

OFFICE OF THE
UNITED STATES TRADE REPRESENTATIVE

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TRADE POLICY STAFF COMMITTEE

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ANDEAN FTA
PUBLIC HEARING

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WEDNESDAY
MARCH 17, 2004

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The Public Hearing convened in Conference Rooms 1 & 2 in the USTR Annex at 1724 F Street, N.W., Washington, D.C., at 10:00 a.m., Carmen Suro-Bredie, Chair, presiding.

PRESENT:

Office of the U.S. Trade Representative:

CARMEN SURO-BREDIE, Chair
DON EISS, Chair
WILLIAM CLATANOFF
BENNETT HARMAN
MARY LATTIMER
STEFAN OSBORNE
GLORIA BLUE, Executive Secretary

U.S. Department of Agriculture:

ROGER MIRELES

PRESENT: (CONT.)

U.S. Department of Commerce:

JULIE ANGLIN
MARIA CAMERON
RICH STETSON

U.S. Department of Labor:

JORGE PEREZ-LOPEZ
CARLOS ROMERO

U.S. Department of State:

KAREN BROWN
KEVIN HONAN

U.S. Department of Treasury

GORDANA EARP

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1 P-R-O-C-E-E-D-I-N-G-S

2 10:11 a.m.

3 CHAIR SURO-BREDIE: This hearing will come
4 to order. The Trade Policy Staff Committee and
5 interagency body chaired by the Office of the U.S.
6 Trade Representative is conducting this hearing. In
7 addition to the U.S. Trade Representative there are
8 representatives from the Departments of Agriculture,
9 Commerce, Labor, State, and Treasury. Members of the
10 USTR staff and other agency staffs that will be
11 working on this negotiation also will be present.

12 The subject of this hearing is the
13 proposed negotiation of a pretrade area with four
14 Andean countries, Bolivia, Colombia, Ecuador, and
15 Peru. The TPSC is seeking public comment to assist
16 the United States Trade Representative in amplifying
17 and clarifying negotiating objectives for the proposed
18 agreement and to provide advice on how specific goods
19 and services and other matters should be treated.

20 In addition to the testimony we will hear
21 today, interested persons including persons who
22 participate in the hearing may send written comments

1 until noon, March 30, 2004. Written comments may
2 include rebuttal points demonstrating errors in fact
3 or analysis not pointed out in the hearing.

4 Under Section 2104 of the Bipartisan Trade
5 Promotion Authority Act of 2002 for agreements that
6 will be approved and implemented through TPA
7 procedures, the President must provide the Congress
8 with at least 90 days written notice of his intent to
9 enter into negotiations and must identify the specific
10 objectives for the negotiations.

11 Before and after the submission of this
12 notice, the President must consult with appropriate
13 congressional committees and the congressional
14 oversight group regarding the negotiations. Under the
15 Trade Act of 1974 as amended the President must afford
16 interested persons an opportunity to present their
17 views regarding any matter relevant to any proposed
18 agreement.

19 Must also designate an agency or
20 interagency committee to hold a public hearing
21 regarding any proposed agreement and seek the advice
22 of the U.S. International Trade Commission regarding

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1 the probable economic effects on U.S. industries and
2 consumers of the removal of tariffs and nontariffs
3 barriers on imports pursuant to any proposed
4 agreement.

5 On November 18, 2003, after consulting
6 with relevant congressional committees and the
7 congressional oversight group, the USTR notified
8 Congress that the President intends to initiate free
9 trade agreement negotiations with the four Andean
10 countries and identify specific objectives for the
11 negotiations. In addition, USTR requested the ITC's
12 probable economic effects advice.

13 There is also a long list in my written
14 statement of all the different areas that the TPSC
15 will be asking information on. But to save time, I
16 will move to the end and just remind the group that we
17 will also be publishing notices of reviews on the
18 possible environmental effects of the proposed
19 agreement and the scope of the environmental review of
20 the proposed agreement, and the impact of the proposed
21 agreement on U.S. employment and labor markets.

22 I'm going to ask the panel to please

1 introduce themselves. Then I would like to turn to
2 Regina Vargo, the Assistant USTR for the Americas, who
3 will discuss the proposed negotiation in more detail.
4 We'll start with the State Department.

5 MR. HONAN: My name is Kevin Honan. I'm
6 Director for Bilateral Trade Affairs in the Bureau of
7 Economic Affairs of the Department of State.

8 MS. ANGLIN: I'm Julie Anglin. I'm Desk
9 Officer for Colombia and Bolivia, U.S. Department of
10 Commerce.

11 CHAIR SURO-BREDIE: I'm Carmen Suro-
12 Bredie, the Assistant USTR for Policy Coordination.

13 MS. VARGO: Regina Vargo, Assistant USTR
14 for the Americas.

15 MS. EARP: Gordana Earp, Senior Policy
16 Adviser, Office of the Assistant Secretary for
17 International Affairs, Treasury.

18 MR. PEREZ-LOPEZ: Jorge Perez-Lopez,
19 Director of the Office of International Economic
20 Affairs, U.S. Department of Labor.

21 MR. CLATANOFF: I'm William Clatanoff,
22 Assistant U.S. Trade Representative for Labor.

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1 CHAIR SURO-BREDIE: Okay. We will turn
2 now to Regina Vargo.

3 MS. VARGO: Thank you very much, Carmen.
4 I'm pleased to be able to be here to kick off this
5 hearing this morning on a perspective U.S.-Andean Free
6 Trade Negotiation. I love looking at a full house and
7 I know that represents the intense interest that exist
8 about moving forward with this initiative.

9 These hearings represent a significant
10 milestone as we proceed to prepare for the upcoming
11 launch of the talks. Carmen described how this
12 hearing fits into our TPA procedures. I will comment
13 briefly on how this negotiation will fit into our
14 trade policy agenda.

15 This is a very proactive agenda. We've
16 shown leadership in launching and advancing the WTO
17 talks in DOHA. In parallel we have pursued both the
18 free trade area of the Americas and bilateral free
19 trade agreements.

20 We completed and won congressional
21 approval of the Chile and Singapore free trade
22 agreements launched bilateral free trade negotiations

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1 with 14 countries and have concluded them with eight
2 including the Dominican Republic last Sunday and a few
3 months earlier our negotiations with the five
4 economies of Central America. We have announced our
5 intention to negotiate additional free trade
6 agreements including one with the Andean countries of
7 Colombia, Peru, Ecuador, and Bolivia as they are
8 ready.

9 The four Andeans collectively represent a
10 market of about \$7 billion for U.S. exports and are
11 home to about \$4.5 billion in U.S. foreign direct
12 investment. Our trade relationship since 1991 has
13 centered on the Andean Trade Preference Act and its
14 renewal and expansion in 2002.

15 The program stemmed from our recognition
16 that strengthening trade ties with the Andean
17 countries advances our goals of helping them to combat
18 narco-trafficking, build democratic institutions, and
19 promote socioeconomic development.

20 The Andean countries have reported that
21 our enhancement of ATPDEA has been successful in
22 stimulating the economies of the region. However,

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1 they believe it important to complete the transition
2 to a free trade partnership with us before the
3 expiration of the enhanced ATPDEA so that our business
4 communities will have the confidence to maintain and
5 expand their operations in the Andean region.

6 We have also heard significant expressions
7 of interest in the U.S.-Andean Free Trade Agreement
8 from the U.S. business community and from civil
9 society. Today and tomorrow we welcome hearing from
10 all interested parties who wish to express a view with
11 respect to these upcoming negotiations.

12 I want to thank you for your interest and
13 for being here today and I wish you all a very
14 productive session. I'm sorry that a prior commitment
15 will keep me from being here but I'll be ably
16 represented by Bennett Harman who is our Deputy
17 Assistant USTR for Latin America who has had a long
18 career focused on the Andean region.

19 Bennett, you want to take my seat? Thank
20 you all very much.

21 CHAIR SURO-BREDIE: Thank you, Regina.

22 Before we start the hearing, if I could

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1 just review some of the information that was in the
2 Federal Register notice. First of all, for members of
3 the press or anyone who's taking pictures, you may
4 take pictures if the witness when the witness first
5 sits down and then after that you have to stop because
6 it's distracting to the panel and to the witness.

7 We've asked the witnesses to please
8 present their testimony in no more than five minutes.
9 It seems like a very short period of time but you've
10 submitted written testimony and the panel has read it
11 and formulated questions based on the written
12 testimony so we would like to have the chance to have
13 an interaction with you.

14 If we start to go much over the five
15 minutes, you'll see my watch swinging in front of you
16 and then if by chance you do ignore me, then I have to
17 stop you which is very difficult for both of us.
18 Hopefully we'll try and keep to the time. As you may
19 see from the witness list, we have quite a number of
20 witnesses and we are going to be conducting this
21 hearing over two days.

22 We will now without further ado call the

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1 first witness, Mr. Javier Nogales, Minister for
2 Economic Development of Bolivia. I hope I pronounced
3 your name correctly. Welcome.

4 MINISTER NOGALES: Thank you. It's really
5 an honor to be here in front of the Trade Policy Staff
6 committee. Bolivia is a small mining country in the
7 heart of South America. It's been a very open country
8 towards trade and investment.

9 In the past two decades, however, we have
10 started a very important modernization process and our
11 manufacturing sector has started to grow. Since 1991
12 the Andean Trade Preference Act opened new
13 opportunities for Bolivia manufacturing sector. Since
14 2002 the enhanced ATPDEA program allowed higher value-
15 added products to be exported to the U.S.

16 While Bolivia has a small economy and
17 total manufactured exports to the U.S. are marginal,
18 they have not exceeded \$3 million a year. For the
19 Bolivian economy these magnitudes have been very
20 essential to the modernization process.

21 Upon this positive experience, the
22 government of Bolivia has decided to initiate free

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1 trade agreement negotiations with the U.S. upon the
2 leadership and generous offer the U.S. Government has
3 made to allow Andean countries to share the largest
4 market in the world.

5 Bolivian President Carlos Mesa announced
6 January 9th of 2004 the intention of the Bolivian
7 government to decidedly initiate these free trade
8 negotiations with the U.S. Bolivia is putting
9 together a team of experts to start negotiating in a
10 very active way. We have received the IBB support.
11 President Iglesias has been very active in supporting
12 Bolivia to help this expert team ready for
13 negotiations.

14 We have been analyzing Chile's and the
15 Central American free trade agreement with the U.S. to
16 be sure that we can move as fast and efficiently as
17 possible. We are convinced that beyond bilateral
18 advantages that this free trade agreement
19 opportunities open for Bolivia, there are very
20 important regional advantages also by developing
21 better democratic basis for our whole region to
22 develop.

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1 We are convinced that unified trading
2 rules in the hemisphere will be a very important
3 advantage and that opportunities not only for Bolivian
4 workers but for Andean workers in general are
5 essential to maintain democratic rule in the region.

6 These benefits will help also modernize
7 our policies framework in the whole country because it
8 will go beyond trade to cover other aspects such as
9 labor rules, environmental aspects and social
10 prediction in general. Stability for the region,
11 better living conditions for our Indian population,
12 and a very important tool for poverty reduction really
13 will be benefits that we expect to get from this free
14 trade agreement.

15 From this point of view, I just want to
16 ensure and deliver a message to you that the interest
17 of my country in joining as soon as possible
18 negotiations for the Andean countries on free trade is
19 very strong.

20 CHAIR SURO-BREDIE: Thank you very much,
21 Mr. Minister. The first question that we would like
22 to ask you will be posed by Bennett Harman.

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1 MR. HARMAN: Good morning, Mr. Minister.
2 I was wondering if you could speak briefly to the
3 degree of support that the Bolivian government
4 perceives in the Bolivian civil society and private
5 sector for this negotiation. Perhaps you could
6 describe what efforts at outreach and public
7 information the Bolivian government has begun in the
8 area of promoting awareness of this negotiation.

9 MINISTER NOGALES: Thank you very much.
10 As with any issue, there are, of course, different
11 opinions in a democratic country. In Bolivia most of
12 the private sector and the social society is in favor
13 of free trade. It's in favor of expanding Bolivian
14 manufactured exports. We do have also some opposition
15 groups mainly from the very extreme left that believe
16 that trade efforts are dangerous for Bolivia because
17 Bolivia is a weak country and that going through a
18 free trade agreement with larger countries like the
19 U.S. could be a great danger to employment generation.

20 However, most of our society agree that
21 free trade will not only enhance competition and
22 efficiency but given the sizes of the markets and

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1 given that Bolivia is already a very open trade policy
2 country, benefits will be very strongly in favor of
3 Bolivia because of the increased opportunities for
4 expanding trade.

5 The government in addition believes that
6 the size of the U.S. economy is so large compared to
7 the small size of our production capabilities that we
8 can enhance labor opportunities for Bolivians and
9 that, I guess, is shared by most Bolivians. We have,
10 of course, started discussions at several levels and
11 especially the Bolivian private sector and also some
12 foreign investors in Bolivia are very much in favor of
13 this type of new agreement.

14 CHAIR SURO-BREDIE: The next question will
15 be asked by the State Department.

16 MR. HONAN: Thank you. Mr. Minister,
17 thank you and welcome. Given the challenges facing
18 the Bolivian government, can you elaborate. You
19 touched on this somewhat in your statement on how
20 Bolivia is preparing for the opportunity to negotiate
21 FTA with the united States.

22 MINISTER NOGALES: Yes. Bolivia currently

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1 is facing an important political crisis and it was so
2 severe that the former president of Bolivia had to
3 resign and President Mesa took over. The Government
4 has been reviewing opportunities and risks to this
5 government and we clearly understand that the greater
6 risks will come from recession, from lack of
7 employment, and from lack of an expansion of the
8 Bolivian economy.

9 Therefore, all the priorities are upon
10 reactivating our Bolivian economy. From that point of
11 view, the results that we have already experienced
12 under the ATPDEA are very important. Our exports have
13 been increasing. In 2003 we have had an important
14 expansion in labor intensive exports. That is in La
15 Paz, the main city in Bolivia. It's a very visible
16 operation.

17 Our textile and garment exports to the
18 U.S. have increased dramatically in 2003. Employment
19 generation in these very poor areas has been very
20 important. We have more than 6,000 workers now just
21 working on textile and garment exports to the U.S.
22 Jewelry exports also very labor intensive are working

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1 now.

2 I would say discussions on these aspects
3 with the population are showing that despite the
4 strong opposition of some groups in regards to free
5 trade agreement, the population in general are
6 supporting the government efforts to join free trade
7 operations.

8 Especially Bolivia has been able to
9 understand that in December of 2006 the ATPDEA
10 benefits will cease to continue and, therefore, we
11 need to maintain these labor opportunities for
12 Bolivians through an expansion of the agreement
13 through a normal free trade agreement with the U.S.

14 CHAIR SURO-BREDIE: The next question by
15 the Department of Treasury.

16 MS. EARP: Mr. Minister, you mentioned
17 textiles and jewelry as sectors where you already are
18 seeing benefits. Are there other sectors in which you
19 would expect benefits from an FTA with the United
20 States and in which sectors would you expect the most
21 benefits for workers in Bolivia?

22 MINISTER NOGALES: Yes. Thank you very

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1 much. Clearly our future looks quite bright. Bolivia
2 has expanded dramatically its reserves of
3 hydrocarbons, special natural gas. We have been in
4 touch already with U.S. authorities in trying to see
5 opportunities in how to export hydrocarbons for the
6 very important and large energy sector of the U.S.

7 Clearly our future will be very much
8 developing in that direction. And for our balance of
9 payments and our general foreign exchange generation
10 sector hydrocarbons will be the base. You know that
11 is not a very labor intensive sector and clearly we
12 have to compliment that with new opportunities in
13 sectors that are labor intensive such as textiles,
14 jewelry. Leather sector, wooden products are other
15 sectors that are also quite labor intensive and offer
16 in the short term greater opportunities for
17 manufactured exports through an FTA.

18 But, of course, given that Bolivia plans
19 to continue with very open and free market rules, we
20 expect that our manufacturing sector will start
21 developing in different directions. A very strong
22 incentive to develop and attract investment into labor

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1 intensive activities will be very much fostered by a
2 free trade agreement which, of course, will try to
3 take advantage of good quality and lower cost labor.

4 From that point of view, of course, it's
5 very important to have very clear labor laws and labor
6 rules that will also protect the Bolivians from abuses
7 that might exist when you don't protect your labor
8 force from very aggressive policies that do not take
9 into account strong social benefits for our laborers.

10 So we believe that we can obtain a strong
11 balance between advantages on labor intensive
12 opportunities, but also greater benefits for our
13 social and for our laborers. From that point of view
14 we will see what are the results of free market rules
15 letting in a very competitive and efficient way to
16 allow Bolivian investment to flow into these labor
17 intensive opportunities and exports to the U.S.

18 CHAIR SURO-BREDIE: Thank you, Minister
19 Nogales, for your testimony and for answering our
20 questions.

21 MINISTER NOGALES: Thank you very much.

22 CHAIR SURO-BREDIE: Our next witness is

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1 Ambassador Raul Gangotena of Ecuador and Minister Raul
2 Izurueta, the Minister of Labor. Welcome.

3 AMBASSADOR GANGOTENA: Thank you very
4 much, Ms. Chairman. On behalf of the government of
5 Ecuador I would like to express my appreciation to the
6 Government of the United States and the willingness of
7 the American Government to have our country be here
8 for these talks that will eventually continue
9 deepening the possibility of a free trade agreement
10 that we seek because of common convenience.

11 I would also like to express my
12 appreciation for the fact that I was preceded by the
13 Minister of Development of Bolivia not only because
14 our peoples are so close but also because his
15 expressions and the way he presented the issues are so
16 accurate and well done that, for the efficient use of
17 time, I make as mine completely all of the expressions
18 that apply to Ecuador because he was very precise in
19 the political and economic side.

20 The government of Ecuador strongly
21 believes that the broad free trade agreement between
22 our nations will not only benefit Ecuadorians but also

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1 U.S. consumers and producers. Since we expect a more
2 dynamic economy in our country having permanent access
3 to a market of this size of the American market, we
4 expect that the additional disposable income would be
5 channeled for high-value imports from the United
6 States. A more stable outlook will help American
7 firms develop longer-term business and marketing plans
8 in Ecuador as well as attract American investment.

9 We expect that with these economic effects
10 we will have more demand for services. Since services
11 are the leading and the highest growing sector in the
12 American economy, we will expect to be able to be
13 better consumers of highly paid services with high
14 value added that are produced mainly in this economy.

15 Of course, as the Ambassador of Bolivia
16 already said, we expect to have higher and bigger
17 investment to create new jobs to mitigate our regional
18 migration process. We want to keep our citizens
19 working in our own country, although we appreciate
20 very much this country has welcomed many of them and
21 has given them the opportunity not only to work but to
22 sustain their families working here.

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1 Also, the combination of this convenient
2 agreements of ATPDEA that have created a new wave of
3 trade opportunities and have provided jobs have also
4 definitely prevented our people being engaged in
5 illicit crops or illicit drug trafficking. We are
6 very happy to be a drug-free country in terms of
7 cultivation and trafficking and we have to keep our
8 country that way. For that purpose we appreciate very
9 much the opportunity to begin talks for the free trade
10 agreement that will make the convenient ATPDEA
11 preferences permanent.

12 CHAIR SURO-BREDIE: Thank you very much,
13 Mr. Ambassador.

14 I think we have a number of questions for
15 you and also for your neighbor Minister. They will be
16 asked by the Department of Labor and by Bud Clatanoff,
17 the U.S. Trade representative. Thank you.

18 MR. CLATANOFF: Good morning. I think
19 you're well aware that there have been some criticisms
20 of labor practices in your country. I would like to
21 know if the government of Ecuador is prepared to take
22 steps to ensure that the use of subcontractors does

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1 not effectively deny workers the right to organize and
2 bargain collectively, in particular in the banana
3 sector.

4 MINISTER IZURUETA: Thank you very much
5 for the question. Yes, the government of Ecuador is
6 aware of that, as you just mentioned. Ecuador will
7 issue a presidential order by the month of April, next
8 month, in which we will consider what you just said
9 which means that we will not let third party
10 contractors act on behalf of a main company having
11 those third party contractors being part of the same
12 company. In other words, we will use the outsourcing
13 procedures by being independent and respecting the
14 loss of the country in respect to the rights of
15 workers in Ecuador.

16 MR. CLATANOFF: Thank you.

17 MR. PEREZ-LOPEZ: If I could continue. I
18 wonder if you could tell us what the government of
19 Ecuador is doing to strengthen child labor inspection
20 and to meet your own requirement to provide at least
21 one child labor inspector in each province in your
22 nation.

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1 MINISTER IZURUETA: That's a compromise
2 that the country made some months ago. I can inform
3 you that up to now we have three inspectors working
4 and by April 15th once our national budget is reviewed
5 on the 31st of this month, we will have the 22
6 inspectors that we offered to have. That will be by
7 April 15th of this year.

8 MR. PEREZ-LOPEZ: If I could ask a
9 question to the Ambassador along those same lines as
10 the question that was asked of the person who came
11 before you, the witness. What is the public opinion
12 in your countries regarding the FTA and what steps is
13 your government taking to build support in your
14 country for the free trade agreement with the United
15 States?

16 AMBASSADOR GANGOTENA: We have been
17 surprised by the generally favorable opinion that has
18 been expressed both by the speakers of the different
19 organizations of civil society and by the constant
20 repetition of discussion about the free trade
21 agreement in the press and in the media.

22 We are very happy to witness that our

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1 civil society generally is well aware of the main
2 issues. We have appreciated --the country has
3 appreciated, and that has been expressed by different
4 ways by the media, that one of the first convenient or
5 the first conveniences derived from a free trade
6 agreement with the U.S. would be to assure the roles
7 for workers precisely and for poor people and also for
8 child labor.

9 It might be important to say that at this
10 very moment we already have an agreement and we have
11 in place a policy by which the Minister of Labor sends
12 the inspectors in case of child labor with overseers
13 that are having trained already 115 of them having
14 trained and they come from the main unions or the
15 equivalents of AFL-CIO or the national unions. They
16 oversee and they witness every inspection to make sure
17 that the rules are met. The government wants them to
18 be all the time caring for that.

19 Of course, as in the case of Bolivia,
20 there are some sectors who are mainly not well
21 informed about what the outcomes of a trade agreement
22 would be. They oppose sometimes in very ideological

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1 terms that don't have anything to do with economic and
2 social concerns.

3 But the government is working very much
4 and we expect to ask maybe the highest amount of
5 assistance of the U.S. Government and the social
6 concerns and the social advancement of our country
7 regarding bigger and more absolutely stable rules for
8 the labor sector and for mitigating all the problems
9 that we have precisely because of poverty which is
10 going to be elevated mainly by the free trade
11 agreement.

12 CHAIR SURO-BREDIE: Thank you very much,
13 Mr. Ambassador and Mr. Minister. Thank you for
14 coming.

15 Our next witness is pablo de la Flor, Vice
16 Minister of Foreign Trade of Peru. Welcome.

17 VICE MINISTER DE LA FLOR: Thank you.
18 Good morning. Thank you very much for the opportunity
19 of meeting with you this morning to present Peru's
20 views on the negotiation of a free trade agreement
21 with the U.S.

22 Our country has heightened expectations

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1 about the successful completion of a FTA due to our
2 perception that such an agreement will serve to
3 bolster Peru's socioeconomic progress, set the basis
4 for sustainable economic development, and enhance
5 democratic governance, all valued and esteemed
6 concepts that were included in Ambassador Zoelick's
7 letter in which he announced USTR's intention to
8 negotiate the FTA with Andean countries.

9 The opportunities that will emerge as a
10 result of the FTA will assist ongoing efforts to
11 eradicate the illicit crops in Peru by providing
12 peasants and other populations at risk with via
13 alternatives to the Peru economy.

14 From that perspective, we believe that the
15 creation of a free trade area with the U.S. will help
16 Peru consolidate social peace and advance the fight
17 against the drug and terror cartels. With more than
18 27 million and a per capita GDP of \$2,100, Peru is a
19 middle income country.

20 A decade after implementation of an
21 ambitious economic liberalization and structural
22 adjustment program. Peru has become one of the best

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1 economic performers in the region. A mixture of fraud
2 trade openness, conservative fiscal management, small
3 public sector, and clear rules to facilitate private
4 investment have allowed Peru to register one of the
5 continent's highest growth rates.

6 The transformation of Peru has been truly
7 remarkable. At the beginning of the 1990s our economy
8 was stagnate and beset and hyperinflation. To tackle
9 this challenge comprehensive reforms were pursued.
10 All sectors of the economy were open to foreign
11 investment which was accorded full national treatment.
12 State companies were privatized, foreign exchange and
13 capital controls were lifted, and a floating exchange
14 rate was established. The fiscal deficit was reigned
15 in and the central bank was given full autonomy.

16 Peru is at the forefront of trade reform
17 in the region. Import tax has been slashed and
18 quantitative restrictions on foreign trade have been
19 abolished. Over the last decade we have entered
20 negotiations on a number of bilateral and multi-
21 lateral trade agreements and have pursued deeper
22 market opening at the WTO meetings.

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1 We are fully committed to pursue a free
2 trade at the original debt level endorsing that agenda
3 as full members of the Andean community of nations and
4 signing free trade agreements with MERCOSUR and trade
5 agreements with Mexico and Chile.

6 We are also active participants of the
7 FTAA process where we have been striving along with
8 the U.S. to reach an ambitious accord that goes beyond
9 WTO, implementing rules, and including areas that have
10 traditionally not been the subject of trade
11 conversations such as government procurement and
12 investments.

13 We are beneficiaries of the ATPDEA, an
14 arrangement that has contributed significantly to the
15 eradication and substitution of illicit crops in Peru
16 by providing farmers and other populations at risk
17 with alternative activities to the highly profitable
18 coca trade.

19 Last year we surpassed our commitment and
20 security eradication of over 11,000 hectares of coca
21 plantations through voluntary and mandatory programs.
22 This progress would not have been possible without the

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1 help of the ATPDEA. The unilateral preference is
2 granted under this agreement. However, do not cover
3 all goods and services and, most worrisome, only lasts
4 until December of 2006. These two disadvantages
5 hinder long-term investment needed to create jobs,
6 reduce unemployment, and curtail poverty. By
7 providing a longer-term horizon and a stable framework
8 for trade, an FTA with the U.S. would help overcome
9 those limitations.

10 Currently one out of every four products
11 entering Peru originates in the U.S. Intermediate
12 goods including wheat represent almost half of total
13 U.S. exports to Peru with capital and finished
14 consumer goods representing the other half. An FTA
15 with the U.S. would certainly translate into increased
16 imports from America and thus lead to greater job
17 creation in the U.S.

18 We are aware there are some persisting
19 investment related disputes with U.S. companies and
20 the Peruvian administrative and judicial courts lack
21 of resolution represents a major threat or stumbling
22 block for the initiation of an FTA with the U.S.

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1 We have been working to get these problems
2 resolved and have secured final closure in a number of
3 those cases. I would like to point out, however, that
4 albeit important, the reference disputes involve less
5 than 2 percent of total U.S. companies doing business
6 in Peru. Again, the overwhelming majority of U.S.
7 firms with a presence in Peru have not had any
8 conflicts with the Peruvian state. USTR has received
9 supportive communications from a number of these
10 companies.

11 In the case of 3M we are happy to announce
12 that a final authorization was handed yesterday so
13 that the company now has all the permits it needs to
14 operate legally. In the case of Letter Noah, Supreme
15 Decree enacted last week, created an commission. All
16 members of the commission have already been named and
17 they are ready to start negotiations on the final
18 financial settlement with the company.

19 With a significant delay the courts have
20 finally handed a negative ruling in the case of Big
21 Three Marine. The company has three working days to
22 appeal the decision and we remain fully committed to

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1 ensure that the judiciary acts and the strict
2 adherence to transparency and due process which figure
3 prominently in the list of companies that registered
4 complaints communicated this week the decision to
5 abstain from participating in the bid which originated
6 the dispute with the national oil company. We
7 understand it remains open to undertake all the
8 important projects improving the future.

9 In the case of the dispute between the
10 Ministry of Transport and Northrup Grumman over Lima's
11 airport facilities and radar, unfortunately it has not
12 been possible for the two parties to reach an
13 agreement. Thus, the arbitration clause contemplated
14 in the original contract will have to be activated.
15 Northrup Grumman and the Ministry as we speak are
16 currently engaged in negotiating the scope of a
17 proposed arbitration.

18 At the time of the renewal of the ATPDEA
19 the Peruvian government also committed to implement
20 measures aimed at strengthening IPR protection and
21 promoting labor rights. I am glad to report that Peru
22 has made significant progress on both fronts.

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1 Finally, I would like to conclude a rate
2 rating, that the proposed FTA will entail significant
3 benefits for both countries opening new business and
4 trade opportunities, and enhancing consumer welfare.
5 For Peru the FTA has the added advantage of putting in
6 place a framework for enhancing domestic governance,
7 sustained development, and the eradication of illicit
8 crops, all strategic objectives with which both
9 countries have a shared agenda. Thank you very much.

10 CHAIR SURO-BREDIE: Thank you very much,
11 Mr. Vice Minister.

12 The first question will be asked by USTR,
13 Bennett Harman.

14 MR. HARMAN: Thank you very much. Good
15 morning, Mr. Vice Minister. We appreciate very much
16 the comments with respect to progress made in a number
17 of the investment disputes that, as you indicate, are
18 potential stumbling block to the most sensitive
19 disputes involving tax authority SUNAT, those
20 involving gold cases, and those involving tax
21 assessments on a retroactive basis. Is there anything
22 you can share today to indicate progress in addressing

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1 those disputes?

2 VICE MINISTER DE LA FLOR: Yes. There is
3 a procedural issue that is quite relevant for both
4 cases and that is a decision of the Ministry of
5 Finance to create the offices of the Tax Ombudsman
6 responsible for overseeing that the tax authorities
7 act in accordance with the norms and that there is no
8 abusing the exercise of their functions. That Tax
9 Ombudsman office, which has just recently been
10 created, will be staffed over the next few days.

11 I think it's important to note that we are
12 in the process of perfecting our legal system. We are
13 committed to the process of legal reform and that the
14 cause of these reforms will be furthered by an FTA.
15 We believe that an FTA will set the basis for the
16 pursuit of a number of reforms that are currently in
17 the dark room. We believe that the successful
18 completion of such an agreement will create impetus
19 for the pursuit of many of the second generation
20 reforms that would make it possible for some disputes
21 to disappear quickly.

22 CHAIR SURO-BREDIE: Thank you. The next

1 question will be asked by the Department of Commerce,
2 please.

3 MS. ANGLIN: Could you comment on the
4 support for an FTA in your country and could you
5 highlight the efforts undertaken by your government to
6 build public support for the FTA?

7 VICE MINISTER DE LA FLOR: We believe that
8 public support for this agreement is high, yet we
9 remain committed to continue building up that support.
10 We have established a consultation, a very broad
11 consultation process. This is a first experience for
12 us.

13 This is a first trade agreement we are
14 negotiating in which we are actively engaged in broad
15 consultations with civic society. We have established
16 contact with the labor unions, with NGOs, and the
17 environmental and labor sectors who are bringing in
18 business organizations and all those parties that have
19 a legitimate interest in these negotiations.

20 They are part of the consultation process
21 through which we expect to craft the positions that we
22 will bring to the negotiating table. For us the

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1 political capital to be gained through that process is
2 fundamental in helping move forward the negotiations.

3 CHAIR SURO-BREDIE: The Department of
4 State has one last question.

5 MR. HONAN: Good morning, Mr. Vice
6 Minister. How would you assess the Peruvian business
7 support for the kind of very significant commitments
8 that Peru would have to undertake in order to achieve
9 an FTA with the United States?

10 VICE MINISTER DE LA FLOR: I think overall
11 there is a very positive and supportive attitude
12 towards the FTA. I have to point out that due to the
13 ambitious structural reform programs that we pursued
14 during most of the '90s, many of the issues that would
15 otherwise make it difficult to arrive to an FTA are
16 off of the table so we so not face the same type of
17 constraints that other countries that did not pursue
18 such ambitious reforms have to confront. I'm not
19 saying that negotiations would be easy but what I'm
20 saying is that we do not face the same type of
21 constraints.

22 CHAIR SURO-BREDIE: Thank you very much,

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1 Mr. Vice Minister.

2 Our next witness is Congressman Sam
3 Gibbons on behalf of the Consumers for World Trade.

4 CONGRESSMAN GIBBONS: First of all, I'll
5 tell you I'm delighted to be here.

6 CHAIR SURO-BREDIE: It's a great honor to
7 have you, sir.

8 CONGRESSMAN GIBBONS: Well, listen. You
9 don't know what an honor it is to me. I have worked
10 with USTR's office since it was an infant and I
11 believe you all are doing the right thing. I
12 certainly hope and pray you do.

13 I'm representing at this time the
14 Consumers for World Trade. I'm the head of Gibbons
15 and Company here but we do not have an ax in this
16 today. I've been a member of the Board of Directors
17 of Consumers for World Trade ever since I retired from
18 Congress in 1997. I've been a member of that board
19 because I believe in the principles that it stands
20 for, open, free, fair -- when I say fair, I mean under
21 the rules of law -- trade between the nations of the
22 earth.

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1 I've been convinced about that going back
2 to my high school and colleges experiences in the '30s
3 and certainly World War II having seen the disaster
4 that Smooth-Haley made of the United States and of the
5 world, I have become a crusader for free trade.

6 I have participated in all of the
7 legislation and the negotiations with the Central and
8 South Americans and the Andean Pact and you name it,
9 world trade, GATT, and everything else. I come here
10 with a wealth of background and a wealth of conviction
11 about the necessity for opening up the markets.

12 I know we're interested today in the
13 Andean Pact. I worked with Congressman Crane when we
14 developed the Andean Pact and it was an off spring of
15 what I'd been able to do with the Caribbean Basin
16 Initiatives I and II. I've been to those countries a
17 lot of times. They are human beings just like we are.
18 They suffer just like we are. They have the same
19 ambitions that we do but their economies and their
20 geography and their isolation such caused them to grow
21 up differently.

22 There are advantages to be gained by the

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1 United States by opening up free trade with the Andean
2 countries. There are advantages such as it gives us
3 more leverage in working with the recalcitrants in the
4 Central and South American area. It gives us more
5 strength in some senses with deal with the
6 recalcitrants and the Asian and European areas.

7 There are lots of strategic reasons why we
8 need to move ahead on this. If you can't do directly
9 what you want to do in the long run, just do an end
10 run and get around it and that's what this is to help
11 bring, I think, Central and South America in.

12 For instance, a common everyday cereal
13 that we eat every morning for breakfast, or some of us
14 do. Maybe I eat too much of it but we eat it. It's
15 very difficult to get that into those countries. Most
16 of them have around a 25 percent tariff on not only
17 the cereals that we send them, but the component parts
18 of the cereal.

19 I know enough about the cereal business to
20 know that you can't make Corn Flakes out of most of
21 the native corn, but yet the people just protect their
22 native agriculture and you can't get even our own

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1 American Corn Flakes or corn in there to make Corn
2 Flakes out of because of the protective tariffs.

3 That's just one instance of the things
4 that we are excluded from their market with. There
5 are bilateral reasons why we ought to push forward on
6 this. We need to encourage them to do as much as we
7 can and they are able to to raise the levels of
8 standard and of the environment in their communities.

9 Because of their culture they have abused
10 those things. I think this is a win/win proposition.
11 The Consumers for World Trade had a formal statement.
12 I assume it will be part of the record and I assume
13 that you will all read it. I think it's good. I
14 support it entirely.

15 I would prefer now to allow you all to
16 pick my mind for whatever you can get out of it, which
17 may not be much.

18 CHAIR SURO-BREDIE: Thank you so much,
19 Congressman Gibbons. We will certainly try and put
20 you to the test.

21 Our first question is by Bennett Harman.

22 MR. HARMAN: Good morning, Congressman

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1 Gibbons. Would you be able to elaborate or, if not,
2 provide information subsequently about the sorts of
3 products that you would expect American consumers
4 would benefit from getting more freely from the Andean
5 region?

6 CONGRESSMAN GIBBONS: Certainly they grow
7 flowers. Certainly they grow vegetables. Certainly
8 they grow fruits. Some of them have a wonderful
9 fishing industry. I don't need to talk about the bad
10 products they also produce. I have been down there
11 and seen that and know what it is and have even had
12 some of their coca tea which, by the way, is very
13 nice. It leaves you feeling very nice, a little sip
14 of tea.

15 These are the kind of things I think can
16 come in here. They will have some ability to compete
17 and I hope compete to bring down the cost of clothing.
18 I think we can still maintain a huge lead in textile
19 manufacture and in spinning of threads and things of
20 that sort because they are largely mechanical.

21 It's a problem of sewing sleeves on coats
22 and pants on trousers and things like that that make

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1 their countries more attractive for that kind of
2 industry. I'm sure you will hear some problems from
3 our own textile and garment industry. They are all my
4 friends. They may not think I'm their friend but I
5 understand their problem.

6 While I'm at it, I want to say that one of
7 the problems we've got here in the United States is
8 we've never had a decent trade adjustment assistance
9 program. That is the bottom of our -- we have never
10 had a good trade adjustment assistance program. That
11 is what causes all the political discontent in this
12 country. While you all are working with the other
13 government agencies, I hope you'll keep that in front
14 of you. It is an important part of trade negotiations
15 as far as America is concerned.

16 CHAIR SURO-BREDIE: Thank you. The next
17 question by the Department of Treasury.

18 MS. EARP: Thank you. Congressman, would
19 you elaborate a little bit on the likely impact on the
20 Andean consumers of an FTA with the United States?

21 CONGRESSMAN GIBBONS: Well, as I say, they
22 could eat our cereal if they like Corn Flakes, and I

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1 assume that they would learn to like them if we have
2 a good sales source. There are lots of consumer
3 products that we manufacture. We are close to them.
4 Transportation costs are smaller than they are from
5 other parts of the globe. We can begin to penetrate
6 those markets with the consumer products that we are
7 especially gifted in such as high tech communications
8 and computing and things of that sort. We've got a
9 lot to offer in that area.

10 Everybody is going to manufacture
11 automobiles as closely to where they are consumed. I
12 don't mean junked but where they are used by the users
13 as they can. I don't think there would be any great
14 growth in the U.S. auto industry out of that.

15 There are lots of things that we can sell
16 them. There's no doubt in my mind about it. I've
17 been down there. One of the ways I used to deflect
18 some of the protected interest in Congress was to tell
19 them about a little plant that I visited down there in
20 the textile business. That's a no-no around Congress.

21 At that time all the automobiles out in
22 front of the plant were U.S. made. That's no longer the

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1 case as you know. All the equipment in the plant,
2 well, the best textile equipment is made in Japan or
3 in Italy. We are importers of Japanese spinning and
4 weaving equipment right here in the United States.

5 We've never been able to somehow beat
6 Toyota. Toyota didn't start out as an automobile
7 industry. They started off as a textile machine
8 manufacturing company and got over into automobiles
9 because they were so much simpler than the textile
10 machines. But that is the kind of thing that will
11 happen.

12 These plants were just full of steel
13 beams. The roof was made in Pennsylvania. The water
14 cooler was made in Ohio. The typewriter was made
15 wherever they were making typewriters in the United
16 States at that time. They were all IBM Selectrics at
17 that time. By the time I got through running it
18 through that, I got those swing votes in Congress to
19 say, "Well, you know, Gibbons is not completely out of
20 his mind. We do sell products down there. There is
21 a market for our product."

22 I believe there is. We've got the

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1 ingenuity. We've got the sales force. We've got the
2 products. I think we can sell them down there but
3 they've got high tariff barriers also. In fact,
4 higher than ours, you know.

5 CHAIR SURO-BREDIE: Next question from the
6 Department of Commerce.

7 CONGRESSMAN GIBBONS: Good.

8 MS. ANGLIN: Good morning. Mr.
9 Congressman, in your written testimony you suggest
10 that the administration adopt more flexible rules of
11 origin for apparel and allow integrated production in
12 the region as a way to improve this industry's
13 competitiveness. Can you elaborate on that?

14 CONGRESSMAN GIBBONS: Not as expertly as
15 I wish to. I want to say that the rules of origin
16 were something that Congress messed around with --
17 that's the only polite way I can explain it -- for
18 years. The rules of origin have become so complex
19 that I don't see how anybody really can understand
20 them or administer them.

21 I know that there are whole businesses
22 just set up out here in the Dulles corridor that do

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1 nothing but try to unscramble the laws we've made and
2 the regulations that the different departments have
3 come out with on this subject. It is one of our
4 cottage industries here in America is trying to
5 unscramble the rules of origin. Generally speaking we
6 need to make them as simple as possible.

7 We need not complicate them. Most of the
8 rules of origin were slapped on because if we gave
9 them some rules of origin we could get some votes.
10 It's not because of any philosophical marriage to
11 rules of origin. Obviously you don't want to import
12 just pass throughs from other trading partners or
13 other trading entities around the globe so there must
14 be some rules of origin but they must be simple and
15 they must be direct and they must be understandable.

16 CHAIR SURO-BREDIE: There are no further
17 questions. Thank you so much, Congressman Gibbons.

18 CONGRESSMAN GIBBONS: Thank you and good
19 luck to you. You're doing the Lord's work. Let's
20 open those markets.

21 CHAIR SURO-BREDIE: Thank you so much.
22 Our next witness is Randy -- is our next witness here?

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1 MR. SCHENAUER: Yes, ma'am.

2 CHAIR SURO-BREDIE: Oh, great. Thank you
3 for being early. That's lovely. Thank you. I hope
4 I'm pronouncing your name correctly. Schenauer?

5 MR. SCHENAUER: Schenauer. Please call me
6 Randy, though.

7 CHAIR SURO-BREDIE: Okay. Mr. Randy
8 Schenauer, Director of Logistics and Wholesale
9 Operations of KaBloom. Just wait until everybody
10 settles down a little bit.

11 MR. SCHENAUER: Okay. While they are
12 getting seated, I hope you'll forgive my nervousness
13 but it's not everyday that I come after Ministers,
14 Ambassadors, and Congressmen for sure. This is all
15 new to me.

16 CHAIR SURO-BREDIE: Well, welcome.

17 MR. SCHENAUER: Thank you.

18 CHAIR SURO-BREDIE: Thank you again.

19 MR. SCHENAUER: My pleasure.

20 CHAIR SURO-BREDIE: We'll be happy to hear
21 your testimony now.

22 MR. SCHENAUER: Great. Members of the

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1 Trade Policy Staff Committee, thank you very much for
2 the opportunity to testify today on the proposed free
3 trade agreement between the United States and the
4 Andean nations. I will summarize for you my written
5 statement and would be pleased to respond to any
6 questions that you may have for me.

7 KaBloom supports efforts to establish a
8 free trade agreement with the Andean nations and
9 strongly urges such agreement provide duty free
10 treatment for flowers from the Andean region. While
11 my comments will focus primarily on Colombian flowers
12 since KaBloom purchases over 50 percent of its flowers
13 from Colombia, we support duty free treatment for all
14 Andean flowers.

15 KaBloom is based in Woborn, Massachusetts
16 and we currently have 65 retail stores open throughout
17 the United States, both franchise and company owned.
18 KaBloom is only five years old but growing rapidly
19 thanks to the Colombian flowers we purchase and then
20 in turn sell to the American consumer.

21 The driving success for our company aside
22 from the entrepreneurial spirit of our franchise

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1 owners, store managers, is the widely available
2 competitively priced high quality flowers that we
3 purchase from the country of Colombia.

4 While sales is a motivating factor to
5 support Andean FTA, I think it is also very important
6 to take a look at the bigger picture not only for the
7 U.S. floral industry but also for what the floral
8 industry means to the country of Colombia.

9 The lack of a robust floral industry in
10 Colombia will adversely impact the U.S. floral
11 industry, harm U.S. national security interest in
12 Colombia, and create further pressure on Colombia
13 which already faces many challenges on its economic,
14 social, and security fronts.

15 For the United States Colombia flowers are
16 an important economic interest. For example, the
17 United States floral industry currently represents \$19
18 billion in retail sales and the Colombian flower
19 industry supports over 220,000 jobs here in the United
20 States.

21 These jobs cross many sectors such as
22 wholesale operations, retail stores such as KaBloom,

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1 supermarkets, import brokerage operations, and
2 transportation companies. Duty free, reasonably
3 priced Colombian flowers have benefitted the United
4 States consumers and several reports including those
5 conducted by the International Trade Commission have
6 documented this fact.

7 In recent years major U.S. companies have
8 made direct investments in the Colombian flower
9 business and often these companies have assumed
10 ongoing Colombian operations. U.S. companies now
11 account for nearly 20 percent of total exports to the
12 United States and own approximately 17 percent of
13 total Colombian production.

14 Today the value of U.S. investments in the
15 Colombian flower industry is estimated at \$250
16 million. It should also be noted that important U.S.
17 national security interest are served by the
18 courageous activities of the Colombian flower industry
19 which continues to be a strong ally of the United
20 States in its effort to compact the flow of illegal
21 narcotics.

22 Rest assured that without the many

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1 thousands of jobs provided by the flower industry in
2 Colombia, these very proud people would have only one
3 other place to look to support themselves or their
4 families and that would be through the cultivation of
5 narcotic crops.

6 For Colombia the flower industry is vital
7 to its economy. Flowers are Colombia's third largest
8 export to the United States and it's the leading
9 nontraditional export product accounting for
10 approximately 4 percent of the Colombian GDP.

11 Most importantly, the industry is a
12 significant source of a legitimate and stable
13 agricultural employment directly employing over 83,000
14 workers and supporting nearly 75,000 jobs in support
15 industries. Moreover, a great deal of this
16 employment, nearly 65 percent, is filled by women. In
17 Latin America it is rare for households employed by
18 the agricultural sector to benefit from more than one
19 income per household.

20 The Colombian economy continues to
21 experience dangerous sustained levels of unemployment,
22 well over 20 percent. Thus, maintaining the strong

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1 role of Colombian flower industry in the Colombian
2 economy is critical. The Colombian flower industry is
3 a model industry that has initiated a wide array of
4 programs to support its work force and to protect
5 Colombia's natural resources.

6 The social programs include nursing,
7 daycare, subsidizing schooling, subsidized food, and
8 nutritional programs as well, as well as low income
9 housing assistance. In addition, the industry has
10 taken a strong leadership role in protecting
11 Colombia's natural resources spending several million
12 dollars to institute a world class environmental
13 program.

14 It is important to note that this program,
15 or all the programs, have been initiated, sustained,
16 and perhaps most importantly, funded by the industry
17 in order to sustain and improve the industry, its work
18 force, and the natural resources it depends on.

19 For the benefit of the United States and
20 the Colombian floral industries, the Colombian floral
21 industry must have duty free access to the United
22 States market which is, by far, the largest

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1 destination for Colombian flowers. The lapse in the
2 Andean Trade Preference Act in December of 2001
3 demonstrates why.

4 During the eight-month period when ATPDEA
5 was not renewed, duties ranging from 3.2 to 7.4
6 percent were levied on Colombian flowers which cost
7 the United States floral industry more than \$2.5
8 million per month. While these duties may not seem
9 excessive, it is very important to understand that the
10 United States flower business is highly competitive
11 with average bottom lines running in the 2 to 4
12 percent range.

13 The ultimate effect of lapse of ATPDEA
14 duty preferences was that the United States consumer
15 would not accept the increased cost of flowers and
16 they took their purchases elsewhere. Sadly, a number
17 of retail florist wholesalers, and importers exited
18 the market during this period.

19 The final item that I would like to leave
20 with you is that I've been traveling in the floral
21 regions of Colombia for over 10 years now. Over those
22 10 years I have witnessed an incredible increase in

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1 the number of jobs being provided by the flower
2 industry, the quality of life being raised for the
3 flower farm workers and the overall social
4 responsibility taken on at farm level.

5 I would strongly urge you to travel.
6 Please join me to Colombia and visit some of the
7 floral farms and witness first hand the beneficial
8 impact of this industry's many programs. In
9 particular, if you do go, you should visit the schools
10 the industries have developed for their employee's
11 children.

12 Without these schools many
13 children would have no education and little to no
14 adult supervision as both their mothers and fathers
15 are working to support the family. I truly cannot
16 imagine where the country of Colombia would be without
17 the presence of a floral industry. My fear is that if
18 the Andean free trade agreement fails to include duty
19 free treatment for flowers, we would be at risk of
20 putting the people of Colombia back many years. There
21 is no doubt in my mind that the economic and social
22 well being of a great many Colombians would diminish

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1 greatly.

2 Without the many thousands of workers
3 employed by the flower industry, it would be forced
4 back into what the United States and the country of
5 Colombia have been fighting for for many years, the
6 growing of coca and the other plants used to make
7 narcotics.

8 I urge the TPSC to work diligently to
9 ensure duty free trade for Colombian flowers under a
10 free trade agreement with the Andean nations. The 90
11 people who work directly with KaBloom and our 200 plus
12 associates who work within our franchise organization
13 rely on the continued flow of competitively priced
14 readily available high quality flowers grown in this
15 wonderful country of Colombia. The future success of
16 our company certainly rests on securing a vigorous
17 trade relations between the United States and Colombia
18 and duty free treatment for Andean flowers.

19 Again, thank you very much for you taking
20 the time to allow me to express my comments about the
21 proposed U.S.-Andean FTA and I would be more than
22 happy to answer any questions that you may have for me

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1 regarding KaBloom, the Colombian flower industry, or
2 the U.S. flower industry.

3 CHAIR SURO-BREDIE: Thank you. Our first
4 question will be asked by Bennett Harman, USTR.

5 MR. HARMAN: Good morning. Thanks very
6 much for your testimony. It was very interesting. As
7 you are probably aware, some critics of U.S. trade
8 policy come from the approach of questioning whether
9 such increased trade is good for labor and the
10 environment. I was intrigued by some of your comments
11 in that regard with respect to how trade in the flower
12 industry may actually be beneficial to both the labor
13 force and labor standards and the environment. Could
14 you elaborate a little bit on that?

15 MR. SCHENAUER: As it relates to what's
16 happening in Colombia?

17 MR. HARMAN: Yes, in the flower industry.

18 MR. SCHENAUER: It's amazing. Again, it's
19 something I've truly been passionate about because
20 typically in the United States the only press that the
21 floral industry gets is bad press. The issue of the
22 flowers coming from Andean countries, coming from poor

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1 people and that whole issue.

2 In ten years what I've seen at farm level
3 where breakfast, lunch, and dinner is provided to farm
4 workers. There's doctors that come to the farms.
5 Some farms actually have a doctor on site seven days
6 a week to address the farm worker's needs. The
7 schools that have been developed recently over the
8 past five years. Just incredible. I mean, the farms
9 in Colombia today have really developed into more of
10 a family type operation versus just a farm growing
11 flowers.

12 MR. HARMAN: The environmental aspects?

13 MR. SCHENAUER: Oh, the environmental
14 aspects. What the industry has done in Colombia in
15 protecting its environment utilizing more natural
16 resources. Basically not getting into too technical
17 terms but using good bugs to fight bad bugs, using
18 good fungusses to fight bad fungusses. It's just been
19 incredible.

20 There's a program down there called
21 Florverde that the farms are developing and working on
22 further. Again, it's stuff that is being researched

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1 and developed here in the United States with the
2 various flora-culture nursery industry, as well as
3 what's being developed in Colombia is being shared
4 between our two industries which also has a crossover
5 effect on the U.S. Food Ag. Things like Ralstonia,
6 what we're doing obviously will protect, or help
7 protect, the potato crop and tomato crop. There's
8 some very positive things with regards to that.

9 CHAIR SURO-BREDIE: Question from the
10 Department of Labor.

11 MR. PEREZ-LOPEZ: Mr. Schenauer, thank you
12 for your testimony. I would like to follow up a
13 little bit on Bennett's first question. You mentioned
14 in your testimony about the schools that are being
15 created on the farms by the industry. I wondered if
16 you could elaborate on that and maybe provide for the
17 record some information on those activities and tell
18 us a little bit about what will be the alternatives
19 for these children. Are there schools in the area,
20 public schools that they could attend? What would be
21 their alternatives if it were not for these schools
22 that are provided as you indicated?

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1 MR. SCHENAUER: The very first time that
2 I travel to Colombia one of the growers was talking to
3 me about the school they were developing and I was
4 asking a lot of questions, the same questions that you
5 are asking me today. Why can't they go to school?
6 Where is the nearest school? Obviously, I presented
7 to him a sincere concern. He said, "We're going to go
8 for a ride."

9 We want to six houses where he knew that
10 his farm workers lived. There were children there two
11 years of age being watched by a four-year-old. That's
12 what happens when those schools aren't available.
13 Children are left unattended by themselves because
14 there is no adult supervision. Both mother and father
15 are working to support the family.

16 Are there public schools in Colombia?
17 Sure there are. Most of the farms are located out in
18 the sabana of Bogota. the schools are located in the
19 cities nearby so one of the issues is getting children
20 to school. I would say to you that if the schools
21 were not opened and provided by the farms, it's
22 simple. Those children would be, again, left

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1 unattended, uneducated. That's what would happen.

2 CHAIR SURO-BREDIE: Thank you very, very
3 much.

4 MR. SCHENAUER: My pleasure. Thank you
5 very much for having me.

6 CHAIR SURO-BREDIE: Thank you.

7 We are running a little in advance. I
8 don't know if Lionel Johnson is here from Citigroup?
9 No. Or Mr. Vastine by any chance? No. Then we will
10 take a 15-minute break and be back at 11:45. Thank
11 you.

12 (Whereupon, at 11:28 a.m. off the record
13 until 11:46 a.m.)

14 CHAIR SURO-BREDIE: I think our next
15 witness is Mr. Lionel Johnson.

16 MR. JOHNSON: Good morning.

17 CHAIR SURO-BREDIE: Good morning. Mr.
18 Lionel Johnson, Vice President and Director,
19 International Government Affairs, Citigroup. Thank
20 you for coming.

21 MR. JOHNSON: Delighted to be here. I
22 apologize and I gather you called on me before.

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1 CHAIR SURO-BREDIE: No, not at all. We
2 were running ahead so it was nice, I think, for people
3 to be able to take a little break. Now we are fresh
4 and can hear your testimony.

5 MR. JOHNSON: Terrific. Well, in the
6 interest of time and knowing fully that you have a
7 packed schedule today and tomorrow. I just wanted to
8 say on behalf of Citigroup that we are delighted to
9 testify in support of the proposed U.S.-Andean free
10 trade agreement and to offer our support and our views
11 on its potential.

12 We were among the first foreign banks to
13 establish business operations in the region and we
14 operate Citibank branches, 100 percent owned
15 subsidiaries, in the region. We provide consumers and
16 corporations, governments, and institutions a broad
17 range of financial products and services including
18 consumer banking and credit, corporate and investment
19 banking, insurance, securities brokerage, and
20 retirement funds. We are committed strongly to our
21 presence in the Andean countries and to their long-
22 term development.

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1 We believe that this proposed FTA offers
2 an excellent opportunity to grow our business in this
3 dynamic region and to enable us to offer more and
4 better services to our Andean and South American
5 customers, many of whom are American companies with
6 operations in the region. In fact, most U.S.
7 companies that operate in the region are Citigroup
8 clients.

9 The proposed FTA will contribute to the
10 enhancement of strong legal frameworks and more
11 professional and efficient regulation in the region as
12 well as stable local banks, better dispute management,
13 and a sound fiscal infrastructure. These are
14 essential to our industry and to the continued
15 strengthening of transparent and accountable
16 governance in the region.

17 Citigroup believes that it is in America's
18 economic and strategic interest to pursue a broad and
19 deep FTA that liberalizes trade to the greatest extent
20 possible. We urge the U.S. negotiators to use the FTA
21 to further strengthen the Andean countries'
22 intellectual property rights, their legal structure,

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1 and investor protections.

2 A trade agreement that contains these
3 important investor protections and provisions will
4 enhance long-term planning for U.S. businesses and by
5 extension can lead to increased investment flows to
6 the entire region. Increased investment flows will
7 lead to increased economic development and regional
8 integration in the Andean countries and South America
9 as a whole.

10 The Andean's region economy is heavily
11 dependent on the export of commodities, principally
12 oil, mining products, bananas, coffee, shrimp, and the
13 FTA will help the regions' economies to diversify to
14 strengthen them over the long haul. Andean companies
15 can compete internationally and many already
16 participate actively in the U.S. market. Specifically
17 it's come to our attention that Andean trade
18 negotiators may be interested in gaining increased
19 market access to our agricultural market.

20 In the interest of achieving the broadest
21 possible trade agreement, we urge our negotiating team
22 to keep all issues on the table as these negotiations

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1 get under way. The U.S.-Andean free trade agreement
2 along with the proposed CAFTA and the FTAs that are
3 presently in force with Chile, Canada, and Mexico
4 represents a critical step toward realizing the goal
5 of securing hemispheric wide free trade zone.

6 While progress toward the FTAA has not
7 come as quickly as we would have hoped, Citigroup
8 enthusiastically supports the administration's efforts
9 to achieve this objective. The U.S.-Andean FTA offers
10 the potential of expanded and liberalized trade
11 throughout the Americas and U.S. businesses including
12 Citigroup will certainly benefit from these changes.
13 But the real winners will be the regions' citizens who
14 can expect to see their real wages and standards of
15 living inexorably rise and while consolidating long-
16 term economic political and social progress.

17 Free trade agreements can improve the
18 economies of signatory countries, promote increased
19 trade, and present businesses with opportunities for
20 increased growth. Citigroup, therefore, strongly
21 supports the proposed U.S.-Andean free trade agreement
22 and we look forward to the continued economic

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1 development of the region to supporting negotiation of
2 this agreement and its approval ultimately by the
3 Congress of the United States. Thank you.

4 CHAIR SURO-BREDIE: Thank you very much,
5 Mr. Johnson.

6 Let's see. The first question is by
7 Bennett Harman.

8 MR. HARMAN: Good morning, Mr. Johnson.
9 Thank you. Could you just elaborate a little bit more
10 on which of the investor protections, which are most
11 important in Citigroup's view to get out of this
12 agreement?

13 MR. JOHNSON: I think it's important for
14 us to maintain the tradition of investor state dispute
15 possibility. This has come to our attention over the
16 past several months here in Washington as the
17 interagency process has gone forward consideration of
18 withdrawing those traditionally held protections from
19 future trade agreements. It is our strong belief that
20 very basic element that's been consistent in our trade
21 policy for years be maintained.

22 CHAIR SURO-BREDIE: Thank you. The second

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1 question is by the Treasury, please.

2 MS. EARP: Could you elaborate on whether
3 you face obstacles to offering the full range of
4 financial services in the region? More specifically,
5 we noted in your testimony that you have a subsidiary
6 in Colombia. Would Citibank have preferred to branch
7 into Colombia without incorporating there? If so, did
8 you face obstacles in doing so.

9 MR. JOHNSON: It was a business decision
10 made several years ago to opt to move toward a fully
11 owned subsidiary. I think in principle it is
12 important to maintain the option of establishment as
13 branches or through wholly owned subsidiaries. It was
14 a business decision that we had made. Overall I think
15 you will see in Citigroup's operations internationally
16 we are moving toward subsidiaries, frankly for the
17 management of capital. It's been for us more
18 effective.

19 We have not faced specific obstacles in
20 the region. In the case of Colombia where we operate
21 a subsidiary there have been no impediments put before
22 us in establishing in that manner but we think it's

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1 important in negotiating that in principle the
2 flexibility of establishment be maintained.

3 CHAIR SURO-BREDIE: Good. Do you have
4 another question by Treasury? State Department.

5 MR. HONAN: Is Citigroup provided an
6 opportunity to comment on draft regulations in these
7 countries where they are promulgated? If you are
8 provided such an opportunity, do you believe your
9 comments are actually considered when they put forth
10 these regulations?

11 MR. JOHNSON: As the process of
12 consolidation of democracy moves forward in the region
13 where transparency continues to improve, I think that
14 there is a recognition on the part of regulators that
15 comment periods are important in terms of promulgating
16 regulations. Even actually during the process of
17 legislating. We have been as Citigroup certainly able
18 to interact with regulators both the essential banks
19 and the finance ministries both informally and
20 formally.

21 I think that as this process continues,
22 not only will foreign institutions like ours be able

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1 to do that more but I think the indigenous
2 institutions and organizations that are operating in
3 each of the countries will find it in their interest
4 as well to participate activity in that kind of
5 exchange of views.

6 CHAIR SURO-BREDIE: Commerce Department.

7 MS. ANGLIN: Mr. Johnson, in your written
8 testimony you mentioned the need to strengthen
9 intellectual property rights, legal structure, and
10 investor protections in the Andean countries. I
11 wonder if you could elaborate on any problems in these
12 areas in that faced and what provisions would be the
13 most beneficial to your business?

14 MR. JOHNSON: Well, I think on behalf of,
15 I would say, our clients more so than Citigroup. We
16 have not, again, specifically faced difficulty. A
17 number of our clients, particularly in the
18 pharmaceutical and the agri-business industries have
19 faced some issues with regard to intellectual
20 property.

21 I would say on their behalf that those
22 considerations need to be certainly first and foremost

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1 as the negotiation process gets underway. I think
2 thus far we've been encouraged by the degree to which
3 the Andean countries have been willing to at least
4 keep those issues on the table.

5 We have spent most of our time in the last
6 couple of weeks actually speaking to our counterparts
7 in Colombia. On this particular area alone I've been
8 very, very impressed by the Colombian government's
9 willingness in particular to speak about this set of
10 issues which many of our companies continue to believe
11 are really important.

12 CHAIR SURO-BREDIE: Other questions?
13 Thank you so much, Mr. Johnson.

14 MR. JOHNSON: Thank you.

15 CHAIR SURO-BREDIE: Our next witness is
16 Mr. Robert Vastine, Vice President, Coalition of
17 Service Industries. Welcome.

18 MR. VASTINE: Thank you. It's a pleasure
19 to be back. Thanks very much for this opportunity to
20 comment. First, I want to say how pleased we are that
21 the U.S. Government has made this decision to
22 negotiate with the Andeans, particularly with

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1 Colombia.

2 Colombia itself is the third largest
3 country in terms of GDP and population except for
4 Mexico and Brazil in South America. Combined with the
5 other Andean partners I think it's a market of about
6 92 million people and a combined GDP of \$170 billion
7 in 2002. This is a major block. It is a very good
8 thing that we are negotiating with them.

9 Services range between 56 and 62 percent
10 of GDP in these economies. Of the four only Ecuador
11 has yet to table a GATS offer in the DOHA round. With
12 the exception of Ecuador they are engaged in Geneva in
13 the GATS negotiations.

14 U.S. direct investment in the Andean
15 countries at the end of 2002 stood as \$8 billion.
16 Sales of services by majority owned U.S. affiliates in
17 the region in those four countries in 2001 were 2.3
18 billion. Their services exports to all markets world
19 wide were \$4.6 billion in 2002 and imports were \$7.8,
20 the point being that there is active trade and cross-
21 border trade and services going on there. This
22 agreement should have the effect of liberalizing and

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1 expanding that trade.

2 It is important also that the Andean
3 economies have liberalized already their trade and
4 investment in services, implemented certain regulatory
5 reforms, and committed to services liberalization in
6 the WTO. Indeed, I have an astonishing chart that I
7 will pass out to you. It's on page 76. I can
8 interpret it for you. It explains the position of the
9 Andeans in the region, in the hemisphere.

10 The way to look at this is those countries
11 with the lines or the data points closest to the
12 external ring the furthest out in the schedule or in
13 the graph that a country goes, the more liberal it is.
14 This is an analysis by a former colleague of CSI,
15 Jaime Nino. That was done for the presidents, in fact,
16 of the Andean countries. I'm going to be using up a
17 lot of my time with this, unfortunately, but it's
18 worth looking at.

19 The Andeans actually in their pact shows
20 the negative list approach to services trade
21 liberalization. This is services trade. What this
22 shows is that using that approach they in a very

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1 general way achieved a level of liberalization about
2 as great as that which we achieved, the United States
3 achieved, in the NAFTA.

4 Those at the intercore, those closest to
5 the center, where you will find Brazil and others and
6 the MERCOSUR countries, are the least liberal. That
7 is because they have chosen the positive list approach
8 to services trade liberalization which will come to a
9 point I will make later. Just as an interesting
10 graphic, I thought that I would show that to you.

11 The point being that the Andean countries
12 should be willing to negotiate a highly liberalizing
13 trade agreement with us and services because they have
14 done a great deal already. Rather than to describe
15 specific market access objectives in each country, I
16 would like to refer you to CSI's guidebook of
17 objectives for services negotiations, all services
18 negotiations, which can be found on our website or
19 which I would be glad to send you or give to you
20 separately.

21 Instead, I would like to discuss very
22 quickly some of the elements we find essential for

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1 trade agreements and on which our support for FTA has
2 been based. The first of these, of course, is market
3 access and in services that takes two forms, market
4 access for cross-border trade and market access for
5 direct and portfolio investment.

6 These are both essential to services
7 trade, cross-border trade being trade and services
8 which occurs, let's say, from New York to Bogota,
9 direct investment, of course, being the establishment
10 of institutions, commercial presence in a foreign
11 market. We find, and you will find in the for-
12 services trade generally, the form of establishment
13 and, thus, the sales of U.S. foreign affiliates is
14 greater than cross-border trade.

15 It is a more important form of trade than
16 cross-border trade is. Roughly the United States has
17 about \$500 billion of sales in services from U.S.
18 foreign affiliates and about \$400 billion of cross-
19 border trade -- of cross-border exports. So you will
20 see that the investment side of these agreements is
21 extremely important and that is why we spend a great
22 deal of time with it.

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1 The second element of a trade negotiation
2 is the movement of people. Now, we regret that mode
3 4 or movement of people has been taken off the table
4 in FTAs. We understand fully the reasons for that but
5 I want to assure that this is something we are working
6 on in the political environment here and hope to be
7 able to solve within some reasonable period of time.

8 Nonetheless, it is important to note that
9 still movement of people is extremely important. This
10 has a very definite point, though, in the case
11 particularly of Colombia. Visas to tourists, B1 and
12 B2 visas, in 2000 were issued to Colombians in the
13 number of 280,000. In 2003 that number was by fiat,
14 by decision of our Government reduced to 180,000, a
15 100,000 fewer Colombian visas, visas issued to
16 Colombians in 2003 by this Government's determination.

17 This is extremely damaging to services
18 trade. Obviously it's a major issue with the
19 Colombians as it ought to be. That means they can't
20 come here to be educated, to have medical care, to
21 receive medical care. These are exports, by the way.
22 These are counted as exports and we are very strong in

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1 education and health exports, I will tell you.

2 It prevents them from doing deals in the
3 United States just simply coming here to do business,
4 which is what I gather a B1 visa is for. And then not
5 only has there been a reduction but there is something
6 like an 18-month backlog. I know this is a matter of
7 visa administration.

8 This is not a matter of high policy having
9 to do with trade agreements in mode 4 but I think the
10 Colombians rightly should make, and we should make
11 this an issue for this negotiation. We ought to be
12 able to expedite the processes for getting the visas
13 and deal with the issues of restraint, an arbitrary
14 restraint on the number of visas issued.

15 The third element in a trade agreement is
16 the process used. I won't go into this at length. It
17 is the negative list. That is the approach that trade
18 negotiations, services negotiations use. If you're
19 not familiar with that, if you're not a GATS junky,
20 you may not be familiar with the negative
21 list/positive list issue, but our trade agreements so
22 far, all of our bilaterals, have been based upon the

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1 negative list.

2 This is the best way to proceed. We
3 insist that it be used in this agreement as well. I
4 don't think there will be any problems with that
5 because that is already the approach that the Andeans
6 have used themselves. I will be glad to describe what
7 this negative list/positive list issue is if you care
8 to know.

9 Next and fourth is the inclusion of
10 investor protections in the investment chapter of the
11 agreement. I said how important direct investment and
12 portfolio investment are. Here, as Lionel said
13 earlier, investor state is absolutely essential.
14 Secondly, we would ask the Government to revise or to
15 revisit the policy it has recently pursued and make
16 these investor protection provisions retrospective as
17 well as prospective.

18 Maybe you know about the interagency
19 dispute on this subject. Maybe you don't. It does
20 not seem fair that we change our historic policy and
21 make these investment protections and investment
22 agreements apply only to new investments, only to

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1 investments made since the date of the agreement.

2 Previously the investor protections have
3 applied to all U.S. investments in a country. Not
4 doing so penalizes those corporations that have had
5 the drive to go into a country like Malaysia decades
6 ago or a country like Brazil decades ago and establish
7 business without those protections. They ought to be
8 protected now.

9 Then finally, and fifth, are strong
10 commitments on regulatory transparency. We are very
11 glad. The Government has done a very good job in
12 including regulatory transparency disciplines in all
13 of the FTAs to date. We have every reason to believe
14 that will be continued. It has been extremely
15 positive. It will be very helpful to us in other
16 forums.

17 Essentially what we are doing here is
18 providing in these FTAs for noticing comment for
19 regulatory licensing decisions, for review of
20 licensing decisions that are -- provisions that are
21 entirely consistent with U.S. law and practice and in
22 countries which have not been using these basic

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1 protections available to all Americans under our
2 administrative law will be extremely beneficial to
3 those countries and to foreign investors in those
4 countries. Those are five essential elements that we
5 hope will be included in this agreement.

6 I would also like to return to something
7 Mr. Johnson said at the outset, and that is it is
8 important that we do not allow our defensive interests
9 to outweigh our offensive interests. There may be
10 issues that are sensitive, let's say, in the
11 agriculture sector that we might like to take off the
12 table. We would hope that would not be done. We find
13 that when it is done it negatively affects services
14 and investment as in the case of Australia. We hope
15 that mistake will not be made in the Andean context.
16 Thank you.

17 CHAIR SURO-BREDIE: Thank you very much.
18 First question by Bennett Harman.

19 MR. HARMAN: Thank you, Mr. Vastine. Your
20 comments were very comprehensive. You commented that
21 it's important to have fair transparent regulatory
22 procedures and that they need to be improved in these

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1 countries. Do you see in your view that this is an
2 area that would lend itself to the capacity building
3 type work that we intend to target toward these
4 countries?

5 MR. VASTINE: Absolutely it would. I
6 would be glad to offer our organizations help with
7 that. We are developing at the current moment a
8 website and tool kit that will be available to any
9 government, anybody that is interested in knowing how
10 to implement transparency disciplines. This is a very
11 interesting point because Chile, Singapore, the CAFTA
12 countries -- Australia has got a transparency --
13 Dominican Republic, etc., Morocco, have made
14 transparency commitments and they are good commitments
15 but I wager that they do not know how to implement
16 them at the current moment. There will be a need for
17 capacity building to help them do that.

18 CHAIR SURO-BREDIE: The next question by
19 the State Department.

20 MR. HONAN: Thank you. Are your members
21 experiencing any problems with distribution services
22 at the national and provincial levels in the Andean

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1 markets?

2 MR. VASTINE: Well, we don't have any
3 distribution members per se. The National Retail
4 Federation would respond on that.

5 CHAIR SURO-BREDIE: Department of
6 Treasury.

7 MS. EARP: Thank you. On financial
8 services are there any regulatory requirements that
9 you might be aware of that have the effect of barring
10 market access? Then, secondly, specifically with
11 respect to pensions and asset management are you aware
12 of any regulatory requirements that would affect those
13 services?

14 MR. VASTINE: I would like to help you
15 better than by winging it by giving you a detailed
16 list of barriers and financial services that we have
17 prepared. We did this for the gas negotiations so we
18 have analyzed each of those countries -- I believe
19 each one of them. Maybe not Ecuador -- to identify
20 the financial services problems.

21 In general I would say, however, that
22 Colombia that quite open and there are a lot of --

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1 there is a substantial number of U.S. insurance and
2 other financial services companies in Colombia. I
3 would rather provide you with the detail on the other
4 countries.

5 CHAIR SURO-BREDIE: Thank you. Could you
6 send off to Gloria Blue, gblue@ustr.gov?

7 MR. VASTINE: Um-hum.

8 CHAIR SURO-BREDIE: That would be great.
9 Any further questions? No. I think we have asked our
10 questions. Thank you so much, Mr. Vastine.

11 MR. VASTINE: Pleasure always.

12 CHAIR SURO-BREDIE: Our next witness is
13 Eric Farnsworth, Vice President of the Council of the
14 Americas.

15 MR. FARNSWORTH: Thank you. Good
16 afternoon. Carmen, it's good to see you again and
17 Bennett, members of the committee. Thank you very
18 much for allowing the council to come before you this
19 afternoon and talk about these very important issues.

20 All of you already know but, just for the
21 record, let me tell you just a very brief part about
22 who the council is. As you all know, we're a leading

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1 voice for business in Latin America and the Caribbean.
2 Our members include over 170 top companies invested in
3 doing business in the hemisphere. For almost 40
4 years, actually our 40th anniversary is this coming
5 year, the mandate of New York based council has been
6 to promote free markets, free ideas, and free people
7 throughout the western hemisphere.

8 Right off the top I should say that we
9 strongly support the administration's efforts to
10 expand trade and investment throughout the Americas
11 because we believe that open markets and healthy
12 investment flows are critical factors and the search
13 for sustainable equitable growth in the hemisphere
14 trade is an important aspect of an overall development
15 strategy. It's not sufficient but it's critical and
16 critically important.

17 The council has been and will continue to
18 be strong public advocates for trade expansion and
19 investment protections through free trade of the
20 Americas negotiations, CAFTA, NAFTA and, of course,
21 the U.S. Chile free trade agreement.

22 Our ultimate goal to try to set the

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1 framework within which we see the potential Andean
2 negotiations occurring, our ultimate goal is an FTAA
3 that establishes open markets and unified trading
4 rules throughout the hemisphere. Bilateral and
5 subregional agreements can provide impetus for the
6 broader FTA negotiations and, as may be the case, they
7 should be pursued with vigor. In that regard, the
8 council, of course, has worked with Congress and the
9 administration to pass ATPDEA and the grade agreement
10 with the Andean nations, of course, the next logical
11 step. Let me talk very briefly about how we see the
12 potential for these trade negotiations.

13 In our opinion, Colombia is a very strong
14 candidate with which to begin the negotiations and the
15 discussions based on that government's demonstrated
16 willingness to honor its trade commitments and if
17 efforts to meet the eligibility requirements of the
18 ATPDEA.

19 Colombia's democracy, though under
20 challenge, is strong and long-standing. The President
21 Alvaro Uribe, of course, is providing leadership to
22 end the extrajudicial guerrilla war while maintaining

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1 appropriate human rights protections.

2 Completing a bilateral agreement would
3 link our two nations closer together on important
4 strategical while also supporting Colombia's democracy
5 by strengthening economic growth, providing Colombia's
6 disaffected, and there are many in Colombia, and
7 dispossessed populations over time the economic
8 benefits of democratic governance. In other words,
9 democracy has to deliver the benefits of democracy to
10 the common people and, in fact, we see trade as an
11 important part of that strategy.

12 Legal trade between the United States and
13 Colombia is strong and growing. The United States
14 imports, again as all of you know, a significant
15 energy, cut flowers, other agricultural goods,
16 jewelry, and other products many of which create jobs
17 in the United States through distribution and other
18 networks. In fact, Bob Vastine has many members who
19 have their own jobs because of some of the trade that
20 goes on with Colombia and with some of the other
21 nations.

22 The United States exports high technology

1 goods and services including aircraft, helicopters,
2 telecommunication services and equipment, industrial
3 machinery and food and agricultural products. It's
4 obviously a two-way street.

5 With the expansion of ATPDEA in the year
6 2002 the textiles and peril sector has also grown
7 significantly in Colombia just as it was designed to
8 do. Our nations have stood together and now it's, of
9 course, timely to take the next step through trade and
10 investment.

11 Likewise, the Council of the Americas has
12 long supported an open and rules-based approach to
13 trade with Bolivia, Ecuador, and Peru. These
14 countries also stand to make significant gains through
15 regional trade agreement which, to reiterate, we
16 strongly support for the same reasons that we support
17 trade with Colombia.

18 We believe that the path to such an
19 agreement, as with any other nation, is for these
20 countries to demonstrate the capacity to implement and
21 enforce trade and investment related legislation and
22 to maintain a demonstrated institutional consistency

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1 across administrations.

2 Peru is a country of special importance
3 and, as a result, the council has activated the Peru
4 action group, otherwise known as the PAG, the
5 successor to the independent North American Peruvian
6 Business Council to advocate for an expanded bilateral
7 relationship with Peru generally.

8 More recently, and this is really the
9 heart of the matter, we have sought to address
10 investment disputes that might otherwise impinge upon
11 the ability and willingness of the private sector to
12 advocate strongly on behalf of a trade agreement with
13 Peru.

14 Several of these disputes -- I think
15 you've already had testimony previously today, and
16 perhaps you have some upcoming this afternoon --
17 several of these disputes are particularly vexing.
18 For example, contrary to Peru's own policies
19 concerning foreign investment the Internal Revenue
20 Service, SUNAT, had seemingly embarked upon a campaign
21 to retroactively assess foreign direct investors.

22 To date such assessments against council

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1 member companies alone total over \$200 million the
2 latest occurring as recently as December 2003. Other
3 disputes remain in the courts with uncertain time
4 tables for resolution. Regrettably, these assessments
5 target the types of quality investment Peru seeks to
6 increase in size and number by a trade agreement. In
7 other words, the large direct foreign investment in
8 extractive industries and sectors and are contrary to
9 Peru's obligations under the ATPDEA.

10 As we have said publicly, the council and
11 their members remain strong advocates for an agreement
12 with Peru and the other Andean nations. I want to be
13 very clear about this. Our ultimate goal is to have
14 an agreement with Peru and with the other Andean
15 nations just as it is, frankly, to have an agreement
16 through the FTAA with the entire hemisphere. That's
17 our ultimate goal. That's what we are trying to
18 achieve.

19 As preliminary discussions progressed to
20 a more advanced stage in the Andean region, it is our
21 hope that all Andean nations take the necessary steps
22 to resolve demonstratively outstanding investment

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1 disputes with affected parties while preventing future
2 cases from arising as an essential manifestation of
3 readiness to enter into meaningful trade negotiations.

4 In this regard we understand there has
5 been some activity in Lima yesterday and today in
6 terms of the announcement for some willingness to
7 quickly resolve some of the outstanding disputes.
8 Frankly, we applaud that. We take note of that. We
9 need to learn a little bit more about it. We
10 understand that some of the disputed issues that may
11 be on their way to quick resolution have been long
12 standing, some as long as 30 years.

13 These do not affect the SUNAT cases,
14 though, I would stress. These are the cases that are
15 separate and are all unique in their own ways. But
16 the SUNAT cases, so far as we understand, have not
17 been put on fast track to resolution so that would
18 simply be something that I would call your attention
19 to.

20 Then finally in the broader context of
21 U.S. efforts within the western hemisphere, the
22 council, of course, supports efforts to pursue a path

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1 of integration and harmonization both among the Andean
2 countries and among free trade agreements that already
3 exist in Chile, NAFTA, Central America Trade
4 Agreement, Dominican Republic, what have you.

5 To the greatest extent possible Andean
6 agreements should be compatible with the existing
7 agreements, as I just said and, at the very least, the
8 terms of the agreement should be conducive to future
9 integration, again, holding the door open to a broad
10 FTAA. In this way, the bilateral and subregional
11 agreement will truly be a path toward hemispheric free
12 trade through the free trade area of the Americas.

13 I would thank you again very much for
14 allowing us the opportunity to testify. If I can try
15 to answer any questions you may have, I would be happy
16 to do so.

17 CHAIR SURO-BREDIE: Our first question by
18 Bennett Harman.

19 MR. HARMAN: We appreciate your bringing
20 to our attention some of these investment disputes and
21 tracking them closely as are we. We would be curious
22 if you could comment a bit further on any indications

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1 of recent progress that you have seen, in particular
2 in the area of the SUNAT cases we heard this morning
3 a reform to institute an tax ombudsman to give an
4 independent assessment of SUNAT cases, I believe, with
5 the potential to review whether to appeal when SUNAT
6 loses a case. I don't know if you have any comment
7 as to whether these developments are positive.

8 MR. FARNSWORTH: The announcement of the
9 intent or the desire to do those things, I think, is
10 positive. The announcement of doing and their actual
11 implementation are two separate steps. Frankly, we
12 would like to see implementation of those things. I
13 think the idea of an ombudsman is a creative one.
14 It's a positive step.

15 The problem with the SUNAT case has not
16 been that -- let me put it differently. The SUNAT
17 cases are many of them in the courts and the courts
18 are independent in Peru, as we all know. The fact of
19 the matter is all governments and democracies they are
20 a separation of powers, but the government of Peru has
21 not always taken steps that would indicate the desire
22 to actually have these issues resolved and, in fact,

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1 has taken steps on occasion that would indicate a
2 desire to not necessarily have them resolved or not
3 have them resolved in a favorable way to the
4 plaintiffs.

5 What I mean specifically is that in
6 several of the cases where a favorable decision has
7 been returned by the courts, and by favorable I mean
8 favorable for the companies themselves, the government
9 then has appealed that decision back to the courts
10 What you have is what somebody has described as a ping
11 pong game.

12 The ball goes over the net. Okay, fine.
13 That's good news. Then the ball goes back over the
14 net and that's bad news. Then the ball goes over the
15 net and you see the analogy. You never have
16 resolution of it. Yes, it's in the courts. Yes, it's
17 being discussed. Yes, there's good will from
18 favorable decisions but at the end of the day there's
19 no progress.

20 In the meantime, penalties accrue,
21 interest accrues, and as you're trying to raise
22 capital on the international markets, all of this is

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1 taken account in terms of the bond structure of the
2 company, the corporate parent, not the Peruvian
3 subsidiary. That goes to the cost of money for
4 companies, the ability to raise capital and, frankly,
5 the desire to put more money into not just individual
6 countries but in the international developing markets
7 generally.

8 So, yes, if there was a significant
9 implementation of a way to finally resolve these
10 cases, that would be very positive and the desire to
11 do that, the announced desire to do that is a positive
12 step so I would certainly applaud that.

13 MR. HARMAN: If council has identified
14 ways in which a U.S. FTA could help to avoid such a
15 dispute from arising in the future or facilitate the
16 resolution.

17 MR. FARNSWORTH: Yes. It's a very good
18 question. In fact, members of the business community
19 had thought they had done that before the investments
20 went originally through the tax stability agreements.
21 In fact, the previous government signed the agreements
22 saying essentially, and I'm not a lawyer so I'll

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1 paraphrase, but essentially that the tax regime remain
2 constant over a period of 10 years. Basically the
3 company invests.

4 The tax structure of that investment
5 remains the same in terms of the rate and all sorts of
6 things. It's that agreement, that previous agreement
7 that is now being challenged in the courts by the
8 government of Peru through SUNAT. So there is a
9 question of if you put something like that in a future
10 trade agreement, it can always be overturned or
11 relooked at or certainly raise cost through a
12 litigation process. That comes to the whole issue of
13 investor resolution. I think that is a critical
14 aspect of any agreement that might go forward between
15 the United States and Peru or, for that matter, the
16 United States, Bolivia, Ecuador, and certainly
17 Colombia. We are not singling out Peru here. It goes
18 to the heart of the matter of prompt, adequate, and
19 effective redress for investment disputes.

20 This is not to say that every time a
21 company has a dispute the company is right. By no
22 means are we saying that. What we're saying is that

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1 disputes when they arise need to have a fair
2 transparent way to work resolution in a way that we
3 are not sitting here 30 years from now, or 20 or even
4 10 years from now, arguing about the same issues so I
5 would say that's a critical aspect of it.

6 And you can try to shape the future
7 investment climate through the agreement but I think
8 there's an understanding that future governments may
9 not feel bound by previous ones. At least based on
10 where we are in terms of the current experience right
11 now. To get around that I think you would need to
12 have some way of independent objective redress.

13 CHAIR SURO-BREDIE: We have no more
14 questions. Thank you very much, Mr. Farnsworth.

15 MR. FARNSWORTH: Thank you.

16 CHAIR SURO-BREDIE: This hearing is now
17 adjourned until 1:30.

18 (Whereupon, at 12:25 p.m. off the record
19 for lunch to reconvene at 1:30 p.m.)
20
21
22

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:44 p.m.

3 CHAIR EISS: The meeting will come to
4 order. First, let me apologize for starting a few
5 minutes late. I appreciate the indulgence of the
6 witnesses. Hopefully as the afternoon progresses, we
7 will catch up our time and get closer to back on
8 schedule so that we can keep people according to the
9 schedule, move expeditiously but completely through
10 all the testimony and complete close to the scheduled
11 ending time of 5:00 p.m.

12 Trade Policy Staff Committee, an
13 interagency body shared by the U.S. Trade
14 Representative's Office is conducting this hearing.
15 In addition to USTR there are representatives from the
16 Departments of Agriculture, Commerce, Labor, State,
17 and Treasury. Members of the USTR staff working on
18 this negotiation also will be present.

19 I'm not going to review and restate all of
20 the comments of introduction that were made this
21 morning by Carmen Suro-Bredie at the initiation of
22 this hearing but just to make sure we're all in the

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1 right place and on the right page, I'll remind people
2 that the subject of this hearing is the proposed
3 negotiation of a free trade area with four Andean
4 countries, Bolivia, Colombia, Ecuador, and Peru.

5 For the benefit of the recorders, I would
6 ask that at the start of each testimony the witnesses
7 identify who they are and as you answer questions you
8 also indicate who it is that is responding so that
9 they will be able to best track. I would also ask at
10 this time that the members of the agencies briefly
11 introduce themselves and give their agency
12 affiliations starting on my far left.

13 MR. MIRELES: Roger Mireles, U.S.
14 Department of Agriculture.

15 MS. BROWN: Karen Brown, Bilateral Trade
16 Office of the State Department.

17 CHAIR EISS: I'm Donald Eiss. I'm with
18 the Office of Policy Coordination of the U.S. Trade
19 Representative's Office.

20 MS. LATTIMER: I'm Mary Lattimer. I'm
21 with the Agricultural Affairs Office at USTR.

22 MS. EARP: Gordana Earp, Office of

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1 International Trade Policy at Treasury.

2 MR. ROMERO: Carlos Romero, Bureau of
3 International Labor Affairs, U.S. Department of Labor.

4 MR. STETSON: Rich Stetson, Office of
5 Textiles and Apparel, Department of Commerce.

6 CHAIR EISS: At some points during the
7 afternoon individuals from the agencies will change
8 and I would ask that the first time they ask a
9 question or whatever they also identify themselves for
10 the benefit of the transcriber.

11 Without further laborious introduction and
12 with again the apologies of the agency group for the
13 delay, I would invite Mr. Lee McConnell, the Sweetener
14 Users Association, to present his views.

15 MR. McCONNELL: Thank you, member of the
16 Trade Policy Staff Committee. It's an honor to appear
17 before you. The Sweetener Users Association
18 represents companies in confectionery, dairy products,
19 soft drinks, grocery manufacturing, and other
20 industries. My name is Lee McConnell. With me is Tom
21 Early, a well-known sugar economist with Promar
22 International who will be available to address any

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1 technical questions that you may have.

2 Sweetener Users Association is in favor of
3 comprehensive free trade agreements with Colombia,
4 Peru, Ecuador, and Bolivia. Although I will confine
5 my remarks to these Andean nations, we also favor
6 comprehensive FTAs with Panama, Thailand, the Southern
7 African Customs Unions and other countries.

8 Our members would underline at least twice
9 the word "comprehensive." We are not in favor of
10 agreements that excludes specific products whether
11 sugar or anything else. Although we did not like some
12 of the sugar provisions in the Central American FTA,
13 that agreement does permit growth in those countries'
14 shipments of sugar to the United States.

15 The Andean countries represent an
16 aggregate market opportunity approximately the same
17 size as CAFTA. There are significant export growth
18 opportunities for all of these nations and for the
19 United States if we can achieve comprehensive trade
20 deals with them.

21 There's no justification whatsoever for
22 treating these nations less favorably than the CAFTA

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1 countries by excluding sugar. Excluding any product
2 on our side means that our negotiating partners have
3 license to do likewise. Why do you think that the
4 exclusion of sugar from the Australian FTA was opposed
5 by other U.S. producer groups? It's because they
6 worried that this precedent if once established would
7 limit what they can achieve in subsequent trade
8 agreements.

9 To our members the idea of comprehensive
10 trade agreement is about more than just sugar. Our
11 companies export many different products and would
12 like to export more. We believe these opportunities
13 will be constrained if the United States tells its
14 trading partners that partial agreements and half
15 measures are acceptable. From that standpoint, the
16 Australia FTA should be seen as an aberration, not as
17 a template as some have called it.

18 This committee is well aware that the
19 United States restricts sugar imports more tightly than
20 imports of almost any other product. Within the
21 extremely restrictive tariff rate quota all the
22 countries we are discussing today have 88,455 metric

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1 tons of quota access this year.

2 The various countries' sugar trade
3 position varies quite a bit. Colombia is by far the
4 largest exporter with about 1.3 million tons of
5 exports. Even though the other countries' total
6 exports are less, each one is a significant producer
7 of sugar and several of them rely on the USTRQ for a
8 major portion of their total exports.

9 We support full liberalization of sugar
10 trade with these countries. Even gradually increasing
11 the amounts of access in the early years of an
12 agreement would be mutually beneficial.

13 In my written testimony I've listed a
14 number of benefits that would result from more open
15 sugar trade with the Andean countries. I will not go
16 through all of these but certainly we are in agreement
17 with previous analytical work by the International
18 Trade Commission which finds that the current sugar
19 program creates substantial welfare losses to the U.S.
20 economy and that more liberal trade would provide a
21 net benefit to consumers.

22 Beyond this several other benefits are

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1 worth mentioning and I hope that the Trade Policy
2 Staff Committee will take these factors into account
3 as it works on potential agreements.

4 First, it's becoming increasingly apparent
5 that the U.S. sugar program is a job killer. Tom
6 Early has tried to quantify some of these employment
7 losses in a paper that is attached to my written
8 statement.

9 To the extent the Free Trade Agreements
10 may slightly mitigate the fundamental reason for these
11 job losses that is the huge gap between U.S. and world
12 sugar prices, they may help create incentives for
13 employment in the United States rather than off shore.

14 Second, there is the simple matter of two-
15 way trade. Every dollar of foreign exchange earned by
16 the Andean countries from exporting sugar is a dollar
17 they can use to buy U.S. agricultural and industrial
18 products. Already Colombia is the largest buyer of
19 our farm products in this hemisphere apart from Canada
20 and Mexico. The potential for further growth and
21 trade with all these countries is obvious.

22 Third, additional sources of sugar supply

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1 will increase competition in the U.S. sugar market.
2 There are only two independent cane refiners left who
3 are not owned by sugar growing companies. Market
4 power amongst sellers of sugar has become increasingly
5 concentrated.

6 This is an issue that seems to concern
7 policy makers when it occurs in the meat or dairy
8 sectors, but for some reason the sugar market goes
9 unnoticed. We believe a wider variety of sellers who
10 are better able to gain access to our market will be
11 healthy for competition.

12 We would like to spend some time
13 addressing an issue that seems to come up whenever
14 anyone proposes the slightest liberalization in U.S.
15 sugar policies. That question is wouldn't the Andean
16 countries simply swamp the U.S. sugar market with
17 sugar if they could thereby crippling the U.S. sugar
18 program?

19 Not everybody thinks the current sugar
20 program is a good idea but regardless of your views on
21 that, the predictions of doom really don't hold up
22 when you look at them very closely. First of all, in

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1 the United States we no longer have the refining
2 capacity to process large quantities of raw sugar
3 which is a form in which most world market sugar is
4 traded.

5 Moreover, most of the 500,000 tons of
6 excess capacity is owned and controlled by U.S. sugar
7 producers so it's within their power not to import
8 excessive amounts of raw sugar. Secondly, U.S. food
9 and beverage companies have very stringent quality
10 standards and specifications that most world market
11 refined sugar does not meet.

12 Having a reliable domestic supplier who
13 can deliver to those standards in a just-in-time
14 industry environment is also a very important
15 consideration for industrial sugar users. Not many
16 cane mills in Central or South America are likely to
17 meet these requirements.

18 Third, there are bona fide defenses
19 available in the form of countervailing duties against
20 any world market refined or raw sugar that is unfairly
21 subsidized and exported to the United States. We
22 already apply such duties against refined sugar for

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1 various European countries.

2 The doomsday scenario also assumes that a
3 rational exporter would never do anything except to
4 sell to the U.S. market since sugar prices here are
5 three times the world price so full liberalization
6 would mean that every last ton of the country's
7 exportable surplus production would go to the United
8 States and not one ton would go to any other
9 destination.

10 We think there are several things wrong
11 with that assumption. Do these countries really
12 abandon every other customer relationship they have
13 anywhere in the world and deliberately become
14 dependent on the United States as their sole market?
15 Would they really feel that their access to the U.S.
16 market was so secure that they could afford to give up
17 all their other customers to somebody else?

18 With a realistic knowledge of U.S. sugar
19 politics, I'm not sure that these countries would
20 place that bet. Let's remember why these countries
21 value access to the U.S. market. It's because of the
22 price premium. But in the doomsday scenario of the

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1 sugar lobbyists millions upon millions of tons of
2 sugar pour into the United States that would eliminate
3 the world market premium to the states and the
4 exporting countries know this.

5 So this scenario assumes that exporting
6 countries will voluntarily, consciously, and
7 deliberately do what is manifestly against their own
8 self interest, that they will export until the premium
9 disappears. Is that really likely? It seems much
10 more likely they would take advantage of new
11 opportunities but also keep existing customer
12 relationships and maximize their economic gains by
13 exercising some export restraint.

14 We would encourage the committee to
15 consider the likely behavior of exporters in a
16 liberalized market. We hope you will simply not
17 accept the assumption that foreign sugar would swamp
18 the U.S. market but examine it critically.

19 In conclusion, we hope that in your work
20 you will consider the benefits to sugar consumers as
21 well as cost to sugar producers. We hope you will
22 consider the effects on other U.S. agricultural

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1 producers if the United States excluded sugar or any
2 other commodity. We also hope you will consider the
3 most likely real world economic behavior of U.S. food
4 and beverage manufacturers, U.S. cane sugar refiners,
5 and our FTA partner countries, not the "sky is
6 falling" rhetoric that has more to do with media spin
7 than sober economics.

8 Thank you very much for the opportunity to
9 appear and we will be happy to take your questions.

10 CHAIR EISSLER: Thank you very much. For the
11 first question I would look to Mary Lattimer from the
12 USTR.

13 MS. LATTIMER: Thank you for your
14 testimony and the written paper that you submitted
15 along with it, as well as your statement. I wanted to
16 shift a little bit from the focus of your testimony
17 which, at least, I perceived as the opportunity that
18 your organization sees in including sugar in this deal
19 because it's an input into what you produce.

20 I wanted to shift the focus a little bit
21 to the question of export opportunity for the products
22 that you produce and the kinds of barriers that you

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1 face in these Andean countries with which we are going
2 to negotiate to the import by them of your products.

3 You reference at the outset of your
4 testimony kind of the universe of products that you
5 produce. We know there's an Andean price ban that
6 hooks at least the sugar. I don't know off hand
7 whether or not it hooks your stuff as well.

8 You mention in your written testimony that
9 there are over-quota tariffs that these countries
10 maintain that are prohibitive in nature. But I
11 wondered if you could tell us a little bit about the
12 barrier that you see that these countries put up on
13 your products if we were to want to export more of
14 them to them.

15 MR. McCONNELL: I work for a chocolate
16 company so I think I can speak to that. We have very
17 good exporting relationships in places that you
18 wouldn't normally think things might happen. We make
19 a large amount of ice cream coating for El Salvador.
20 This is not a place that you would think you would
21 find a premium ice cream product.

22 We look at this hemisphere and the ability

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1 to produce value-added chocolate products. We
2 understand that the critical mass is there of the
3 consumer. We understand that there's a taste for
4 chocolate and all things that taste like chocolate so
5 it doesn't necessarily have to be milk chocolate
6 applications. It could be baking applications.

7 I would say that our business in Latin
8 America, I would say even exclusive of Mexico which
9 has been NAFTA driven if you get into Central America,
10 we've probably grown that business 35 to 40 percent in
11 the last five to six years to the extent that we can
12 remove barriers to entry, price barriers to entry or
13 nontariff barriers to entry for any of those products.

14 It's a capital intensive business and to
15 the extent that we feel the capital is probably more
16 effectively employed here, it makes sense to export
17 rather than probably to produce it locally. I would
18 say we see sort of the same type of opportunities in
19 Colombia. We source a lot of cocoa beans from
20 Ecuador.

21 There has been actually some two-way trade
22 back and forth between us buying beans and sending

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1 products back down there. There is a local processing
2 industry. There is a local confectionery industry but
3 certainly we would think the market for both semi-
4 finished chocolate products and finished chocolate
5 products is quite rich there.

6 MR. EARLY: My name is Tom Early. If I
7 could add something to that. As part of our work on
8 sugar we track trade and sugar containing products.
9 There's some information on that in Lee's statement.
10 If you look at what's happened over the last few
11 years, there's over 200 tariff lines with sugar in the
12 product and we have estimated the sugar content.

13 Our exports of sugar in products the last
14 few years have been roughly 500,000 tons more or less.
15 Our imports have grown from about that level over the
16 last six years to over a million tons. It's one of
17 the things affecting the U.S. sugar market.

18 Those products that are coming in are
19 products that are competing with the products of the
20 members of this association. I think one central
21 reason that they have favored trade liberalization in
22 sugar is that they favor trade liberalization

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1 generally.

2 When you look around the world tariffs and
3 other barriers on our consumer products are higher
4 than those that we impose on imports so it's a
5 consistent position. I think while these countries
6 aren't the biggest countries in the world, we agree
7 that this is a step-by-step process and that it would
8 be a positive development for exports of cookies and
9 soft drink concentrates and all kinds of things.

10 MR. McCONNELL: I think the typical
11 experience is if you raise incomes, you also tend to
12 raise product standards to the consumer at the same
13 time. I think if you talk to any branded food
14 manufacturer and when they look at a business that
15 when all is said and done is population driven the
16 consumption of their food products, if you can raise
17 incomes in those products and you can do it via
18 trading mechanisms, you open up markets.

19 MS. LATTIMER: Thank you.

20 MR. MIRELES: Again, Roger Mireles. Just
21 shifting back to the import side. In your testimony
22 you cite the U.S. sugar program as a reason for the

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1 decline in food and beverage jobs but my question is
2 what shares of the cost of your members' typical
3 products are accounted for by sugar?

4 MR. EARLY: My name is Tom Early. I think
5 if you look broadly at the whole collection, typically
6 ingredient cost in food products are on the order of
7 25 percent. That's been a declining proportion as the
8 service component and convenience component of all
9 kinds of foods has increased. That's going to range
10 from, I think in confectionery -- Lee can probably
11 speak to that -- it's probably closer to 40 or 50
12 percent.

13 For sugar in particular, in our tracking
14 of all these sugar containing products it varies
15 widely from like 5 percent and in a hard sugar candy
16 it's getting up towards 80 percent the rest of it
17 being corn sweetener. It's highly variable but on
18 average ingredients in total are about 25 percent of
19 retail food prices.

20 CHAIR EISS: Mr. McConnell, Mr. Early,
21 thank you very much.

22 The next witness is Mr. Stephen Lamar of

1 the American Apparel Association.

2 MR. LAMAR: Thanks. Good afternoon. It's
3 a pleasure to be here today to speak with you about
4 the free trade agreement the United States is
5 preparing to negotiate with the four nations of the
6 Andean region. Actually three, I guess, and then
7 hopefully a fourth one coming on.

8 From the outset let me express support for
9 the negotiation of this FTA. Through the Andean Trade
10 Preference Program there currently exist a mutually
11 beneficial relationship between the United States and
12 the Andean region. We are able to import certain
13 kinds of footwear and clothing duty free which creates
14 an incentive to do business with these countries. In
15 many cases these products use U.S. inputs.

16 As a result, we simultaneously achieve the
17 following benefits. We develop nearby reliable
18 suppliers. We stimulate the export of U.S. goods and
19 services thereby stimulating U.S. jobs. We stimulate
20 job creation and economic development in these nations
21 which leads to political stability. We create an
22 economic platform that helps move these countries away

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1 from destabilizing pressures in the region and in the
2 United States and we remain able to offer U.S.
3 families a wide variety of high-quality reasonably
4 priced apparel and footwear.

5 As we move from the trade preference
6 program to the full FTA partnership we do a couple of
7 things. We create additional markets for U.S. inputs
8 and finished products since U.S. exports will now
9 qualify for reciprocal duty free status in those
10 countries' markets. We expand the partnership to
11 include products not currently eligible for preference
12 such as fabrics, yarns, and made up textile articles.

13 We simplify the Customs requirements and
14 make it easier for the existing categories of footwear
15 and textile articles to qualify for duty free
16 treatment and we foster business certainty and
17 investment predictability since the FTAs are permanent
18 and are no longer based on unilateral conditions.

19 At the same time these agreements pose
20 minimal risk of injury to the United States. Import
21 penetration in these industries is considerable
22 reflecting the economic reality that most apparel and

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1 footwear is no longer produced in the United States.

2 Moreover, the region does not represent
3 significant sources of apparel or footwear when
4 measured against total worldwide imports. If you take
5 it all combined it probably represents about 1 percent
6 during 2003.

7 If negotiated properly, an FTA will
8 continue to anchor the trade that already enjoys duty-
9 free status while creating enough incentives to
10 stimulate new trade and investment linkages. But the
11 benefits to the United States and the region that I've
12 outlined above are severely diminished if the
13 agreement is implemented in a manner that is too
14 restrictive or complicated.

15 The economic incentives offered by duty-
16 free access to the U.S. market are very powerful but
17 if the cost of achieving that duty-free status through
18 burdensome compliance, costly Customs procedures, and
19 rigid and expensive input requirements exceeds the
20 margin of the duty saved, that incentive quickly
21 evaporates.

22 We strongly encourage the negotiation of

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1 an FTA with simple and flexible rules of origin,
2 common sense Customs procedures that reflect business
3 operations, and market access provisions that commence
4 on day one with the duty-free environment.

5 If we can keep the apparel and footwear
6 industry producing product in this hemisphere, they
7 will naturally look to this hemisphere for their
8 inputs and other raw materials as their first choice.
9 I think somebody once said if you build it, they will
10 come. I think that applies here as well.

11 My testimony discusses further the kinds
12 of concepts we like to see included in an FTA with the
13 Andean region. I just would like to make a couple of
14 points if I may. First, the job is not done when
15 Congress ratifies the final agreement. I think you
16 all know this pretty well. Predictable regulations
17 must be swiftly and clearly promulgated to ensure the
18 agreement reaches its fullest potential. We are still
19 awaiting final regs for the Andean program which
20 concluded two years ago, as well as the CBI program
21 which was concluded four years ago.

22 Second, the benefits of the Andean FTA are

1 minimized if it's negotiated with that regard to other
2 FTAs previously negotiated, or soon to be negotiated,
3 by the United States with other countries in this
4 hemisphere whether through a culmination provision or
5 some other mechanism. I'm not sure what our term of
6 art is these days. We need to make sure that these
7 agreements are integrated with each other.

8 Third, and on that point, the relationship
9 with the U.S. Central America FTA is particularly
10 important. For some apparel companies the operations
11 in the Andean nations are closely linked to their
12 operations in Central America which are often much
13 larger. There is a very real concern that if Central
14 America sees this to be a competitive apparel supplier
15 because of delays in the implementation of the Central
16 America FTA until 2005, this will negatively affect
17 the Andean regions.

18 Fourth, the FTA should explicitly or
19 implicitly recognize that many products and inputs are
20 no longer made in the United States. The rules should
21 be constructed in such a way that they do not
22 discourage trade because of such short supply

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1 scenarios.

2 Fifth, with footwear in particular, we
3 worked with other U.S. footwear associations to
4 advocate a simple and flexible substantial
5 transformation style of origin rule coupled with
6 immediate duty-free treatment for all but 17 specific
7 eight digit HTSUS lines. They get provided that
8 information before and it's been hardwired into a lot
9 of other agreements. If you need more information on
10 it, I would certainly be happy to provide it for you.

11 Six, we support the continued right of
12 U.S. companies to avail themselves of duty drawback
13 and duty deferral programs as in the existing ATPDEA
14 as well as the recently negotiated U.S. Central
15 America free trade agreement. And, finally, we
16 support FTAs that contain effective labor provisions
17 that are consistent with the requirements of the trade
18 promotion authority.

19 At the end of the post quota environment
20 in 2005, the marginal benefit of any particular
21 preference program will become even smaller since the
22 quota cost currently imposed on many nonpreference

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1 partners will diminish. As a result it will become
2 increasingly important for the cost associated with
3 using any preference program or FTA to diminish as
4 well if we want those programs to remain competitive
5 for textiles and apparel.

6 While there is no similar action forcing
7 event for footwear, the heavy concentration of this
8 industry in Asia and the need for diversification
9 makes a flexible and pragmatic FTA for footwear
10 equally desirable.

11 Let me reiterate our very strong support
12 for this FTA and our hope that they will be swiftly
13 negotiated and implemented in a commercially
14 meaningful manner so that benefits noted above can be
15 quickly realized. Thank you.

16 CHAIR EISS: Thank you, Mr. Lamar.

17 For the first question, I turn to Bennett
18 Harman from the USTR.

19 MR. HARMAN: Thank you, Steve. Very
20 comprehensive remarks. One question is in light of
21 the phasing out of the multi-fiber arrangement quotas,
22 would the FTAs be sufficient for the Andean countries

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1 to remain competitive vis-a-vis particularly Asian
2 suppliers?

3 MR. LAMAR: I think the more you can
4 signal that these things are going to take effect as
5 soon as possible, I think the more likely they will be
6 sufficient. I think the device that was used in the
7 Central America FTA was to make the duty benefits
8 retroactive back to 1/1/04.

9 One of the purposes of that was to give
10 people an added incentive to stay in the region so
11 rather than start looking for other souring. I think
12 that is the kind of thinking you need to do to really
13 give people that comfort that this is a place where
14 they really should be placing more of their business
15 rather than less business.

16 Particularly if we're talking about
17 negotiations that wrap up in -- I'm just going to
18 throw in a date -- next March and if it takes the time
19 to get those in place, then we're looking at 1/1/06
20 for the actual implementation date. If you can look
21 to the way of trying to make the benefits come in
22 faster rather than slower, I think that would probably

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1 help out.

2 CHAIR EISS: Department of Commerce.

3 MR. STETSON: Yes. Thanks, Steve. Steve,
4 could you elaborate on what you mean by the simple and
5 flexible rules of origin, the common sense Customs
6 procedure that reflect business operations and the
7 market access provisions that commence with the duty-
8 free environment?

9 MR. LAMAR: Okay, market access
10 provisions. I'll start with that. What we mean by
11 that is simply that all the trade really should be
12 duty free on day one of the agreement unless we have
13 a sort of earlier than day one agreement as in the
14 case of textiles and apparel under the Central America
15 program.

16 As you go into a formulation where you are
17 phasing out duties over time given the enormous
18 changes that this industry is going to go through in
19 the next year, it really is meaningless. I mean, over
20 the long term it might mean something but certainly
21 over the short term you'll lose the benefits so duty-
22 free on day one really we think is a required part of

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1 this.

2 The Customs procedures, there our reaction
3 is to some of the things we've been seeing a couple of
4 things. One is getting the regulations out as clearly
5 as possible. I understand Customs has just had an
6 amazing amount of work to do in terms of all the
7 regulations they are putting out but really trying to
8 make a priority to get some of these provisions out
9 there so people can start to plan the business as soon
10 as possible.

11 Once they have some predictability that a
12 particular garment or particular item of footwear is
13 going to be eligible for duty treatment, then they can
14 start placing the business. We've had a lot of fits
15 and starts with the CBI and the Andean program, even
16 on the Africa program in terms of what people think is
17 eligible but what ultimately then became eligible
18 based on whether it was cut here, cut there, whether
19 it's got a piece of a drawstring.

20 I mean, all sorts of things go into it.
21 That's one aspect of it. The other aspect of the
22 Customs provisions is trying to make sure that the

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1 verification, the documentation requirements which are
2 important, and you really need to be part of this, are
3 done in a way that they just really reflect the
4 natural business operations.

5 One of the things that we find is there
6 is, in effect, a duplicate record keeping requirement
7 for the CBI because of the way in which Customs is
8 performing its inspections. We've worked with them
9 and worked with our colleagues in the textile industry
10 to figure out if there is a way to eliminate that
11 burden. But what happens is unless we do that, the
12 burden adds cost to using that program and encourages
13 you to go to the programs where there is less cost
14 which might be a full package from outside of an FTA.

15 The third thing is on the rules of origin.
16 We are pulling our members right now to figure out
17 what kinds of rules of origin specifically might be
18 able to work so we can go back and present that to you
19 all as you are getting ready to commence the actual
20 negotiations.

21 I just kind of would fall back on the
22 position that as you make it easier to do business in

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1 terms of being able to put a garment or a shoe
2 together using inputs, you make it easier for the
3 customer to exist. When you make it easier for the
4 customer to exist, then the suppliers can go into that
5 customer.

6 Many times the U.S. Textile Industry, I
7 know, is very geared up towards a rule that requires
8 all of the yarn and all the fabric to originate in one
9 particular place. What you find happening, though, is
10 that may eliminate the choices. Just as an example,
11 everyone up here on the panel is wearing a tailored
12 coat. Under the CBTA rules of origin you're required
13 that all of the fabric elements in that coat must
14 originate in the United States.

15 If it turns out that for whatever reason
16 a piece of the pocketing material you can't get in the
17 U.S., maybe because of short supply but maybe because
18 you have had an argument with that supplier and that's
19 the particular kind that you need and you can't meet
20 the threshold for short supply termination, that
21 entire garment goes somewhere else.

22 The people that provided the wool, the

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1 sewing thread, the buttons, all the other things that
2 went into it, all of those U.S. export sales get lost.
3 The more flexibility you create in that, the more
4 opportunities you have for different people in the
5 supply chain to make a sale.

6 MR. STETSON: Thanks, Steve. Could you
7 also elaborate on your objectives for accumulation of
8 inputs and linkages between other countries with FTAs
9 and how it would expand the level of economic
10 activity?

11 MR. LAMAR: We would like to see the
12 agreements linked together. Our attitude would be
13 there really shouldn't be any restrictions on the
14 sharing of inputs among the various FTA partners so
15 you can be in Central America, you can use U.S.
16 inputs, Andean inputs, you could be in the Andean
17 region and use them back and forth. We really think
18 there should be, no pun intended, a seamless linkage
19 between the various countries to be able to use their
20 inputs without restriction. We think that creates the
21 most opportunities.

22 MR. STETSON: Thanks.

1 CHAIR EISS: Mr. Lamar, thank you very
2 much.

3 MR. LAMAR: Okay. Thanks.

4 CHAIR EISS: Our next witness is Mariana
5 Pachecho, Director for International Trade on behalf
6 of the National Association of Enterprises of
7 Colombia, Cotton, Fiber, Textile, and Apparel Chief.

8 MS. PACHECHO: Thank you. Good afternoon.
9 My name is Mariana Pachecho. I'm Director of
10 International Trade of Sander, Travis, and Rosenberg.
11 Here with me is Mark Haney, also with Sander, Travis,
12 and Rosenberg.

13 I am pleased to testify today before the
14 Trade Policy Staff Committee on behalf of the National
15 Association of Enterprises of Colombia and its cotton
16 fiber, textiles, and apparel chamber to share with you
17 some of the critical negotiating objectives of this
18 industry for the U.S. Andean Free Trade Agreement.

19 ANDE was founded in 1944 and is a
20 nonprofit association that represents the Colombia
21 private sector and toward the secure environment for
22 business. The association represents about 30 present

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1 of Colombia's total GDP and 60 percent of the
2 industrial GDP. Approximately 80 percent of our
3 affiliates have direct business relations with the
4 United States.

5 Colombia possesses a vertically integrated
6 textile and apparel industry that is a natural partner
7 to U.S. textile and agricultural interests. Colombia
8 is well known around the world as a source of high
9 quality fashion merchandise. This sector is critical
10 to the Colombian economy and it's continued growth and
11 stability.

12 The implementation of the Andean Trade
13 Promotion and Drug Eradication Act, ATPDEA, program
14 has had a dramatic effect on bilateral, textile, and
15 apparel trade between the United States and Colombia
16 illustrating the mutual importance of this program for
17 our two countries.

18 For example, during 2003 Colombia's
19 exports of textiles and apparel to the United States
20 increased 45.8 percent. U.S. exports of textiles and
21 apparel to Colombia increased 50 percent and U.S.
22 exports of cotton to Colombia increased 33.8 percent.

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1 The hemispheric industry will come under significant
2 increased competition next year as a result of the
3 final stage of quota integration for WTO countries.

4 The enhancement of the bilateral
5 relationship between the United States and Colombian
6 industries is necessary to confront this competition
7 and remain viable over the longer term. A recent
8 study by the ITC noted that Colombia, "Is likely to
9 become less cost comparative in the U.S. market with
10 Asian suppliers following quota removal."

11 It is, therefore, imperative that a free
12 trade agreement between the United States and Colombia
13 contain the following provisions among others relating
14 to textiles and apparel. Immediate duty-free
15 treatment for all textiles and apparel products and
16 flexible rules of origin for these projects and a
17 short supply provision.

18 The textile and apparel industry is of
19 high importance to Colombia employing nearly 400,000
20 people, or 22 percent of industrial work force.
21 Finally, I would like to add that ANDE supports
22 inclusion of meaningful labor and environmental

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1 provisions that will encourage both of our countries
2 to enforce our existing laws in these areas.

3 It is imperative that the industry
4 provides additional jobs as an alternative to coca
5 cultivation and drug trafficking. ATPDEA was
6 responsible for the creation of 60,000 new jobs last
7 year in Colombia. Continued industrial development in
8 Colombia is crucial to our security. By providing
9 alternatives to coca and illegal drug production, we
10 can reduce the violence and insecurity directly caused
11 by those activities.

12 Thus, we can contribute to economic
13 security for the western hemisphere. Also, the
14 implementation of a free trade agreement with
15 meaningful and flexible rules would have a positive
16 impact not only for the Colombian industry and economy
17 but also for the U.S. textile industry and U.S.
18 consumers as well.

19 Thank you. I look forward to answer your
20 questions.

21 CHAIR EISS: Thank you, Ms. Pachecho.

22 Mr. Harman.

1 MR. HARMAN: Thank you. Could you
2 elaborate a little bit on how great a flexibility in
3 the rules of origin including increasing U.S. textile
4 exports to the Andean region?

5 MS. PACHECHO: Sure. I would just take
6 again the same words as Steve Lamar. Basically more
7 flexible rules of origin would give more opportunities
8 between trade between ANDE and its members and, of
9 course, U.S. industries. More flexible rules, more
10 opportunities, more jobs. Both objectives are well
11 served.

12 Just because of ATPDEA I can repeat that
13 U.S. exports of textiles and apparel to Colombia
14 increased more than 50 percent and exports of U.S.
15 cotton also increased by almost 40 percent. The more
16 flexible rules, the more opportunities for new
17 businesses to grow.

18 MR. STETSON: Thanks, Mariana. In your
19 estimation what Colombian textile and apparel products
20 imported into the U.S. do you anticipate will benefit
21 most from the duty-free treatment under the Andean
22 FTA?

1 MS. PACHECHO: That's a very good
2 question. I would say not only woven which are mostly
3 the products that the Colombian industry specializes,
4 but also we've seen whole variety of new apparel
5 products that have increased as the result of TPDEA.
6 We've seen wool men and women's suits, also children's
7 wool suits. We've seen knit products, cotton made
8 products coming from Colombia.

9 We've seen a whole variety, socks, you
10 name it. I think ATPDEA has been very useful not only
11 in its social and security objectives but also in
12 increasing two-way trade. Textiles, all sorts of hand
13 goods from the U.S. as well as cotton, and apparel
14 exported from Colombia to the U.S.

15 MR. STETSON: Thanks.

16 MR. ROMERO: Ms. Pachecho, you mentioned
17 inclusion of labor provisions in the free trade
18 agreement as a positive thing. I'm wondering why you
19 think the inclusion of labor provisions where our
20 country must enforce its own labor laws would help
21 investment in the textile and apparel industry in
22 Colombia?

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1 MS. PACHECHO: I think Colombia has a good
2 record in implementing and enforcing its own labor
3 laws. The textile and apparel industry is a good
4 example of that. Other industries as well. By the
5 end of last year we had more than 100 apparel
6 companies joined WWRAP, the World Wide Responsible
7 Apparel Production. Most of the Colombian industries
8 have very high labor standards as well as
9 environmental standards.

10 MR. HANEY: If I could add to -- this is
11 Mark Haney -- that American companies are concerned
12 with labor provisions and the whole labor issue has --
13 you know, the apparel industry has become a lightening
14 rod for worker's issues. By, in effect, enshrining
15 this in an FTA it gives the apparel companies more
16 certainty, something that they can hang their hat on
17 and say, "We source from a country that has these
18 labor standards." They are obliged to enforce them
19 under the FTA. It provides them more certainty which
20 is something they desperately want in their souring
21 decision.

22 CHAIR EISS: Ms. Pachecho, thank you very

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1 much.

2 MS. PACHECHO: Thank you.

3 CHAIR EISS: Our next witness is Natalie
4 Hanson of the U.S. Association of Importers of
5 Textiles and Apparel.

6 MS. HANSON: Good afternoon. Natalie
7 Hanson with International Development Systems on
8 behalf of the U.S. Association of Importers of
9 Textiles and Apparel. USAITA strongly supports the
10 timely negotiation of a free trade agreement with the
11 Andean countries, Bolivia, Colombia, Ecuador, and
12 Peru.

13 Both Colombia and Peru are already
14 significant suppliers of finished apparel goods to the
15 U.S. market. In particular, Peru is well known for
16 its high quality cotton tops and Colombia valued for
17 its similarly high end wool suits and tailored
18 clothing. Trade from each currently totals
19 approximately \$500 million per year with turns out to
20 be just less than 1 percent of the overall market in
21 terms of value.

22 With the proper terms an FTA with the

1 Andean nations would encourage vertical integration of
2 textile and apparel manufacturing within this
3 hemisphere to the mutual benefit of our trading
4 partners and U.S. firms as well as U.S. consumers.

5 USAITA members include manufacturers,
6 distributors, retailers, importers, and related
7 service providers such as shipping lines and Customs
8 brokers. Member companies account for as much as \$100
9 billion in U.S. apparel sales annually and sourced
10 from countries around the world.

11 The availability of viable sourcing options
12 within the western hemisphere is particularly
13 important to USAITA members companies who seek
14 quality, value, and timely delivery in their products.
15 In terms of general objectives for the FTA, we believe
16 the United States should look closely at the lessons
17 we've learned under current unilateral preference
18 programs and previously negotiated FTAs and develop a
19 more business friendly FTA environment.

20 This point cannot be overstated to the
21 extent that the FTA with the Andean countries
22 restricts flexibility or limits the ability of firms

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1 to integrate their operations within the hemisphere or
2 imposes significant paperwork requirements and related
3 complaints caused not applicable to non-FTA or non-
4 preference goods. The incentive to do business under
5 the FTA will be significantly undermined.

6 In the upcoming quota-free environment for
7 textile and apparel trade, U.S. importers will have
8 more choices. That increased competition means that
9 FTAs must offer more tangible benefits in order to be
10 relevant. That quota has been a primary, if not the
11 primary, consideration in the past. The
12 attractiveness of preferential duty treatment will be
13 much greater as we go forward.

14 Therefore, the key to ensuring that an FTA
15 with the Andean countries is meaningful and worth
16 consideration in companies' U.S. business plans is
17 whether or not it includes the right terms. At a
18 minimum a U.S. Andean FTA should include the immediate
19 elimination of tariffs on all consumer goods, flexible
20 rules of origin that are based on commercial reality,
21 and the establishment of expedited and streamlined
22 customs procedures and oversight that are not unduly

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1 burdensome or risky.

2 In terms of duties, virtually all consumer
3 goods produced in the Andean region already qualify
4 for duty-free access to the U.S. market under the
5 Andean Trade Preference Act as amended by the Andean
6 Trade Promotion and Drug Eradication Act.

7 With respect to apparel alone, the ATPDEA
8 has increased the attractiveness of sourcing many items
9 by eliminating quotas and duties. Given that
10 qualifying garments are already duty free it makes no
11 sense for the FTA to develop or include a gradual duty
12 reduction schedule.

13 With respect to origin rules, USAITA is
14 convinced that FTAs that include rules of origin
15 designed to encourage integration within the
16 hemisphere will create increased business for U.S.
17 fiber, yarn, and textile producers, as well as for
18 Andean producers and U.S. importers and retailers.

19 Regrettably, USAITA companies are
20 disappointed with certain aspects of the Central
21 America Free Trade Agreement, CAFTA. On the one hand,
22 CAFTA does include a flexible rule of origin for a few

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1 products establishing a "brocarden" rule of origin for
2 those items. However, future FTAs should have more
3 items eligible for that type of rule of origin.

4 Further, despite requests from U.S.
5 retailers, importers, and some of the major U.S.
6 fabric manufacturers, there is not a broad provision
7 that allows full integration among regional fabric
8 suppliers who have preferential access to the U.S.
9 market.

10 A broad accumulation provision is
11 essential to creating an Andean FTA that encourages
12 doing business in this hemisphere. The CAFTA text has
13 started us down this road and the Andean FTA must
14 expand upon this with an eye toward the eventual free
15 trade area of the Americas.

16 CAFTA provides for the possibility once
17 several conditions are met that Mexican and Canadian
18 yarns and fabrics may be used to produce CAFTA
19 qualifying garments, but it would not allow Andean
20 region yarns or fabrics to be used.

21 A top priority for the Andean FTA
22 negotiations should be the linking of the Andean FTA

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1 to the CAFTA, to NAFTA, and to the Chile FTA. Thus,
2 USAITA strongly recommends that the FTA include
3 provisions under which yarns and fabrics from any
4 NAFTA country or any other U.S. FTA partner including
5 Central America and Chile could be used to produce
6 qualifying products.

7 In addition, we would recommend that such
8 benefits be reciprocally added to CAFTA so that
9 Central American countries may use Andean foreign
10 yarns and fabrics. The FTA negotiations that are
11 upcoming provide an opportunity to enhance regional
12 integration of the industry to act as a type of
13 virtual vertical integration.

14 The creation and expansion of sourcing
15 flexibility among textile and apparel producers in the
16 western hemisphere is a win/win outcome for the U.S.
17 Andean FTA. The new sourcing relationships that will
18 be created will benefit American producers and will
19 provide an important outlet for new partnerships and
20 new markets for U.S. fibers, yarns, and fabrics.

21 USAITA notes one important caveat to the
22 potential success of the Andean FTA and the potential

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1 FTAA and that is Customs procedures. In the most
2 recently negotiated FTAs textile and apparel products
3 are subject to additional and separate compliance
4 requirements including greater oversight. The way to
5 encourage business in the hemisphere is to create a
6 business friendly environment, not greater obstacles
7 and distinctions.

8 Under previously negotiated FTAs such as
9 NAFTA, questions regarding the eligibility of products
10 for preferential treatment including duty-free access
11 may be addressed through post-entry reviews. In the
12 event that it is determined that a product or shipment
13 did not qualify for FTA benefits, the normal duty
14 would be assessed and collected.

15 Entries are not held or detained pending
16 a determination of eligibility for duty benefits.
17 There have been some indications that this policy may
18 not apply with respect to textile and apparel
19 shipments under the most recently negotiated FTAs and,
20 therefore, possibly not for the Andean FTA.

21 Again, we would urge that such
22 discrimination against the textile and apparel sector

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1 is unjustifiable and would undermine the
2 attractiveness of doing business under the FTA. It
3 makes no sense to detain shipments preventing goods
4 from getting to market in a timely manner solely so
5 that a preference treatment could be confirmed when
6 there is already an elaborate post-entry review system
7 that would accomplish the same objective without
8 harming the trade.

9 USAITA appreciates the opportunity to
10 present its views on appropriate negotiating
11 objectives and look forward to working with the
12 negotiators to achieve a successful result. Thank
13 you.

14 CHAIR EISSLER: Thank you, Ms. Hanson.

15 Mr. Harman.

16 MR. HARMAN: What would be the analysis of
17 your group with respect to the effect of the Andean
18 FTA in light of similar questions that I posed to Mr.
19 Lamar? The increased competition likely to come from
20 Asia. How would you see it affecting trade patterns
21 with the Andean countries?

22 MS. HANSON: I think that duty-free

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1 benefits will be a great incentive to attract
2 business. It will be an important element but are yet
3 one of many factors that will be used in a company
4 sourcing strategy. The good news for the Andean
5 suppliers, particularly Colombia and Peru, is that
6 they are already very efficient, very high quality
7 producers of certain products. I think in each of
8 those cases they already have sort of a niche market
9 following that is very strong. That will only be
10 enhanced by their duty-free status.

11 MR. HARMAN: Thank you.

12 MR. STETSON: Natalie, do you feel that
13 previous reductions in U.S. textile and apparel
14 tariffs including through FTAs have been passed on to
15 consumers in the form of lower prices?

16 MS. HANSON: For the past FTAs? I'm
17 sorry. Could you repeat it one more time?

18 MR. STETSON: Yes. Past FTAs and other
19 reductions in U.S. textile and apparel tariffs.

20 MS. HANSON: I think that we have seen
21 prices for consumer goods and apparel coming down
22 slowly. Of course, it's nothing to predicting what

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1 shifts will be occurring nine months from now when the
2 quotas finally come off. I think there will be some
3 major shifts. There's no way of telling how much of
4 it was due to the duties that were assessed on
5 textiles and how much of it by the non-tariff barriers
6 in the quota system itself.

7 MR. STETSON: What sort of accumulation of
8 origin approach do you support and how would it
9 benefit the industries in the region?

10 MS. HANSON: Right. I think I mentioned
11 in my statement that we are a bit critical of the
12 accumulation provisions as they ended up in CAFTA. We
13 would like to see them be a bit broader. CAFTA is
14 limited to certain woven apparel, certain woven
15 fabrics only.

16 We would love to see it be as broad as
17 possible meaning that whatever the rule of origin for
18 the FTAs are that you apply that rule to the other FTA
19 partners. So if it were yarns, fibers, fabric, all of
20 those options would be available for companies to
21 source back and forth within the region to encourage
22 integration.

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1 MR. STETSON: Okay. And, finally, from
2 what you've seen from the Customs cooperation language
3 in CAFTA, would that Customs cooperation language be
4 appropriate in the context of the Andean FTA?

5 MS. HANSON: I think we have some concerns
6 which I alluded to in the statement regarding the
7 admissibility of goods to verify preference claims.
8 We believe that should not impede the entry of goods.
9 We would like to see the merchandise move and have
10 everyone address their paperwork as they could through
11 existing procedures that are already on the books.
12 Other than that, we look forward to seeing the Customs
13 regulations for CAFTA and finding out how to best make
14 use of them.

15 MR. STETSON: Thank you.

16 CHAIR EISS: Thank you very much, Ms.
17 Hanson.

18 Our next witness is Mr. Steve Coats, U.S.
19 Labor Education in the Americas Project.

20 MR. COATS: Good afternoon. Thank you for
21 the opportunity to testify this afternoon. I feel
22 like I may be a bit of a skunk at the party after the

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1 last couple presentations but we are here to talk
2 about labor issues in Ecuador and Colombia.

3 We strongly support the expressed position
4 put forth by Ambassador Zoelick in his November 18,
5 2003 letter to the Speaker of the House that both
6 countries, Ecuador and Colombia, have key labor
7 problems that need to be addressed, namely, and I
8 quote, "Ecuador needs to take significant further
9 steps to address concerns we have raised regarding
10 inadequate protection and worker rights." And
11 Colombia must, "make progress in addressing violence
12 against trade unions." We do not believe that taking
13 these steps should wait until after a trade agreement
14 is in negotiated and approved.

15 My name is Steven Coats and I'm the
16 director of the U.S. Labor Education in the Americas
17 Project, USLEAP, formerly the U.S. Guatemala Labor
18 Education Project. We're an independent nonprofit
19 organization that supports the basic rights of workers
20 in Latin America. We've had extensive experience with
21 the GSP worker rights provisions, a petition process
22 dating back to 1991 in Guatemala.

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1 We have been actively engaged in the
2 ATPDEA process with respect to Ecuador for the past
3 two years and we are a current worker rights
4 petitioner. We've also worked with members of
5 Congress on efforts to enforce worker rights
6 provisions of U.S. trade law with respect to both
7 Ecuador and Colombia.

8 We're not opposed to trade agreements. We
9 are opposed to those that have been negotiated in
10 recent years including NAFTA and CAFTA. You are quite
11 familiar with the arguments that have been put forth
12 regarding the need for the global trading system to
13 strengthen respect for worker rights both to protect
14 the basic rights of workers in the south, but also to
15 protect minimum standards and florist workers here in
16 the United States.

17 Unfortunately, the worker rights
18 provisions negotiated in these multilateral trade
19 agreements represent a huge step backwards from the
20 worker right standards that currently exist under U.S.
21 unilateral trade programs including GSP, CPTPA, and
22 ATPDEA.

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1 You know all about these arguments and
2 we're not going to go through them infinitum. What we
3 would like to do, however, is underscore in the
4 strongest possible terms that we don't believe that
5 either Ecuador or Colombia are eligible for FTA given
6 current conditions with respect to worker rights.

7 It's ironic, I think, to use one word,
8 that the administration is considering initiating
9 negotiations for a trade agreement with Ecuador even
10 while the country is under an ATPDEA worker rights
11 review for failing to take adequate steps to address
12 worker rights concerns.

13 Despite nearly two years of high level and
14 very welcome interventions from USTR, DOL, and the
15 State Department to address violence against trade
16 unionists, a labor code that is substantially short of
17 high-level conventions and child labor violations.

18 Over 35 members of Congress have just
19 signed a letter arguing that time is just about up for
20 Ecuador and current trade benefits should be
21 suspended. Initiating an FTA with Ecuador after it
22 has consistently failed to honor its commitments to

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1 the U.S. Government to take meaningful steps to
2 improve worker rights protections is contradictory at
3 best.

4 As for Colombia, one can't find the words
5 to express adequately how appalling it is to
6 contemplate trade negotiations with the country that
7 has for years seen more trade unionists murdered than
8 in all other countries in the world combined. The
9 expressed commitment to worker rights and trade
10 agreements strikes us as meaningless when you initiate
11 negotiations with the world's number one killer of
12 trade unionists.

13 The government of Colombia is not
14 responsible for all those killings, although there
15 are, as you know, credible grounds for linkages
16 between the Colombian military and the para-military
17 groups that have been responsible for the majority of
18 murders of trade unionists.

19 But the government is responsible for the
20 rule of law and here their failure rate is
21 astronomical. More than 2,000 trade unionists have
22 been murdered in Colombia since 1991. Four hundred

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1 were killed in 2001 and 2002 combined and nearly
2 another 100 last year. Virtually no one is behind
3 bars for any of these killings.

4 Indeed, the State Department has just
5 released the 2003 Human Rights Report and was unable
6 to identify a single conviction last year for the
7 murder of a trade unionist despite hundreds of cases
8 from which to choose, many of them fresh.

9 Over 99 percent of these murders have not
10 been prosecuted. Why are we negotiating a free trade
11 agreement of the country in which successive
12 governments have demonstrated a commitment to
13 maintaining a culture of total impunity with respect
14 to the murder of thousands of trade unionists. It's
15 hard to think of a country in which the most basic
16 right of workers, the right to life, is more
17 egregiously violated.

18 It would not be sufficient for an FTA but
19 it should certainly be necessary the government of
20 Colombia demonstrate meaningful progress and any
21 impunity for at least a fraction of the murders of
22 trade unionists over the past decade. Acceptable

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1 trade agreements cannot be built on the culture and
2 practice of total impunity.

3 There are other important worker rights
4 violations in Colombia that need addressing including
5 a labor code that is short of high-level conventions.
6 If the rule of law cannot be applied to the outright
7 murders of trade unionists, how can we expect respect
8 for core labor rights. Thank you.

9 CHAIR EISS: Thank you, Mr. Coats. The
10 first question is from Mr. Clatanoff from USTR.

11 MR. CLATANOFF: Hello, Steve. I want to
12 draw you out a little bit here on your statement that
13 the labor provisions in the recently negotiated FTAs
14 represent, and I quote you, "A huge step backward from
15 those contained in current unilateral programs
16 including GSP, CPTBA, and ATPDEA.

17 In particular, how you make that statement
18 and yet, as you know, and as your statement says,
19 we've been engaged intensively with Ecuador in the
20 last couple years under ATPDEA. Why do you think an
21 FTA labor provision will be a step back?

22 MR. COATS: I think Human Rights Watch

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1 just released an excellent analysis of that rejecting
2 the CAFTA worker rights provisions and urging the
3 administration to renegotiate to bring those back up
4 to some of the levels that exist under current
5 programs.

6 One of the major distinctions, as you
7 know, is CAFTA requires only compliance with current
8 national labor law whether or not those are short of
9 international standards, whereas GSP, CPTPA require
10 compliance with what are essentially internationally
11 recognized worker rights core standards.

12 The second issue are the remedies. The
13 remedies that are provided under GSP and CBI, CPTPA,
14 and ATPDEA allow for trade sanctions in the short
15 term, suspension of trade benefits. The fines that
16 are put forth under CAFTA seem to be a very time
17 consuming process that provide limited effectiveness
18 as we witness under NAFTA.

19 NAFTA has not shown itself to be very
20 useful at all with respect to supporting worker rights
21 in Mexico. I think there are very close similarities
22 between -- there are a lot more closer similarities

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1 between the NAFTA/CAFTA provisions than there are with
2 GSP, CBI, and CPTPA. Too many acronyms here.

3 There was a second part to your question.
4 Oh, the effectiveness. Well, I did not say, however,
5 that we have taken the position that current worker
6 rights provisions of the U.S. trade programs are
7 sufficiently effectively. I'm just saying they are
8 stronger than what we are entering into with the new
9 FTAs.

10 MR. CLATANOFF: I obviously don't share
11 your opinion.

12 MR. COATS: USTR has never shared that
13 agreement with me.

14 MR. ROMERO: Mr. Coats, you mentioned that
15 you thought that initiating trade negotiations with
16 Ecuador would undercut the message that Ecuador needs
17 to address these worker rights issues. Now, once we
18 engage in trade negotiations with a country, there's
19 the negotiation of the labor chapter and there's an
20 opportunity to work very closely with that country and
21 talk about these very issues.

22 We've seen that with Chile, with CAFTA,

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1 with Morocco. And we've seen improvements during that
2 process. Do you see the negotiations period
3 potentially with Ecuador as a vehicle for addressing
4 some of these worker rights issues?

5 MR. COATS: It would seem to me you would
6 have the opportunity to have those discussions with
7 the Ecuadorian government under the context of ATPDEA
8 and the review that is being undergone right now. It
9 would seem to me that for Ecuador it would be more of
10 an incentive if it had to demonstrate some compliance
11 before negotiations were begun and you could prohibit
12 having discussions at this point under the ATPDEA
13 process.

14 MR. CLATANOFF: Am I correct then if
15 Ecuador did take some concrete steps, and you and I
16 both know the areas we're talking about, we should
17 demand these concrete steps before we start
18 negotiations.

19 CHAIR EISS: Mr. Coats, thank you every
20 much.

21 MR. COATS: Thank you.

22 CHAIR EISS: Our next witness is Mr.

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1 Renard Aron, Assistant Vice President for Latin
2 America and Canada of the Pharmaceutical Manufacturers
3 Association.

4 MR. ARON: Good afternoon, Mr. Chair,
5 members of the Trade Policy Staff Committee. I'm
6 Renard Aron, Assistant Vice President for Latin
7 America for PhRMA. On behalf of PhRMA and its members
8 I want to express our appreciation for the opportunity
9 to appear here before you today to share our views on
10 the pursuit of a free trade agreement with Colombia,
11 Peru, Ecuador, and Bolivia.

12 We support the USTR's decision to
13 negotiate FTAs and see it as an opportunity to improve
14 patients with life-saving medicines and promote timely
15 and science-based regulations in Latin America,
16 strengthen protection and enforcement of IP and assure
17 a level, nondiscriminatory playing field for American
18 firms as well as our products to be priced
19 commensurately with improved patient welfare and
20 saving lives.

21 PhRMA is optimistic about these FTA
22 negotiations. The upcoming negotiations are an

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1 opportunity to build upon the achievements in the
2 recent Chile and Central American free trade
3 agreements. The key issues affecting U.S. research-
4 based pharmaceutical companies in the region can be
5 grouped in two areas. One, adequate protection of
6 intellectual property rights, IPR, and market access
7 barriers.

8 In 2002 Colombia took an important step by
9 issuing decree 1085 which establishes a five-year data
10 exclusivity period during which no third party may
11 obtain a health registration for a pharmaceutical
12 product relying on safety and efficacy studies filed
13 by the innovator.

14 Colombia should be commended for being the
15 first and only Andean country to take this step in
16 coming to compliance with the national obligations
17 under TRIPS Article 393. Members, therefore, support
18 that Colombia is the first in line among the Andean
19 nations to engage in trade negotiations with the
20 United States.

21 Broader negotiations, Peru, Ecuador, and
22 Bolivia, should take the same steps to come to

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1 compliance with current international obligations to
2 protect data exclusivity. Failure to do so should be
3 reflected in the negotiations. However, decree 2085
4 is now under attack from a local trade group that has
5 filed a noncompliance action before the Andean
6 Secretariat.

7 Whatever the result it most likely will be
8 appealed before the Andean court of justice. A
9 negative result could have far reaching consequences
10 beyond the Andean region. It would establish an
11 article 266 of decision 46 and, therefore, TRIPS
12 article 39.3 only obligates a country to protect test
13 data as it would a trade secret.

14 The FTA negotiations represent an
15 opportunity to reaffirm the commitment of Andean
16 region countries to provide effective protection to
17 clinical doctors including protection against
18 disclosure and against direct and indirect reliance
19 rewarding innovation and its benefits for patients.

20 Research based pharmaceutical companies
21 contend with intellectual property barriers in the
22 broad Andean region both at the community and national

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1 levels. The Andean communities intellectual property
2 regime has created problems affecting all of its
3 member countries.

4 The Andean court of justice has issued
5 several level opinions forcing Andean community
6 members to refuse recognition of a second used patens.
7 The failure to provide this type of protection
8 particularly affects the pharmaceutical industry which
9 dedicates many of its research dollars to evaluating
10 additional therapeutic benefits of non-monitors nor to
11 provide more options for patients.

12 An FTA with an Andean nation use the
13 clearest possible language to establish a high level
14 of IP protection which cannot be eroded by the
15 decisions of the Andean tribunal. Moreover, at the
16 national level health authorities have consistently
17 failed to coordinate with patent officials and
18 appropriately issue phytol-sanitary regulations for
19 products already under patent whose patent application
20 is pending or whose period of data exclusivity has not
21 expired.

22 The adoption of precise and specific

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1 linkage regulations, i.e., establishing a formal link
2 between health and patent authorities is necessary to
3 ameliorate the situation requiring that second
4 applicants, i.e., generic, are in some cases
5 infringing applicants demonstrate that the product for
6 which they are requesting market approval is not the
7 subject of a valid patent or pending application.

8 We strongly support the inclusion of a
9 chapter in the FTA that establishes comprehensive and
10 effective standards for intellectual property
11 protection which facilitates a granting of full
12 implementation and enforcement of rights. The
13 essential elements of such a chapter include measures
14 that build upon and enhance the standards established
15 by the agreement on trade related aspects and
16 intellectual property rights TRIPS and recent
17 bilateral agreements between the United States and
18 other countries.

19 In addition to the topics just discussed
20 these would include measures that provide patent term
21 restoration for products, the marketing of which have
22 been delayed by regulatory or patent writing

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1 procedures, standards that ensure complete patent
2 eligibility for biotechnology and pharmaceutical
3 inventions including patent inventions, standards that
4 ensure that patent rights will not be exhausted by
5 acts that occur outside the territory of each country,
6 procedures that will facilitate the granting of
7 patents in the region, the reliance on an initial
8 patent grant by the United States Patent and Trademark
9 Office, measures that will enhance protection for
10 trademark rights including actions prohibiting
11 restrictive or burdensome labeling requirements for
12 regular products, measures that enhance ability of
13 patent owners to obtain preliminary injunctive relief
14 in judicial proceedings where there is an ongoing
15 infringement of rights and market access barriers.

16 In countries in line for the U.S. Andean
17 free trade agreement also need to address market
18 access barriers that unfairly target the
19 pharmaceutical industry. Price controls and other
20 intrusive market access barriers that discriminate
21 against U.S. manufacturers should be eliminated and
22 replaced by free market principles.

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1 These market access barriers include high
2 tariff rates, price controls, and discriminatory
3 regulations. For instance, Colombia we have tariff
4 rates of up to 10 percent. Ecuador and Peru have
5 implemented the market access barriers that limit
6 patient treatment options and discourage investment of
7 further research and development.

8 In Ecuador the Ecuadorian government
9 issued a price freeze decree that has been
10 subsequently renewed. The government of Peru
11 discriminates against foreign manufacturers by
12 granting a 20 percent bonus and/or bidding preference
13 to national manufacturers participating in a public
14 competitive bidding process.

15 In conclusion, PhRMA is pleased that
16 Colombia is leading the way in the Andean region in
17 the protection of IPE through issue of decree 2085.
18 PhRMA supports Colombia as the first country to engage
19 in trade negotiations with the United States. The
20 remaining Andean countries in line for FTAs should
21 follow suit and take similar steps to protect clinical
22 doctors prior to the start of the trade negotiations.

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1 Failure to do so should be reflected again in delays
2 in launching these negotiations.

3 Patients throughout the Andean region
4 clearly want and expect access to the world's leading
5 medicines and will not accept policy to limit access
6 to advanced lifesaving medical treatments. Strong IP
7 provisions and nondiscriminatory market based policies
8 will ensure the patients in the region benefit from
9 access to the advanced lifesaving medicines.

10 PhRMA views the successful negotiation of
11 the U.S. Andean FTA as a win/win opportunity to
12 improve access by patients to U.S. medicines. We
13 welcome the decision to pursue this free trade
14 initiative and look forward to working with the
15 administration in making the U.S. Andean FTA a
16 reality. Thank you very much.

17 CHAIR EISS: Mr. Harman.

18 MR. HARMAN: Is it the case in PhRMA's
19 view that an Andean U.S. FTA would benefit both the
20 U.S. pharmaceutical industry, the pharmaceutical
21 industry in the region? And what about effects on
22 consumers in the U.S. region? Do you wish to comment

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1 on that?

2 MR. ARON: Yes. Well, we see this, as I
3 mentioned here, a win/win situation for U.S. companies
4 that are doing business in the region, investing in
5 the region. A number of the companies have sizable
6 investments in the region with manufacturing
7 facilities down there and hiring employees. There are
8 high-paying good jobs.

9 There is technology for the companies in
10 the region so all these benefits directly not only the
11 jobs and technology trends in the region, but also
12 provides access to new medicines with a good framework
13 in place, being IP and being free market, so patients
14 can benefit from the latest medicines.

15 It has happened in many opportunities that
16 those countries that do not provide the high standard
17 IP levels that companies don't feel comfortable in
18 launching latest medicines. Therefore, patients don't
19 have access to the latest medications and will suffer
20 from that.

21 MS. ALVAREZ: Karen Alvarez. I'm with Eli
22 Lilly and Company but I'm also a member of the PhRMA

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1 Latin America Regional Committee. With respect to
2 consumer choices as well, we should add that we have
3 found that, for instance, in NAFTA once the strong IP
4 provisions were implemented, even though everyone
5 feared the prices would rise, both in NAFTA and Mexico
6 as well as in Jordan, another example of where there's
7 high IP standards, we have actually found there has
8 been increased supply of medicines, innovative
9 medicines and we have not, in fact, found the prices
10 to have risen.

11 In fact, they have stayed stable if not
12 decreased because of increased competition and an
13 increased flourishing pharmaceutical market. Another
14 concern was last year when decree 2085 in Colombia was
15 put into place another concern was raised there that
16 this decree would mean that prices would rise. In
17 fact, we have not found that to be the case.

18 CHAIR EISS: Ms. Brown.

19 MS. BROWN: Mr. Aron, you mentioned this
20 quickly in your testimony but I was wondering if you
21 could elaborate a little more on what provisions you
22 would consider to be essential for an IP chapter for

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1 the Andean FTA?

2 MR. ARON: I think everything that we have
3 included here we would consider as essential. This is
4 the complete framework, be it on the IP side, be it on
5 the market access side and all those elements are
6 essential for companies to be able to invest and
7 flourish and be able to, therefore, provide patients
8 with the best medicines in their local market.

9 MS. CAMERON: I'm Maria Cameron. I'm the
10 Peruvian/Venezuela Desk Officer at Commerce. Have
11 Peru, Ecuador, and Bolivia made any progress to pass
12 a law to provide the same level of data protection as
13 Colombia?

14 MR. ARON: Native protection, no. I don't
15 know if Karen wants to -- no, they have not.
16 Therefore, we are asking for steps in that direction
17 before the beginning of the negotiations.

18 MS. CAMERON: What are you hearing from
19 your members about the challenges of the Colombian
20 decree before the Andean Secretariat?

21 MR. ARON: They are quite concerned with
22 the outcome and it could have, as I mentioned, quite

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1 a negative effect throughout the region on the
2 negotiations.

3 CHAIR EISS: Mr. Aron, Mr. Alvarez, thank
4 you very much.

5 MR. ARON: Thank you.

6 CHAIR EISS: Our next witness will be
7 Maria Strong from the International Intellectual
8 Property Owners.

9 MS. STRONG: Thank you. I'm pleased to
10 have an opportunity today to discuss with you the
11 perspectives of the U.S. copyright base industries on
12 the promises of U.S. Andean free trade agreement. My
13 testimony will address two points. First, the high
14 level of copyright enforcement obligations we expect
15 to see in the FTA IPR chapter and I'll provide you a
16 summary of some of the key problems we see in country.

17 First off, the U.S. Andean FTA IPR chapter
18 should contain high levels of copyright protection
19 enforcement that will benefit U.S. industries along
20 the lines of what we've seen in the CAFTA and the
21 Chile agreements. Fortunately to date most of IIPA's
22 recommendations for the chapter have been integrated

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1 and the FTA has already concluded and my testimony
2 goes into full detail of the high levels of standards
3 so I won't repeat those here.

4 Basically what we're looking for is high
5 level of protection that integrates the obligations of
6 the two WIPO treaties, substantive improvements that
7 go to other issues such as duration and moderate and
8 effective enforcement measures.

9 Colombia, Peru, and Ecuador have all
10 engaged in copyright law reform efforts in the mid-
11 1990s. In fact, these three countries are already
12 members of the two WIPO treaties. Further revisions
13 to their copyright laws and the related laws such as
14 criminal and civil procedure codes will likely be
15 needed to satisfy the obligations we expect in the IP
16 chapter.

17 In contrast, however, we must point out
18 that the current copyright regime in Bolivia falls far
19 short of satisfying its own four-year overdue TRIPS
20 obligation commitments, let alone the current
21 bilateral obligations it has under GSP and ATPDEA.
22 Bolivia is long overdue to improve its enforcement

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1 mechanisms as well.

2 Speaking of enforcement, with respect to
3 the IP chapter we would expect it to include
4 comprehensive provisions strengthening the scope of
5 criminal penalties, civil remedies, ex officio actions
6 by police and Customs authorities. We would expect
7 assumptions to be added and enforcement to adapt to
8 the online environment including a strong and
9 expeditious notice and takedown system which would be
10 a key feature and which has been achieved in other
11 FTAs.

12 Let's turn to what's happening on the
13 ground now in these nations. As we move to the
14 negotiating phase, IPA believes it is critical that
15 all four of these FTA eligible countries continue to
16 take all appropriate actions to improve their efforts
17 to enforce their current laws.

18 Copyright piracy and inadequate
19 enforcement are the major market access barriers for
20 the copyright industries in this region. The
21 challenges faced by the copyright industries' national
22 governments to enforce our laws grow exponentially as

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1 piracy shifts from hard goods to digital and internet
2 media.

3 Inadequate and ineffective enforcement has
4 already met obstacles in failing to enforce
5 traditionally piracy let alone these new forms of
6 piracy. We acknowledge there have been some small
7 beams of optimism regarding better anti-piracy efforts
8 in some of these countries for some of our industries
9 some of the time. But the problems far outshine the
10 successes so let me highlight a couple of these.

11 Piracy of recorded music in Peru, Ecuador,
12 and Bolivia exceed 90 percent of the total market
13 there. That means over nine out of 10 copies are
14 pirate. In Peru the once thriving legitimate
15 recording industry has been devastated. Pirated music
16 in both CD and audio tape formats are sold throughout
17 the country including the Mesa Redonda area which is
18 located one block away from police headquarters.

19 Legitimate recorded music in Colombia is
20 also suffering due to lack of effective enforcement.
21 In fact, a major U.S. recording label, Warner Music,
22 announced two weeks ago that it is closing its

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1 Colombia operations and this will have an impact on
2 the distribution in both Peru and Venezuela.

3 Business software piracy takes various
4 forms of putting counterfeiting and user piracy,
5 resale piracy. In this region it continues to face
6 the same obstacles, particularly in Bolivia. The lack
7 of an ex parte civil enforcement search measure
8 remains a serious problem. This is a TRIPS required
9 remedy that has not been implemented in Bolivia.

10 In fact, BSA and its member companies have
11 to notify defendants of such searches 24 hours in
12 advance of the search and, as you might imagine, this
13 greatly reduces the likelihood of the success of the
14 inspection. This provision violates TRIPS as well as
15 GSP and the ATPA provisions.

16 In Ecuador there's an education law which
17 contains a poorly drafted provision which basically
18 would grant free software licenses to educational
19 institutions. We believe this, too, violates
20 international standards.

21 Video piracy is high throughout the region
22 ranging from 45 percent in Peru to over 90 percent in

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1 Ecuador and Bolivia. In Colombia, which is the
2 largest market for the region, the motion picture
3 industry is increasingly concerned about the growth in
4 OD, optical disk piracy format. This would be either
5 CDR or DVDR recordable format.

6 To give you an insight of the motion
7 picture problem in Peru, the motion picture industry
8 along with 300 federal police officers, 12 state
9 attorneys, six copyright office inspectors raided the
10 Mesa Redonda market in early February of this year.
11 25 tons of pirated films and music were seized
12 requiring four large trucks to haul it away to the
13 pirate warehouse. That's a success story.

14 Compare that to what happened last
15 September in Pulos Azules where enforcement
16 authorities in the industry tried to conduct an
17 inspection of the street market. 150 police officers
18 were involved in a tear gas fight and they never were
19 able to enter the market for the inspection.

20 The book publishing industry reports its
21 major problems throughout these four countries which
22 involves unauthorized photocopying predominately at

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1 universities. There's also unauthorized translations
2 and you might expect that because Colombia has a very
3 strong literary tradition worldwide.

4 The U.S. entertainment software industry
5 also suffers from inadequate enforcement, high levels
6 of piracy in all of its formats whether it's cartridge
7 based, personal CD-ROMS, and game consuls which are
8 like handhelds.

9 My point to you is the bottom line is all
10 these Andean countries can and should work now to
11 improve their copyright enforcement regimes in order
12 to stop piracy. Entering into FTA negotiations should
13 not be interpreted as permitting any delay in such
14 actions.

15 In fact, a few years ago before the ATPDEA
16 entered into effect, IIPA requested that the U.S.
17 Government ask the Andean countries for commitments on
18 copyright piracy and enforcement. We were told that
19 in the lead up to the ATPDEA both Colombia and Peru
20 did make general commitments to stop piracy and invoke
21 software acid management regimes for their government
22 agencies.

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1 Perhaps this kind of informal engagement
2 in the prenegotiation phase would reemphasize the
3 importance the U.S. Government places on the Andean
4 countries meeting their current IP obligations.

5 In conclusion, we support the initiation
6 of the negotiations such that the IP chapters includes
7 high-level standards of protection but we ask that
8 these nations in order to show good faith and meet
9 their current standards continue and improve levels of
10 enforcement that they are taking now, both civilly,
11 criminally, and at the border. Thank you.

12 CHAIR EISS: Ms. Strong, thank you.
13 Before we start with the questions, if I could just in
14 order to get a sense for the pace of the balance of
15 the hearing since we had a last-minute cancellation
16 witness, is Mr. Dresner here? Okay. Mr. Heibert?

17 Okay. What we will do then is proceed
18 with the questions for Ms. Strong, hear Mr. Dresner,
19 and then we will see where we stand. We may take a
20 few minute break since we may be mercifully a little
21 bit ahead of schedule.

22 Mr. Harman.

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1 MR. HARMAN: Maria, you described very
2 well the enforcement issues that exist there and they
3 represent a significant challenge. Has the IIPA and
4 its members thought about a new and more proactive way
5 that we can engage these countries in a concerted
6 effort to change this pattern with respect to
7 enforcement perhaps gearing it in some measure to be
8 a capacity building exercise? We are looking for
9 ideas and guidance on how best to get our arms around
10 this problem.

11 MS. STRONG: Well, we too are looking for
12 proactive and new ways because what we've been able to
13 do so far has had measured success. I think the first
14 part is a lot of the work has to be done by the
15 industries working in country at each level. In fact,
16 in some of the success stories that I did not mention
17 orally include Peru where very many of our industries,
18 especially the motion picture industry, has increased
19 its visibility, its public awareness, outreach if you
20 will, and has produced positive results in
21 enforcement, both criminal and administrative. Our
22 industries have to continue public awareness, criminal

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1 and civil enforcement in country. That is where the
2 rubber meets the road type thing.

3 I think we have also continued to work
4 with the U.S. Government here in Washington in order
5 to elevate the attention of the missed opportunities
6 under current bilateral obligations under GSP and
7 ATPA. That was the exercise, as Mr. Harman knows,
8 that we underwent with ATPDEA in trying to get
9 commitments ahead of time.

10 We are on the record this year that if
11 Bolivia doesn't improve its efforts, we will ask for
12 the initiation of a GSP TPA investigation. That's a
13 third opportunity. This year in terms of the special
14 301 we are also elevating all of our concerns just
15 mentioned. Those are tried and true methods for the
16 last couple of years.

17 In terms of proactive approaches, we are
18 sort of in a chicken and egg place. A lot of our
19 industries are not actively involved in the smaller
20 markets, particularly Ecuador and Bolivia. Part of
21 the reason why when you have over 95 percent piracy
22 level it's hard to get the commercial people to enter.

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1 There's a fine line between making a business decision
2 to enter a market and invest in anti-piracy efforts
3 because it's hard to do one without the other.

4 What we are looking for is stated
5 commitments by these governments to realize that it is
6 in their own best interest to have high levels of IP
7 protection. In fact, just this week in Ecuador a
8 local Ecuadorian paper noted that over the last 12
9 years in Ecuador over 167 cinemas have closed down due
10 to high levels of piracy. That hurts local Ecuadorian
11 retailers, businessmen, consumers, as well as workers.

12 I think we are doing a better job at
13 telling the story of what is lost in these countries
14 whether it's employment, tax revenue, rule of law. I
15 think they will find the internal reasons to joint.
16 Obviously the prospect of an FTA is a wonderful reason
17 to join but these countries are already receiving over
18 \$5 billion a year in preferential trade and benefits.
19 Our companies are losing somewhere in the \$250 million
20 a year. As Bennett noted, we are on the same line.
21 We need to find new ways to create success.

22 CHAIR EISS: Ms. Brown.

1 MS. BROWN: Leaving aside the important
2 area of enforcement for a minute, are there areas in
3 which the copyright laws themselves in the region need
4 to be strengthened?

5 MS. STRONG: Yes, there are. I would
6 start with the weakest country's copyright regime and
7 that's Bolivia. This is a country that has failed to
8 even implement its TRIPS obligations. Its law is
9 almost 14 years old. It doesn't have the basic
10 substantive rights. It certainly doesn't have
11 comprehensive enforcement standards. As I mentioned
12 earlier, civil ex officio is something that it has to
13 have as a TRIPS obligation.

14 The other three countries actually have
15 pretty fairly advanced copyright laws. They have a
16 broad scope of exclusive rights. They do have a fair
17 amount of civil and criminal remedies available to
18 them. It's true that once the higher IP chapter
19 obligations are adopted there will be some fine tuning
20 needed, no doubt about it. But compared to Bolivia
21 the other three are in good stead.

22 The problem boils down to the fact that

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1 they have good laws on the books and aren't being
2 enforced. In fact, Peru has very significant criminal
3 penalties ranging between two to eight years of
4 imprisonment but just haven't been able to get past
5 judges suspending the sentences and, therefore, more
6 deterrents.

7 CHAIR EISS: Department of Commerce.

8 MS. CAMERON: In what ways could an FTA
9 with the countries in the Andean region benefit both
10 U.S. copyright industry as well as Andean artists,
11 performers, and companies?

12 MS. STRONG: Obviously the obligations,
13 both the copyright obligations and the enforcement
14 obligations, will require changes in domestic law.
15 Because copyright is enforced at the domestic level,
16 actually the first layer of people who benefit are the
17 local artists, producers, publishers, writers, film
18 makers because they are the ones who are protected
19 under law.

20 High levels of copyright protection also
21 encourage foreign investment. To the extent our
22 companies are using local personnel to help distribute

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1 their products that, too, improves the local
2 economies. I think recognition has been established
3 for some time. We would be hoping that what the FTA
4 offers is that kind of increased level of attention
5 because when it comes to tariffs there really is no
6 benefit.

7 I mean, what we are looking for is what is
8 happening in the local enforcement regime because if
9 we're not good, our products aren't going to reduce
10 tariffs so we're not going to win in the tariff war.
11 What we will win is in increased enforcement and
12 better substantive protections in country. As I said
13 before, each country has to recognize that. I would
14 say with the exception of Bolivia the other three do.

15 CHAIR EISSLER: Ms. Strong, thank you very
16 much.

17 MS. STRONG: Thank you.

18 CHAIR EISSLER: Our next witness is Mr. Mark
19 Dresner, Vice President of Corporate Communications
20 for Englehard Corporation.

21 MR. DRESNER: Recognizing that I'm between
22 you and a break, I'll try and be as brief as possible.

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1 Good afternoon. I am Mark Dresner, Vice President of
2 Corporate Communications for Englehard Corporation.
3 Englehard is a Fortune 500 company headquartered in
4 Iselin, New Jersey with facilities in 18 states and
5 worldwide operations employing more than 6,500 people.

6 I'm here today to strongly request that
7 the United States Government suspend Andean trade pact
8 benefits for the government of Peru and delay
9 discussions of a free trade agreement until such time
10 that Peru returns the nearly \$30 million it
11 expropriated from the company in 1999 together with
12 accrued interest in accordance with Peruvian law.

13 The basics of the case are simple.
14 Englehard purchased real gold at fair market prices,
15 paid all the VAT required under Peruvian law, and
16 exported that gold to its U.S. refinery, therefore,
17 becoming eligible for a VAT refund.

18 The government of Peru has produced no
19 evidence, either documentary or testimonial, of any
20 wrongdoing on the part of the company or its
21 officials, nor has it even offered a motive or
22 explanation of how the company may have profited from

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1 any alleged scheme.

2 On the other hand, each of Englehard's
3 transactions were found to be legal and appropriate by
4 three independent audits including one performed by a
5 Peruvian court-ordered auditors.

6 The government of Peru's position has been
7 to hold Englehard accountable for the actions of
8 others time and again claiming that the ultimate
9 exporter should be denied refunds if VAT shortfalls
10 were discovered or any irregularities occurred
11 regardless of who is truly responsible.

12 For example, Peru speaks of sham
13 transactions and false invoices, yet in five years not
14 one shred of evidence has been produced that links
15 Englehard to any sham transaction or any false
16 invoice.

17 Another example. Peruvian officials
18 repeatedly have told U.S. officials that Englehard
19 people were caught smuggling cold painted lead bars in
20 an attempt to defraud the government of VAT. It is
21 true that an individual was caught doing just that but
22 the person never worked for Englehard, nor had any

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1 connection or business dealings with the company.

2 That person ultimately pled guilty to
3 defrauding the Peruvian government of approximately
4 \$20 million. He was sent to prison. He served time.
5 He was released. He's a free man today. Yet, our
6 case remains unresolved and two of our employees
7 continue to remain in legal jeopardy.

8 We oppose Peru's continued ATPA benefits
9 and its request for a free trade agreement because we
10 believe the record shows that Peru does not offer an
11 environment that will attract and hold foreign
12 investment. Furthermore, to grant Peru these benefits
13 knowing that they continue to mistreat U.S. companies
14 would be to reward and enable the continuation of
15 corrupt practices.

16 In order to secure its benefits in
17 September 2002 Peruvian Ambassador Robert Danino
18 promised the U.S. Government, and I quote, "The
19 government of Peru will promote prompt and effective
20 due process and transparency under the law in
21 connection with the processes that companies such as
22 Englehard and Princeton Dover may seek to pursue in

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1 Peru."

2 Over the 18 months the government of Peru
3 has done absolutely nothing to promote prompt and
4 effective due process in the Englehard matter.
5 Consider the following. SUNAT, the Peruvian taxing
6 authority, repeatedly blocked our attorney's access to
7 the Englehard file. That is a clear violation of
8 Peruvian law. Only after our attorneys filed formal
9 notarized documents did SUNAT relent and allow us
10 access to our own file.

11 A thorough review of that file revealed
12 that an engineering report cited by the tax court in
13 its ruling against Englehard was not in the file,
14 another clear violation of Peruvian law. As a result,
15 Englehard was denied the opportunity to argue or even
16 see the evidence, the report, before the tax court
17 used it as the basis to rule against the company.

18 An eventual review of that very
19 engineering report revealed it to be a preliminary
20 document, not a final report, which was based solely
21 on information and unverified assumptions provided by
22 SUNAT. Englehard filed criminal charges against both

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1 SUNAT and the tax court for its actions in the matter.
2 A police investigation then concluded that a number of
3 SUNAT employees were alleged perpetrators of four
4 major crimes, and I'm quoting from the report.

5 "One, offense against public
6 administration of use of authority and omission of
7 governmental duties. Two, offense against judicial
8 administration, false declarations and administrative
9 proceedings, inducement of government error. Three,
10 offense against public good faith, general falsehood.
11 And, four, offense against public peace, illicit
12 association." These charges have been forwarded to a
13 special anti-corruption court and are awaiting
14 prosecution.

15 There has been no significant progress in
16 the penal case against two officials of Englehard's
17 Peruvian subsidiary, a case brought in October 2000
18 using falsified testimony. Judge Nicholas Trujillo,
19 who initiated that case, faces criminal charges in
20 connection with his action in the Englehard case as
21 well as in many other cases.

22 One of the truly tragic elements of our

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1 matter is that Englehard did what Peru wanted. We
2 invested in the country. Nearly a decade ago
3 Englehard saw a business opportunity to purchase and
4 export gold from Peru. We built a state of the art
5 gold refinery there. That refinery which would have
6 provided jobs so desperately needed by Peruvian
7 citizens never opened.

8 Why? Because before its scheduled opening
9 the government of Peru issued Supreme Decree 14 which
10 held Englehard responsible retroactively for the
11 actions of others with whom we never did business.
12 That Supreme Decree 14 was later declared
13 unconstitutional. The aim of stealing the company's
14 \$30 million had already been achieved.

15 It is clear that Englehard was the victim
16 of the corruption that ultimately brought down former
17 President Alberto Fujimori and his infamous spy chief
18 Vladimir Montesinos. But I want to be very clear that
19 the actions of subsequent Peruvian administrations has
20 seemingly been designed to coverup the illegal actions
21 and provide false justification for not returning the
22 money rightfully owed the company.

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1 That is in spite of the findings of a
2 bipartisan commission of the Peruvian congress which
3 concluded that Englehard was "a victim of corrupt
4 elements within SUNAT and the Fujimori government."
5 The Mulder Commission Report.

6 That is in spite of the police report I
7 referenced earlier which also supports the company's
8 position and it is in spite of two separate rulings
9 very early in the penal case in which a judge granted
10 the equivalent of bail to the Englehard employees
11 citing the lack of evidence to support SUNAT's
12 charges.

13 The pattern of lies and distortions put
14 forward in Washington by the Peruvian government
15 traced to the earliest days of our case. More
16 recently, in the fall of 2002 Peru waged a vigorous
17 campaign to win approval from the administration and
18 congress. In September of 2002 then special trade
19 representative, later Peru's Ambassador to the United
20 States, Roberto Danino, used a PowerPoint presentation
21 in meetings with administration officials and members
22 of Congress to implicate Englehard.

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1 We prepared a point-by-point rebuttal to
2 the distortions, falsehoods, and fabrications in that
3 presentation and here is what 15 members of Congress,
4 most of them free traders I would add, wrote regarding
5 Mr. Danino's presentation, and I quote, "We have
6 serious misgivings about the veracity of the
7 information distributed by the government of Peru when
8 meeting with U.S. Government officials and members of
9 Congress."

10 Peru's embassy recently distributed to
11 some congressional offices a PowerPoint presentation
12 that is demonstratively replete with information that
13 is simply false and distorts the nature of the
14 unlawful actions taken against Englehard.

15 At the beginning I said this was an easy
16 case made complex by those in Peru to deny the company
17 justice. Throughout these five years there are two
18 questions that Peru has never answered because it
19 cannot.

20 If Englehard bought gold at fair market
21 value, exported the gold to the United States, paid
22 all the VAT required under Peruvian law, and can

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1 document each transaction, why is it not entitled to
2 its money back? And if Englehard paid \$1 of VAT and
3 sought \$1 in VAT refund, how did they profit and what
4 proof do you have that the company did anything wrong?

5 I encourage you to send a very clear and
6 unyielding message to Peru, no justice for Englehard
7 and its employees, no ATPA or free trade agreement for
8 Peru. Thank you very much.

9 CHAIR EISS: Mr. Harman.

10 MR. HARMAN: Mr. Dresner, thank you very
11 much for your succinct but very complete presentation
12 of this challenging case. You have already answered
13 some of the questions I was going to ask because it
14 was so complete in terms of if you could enunciate all
15 of the instances in which an independent objective
16 third party examined the facts of the case. That was
17 already part of your presentation.

18 Perhaps I could turn to the other line of
19 questioning which is simply can you point to possible
20 ways forward that could lead to a path to resolution
21 of this issue in the approving system?

22 MR. DRESNER: Yes, we provided the embassy

1 in Lima a road map for numerous ways through the legal
2 process that these cases could be resolved. In fact,
3 we provided that information a week or two ago and
4 demonstrated how they could all be done by March 31st.

5 Presently there is an appeal of the
6 administrative case, the tax case. We chose to appeal
7 it to a constitutional court claiming that our rights
8 had been violated which they clearly had. As opposed
9 to a superior court on advice from attorneys that the
10 superior court would more likely encounter political
11 interference in a constitutional court.

12 The constitutional court we are told is
13 expected to rule this week. Under the laws in Peru
14 generally the constitutional court has three days to
15 rule in cases such as this. The case was filed in May
16 and we are still waiting a ruling.

17 The constitutional court has a number of
18 options at its disposal. It can return the
19 administrative case to the tax court and how limiting
20 it is and how it returns it to the tax court would
21 determine how quickly it could be resolved. It could
22 give the tax court very clear guidelines on what they

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1 may and may not include in reviewing the case.

2 For example, they may only review evidence
3 that is directly related to Englehard, not to third
4 parties or fourth parties that Englehard may have done
5 business with two or three years ago. And that they
6 may not use retroactive application of tax laws, that
7 exporters who were entitled to refunds as the scheme
8 was in place when we were in business there. If they
9 limited themselves to those guidelines, the tax court
10 would need no more than an hour to resolve this case.

11 On the penal side, this is an interesting
12 situation in that the case never should have been
13 brought in the first place. There is no evidence
14 against these people. The evidence that opened the
15 case has been proven to be falsified evidence. They
16 very easily could rule on any one of the number of
17 appeals that we have pending in the criminal court to
18 toss the case because of lack of evidence against the
19 two individuals.

20 Also, another player in the gold industry
21 that was excluded from the administrative case by
22 order of Montesinos, it's on an audiotape and

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1 available in the Mulder Commission Report. Somehow
2 two of their people managed to slip through and there
3 was a criminal charge brought against them. That
4 charge was released on a technicality that a key
5 report was not in their file which sounds very
6 familiar to our case. We provided a number of
7 different ways through the legal system that could be
8 accomplished.

9 MR. HARMAN: Is it the case, as we have
10 heard, that your company has even asked the Peruvian
11 government for any evidence because you have some
12 insurance policy to protect you against fraud by your
13 employees?

14 MR. DRESNER: As I have mentioned to you
15 on past occasions, if Peru returned our money today
16 with the interest, we would still be out several
17 million dollars in operating costs and legal fees for
18 dragging this thing on more than five years now.

19 One of the main elements here is that we
20 have two employees, innocent employees, who are under
21 criminal indictment. If they were proven to have done
22 anything wrong, we have insurance for that. We would

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1 be able to recoup on the insurance. However, what, in
2 effect, has been done is they have lumped the case
3 with approximately 200 other defendants and allowed it
4 to sit for five years with no hope or site of it
5 moving forward so we can't collect on the insurance
6 side. We can't clear the employees' names.

7 One might way, and it has been suggested
8 to us that a good sound business decision might be to
9 walk away from the money and just cut the losses. We
10 will not do that. We will not leave our employees in
11 legal jeopardy when they are innocent.

12 CHAIR EISS: Mr. Dresner, thank you very
13 much. Thank you. By any chance, Is Mr. Roy
14 LeTourneau here? Okay. And neither Mr. Heibert or
15 Wechsler are here yet? All right. Then I think we
16 will stand adjourned for approximately 10 minutes. We
17 will reconvene at 3:40.

18 (Whereupon, at 3:29 p.m. off the record
19 until 3:46 p.m.)

20 CHAIR EISS: The hearing will come to
21 order. We are now entering the Heibert hour. Mr.
22 Peter

1 Heibert will be speaking on behalf of the government
2 of the Virgin Islands, the Virgin Island rum
3 industries, and the government of Puerto Rico. I
4 asked him how he would prefer to handle it, and at his
5 request we are going to permit him to complete his
6 presentations with respect to all three sets and then
7 we will just work through the sets of questions that
8 he has -- that we have for him on his presentations.

9 Mr Heibert, the floor is yours.

10 MR. HEIBERT: Thank you very much. I
11 think that is actually known as the hat trick.

12 Mr. Chairman and members of the committee,
13 my name is Peter Heibert and I'm a partner in the law
14 firm of Winston & Strawn which serves as outside
15 council to the government of the U.S. Virgin Islands,
16 as well as council to the government of the
17 Commonwealth of Puerto Rico. In this case, we are
18 also speaking on behalf of the Virgin Islands Rum
19 Industries, Ltd., the leading rum producer in the
20 Virgin Islands.

21 With me today is Andrew Szamosszegi of
22 LECG, LLC, a leading economic consulting firm, which

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1 has conducted an economic analysis of the probable
2 economic effects of further tariff liberalization
3 under the proposed Andean free trade agreement.

4 Before Mr. Szamosszegi's presentation, I
5 would like to summarize a few key points in our formal
6 testimony about the critical importance of the rum
7 industry to the fiscal foundations of both the Virgin
8 Islands and Puerto Rico.

9 Under longstanding tax principles
10 governing the relationship between the United States
11 and these island jurisdictions, the U.S. returns to
12 the respective treasuries the federal excise taxes
13 collected on Virgin Islands and Puerto Rico rum. In
14 the case of the Virgin Islands, this has historically
15 amounted to upwards and more than \$75 million a year
16 which constitutes more than 15 percent of the entire
17 island budget. In the case of Puerto Rico, rum taxes
18 add over a third of a billion dollars every year.

19 Any trade agreement that might impair
20 these revenues could have disastrous financial
21 consequences for both island jurisdictions. This is
22 especially so in the case of the Virgin Islands which

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1 finances its essential public infrastructure with
2 bonds that are backed by the rum tax revenues. These
3 bonds go out 30 years at a time.

4 In addition, the government of the Virgin
5 Islands has negotiated in recent months a series of
6 agreements with the U.S. Department of Justice, and
7 the U.S. Environmental Protection Agency under which
8 the construction of new waste water treatment
9 facilities and future compliance with the Federal
10 Clean Water Act are tied to future rum tax revenues.

11 In consideration of the unique role that
12 rum plays in the economies of the Virgin Islands and
13 in Puerto Rico, the U.S. Government in 1997 negotiated
14 a balanced framework for the treatment of rum in the
15 Singapore Zero for Zero agreement on distilled
16 spirits. Under that accord reached by the United
17 States, the European union, Canada and Japan, U.S.
18 duties on high-valued branded rum were eliminated,
19 while the existing tariff on low-valued commodity rum,
20 which is highly priced and import sensitive, was
21 maintained.

22 In 2002 Congress reaffirmed this important

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1 decision by continuing to exclude low-valued rum from
2 further tariff liberalization when it reauthorized the
3 Andean Trade Preferences Act. I respectfully submit
4 that this should remain the U.S. policy in negotiating
5 an agreement with the Andean countries.

6 I would be pleased to answer any questions
7 about rum after our presentations and now I would like
8 to introduce Mr. Szamosszegi.

9 MR. SZAMOSSZEGI: Good afternoon. I'm
10 Andrew Szamosszegi and I'm a managing consultant at
11 LECG here in Washington. I'm appearing in place of
12 Andrew R. Wechsler who is the managing director at
13 LECG with whom I prepared this testimony.

14 We were requested to examine the probable
15 economic effect of extending duty free status to low-
16 valued rum under the U.S.-Andean countries free trade
17 agreement. We find that absent the duties on low-
18 valued rum Colombia, and eventually Brazil if FTA were
19 to be extended to all South American countries, would
20 immediately become the lowest cost suppliers of low-
21 valued bulk rum to the United States.

22 The status of the insular rum industry in

1 the U.S. Virgin Islands and Puerto Rico remains highly
2 vulnerable to the elimination of duties. There is
3 little that these producers can do on their own to
4 effectively mitigate against the dramatic impact
5 likely to ensue from a significant change in their
6 competitive environments that due to a reduction would
7 bring. The removal of the tariff would simply become
8 a rather immediate location tipping event.

9 I'm sure the panel is somewhat familiar
10 with rum so I won't go into great detail. It's an
11 alcoholic distillate of the fermented juice of sugar
12 cane and sugar cane by-products such as molasses.
13 Puerto Rico and the U.S. Virgin Islands account for
14 approximately four-fifths of U.S. apparent supply.

15 The rum market is, as Peter mentioned,
16 segmented. It's segmented into high-valued rum in
17 bottles, high-valued rum in bulk, low-valued rum in
18 bottles, and low-valued rum in bulk. The highest
19 valued rum is shipped in bottles and has strong brand
20 identity. It's not sensitive to changes in price.
21 There are also significant barriers to entry at the
22 high end of the market.

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1 On the other hand, the low-value rum is
2 price sensitive and country of origin is not really
3 important to the consumer. Firms that produce low-
4 valued rum cannot easily get into the high-valued
5 segment because of the high expenditures on
6 advertising and other things that are required to
7 enter that market.

8 The cost of producing rum depends on
9 whether the rum is bulk or bottled, aged or unaged.
10 Unaged bulk rum is the least costly to produce and its
11 two key inputs are molasses and fuel oil which is used
12 for distilling the molasses. The bottling of rum
13 requires additional labor, bottles, and also some
14 packaging material.

15 The U.S. Virgin Islands rum industry has
16 one major player and that's Virgin Islands Rum
17 Industry, Ltd. which concentrates on the lowest-valued
18 commodity segment of the market which is less than
19 \$2.61 per proof-gallon. Its shipments to the United
20 States are almost entirely in bulk. That is, in
21 containers exceeding four liters. Puerto Rico, on the
22 other hand, has four major players, Serralles, Edmundo

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1 Fernandez, Barcardi, and Trigo.

2 The economics here are pretty
3 straightforward. Low-valued bulk rum has duties on it
4 of 90 cents per proof-gallon. With those duties the
5 Virgin Island industry is the low-cost, high-volume
6 supplier to the U.S. market. In fact, 94 percent of
7 the VI shipments are bulk and low-valued.

8 For Puerto 72 percent of its shipments to
9 the mainland are low-valued. We are pretty sure that
10 most of the bulk of those low-valued shipments are
11 actually in bottles. The competitiveness of producers
12 in Puerto Rico and the Virgin Islands in the U.S.
13 market is directly dependent on the current duty
14 regime.

15 Compared to producers in the Andean region
16 and Brazil, the largest producer of rum in the world,
17 Puerto Rico and the U.S. Virgin Islands face
18 relatively high cost for their labor and energy. They
19 also lack domestic sugar industries to provide them
20 with cheap molasses.

21 Now, under these circumstances the duties
22 make a huge difference for the insular industry. For

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1 low-valued rum the existing duties constitute the
2 single largest cost factor for any potential exporter
3 to the United States.

4 Duties are also a significant component of
5 the production cost for low-valued bottled rum. Now,
6 eliminating the duty would almost certainly have a
7 dramatic impact on the insular industry's
8 competitiveness. The existing duty on low-valued rum
9 is, we believe the only factor that prevents Colombia,
10 for instance, from becoming a low-cost producer in the
11 U.S. market to the detriment of the rum industries in
12 Puerto Rico and the U.S. Virgin Islands.

13 Now, in the past the U.S. Government has
14 recognized sensitivity of the insular rum industry to
15 imports in its past programs and trade agreements, I
16 believe, should do so again in the FTA with Andean
17 countries.

18 Peter.

19 MR. HEIBERT: Will, I guess now I shift my
20 hat to appear before you as counsel to the government
21 of the Commonwealth of Puerto Rico. Before Mr.
22 Szamosszegi summarizes the results of his economic

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1 analysis on tuna and coffee, I would also like to
2 highlight a few important points raised in the
3 Commonwealth's formal submission.

4 The Commonwealth strongly supports the
5 efforts by the President and USTR to negotiate market
6 opening initiatives in the Andean countries. Although
7 Puerto Rico is well positioned to provide goods and
8 services to the Andean countries, high tariffs and
9 other trade barriers have discouraged many Puerto
10 Rican exporters from seeking to do business in the
11 Andean region.

12 Replacing current U.S. unilateral trade
13 concessions with a mutually beneficial Andean FTA
14 would provide important new opportunities for Puerto
15 Rico's internationally competitive providers of
16 products and services and would enable Puerto Rico to
17 capitalize on its unique position as a bridge between
18 the United States and markets in the Andean region.

19 Puerto Rico also believes that an Andean
20 FTA must be a well-balanced agreement that takes into
21 account products of particular importance to Puerto
22 Rico and the other U.S. insular economies.

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1 Specifically, low-valued rum, canned tuna and coffee
2 shipments into Puerto Rico. The Commonwealth strongly
3 supports USTR and strongly urges USTR to exclude these
4 import sensitive products from any agreement with the
5 Andean countries.

6 The U.S. tuna canning industry creates
7 thousands of jobs in the insular economies of American
8 Somoa and Puerto Rico. Duty free treatment for canned
9 tuna from the Andean countries would have devastating
10 economic effects on American Somoa and serious
11 economic effects in Puerto Rico.

12 In recognition of the vulnerability of the
13 U.S. canning industry canned tuna was made ineligible
14 for duty-free benefits when Congress enacted the
15 Andean Trade Preferences Act in 1991 and that decision
16 was affirmed again when the Act was reauthorized in
17 2002.

18 The decision by the Congress in 2002 is
19 based in significant part on an analysis by the
20 International Trade Commission which confirmed that
21 duty-free imports of the Andean canned tuna would
22 seriously impact the U.S. canning industry, employment

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1 in American Somoa, and in Puerto Rico.

2 As Mr. Szamosszegi will explain, duty-free
3 treatment for Andean canned tuna would spell the end
4 of the U.S. insular canning industry and the thousands
5 of jobs that it creates for American citizens and
6 nationals in these off-shore communities.

7 I would also like to note that since 1931
8 Puerto Rico has maintained its own separate
9 congressionally authorized duty on coffee imported or
10 shipped into Puerto Rico. As Mr. Szamosszegi will
11 explain, these duties are essential to preserve Puerto
12 Rico's important coffee sector in the face of the
13 destructive economic forces at play in the
14 international coffee market.

15 For these reasons, Puerto Rico's separate
16 coffee duties must be excluded as they have been in
17 all international trade agreements to date for many
18 trade pact with the Andean countries.

19 Finally, Puerto Rico is in full agreement
20 with the separate testimony provided by yours truly in
21 the U.S. Virgin Islands on the issue of low-valued
22 bulk rum. For reasons detailed in the LECG study on

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1 rum, we urge that low-valued rum be excluded also from
2 any Andean trade agreement.

3 With that, I would like to hand the mike
4 over to our economist, Mr. Szamosszegi.

5 MR. SZAMOSSZEGI: Thank you, Peter. As
6 Peter noted, we were also asked to assess the
7 potential impacts of eliminating or reducing the long-
8 standing duty on coffee shipments into Puerto Rico and
9 on U.S. imports of canned tuna. For both products we
10 conclude that existing duty structure, removal of it,
11 would be a location tipping event with adverse
12 consequences to the respective insular industries.
13 I'm going to start with coffee and then move on to
14 tuna.

15 You may not know it from the prices in
16 your neighborhood coffee shop but we have been in the
17 midst of a coffee crisis in recent years. Expanded
18 coffee bean production in Brazil and Vietnam and
19 stagnating consumption worldwide have seriously
20 depressed world coffee bean prices. There has been,
21 unfortunately, human suffering due to the fact that
22 many growers have not been able to cover their

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1 production cost.

2 Puerto Rico's coffee farmers have been
3 spared the destructive affects of these low prices.
4 This good fortune can be traced to the current tariff
5 regime. Coffee remains an important crop in Puerto
6 Rico. In a typical year industry and climate can
7 approach 25,000 people and more than half of Puerto
8 Rico's nearly 20,000 farms contained coffee trees in
9 1998.

10 Coffee bean sales that year were \$55.5
11 million which amounted to one-quarter of total crop
12 sales. In addition, Puerto Rico has a roasting
13 industry and those roasters were responsible for
14 nearly \$70 million in manufacturing value added and
15 supported a payroll of \$6.8 million.

16 The importance of coffee to the island
17 social fabric and economy is reflected in a generally
18 favorable policy environment for coffee growers. The
19 Commonwealth government sets coffee prices and applies
20 an import duty on coffee imports and coffee shipped to
21 Puerto Rico from the United States. The duty is \$2.50
22 per pound for nonroasted coffee and \$3 per pound for

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1 roasted coffee. Even in the current price depressed
2 environment these duties make the importation of
3 coffee beans prohibitive in Puerto Rico.

4 The impact of coffee duty reduction on
5 trade depends on relative production cost which differ
6 from country to country. The major producers, as you
7 know, are generally developing countries with input
8 costs as was the case with rum that were significantly
9 lower than those costs in Puerto Rico. I think the
10 most striking example is labor. In Puerto Rico the
11 harvesting wages are about three to 15 times higher
12 than agricultural wages of the other western
13 hemisphere coffee producers. Inputs such as
14 fertilizer and energy are also more expensive in
15 Puerto Rico.

16 As a result of this cost disparity,
17 maintaining the current duty regime is really
18 essential to the Puerto Rican industry. It's a matter
19 of survival. A duty of \$2.50 per pound list the price
20 of Arabica beans today to more than \$3.00 per pound,
21 compared to really the minimum that growers in Puerto
22 Rico would receive of \$2.44 per pound that the

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1 government would pay them in the event of a shortage
2 or a coffee surplus.

3 This renders Brazilian and Colombian beans
4 noncompetitive but absent the duty for imported beans,
5 the beans would just undercut by staggering amounts
6 really the locally grown beans. In this context due
7 to the elimination or reduction would cause rapid
8 deterioration in the insular coffee cultivation in
9 Puerto Rico with the impact felt throughout the
10 agricultural sector in the form of higher
11 unemployment, lower incomes, and even potential social
12 turmoil which we've seen in other countries where low
13 coffee prices have caused problems.

14 The gains to third countries from any
15 liberalization of coffee into Puerto Rico would be
16 quite small. The local Puerto Rican market is
17 virtually the totality of the Puerto Rican industry's
18 focus. They export very little. However, the Puerto
19 Rican coffee market is but a drop in the world
20 market's bucket and cannot have a significant impact
21 on global coffee prices. This is really all pain and
22 no gain for Puerto Rico.

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1 Even before the collapse of world coffee
2 prices the coffee duty was necessary to maintain the
3 insular industry's competitiveness and as a result of
4 that collapse, the duty really is now more important
5 than ever.

6 I'll now turn to tuna to complete the
7 trifecta here. The U.S. tuna canning industry is
8 similarly vulnerable to the elimination of the duty on
9 canned tuna. The U.S. industry is concentrated in
10 insular economies of American Samoa and Puerto Rico
11 with limited amount of production undertaken in
12 California.

13 I'll just give you some facts about the
14 U.S. industry. It employs 6,000 people. More than
15 5,000 of them are in American Samoa and about 800 to
16 900 are employed mostly in Puerto Rico but also in
17 California. Even with the current regime which
18 applies a 23.5 percent tariff on the vast majority of
19 canned tuna imports, Puerto Rican canning industry has
20 been in turmoil. Puerto Rico lost more than 1,000
21 jobs in 2001 when Starkist shuttered its Mayaguez
22 plant.

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1 Now, tuna canning is a low-margin
2 industry. Competitiveness is determined really by
3 other relative cost such as labor, especially labor,
4 especially since tuna is purchased on the open market.
5 According to U.S. ITC staff estimates hourly labor
6 costs are \$6.50 in Puerto Rico, \$3.75 in American
7 Somoa, and a mere \$.77 in Ecuador. You can see the
8 disadvantage that insular producers face.

9 These labor costs really drive locational
10 decisions. Starkist testified to the Department of
11 Labor that the labor cost differentials were really
12 the main reason why it decided to close the Mayaguez
13 cannery and relocate its facilities to Ecuador which
14 is, as you know, the largest Andean producer of canned
15 tuna by far.

16 Please note that this decision took place
17 despite the advantageous duty situation that was in
18 place at the time, meaning that even with a duty in
19 place production in Puerto Rico is now vulnerable.
20 There is no room in this environment for reduction of
21 the existing duties, no less their elimination.

22 The industry's cost sensitivity indicates

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1 that significant and immediate adverse effects are
2 likely if the current duty is removed. The 2002
3 analysis of canned tuna trade by the U.S.
4 International Trade Commission staff concludes that up
5 to 4,400 mainland and insular jobs will be lost were
6 the duties removed.

7 Such losses imply the virtual elimination
8 of California and Puerto Rican canning operations and
9 a significant reduction in canning operations in
10 America Samoa as well. So significant, in fact, that
11 it may not be worth keeping the whole facility open.

12 Even the mid point of the staff's
13 employment loss estimates which was 2,659 jobs implies
14 a minimum of 1,800 jobs lost in American Samoa. But
15 the gains from increased Andean employment that the
16 commission found, that was a mid point of 1,785 new
17 jobs, hardly justifies the pain of an even higher
18 number of lost American jobs. These estimates could
19 very well understate the danger to the U.S. industry
20 from the elimination of duty due to some overly
21 optimistic assumptions.

22 In short, insular canned tuna production

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1 is competitive in the U.S. market due to the current
2 regime and this is a regime that has already enabled
3 the Ecuadorian industry to prosper. Congress has long
4 recognized the critical role played by the tariff
5 regime in preserving the U.S. production of canned
6 tuna. The United States should continue this practice
7 and exclude canned tuna from the list of products that
8 would receive duty free treatment under an Andean FTA.
9 Thanks. I guess we are ready for questions.

10 CHAIR EISS: Does that conclude?

11 MR. SZAMOSSZEGI: Yes.

12 CHAIR EISS: All right. Then perhaps
13 starting and moving through in the order in which you
14 addressed your issues. If I could turn to the
15 Department of Treasury and ask them to address
16 questions regarding the rum question, the rum issue.
17 Then we'll proceed from there.

18 MS. EARP: In your testimony you mentioned
19 that 15 percent of the Virgin Islands' revenue budget
20 comes from rum excise tax refunds. Has that number
21 been constant over the last several years or has it
22 been going up or down?

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1 MR. HEIBERT: It goes up and down but it
2 has also gone up in recent years primarily because
3 Congress has increased the amount of the tax that it
4 has returned to the Virgin islands and Puerto Rico.
5 A few years back it was set at \$10.50 a proof-gallon.
6 It is currently \$13.25 a proof-gallon and there is
7 legislation pending before the Congress that would
8 increase it to \$13.50 a proof-gallon.

9 MS. EARP: Okay. Thank you. In your
10 written testimony on behalf of the rum industry, you
11 mentioned that there were efforts underway to move to
12 higher value-added rum production. Could you tell us
13 a little bit more about what the prospects for that
14 are? And also what are the largest export markets?
15 Presumably the United States but what are some of the
16 other markets that are being developed?

17 MR. HEIBERT: The largest export market
18 for VIRIL is, in fact, the United States. It is
19 virtually all of it. It's not 100 percent but it's
20 99. something percent. There are, as Mr. Szamosszegi
21 indicated, very substantial barriers to entry into the
22 branded market.

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1 It requires an expensive sustained
2 advertising campaign over time, the development of
3 distribution channels. It is a long process. If I
4 could just briefly go into some of the economics of
5 the production of rum, you will see why, especially in
6 the case of the Virgin Islands that it is a tough hill
7 to climb.

8 Just for the sake of mental math, let's
9 say that the bureau produces roughly 6 million proof-
10 gallons of rum. Currently I think the figure is that
11 it's 90 to 95 percent and higher in the low-valued
12 bulk rum category. That rum will enter the U.S. at a
13 Customs landed cost of less than \$2.00 a proof-gallon.

14 Let's say the profit, again for the sake
15 of a hypothetical figure, is 25 percents out of that
16 less than \$2.00. With 6 million proof-gallons, that
17 means the net income of the company may be
18 substantially less than a million and a half dollars.
19 Now, the irony is that the profit to the Government
20 because we get \$13.25 a proof-gallon, while the
21 company may get \$.25, we get \$13.25.

22 We generate, in effect, tax revenue equal

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1 to \$75 million but a company with \$1 to \$2 million
2 worth of revenue is going to be hardpressed to mount
3 a national advertising campaign to break into the
4 market to displace the other branded products
5 including Barcardi.

6 MR. SZAMOSSZEGI: Just to amplify that if
7 I may.

8 MR. HEIBERT: Yes.

9 MR. SZAMOSSZEGI: We looked at that issue
10 in a somewhat longer study we did, I think, two or
11 three years ago. We found that really if you want to
12 make a splash in this industry the players who do make
13 a splash spend extraordinary amounts of money. The
14 firms that spend extraordinary amounts of money on
15 advertising also sell a lot of rum. The point is that
16 somebody, especially like VIRIL, it is really very
17 difficult to make that jump.

18 Now, there may be trends in the market
19 toward certain types of flavored rums that may really
20 help VIRIL sell more rum but in terms of entering the
21 high-valued market probably they lack the financial
22 wherewithal to make that happen.

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1 MS. EARP: Finally, could you just briefly
2 describe the structure of the industry in the Virgin
3 Islands? Are there small producer relationships to
4 other countries?

5 MR. HEIBERT: There is a single producer
6 currently which is by Todd Hunter International which
7 is a U.S. company located in Florida. But its market,
8 again, is 99. something percent U.S.

9 CHAIR EISS: Okay. And now with respect
10 to the balance of your testimony with regard to tuna
11 and other related issues. The Department of Commerce.

12 MS. CAMERON: When speaking of eliminating
13 duties on canned tuna you talked a lot about potential
14 job losses not only in Puerto Rico but also American
15 Samoa and California. Do you have an estimate of the
16 total economic impact in dollar terms on these
17 economies if canned tuna were included in an FTA and
18 given duty free status?

19 MR. HEIBERT: I will defer to my economist
20 on that question.

21 MR. SZAMOSSZEGI: On the dollar amount we
22 did not do that. We looked at basically what the

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1 commission staff had done which was generally very
2 good. We just disagreed with certain assumptions
3 about the ability of Ecuador to access tuna from the
4 Western Pacific ocean and so we thought that the
5 supply limitations that the commission placed on the
6 import share of Ecuadorian tuna were a little bit low.
7 Of course, without those restrictions, you would end
8 up having a larger economic impact.

9 Commission staff also noted in a revised
10 version of that report, also correctly we feel, that
11 there is not necessarily a gradual reduction in
12 production capacity and employment in this industry.
13 If you are losing sales, you're not going to go one
14 employee down, one employee down, one employee down
15 for the whole 6,000 or 5,000 in the case of American
16 Somoa.

17 At some point you are going to say, "Look,
18 we just don't have enough business to do this here.
19 We are going to have to shut the facility and you will
20 go from 2,500 to zero at the drop of a hat." So that
21 is also another point to consider in viewing the
22 economic impact.

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1 In terms of revenues and other data,
2 capital expenditures and things like that that the
3 Department of Commerce generally collects on an
4 industry-by-industry basis for Puerto Rico, tuna
5 canning because of the few number of players, data on
6 tuna canning is withheld because you don't want to
7 really let the competitors know all of your data so,
8 therefore, we can't really get at that data either.

9 MR. HEIBERT: Could I just interject just
10 to make sure, you know, the point is clear. In the
11 case of tuna Congress made a Solomonian decision in the
12 reauthorization of the Andean Free Trade Preference
13 Act. Pouch tuna enters the U.S. duty free. In the
14 case of rum in the course of the Singapore zero-for-
15 zero agreement and the negotiations with the quad
16 countries, high-valued rum comes in duty free.

17 What we're talking about here in these
18 cases are very narrow sectors of a much larger
19 industry. It's the low-valued bulk rum sector in the
20 case of rum. It's the most price sensitive, import
21 sensitive sector of the tuna market, canned tuna.

22 In the case of coffee, coffee comes into

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1 the United States duty free. We're certainly not
2 contesting that. We're talking about something that
3 -- a specific regime that Congress delegated to Puerto
4 Rico as part of the tariff act of 1930 that has been
5 in force since that time and is the basis for the fact
6 that there is a Puerto Rican coffee industry.

7 CHAIR EISSLER: Okay, Mr. Heibert. Thank you
8 very much. I think we have completed the questions.
9 I appreciate your time.

10 MR. HEIBERT: Thank you very much.

11 CHAIR EISSLER: Our next witness will be Mr.
12 Roy LeTourneau of LeTourneau Peru, Inc.

13 MR. LeTOURNEAU: Thank you very much. I
14 appreciate this opportunity. I'm Roy LeTourneau. I
15 currently live in the Dallas, Texas area. I present
16 this testimony on behalf of LeTourneua Peru, Inc.
17 Since we submitted written testimony to you on March
18 10th, I will only summarize those things today in the
19 interest of time which I know you've been sitting here
20 all day.

21 From 1953 to 1970 we built a highway under
22 contract with the government of Peru. In 1970 the

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1 government of Peru appropriated our property and 34
2 years after completion of the highway Peru has not
3 compensated LeTourneau for any of the work performed.
4 This highway is still being used by Peruvians today.

5 Since I filed my written testimony on
6 March 10th there has been a development to report. On
7 March 12th the government of Peru issued a Supreme
8 Decree authorizing a commission to address the
9 LeTourneau matter. On the surface, at least, the
10 decree appears to be a step forward toward resolution.
11 But we will not know that until we see how Peru
12 implements the decree and the negotiation positions it
13 takes.

14 There are some unknowns. First, the
15 decree does not specify any procedures for
16 negotiations. Second, the decree does not require a
17 negotiated result, only a report. I'm not sure what
18 such a report is. Third, the report must be approved
19 by the Congress. These uncertain areas give me
20 concern and after 33 years, please forgive me if I
21 have a healthy sense of skepticism.

22 However, I am prepared to begin

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1 discussions on the assumption that good faith serious
2 negotiations will lead to a fair negotiated result and
3 that the approval process in the decree will not undo
4 the negotiated result.

5 Just this morning the Vice Minister of
6 Foreign Trade, Pablo de la Flor, who testified here,
7 advised us that the members of the negotiation
8 commission have been appointed as of yesterday. We
9 have communicated to the government of Peru that we
10 are prepared to meet in Lima on March 30th.

11 If things go well, you won't need to hear
12 from me again. However, if things do not go well, I
13 will be coming back and continue our opposition to FTA
14 discussions with Peru and continued ATPDEA
15 eligibility. Without the continued support of our
16 Government, I have no more assurance today than I did
17 in 1992 that Peru will ever meet its obligations to
18 compensate us for its 1970 appropriation, an
19 obligation that has been confirmed by more than four
20 Peruvian courts and acknowledged by the government
21 themselves.

22 My concern and the reason for my testimony

1 requesting the U.S. not to enter into FTA negotiations
2 with Peru is that in the past the government of Peru
3 has not followed the decisions of its own courts and
4 has used the judicial process to delay and, thus,
5 avoid meeting its contractual and constitutional
6 obligations to LeTourneau.

7 Hopefully, the recent decree will change
8 things. Frankly, I'm not comfortable getting into the
9 middle of potential U.S./Peru FTA discussions.
10 Personally, I am pro-free trade. However, given my 33
11 years of frustration with Peru's inaction I need the
12 help of my Government to obtain resolution of this 34-
13 year-old expropriation.

14 We relied on the contractual commitments
15 of the Peru government in the early '50s and performed
16 over \$5.5 million of services. We have been waiting
17 a long time for Peru to compensate us and we have
18 invested time and resources to recover what is taken
19 by the government from my family's company in 1970.

20 During that time Peru has received
21 benefits from the U.S. under the ATPA and the ATPDEA
22 and now FTA discussions are contemplated. So long as

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1 Peru has not reasonably resolved the LeTourneau
2 expropriation claim and the claims of others, it does
3 not meet the criteria for such trade benefits. Nor,
4 I suggest, has Peru earned the right to open
5 discussions as to a free trade agreement with the U.S.

6 Previously I have asked the U.S. to
7 suspend Peru's eligibility under the ATPA and the
8 ATPDEA and today I request the U.S. also forego any
9 FTA discussions until Peru resolves our 34-year-old
10 expropriation claim.

11 As I said at the outset, I hope and pray
12 and with the issuance of the decree and the
13 appointment of the commission, Peru is now willing and
14 able to move forward promptly and fairly toward a
15 reasonable resolution.

16 Thank you for taking time to consider my
17 remarks and requests. If you have any questions, I
18 would be more than pleased to try to answer them.

19 MR. HARMAN: Good afternoon, Mr.
20 LeTourneau. It's good to see you again. I'm Bennett
21 Harman. We met previously. I believe a number of the
22 agencies here are familiar with your case as we have

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1 been working hard to advance it.

2 There have been recent developments
3 including as recently as today. We share some
4 encouragement from that. Perhaps you could help
5 clarify. As we understand this decree, it mapped out
6 a three-month process for a negotiation to occur.
7 Have you been given clarification as to when exactly
8 that clock begin on the three-month process?

9 MR. LeTOURNEAU: Quite honestly, we have
10 had no official communication from them. We were
11 given a copy of the decree but we did not know until
12 we met the Vice Minister here this morning that the
13 commission had actually been named.

14 They faxed a list of those people over to
15 us this morning. We assume that we will meet with
16 them on the 30th. We have had no official
17 communication for that as yet. You're right. There
18 aren't laid out a lot of procedures. We just know
19 that it specifies we are supposed to have it resolved
20 within three months. As we say in Spanish (speaks in
21 Spanish).

22 MR. HARMAN: Thank you.

1 MR. LeTOURNEAU: I will comment on the
2 previous. We have met with them a couple of times
3 but, quite honestly, every time we've met with them it
4 has fallen flat. We have not received any further
5 communication from them. We have asked for
6 appointments. We've sent them letters. We haven't
7 gotten feedback from them in the past. I hope this is
8 a new beginning.

9 MR. HARMAN: It is your understanding they
10 have agreed to meet as of the 30th?

11 MR. LeTOURNEAU: They have not
12 communicated that as yet. We've offered to meet on
13 March 30th.

14 MR. HARMAN: We'll stay in touch on that
15 then.

16 MR. LeTOURNEAU: Okay.

17 MS. CAMERON: I do have one quick
18 question. In the past they have said that the
19 Agriculture Ministry had the jurisdiction for this.
20 Where does the jurisdiction lie with the Supreme
21 Decree and the negotiators or the group on that? Is
22 it still under the agriculture ministry?

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1 MR. LeTOURNEAU: We understand that a
2 representative from the Council of Ministers will be
3 the chair of that commission. There will be
4 representatives there from Agriculture, Trade,
5 Finance, Justice. There will be a broad
6 representation on that commission chaired by the
7 representative from the Council of Ministers.

8 The government has tried at times to put
9 us under the Aquarian Reform Law which has been ruled
10 by the courts do not apply to us and, in fact, the
11 courts ruled that was unconstitutional. There we
12 stand.

13 CHAIR EISS: Mr. LeTourneau, thank you
14 very much for your time and for your brevity.

15 MR. LeTOURNEAU: I know you're tired.

16 CHAIR EISS: Is Mr. John Murphy here?
17 Thank you very much. We welcome you as the last
18 witness on this first day of the hearing. We invite
19 you to make your presentation.

20 MR. MURPHY: Thank you very much. I would
21 like to thank the committee for the opportunity to
22 share some comments on behalf of the U.S. Chamber of

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1 Commerce. With over 3 million members the U.S.
2 Chamber is the world's largest business federation.
3 The Chamber has been a strong advocate of closer trade
4 relations between the United States and the countries
5 of Latin America and the Caribbean through the FTAA,
6 as well as bilateral and subregional agreements such
7 as NAFTA, the U.S. Chile Free Trade Agreement, as well
8 as the CAFTA agreement.

9 As the Chamber's chairman Larry Liebenow
10 told the press at the close of the Miami FTAA
11 ministerial last November, it is increasingly clear
12 that, and I quote, "Ambassador Zoelick's strategy of
13 competitive liberalization is working."

14 Governments in Latin America and the
15 Caribbean are under tremendous pressure to make
16 ambitious commitments and free trade negotiations or
17 risk being left on the sidelines. It was that very
18 week that the United States announced its intent to
19 negotiate a free trade agreement with potentially four
20 Andean countries.

21 The fact that we have reached a point
22 where we can contemplate this possibility underscores

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1 the sense of movement in the hemisphere toward trade
2 liberalization despite hard times in some countries
3 and election year politics here in the United States.

4 Just as the Chamber was a supporter of the
5 Andean Trade Preference Act of 1991 and its renewal
6 and enhancement in 2002, we welcome the proposed FTA
7 as a logical next step in the commercial ties between
8 our countries. Trade is a central role to play in
9 helping the Andean countries combat narco trafficking,
10 build democratic institutions, and promote
11 socioeconomic development.

12 I would like to comment to the committee
13 that I could go into some detail with regarding
14 recommendations but I believe you've seen an advance
15 the written comment. In the course of the day you've
16 heard many of these points reiterated. For me to
17 repeat comments such as those made by Renard Aron of
18 PhRMA or Maria Strong of IIPA is perhaps not the most
19 important thing at this hour of the day.

20 Let me rather than go into those specifics
21 just make a brief concluding comment and then perhaps
22 we can have a little discussion. It's important to

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1 note as the committee has been hearing today that a
2 number of persistent disputes between U.S. companies
3 that have invested in the Andean countries and the
4 respective national governments continue and these are
5 a substantial obstacle in the road to a free trade
6 agreement.

7 It's noteworthy that the government of
8 Colombia under the leadership of President Uribe has
9 moved to resolve a number of the most difficult
10 disputes in that country. It's critical that the
11 government of Colombia continue to advance for final
12 resolution of the remaining cases in the weeks before
13 the launch of negotiations.

14 The situation in Peru is a bit more
15 difficult and details relating to investment disputes
16 in that country are by now well known to this
17 committee obviating the need for me to present great
18 details. There are also difficulties in the
19 investment climate in Ecuador and Bolivia.

20 The U.S. Chamber of Commerce strongly
21 believes that a free trade agreement with the Andean
22 countries has the potential to improve the investment

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1 climate in the region substantially. Above all, the
2 rules included in such an agreement promise to level
3 the playing field for U.S. and local businesses in
4 important ways including measures to ensure
5 transparency in government procurement, protect
6 intellectual property, and provide access to
7 international arbitration for investment disputes. In
8 a sense, the FTA is a significant part of the solution
9 to the problems that beset the investment climate in
10 some countries.

11 As a consequence, the Chamber favors
12 proceeding with the launch of negotiations with
13 Colombia and Peru and with Ecuador and Bolivia when
14 they become ready. Our support for the inclusion of
15 Peru in the initial launch of negotiations is tempered
16 by the need to secure the rapid resolution of the
17 investor disputes in that country.

18 While some cases may require additional
19 time to resolve, opening negotiations with Peru should
20 be conditioned on substantive action in these cases in
21 the weeks leading up to the scheduled launch of the
22 negotiations. And, by the same token, concluding the

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1 negotiations should be conditioned on the full
2 resolution of at least a great majority of these
3 disputes.

4 With the government of peru focusing on
5 these disputes with a new clarity and purpose, it
6 should be feasible to launch the negotiations with
7 Peru as a full partner to the benefit of all parties.

8 Let me conclude by noting that many of the
9 Chamber's member companies and their employees stand
10 to benefit directly from the proposed FTS.
11 Consequently, we are prepared to work diligently to
12 support the negotiation and eventually the
13 ratification approval of a comprehensive and ambitious
14 U.S.-Andean FTA. I would be happy to take any
15 questions or comments.

16 CHAIR EISS: Mr. Harman.

17 MR. HARMAN: We appreciate your not
18 covering the same ground as some previous people that
19 testified, but are there some areas you wish to
20 highlight that were not previously covered that are
21 areas of particular concern in the Andean region to
22 U.S. exporters, investors? Are there particular areas

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1 or practices that seem like a priority to address in
2 these negotiations?

3 MR. MURPHY: I think in polling our
4 membership we came back with indeed the issues that
5 were flagged in our written comment. One of the take-
6 aways from these comments is that the evolving body of
7 what goes into a high-standard free trade agreement is
8 very much to the satisfaction of our member companies.
9 The U.S. Chile agreement, the U.S. Central America and
10 Dominican Republic Agreement have really set new
11 standards in the intellectual property chapter, for
12 instance, the way that the Central America agreement
13 dealt with the issue of dealer protection laws.

14 These were areas that caught the attention
15 of our member companies. Indeed, if it were possible
16 to go out and use much the same text, in many cases
17 companies would be very pleased indeed I think.

18 MS. BROWN: Yes, Mr. Murphy. I wonder if
19 you could say something about those industries that
20 the Chamber sees as benefitting the most from an
21 Andean FTA. Those U.S. industries.

22 MR. MURPHY: I think the U.S.-Andean

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1 initiative, one of the most interesting aspects it
2 offers is what it would do for U.S. agriculture. I
3 think it has been widely noted that Colombia is quite
4 a large importer of U.S. agricultural products. We at
5 the Chamber are very active on Capitol Hill right now
6 promoting passage of the U.S.-Australia and the U.S.-
7 Central America FTAs. Excellent agreements.

8 We recognize that part of getting to yes
9 with the Congress on these agreements is underscoring
10 broad benefits. If we can get more and more of the
11 agricultural community to see the value of these
12 agreements as has happened, for instance, with CAFTA
13 in Australia and the Farm Bureau endorsing it. That
14 will be really critical. I think that is the entirety
15 of my comment on that.

16 CHAIR EISS: Department of Commerce.

17 MS. EARP: In terms of the Peru disputes,
18 what message has the Chamber communicated to the
19 government of Peru regarding the need to resolve these
20 outstanding disputes?

21 MR. MURPHY: On March 2nd Dan Crisman, who
22 is the Senior Vice President for International Affairs

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1 and myself were in Lima and had meetings with
2 President Toledo and a number of ministers to raise
3 these disputes. I think the formulation that we used
4 on that occasion was much as I put it here. We don't
5 need to see road maps now. We don't need to see plans
6 about how to resolve disputes.

7 What we need to see is actual resolution.
8 I'm not in a position to evaluate the work of the past
9 two weeks and I believe the committee has heard
10 directly from the Peruvians today on that. That was
11 our message in Lima that we need to see substantive
12 movement forward, a resolution of some disputes, of
13 the disputes that can be resolved quickly in advance
14 of the launch. And certainly before concluding the
15 negotiations with the majority of them coming to
16 closure.

17 CHAIR EISS: Treasury.

18 MS. EARP: In your submission you note
19 that the need for transparent and easy to use rules of
20 origin. Are there any particular sectors or areas
21 where you would change the model that we've used in
22 recently negotiated FTAs such as CAFTA?

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1 MR. MURPHY: For a large umbrella of
2 business association like the Chamber the rules of
3 origin can be a complex issue. That is why our
4 statement on it is rather brief but I think we try to
5 make it very clear. There's the comment about that we
6 need to avoid requirements that we trace products
7 used. The requirement to trace origin is onerous for
8 some companies. Certainly making these rules as
9 simple as possible and as easy to use is a top
10 priority for companies across sectors.

11 CHAIR EISS: No more questions, I believe.
12 Mr. Murphy, we thank you for your testimony. We thank
13 all in the audience and the witnesses for their
14 appearance today. The second day of the hearing will
15 convene at 9:15 tomorrow morning right here. With
16 that, I declare the hearing adjourned.

17 (Whereupon, at 4:41 p.m. the hearing was
18 adjourned.)

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