U.S. fabrics that are beneficial to many cotton growers, yarn producers, and textile mills in this country, as well as to vibrant U.S. port and service operations. For the state of North Carolina alone, apparel and fabric exports to the CAFTA countries have more doubled since 1999 to \$1.3 billion in 2004, representing more than 50 percent of North Carolina's exports of these products.

Without the passage of CAFTA, however, we would have to make different choices of where and how to service our customers tomorrow. Without CAFTA, it will be extremely difficult to sustain our current base and relationships in the Hemisphere in the years ahead.

Without CAFTA, there would also be increasing turmoil and instability in the textile and apparel sector, particularly given the lifting of global quotas on textiles and apparel. Sourcing decisions, already increasingly complex, would be even more so, and there would be far less predictability and stability than have existed prior to the removal of quotas, with very negative effects on the hundreds of thousands of workers in the CAFTA region.

For Sara Lee and many others, CAFTA presents an essential opportunity to continue to grow and develop this highly successful U.S.-Central American-Dominican economic partnership that has been the bedrock for sustainable reforms and developments within the region. That progress is only sustainable with the near-term passage of CAFTA to encourage existing producers to stay in the Hemisphere and

further encourage new opportunities to flourish in this Hemisphere as opposed to Asia.

At the same time, we need to make sure that we undertake other policies to support this trade relationship. Ending “banking” hours by Customs officers at our southern ports and welcoming the Central American ports into the Container Security Initiative framework are just two additional policy options that we can and should embrace.

#### *CAFTA’s New Opportunities*

CAFTA presents an incredibly important opportunity to change this erosion in competitiveness, at least for Central America and the Dominican Republic. It does so by building on the current program in the following ways, all of which are designed to maximize the production of textiles and apparel that rely upon a North American supply chain and that use U.S. textile inputs.

1. *CAFTA is permanent and creates a predictable environment.* The current duty preference program expires in three years. With long-term planning in five-year increments, many apparel companies are already factoring in the CBTPA’s expiration.
2. *CAFTA is reciprocal.* For the first time, U.S. companies will be able to export their textile and apparel products duty free to the region. Currently, if we want to export to the region, we have to pay duties on the inputs, or re-export the product to the United States so it can be re-exported back to Central America. CAFTA will eliminate that complexity, while leveling the playing field with duty-free imports we currently get from the region.
3. *CAFTA is broader.* The current program covers only garments. CAFTA will create new opportunities for the export of yarns, fabrics, and home furnishings.
4. *CAFTA is flexible.* The current program has numerous restrictions that limit the ability to use U.S. inputs or to combine U.S. inputs with limited regional inputs. For example, every year, about this time, we lose the ability to sell U.S. spun yarn to the region to make t-shirts because of the cap imposed on the import of those T-shirts into the U.S. market. CAFTA will create more ways to make garments, most of which will be made mostly with U.S. inputs.
5. *CAFTA is simple.* The current program eats up much of our duty savings in excessive paperwork and reporting requirements. Compliance is important, but when the cost of the compliance per garment exceeds the margin of duty for that garment, the incentive to use U.S. inputs evaporates. CAFTA relies on the documentation that is generated through the normal course of business to ensure proper use of the program.
6. *CAFTA is Predictable.* The current trade program does not yield predictable long-term rules and regulations needed to achieve the flexibility in servicing the supply chain. CAFTA needs to be implemented with a focus on creating viable market conditions to support on-going and new operations to serve the U.S. and growing CAFTA economies. The agreement is based on creating a significant commercial framework to foster development. It will be critical that each government establish agile and commercially vibrant regulations during the life of the agreement.

Adding all this up, CAFTA creates a model that will permit the U.S.-Central American-Dominican textile and apparel trade partnership to thrive and grow. It creates both the predictability needed for investment, as well as the flexibility needed to accommodate the constant need for change demanded of this fashion-sensitive and consumer-oriented industry. In short, it does not repeat the mistakes of NAFTA, and it provides the U.S.-Central America-Dominican industries the tools they need to compete globally.

The status quo in the U.S.-Central American-Dominican trading relationship is not the answer for those of us who care deeply about economic growth, development and the rule of law in Central America, the Caribbean and throughout Latin America. Indeed, absent the change in rules that CAFTA provides, the situation will deteriorate, as the textile and apparel industry faces growing competitive pressures with which it cannot compete. The result will be the loss of jobs in the sector accounting for the second largest group of workers in these countries and a deteriorating economic situation.

CAFTA is a concrete step forward in our 20-year policy of economic engagement with the region. It is the next step in our relationship and one that will set important precedents for our economic engagement with the rest of Latin America. I urge

the Members of this Subcommittee and the U.S. Congress to continue that engagement and approve and implement the CAFTA as soon as possible. Thank you.

Mr. WELLER. Thank you, Mr. Cook.  
Mr. Massey?

**TESTIMONY OF MR. MICHAEL MASSEY, SENIOR VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY, PAYLESS SHOESOURCE, INC.**

Mr. MASSEY. Congressman Weller and Members of the Committee, thank you for allowing me to appear before you today. With your permission, I would like to summarize Payless' views.

Before I begin with my substantive comments, I would like to thank the United States Trade Representative, especially Ambassador Alguire and Regina Vargo, for having constructive dialogue with the U.S. retail and footwear industry and creating commercially viable rule of origin for footwear in CAFTA.

My substantive comments are as follows with respect to CAFTA, and these are based upon Payless' experience of opening a successful retail operation throughout the CAFTA countries with over 130 stores and 800 associates and what we believe will be a very successful investment in Central America.

Based upon Payless' experience in Central America, we believe CAFTA will be helpful to Payless and United States business both in Central America and the United States. We believe that CAFTA will improve United States companies' abilities to export retail services to Central America.

Payless believes that CAFTA will improve the economies of Central America through new investment and through keeping jobs there in important existing industries. We believe that CAFTA will contribute to the political stability of these countries by improving the economies in these countries and the status of the ability to make investments in Central America.

CAFTA is a logical extension of U.S. policy since the 1980s. These Central American countries are pro United States and are open to United States investment. Other Latin America countries like Peru and Mexico have not been as open to United States investment. We should support countries with favorable attitudes toward the United States and its businesses.

Finally, CAFTA makes trade with Central America a two-way, win/win advantage for both sides, where today it is currently a one-way street. This treaty will allow American exports to better compete against exports from other countries into Central America.

That concludes my prepared remarks.

[The prepared statement of Mr. Massey follows:]

**PREPARED STATEMENT OF MR. MICHAEL MASSEY, SENIOR VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY, PAYLESS SHOESOURCE, INC.**

Mr. Chairman and Members of the Committee, thank you for allowing me to appear before you today. My name is Michael J. Massey and I am Senior Vice President—General Counsel and Secretary for Payless ShoeSource. I am also Chairman of Payless ShoeSource BVI Holdings, Ltd., Payless' joint venture company operating 136 stores in the Central American region. I wish to express our strong support for DR-CAFTA, the Free Trade Agreement among the United States, the five Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, and the Dominican Republic.

Payless is the Western Hemisphere's largest family footwear retailer generating almost \$2.77 billion dollars in sales in 2004. We have nearly 4,700 retail stores in all fifty U.S. states, Canada, the Caribbean, and Central America. These stores are located in a variety of settings, from urban to rural. In addition, through a joint venture agreement with the Japanese trading company, Sojitz, we operate one store in Japan.

Payless employs nearly 27,000 associates in the United States alone. Our world headquarters is located in Topeka, Kansas. We transport approximately 60 percent of our product to our main distribution center in Topeka. From there the goods are sorted and re-distributed to one of 50 smaller distribution centers throughout the United States and then on to Payless' retail stores.

Payless clears an average of 22,000 forty-foot containers through U.S. ports of entry each year, and the declared value of our total imports in a typical year averages between \$900 million dollars and \$1 billion dollars. We pay approximately \$95 million dollars annually in duties to the United States.

Payless has been a global enterprise for many years. We are able to offer our customers a unique combination of quality footwear at prices they can afford, in large part, due to our extensive long-term relationships with overseas footwear producers. Accordingly, Payless has long taken a keen interest in U.S. foreign and trade policy and we are a consistent advocate of free trade.

In recent years, we have begun to expand our retail presence throughout the Western Hemisphere. In 1997, Payless opened the first of its now nearly 300 Canadian stores. We began our expansion into Latin America in November of 2000 when we opened the first Payless store in Costa Rica. Since then, Payless has, through a Central American partnership, opened stores in El Salvador, Honduras, Guatemala, Nicaragua, Panama, the Dominican Republic, and Trinidad and Tobago. In South America, Payless, through another Latin American partnership, operates 30 stores in Ecuador. We have found the Latin American customer very receptive to our in-store presentation and product mix and have, in general, enjoyed success in these markets.

We believe DR-CAFTA will benefit U.S. exporters by opening markets across the region to their products and protecting their investments and intellectual property rights. In addition, these trade agreements will provide opportunities for economic growth in Central America and the Dominican Republic and will help promote political stability throughout the region. By opening and operating 136 stores across the region, Payless has made a substantial investment with its retail presence throughout Central America. Those stores as a whole account for nearly \$70 million in gross sales. Thus, Payless is directly impacted by the economic and social well-being of the people of Central America. Naturally, we are enthusiastic champions of any legislation which has the effect of improving our customers' lives and their buying power. DR-CAFTA represents an important step along the road toward more liberalized trade throughout the Western Hemisphere and Payless ShoeSource has long believed that free trade generally benefits all participants.

The Central American apparel industry has been recently reported as a good illustration of the relationship between the U.S. economy and the economies of Central America. Throughout Central America there are an estimated 1,000 textile and apparel factories that employ some 500,000 people. Apparel makers in the Dominican Republic and Central America face stiff competition from abroad, especially since the ending of U.S. textile quotas. Many apparel factories in Central America, both as buyers and sellers, are staking their futures on these trade agreements, to ensure U.S.-made fabric and yarn is brought into their countries duty-free and then, after assembly, exported back to the U.S. duty free. Unless their access to the U.S. markets is kept open by the DR-CAFTA, apparel factories in the region will be unable to compete in a global market and will be forced to shut down. Thousands of Payless' customers will be out of work, negatively impacting our Central American business. And it is widely predicted that many won't stay in their home countries hoping the factories reopen, but will pursue better perceived opportunities here in the United States. In addition, without the DR-CAFTA the U.S. textile industry will lose one of its largest customers—the apparel industry in the Dominican Republic and Central America.

Payless also supports DR-CAFTA for reasons which are more specific to our long-term vision as the Western Hemisphere's largest footwear retailer. We are always on the look-out for opportunities to diversify our sourcing base and to using producers from parts of the World other than Asia. The Company already sources some products from Brazil, Colombia, and the Dominican Republic. Increased production from Latin America could be an important potential element of our future sourcing base and we believe DR-CAFTA could facilitate the growth of the footwear industry in Central America.

The DR-CAFTA allows immediate duty-free treatment for most types of footwear originating in the DR-CAFTA member countries. This duty-free treatment applies to some 98 of the 115 tariff classifications for footwear. A carefully crafted list of 17 shoe types is excluded from instant duty-free treatment because they are still produced in the United States. Instead, the duties on these footwear types are to be phased-out over a period of time.

The DR-CAFTA is critical if footwear producers in Central America are to develop into world-class competitors. Several provisions in the DR-CAFTA are important in this regard including the rule of origin. The DR-CAFTA contains a substantial transformation rule of origin. A footwear component is brought into a member country under one tariff classification and then assembled with another component. The final shoe is then exported under a different classification. Because the product has been substantially transformed, it is considered to have originated in that country.

A more stringent rule of origin would require local factories to construct most of the shoe with components from the member country. At present, Central America does not have the industrial infrastructure to support large scale shoe manufacturing. In fact, there are no factories in the region which can construct shoes from start to finish at the volumes and costs Payless requires.

The transformation rule of origin could allow smaller existing factories or new larger foreign joint-venture assembly factories to import components and assemble them in the DR-CAFTA countries, thereby creating the basis for a growing footwear manufacturing infrastructure. Once robust assembly operations are up and running, it stands to reason that in-country market forces will lead to the development of broader factory operations and the development of a regional raw material and component supplier infrastructure, as has occurred in other countries. Ultimately, it is possible that the entire shoe could be built from component materials manufactured in the Western Hemisphere, including from suppliers in the United States. Such development would almost certainly not occur without the substantial transformation rule of origin.

Payless believes the footwear provisions currently found in DR-CAFTA will be conducive to the development of footwear manufacturing here in our own Hemisphere. This will be good for the countries which produce the shoes, but it could also have benefits for the United States. Currently, when a shoe is manufactured in Asia, the only firms which have a realistic chance of competing to supply components for that shoe are other Asian firms. If production were occurring in this Hemisphere, U.S. firms would have an excellent opportunity to compete for that type of business. With DR-CAFTA, we could eventually see Central American shoes in our stores worldwide containing textile fabric, leather, shoe laces, eyelets and insoles produced in the United States.

The suggestion that increased manufacturing in Central America could benefit U.S. suppliers has already been amply proven by the textile industry. It has been reported that more than seventy percent of the garments made in Central America are produced from U.S. fabrics and yarn. DR-CAFTA will ensure that U.S. fabric and yarn suppliers can continue and possibly expand their exports to Central America, enabling Central American manufacturers to expand their export markets and compete in a global economy. This is a win-win for U.S. producers and Central American manufacturers.

However, U.S. suppliers are not the only ones to benefit from the DR-CAFTA in the United States. The increased market access accorded under the DR-CAFTA will also benefit U.S. consumers. Currently, high tariffs harm consumers by forcing them to pay higher prices on imported footwear. A reduction in trade barriers could drive down prices at both the factory and retail levels. A win-win situation for all.

Let me also say a few words about the current state of the Central American, Dominican Republic, and U.S. footwear industries. Not one of five Central American countries has a significant shoe manufacturing industry or meaningful exports of footwear. On the other hand, the Dominican Republic has some footwear production. In terms of market share though, it remains less than one percent of the total U.S. market. None of these industries pose any threat to U.S. footwear manufacturing jobs.

With regard to the United States, the market for footwear is fulfilled primarily through imports with only a small number of firms continuing to manufacture domestically. Total U.S. import penetration for all footwear is approximately 98%. This is astounding given that the average duties on footwear are among the highest of any product entering the United States.

The U.S. shoe industry, however, has carved-out its own niches in the marketplace which do not compete on price. As a result, there is no connection between the elimination of duties and employment in the U.S. footwear industry. We have worked hard to ensure that there are no adverse domestic implications regarding

the footwear provisions in the DR-CAFTA, and I believe we have achieved that. In fact, I believe DR-CAFTA will revitalize the footwear industry in this Hemisphere, ultimately creating opportunities for U.S. suppliers.

Payless, through various trade associations, worked extensively with other footwear retailers and the small number of firms which still produce footwear in the United States to provide input to the U.S. Trade Representative on the footwear provisions in DR-CAFTA. We were sensitive to the pressures facing the remaining U.S. footwear producers. Our objective was—and I am happy to say we were successful—to reach a consensus on developing economically viable rules of origin for footwear not produced in the United States. As a result of these efforts, the U.S. Trade Representative negotiated footwear provisions in DR-CAFTA that are a win-win for U.S. consumers, footwear retailers, other U.S. businesses, and the countries of Central America and the Dominican Republic.

For these reasons, I ask you, Mr. Chairman and Members of the Committee, to recognize the numerous benefits of the DR-CAFTA and vote in favor of it. This agreement will make the region more prosperous and stable, benefiting U.S. business and enhancing our national security.

Thank you, Mr. Chairman and Members of the Committee, for allowing me to testify before you today.

NOTE: Payless ShoeSource, Inc. has received no money from the Federal Government.

Mr. WELLER. Thank you, Mr. Massey.  
Ms. Chavez-Thompson?

**TESTIMONY OF MS. LINDA CHAVEZ-THOMPSON, EXECUTIVE VICE PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

Ms. CHAVEZ-THOMPSON. Thank you, Mr. Chairman. Congressman Menendez and Mr. Delahunt, thank you. Members of the Subcommittee, thank you for holding this important hearing and for giving me this opportunity to testify against what we believe is the injustice of CAFTA.

Before I begin my remarks, I also want to thank you for listening to the voices of citizens throughout the region, especially Bishop Alvaro Ramazzini.

I come to you as someone who has traveled and worked extensively throughout Latin America. As the President of ORIT, the Inter-American Regional Organization of Workers, I have had the opportunity to listen to the concerns of workers and citizens in all the CAFTA countries.

Workers, farmers, and faith leaders in Central America and the Dominican Republic agree. We can and must build an international economy that respects and rewards workers' rights, job creation, a healthy environment, and decent wages in Central America as well as here in the United States. The first step toward building such an economy must be the rejection of CAFTA.

Instead of improving things, CAFTA will further oppress workers, depress wages in Central America, and cost jobs in the United States. CAFTA is utterly devoid of compassion and opportunity for those who need it the most—the 37 million Central Americans struggling in poverty and the millions of hard-working immigrants in this nation most vulnerable to exploitation and layoffs.

Under CAFTA rules, multinational corporations will speed up their race to the bottom when it comes to wages and workplace protections. To sell CAFTA to Congress, some make the desperate argument that CAFTA is the road to bringing Central America out

of poverty. We need only to examine the results of NAFTA to dispel this myth.

Real wages in Mexico have fallen, the number of poor people has grown, and the number of people migrating to the United States to seek work has doubled. Trade liberalization in agriculture displaced nearly a million rural farm workers, swamping the fewer jobs created in the export processing sectors. Many in Mexico who supported NAFTA 11 years ago have now turned into ardent opponents. CAFTA is likely to have similar impacts in Central America.

With NAFTA, proponents argued that with the American market already more open to Mexican products, our workers and producers would come out on top if all trade barriers were eliminated. The same argument is being used to sell CAFTA in this country.

However, NAFTA offers evidence of how unbalanced trade deals fail workers in both rich and poor countries. NAFTA has cost U.S. workers close to 900,000 jobs and job opportunities. Imports from our NAFTA partners grew more than \$100 billion faster than our exports to them, displacing workers in industries as diverse as aircraft, autos, apparel, and consumer electronics.

To prevent another NAFTA disaster for Latin America and the United States, this CAFTA must be shelved by the Administration or defeated by Congress. The Bush Administration and Central American Governments have shown the will to make dramatic changes, at least when multinational corporate interests are at stake, but not in protecting workers in the United States and in the countries affected by CAFTA.

Right now in Guatemala, the rights of people who need inexpensive medications are being traded away in favor of CAFTA's business interests. Pharmaceutical companies are so powerful that they have already forced Guatemala to stop allowing inexpensive drugs in stores. CAFTA imposes a 5- to-10-year waiting period on generic drugs. The humanitarian organization, Doctors Without Borders, has said that these provisions in CAFTA could make newer medicines unaffordable.

At the same time, despite the overwhelming evidence that Central American workers are routinely abused, CAFTA gives companies more freedom to violate workers' rights and requires only that countries enforce their own labor laws, laws that Human Rights Watch, the International Labor Organization (ILO), and even our own State Department have documented as being of the lowest standards.

Not one Central America country included in the CAFTA agreement comes close to meeting a minimum threshold of respect for the ILO's core labor standards—freedom of association, the right to organize and bargain collectively, and freedom from child labor, forced labor, and discrimination.

In Central America, employers pay young women poverty wages to labor for long hours in unsafe conditions. When these workers try to organize to win a voice at work they face intimidation, threats, dismissal, blacklisting, and even death.

A terrible example is the same one that was made by Congressman Menendez about Jose Gilberto Soto, a trusted and respected Teamster leader from the Port of New Jersey. He was brutally murdered and shot in the back three times when visiting El Sal-

vador last November. He was there on behalf of the Teamsters to meet with Salvadorian trade union leaders and port drivers.

It is no wonder that in Central America tens of thousands of workers, farmers, small business owners, and other activists have taken to the streets to voice their opposition to CAFTA and the lack of transparency in the negotiation process.

In sum, CAFTA grants multinational corporations that ship U.S. jobs overseas with the following rewards: Greater access to the U.S. market, more freedom to violate workers' rights with impunity, and the ability to challenge government regulations enacted in the public interest.

CAFTA's rules on investment, government procurement, intellectual property rights, and the services create new rights for multinational corporations, but the agreement contains no effective new protection for workers' rights and actually removes existing protections, leaving the interest of ordinary working men and women out in the dust.

Members of this Subcommittee, for all of these reasons we urge the Congress to reject CAFTA and begin work on just economic and social relationships with Central America and the Dominican Republic.

Thank you.

[The prepared statement of Ms. Chavez-Thompson follows:]

PREPARED STATEMENT OF MS. LINDA CHAVEZ-THOMPSON, EXECUTIVE VICE PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

Chairman Burton, Congressman Menendez, and members of the subcommittee, thank you for holding this important hearing and for inviting me to testify. Before I begin my remarks, I also want to thank you for listening to the voices of citizens throughout the region, especially Monsignor Alvaro Ramazzini. In the trade debate, we often hear too much about statistics and theories and not enough about the people impacted by these policies. I know we all seek to work with Bishop Ramazzini and others leaders in the region to alleviate poverty and create employment opportunities throughout the hemisphere, but we must do much more than that. It is our obligation to speak out against injustices wherever they occur. That is what brings me before the committee today—speaking out against the injustice of this CAFTA.

I come to you as someone who has traveled and worked extensively throughout Latin America. As the President of ORIT, the Inter-American Regional Organization of Workers, which is the Western Hemispheric arm of the International Confederation of Free Trade Unions, I have had the opportunity to listen to the concerns of workers and citizens in all the CAFTA countries. Workers, farmers, and faith leaders in Central America and the Dominican Republic agree: we can and must build an international economy that respects and rewards workers' rights, job creation, a healthy environment, and decent wages in Central America as well as here in the United States. But the first step towards building such an economy must be the rejection of CAFTA.

Instead of improving things, CAFTA will further oppress workers, depress wages in Central America and cost jobs in the United States. CAFTA is utterly devoid of compassion and opportunity for those who need it the most—the 37 million Central Americans struggling in poverty and the millions of hard-working immigrants in this nation most vulnerable to exploitation and layoffs. Under CAFTA rules, multinational corporations will speed up their race to the bottom when it comes to wages and workplace protections. The deal will do nothing to pull people out of poverty in Central America, and it has the potential to plunge workers further into exploitation.

To sell CAFTA to a skeptical Congress, some make the desperate argument that CAFTA is the road to bring Central America out of poverty. We need only to examine NAFTA to dispel this myth. Real wages in Mexico have fallen, the number of poor people has grown, and the number of people migrating to the United States to seek work has doubled. Trade liberalization in agriculture displaced nearly a mil-



lion rural small farmers, swamping the fewer jobs created in the export processing sectors. Many in Mexico who supported NAFTA 11 years ago have now turned into ardent opponents. CAFTA is likely to have similar impacts in Central America.

With NAFTA, proponents argued that with the American market already more open to Mexican products, our workers and producers would come out on top if all trade barriers were eliminated; the same argument is being used to sell CAFTA in this country. However, NAFTA offers evidence of how unbalanced trade deals fail workers in both rich and poor countries. NAFTA has cost U.S. workers close to 900,000 jobs and job opportunities. NAFTA was supposed to open markets for American goods and services, creating high-paying jobs at home and prosperity abroad. But the opposite has occurred. In 11 years under NAFTA, the U.S. trade deficit with Canada and Mexico ballooned to 12 times its pre-NAFTA size, reaching \$111 billion in 2004. Imports from our NAFTA partners grew more than \$100 billion faster than our exports to them, displacing workers in industries as diverse as aircraft, autos, apparel, and consumer electronics.

To prevent another NAFTA disaster for Latin America and the United States, this CAFTA must be shelved by the administration or defeated by Congress. The Bush administration and Central American governments have shown the will to make dramatic changes—at least when multinational corporate interests are at stake—but not in protecting workers in the United States and in the countries affected by CAFTA. Right now in Guatemala, the rights of people who need inexpensive medications are being traded away in favor of CAFTA's business interests. Pharmaceutical companies are so powerful that they have already forced Guatemala to stop allowing inexpensive drugs in stores. CAFTA imposes a five-to-ten year waiting period on generic drugs. The humanitarian organization, Doctors Without Borders, has said that these provisions in CAFTA could make newer medicines unaffordable.

At the same time, despite the overwhelming evidence that Central America's workers are routinely abused, CAFTA ignores this problem. CAFTA gives companies more freedom to violate workers' rights and requires only that countries enforce their own labor laws—laws that Human Rights Watch, the International Labor Organization and even our own State Department have documented as being of the lowest standards. Not one Central American country included in the CAFTA comes close to meeting a minimum threshold of respect for the ILO's core labor standards: freedom of association, the right to organize and bargain collectively, and freedom from child labor, forced labor, and discrimination. In Central America, employers pay young women poverty wages to labor for long hours in unsafe conditions. When these workers try to organize to try to win a voice at work, they face intimidation, threats, dismissal, and blacklisting.

CAFTA actually weakens the minimal workers' rights conditions we have in place today, under existing preference programs like the Generalized System of Preferences (GSP). Instead of insisting that Central American governments must respect internationally recognized workers' rights, the Bush administration has negotiated provisions requiring only the enforcement of domestic labor laws. There is nothing in the agreement that would prevent governments from gutting or even eliminating their labor laws after signing the agreement.

Put simply, CAFTA is a step back from the already paltry workers' rights protections contained in our current trade laws, leaving the interests of ordinary working men and women out in the cold.

CAFTA strengthens protections for multinational corporations, forcing changes in intellectual property protection regimes that threaten public health, giving corporations new rights to sue governments over regulations they deem too costly or inconvenient, and limiting the ability of future legislators to place conditions on government procurement. This hurts Central America's prospects for future development, just as it weakens state legislators and erodes wages and jobs here at home.

The lopsided tilt toward corporate interests helps to explain why CAFTA is so unpopular, both here in the U.S. and throughout Central America. A recent poll by Americans for Fair Trade found widespread opposition to CAFTA, with 74% of respondents saying they would oppose the pact if it caused job losses, even if it also reduced consumer prices. In Central America, tens of thousands of workers, farmers, small-business owners, and other activists have taken to the streets to voice their vehement opposition to the deal and to the lack of transparency in the negotiation process.

For the sake of Americans all over our hemisphere, we need to reject CAFTA. We must have a vision of trade that makes moral and economic sense for all workers. We need urgent and aggressive policy solutions for poverty, inequality, and the relentless loss of good jobs.

That is why American and Central American unions have come together to oppose CAFTA and to lay out our alternative vision for a system designed to eliminate so-

cial and economic inequities. A fair system must provide for, among other things, workers' rights, clear anti-corruption policies, fair environmental and agricultural rules, and debt-relief. Increased trade with the region must also be accompanied by a just immigration policy, and commercial rules that safeguard the public interest, not just private profits.

Repeated and systematic violations of workers' rights retard the development of Central American countries and drag down standards for American workers who are thrown into a vicious race to the bottom with their fellow workers in the region. Workers in Central America have too often been excluded from the benefits of increased trade in the region as they continue to struggle to have their basic human rights respected in the workplace, and as they literally risk their lives to do so. A trusted and respected Teamster leader from the Port of New York/New Jersey, José Gilberto Soto, was brutally murdered—shot in the back three times—while visiting Usulután, El Salvador last November. He was there on behalf of the Teamsters to meet with Salvadoran trade union leaders and port drivers. There was no robbery and Soto was not involved with any illegal activity. The Teamsters and the AFL-CIO are deeply concerned that Mr. Soto's murder is related to his leadership position with the union and his intention to meet with Salvadoran labor leaders and port drivers. To date, Salvadoran authorities have refused to consider the fact that he was murdered as a result of his work. A climate of impunity remains in Central America, an unwelcome reminder of an earlier era in the region.

In sum, CAFTA grants multinational companies that ship U.S. jobs overseas with the following rewards: greater access to the U.S. market, more freedom to violate workers' rights with impunity, and the ability to challenge government regulations enacted in the public interest. CAFTA's rules on investment, government procurement, intellectual property rights, and services create new rights for multinational corporations, but the agreement contains no effective new protections for workers' rights and actually removes existing protections, leaving the interests of ordinary working men and women out in the cold.

Members of the subcommittee, I will close with these thoughts. The U.S. economy continues to break records, but not in ways that help working people. The all-time high U.S. trade deficit is not an abstract issue; it shows up every day as working men and women see their plants close, are asked to train their own overseas replacements or are asked to swallow wage and benefit cutbacks that affect their families' lives in hundreds of ways. Entire communities suffer the consequences of failed trade agreements. We urge the Congress to reject CAFTA and begin work on just economic and social relationships with Central America and the Dominican Republic.

Mr. WELLER. Thank you, Ms. Thompson.  
Bishop Ramazzini?

**TESTIMONY OF THE MOST REVEREND ÁLVARO LEONEL RAMAZZINI IMERI, BISHOP OF SAN MARCOS, GUATEMALA, AND PRESIDENT OF BISHOPS' SECRETARIAT OF CENTRAL AMERICA AND PANAMA**

Bishop RAMAZZINI. Mr. Chairman, Ranking Member and Members of the Subcommittee, thank you for this opportunity. I am Bishop Alvaro Ramazzini, Bishop of San Marcos, Guatemala, and past President of the Bishops' Secretariat of Central America.

I ask that the full version of my testimony and the joint declaration by Bishops of the United States and Central American CAFTA be entered into the record.

Mr. WELLER. Without objection.

Bishop RAMAZZINI. Other experts will offer economic and legal advice. I speak as a pastor who lives and works amongst some of the poorest people of the hemisphere. I echo the concerns of our beloved Pope, John Paul II, who said:

“If globalization is ruled merely by the laws of the market applied to suit the powerful, the consequences cannot but be negative.”

Mr. Chairman and Members of the Subcommittee, current efforts of economic integration are far from our best efforts. The current model is deficient, and I am confident that we can repair it so that trade works for all. To do so, we must all look at trade policies from the bottom up, from their impact on the lives and dignity of poor families and vulnerable workers across the hemisphere.

The people of my diocese are typical of many millions across Latin America. They are hard-working and have a dream that everyone shares. They know how to compete in more open markets, but they cannot compete against the United States Treasury and its subsidies.

The concerns about current trade agreements such as CAFTA are well known. I share them. The risks are real. We have been liberalizing trade in Guatemala for many years, yet poverty levels have increased, and the disparity between the super rich and the very poor has become wider.

The women who work in the maquila factories live precarious lives trying to raise children as the sole wage earner. They have unstable jobs and an uncertain future. It is not because of China. I fear that current trade agreements will most likely lock in these inequalities.

As a pastor I am urging patience and determination from you and my fellow Central Americans. I often hear the plea from trade ministries to stop talking about social justice issues in relation to trade agreements. I make no apologies for calling trade agreements "moral documents." They are about the life of millions of poor people who will be left high and dry.

I urge you to help develop a bold, comprehensive agenda for agrarian, economic, and social reform. Mr. Chairman, you and your colleagues have an opportunity to integrate human development with economic progress. There should be no shortcuts in this process. How else will the next generation of Latin Americans take their rightful place as global citizens in a free and fair market?

Mr. Chairman, we need a real partnership between our countries. I am not saying "no" to more open trade. I am not saying "never" to a free trade agreement. I am saying that most people are absent from this discussion, and their absence creates a fatal flaw.

The poor were not consulted during negotiations. In fact, they have been shut out. Instead they should be the protagonists in this process if we are going to be serious about democratic stability in this hemisphere. What we see is public unrest met with violence and police action. Therefore, my request to you, Mr. Chairman and Members of the Subcommittee, is to instruct your trade representatives to try again. Try again.

Before coming to the United States to testify here today, I was warned by an informant that I have been identified as a problem for the power interests in my country, ones that are connected to the extrication of our natural resources, first among which are our people. There have been threats on my life.

I am here because trade brings with it great risks for the lives and dignity of many, many people. I thank you for the opportunity to investigate these important issues, and I ask that by raising the moral challenges of social and economic integration in our hemisphere you will contribute to the task of building a better future

for ourselves and our people. It requires patience and omnipotence to learn from one another.

Thank you, Mr. Chairman.

[The prepared statement of Bishop Ramazzini follows:]

PREPARED STATEMENT OF THE MOST REVEREND ÁLVARO LEONEL RAMAZZINI IMERI,  
BISHOP OF SAN MARCOS, GUATEMALA, AND PRESIDENT OF BISHOPS' SECRETARIAT  
OF CENTRAL AMERICA AND PANAMA

Mr. Chairman, Ranking Member and Members of the Committee, I would like to thank you for this opportunity to address the growing impact of international trade on our peoples and our hemisphere. I am Bishop Alvaro Ramazzini, Bishop of San Marcos, Guatemala and immediate past President of the Bishops' Secretariat of Central America. I have met some of you previously, and have engaged many of your colleagues on issues of mutual concern to our countries.

I come before you today to share the experiences of the people of my country, and especially of my diocese of San Marcos, in order to contribute to the on-going debate concerning the negotiation and implementation of trade agreements. These experiences can give us perspective on the impact of trade policies in the hemisphere. My experience with the United States-Dominican Republic-Central American Free Trade Agreement informs much of what I have to say today. Others will offer more technical commentary of an economic and legal nature. I speak as a pastor who lives and works among some of the poorest people of the hemisphere, the people I urge trade policy makers to prioritize. I appear today as a guest of Chairman Hyde and with the support of the United States Conference of Catholic Bishops. In June of last year, bishops of the United States and the countries of Central America issued a Joint Declaration on US-CAFTA that I am appending to my short statement and requesting be entered into the record.

I would like to begin by invoking the memory of Pope John Paul II whose presence among us is still very much felt. The Pope had the tremendous capacity to warn us of dangers that we ourselves are often slow to recognize. At the very start of his pontificate, Pope John Paul II turned our attention to the needs of the poor saying: "The depressed rural world, the worker who with his sweat waters his affliction, cannot wait any longer for full and effective recognition of his dignity, which is not inferior to that of any other social sector. He has the right to be respected and not to be deprived with maneuvers which are sometimes tantamount to real spoliation of the little that he has. He has the right to real help, which is not charity or crumbs of justice, in order that he may have access to the development that his dignity as a person and as a son of God deserves. It's necessary for bold changes, urgent reforms, without waiting any longer."

The Pope's message challenges us to consider how we might better respond to the moral values that flow from the call to solidarity with one another. Mr. Chairman, the rural poor today make up 70 percent of poor people across the globe. In Latin America, two-thirds of those who live in rural areas are poor. In Guatemala, 56 percent of the population is poor and 16 percent is extremely poor with 93 percent of those in extreme poverty living in rural areas in my country. Almost one quarter of Guatemala's GDP comes from the agricultural sector. Our farmers are hard-working and will continue to find ways to compete with their northern neighbors. But they cannot compete against the United States Treasury and the \$170 billion subsidies granted in your Farm Bill of 2002.

And when they can no longer farm and support their families because of cheap commodity imports or restricted access to seeds and fertilizers because of stringent intellectual property restrictions, where do my people go? What do they do when they are no longer on the land, growing corn, rearing cattle, raising families, going to church and building communities? The older people mostly stay on the land, but our young head to industrial centers in search of jobs. This is good, some say, as we enter more and more the industrial age.

As you know, Mr. Chairman, many come to the United States, lured by a dream that is shared by all people of the Americas: to build a dignified life for themselves and their families. Some call them "illegals." But according to the market model, they are better described as entrepreneurs without assets, pursuing the American dream. They are not free-loaders. They work hard, often in several jobs, supporting a way of life that many take for granted. They earn minimum wages in large part and go to local emergency rooms when sick. They are able to enroll their children in school, and enjoy a relatively safe working environment. Their relatives, meanwhile, who are perhaps U.S. citizens or permanent residents, may enjoy even better

prospects. They have jobs with paid health care, have a voice in the workplace, and can plan for their future and their children's future.

But in Central and Latin America, trade agreements threaten to lock in a much lower level of protection for workers and their families. Let us consider those who move to the cities and industrial areas to work in the maquila sector. As is the case in the rest of Latin America, most of them are women with children and are the sole wage-earners. Many of them face an uncertain future. I know of repeated instances where workers were treated in a way that would be against basic labor law in the United States.

Employment lies at the heart of authentic human development. Poor working conditions make for bad economics. Without enforceable labor rights that are part of trade agreements with sanctions for non-compliance applied to them, we will not raise standards of labor and standards of living in my country. As a result, jobs will continue to hemorrhage from the United States. It is forecast that the only country that will not lose jobs with the end of the Multi-Fiber Agreement is Nicaragua. Why? Presumably it's because they have the lowest wages. Without stability in the workplace, there will be no stability in the marketplace, no stability in our democracies and no stability in the hemisphere. We will be troubled by popular protests that can often result in a violent response from the security forces.

We will only approach long-term solutions to these problems when we begin to place the dignity of the human person, especially the poor, at the center of our discussions. I recognize that all who testify today are people of good will. We all want the best for the people of our hemisphere. But this hearing is exploring vital questions about our future with serious consequences for all of us.

Some see increased trade as the solution to all economic problems; others see it as the source of major economic distress. In fact, it is neither. I echo once again the concerns of John Paul II: "If globalization is ruled merely by the laws of the market applied to suit the powerful, the consequences cannot but be negative." (*Ecclesia in America*, p. 20) These include, for example, "unemployment, the reduction and deterioration of public services, the destruction of the environment and natural resources, the growing distance between rich and poor, unfair competition which puts the poor nations in a situation of ever increasing inferiority." (*Ecclesia in America*, p. 20). The terms of trade that will be enshrined in law through these various agreements—laws that constitute a treaty between our countries—will impact more than the movement of goods and services across our borders, more than the private property rights of investors and corporations. These agreements will define the kind of relationship we wish to establish between our countries. These agreements should embody an understanding of human dignity and interdependence among the people of our hemisphere that is marked by solidarity and mutual concern. But, in fact, these are not the primary elements of current trade practices throughout the hemisphere and there is no reason they cannot be.

Mr. Chairman and Members of the Committee, current efforts at economic integration are far from our best efforts. The current model is deficient—and I am confident that we can repair it so that trade works for all, especially for poor families and vulnerable workers. To do so, we must all look at trade policies from the bottom up—from their impact on the lives and dignity of poor families and vulnerable workers across the hemisphere.

In the case of CAFTA, the United States is entering into a comprehensive trade agreement with some of the poorest countries in the hemisphere. Our countries have some of the greatest inequality in the region. It is easy to understand why the national leaders in poor countries such as Guatemala may seem enticed by the prospect of favorable access to the mighty market of the United States. But we must ask the question: Will any short-term gains envisaged by such bilateral agreements be far out-weighted by the loss of bargaining power in other forums? It is widely expected that low-income developing countries, such as Guatemala, will be afforded "special and differential treatment" under World Trade Organization rules currently being negotiated in the Doha Development Round. CAFTA will likely trump such measures that are designed to allow developing countries the time and the space to foster integral human development.

A one-sided approach to economic integration that focuses only on liberalizing trade barriers compromises other vital ways of promoting social development. The path of trade integration laid down by the free trade agreement between the United States and Central America has been presented as a wide avenue along which all can travel towards greater prosperity. In reality, it is a narrow path across a deep gorge that only the strongest can travel. It offers hope only to a few, and I fear no hope to those whom the Pope calls the "weakest, the most powerless and the poorest." (*Ecclesia de Eucharistia* p. 20) You are perhaps aware that Guatemala ranked among the 10 worst nations in Latin America in the level of income inequality.

These nations desperately need a growing middle class. Industrial workers, equipped with the basic rights to have a say in the workplace, were key to the growth of a middle class in your nation. It was a key element in making the United States the economic powerhouse it is today. This is not happening in Central America and it will not happen as long as hundreds of thousands of workers are suppressed, not empowered, at the workplace.

Mr. Chairman, I fear that we are taking enormous risks with these trade agreements; ones that have profound consequences for our peoples, and we have not even begun to have an adequate conversation on the risks and opportunities. Up-beat predictions regarding the positive impact of these trade agreements must be evaluated carefully. During my meeting with Assistant United States Trade Representative Padilla, in June, 2004, we both recognized that attempts at developing a broad consultative process about trade in Guatemala—ones envisaged by the USTR during the negotiations—were unsuccessful. This experience of exclusion does nothing to further democratic reforms in my country and across the region.

Many voices, including some we have heard today, point to the supposed limits of any trade agreement. They highlight the fact that a trade agreement is only a part of the solution to poverty, exclusion, lack of education and integral development. "Trade is not a panacea," we are told, and that is correct. For that very reason, trade policies need to be complemented by institutional reforms and a broader development framework that affords each person their right to participate in a market that is fair and compassionate. However, in my experience, trade agreements run the risk of further entrenching inequality in our societies. Surely the people of the United States want no part in a trade regime that may push people further apart. To date, there has been no serious effort on the part of negotiators to ensure the type of reforms necessary for the people who need them the most. With such reforms, we could tap so much potential, unlock so much capacity and enable the poor to be protagonists in their own development.

During my last visit, I was encouraged by the efforts of Ranking Member Menendez and others to complement proposed trade agreements with plans to provide broader social development. Such cooperation is akin to the more comprehensive development program undertaken by our European allies when they recently admitted new members to the European Union. If I may add, any plan to seek closer economic integration throughout the hemisphere, as proposed by the Free Trade Area of the Americas, should learn from the experience of regional integration that has benefited the poorer countries of the European Union.

We are also assured by proponents of current trade policies that these agreements will lead to transparency, participation and a strengthening of democracy in a region that has seen significant unrest. In our Joint Statement with the U.S. Bishops we expressed our concern about the growing tide of discontent in our countries around the impact of trade integration. And here I would like to draw your attention once again to the photos. Mr. Chairman, the people you see here lifting their voices in protest at the process and substance of the recent trade deal between Guatemala and the United States are ordinary people. They understand their livelihoods and what it means to struggle daily to support themselves and their families. They are not a privileged group afraid of losing what they have come to expect. If they were, then the rich elites in our country would be marching. Instead the elites are in Washington, DC trying to hurry this process along. The people in these pictures remind me of Maria Rodriguez. Maria's family has farmed for generations. She sends her children to school. Her eldest son goes to college in Guatemala City. When her husband was ill, he was treated in the local clinic that is maintained, in part, by government income from imports tariffs.

Trade discussions begin by asking how policies will be good for business and economic growth, but we need also to ask how trade policies will be good for those who live in poverty. It is not enough to rush ahead with so-called "state of the art" trade agreements, while our development policies languish behind. Financial assistance to the region has been steadily decreasing and will fall by another again by 10 percent in Fiscal Year 2006. We need concerted efforts to complement trade agreements in a serious way by putting our most talented trade experts with our most talented development experts in the same room. Together, they can work on the same problems from their own specific fields of competence. Then the rights of workers to decent wages, the rights of small farmers to fair prices, and the rights of all to access to health care and education for their children will become possible with democratic reforms and a just participation in the global market. We can do better. We must do better. We must shape a bold, comprehensive and integrated trade and development agenda that will lift up the poor among us and provide justice for all.

Thank you Mr. Chairman.

Mr. WELLER. Thank you, Bishop. First let me commend you for being exactly 5 minutes. You were right on the dot, and we can all learn from your efficiency and your statement.

Let me begin by again thanking you for traveling to Washington to be part of our hearing. I would ask that you give my regards to Bishop Rios of Guatemala City, who I have a good acquaintance with, as you know.

I have enjoyed visiting with you in a previous meeting earlier today, as well as other leaders of the Catholic Church from throughout Latin America and the Andean region, as well as in Central America, and I welcome your ideas and your input in my role on the Subcommittee, as well as on another Committee with a strong interest in trade.

As I have shared with you and other Bishops who have expressed similar concerns, we each have the same goal. Perhaps we have different ways of going about solving the challenge of poverty and creating economic opportunity and allowing the workers of Central America and the Andean region and Panama, which was the subject of today's hearing—not just one trade agreement, but there are three trade agreements that we are discussing in today's hearing.

It is ensuring that not only is there economic opportunity, an opportunity to move up the economic ladder, but to give our hemisphere and the workers of our hemisphere, as well as the entrepreneurs and the farmers of our hemisphere, an edge as we work together to compete in the globe's economy.

We are not going to change the fact that we have a global economy today, but we want to ensure that the people of our hemisphere can work together and the governments of our hemisphere can work together. I am very pleased that the negotiations we have underway, as well as the agreement we have or will soon have before this Congress, were negotiated with democratically-elected governments, Presidents that were elected by the people they represent, as well as legislative bodies, the congresses, that were elected by the people they represent.

I note that three out of six of our partners in the Dominican Republic-Central American Free Trade Agreement have ratified the agreement. The Government of Guatemala, the congress has ratified the agreement. The same with Honduras and El Salvador. They have reinforced their democratically-elected government's commitment to expanding our partnership between our nations.

One point that you made was of course that as part of the trade agreement that we also need to include various initiatives, particularly social initiatives. As I said earlier, former Chairman Ballenger here, as you know, has a 30-, almost 40-year history of commitment to your country, as well as the entire hemisphere. DR-CAFTA, as we call it, is just one component of the United States' commitment to our friends in the democratically-elected nations of Latin America.

The other components, as we look to help solve some of the social challenges we have before us, are the Millennium Challenge Account, which essentially rewards positive reforms, transparency, the rule of law, and of course we are in the process with two of our CAFTA partners of moving forward on an agreement with those

governments, or very soon. This is separate from CAFTA, but a key part of it.

President Bush's Millennium Challenge Account will be very helpful to at least two of the six countries, and also the United States Agency for International Development (USAID) has a number of programs underway to help small entrepreneurs and small business people have the opportunity to sell products to the export market.

Also, I have seen firsthand in a number of visits to Central America how USAID has been working to help farmers, campesinos, have the opportunity to grow crops for the export market as well. The traditional crops of sugar and corn, maize, are not very profitable, but if they grow crops that they can raise for the export market, whether it is Hondurans raising for the El Salvador tomato market or jalapenos for the United States, it is an opportunity to significantly lift their families' income, and that is part of our Government's commitment in addition to the trade agreement we have before us.

I respect your testimony, and I greatly appreciate you being here. I also think it is important to recognize that many of us in Congress share your goal. I think we all do, but also there might be different approaches to achieving that goal.

I want to direct one question to a member of this last panel, and that is, the textile sector is an area that has been particularly concerned about the impact of the Central America Free Trade Agreement on apparel, the apparel sector in particular. I know when I was in the Dominican Republic, when I have been elsewhere in Central America, I have noticed that many of the components that go into apparel that are assembled there are actually from the United States.

Now, Mr. Cook, could you share, if a product is made in China, what percent of inputs that go into that apparel originate in the United States and then compare that with the United States inputs that are included in apparel made in the Dominican Republic or in the Central American countries? If you could give some examples as well?

Mr. COOK. Sure. Overall when you look at an item coming from China back to the United States, wearing apparel, say a T-shirt or a pair of pants, it is probably 3 percent or less of the value of that garment is United States value as compared to the Central American-Dominican Republic. It is all United States fibers and cotton, 100 percent of the agricultural base comes from the U.S. You are looking at roughly 60 percent of the value in that garment is U.S. value, not counting—

Mr. WELLER. When you are using the term "U.S. value," you are saying U.S. input, the components?

Mr. COOK. Yes, sir.

Mr. WELLER. Yes.

Mr. COOK. Whether it is United States yarn, fiber, elastic, buttons, bows, plus in addition to that you also have port operations and ocean and shipping that you do not have, say, from China because in the case of the Caribbean you actually have two-way. You have southbound shipping and northbound. In China you just have single direction using either an Eastern port or a Western port.



Mr. WELLER. And do you see the DR-CAFTA as a key component of the strategy of maintaining apparel production in our hemisphere? Tell us what would happen without DR-CAFTA. Would that production shift elsewhere?

Mr. COOK. I think it is fair to say status quo the Western Hemisphere is going to lose production and lose it fairly rapidly. The agreement has played itself out under the unilateral with the phase-out of quotas. The region is just under too much stress.

With the passage of DR-CAFTA, one, you can sustain what you have today. You may be able to grow the region, and you certainly can increase. We are certainly interested in seeing that happen, and I think it is a real upside opportunity.

If you go back and look again from 1999 to 2004, there has been \$2 billion of U.S. yarns and fabrics that have been exported to this region. All that was under a quota regime. In the absence of a quota, the absence of DR-CAFTA, I think you see a heavy migration from the region.

Mr. WELLER. A job lost from Honduras or El Salvador or Guatemala to China, the United States also loses, but a new job created in the Central America-Dominican Republic, the United States wins—

Mr. COOK. Right.

Mr. WELLER [continuing]. Because of the jobs that are created here.

Mr. WELLER. Mr. Menendez?

Mr. MENENDEZ. Thank you.

Mr. Massey, I am happy that the Trade Representative spoke to the footwear industry. I only wish they would speak to Members of Congress. It would be great if they would come here to testify. I am glad at least that your industry got to speak to them.

Let me ask Mr. Cook. Mr. Cook, when 1.3 million agricultural jobs were lost to NAFTA, and 650,000 were replaced by manufacturing jobs, that left 650,000 people without any work. What is the economics of that?

Mr. COOK. Well, I can answer from our company's perspective. Without the passage of NAFTA, our U.S. textile base would have disappeared. It extended the life of every one of those operations, and we increased our production using our U.S. textile base.

Mr. MENENDEZ. But my point is not from your company's perspective; from the perspective of suggesting the great arguments that have been made here is that in fact we are going to help the Central American countries lift themselves up. And in Mexico, where at the end of the day maybe the manufacturing jobs paid somewhat better, there were still 650,000 people who lost their jobs and were not replaced by jobs in the marketplace as a result of the trade agreement.

Hence, they end up on the borders of the United States seeking to come to achieve their hopes and dreams and aspirations that NAFTA did not make a reality for them in their country, and so I am sometimes concerned that we over-promise, just as I have heard my colleagues suggest the trade agreements are not the panacea.

I certainly agree with them that they are not expected to be the panacea for all. By the same token, I have read your statement and

listened to your abbreviated statement, and I guess there is not anything bad about this at all either. It always makes me worry when something is totally bad or totally good. It is probably somewhere in the middle.

I am concerned about that, and I also read on page 5 of your written comments, suggesting that those of us who have raised this issue about the agriculture do not look at the fact that domestic production grew. But production can increase, not necessarily as a result of greater jobs, but it can increase by machinery and technology. It can increase by greater hours. So production is not a measurement, ultimately, of success in that regard.

I am concerned, and, Your Eminence, I appreciate your visit here because sometimes in this process all we talk about is money. We do not talk about people, people here in the United States and the standard of living we want to continue to enjoy, and people in the countries that we say we want to help and strengthen their democracy.

You know, my problem, and maybe you can help me with this, is that I think if I were a Latin America legislator or President, and all I was getting offered is a trade agreement well, I would want that trade agreement. But if in fact I was also offered an opportunity to have resources and investment in my people, resources and investment in economic development, resources and investment in alternative production from crop production for alternative sustainable development, I think I would want to accept that and work with it to achieve the goals that I have for the people I represent.

I see so many of my colleagues, those who came before and others, who are debating this issue and promoting CAFTA. Yet, who do not seem to be willing to support anything as it relates to social and economic development assistance. As a matter of fact, they are relatively silent about the Administration's cut for the last 2 years. Your country of Guatemala has one of the biggest cuts in child survival rates that will, in fact, be affected by the Administration's cut for the second consecutive year in a row, and yet that is about people, and we say nothing about it.

MCA (Millennium Challenge Account) is a false promise to most of Latin America, including the Central American countries. Yet, we keep heralding MCA as something that, in fact, is going to help the sustainable development and economic opportunity for people for which the gulf is this wide.

Would you say, as someone who has a moral leadership position in your country, that the people who are the legislators of your country and other countries of Central America look at this as their only choice that is being offered and, therefore, act in a way in which this may be their only possibility of doing something for economic development versus a broader vision that deals with social and economic development in the hemisphere?

[The following was delivered with the aid of an interpreter.]

Bishop RAMAZZINI. So, as I was saying, and if you will allow me to speak in Spanish, our poor people are not prepared to enter the market, especially when 80 percent of our population are so poor.

We are looking for ways in which we can implement structural changes in our country, ones which perhaps should be allied with

CAFTA. Let us not forget that Guatemala has just finished a period of 36 years of conflict so that our political processes are still very weak, and let us not forget that while we have good labor laws, none of them are fulfilled.

That is not to mention the huge social inequality that exists in our country. Let us not focus so much just about the market. Let us talk about people at the center of the market

Mr. MENENDEZ. Thank you.

Mr. WELLER. Thank you.

Ms. Harris?

Ms. HARRIS. Thank you, Mr. Chairman, and thank you so much for having this very important hearing, and I thank the panelists for being here today. We appreciate your testimony.

I would like to address my comments to Ms. Chavez-Thompson. DR-CAFTA includes binding dispute settlements for enforcement of high domestic labor laws, as well as the capacity for building stronger and broader labor rights protection.

In fact, last night at a dinner with several Members of Congress from different countries, they were concerned that the labor laws that we were requesting were indeed too much, and I thought we were trying to protect these laws. So I guess my question would be, in your written testimony about CAFTA, you argued that it will do nothing to pull people out of poverty in Central America, and then you described the detrimental effect of NAFTA on Mexico's economy.

According to CBO and the World Bank, it said that NAFTA made a strong contribution to trade growth. All the numbers I have seen show an elevated opportunity. Certainly Mexico's global exports would have been 25 percent lower today if it were not for NAFTA, and the World Bank study of NAFTA showed that there was significant acceleration in productivity.

I just wondered if you could shed some light on the debate. I always hear from the other side and I would like to hear your thoughts.

Ms. CHAVEZ-THOMPSON. Well, one of the things that has come out through all of this is that 10 years ago, before NAFTA, or 11 years ago, before NAFTA, the average wage for Mexican workers, especially in the maquiladoras, was anywhere from \$15 to \$17 a day. Those same maquiladoras are now paying anywhere from \$8 to \$10 a day, so the wages have gone down even within those areas of the free trade zones.

The same thing has happened in those areas that already have trade zones like in the Dominican Republic. For instance, in the Dominican Republic outside the free trade zone, the wage is \$164 a week. Whereas within the free trade zones, it is \$119.

The increase has not come to the people who actually are performing the work, so if there is more money being made, it is not being made by the workers. There are no more law enforcement for those workers or no more opportunities for those workers, and unfortunately many of those workers have come to the United States. They have crossed the border to find work here because they know that in most cases they are going to earn \$5.15 an hour, which is the minimum wage here.

The unfortunate part is that for the lowest of the people, the race to the bottom has not benefitted any of those workers in any of those countries, including Mexico. I know there are lots of facts and figures that can be given about who is getting money and the percentage that have been gained by Mexico, but the unfortunate part is that we are getting the result of the people who are not earning the wages in the immigration to this country of people from Mexico and from many of the other Central American countries.

Ms. HARRIS. Let me take it a step further. The World Bank said it was not because of NAFTA that they were earning less. It was because the 1994 peso when it fell, I think rural wages fell something like 25 percent in Mexico.

Ms. CHAVEZ-THOMPSON. That was one reason, yes.

Ms. HARRIS. It has steadily come back. I am from Florida. In my previous capacity I was in charge of trade relations, and we were able, actually, to focus Florida's economy on 30 new programs internationally engaging because we felt that if these other nations in the Western Hemisphere were benefitting economically and growing and flourishing then, number one, their workers would want to stay there and they would benefit, and, number two, it would really be more secure for our borders so we really have an extraordinary interest.

Some of our most significant trading partners are in Central America. People found that astonishing back home, but it is important. I guess my concern is that the World Bank studies show that Mexican States that are tied to direct foreign investment and exports and maquiladoras had higher and faster growing wages than other states, and so it seems like the opportunities and the prospect for wages in Central America would be increased by DR-CAFTA.

Ms. CHAVEZ-THOMPSON. We disagree.

Ms. HARRIS. Thank you.

Mr. WELLER. Thank you, Ms. Harris.

Mr. Delahunt?

Mr. DELAHUNT. I think you all heard my observations about the benefit of free trade not being just simply restricted to the economic elite. I think, you know, your testimony, Ms. Chavez-Thompson, just reflects my own concerns.

Let me ask the two gentlemen, Mr. Cook and Mr. Massey: We have a certain leverage at this point in time because the power structure in Central America wants this bill because it accrues to their benefit. I see my role as attempting to create a more fair and equitable society in Central America so that democracy will prosper and we will have an increasing market to export our goods. Now, I do not know whether you have direct involvement in these five countries, if you are familiar with what is happening on the ground, but what are your observations in terms of the benefits that will be promoted by, say, CAFTA?

I presume that you people are, you know, doing a good job in terms of your companies as far as raising those standards.

Mr. MASSEY. Yes, sir.

Mr. DELAHUNT. I applaud that. How do we get these governments to invest in that infrastructure that I talked about?

As I indicated, the testimony of Secretary Noriega, 8 percent, and I will ask the Bishop from Guatemala. Eight percent of the GDP goes back into the society in terms of an investment by the government. We have to ratchet that up.

Mr. MASSEY. Yes, sir. Payless ShoeSource's experience has been that by making an investment we have been able to employ quite a few associates.

Our primary concern is our customer. When we came to Central America we focused on our customer, which is all Central Americans. That is how we viewed it when we viewed that market. We bet on the Central American economy when we made that investment.

Jobs are important. The best way that we see for the increase in living standards in Central America is continued direct investment. We had lots of difficulties coming to Central America. It was not easy. We have—I will not call it a simple business, but we sell shoes, shoe care items, and hosiery.

You can increase United States investment in Central America by making it easier to invest there, and United States investment can raise living standards. That does not require, necessarily, anything other than the investment and the working of the U.S. company in that country.

That is not the only answer, and I—

Mr. DELAHUNT. I will grant you what you just said, okay? I am not going to dispute that. This is good for the American worker, but before we spoke about giving opportunity to the people of Central America.

Their governments have ineffectively dealt with the issue of income distribution, and I do not see any evidence that they are going to do anything different unless we leverage them, unless they start paying their fair share of the dollars that go to a small percentage of the population, and take those dollars and go back and create a middle class and invest in social and economic development.

Mr. MASSEY. I respect your concerns, sir. I will tell you that one thing that our company has tried to do is to be a role model. We pay our taxes. We pay our duties. We have tried very hard to be a good role model throughout Latin America so that it is easier for government officials to enforce the law against all of the other businesses there. That goes to our advantage.

I guess what I would say is, I am not sure a trade agreement can do everything.

Mr. DELAHUNT. I understand that.

Mr. MASSEY. I do believe that it cannot. Sure.

Mr. DELAHUNT. I am going to pose a question to the Bishop, but the point that I am saying is, you have a different responsibility. You have a responsibility to your shareholders.

We have, and this Congress has, a responsibility to the American people, to our national security, and part of that is to promote democracy and fair and stable societies everywhere, so we have a different job to do. As part of that job I want to see the inequalities within the Central American States reduced because I think that accrues to all our benefits.

We spoke about labor laws, and the reality is—and I am going to ask this to the Bishop. You know, I am visited frequently by labor leaders from Guatemala who feel threatened, who feel harassed. By the way, let me just state publicly that I happen to approve of the efforts being made by the current Guatemalan Government. I think they are out there trying to do the right thing, but they are dealing with history, and they are dealing with forces outside the government.

Those labor laws and those labor leaders, the labor laws are not being enforced, and labor leaders are being intimidated, and the reality is it translates into further inequality in the kind of society where they can have all the elections they want. It is not a viable democracy.

Bishop?

Bishop RAMAZZINI. Thank you very much for your considerations, which I wholeheartedly agree with. I would like to add the following: As we have already said, when it comes to workers in Guatemala, we have an excellent law, but it is not fulfilled. For that reason, I understand why people come to you and they explain and describe the threats that they have been receiving.

That is one of the fundamental problems in Guatemala. It is the lack of respect for basic human life and dignity. When we look at things just from an economic perspective then it should not surprise us that these things happen.

I ask myself: How is it that somebody who only knows how to pick coffee or to cut sugarcane, how can they really be competitive in this global marketplace so quickly? They tell us much about how we need to become more and more competitive, but with 80 percent of our population not having received a basic education, or 69 percent of our indigenous children who remain malnourished, according to the latest reports, how can we be competitive?

Perhaps this is not the time to really rush ahead to implementing CAFTA. Perhaps we should talk about something similar to a marshal plan that will really lift us up and our people.

Mr. BURTON [presiding]. Okay. Gracias.

Ms. Lee?

Ms. LEE. Thank you, Mr. Chairman. I want to thank our panelists for being here.

First of all, let me just preface this by saying that I support free trade, but it must be fair trade. I was formerly a member of the California World Trade Commission. I actually led the movement to open a trade office in South Africa.

The late Secretary Ron Brown—I was his representative on the District Export Council, and also I was a small business owner, so I understand free trade, but it has to be fair. I do not believe NAFTA has been fair, nor is CAFTA, as it is proposed, a fair trade agreement.

I would like to ask the Chairman if I could submit for the record a letter from Sharon Cornu, who is the Executive Secretary and Treasurer of our Alameda County Central Labor Council. I just want to quote from this letter because I think her letter sets forth a very clear analysis of what fair trade means.

In her letter, and let me just quote a couple of points she made. She noted the negotiations for CAFTA-DR and FTAA aid “did not

include meaningful input from many of the most impacted communities: [of these agreements—the] workers, conservationists, environmental justice activists, women's organizations, family farm interests, and immigrant and human rights promoters."

Mr. Chairman, I would like to put that letter into the record if it is okay with you.

Mr. BURTON. Without objection.

Ms. LEE. Thank you very much.

I would like to ask our panelists. Perhaps Ms. Chavez-Thompson or the Bishop could answer this question as it relates to the effects of this trade agreement. On marginalized populations such as women and immigrants and especially those of Afro descendent in Central America—because we know that they, too, are oftentimes left out of these trade agreements—I would like to get your sense of what the impact of CAFTA would be on these populations.

Ms. CHAVEZ-THOMPSON. It does not help the majority, Congresswoman, at all. I have been to the Dominican Republic. I have been to the free trade zone centers. When workers have tried to organize, to speak as a collective body, they have been threatened. They have been intimidated. They have been in fact blacklisted. They cannot get jobs any more in the free trade zone because they tried to form a union. They tried to form an opinion.

The laws that each of these countries have—and supposedly are the ones that are going to be enforced—do not help the workers in any way when you can violate the law. For instance, in the Dominican free trade zone, for violating a Dominican labor law and firing 140 employees, the employer got fined \$660. That employer can do it 10 times over and all that employer is out is \$6,000.

How do the workers combat laws that do not work for them? Time and time again we have said, "When you are not at the table to discuss how you can be helped or how you can be hurt, how do you expect your voices to actually be in place for any kind of agreement to help you or hurt you?"

That is what has happened in many of these countries. The voices have not been heard, as the Bishop mentioned just a minute ago, of the people that are affected by these trade agreements. These countries are not ready for it. The workers are not ready for it.

Each of the democratically-elected unions in these countries, through the ORIT organization that I represent, have said "no" to CAFTA. They are campaigning against it. They say it is not time. This is not the right agreement for them. It only exaggerates the problems that are already there.

Bishop RAMAZZINI. I want to speak about the maquilas. In Guatemala the textile industry is dominated by foreign business competitors. Sixty percent of the 350 textile businesses are Korean. They operate without paying taxes. They are exonerated for 10 years from paying income taxes and other taxes in labor intensive operations that include long hours and repetitive labor violations. Nevertheless, we have very good labor laws, but, as I have said, these laws are not fulfilled.

This productive base generated the case of economic growth that benefits only a small portion of the population because while the value of the production multiplied by 4.5 between 1950 and 1980,

poverty increased in the country from 60 percent in 1960 to 79 percent in 1980, heading toward 87 percent by the end of that decade.

Ms. LEE. Mr. Chairman, let me just mention the violence that broke out in Guatemala, I believe it was March 15, when there was opposition to CAFTA.

It appears that this is becoming a destabilizing factor in countries such as in Guatemala and so I am concerned that if people are out there opposing CAFTA in these countries, what would be the long term if it passes? How do you make those adjustments? I hope it does not pass, quite frankly.

Mr. Chairman, could I just ask for a response to that? Thank you very much.

Bishop RAMAZZINI. The violence expressing the manifestation you are talking about is the result of a process in which the population was not concerted about CAFTA.

The decision was secretive, was made very, very fast, and in the last days our congressmen ratified this CAFTA. Nevertheless, the people, many sectors of the Guatemalan society, were talking about the need to be listened to and to be involved in the process, and they did not. The people were upset, and they went to the streets for protesting against the way the negotiation was made.

Ms. LEE. Thank you very much.

Mr. BURTON. I will take my time now, and I will yield to the Vice Chairman.

Mr. WELLER. Thank you, Mr. Chairman.

Bishop, I would just like to get an understanding. I have read the news clippings. I spoke with individuals who were present during the violence, and I know the protestors were firebombing public busses, overturning cars. They were destroying public monuments with axes and machetes. It was a pretty violent crowd.

Are you saying that that violence was justified, that you would justify the use of violence as a form of protest?

Bishop RAMAZZINI. No, never. I never justified the violence. I was only explaining what was happening.

It is very important to know the reality because if you know the reality through the mass media, the interpretations are different. I was not in Guatemala City that day, but I have spoken with different people, and many of them gave different explanations.

Mr. WELLER. Yes.

Bishop RAMAZZINI. I repeat—

Mr. WELLER. Of course, you have an independent media. I saw many of the news clippings, saw the photos, saw an individual with an axe destroying a public monument near the capital.

Perhaps it was just my misinterpreting your statement when you were explaining how that violent act perhaps was the result of something. I was concerned that perhaps you were justifying the use of violence as a form of protest. I just wanted to clarify that. Thank you, Bishop.

Bishop RAMAZZINI. Yes. I repeat, I am not agreed with the violence.

Mr. WELLER. Okay.

Bishop RAMAZZINI. Absolutely not. Violence generates more violence.



Mr. BURTON. Let me just make a couple of real brief comments. I listened with great interest to the remarks that were made, and I apologize for my absence a few minutes ago. I had to be gone for a little bit.

To retain the status quo, to keep everything the way it is right now, seems like to me a step, a giant step, in the wrong direction. We have the Caribbean Basin Initiative, which may or may not be renewed. Those economies in Central and South America that are dealing with severe poverty right now are not going to see anything get any better if we start seeing more and more of the business and industry, textiles and others, go to China. A lot of those jobs will go over there and to Bangladesh and to elsewhere if we do not do something.

One of the reasons why a number of us are for CAFTA and for the Andean Free Trade Agreement and others is not because we think NAFTA worked out so well, because I had some problems with NAFTA myself, but that we think it is absolutely essential that we do something to stimulate economic growth in Central and South America so that those fledgling democracies do not fall on their face.

Right now because of poverty we see terrible problems in Venezuela, in Bolivia, in Paraguay, and elsewhere, and we want to make sure that democracies flourish in Central and South America. One of the main reasons why I am for CAFTA and for the Andean Free Trade Agreement is to not only help eliminate poverty and provide employment for people down there, but to make sure that all of these gainfully employed people do not end up in China or in Southeast Asia someplace. That is very likely to happen if we do not do something.

Now, if that takes place, if we see an erosion of employment and all of these jobs going into another part of the world in the Far East, then what you are going to see is more poverty and more destabilization in Central and South America.

We watched the Contras and the Sandinistas fight and thousands of people get killed back in the 1980s. We watched the FLMN and the government fight and thousands of people die in El Salvador. One of the main reasons was because there was so much poverty, and people thought that the more Communistic approach was the one that was going to solve their economic problems. It did not work, and it will not work.

The only thing that works is something that will stimulate economic growth and employment, and that is something that goes right along with, in my opinion, the stabilization of democracies.

I have been in Congress 23 years, and we have worked for over 20 years to create democratic institutions in Central and South America and the Caribbean. The United States and other leaders in Central and South America have been successful in getting that done.

Now we see the reverse happening because the poverty continues to exist and grow, and what we are trying to do with CAFTA and the Andean Free Trade Agreement and others is to create an economic growth potential for Central and South America which will not only help their economies, but will help stabilize those fledgling democracies.

That is what this is all about as far as I am concerned, and I understand some of the remarks that have been made about how we are concerned about civil strife and civil disorder. That is a real problem, but what do we do if we do not do anything? If we do not do anything, is it going to get better? I do not think so. If we do nothing, I think the situation is going to get much worse, and we are likely to see people like Fidel Castro and their philosophy of government start to resurface throughout the hemisphere.

As Chairman of this Subcommittee, I certainly do not want that happening on my watch, and so for that reason I am going to do everything I can to get CAFTA passed and get the Andean Free Trade Agreement passed as well.

Mr. Meeks?

Mr. MEEKS. Thank you, Mr. Chairman. I am sorry I missed most of the testimony. This has been one of those days when you are running around, especially when you have more than one Committee.

I just wanted to ask a brief question. First of all, I would ask the Bishop: What would you do to make this trade agreement better if you had the opportunity to, something that you think we would agree upon? Or is it you do not think any trade agreement would be good for the CAFTA region?

Bishop RAMAZZINI. I am not an expert on this topic of economics, but I think that this is not the time for doing this CAFTA for Guatemalan people. I said 80 percent of poor people without access to formal education. Most of them just work in the fields picking up coffee. This is my problem.

Mr. MEEKS. But given what the Chairman just said, you know, because we all agree, and I am undecided on where I am going on this bill. I want to do something for those people, and it seems to me if I do not do anything then nothing happens. Their conditions do not change.

My question basically to you is, I want to help change those conditions and it seems like one of the ways may be what the Chairman said, stimulating the economy so that there will be job creation. It is not going to be the end all and be all, but it is a step.

This particular free trade agreement may not be the best, and that is why I am asking: What would you do to improve it? What would you do so that we can help those people?

It is not going to be—and I think I agree with the Chairman again, I cannot believe another time—it is not going to be Communism, so what would you see us doing to make life better for the people that you are concerned about?

Bishop RAMAZZINI. Now I will speak in Spanish. I was talking to people who were dealing with this question in Costa Rica, and they are talking about implementing a complementary set of provisions that can go alongside CAFTA, can be included with CAFTA.

I repeat that this type of agenda needs to prioritize integral human development and not to just look at the economic and market issues. Now that we have ratified CAFTA, they are talking about implementing certain provisions, but who can oblige them to do that now that they have ratified CAFTA? Especially when in Guatemala we have structural problems that are not being resolved, especially since we have a weak state, a weak political

state, a weak and poor education and health system, especially when we have a history of exclusion especially of indigenous people for over 200 years.

Mr. MENENDEZ. If the gentleman would just yield a moment?

First of all, and I thank the gentleman for yielding, Bishop, I heard your comments, and I did not take in any way that you justified or supported violence. It was very clear to me. I know that Christ's teachings are those of peace and not of violence, so I would not expect that of you anyhow.

Secondly, let me just ask you one thing. Have you seen my legislation on the social and economic fund for the Americas? Would you have had an opportunity to see it?

Bishop RAMAZZINI. Yes, I have seen.

Mr. MENENDEZ. Is that something that would be helpful, you believe, to the people of Central America, maybe as a complementary agenda at the same time?

Bishop RAMAZZINI. Yes. That is right.

Mr. MENENDEZ. Thank you very much.

Mr. BURTON. Well, I want to thank this panel very much for your patience and for your comments.

We have one more panel, but I understand we have a vote here in about 5 minutes, so we will go to the next panel and see how far we can get before the bell rings.

Thank you very much. Thank you, Bishop.

Will you gentlemen please rise?

[Witnesses sworn.]

Mr. BURTON. Mr. Dresner, we apologize for the length of the day, but we do appreciate you being here and you, Mr. Murphy. Thank you very much.

Mr. Dresner?

**TESTIMONY OF MR. MARK DRESNER, VICE PRESIDENT FOR CORPORATE COMMUNICATIONS, ENGELHARD CORPORATION**

Mr. DRESNER. Mr. Chairman, Mr. Menendez, and Members of the Subcommittee, I appreciate the opportunity to once again appear before this panel to discuss my company's more than 5-year struggle with the Government of Peru.

I am here today to renew my request that the United States Congress stand firm in denying the Government of Peru the benefits of a free trade agreement and consider withholding some of the more than \$600 million Peru annually receives from the U.S. Government until such time that Peru clears Engelhard's name, returns the nearly \$30 million it expropriated from our company and its shareholders, together with the accrued interest in accordance with Peruvian law.

I am also here today to share with you developments in our case since the hearing last October and to put into perspective what those developments really mean in the bigger picture of securing a full and fair resolution of our matter.

First let me briefly summarize our issue. The basics of the case are really quite simple. Engelhard purchased real gold at fair market prices, paid all the VAT required under Peruvian law, exported that gold to its United States refinery. Thereby it became eligible for a VAT refund.

For more than 5 years, the Government of Peru has produced no evidence, either documentary or testimonial, of any wrongdoing on the part of the company or its officials, nor has it ever even offered a motive or an explanation of how the company may have profited from any alleged scheme.

On the other hand, all of Engelhard's transactions were found to be legal and appropriate by three independent audits, including one performed by Peruvian court appointed auditors.

The Government of Peru's position has been to attempt to hold Engelhard accountable for the actions of others, time and again claiming the exporters should be denied refunds if any VAT shortfalls were discovered or any irregularities occurred regardless of who was truly responsible.

There is no evidence against the company or its employees, and SUNAT, the Peruvian taxing agency, and other officials within the Ministry of Economics and Finance have actually committed criminal acts in order to keep the case hopelessly gridlocked all these years.

I remind the Subcommittee that this is not simply Engelhard's view. This view is supported by a judge's decision in bail hearings, the findings of a bipartisan commission of the Peruvian Congress, the findings of a Lima police investigation, the findings of a probe by Peru's Anti-Corruption Court, and a ruling by Peru's Constitutional Court.

The latest development in our case involves SUNAT's appeal of that Constitutional Court ruling. In April 2004, the Constitutional Court ruled that Engelhard's rights had indeed been violated. The ruling implicitly and repeatedly states that Engelhard cannot be held responsible for the actions of third parties. That ruling further states that the documentary evidence filed by SUNAT does not demonstrate any irregularities in the purchase of gold by Engelhard.

The court also ruled that SUNAT and the MEF violated due process rules by exercising Engelhard's letters of guarantee totaling approximately \$20 million and by withholding additional refunds from the company amounting to about \$10 million.

According to Peruvian law, the deadline for decision on SUNAT's appeal of that ruling was June 25, 2004. If we have learned anything in more than 5 years in Peru, it is that deadlines seem to be irrelevant in the Peruvian judicial system.

The Superior Court finally rendered its decision late last month. Two of the three judges voted in favor of Engelhard, but three votes are needed for a final determination. A fourth judge now has been added to review the appeal, and another round of oral arguments is scheduled for April 28.

A critical point I want to make to you today is this: A ruling in favor of Engelhard on this appeal would be an important step, but it would not resolve the case. It would remand the case back to the Tax Court for reconsideration. If the Tax Court followed the instructions of the Constitutional Court, it would appear the Tax Court would have no alternative but to rule in Engelhard's favor.

So why are we concerned? To quote Yogi Berra, "Deja vu all over again." We have been here before. In April 2002, Peru was anxious to secure its recertification for benefits under the ATPDEA.

Engelhard was one of several disputes involving U.S. companies that threatened its recertification.

Against that backdrop, Peru's Tax Court ruled in favor of Engelhard and instructed SUNAT to once again review the company's VAT refund request, and the Tax Court instructed SUNAT to do so with two important provisos. Number one, do not use Supreme Decree 14. Supreme Decree 14, which was ruled unconstitutional, was the vehicle that SUNAT used initially to rule against Engelhard and to take possession of the company's funds. Number two, rely only on evidence directly related to Engelhard, not the actions of third parties.

In lobbying in Washington for ATPDEA recertification, Peruvian officials pointed to the favorable Tax Court ruling as an example of the fair treatment being extended to Engelhard. Then in September 2002, Peru promised in writing to "promote prompt and effective due process and transparency under the law in connection with processes that companies such as Engelhard may seek to pursue in Peru."

Now, after that promise was made, Peru received its recertification from the U.S. Government. SUNAT then turned around, issued virtually the same resolutions it had the first time against Engelhard. The Tax Court then inexplicably reversed itself, ruling against Engelhard in the absence of any direct evidence against the company.

Peru made a promise to get what it wanted from the U.S. Government. It not only failed to live up to that promise, it went on to commit criminal acts in denying Engelhard due process.

In recent weeks, Peruvian officials have held meetings in Washington in which they have cited this two-to-one Superior Court ruling as an indication that the ultimate determination may be favorable to Engelhard. Such a favorable ruling provides no guarantee, though, that the Tax Court will rule fairly and return the money rightfully owed the company, nor does it suggest that unwarranted criminal charges against our employees will be dropped.

By its actions, the Government of Peru has demonstrated that it will do only what it is forced to do in order to get what it seeks from the U.S. Government, and now it seeks the benefits of a free trade agreement and ongoing United States aid in spite of the fact that Peru has failed to live up to its promise to secure ATPDEA benefits made 3 years ago.

Engelhard is not asking for special treatment, only fairness. We urge Members of Congress to insist that Peru deliver that fairness in full before granting them what they now seek from you. That resolution in full would be to clear Engelhard's name, return the monies rightfully owed the company in a bank outside of Peru, and drop the unwarranted criminal charges against our employees.

Thank you.

[The prepared statement of Mr. Dresner follows:]

PREPARED STATEMENT OF MR. MARK DRESNER, VICE PRESIDENT FOR CORPORATE COMMUNICATIONS, ENGELHARD CORPORATION

Mr. Chairman, Mr. Menendez and Members of the Subcommittee, I appreciate the opportunity to once again appear before this panel to discuss my company's more-than-five-year struggle with the Government of Peru.

I am Mark Dresner, Vice President of Corporate Communications for Engelhard Corporation. Engelhard is a *FORTUNE 500* company headquartered in Iselin, New Jersey with facilities in 18 states and worldwide operations employing more than 6,600 people.

I am here today to renew my request that the United States Congress stand firm in denying the Government of Peru the benefits of a Free Trade Agreement—and consider withholding some of the more than \$600 million Peru annually receives from the U.S. Government—until such time that Peru clears Engelhard's name and returns the nearly \$30 million it expropriated from our company and its shareholders, together with accrued interest in accordance with Peruvian law.

I am also here today to share with you developments in our case since the hearing last October and to put in perspective what those developments really mean in the bigger picture of securing a fair and full resolution of our matter.

First, let me briefly summarize our issue. The basics of the case are simple. Engelhard purchased real gold at fair market prices, paid all the VAT required under Peruvian law and exported the gold to its U.S. refinery, thereby becoming eligible for a VAT refund.

For more than five years, the Government of Peru has produced no evidence—either documentary or testimonial—of any wrongdoing on the part of the company or its officials, nor has it ever even offered a motive or explanation of how the company may have profited from any alleged scheme.

On the other hand, all of Engelhard's transactions were found to be legal and appropriate by three independent audits, including one performed by Peruvian court-appointed auditors.

The Government of Peru's position has been to hold Engelhard accountable for the actions of others—time and again claiming that the exporter should be denied refunds if any VAT shortfalls were discovered or any irregularities occurred—regardless of who was truly responsible.

There is no evidence against the company or its employees, and SUNAT (the Peruvian Tax Agency) and other officials within the Ministry of Economics and Finance have committed criminal acts in order to keep the case hopelessly gridlocked.

I remind the Subcommittee that this is not simply Engelhard's view. This view is supported by:

- A judge's decision in bail hearings;
- The findings of a bi-partisan Commission of the Peruvian Congress;
- The findings of a Lima police investigation;
- The findings of a probe by Peru's Anti-Corruption Court; and
- A ruling by Peru's Constitutional Court.

The latest development in our case involves SUNAT's appeal of that Constitutional Court ruling. In April 2004, the Constitutional Court ruled that Engelhard's rights had, indeed, been violated. The ruling implicitly and repeatedly states that Engelhard cannot be held responsible for the actions of third parties in the absence of evidence.

That ruling further states that the documentary evidence filed by SUNAT does not demonstrate any irregularities in the purchase of gold by Engelhard.

The Court also ruled that SUNAT and the MEF violated due process rules by exercising Engelhard letters of guaranty totaling approximately \$20 million and by withholding additional refunds from the company amounting to an additional \$10 million.

According to Peruvian law, the deadline for a decision on SUNAT's appeal of that ruling was June 25, 2004. If we have learned anything in more than five years, it is that deadlines are irrelevant in the Peruvian judicial system.

The Superior Court finally rendered a decision late last month. Two of three judges voted in favor of Engelhard, but three votes are needed for a final determination. A fourth judge has been added to review the appeal and another round of oral arguments is scheduled for April 28th.

A critical point I want to make to you today is this: A ruling in favor of Engelhard on this appeal is an important step, *but it would not resolve the case*. It would remand the case back to the Tax Court for reconsideration. If the Tax Court followed the instructions of the Constitutional Court, it would appear that the Tax Court would have no alternative but to rule in Engelhard's favor.

The reason we are so concerned, however, is that we have been here before.

In April 2002, Peru was anxious to secure its recertification for benefits under the ATPDEA. The Engelhard case was one of several disputes involving U.S. companies that threatened their recertification.

Against that backdrop, Peru's Tax Court ruled in favor of Engelhard and instructed SUNAT to once again review the company's VAT refund requests. The Tax Court further instructed SUNAT to do so with two important provisos:

1. Do not use Supreme Decree 14—Supreme Decree 14, which was ruled unconstitutional, was the vehicle SUNAT used initially to rule against Engelhard and to take possession of the company's funds; and
2. Rely only on evidence directly related to Engelhard—not the actions of third parties.

In lobbying Washington for ATPDEA recertification, Peruvian officials pointed to the favorable Tax Court ruling as an example of the fair treatment being extended to Engelhard. In September 2002, Peru promised, in writing, to “promote prompt and effective due process and transparency under the law in connection with processes that companies such as Engelhard . . . may seek to pursue in Peru.”

After that promise was made and Peru received the recertification it sought from the U.S. Government, SUNAT issued virtually the same resolutions against Engelhard. The Tax Court then inexplicably reversed itself—ruling against Engelhard in the absence of any direct evidence against the company.

Peru made a promise to get what it wanted from the U.S. Government. It not only failed to live up to that promise, it then committed criminal acts against the company in denying Engelhard due process.

In recent weeks, Peruvian officials have held meetings in Washington in which they touted the recent 2–1 Superior Court ruling as an indication that the ultimate determination is likely to be favorable to Engelhard.

Such a favorable ruling provides no guarantee that the Tax Court will rule fairly and return the money rightfully owed the company, nor does it suggest that the unwarranted criminal charges against our employees will be dropped.

By its actions, the Government of Peru has demonstrated that it will do only what it is forced to do in order to get what it seeks from the U.S. Government. Now, it seeks the benefits of a Free Trade Agreement and ongoing U.S. aid in spite of the fact that Peru has failed to live up to the promise it made to secure ATPDEA benefits three years ago.

Given the history of our case—the countless delays, manipulations and even criminal acts by which we've been victimized—we urge the United States Congress to withhold the benefits of a Free Trade Agreement until Peru *fully* and fairly resolves the Engelhard case. And the case will only be fully and fairly resolved when:

1. The company's name is cleared;
2. The monies rightfully owed are deposited in an Engelhard bank account outside of Peru; and
3. Unwarranted criminal charges against our employees are dropped.

In their recent meetings in Washington, we understand that Peruvian officials also have pointed out that the Engelhard case is small in comparison to the overall investment of American companies in Peru. As one of several companies engaged in long and frustrating disputes with the Government of Peru, we find such a statement both frightening and deplorable. Are they suggesting that as long as overall American investment remains high, the U.S. Government should overlook the theft of \$30 million and the ongoing denial of due process?

Engelhard is not asking for special treatment—only fairness. We urge Members of Congress to insist that Peru deliver that fairness in full before granting them what they now seek from you.

To grant Peru additional benefits—knowing how they continue to mistreat U.S. companies and mislead U.S. Government officials—would be to reward and enable the continuation of corrupt practices.

Thank you.

Ms. HARRIS [presiding]. Thank you, Mr. Dresner, for your testimony.

Mr. Murphy? Thank you for being here.

**TESTIMONY OF MR. JOHN G. MURPHY, VICE PRESIDENT,  
WESTERN HEMISPHERE AFFAIRS, U.S. CHAMBER OF COM-  
MERCE**

Mr. MURPHY. I would like to thank the Committee for their focus on these important issues today and for their endurance through what has been, I think, a valuable hearing.

Ms. HARRIS. They will be back shortly.

Mr. MURPHY. That is all right.

The U.S. Chamber of Commerce is the world's largest business federation, representing 3 million companies of every size, sector, and region. At the urging of our broad membership, the U.S. Chamber has advocated closer trade relations between the United States and the countries of Latin America and the Caribbean for many years. Why? Because trade works and free trade agreements work.

The new U.S.-Chile Free Trade Agreement, for instance, has generated a 33 percent surge in U.S. exports to that country in 2004, its first year of implementation. Far from a race to the bottom, these free trade agreements are a ladder from poverty to prosperity.

Consider how trade generates the best jobs in the United States, paying an average premium over other jobs of about 15 percent. In Mexico, trade related jobs pay a premium of 40 percent over other wages, and in Honduras jobs in the apparel sector, which is purely export oriented, pay an average wage that is four times the average wage in that country.

The Chamber's top trade priority this year is approval of DR-CAFTA, which is not only the biggest FTA in a decade, but a landmark agreement that sets new and higher standards for service providers, market opening, and enforcement of labor and environmental standards.

Today I have been asked to speak more about the U.S.-Andean Free Trade Agreement, which is now being negotiated. In principle, the Chamber strongly supports the effort to conclude a free trade agreement with Colombia, Peru, and Ecuador, and we hope the final agreement will be as ambitious and comprehensive as DR-CAFTA.

The 100 million citizens of these countries generate a collective GDP near half a trillion dollars. There is no denying the tremendous commercial advantages afforded by this next generation of free trade agreements. However, we do believe that a number of commercial disputes related to United States companies' investments in Peru and Ecuador must be resolved before concluding negotiations.

It is noteworthy that the Government of Colombia has moved to resolve a number of the most difficult disputes in that country and to improve the business climate generally. The situation in Peru is more difficult. Notable common threads in some of the disputes there include uncertainty regarding which agency or branch of government has authority to resolve a particular dispute, and a lack of respect for legal and tax stability agreements entered into with the government.

The Chamber is concerned about a number of disputes involving SUNAT, the tax agency. Too often SUNAT's dealings with compa-



nies are inconsistent with Peruvian law, and the agency has ignored procedural time lines repeatedly in some cases.

On a positive note, a newly appointed taxpayer advocate has helped to limit some of SUNAT's ability to prolong unnecessary procedural argumentation indefinitely. However, the fact remains that many of the SUNAT-related cases that were cited before this Subcommittee in October have not been resolved.

The investment climate is also difficult in Ecuador where several major United States investors are involved in disputes with the government. There are further details in my written statement.

Now, one major reason the U.S. Chamber strongly supports free trade agreements is that they represent strong medicine to prevent certain kinds of disputes from arising in the future. This is accomplished through the creation of a more transparent rules-based business environment, which in turn will strengthen democratic institutions and enhance economic reform.

For example, the FTA will guarantee transparency in government procurement with competitive bidding for contracts and extensive information made available on the Internet, not just well-connected insiders, and it will strengthen legal protections for intellectual property rights. In this sense, a free trade agreement is a significant part of the solution to the problems that beset the investment climate in some countries.

In Peru and Ecuador, however, the need to secure the rapid resolution of these disputes is urgent. While we understand that each case is different in nature and some cases may require additional time to resolve, the time to act is now. We need action, not words.

If the opportunity to conclude a free trade agreement with the United States should fall by the wayside, Peru and Ecuador may have to wait years for another chance to enter into such an economic relationship with the United States. It is incumbent upon those two governments to demonstrate their resolve.

Thank you.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF MR. JOHN G. MURPHY, VICE PRESIDENT, WESTERN  
HEMISPHERE AFFAIRS, U.S. CHAMBER OF COMMERCE

In May 2004, the United States launched negotiations for a free trade agreement with Colombia, Peru, and Ecuador, dubbed the U.S.-Andean Free Trade Agreement (FTA). Several negotiating rounds have been held since that date, and officials with the Office of the U.S. Trade Representative have outlined a negotiating schedule aiming to conclude the agreement within the next few months. Bolivia is participating in the negotiations as an observer.

The U.S. Chamber of Commerce is the world's largest business federation, representing three million businesses of every size, sector, and region. The U.S. Chamber has long advocated closer trade relations between the United States and the countries of Latin America and the Caribbean through the Free Trade Area of the Americas (FTAA) negotiations as well as bilateral and sub-regional agreements such as the North American Free Trade Agreement (NAFTA), which has brought remarkable benefits to U.S. businesses, workers, and consumers. Another successful model is the U.S.-Chile FTA, which was implemented on January 1, 2004. This FTA is already delivering significant benefits for the U.S. economy as well, including a 33% increase in exports to that country in its first year of implementation.

In the same vein, the U.S. Chamber's top international trade priority for 2005 is Congressional approval of the landmark U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA). As other witnesses in this hearing will surely report, U.S. companies and workers exported \$15.7 billion in U.S. products to Central America and the Dominican Republic last year—more than the United States sells to India, Indonesia, and Russia combined. Two-way trade surpassed \$33 billion

in 2004. A U.S. Chamber study of DR-CAFTA's impact on a dozen states projects it will create over 25,000 new jobs in its first year—and over 130,000 new jobs in a decade.

Above all, the U.S. Chamber supports DR-CAFTA because it will level the playing field for U.S. workers. Today, 80% of Central American and Dominican products enter the U.S. market duty free; by contrast, U.S. merchandise exports to the six countries face tariffs that average 30% to 100% higher than the average U.S. tariff on imports from the six countries. In other words, these countries are enjoying nearly free access to our marketplace while our access to theirs remains limited. DR-CAFTA will fix this imbalance by immediately eliminating all tariffs on 80% of U.S. manufactured goods, with the rest phased out over a few years.

In similar fashion, many of our member companies and their employees stand to benefit directly from the proposed U.S.-Andean FTA. The agreement stands to boost trade and investment between the United States and several of our closest neighbors. Colombia, Peru, and Ecuador represent a significant potential market, with a population approaching 100 million and a collective GDP near \$500 billion when measured on a purchasing power parity basis. Bilateral trade was near \$24 billion in 2004.

The U.S. Chamber of Commerce supports the proposed FTA in principle. We believe the FTA will help promote the economic development of the Andean countries while providing new business opportunities for U.S. agriculture, industry, and service providers. However, we believe that a number of commercial disputes related to U.S. companies' investments in Peru and Ecuador must be resolved before concluding negotiations. Expeditious resolution of these disputes is a priority for the U.S. Congress, the Bush Administration, and the U.S. Chamber of Commerce.

#### RESOLVING ONGOING INVESTMENT DISPUTES

A number of persistent disputes between U.S. companies that have invested in Peru and Ecuador and the respective national governments stand as a substantial obstacle that could block the participation of these countries in a free trade agreement with the United States. The few remaining months of the negotiations represent a critical opportunity for governments to resolve these disputes.

It is noteworthy that the government of Colombia, under the leadership of President Alvaro Uribe, has moved to resolve a number of the most difficult disputes in that country and to improve the business climate generally. His leadership and the diligence of other members of the Colombian government to resolve a number of thorny problems serve as an example to other governments.

The situation in Peru is more difficult, and details relating to investment disputes in that country are well known to a variety of U.S. officials, obviating the need for a detailed account in this document. Notable common threads in the disputes include aggressive and often questionable tax assessment strategies involving foreign firms; uncertainty regarding which agency or branch of government has authority to resolve a dispute; and a lack of respect for legal and tax stability agreements entered into by the government.

The U.S. Chamber is particularly worried about a number of disputes revolving around the Peruvian tax agency, known by its Spanish-language acronym, SUNAT. Too often, SUNAT's dealings with companies appear to be inconsistent with Peruvian law, and the agency has ignored procedural timelines repeatedly in some cases.

In one high profile case, SUNAT has repeatedly appealed tax court rulings in favor of Luz del Sur, a U.S.-owned utility. As background, the privatization of ElectroLima created two regional electric utilities, Edelnor and Luz del Sur, each of which serve half of the city of Lima. Both companies inherited the same accounting books from ElectroLima and used the initial asset values they contained to revalue them later to market prices, as allowable under Peruvian law. While SUNAT has allowed a revaluation of only 35% for Luz del Sur's assets, it has permitted a 171% revaluation for Edelnor. This discriminatory treatment for two halves of the same company—in the same business, in the same city, in simultaneous revaluations—raises serious questions about Peru's investment climate.

On a positive note, the Peruvian government has resolved several disputes, and the newly created position of Taxpayer Advocate, sometimes referred to as an ombudsman, represents a step forward. The Taxpayer Advocate has helped to limit some of SUNAT's ability to prolong unnecessary procedural argumentation indefinitely, though the fact remains that major SUNAT-related disputes have yet to be resolved.

The investment climate is also difficult in Ecuador, where several major U.S. investors are involved in disputes with the government. Among the difficulties that have kept foreign investors away are the government's failure to pay its bills to pri-

vate companies and its willingness to see spurious lawsuits against multinationals pursued in domestic courts.

In one case, the Ecuadorian government has failed to comply with its own law in a dispute involving Interagua, an affiliate of the Bechtel Corporation, which is a concessionaire for the supply of water services in Guayaquil. The government has not complied with provisions in the original telephony and radio communications law, 175, and its successors, which directed that two-thirds of the revenue generated by a 15% surcharge on telephony bills be automatically deposited in a trust mechanism for Interagua. Provisions of the concession contract have effectively prevented Interagua from obtaining the necessary long-term debt financing to complete the expansion of the potable water and sewage connections stipulated in the contract. Continued non-compliance by the Ecuadorian government could lead to large financial losses by Interagua and failure of the utility to provide adequate water and sewage services to the people of Guayaquil.

The U.S. Chamber is also very concerned about the lawsuit faced by ChevronTexaco Corporation in Ecuador, which potentially represents an instance of “global forum shopping.” In 2003, a group of Ecuadorian citizens filed an action against a predecessor, fourth-tier subsidiary that was part of a now-defunct consortium of companies that included elements of the Ecuadorian government. The consortium had been licensed by the Ecuadorian government between the years of 1964 and 1992 to explore and produce oil. This legal claim is contrary to a standing 1995 Settlement and Release Agreement between ChevronTexaco and the government of Ecuador, including its state-owned oil company, Petroecuador, which was a member of the former consortium. In fact, the Ecuadorian government certified in 1998 that ChevronTexaco fulfilled all terms of the Agreement, pouring nearly \$50 million into the Oriente region in the form of environmental remediation programs and social projects to directly benefit the local communities. To resolve the dispute, the Ecuadorian government must honor the Joint Operating Agreement which defined its partnership with Texaco by admitting its responsibility for the situation involving ChevronTexaco in the Oriente and define a plan of action to resolve these concerns, thereby eliminating the basis for naming ChevronTexaco as the sole defendant in the lawsuit.

#### PREVENTING FUTURE INVESTMENT DISPUTES

One major reason the U.S. Chamber supports the proposed FTA is that it represents strong medicine to prevent certain kinds of disputes from arising in the future. This is accomplished through the creation of a more transparent rules-based business environment which in turn will help enhance democratic institutions, business transparency, and economic reform. For example, the FTA will guarantee transparency in government procurement, with competitive bidding for contracts and extensive information made available on the Internet—not just to well-connected insiders. It will also create a level playing field in the regulatory environment for services, including telecoms, insurance, and express shipments.

Another instance where we expect the FTA to improve the business climate in the Andean countries relates to dealer protection laws. Such laws represent a significant trade and investment barrier for U.S. companies seeking to do business in the region. In some cases, these laws provide local dealers and distributors of products, services, and trademarks owned by foreign principals with exaggerated protections, locking manufacturers into exclusive dealership arrangements. In some cases, U.S. companies have no way to discipline a nonperforming dealer. The recently negotiated DR-CAFTA dealt with this matter effectively, and the U.S.-Andean FTA should use that agreement as a model in this regard.

In addition, the proposed FTA also represents an important opportunity to strengthen legal protections for intellectual property rights in the region, as well as the actual enforcement of these rights. For the pharmaceutical patent-based industries, ongoing violations of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as well as provisions of the Andean Trade Preference Act (as amended in 2002) in some of the Andean countries are a source of serious concern. This is particularly true with regard to the failure to protect confidential and exclusive test data in the research-based pharmaceutical sector. The U.S. Chamber submitted more detailed comments on negotiating priorities to the inter-agency Trade Policy Staff Committee on March 17, 2004.

The government of Colombia took a positive first step last year with the promulgation of Decree 2085, which protects confidential test data provided to the authorities upon registering a patent. Peru and Ecuador should take the necessary administrative steps to ensure that no new or additional unauthorized copies of innovative drugs are given a sanitary registration and/or marketing approval inconsistent with

data exclusivity. This provisional protection should remain in place until such time that Peru and Ecuador complete implementation of meaningful and effective data exclusivity language.

#### RESOLVING FUTURE INVESTMENT DISPUTES

A final reason the U.S. Chamber in principle supports the FTA is the promise it holds to establish dispute settlement mechanisms designed to provide timely recourse to an impartial tribunal. Such "Investor to State Dispute Settlement Procedures" (ISDPs) are included in over 40 bilateral investment treaties (BITs) between the United States and other countries, many of which have been in force for decades, as well as in FTAs.

ISDPs provide for dispute settlement panels operating under international legal standards that mirror U.S. Constitutional protections against arbitrary government actions and against taking of property without compensation. In developing countries where local judiciaries are at times slow, ineffective, or corrupt, U.S. companies have benefited from recourse to ISDPs. The existence of such procedures in a BIT or FTA represents a boon to the investment climate, even though the number of cases tried is typically very small (e.g., a total of just over 30 cases have been brought under NAFTA's Chapter 11 in all three countries over the past ten years). The value of the investments involved in these cases is small compared to the hundreds of billions of dollars that U.S. companies have invested in countries with which the United States has BITs or FTAs that feature ISDPs.

In this vein, the FTA should include a requirement that the signatory countries take the necessary steps to accede to arbitral conventions, including New York Convention and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

#### CONCLUSION

The U.S. Chamber believes that a free trade agreement with the Andean countries has the potential to improve the region's investment climate and economic development prospects. Above all, the rules included in such an agreement promise to level the playing field for U.S. and local businesses in important ways, including measures to ensure transparency in government procurement, stronger protections for intellectual property, and access to international arbitration for investment disputes. In this sense, the FTA is a significant part of the solution to the problems that beset the investment climate in some countries.

However, the support of the U.S. Congress, the Bush Administration, and the U.S. Chamber of Commerce for the inclusion of Peru and Ecuador in the U.S.-Andean Free Trade Agreement is tempered by the need to secure the rapid resolution of the disputes cited above. While we understand that each case is different in nature, and some cases may require additional time to resolve, these disputes continue to cast a cloud over the negotiations. While some cases pending before international arbitral panels are subject to fixed timetables, it is certainly reasonable to require the final resolution of many of these cases, including those involving Peru's SUNAT. We have had enough of roadmaps. We need action, not words—*hechos, no palabras*. If the opportunity to conclude a free trade agreement with the United States should fall by the wayside, Peru and Ecuador may have to wait years for another chance to enter into such an economic relationship with the United States. In this sense, Peru and Ecuador are at a critical juncture in their economic development. It is incumbent upon those two governments to demonstrate their resolve.

Ms. HARRIS. Mr. Murphy, Mr. Dresner, thank you so much for your testimony.

Shall we go ahead, or shall we recess?

If you do not mind, we will take a temporary recess so that we do not miss this vote, and then we will be back.

Thank you.

[Recess.]

Mr. WELLER [presiding]. We will resume the hearing here. Members have gone to vote. Some will be coming back and going back and forth as this is the final vote of the day, but I appreciate your time and your patience accommodating our congressional schedule.

I would just like to direct this question to both of you if you would like to share your opinions on it. Moving forward on the An-

dean Free Trade Agreement, which I support and what I believe will be a very important free trade agreement. Of course, as we go through that process we have to look at commercial disputes, and that is why you are before us.

In the Andean FTA, disputes have led to a deteriorating investment climate in the country of Peru where foreign investors have shown little willingness to invest further and some have sold off their assets to minimize exposure.

Of all the United States companies currently doing business in Peru, the ones that have an issue with the Peruvian tax authority represent at least 40 percent of all the overall United States investment. Does the Peruvian Government have the ability to control the Peruvian tax authority, SUNAT?

Mr. DRESNER. If it has, it has not demonstrated a willingness to do so. It is clear that in our case SUNAT has taken actions that clearly have been proven by police and Anti-Corruption Court investigations to have been criminal, yet many of the people that were involved in those actions and involved in our case from 6 years ago continue to work in the agency.

The answer would be if they have, they have not demonstrated that they are willing to do so.

Mr. MURPHY. As I put in the written statement, the Chamber is concerned about the SUNAT-related cases. We have observed that over time a number of these cases seem to get bounced around within the process, and it is not always clear what authority is going to bring closure to a case. The procedural time lines have not been respected.

I mentioned, also, a positive note that there was a tax ombudsman created which is a person who has some authority to give an end to some of these appeals, but the fact remains that many of these SUNAT-related cases are still unresolved.

I think a hearing such as this one today is very important to draw attention to the resolve of not only the business community or the Administration, but of the Congress, that it is indispensable to see closure brought to these disputes before the conclusion of the negotiations for the free trade agreements.

Mr. WELLER. Of course, we are getting two different messages. The Government of Peru, of course, which is a friend, a democracy, they are stating that investment disputes are actually being resolved in a timely manner.

At the same time our constituents, American companies investing in Peru who have investments at stake here, they tell us that disputes are being drawn out essentially as if someone is trying to run out the clock as we go through the FTA negotiations.

Are these cases being resolved in a timely manner? Do you see a sincere effort to resolve these investment disputes in an open and transparent as well as timely manner?

Mr. DRESNER. No, absolutely not. All of the deadlines in our case have been missed by as much as 2 to 3 years. As I said in my testimony, the deadlines in the judicial system in Peru appear to be irrelevant.

Similarly with SUNAT. SUNAT has dragged out, and I believe I mentioned in October that we had offered the Peruvian Government the opportunity that we would forego any of the interest owed

to us if we were found innocent, if they would not appeal the Constitutional Court ruling and allow the case to go back to the Tax Court.

Now, we made that offer knowing we might not win the case, but we made it in the hopes to try to expedite it. It was declined.

Mr. WELLER. Mr. Murphy—this will be my last question, and then I will call on Mr. Menendez—you made a statement that President Uribe of Colombia has taken steps to improve the business climate, particularly when it comes to the cases of investment disputes. Can you elaborate on that for the Committee?

Mr. MURPHY. There were a number of long-festering disputes with large price tags attached to them, one involving Nortel, for instance, that had been around for a long time. President Uribe got personally involved in these cases, and they came to a resolution of those disputes.

I think it is fair to say today that the U.S. business community has a very high opinion of President Uribe and his administration's ability to fix those sorts of disputes such that there are not any significant ones festering today. It is a real example to other economies in the region.

Mr. WELLER. Just based on that, our friends that we are negotiating with—Colombia, Peru, Ecuador—would you grade their process from your organization's perspective in resolving commercial disputes?

Mr. MURPHY. I think the important thing today is to give Colombia a thumbs up, but a very clear incomplete to the other countries.

It is important that we have a united front here to maintain the consensus in the United States, from government to private sector, that it is indispensable to come to closure on these things as we wrap up the negotiations in the next few months.

Mr. WELLER. Okay. Thank you, Mr. Murphy.

Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman. I am glad to see the Chairman was able to come back as well because this is something I feel very deeply about.

Before I do, I just want to take a moment of personal privilege here to congratulate Ted Brennan, who is going to be going to the Senate. I have had the privilege of working with Ted over several years on this Committee as a staff member on the Republican side, and he is just an exceptional person to work with. Many of us could learn about bipartisanship through his efforts.

I hope I do not get you in trouble now, Ted, but in any event, I really mean it in a complimentary fashion, and I want to thank you for everything, the courtesies you have extended to this side of the aisle along the way. We wish you good luck in the Senate.

Mr. Chairman, I have very, very significant concerns about the investment climate in Peru. I have been voicing it over a period of time. I only regret that you came this late in the hearing. I know it is not of your doing. We just had a very substantial hearing.

I am going to do everything I can to let the entire country and this Congress understand either we are going to stand up for American companies who have a legitimate case—not arbitrarily and capriciously when they do not have a legitimate case because I am not for that. But, when they have a legitimate case and when

the courts of a country decide in their favor and they get danced around for 5 years and they still cannot achieve justice.

If we are going to put all of this on the altar of trade, what a mistake we are going to make for American companies. Thirty million dollars. That is what we are talking about just in one case. Thirty million dollars.

Now, I have tried in private diplomacy to move this ahead. To be honest with you, I believe I have been mocked by the Peruvians. Obviously they just think they are going to dance us, Mr. Chairman, all the way to an agreement. That is what they think they are going to do. They are going to dance us all the way to an agreement.

Mr. BURTON. Would the gentleman yield?

Mr. MENENDEZ. I would be happy to yield to the Chairman.

Mr. BURTON. Let me just say that based upon the information you have given me, I do not think there is any doubt that what you say is absolutely accurate, and I would be very happy to join you and maybe even the Vice Chairman in writing a letter to the Peruvian Government telling them of our dissatisfaction with the way they have handled these cases.

If you are inclined to do that, I will be happy to join you in trying to put a little heat on them.

Mr. MENENDEZ. Mr. Chairman, all of your help is well appreciated, and I thank you for the offer and certainly will accept it.

I just want to make a point here. This is emblematic. It is not about Engelhard. That is the problem here. In the case of Engelhard, as you have heard, \$30 million seized based on false charges and unproven accusations in spite of 5 years of numerous court rulings by the Government of Peru and independent audits which support Engelhard's actions as legal and appropriate. Engelhard is still waiting for due process, fair treatment by the judicial system and return of their \$30 million.

A second company in New Jersey, PSEG, invested in Peru, has been a friend in Peru, contributed to Peru's economy and future. Over the past 6 years, PSEG has been subject to judicial decisions based again on a moving target. Every time the court finds in favor of PSEG, SUNAT, which I personally believe is a rogue agency, discovers a new basis to assess back taxes and evade the ruling.

Even when good companies playing by the rules that want to invest in Peru's economy have been caught in the web of SUNAT's capricious and, I believe, illicit behavior, there is not much that can be done because you get a court decision, and then a court decision means nothing. You get the Constitutional Court to determine in your favor, and yet that can find a way that ultimately can be circumvented.

Now, I respect the sovereignty of the country of Peru. However, when we are talking about entering trade agreements, that is something we have a little something to say about. That is something that is about the national interest and security of the United States. That is something about who we want to do business with.

If we are not going to stand up for U.S. companies who follow the law of the country that they make investments in and still are shortchanged at the end of the day, then I do not know who we are going to stand up for.

For Peru, it is just a bad, bad message because it says that even those who want to make investments in your country, significant investments, that you will change the rules of the game arbitrarily and capriciously. The rule of law ultimately does not have the just conclusion that it should have, and at the end of the day what message does that send for Peru? It sends the wrong message.

Mr. Dresner, I just want to ask you one question in this regard because some of our colleagues have to wonder well, what are they talking about 5 years of rulings and all this stuff and still have not resolved the problem.

You get another Constitutional Court ruling. If you receive a favorable ruling and appeal the Constitutional Court, what are you concerned about then?

Mr. DRESNER. The case goes back to the Tax Court. The Tax Court, if it followed the instructions given it by the Constitutional Court, should have no alternative but to rule for Engelhard.

Those instructions would be, you cannot rely on evidence against third parties. You cannot hold Engelhard accountable for third party actions in the absence of evidence, and you cannot use Supreme Decree 14 or Norm 8 or Article 44 of the Tax Code, which is what they used to substitute for Supreme Decree 14 the last time around.

What we are afraid of is this is exactly, as I said, where we were in 2002 where we got a favorable Tax Court ruling before the ATPDEA certification, and once the ATPDEA certification was received, SUNAT issued the same resolutions and the Tax Court did not follow its own advice to SUNAT in accepting SUNAT's position, even though they were again holding us accountable for the third parties without any direct evidence.

We do not believe that we can trust a ruling on this appeal as a final determination of the case. We have been here before.

Mr. MENENDEZ. An endless circle?

Mr. DRESNER. SUNAT could take, or the Tax Court could take forever to make its ruling. Deadlines are meaningless. We have seen that. Every time the Tax Court had a ruling to make in our case—and we can go back and look at the record—they exceeded their deadline responsibility. They could drag that out right on through whatever free trade agreement timetable may be.

There are a number of ways that they could delay further, or they could once again come out with a ruling as they did last time which has no basis in law and start the whole appeal process for us over again.

Mr. MENENDEZ. Just a last point. You did make, meaning the company, an effort here, even though you had 5 years' worth of decisions on your side, an independent congressional investigation that said that you were treated not only unfairly, but probably that there were illicit activities and a whole host of other decisions. You nonetheless offered an opportunity for a settlement, did you not?

Mr. DRESNER. We offered an opportunity for a settlement several times over the last 3 years.

Mr. MENENDEZ. And those have not been accepted?

Mr. DRESNER. No.

Mr. MENENDEZ. \$30 million out?



Mr. DRESNER. And at least \$8 million to \$10 million in operating costs which we will never recoup, legal fees, costs of continuing to pay the employees who are helping us in the legal defense.

Mr. MENENDEZ. Maybe that is why USTR did not show up today. Thank you.

Mr. WELLER. Mr. Meeks?

Mr. MEEKS. Thank you, Mr. Chair.

Mr. Murphy, let me ask. I have heard much about \$20 million that will be spent in DR-CAFTA countries for trade capacity building, about \$15 million of which will be allocated for labor initiatives.

Labor concerns around DR-CAFTA have been voiced mostly by Democrats for over 2 years now. Given that there are so many concerns regarding labor practices in DR-CAFTA countries and the countries recently here were requesting additional funding to implement the white paper on their labor laws, will the \$15 million, to your knowledge, will that be used to help support or would the Chamber support additional funds to implement the white paper?

Mr. MURPHY. Absolutely. I think it is important to back up some of the initiatives that have come out over the past couple of years to enhance the capacity of the labor ministries in the six countries, that the United States should provide resources to help these countries make progress.

I would make a general point about that, though, that as I have observed the negotiations go on there is evidence that CAFTA, which has not yet come to a vote, certainly not yet been implemented, has already made a difference in improving labor conditions in the six countries.

I think it is evidence that an effort in all of these countries has been made, that is a very serious one, that the ministries are taking much more seriously the scrutiny that they are receiving not just from the ILO and from the United States, but domestically as well.

Now, these resources are badly needed for them to hire the inspectors that will carry out their plans. In many ways, if you look at the law in Central America, it is a socialist workers' paradise. What you see is laws that promise a great deal. Now what is needed is follow-through to improve the implementation.

Mr. MEEKS. Do you know of any plans? For example, which organizations? How will the money be spent? Who is going to receive the money? Has there been any discussion in that regard?

Mr. MURPHY. I think the white paper, which was just released, gosh, about 10 days ago by the six countries with support from the InterAmerican Development Bank, is their best map of it. I would be happy to get you more information about that.

Mr. MEEKS. Please.

Mr. MURPHY. It is very detailed about specific problems in specific countries and mapping out how they wish to address them in the very near future.

Mr. MEEKS. Please. For either one of you, you know, one of the things that I have been trying to figure out and the question I have had is, we have been talking about China moving into the region. We are talking about DR-CAFTA making it more competitive for United States businesses. My problem is, because labor is still

cheaper in China, it still would be cheaper for the DR-CAFTA countries when you talk about manufacturing pants or shirts and things of that nature to do it in China.

How will United States manufacturing companies still be able to be competitive in China given that labor is still going to be cheaper in China?

Mr. MURPHY. I think that your question is mostly about the apparel industry.

Mr. MEEKS. Correct.

Mr. MURPHY. What I see is that Central America and the Dominican Republic need to capitalize on one of their most obvious assets, which is that they are right on our front doorstep. The speed to market with which they can respond is a huge advantage.

The time for turnaround for products that come, fabric inputs that have been cut and then go down to be sewn in the region, and then come back as a final product, is much quicker than anything that China can do, and as high-end products are made in this country or in Central America that are very responsive to the fashion changes of the day, that is a potential advantage for Central America.

I am struck, for instance, at the changing trends and how different parts of blue jeans are bleached as you see teenagers wearing them. That sort of thing is changing on a very rapid basis, and being attuned to those changing fashion trends is a real potential advantage for these countries which are very close.

Mr. MEEKS. See, what I was referring to is there was a study by Harvard Center for Textile and Apparel Research which explored the dramatic cost differential between producing textile and apparel in China and producing it in Central America.

Even after transportation costs, because of the closeness that we do have, they found it costs \$6.75 to make a single pair of men's jeans in China, while it cost \$8.32 to make it in Nicaragua. Similarly, it cost \$1.75 to make a cotton wrung spun T-shirt in China, while it cost 10 percent more to make it in Honduras.

So even with the closeness of geography with us it still is cheaper. I am talking about competitively. That is what we are talking about. You are still not going to be able to compete with China.

Mr. MURPHY. I think it is certainly going to continue to be difficult to compete with China. However, it will be more difficult without CAFTA. CAFTA will get rid of some of the remaining obstacles that, for bureaucratic reasons, prevent these six countries from really taking advantage of their close proximity to the U.S. marketplace.

I was in another hearing today where a gentleman named Keith Crisco, who is the CEO of an Asheboro, North Carolina, company that makes inputs for apparel. He makes little bits of elastic and so on that are used in all kinds of garments. He said, "With CAFTA, I at least have a chance. With CAFTA I am still in the game, and I can get in there and compete. It will not be easy, but at least I will have a shot at it."

Mr. WELLER. Chairman Burton?

Mr. BURTON. Mr. Chairman, I have no further questions except to say I am very sympathetic to the problems these gentlemen have talked about.

As I said, I would like to work with Mr. Menendez and you and see if we cannot get the Peruvian Government and the other governments down there to fess up to these problems.

Let me just add one more thing. Yes, Ted, we are going to miss you. You are a Marine, and we will not hold that against you. I cannot for the life of me figure out why you want to go to the lower body to work, but we will accept your decision and wish you the best of luck over there. You have been a big help to all of us, and we really appreciate it very much.

Mr. BRENNAN. Thank you, Mr. Chairman. Thank you.

Mr. BURTON. Thank you.

[Applause.]

Mr. WELLER. Thank you, Mr. Chairman, Mr. Menendez, and other Members of the Subcommittee, and our panelists.

I of course echo my Chairman, as well as the Ranking Member's comments regarding Ted Brennan. It has been a real privilege to work with Ted over the last several years that he has been a member of the Subcommittee staff, and I have had the honor of being on this Subcommittee and wish him all the best. We are going to miss him.

We know there will be other opportunities in the future to work together, but we just wish you all the best and God speed and thank you for the good work on behalf of the House of Representatives and all of us on the Committee.

Mr. BRENNAN. Thank you.

Mr. WELLER. Thank you, members of the panel. This hearing is adjourned.

[Whereupon, at 5:40 p.m. the Subcommittee was adjourned.]



## **I73A P P E N D I X**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

MATERIAL SUBMITTED BY THE HONORABLE BARBARA LEE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA



## Central Labor Council of Alameda County AFL-CIO

7992 Capwell Drive  
Oakland, California 94621

Phone: (510) 632-4242  
Fax: (510) 632-3993

mel@alamedalabor.org  
www.alamedalabor.org

Send all correspondence to:  
Executive Secretary-Treasurer  
Sharon Cornu, CWA 39521

President  
Dorothy Fortier, IBEW 1245

1st Vice President  
Larry Hendel, SEIU 790

2nd Vice President  
Chuck Mack, IBT 70

Executive Committee  
Elen Alarcon, ILWU 8  
Richard Benson, UFCW 870  
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Antonio Christian, IBT 853  
Dave Connolly, SUP

Don Crosato, IAM 1546  
Tom Cooley, SEIU 1877  
Jim Dupont, HERE 2860  
Tim Himmeln, UFCW 120  
Bill Harvey, CWA 9415  
Fran Jefferson, SEIU 616  
David Kramer, SEIU 535  
Joanne Lawrence, IFPTE 21  
Barry Lubowski, Biog. Trades  
Marlaine Morgan, IFPTE 20  
Ron Paredes, IBT 78  
D. Rosario, AFSCME 242B  
Pat Sanchez, OPEIU 29  
Steve Schlessor, AFT 771  
Joe Silva, IBT 70  
Clarence Thomas, ILWU 10  
Obay Van Buren, Plumbers 342  
Brenda Wood, AFSCME DC 57

Secretary Treasurer Emeritus  
Judith M. Goff

Sergeant-at-Arms  
Dan Rush, UFCW 120

Trustees  
Mike Hennsberry, UFCW 870  
Bill Schectler, IAM 1546  
Peggy Turner, IFPTE 20

## Organizing for Justice in Our Community

March 25, 2005

U.S. Rep. Barbara Lee  
1301 Clay St. #1000 N  
Oakland, CA 94612

Re: Oppose CAFTA

Dear Representative Lee,

Thank you for your support for a just, democratic and balanced international trade agenda. This is a significant moment in the globalization debate when the U.S. can decide to either replicate failures of the past, or support a new approach to globalization. Responsible trade policy must meet the needs of both people and business, in both developed and developing nations. The current model has failed on all counts. It has failed the U.S. middle class, created a record 2004 trade deficit of \$500.5 billion and has not fulfilled its promise to the world's poor. This trade crisis must not be ignored.

NAFTA's dismal 10-year track record, the collapse of recent WTO ministerial meetings, and the faltering FTAA negotiations make this the time to reexamine the antiquated trade model currently in use. We urge you to publicly oppose the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) as it represents a strategic step toward hemispheric expansion of the NAFTA model via the Free Trade Area of the Americas (FTAA). While we support international trade, it is imperative that trade rules adequately address current social and economic realities.

Of primary importance in discussions of DR-CAFTA and the FTAA is the fact that these agreements were negotiated undemocratically. Negotiations did not include meaningful input from many of the most impacted communities: workers, conservationists, environmental justice advocates, women's organizations, family farm interests, and immigrant and human rights promoters.

The DR-CAFTA also violates the "no greater rights" mandate of the 2002 Trade Promotion Authority Act and grants foreign corporations *greater rights* than are afforded U.S. businesses and citizens. Further, including NAFTA-style investor protections in DR-CAFTA demonstrates a clear disregard for public interest laws that protect workers, the environment and public health.

The DR-CAFTA's labor provisions are woefully inadequate to protect workers in Central America and to prevent continued job flight out of California. The labor rules

fall far short of International Labor Organization (ILO) standards, are unenforceable, and lack parity of enforcement with commercial provisions. Because the agreement ensures exploitation of workers in Central America and continued job loss for American workers, a vote for the DR-CAFTA is a vote against working families in all member countries.

Much like the false sense of protection offered by DR-CAFTA's labor provisions, its environmental provisions offer only the façade of concern for our natural resources. The agreement does not contain enforceable standards for environmental protection and caps the penalties for failing to enforce any standards at \$15 million. For these reasons, the DR-CAFTA represents a tradeoff of environmental health for foreign economic gain.

The DR-CAFTA also restricts member nations' right to protect public health and, in particular, to promote access to medicines. The agreement would restrict government's ability to issue compulsory licenses to purchase life saving medicines, depriving governments of a key tool in addressing public health crises. At a time when over 3 million people worldwide die annually as a result of a treatable and preventable health crisis such as HIV/AIDS, it is imperative that we allow governments every opportunity to ensure access to life saving medicines.

Another concern with the DR-CAFTA is that it would devastate rural communities and small farmers in both the U.S. and Central America. The National Farmers Union has stated that, "The CAFTA resembles failed trade policies of the past... further encourages a race to the bottom for producer prices and fails to address issues that distort fair trade." Under NAFTA, multinational agribusiness decimated Mexican corn farmers, forcing many of them to abandon their families and communities to seek jobs in maquiladoras or to emigrate to the U.S. And, in the U.S., small farmers have seen their livelihoods destroyed as a result of competition with multinational agribusiness.

Current trade policies have also failed women. Despite requests from Congress to assess gender-specific impacts of trade liberalization, the Administration refused to address this serious concern. In the U.S., women workers were more likely to be displaced as a result of NAFTA—according to a 1999 survey, they received 66 percent of all recipients of NAFTA-Trade Adjustment Assistance. And, in the U.S., women are employed disproportionately in the apparel, textile, and leather industries, which are the industries most vulnerable to import competition. In Central America, the DR-CAFTA would mean more women toiling in factories under harsh conditions for insufficient salaries. DR-CAFTA fails to tackle real-world gender impacts and does not deliver development solutions.

There is also a real threat to local democracy. An increasing number of local and state legislators are working to stop international trade agreements from usurping their power to legislate for the needs of their constituents. Most recently, in a January 19, 2004 letter to the USTR, the National Council of State Legislatures described their, "reluctance to sit idly by while their constituents' jobs are lost to competition from overseas" and announced that "NCSL's January 2005 edition of *State Legislatures* magazine lists concerns regarding international trade law and trade agreements as one of the top 10 key policy priorities" in 2005.

Each new trade agreement that comes before Congress offers the opportunity to build on past successes and remedy past shortcomings. Bush's DR-CAFTA represents a missed opportunity and we urge you to oppose it. Trade agreements must be negotiated democratically, and must include strong, enforceable protections for workers and the environment so as to encourage innovative business practices that achieve both economic and social benefits. While we strongly support trade, the current free trade model simply does not offer enough benefits to outweigh its immense costs.

Sincerely,



Sharon Cornu  
Executive Secretary-Treasurer  
Central Labor Council of Alameda County, AFL-CIO

cc: California Coalition for Fair Trade & Human Rights

Opciu:29/afl-cio

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MATERIAL SUBMITTED BY THE HONORABLE ROBERT MENENDEZ, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NEW JERSEY

**EMBASSY OF PERU**  
1700 MASSACHUSETTS AVENUE, N.W.  
WASHINGTON, D.C. 20036

April 12, 2005

The Honorable Dan Burton  
Chairman  
House Subcommittee on the Western Hemisphere  
United States Congress  
Washington D.C.

Dear Mr. Chairman:

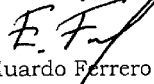
Following my letter dated April 8, 2005, I respectfully submit to you the attached document on current status of "Investment disputes between Peru and U.S. companies" to be included for the records of the Western Hemisphere Subcommittee Hearing on "U.S. Trade Agreements with Latin America", scheduled for April 13, 2005.

The said document has been prepared by Dr. Aurelio E. Loret de Mola, Special Appointee for the Assessment and Bilateral Treatment of Existing Investment Disputes between Peru and U.S. Companies. As you are aware, I officially requested to have Mr. Loret de Mola to personally testify before the said Hearing, petition that unfortunately was not granted.

As I stated in my previous letter of October 19, 2004, copy of which is attached, the Government of Peru gives the greatest priority to the resolution of these pending investment disputes within the respective judicial and administrative system, under the principles of due process, transparency and the respect of the independence of the Judiciary, in the framework of our ongoing efforts to strengthen our democratic system.

I thank you in advance for your consideration and friendship, and stand ready to continue working with you and the members of the Committee for the benefit of our bilateral relations.

Sincerely,



Eduardo Ferrero  
Ambassador

Attachments

### **Investment disputes between Peru and U.S. companies**

Current Status  
(April 12, 2005)

#### 1. General considerations:

1.1 At present, 500 U.S. companies operate in Peru with an investment of approximately US \$ 10 billion. Only five of them have investment disputes, under consideration of the USTR, which represent only 1% of total US investments in Peru. Future short and middle term projected foreign investment in Peru amounts to US \$ 8.5 billion, including US large investments like Hunt Oil's of approximately US \$1.8 billion and others like Phelps Dodge of around US \$ 800 million.

1.2 There is no distinction between foreign or domestic companies in Peru. The same legal, taxation, administrative and judicial treatment is applicable to local or foreign investments. The Peruvian system allows free remittance of companies' profits.

1.3 Mr. Fujimori's government political interference in administrative and judicial procedures was common place some years ago. However, since November 22, 2000 (Mr. Paniagua's and now Mr. Toledo's Administration) such interference does not exist. During the last four years and four months Peru has been working hard to strengthen its democratic institutions and the rule of law.

#### 2. Concrete achievements and results:

Given the high priority that Peru attaches to the investment disputes, it has gone to great lengths to achieve concrete results in recent months. For instance, 3M, STM Wireless and Arcadis have been resolved already. It is also important to highlight that the case related to "Duke Energy International" is currently under arbitration within the ICSID Convention terms<sup>1</sup>.

#### 3. Five pending investment disputes:

##### 3.1 **Arbitration**

###### • **Northrop Grumman Overseas Service Corporation**

This case is under jointly agreed arbitration. The Arbitration Tribunal had set April 12, 2005 for the evidentiary hearing on this case. At company's request, the hearing has been postponed to April 18, 2005. The President of the Tribunal has confirmed May 9-10, 2005, for closing statements, and the end of May as the date for final determination.

##### 3.2 **Judicial System**

###### a) **Engelhard Peru S.A.C.**

The Superior Court (three judges) decided 2 to 1 in favor of Engelhard. Under Peruvian Law three votes are needed in order to have a final judgement. For that

<sup>1</sup> On February 1, 2005, **Duke Energy International** Peru Investments No. 1 Ltd. and the Republic of Peru sent a joint letter to the USTR, advising that their dispute had been submitted to arbitration under the provisions of the ICSID Convention. On February 24, 2005, the USTR replied that "given the pendency of the arbitration proceedings, the Trade Policy Staff Committee has suspended consideration of the petition filed by Duke Energy International, L.L.C.... and intends to continue suspending its consideration until the completion of those proceedings".

purpose a fourth judge has been called and a public hearing will take place on April 28, 2005. If the fourth judge votes in favor of Engelhard the case will conclude. If the fourth judge votes against the company a fifth and last judge shall be called.

If Engelhard wins in the Superior Court, the case should conclude. The government has no right to appeal. If Engelhard losses, the company has the right to appeal to the Constitutional Court to overturn the Superior Court's judgement.

**b) Princeton Dover Corporation**

The Superior Court (three judges) decided 2 to 1 in favor of the Ministry of Economy. According to Peruvian Law three votes are needed in order to have a judgement. For that purpose a fourth judge has been called and a public hearing will take place on April 14, 2005. If the fourth judge votes in favor of the Ministry of Economy the case will conclude. If the fourth judge votes against the Ministry of Economy a fifth and last judge shall be called.

If Princeton Dover wins in the Superior Court, the case should conclude. The government has no right to appeal. If Princeton Dover losses, the company has the right to the Constitutional Court to overturn the Superior Court's judgement.

**c) LeTourneau of Peru, Inc.**

Some months ago in Lima, Mr. LeTourneau, his lawyer and I agreed on a negotiation plan for a Post-Sentence Agreement to pay for the value of an unfinished dirt road received by Peru after the non-fulfillment of a construction contract. We exchanged four drafts of such Post-Sentence Agreement. LeTourneau's lawyer pretended to modify the agreed negotiation plan in a fifth draft, which is not legally possible because the sentence we are trying to enforce does not permit it. I met LeTourneau's lawyer in Washington on March 30, 2005. He told me then that he was going to ask his client if he would accept to return to the original and agreed negotiation plan.

**3.3 Tax Court**

**• PSEG / Luz del Sur S.A.A.**

The Tax Court ordered independent experts to appraise the company's assets. Said assessment should be ready by April 15, 2005. However, these experts may ask for an additional period of seven days to conclude their work (if it is not yet finished), which the parties cannot question. Based on that assessment and after a public hearing to be held on April 27, 2005, the Tax Court will determine if the company revaluated its assets in 1996 according to pertinent law (market prices) and if subsequent depreciation and income tax payment was correct. The case shall conclude with the Tax Court decision.

*Aurelio E. Loret-de-Mola Special Appointee for the Assessment and Bilateral Treatment of Existing Investment Disputes between Peru and U.S. Companies*

**EMBASSY OF PERU**  
1700 MASSACHUSETTS AVENUE, N.W.  
WASHINGTON, D.C. 20036

April 8, 2005

The Honorable Dan Burton  
Chairman  
House Subcommittee on the Western Hemisphere  
United States Congress  
Washington D.C.

Dear Mr. Chairman:

I kindly request from you to include, Mr. Aurelio Loret de Mola, a private Peruvian lawyer who is Special Appointee for the Assessment and Treatment of the Existing Bilateral Investment Disputes between Peru and the United States, to participate as a witness at the Hearing of the Subcommittee on the Western Hemisphere "U.S. Trade Agreements with Latin America", scheduled for April 13, 2005.

Mr. Loret de Mola's testimony would provide an up-to-date briefing on progresses achieved on some investment disputes with US companies in the framework of current negotiations for an Andean Free Trade Agreement with the United States.

The Government of Peru attaches the highest priority to a Free Trade Agreement with the United States, and in that regard we are making all efforts in order to achieve that goal that would help us to consolidate our democracy, promote our development and to fight against drug-trafficking and terrorism. All of these issues are at the top of our Hemispheric Agenda.

Sincerely,



Eduardo Ferrero  
Ambassador

**EMBASSY OF PERU**  
1700 MASSACHUSETTS AVENUE, N.W.  
WASHINGTON, D.C. 20036

Washington D.C. October 19, 2004

The Honorable  
Cass Ballenger  
Chairman of the Sub-Committee on the Western Hemisphere  
U.S. House of Representatives  
Washington DC

Dear Chairman Ballenger,

On behalf of the Government of Peru I address you in relation to the recent public hearing on "U.S. Trade Disputes in Peru and Ecuador", held under your leadership at the Subcommittee on the Western Hemisphere last Wednesday, October 6, 2004.

The Embassy of Peru expressed its interest to participate in this hearing and submit a written statement to register our position about the matters dealt with at the hearing. We also wanted to explain what steps the Government of President Toledo is taking to resolve, within the strictest respect for Peruvian law, the controversies that a few American companies are facing in Peru. Unfortunately, this was not allowed and we were limited to make an oral testimony, an option that was not the most balanced for my Government's participation at the hearing.

I want to reaffirm that the Government of Peru maintains the political will to resolve each and every outstanding dispute under the fundamental principles of due process and transparency, and under the framework of the national legislation and Peruvian sovereignty.

As you are aware, after enduring a decade of an authoritarian government, Peru is in the midst of reconstructing and strengthening its democratic institutions and the respect for the independence of the branches of government. Thus, the Government of Peru does not intervene in matters that are under the jurisdiction of the Judiciary.

In regard to the National Tax Administration (SUNAT) it is pertinent to mention that on March of this year, the Government appointed an Ombudsman to protect the interest of tax payers. The Ombudsman will also evaluate the appeals that SUNAT may want to submit to the court system against the rulings of the Fiscal Tribunal. This decision implies that all the appeals of SUNAT have to

be accepted by the Ombudsman and then authorized by the Ministry of Economy and Finance.

Regarding the investment climate in Peru, I want to share with you information that, contrary to what was said at the hearing, will let you appreciate that Peru stands out in the Latin American region as far as the flow of foreign direct investment is concerned.

Accordingly, it should be stressed that Peru is one of the leaders in the region in establishing clear rules for foreign investment as it guarantees equal treatment and without any distinctions for national or foreign capital. Likewise, our current modern legislation allows unrestricted access of foreign capital to most sectors of our economy and free remittance of profits and dividends. This favorable environment has made possible that American investment in Peru reach —according to the figures provided by the American Peruvian Chamber of Commerce— an amount of more than \$ 10 billion, by more than 500 American companies doing business in Peru.

The stabilization and structural reform programs carried out in Peru have resulted in three consecutive years of economic growth, turning our country into one of the best performers in the hemisphere in terms of GDP expansion. This situation has restated and increased the trust foreign investors have placed in Peru.

Currently, major foreign companies have committed to invest in Peru more than \$ 3.5 billion, which is headed by Hunt Oil, a Texas based company, with an allotted investment of \$ 2.2 billion (construction of an LNG plant). Similarly, the Swiss consortium X-Strata has just won an international bid to operate one of the biggest copper mines in Peru, *Las Bambas*, for an investment of up to \$ 1 billion. The most recent example of the interest of U.S. companies in our country is the announcement of Phelps Dodge Corp. from Arizona to invest \$ 450 million to expand its mining operations in Peru.

In this regard, and without the intention of belittling the ongoing controversies, I believe that it is appropriate to consider the whole universe of foreign investment in Peru, in particular American companies that are conducting their operations without any problems, to avoid generalizations that do not reflect Peruvian reality. On the contrary, we continue receiving American investment flows in Peru.

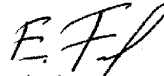
Peru is a friend and a partner country of the United States with whom it shares basic principles like promotion of democracy, human rights, and the fight against terrorism, drug-trafficking and corruption. Both countries share a rich and diversified bilateral agenda that reflects the very good relations existing

between our two nations. Hence, it is important to highlight that this positive relationship is not only for the mutual benefit of both nations, but for the stability of the Western hemisphere, in particular the Andean region.

Peru is fully convinced of the importance of negotiating a fair and equitable Free Trade Agreement with the United States that will allow us to deepen our political, economic and commercial relations and will create a legal framework that will contribute to the flow of foreign investment. Furthermore, it will allow the Government to generate more employment opportunities and offer a better life to the Peruvian people.

In a later communication, I would like to send you detailed information about the status of each of the outstanding controversies.

I avail myself of this opportunity to reiterate my disposition to maintain an open dialogue and close contact to deal with these and others matters that are important to both our countries.

A handwritten signature in dark ink, consisting of stylized initials 'E.F.' followed by a surname.

Eduardo Ferrero  
Ambassador of Peru

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CHIEF OF STAFF

## Congress of the United States

### U.S. House of Representatives COMMITTEE ON WAYS AND MEANS

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JANICE MAYSL  
MINORITY CHIEF COUNSEL

April 4, 2005

The Honorable Peter Allgeier  
Acting U.S. Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Allgeier:

In recent weeks, advocates for the Central American Free Trade Agreement (CAFTA) have made assertions that the CAFTA countries' laws comply with basic, internationally-recognized rules that ensure common decency and fairness to working people. These advocates argue that the only outstanding issue concerning the rights of workers in the CAFTA countries is a lack of adequate enforcement of existing labor laws.

Unfortunately, CAFTA advocates' rhetoric is not supported by the facts. There are still no fewer than 20 areas in which the CAFTA countries' labor laws fail to comply with even the most basic international norms, as documented by the International Labor Organization (ILO), the U.S. Department of State and multiple non-governmental organizations.

More than a year ago, in November 2003, a number of us wrote to you outlining these problems in detail. We had hoped that doing so might lead to actions to remedy those problems, or at least to a constructive dialogue about them. However, the Members who signed that letter have yet to receive any response to the list of problems documented in that letter — either from your office or from the countries concerned. In fact, the labor laws in at least one of the CAFTA countries have been weakened in recent months.

In light of the fact that Congress may soon be considering the CAFTA, it is important to move beyond rhetoric to the facts. We urge you to provide documented information concerning any amendments CAFTA countries have made to their laws to address the shortcomings noted in the attached list. Those shortcomings cannot be overcome with better enforcement efforts. Even the best enforcement of inadequate laws — whether relating to intellectual property, services regulation or technical standards for manufactured products — cannot yield acceptable results.

We support the right CAFTA for the Central American countries and the Dominican Republic, just as we have strongly supported the Caribbean Basin Initiative (CBI) programs.




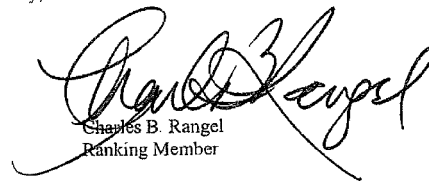
The Honorable Peter Allgeier  
 April 4, 2005  
 Page 2


These programs have done much to strengthen economic ties with our friends and neighbors in Central America and the Caribbean in ways that benefit both the United States and the region. However, the CBI programs were built on the dual pillars of expanded economic opportunity and a strong framework for trade. In particular, the programs were expressly conditioned on the countries making progress in achieving basic labor standards. By contrast, the CAFTA moves backward by not including even these minimum standards, and using instead a standard for each country of "enforce your own laws." Ensuring that the CAFTA countries both adopt and effectively maintain in their laws the most basic standards of decency and fairness to working people is important to their workers, their societies, and to U.S. workers. It also is critical to ensuring strong and sustainable economic growth and promoting increased standards of living.

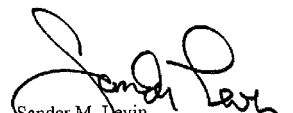
We welcome and support all efforts to improve the capacity of Central American countries to improve the enforcement of their labor laws. In fact, for the last four years, we have fought for better funding of such programs and against massive Administration budget cuts for labor technical assistance programs — many of these programs zeroed-out or slashed by up to 90 percent in budgets submitted by the Administration. The Administration's track record gives us little confidence that the one-time grant of \$20 million included in the FY05 Foreign Operations Appropriations Act for labor and environmental technical assistance in the CAFTA countries represents the kind of real and sustained commitment needed in these areas. Moreover, such efforts on enforcement are no substitute for getting it right on basic laws.

Sincerely,

  
 Benjamin L. Cardin  
 Ranking Member  
 Subcommittee on Trade

  
 Charles B. Rangel  
 Ranking Member

  
 Xavier Becerra  
 Member

  
 Sander M. Levin  
 Ranking Member  
 Subcommittee on Social Security

**U.S. State Department and International Labor Organization Reports  
Confirm Deficiencies in CAFTA Labor Laws**

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The 2004 U.S. State Department *Country Reports on Human Rights Practices*, the October 2003 ILO *Fundamental Principles and Rights at Work: A Labor Law Study* (“the Report”), and other ILO reports released in recent years confirm the existence of at least 20 areas in which the labor laws in the CAFTA countries fail to comply with two of the most basic international norms of common decency and fairness to working people – the rights of association (ILO Convention 87) and to organize and bargain collectively (ILO Convention 98).

Each of these deficiencies, discussed in detail below, was identified in a letter sent in November 2003, from Reps. Rangel, Levin and Becerra to then U.S. Trade Representative Zoellick. Neither USTR nor the governments of the Central American countries have provided information responding to these inconsistencies.

**COSTA RICA**

- (1) **Use of Solidarity Associations to Bypass Unions.** Costa Rican law allows employers to establish “solidarity associations” and to bargain directly with such associations, even where a union has been established. The failure to explicitly prohibit employers from bypassing unions in favor of employer-based groups violates ILO Convention 98.<sup>1</sup>
  - **This deficiency was confirmed in the October 2003 ILO Report:** “[T]he report of the technical assistance mission...drew attention to the great imbalance in the private sector between the number of collective agreements and the number of direct pacts...the CEACR recalled that direct negotiation between employers and workers’ representatives was envisaged ‘only in the absence of trade union organizations.’”<sup>2</sup>

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<sup>1</sup>Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that “acts which are designed to promote the establishment of workers’ organizations under the domination of employers...shall...constitute acts of interference.”

<sup>2</sup>The ILO Report on the five Central American countries is largely based on existing reviews by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR has a very limited scope of review, as it only  
(continued...)

- (2) **Onerous Strike Requirements.** Costa Rican law includes a number of onerous procedural requirements for a strike to be called. These requirements contravene ILO guidelines for regulation of strikes, and taken as a whole, make it nearly impossible for a strike to be called. For example, Costa Rica requires that 60% of all workers in a facility vote in favor of a strike in order for it to be legal. These requirements violate ILO Convention 87.<sup>3</sup>
- **This deficiency was confirmed in the October 2003 ILO Report:** *“The general requirements set out by the legislator [sic] for a strike to be legal...include the requirement that at least 60 per cent of the workers in the enterprise support strike action. The CEACR has stated that if a member State deems it appropriate to establish in its legislation provisions for the requirement of a vote by workers before a strike can be held, ‘it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.’”*
- (3) **Inadequate Protection Against Anti-Union Discrimination.** Costa Rica’s laws do not provide for swift action against anti-union discrimination. For example, there is no accelerated judicial review for dismissal of union leaders.
- **This deficiency was confirmed in the October 2003 ILO Report:** *“[A]s the CEACR has indicated, legislation needs to be amended ‘to expedite judicial proceedings concerning anti-union discrimination and to ensure that the decisions thereby are implemented by effective means.’”*

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<sup>2</sup>(...continued)

reviews laws in light of ratified conventions. Therefore, if a country has not ratified one of the core conventions (e.g., El Salvador has not ratified the ILO conventions on the right to associate or bargain collectively), the CEACR will not review the country’s implementation of that convention.

<sup>3</sup>ILO convention 87, on freedom of association and the right to organize, covers the right to strike. Specifically, strikes are considered part of the trade union “activities ..and programs” protected under Article 3 of that Convention.

The ILO has consistently maintained that if a vote is required for a strike by a union, then: (1) only union votes should be counted in determining whether there is sufficient support for the strike; (2) only a simple majority of workers present and voting should be required for approval; and (3) if a quorum is required for a vote to be called, the quorum should be set at a “reasonable level.”

**EL SALVADOR**

- (1) **Inadequate Protection Against Anti-Union Discrimination.** El Salvador fails to provide adequate protection against anti-union discrimination. In particular, El Salvador fails to provide for reinstatement of workers fired because of anti-union discrimination, which violates ILO Convention 98.<sup>4</sup> There also are widespread reports of blacklisting in export processing zones of workers who join unions. Salvadoran law does not prohibit blacklisting, as it bars only anti-union discrimination against employees, not job applicants.
- **The 2004 U.S. State Department Report on Human Rights Practices confirms this deficiency:** *“The Labor Code does not require that employers reinstate illegally dismissed workers... Workers and the ILO reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the circulation of lists of workers who would not be hired because they had belonged to Unions.”*
- (2) **Restrictive Requirements for Formation of Industrial Unions.** El Salvador has repeatedly been cited by the U.S. State Department and the ILO for using union registration requirements to impede the formation of unions. These formalities violate ILO Convention 87.<sup>5</sup>
- **The 2004 U.S. State Department Report on Human Rights Practices confirms this deficiency:** *“[I]n some cases supported by the ILO Committee on Freedom of Association ... the Government impeded workers from exercising their right of association ... [T]he government and judges*

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<sup>4</sup>Convention 98 on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR, in a 1994 General Survey, elaborated on this principle, stating that “legislation which allows the employer in practice to terminate the employee on the condition that he pay compensation...is inadequate under...the Convention.”

<sup>5</sup>Convention 87 guarantees the right of workers to establish worker organizations without prior authorization, and states that requirements for union registration should “not be of such a character to restrict the right to organize.” The ILO Committee of Experts has elaborated on this principle, stating that “administrative requirements which are preconditions for the free functioning of an organization should be of a purely formal nature” and not be used to restrict the right to associate or to organize.

*continued to use excessive formalities as a justification to deny applications for legal standing to unions and federations."*

- **A 1999 Report by the ILO Committee on Freedom of Association confirms this deficiency:** *The Committee observes that "legislation imposes a series of excessive formalities for the recognition of a trade union and the acquisition of legal personality that are contrary to the principle of the free establishment of trade union organizations ..."*

#### **GUATEMALA**

- (1) **Inadequate Protection Against Anti-Union Discrimination.** Guatemala's laws do not adequately deter anti-union discrimination. The failure to provide adequate protection from anti-union discrimination violates Convention 98.<sup>6</sup>
  - **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities...."*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he CEACR hopes that ... 'measures will soon be adopted to ensure rapid and effective compliance with judicial decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities and that effective penalties will be established for failure to comply with such decisions.'"*
  - *Note: In August 2004, the Constitutional Court of Guatemala issued a ruling rescinding the authority of the Ministry of Labor to impose fines for labor rights violations. Following this decision, it is not clear whether Guatemala's law permits any fines to be assessed for labor law violations.*
- (2) **Restrictive Requirements for Formation of Industrial Unions.** Guatemala requires a majority of workers in an industry to vote in support of the formation of

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<sup>6</sup>Convention 98, on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR has stated that "the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice."

an industry-wide union for the union to be recognized. This requirement violates Convention 87.<sup>7</sup>

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *The high, industry-wide threshold creates "a nearly insurmountable barrier to the formation of new industry-wide unions."*

(3) **Onerous Requirements to Strike.** Guatemalan law includes a number of provisions that interfere with the right to strike. The Guatemalan Labor Code mandates that unions obtain permission from a labor court to strike, even where workers have voted in favor of striking. In addition, the Labor Code requires a majority of a firm's workers to vote in favor of the strike. These laws violate Convention 87.<sup>8</sup>

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *Noting that "procedural hurdles" helped to make legal strikes rare, the Report states, "The Labor Code requires approval by simple majority of a firm's workers to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike."*
- **This deficiency was confirmed in the October 2003 ILO Report:** *"[O]ne of the general requirements laid down in the legislation ... is still under criticism by the CEACR: 'only the votes cast should be counted in calculating the majority and ... the quorum should be set at a reasonable level.'"*

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<sup>7</sup>Convention 87 states that "workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing." The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, "the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered."

<sup>8</sup>As discussed in note 3, strikes are considered part of the trade union "activities... and programs" protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

- (4) **Ambiguity in Certain Criminal Penalties.** Guatemala's Penal Code provides for criminal penalties against anyone who disrupts the operation of enterprises that contribute to the economic development of the country. Whether and how these penalties apply to workers engaged in a lawful strike is unclear, and this ambiguity has deterred workers from exercising their right to strike. The CEACR has stated that application of these penalties to a worker who engaged in a lawful strike would violate ILO Conventions 87 and 98.<sup>9</sup>
- **This deficiency was confirmed in the October 2003 ILO Report:** *"The CEACR has drawn the attention of the Government to the fact that certain provisions of the Penal Code are not compatible with ILO Conventions ... noting that ... sentences of imprisonment ... can be imposed as a punishment ... for participation in a strike."*
- (5) **Restrictions on Union Leadership.** Guatemala maintains a number of restrictions with respect to union leadership including: (1) restricting leadership positions to Guatemalan nationals; and (2) requiring that union leaders be currently employed in the occupation represented by the union. These restrictions violate Convention 87.<sup>10</sup>
- **This deficiency was confirmed in the October 2003 ILO Report:** *"Both the Constitution and the Labour Code prohibit foreign nationals from holding office in a trade union.... The Labour Code requires officials to be*

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<sup>9</sup>Convention 87 establishes the right to strike as a key element of the right to freedom of association and the right to organize. The CEACR has cautioned that penalties against workers for strikes should not be used to deter lawful union activities.

The CEACR has elaborated on the problems that arise when penalties are imposed on workers for strikes, stating that, "[t]he Committee considers that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, both excessive recourse to the courts in labor relations and the existence of heavy sanctions for strike action may well create more problems than they resolve."

<sup>10</sup>Under Convention 87, on the right to associate and organize, governments are supposed to ensure the free functioning of workers' organizations, including by ensuring that workers have the right to elect their representatives in "full freedom." The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

*workers in the enterprise... These restrictions have given rise to observations by the CEACR."*

## **HONDURAS**

- (1) **Burdensome Requirements for Union Recognition.** Honduran law requires more than 30 workers to form a trade union. This numerical requirement acts as a bar to the establishment of unions in small firms, and violates ILO Convention 87.<sup>11</sup>
  - **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The [ILO] has noted that various provisions in the labor law restrict freedom of association, including ... the requirement of more than 30 workers to constitute a trade union... ."*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he requirement to have more than 30 workers to constitute a trade union ... has prompted the CEACR to comment that this number is 'not conducive to the formation of trade unions in small, and medium size enterprises.'"*
- (2) **Limitations on the Number of Unions.** Honduran law prohibits the formation of more than one trade union in a single enterprise. This restriction violates ILO Convention 87 on the right of workers to join or establish organizations of their own choosing, and fosters the creation of monopoly unions.<sup>12</sup>
  - **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The [ILO] has noted that various provisions in the labor law restrict freedom of association, including the prohibition of more than 1 trade union in a single enterprise... ."*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *"Such a provision, in the view of the CEACR, is contrary to Article 2 of*

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<sup>11</sup>Convention 87 states that "workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing." The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, "the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered"

<sup>12</sup>Convention 87 protects the right of workers to establish and join "organizations of their own choosing." Restricting the number of unions to one per enterprise interferes with that right.



*Convention No. 87, since the law should not institutionalize a de facto monopoly ....”*

- (3) **Restrictions on Union Leadership.** Honduras requires that union leaders be Honduran nationals, and be employed in the occupation that the union represents. These restrictions violate ILO Convention 87.<sup>13</sup>
- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *“The [ILO] has noted that various provisions in the labor law restrict freedom of association, including ...the prohibition on foreign nationals holding union office, the requirement that union officials must be employed in the economic activity of the business the union represents....”*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *“The Labour Code prohibits foreign nationals from holding trade union offices and requires officials to be engaged in the activity, profession or trade characteristic of the trade union .... The CEACR has objected to these provisions, which it deems incompatible with Article 3 of Convention No. 87 ....”*
- (4) **Inadequate Protection Against Anti-Union Discrimination.** The ILO CEACR has faulted Honduras for a number of years for not providing adequate sanctions for anti-union discrimination. For example, under the law, only a very small fine equivalent to approximately US\$12-\$600 can be assessed against employers for interfering with the right of association. This Honduran law violates ILO Convention 98.<sup>14</sup>

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<sup>13</sup>Under Convention 87, governments are supposed to ensure the free functioning of workers’ organizations, including by ensuring that workers have the right to elect their representatives in “full freedom.” The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

<sup>14</sup>Article 1 of Convention 98 states that “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.” The CEACR has stated that the test of whether or not the legal procedures meet the requirements of the Convention is that the “procedures prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office

(continued...)

- **This deficiency was confirmed by a 2004 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR):** *“The penalties envisaged ... against persons impairing the right to freedom of association (from 200 to 2,000 lempiras, with 200 lempiras being equivalent to around \$12) had been deemed inadequate by one worker’s confederation. ... The Committee once again hopes that [legislation will be prepared] providing for sufficiently effective and dissuasive sanctions against all acts of anti-union discrimination.”*
- (5) **Few Protections Against Employer Interference in Union Activities.** Honduras prohibits employers or employees with ties to management from joining a union; it does not, however, prohibit employers from interfering in union activities through financial or other means. The failure to preclude employer involvement violates ILO Convention 98 on the right to organize and bargain collectively.<sup>15</sup>
- **This deficiency was confirmed in a 2004 Report of the ILO CEACR:** *“[T]he Convention provides for broader protection for workers’ ... organizations against any acts of interference ... in particular, acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations. In this respect, the Committee once again hopes that [labor law reform will include provisions] designed to ... afford full and adequate protection against any acts of interference, as well as sufficiently effective and dissuasive sanctions against such acts.”*

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<sup>14</sup>(...continued)  
according to their constituents’ wishes.”

<sup>15</sup>Convention 98 states that “workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other” In particular, Convention 98 prohibits employers’ acts to “support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers. . .”

- (6) **Restrictions on Federations.** Honduras prohibits federations from calling strikes. The CEACR has criticized this prohibition, which contravenes the right to organize.<sup>16</sup>
- **This deficiency was confirmed in the October 2003 ILO Report:**  
*"Federations and confederations do not have a recognized right to strike ... which has prompted the CEACR to recall that such provisions are contrary to Articles 3, 5 and 6 of Convention No. 87..."*
- (7) **Onerous Strike Requirements.** Honduras requires that two-thirds of union members must support a strike for it to be legal. This requirement violates ILO Convention 87.<sup>17</sup>
- **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he CEACR has recalled that restrictions on the right to strike should not be such as to make it impossible to call a strike in practice, and that a simple majority of voters calculated on the basis of the workers present at the assembly should be sufficient to be able to call a strike."*

#### **NICARAGUA**

- (1) **Inadequate Protection Against Anti-Union Discrimination.** Nicaragua's laws permit employers to fire employees who are attempting to organize a union as long as they provide double the normal severance pay. This allowance violates ILO Convention 98.<sup>18</sup>

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<sup>16</sup>Convention 87 gives federations and confederations the same rights to "organize their activities, and to formulate programs" as unions. The right to strike is considered a worker organization "activity;" therefore, federations should have this right.

<sup>17</sup>As discussed in note 3, strikes are considered part of the trade union "activities... and programs" protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

<sup>18</sup>Article 1 of Convention 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." The CEACR has stated that legislation which allows the employer to terminate the employment of a worker on condition that he pays compensation is inadequate under the terms of the Convention.

- **This deficiency was confirmed in the October 2003 ILO Report:** *The Annex to the Report states that the Labor Code provides that "if the employer does not carry out reinstatement, he/she shall pay double the compensation according to the length of service."*
- (2) **Use of Solidarity Associations to Bypass Unions.** Nicaragua allows employers to create "solidarity associations" but does not specify how those associations relate to unions. The failure to include protections against employers using solidarity associations to interfere with union activities violates ILO Convention 98.<sup>19</sup>
- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The Labor Code recognizes cooperatives into which many transportation and agricultural workers are organized. Representatives of most organized labor groups criticized these cooperatives and assert that they do not permit strikes, have inadequate grievance procedures, are meant to displace genuine, independent trade unions and are dominated by employers."*
- (3) **Procedural Impediments to Calling a Strike.** Nicaragua maintains a number of restrictive procedural requirements for calling strikes. (According to the 2002 U.S. State Department Human Rights Report, the Nicaraguan Labor Ministry asserts that it would take approximately 6 months for a union to go through the entire process to be permitted to have a legal strike.) Since all legal protections may be withdrawn in the case of an illegal strike, the practical outcome is that workers who strike often lose their jobs, thus undermining the right to strike protected by Convention 87.
- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"Observers contend that the [process for calling a strike] is inappropriately lengthy and so complex that there have been few legal strikes since the 1996 Labor Code came into effect..."*

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<sup>19</sup>Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers ... shall ... constitute acts of interference."

