

ENVIRONMENTAL IMPACT OF THE PROPOSED NORTH AMERICAN FREE TRADE AGREEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

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ENVIRONMENTAL IMPACT OF THE PROPOSED NORTH AMERICAN FREE TRADE AGREEMENT

WEDNESDAY, SEPTEMBER 16, 1992

**U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, DC.**

The hearing was convened, pursuant to notice, at 10:10 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Also present: Senators Bentsen, Riegle, Daschle, Breaux, Packwood, Danforth, Chafee, and Grassley.

[The press release announcing the hearing follows:]

[Press Release No. H-48, September 11, 1992]

**TRADE SUBCOMMITTEE TO EXPLORE NAFTA ENVIRONMENTAL ISSUES, EPA
ADMINISTRATOR REILLY TO TESTIFY**

WASHINGTON, DC.—Senator Max Baucus, chairman of the Senate Finance Subcommittee on International Trade, Friday announced a hearing to examine the environmental impact of the proposed North American Free Trade Agreement.

Baucus (D., Montana) said Environmental Protection Agency Administrator William Reilly and representatives of environmental organizations will testify at the hearing.

The hearing will be at 10 a.m. on Wednesday, September 16, 1992 in Room SD-215 of the Dirksen Senate Office Building.

"The past few years have witnessed a convergence of trade issues with environmental issues," Baucus said.

"Nowhere is this more evident than with the U.S. effort to negotiate a NAFTA. The fate of NAFTA depends, in many ways, on the resolution of these important environmental issues."

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN OF THE SUBCOMMITTEE

Senator BAUCUS. The hearing will come to order. The North American Free Trade Agreement negotiations did, and perhaps still do, represent an historic opportunity for the North American environment as well as the North American economy.

But, in my opinion, the Bush administration has squandered yet another opportunity to demonstrate leadership on environmental issues. And now, rather than attempt to address the environmental shortcomings of the NAFTA in a forthright manner, the administration has essentially resorted to empty rhetoric.

This would be quite disturbing were it not just another in a long list of environmental sins of the President, who, 4 years ago, proclaimed himself the environmental President.

I give this administration credit for early environmental achievements, such as working with Congress to pass the new Clean Air Act. But even that great achievement has now been undermined by the efforts of a so-called Quayle Competitiveness Council to gut the Clean Air Act by holding up and weakening key regulations intended to implement the act.

Beyond that, the Bush administration demonstrated to the world at the recent Rio World Environmental Summit that it is a reluctant follower, not a leader, on international environmental areas.

I have considerable respect for the efforts of EPA Administrator Bill Reilly. But his wise environmental counsel has too often fallen on deaf ears in the White House. Often, the excuse for inaction on environmental issues has been that environmental protection could endanger jobs. But I believe that trade-off is rarely necessary.

And, in the case of the NAFTA, environmental protection could actually save American jobs by creating a level trade playing field. But, still, the administration was unwilling to aggressively pursue an agreement which would protect the environment.

From the outset of the debate on the NAFTA, it was clear that negotiating the NAFTA was a fundamentally different proposition than negotiating a free trade agreement with Canada.

Despite the very considerable achievements of the Salinas administration, Mexico remains a developing country, with all of the political, economic, and environmental problems characteristic of a developing country. According to international observers, judicial and political corruption remains a very serious problem in Mexico. Wages in Mexico remain about one-tenth of comparable U.S. wages in key manufacturing sectors.

And, again, despite the good efforts of the Salinas administration, environmental laws are often ignored. A recent GAO survey found that six U.S. companies—that is, all companies included in the survey—had recently moved to Mexico, and not a single one had fully complied with Mexican environmental laws—not one single company.

And just a few months ago I personally visited the Mexican-American border area and was struck by the environmental health problems that I saw.

Largely because of the problems caused by this wide gap in development, no free trade agreement has ever been negotiated between a developed country and a developing country. And none can be negotiated without addressing issues such as wage rates, and the environment.

Because of the unique political, geographic and economic relationship between the two countries, I support concluding a free trade agreement between the United States and Mexico. As the recent boom in U.S. exports to Mexico demonstrates, there is a considerable market for American products in Mexico. And securing access to a \$6 trillion market of 360 million consumers could be a major boost to the American economy.

Although I would have hoped we could have struck a better deal in a few areas for American workers and business, I am generally satisfied with the commercial aspects of the tentative agreement with Mexico and Canada. I have serious questions regarding NAFTA provisions related to wheat, autos, films, and wine. I hope

some of these problems can be addressed in implementing legislation or through other means.

On the whole, however, the agreement seems a balanced package of concessions and benefits. But despite repeated warnings from this Senator and many others in the Congress, the Bush administration has failed to adequately address other issues that must be addressed before a free trade pact can be concluded.

Specifically, the administration has not yet put forward a fully-funded worker adjustment program for those workers when they lose their jobs because of free trade. Without such a program, the NAFTA faces serious problems in the Congress.

I am even more concerned about the handling of a range of environmental issues. My concerns should have come as no surprise. I have met with Ambassador Hills and a number of environmental groups on several occasions to explore environmental concerns related to the NAFTA.

I stated publicly when the Congress gave the President fast-track negotiating authority to begin the NAFTA negotiations that environmental issues must be addressed. I generally support the proposition that economic growth can increase environmental awareness, but, by itself, that is not enough.

After a recent experience involving the Marine Mammal Protection Act, many environmental groups are justifiably concerned that U.S. environmental laws are being attacked as trade barriers.

The drafted NAFTA agreement does make some significant progress on this issue. The agreement clearly puts the burden of proof on any Nation that would challenge our environmental laws. It also establishes boards with environmental expertise to address conflicts between environmental standards and trade. I hope to receive further clarification on these issues from the administration today.

But, the NAFTA is silent on what I see as the most important environmental issue: ensuring that all parties to the agreement, including Mexico, enforce adequate environmental standards.

It is important to recognize that this is a critical environment and economic concern. If Mexico does not enforce adequate environmental laws, Mexican companies could avoid pollution control costs. This could result in significant economic advantage to Mexican businesses vis-a-vis their U.S. competitors.

More troubling, unscrupulous U.S. businesses could be convinced to move to Mexico to take advantage of lax pollution enforcement and use the NAFTA to be assured of retaining access to the U.S. market.

Obviously, this is a major threat to the North American environment. Pollution over the continent could increase dramatically if manufacturing moved to Mexico to avoid pollution controls. The problem of a Mexican pollution haven could also be a serious economic problem in the United States if businesses close up shop, throw out their workers, and move to Mexico to avoid pollution controls.

This problem is so serious that it must be addressed before a free trade agreement is concluded. But, rather than addressing this concern head on, the Bush administration ignored it. They accused all

who raised this concern of being "protectionists in environmental clothing."

They ignored the issue of enforcement while maintaining that NAFTA is "the greenest trade agreement ever negotiated." And, when our trading partners raised this issue in the NAFTA negotiations, the administration stonewalled.

I have a long record of supporting both free trade and the environment, and I personally take insult at the suggestion that raising environmental concerns somehow makes me a protectionist.

Despite the administration's claims to the contrary, every single environmental group I have contacted, including those that act as official advisors to the administration, have expressed concern about the Mexican enforcement of environmental laws.

And many other groups, including State and local governments, have expressed concern about the prospect of businesses fleeing the United States to avoid environmental regulations.

I think all of the cooperative efforts that the EPA is pursuing with its counterparts in Mexico are positive. But long experience in trade negotiations has taught me one thing: commitments must be enforceable. Voluntary efforts and statements of support are not enough.

The Japanese, for example, have voluntarily agreed to open their market dozens of times, yet we are still waiting. The Canadians promised in the United States-Canada FTA to negotiate with the United States to phase out subsidies over 5 years. That was in the agreement. We are still waiting.

Only enforceable commitments can be relied upon. Promises are soon forgotten. There are a number of ways to address this problem. Tariffs could be snapped back in sectors where environmental standards are not enforced. Offsetting duties could be imposed on products produced without adequate environmental standards. A commission could be established to enforce environmental laws in all three countries. As the Canadians proposed, inadequate environmental standards could be subject to the NAFTA's dispute settlement procedures.

Any of these alternatives could be workable. They all have flaws, but, with refinements, they could be workable. But some real and workable approach must be found to ensure that all parties to the NAFTA enforce adequate environmental standards. Until a solution is found to this problem, I cannot support the NAFTA, and I doubt that it will win Congressional approval.

The world is constantly changing. The Cold War is over. The Soviet challenge we have faced for the last three decades has disappeared. But if we are to remain a great Nation, we must be ready to address the economic and environmental challenges that now confront us.

In my opinion, the main reason that the Bush administration chose not to adequately address the environmental issues of the NAFTA was that the growing tension between the environment and trade issues had never before been raised. The administration was timid in the face of a new challenge.

I have great respect for Administrator Reilly. I do endorse EPA's efforts to set up cooperative environmental programs with Mexico.

But they are not enough. We cannot afford to retreat instead of facing the challenges of a rapidly changing world.

I would like to turn to the chairman of the committee for his statement.

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. Thank you very much, Chairman Baucus. I want to thank you for holding this hearing of the International Trade Subcommittee. I am particularly concerned about the environment and what happens on that border.

I do not know anyone who could be more concerned about it than I am. I was born and reared on that border. At night when I get ready to go to bed in South Texas, I can look across and see the lights of Mexico. I can see the lights of the Maquiladoras.

I know some of the problems that have been created as a result of that massive increase of industrial output and the hiring of thousands and thousands of people who have come up to an area that does not have the infrastructure to handle it.

I look at a relatively poor country, trying to meet the demands of what we think is necessary to do today to protect that environment, and at a situation where, back in May of 1991, Chairman Rostenkowski and I stated that our support of the authority to negotiate this agreement was predicated on the President committing to certain environmental concerns and trying to address them.

And he wrote us a letter in that regard, and I cited that time and time again in the debate as we sought the authority for the administration to negotiate this agreement. Now the time has arrived to see how good a job has been done in keeping those commitments.

Mr. Chairman, yesterday I had a lengthy meeting with Mr. Reilly, the Administrator for the EPA. It was a good one, and I appreciated the exchange. I do not doubt his sincerity for a moment.

But, what I am concerned about, is I do not want this issue just addressed as we have the heat of the debate on getting this agreement through the Senate. I hope this is an ongoing commitment that we can look forward to along that border in trying to address those problems.

I think some real progress has been made. And, within the NAFTA text, insofar as investments and standards of industrial and agricultural products, a good part of that has been addressed. That part of it is encouraging to me.

But I am also interested very much in what we do within our own country. I am really concerned about having a base of funds that we do not have to compete for every year, if we can, to address the problems along that border; the infrastructure that is in real trouble because of this great increase in low-income population throughout that area.

Back in February, the two governments released a detailed plan to deal with the border environment. That provides, I think, a useful blueprint for action on air pollution, water pollution, hazardous wastes, pesticides, and other concerns. Now the question is seeing it administered effectively.

I have been encouraged by a number of the things that I have seen Mexico do. Talking about requiring catalytic converters—I do not know of any other Third World country doing that.

I watched President Salinas close down a refinery in Mexico City that was a major contributor to pollution, costing thousands of jobs at a time of high unemployment. It takes a great deal of political courage to do that one.

I have seen them close down a number of Maquiladora plants along that border, at least until they corrected some of the problems. I would like Administrator Reilly to, in your statement that you give to us, tell us about those things you are doing to try to assist Mexico.

They have passed some tough environmental laws, many of them modeled after ours. The question, as Chairman Baucus says, is enforcement and carrying through on it, and what kind of contribution the EPA is making in that regard.

Let us face it. I do not think the environmental concerns along that border have ever had more attention than they are having now. Now is the time to take advantage of it, when the leadership of both nations want an agreement. Frankly, I do, too. Let us try to see if we can get the ongoing, continued commitment to the process and not just do it while NAFTA is on the front burner.

Mr. Chairman, I have other commitments and I would like to leave some written questions for the administration.

Senator BAUCUS. Without objection, that will be done.

[The responses to written questions were not received at press time.]

Senator BAUCUS. Thank you very much, Mr. Chairman, for your comments. I appreciate it very much. Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman. From the very outset of these free trade discussions, the environment has been a key factor; key to an extent never before seen before this committee. We have all been through a series of trade agreements, whether they were with Canada, whether they were renewal of GATT, and never have we seen the environment take such a high profile as it has in these deliberations. And it seems to me that that is good, that it signifies how far the environment has come in its role as a major factor in trade policy debate.

The strength of environmental advocacy, it seems to me, lies in the credibility of its proponents. If those of us who are environmentalists wish to be taken seriously by others, we must recognize our responsibility to thoroughly and honestly evaluate proposals that may affect the environment.

Credibility is a scarce and valuable currency. Once earned, it cannot be squandered or else we lose the opportunity to move forward, and, in fact, take a step backwards.

Now, I mentioned these thoughts for a very specific reason. I have been discouraged, Mr. Chairman—indeed, distressed—by the nature of the discussion of the environmental aspects of NAFTA. This agreement has only been up before us for something like 4 weeks.

And during that time, it seems to me, we have been drowned in a sea of overly-simplistic proclamations, warnings, assertions and announcements about NAFTA and its potential effect on the environment.

Virtually nowhere in the press reports or in the comments of those interviewed do we find careful and substantive analysis of the pertinent provisions of the agreement.

Now, I understand full well that the press and television formats frequently are not structured in such a way as to encourage detailed appraisals. But I think there is a real danger in allowing the question of the environmental soundness of this agreement to be debated in the headlines.

To the extent that we who believe we are environmentalists allow or condone by our silence, or participate in this superficial "debate," we are squandering this resource of credibility.

So, I call on everybody—environmentalists and others—to eschew rash and overly broad pronouncements and talk about specifics. I think we owe that to the Nation. Let us get down to business.

I think we have got to remember this, Mr. Chairman: this is not an environmental agreement with some trade aspects. It is a trade agreement with environmental aspects and it deserves to be examined as such, using as a yardstick whether or not its adoption will advance or will it hinder the long-term enhancement and protection of ours, and our neighbor, Mexico's, natural resources. This is not meant to solve every environmental problem of either Mexico or the United States.

So, Mr. Reilly, when my time comes, I am going to ask you a series of detailed questions about the text that has been negotiated. And I intend to ask you what pledges the administration made in May of last year to this committee and this Congress, and how well the text and the accompanying agreements you have negotiated fulfill each and every one of those promises. I want to know what the provisions are relating to the environment that are scattered throughout the text, what they will do for environmental protection, and I want specifics.

And, to the panelists, I am going to ask you why you have developed the views you have. If you do not like the text or have concerns about it, I want to know which provisions and I want to know citations.

I want your suggestions as to how specific unsatisfactory provisions—if you find them—might have been drafted to be satisfactory, or whether, frankly, nothing would have been satisfactory.

And, for those who do support the text, I want to know which provisions, again, with citations, in the text convince you that it merits supporting. No rhetoric, please; just the facts.

In sum, we are here today to talk about the environmental aspects of this agreement, and that is what I hope we do. I seek to ensure that as the legitimate debate on the NAFTA continues in the coming months we are not sidetracked by red herrings, or, perhaps in this case, I should say green herrings. That means specific citations in terms and references.

I think this is the responsible way to proceed. I think that is what our country and what our neighboring country deserves. I want to thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator Chafee. Senator Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Mr. Chairman, again, I express for the third time in two weeks, appreciation for our committee moving ahead on these hearings on the North American Free Trade Agreement.

And when it comes to the question of our worry about the investment by American business in Mexico for environmental reasons to avoid strict laws in the United States, even though they are not more strict than in Mexico, I think we should remember the statistic that we have only 2 percent of all U.S. overseas investment is in Mexico. So, from the very beginning, the United States has not, to a considerable extent—in fact, to a very minor degree—been looking for opportunities to invest in Mexico.

Now, that, surely, will change after the North American Free Trade Agreement, but it will still have to go a long way till that area of the world is a place where United States business is going to put a major emphasis.

The interaction between trade and environment have recently and suddenly emerged as an important concern in Congress and the world community. Both environmental protection and trade are crucial to the welfare of Nations.

Yet, policies in both areas have developed, for the most part, in isolation from each other, according to a recent Office of Technology Assessment report. I happen to be a member of the Board of Directors of that Office of Technology Assessment.

And, in that regard, I am pleased to have had an opportunity to be a part of this report, and I am particularly pleased that we will be discussing this issue from the perspective of witnesses in both the public and private sector this morning.

The OTA study in Appendix E of the text suggests the following: "In an era of heightened competition, increased environmental costs can diminish trade performance. And, when combined with other effects—for example, cost of capital, foreign industrial policies, et cetera—may contribute to significant competitive difficulties.

But, as other OTA reports have shown, factors such as capital availability, a well-trained work force, and a strong development and diffusion of commercially-oriented technologies remain important determinants of competitiveness."

The report goes on to state that U.S. overseas investment decisions are often driven by such considerations as foreign market access or savings in areas such as wages. For relocation decisions driven by cost considerations, the savings have to be large enough to overwhelm the cost of opening up a new plant. Many firm location decisions are not driven by low cost because access to market skilled labor and quality infrastructure may be more important.

Usually, savings from lax environmental regulations will be relatively modest compared to the savings from other factors, such as low wages. However, many countries with low labor costs also have low levels of environmental and worker health and safety regulations, which, when combined, can result in even lower costs.

Having said this, I would be remiss if I did not cite another study of U.S. Maquiladora plants. It found no relationship between the level of low Mexican regulation and U.S. investment.

As I have said in previous hearings, the 1990's, to the surprise of many, has thrown the world into a new era of international economics, trade politics, and environmental concerns. These shifts will require each of us to have a vision that clearly reflects the realities of a changing world.

The Nation is looking to each of us for leadership. It is time, of course, as I said last week, that this become a bipartisan approach and that we should be fully prepared from such an approach to enter the 21st century with sound policies to meet the challenges ahead.

While a free trade agreement with our neighbors to the north and south will bring extensive economic benefits to people living in each of our respective countries, we must also make sure that we have a comprehensive environmental protection program to ensure these same people the same health, safety and environmental standards to which they are entitled. So, I thank you, Mr. Chairman. I look forward to an opportunity to question our witnesses.

Senator BAUCUS. Thank you very much, Senator. Next on my list, in order of appearance, is Senator Daschle.

**OPENING STATEMENT OF HON. TOM DASCHLE, A U.S.
SENATOR FROM SOUTH DAKOTA**

Senator DASCHLE. Thank you very much, Mr. Chairman. I appreciate, as others have already indicated, the opportunity to have a hearing of this kind. The environmental considerations in this agreement are, of course, extraordinary. They set, in my view, substantial precedents, and they have set very historic ramifications.

As a result, I think they raise very serious questions, and Senator Chafee has addressed some of those questions this morning. I am deeply concerned with Mr. Reilly's admission yesterday that the United States may have little leverage over Mexico should they fail to live up to the agreement as we understand it.

I am deeply concerned about the message it sends to other governments, to businesses, and to the people of Mexico, Canada, and the United States. This question alone could determine the fate of the agreement next year, and I think it ought to be completely explored.

While there may be many differences on this particular point and on other points regarding the environmental provisions of this bill, there is no disagreement whatsoever about their importance or about the need to consider them carefully and understand them fully. Certainly this hearing contributes to that consideration and understanding, and I look forward to our witnesses this morning. Thank you.

Senator BAUCUS. Thank you, Senator. Next, Senator Breaux.

**OPENING STATEMENT OF HON. JOHN BREAUX, A U.S.
SENATOR FROM LOUISIANA**

Senator BREAUX. Thank you, Mr. Chairman. I thank Mr. Reilly and the other witnesses for being with us, and look forward to their testimony. I approach the Mexican environmental question with a

two-prong analysis. One, concerns the quality of the border environment for both the United States and Mexico. The second is equally important, and that is the investment scenario that is influenced by the environmental considerations of the two countries.

As a Senator from a State that is relatively close to the Mexican border and a State that is relatively highly industrialized with many, many industrial plants, my concern with the NAFTA is, if I were a plant operator in Louisiana that has to comply with the Clean Air Act which we recently passed, the Clean Water Act, with OSHA requirements, with insurance requirements, and the array of environmental legislation, that is on the books right now, which by the way I do not argue with; and I saw an opportunity to freely move to another country that did not have any of these requirements on their books or, to the extent that they do, they fall far short of what I have to do to produce a product in the United States. My inclination, if I was concerned only with the bottom line, would be to pack up and leave and to go to the other country.

That would make good economic sense, because I would not have to spend as much money to comply with the fewer or non enforced laws. And I guess that is just my bottom concern. I think the administration says, well, Mexico is improving—and I think they are—but they are not there yet, and I am really concerned that U.S. companies might take advantage of this unfair economic advantage.

When I look to the NAFTA section that deals with environmental matters and investments, it says that the parties recognize that it is inappropriate to encourage investment in your country by relaxing domestic health, safety, or environmental measures.

Now, I am not so concerned by countries—Mexico, in this case—trying to attract U.S. businesses to relocate by reducing their environmental standards, which the NAFTA tries to prohibit, but rather by inducing them to come over there because of their current environmental standards and enforcement, which, in many cases, is far below ours. I think that this circumstance is something that needs to be addressed, and look forward to the witnesses' response.

Senator BAUCUS. Thank you, Senator. Senator Riegle.

OPENING STATEMENT OF HON. DONALD W. RIEGLE, JR., A U.S. SENATOR FROM MICHIGAN

Senator RIEGLE. Thank you, Mr. Chairman. Mr. Reilly, welcome. It is good to have you here this morning. I do not know whether you would have seen, in May of last year, an article that ran in U.S. News and World Report, which is a very respected business journal, if you will, a feature story called "Poisoning the Border." And the sub-headline is: "Many American-owned factories in Mexico are fouling the environment and their workers are not prospering."

And then, in the course of this article, they actually show some of the terrible environmental destruction and damage that is going on, and the fact that it is sort of the way the whole situation has been evolving over a period of time.

I think every serious environmentalist or person concerned about these issues is disturbed about what has happened in the past, what is going on at the present time, and the terrible problems

that are going on down there. The threat that this has, not only in spill over effects in environmental degradation generally, but, also, this economic incentive that it creates for firms under financial pressure to go to Mexico for the cheap labor, but also for either an absence of environmental standards or an absence of enforcement. It is one thing to say that there will be environmental standards, it is another thing to have them applied rigorously.

The other day, Senator Moynihan, when you were not here, indicated that Freedom House, which is an organization that looks at how democratic processes work in countries, looked at this hemisphere and decided that Mexico was the second worst example, behind Cuba, in terms of the failure of the political and legal system to work fairly and properly. It is riddled with corruption.

So, promises that may be made now in the rush to try to get an agreement may be broken. There is a real question as to the enforcement of those understandings and how a break-down in enforcement would actually be pursued. I mean, what is the process by which compliance would actually take place?

It is very interesting. When you look at the European Common Market, they had some of these problems with Third World-type economies, particularly in the case of Turkey, which was an extreme case, but also a serious problem, not as extreme as Turkey, in the case of Spain and Portugal.

A lot of money was put into that equation up front to bring environmental standards up to a higher level. The European Common Market was not willing to take Turkey in because the differentials were just too vast.

Frankly, I think that situation is very comparable to what we have in Mexico. And they did not see a way to actually be able to carry out the environmental side of the requirements and pay for it and to actually get it done on a real-time basis, and I have that concern here.

Despite the work that you have done, and there are many who admire the effort you have made—you have been a dissenter many times even within the administration on environmental policy—generally, I think it is clear that the administration has a weak environmental record. I do not fault you for that, particularly, but it is just the fact of the matter and it is the general view of people who pay attention to these issues.

So, it is very hard to have confidence in the enforcement of any understandings, particularly in light of the fact that we have to rely on good faith compliance in this case by Mexico, and there is really a very, I think, sorry record already in place on that front.

Finally, I have a resolution that I have drafted here in the Senate, S.R. 109, which now has 32 co-sponsors, that would enable us to open up the free trade agreement for amendment in five areas for a specific time limit—15 legislative days. At the end of that time there would be an up or down vote. And one of the areas is in the area of environmental protection.

It would give the Senate the ability, after these hearings and other discussion, to be able, on the Senate Floor, to be able to put that right into the agreement. I think that is necessary if we think there are deficiencies or an absence of safeguards, or an absence

of funding, or an absence of a tough adjudicative process to settle disputes.

I would hope that, as you look at that, that you might decide yourself that that is an appropriate power for the Senate to reserve unto itself to be able to amend this treaty in any one of five areas, but very particularly in the area of environmental protections and safeguards to make sure that we have something here that is really going to meet the test of protecting the environment and being good for the people there, the people in our country, and people, generally. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator Riegle. Senator Packwood.

**OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S.
SENATOR FROM OREGON**

Senator PACKWOOD. Very quickly. I have seldom seen an agreement that we have had or a problem that we have faced where there seems to be a genuine difference of environmental opinion. I guess the question I would ask is, are we better off or not better off with the agreement from the standpoint of the environment? If we have no agreement at all, if we turn it down, will that create higher environmental protection than if we agree to it? That is the only statement I have, Mr. Chairman.

Senator BAUCUS. Thank you, Senator. Senator Danforth.

**OPENING STATEMENT OF HON. JOHN C. DANFORTH, A U.S.
SENATOR FROM MISSOURI**

Senator DANFORTH. Mr. Chairman, thank you very much. Mr. Reilly, welcome to the committee. I look forward to your testimony. There are several things that I hope you will have an opportunity to touch upon as you meet with us this morning.

I am interested in the present state of the environmental affairs between Mexico and the United States, especially on the border. I think most of us who have travelled to Mexico who have been across the border recognize that, under the present state of affairs, there are some very serious environmental problems, particularly on the border, and particularly as created by the Maquiladora program on the border of Mexico, which is an artificially-created program.

And I would like to find out the extent of the problem that we now have that is related to the Maquiladora situation and the extent to which the NAFTA would help us deal with that problem by altering the artificial situation of the Maquiladora under existing Mexican trade laws.

The use of health and environmental standards as a guise for protectionism is something that all of us on this committee have a longstanding experience with, particularly those of us who represent agricultural States.

We know, for example, the problems that we have had with Europe with what we consider to be the guise of health standards to keep out U.S. meat products. This misuse of health standards and environmental standards is specifically addressed in NAFTA.

I would like to find out more about that, and whether it is not true that the false or artificial use of environmental standards in

order to serve protectionist ends is not something that is specifically dealt with in this particular agreement.

Finally, I am interested in the whole question of reciprocity with respect to the environmental use of trade policy. If the United States were to devise a scheme to keep out products from Mexico for alleged environmental reasons, is the United States at least as vulnerable? And could not a government in Mexico be equally ready, willing and able to develop similar kinds of barriers to U.S. products on environmental grounds?

Senator BAUCUS. Thank you, Senator. Mr. Reilly, it is all yours.

**STATEMENT OF HON. WILLIAM K. REILLY, ADMINISTRATOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON,
DC**

Mr. REILLY. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you this morning. This is, in fact, the seventh time I have appeared before committees of this Congress to discuss aspects of the North American Free Trade Agreement, in other earlier appearances, to give some assurances about the degree to which we would try to make certain that the North American Free Trade Agreement did, in fact, protect our environmental standards, ensure the integrity of our regulatory process, provide explicit protection for the critical international environmental treaties that we are proud to have helped negotiate and have agreed to over the years.

And I am very pleased to say that, on all of those issues, we have heard members of this committee, of the conservation and environmental community and others, and have provided explicit assurances with respect to them in the treaty.

I think the attention given to the environment in this treaty is a measure of the change in our thinking and our expectations about the nature of trade and development, and it is also a measure of the higher expectations that we have with regard to the environment.

It is a measure of the President's and the administration's effort to ensure a strong environmental commitment in the context of economic and trade policy, and a measure, also, I think, of our response to the kinds of concerns—and, in some cases, criticisms—we have heard from this committee and others about the urgency and importance of attending the environment in the treaty.

I would like to ask, Mr. Chairman, if my formal statement might be inserted in the record, and I could summarize it briefly for you. Senator BAUCUS. That will be included.

[The prepared statement of Mr. Reilly appears in the appendix.]

Mr. REILLY. One of the precedents set in this treaty is the extraordinary involvement of the Environmental Protection Agency in both developing the United States' negotiating position and in actually negotiating terms of the agreement.

EPA co-chaired two of the negotiating groups dealing with environmental, health and safety standards with the Food and Drug Administration, and sanitary and phytosanitary measures with the Department of Agriculture.

We were actively involved in the voluntary environmental review of NAFTA which produced recommendations for U.S. negotiators

on matters of environmental concern, and, to a large degree, really shaped the nature of our negotiating position.

Outside of NAFTA, EPA is taking the lead among U.S. Government agencies in addressing environmental issues of concern to the United States and Mexico in a series of initiatives which have come to be known as the Parallel Track.

Turning to the treaty itself, I think the tone of this treaty is set at the outset, in the preamble; a preamble which has commitments in it that exist in no other trade treaty ever agreed to.

In the preamble, the parties commit "to expand trade in a manner consistent with environmental protection and conservation to promote sustainable development and to strengthen the development and enforcement of environmental laws and regulations."

The concept of sustainable development, so important to many of us in the conservation community, has not previously appeared in a trade treaty.

Now, the NAFTA provisions explicitly maintain existing U.S. Federal and State health, safety and environmental standards, and they preserve our right to ban non-conforming imports. Concern that we do this was, perhaps, the most important one that we heard from the conservation community. We responded to it. NAFTA explicitly allows the parties, including States and cities, to enact standards that are stricter than international or even national standards.

Therefore, those jurisdictions which, under our law, now enjoy authority to set standards tighter, more restrictive, more protective than those that we have at the Federal level, maintain, as a matter of explicit assurance in NAFTA, that authority.

NAFTA explicitly affirms the right of each party to choose the level of protection of human, animal or plant life or health that it considers appropriate. NAFTA encourages the parties to strengthen standards through upward harmonization.

NAFTA explicitly ensures the ability of each country and interested groups within them—including non-governmental organizations—to receive advanced notification of proposed regulatory actions in the other two comments, and to review and comment on those actions.

Senator CHAFEE. Mr. Chairman. I wonder, when you say explicitly, it would help me, anyway, if you could tell us where, if you have got the citations.

Mr. REILLY. I do not have the citations to hand, but I will get that to you in a few minutes, Senator.

Senator CHAFEE. All right. Thank you.

Mr. REILLY. NAFTA establishes two committees. One, is a committee on standards-related measures to facilitate compatibility of standards, to consult regularly on matters of common concern in this area, and to enhance cooperation on developing, applying, and enforcing standard-related measures.

It also establishes a committee on sanitary and phytosanitary measures to promote harmonization and equivalence of S&P measures, and to facilitate technical cooperation and consultation on specific S&P bilateral or trilateral issues.

With respect to dispute resolution, the burden of proof that an environmental action constitutes a violation of NAFTA as an obsta-

cle to trade is not based on science or health concerns, but rather on economic concerns, is on the challenging party by the terms of NAFTA.

In disputes arising under the standards chapters of the agreement relating to the environment, where factual matters arise, the dispute settlement panel, on its own, may request a report from an independent scientific review board, which is provided for in the agreement.

This report must be taken into account by the panel before it reaches its decision, and must be released along with any final decision that is publicly released. Again, this is a first in the NAFTA.

The responding party—generally, the party defending the environmental measure—may elect to have the matter decided exclusively by a NAFTA, as opposed to a GATT, panel. Concerns had been expressed with respect to that issue by a number of environmental groups, and it is one that we are very pleased to say we responded to.

Now, with respect to concerns about the possible creation of pollution havens, the investment chapter of NAFTA commits the parties to ensuring that investment occurring in their territories is undertaken in an environmentally sensitive manner and that they will not compete for investment by making less stringent or failing to enforce their environmental laws and standards. Those are the terms of reference of the treaty.

A number of important international environmental treaties carry with them sanctions on trade in the event of non-compliance. Now, in the event of any inconsistency between the NAFTA and the mandatory trade provisions of some of these treaties which are explicitly enumerated in NAFTA, the provisions of the international environmental agreement shall prevail.

I refer here to the Convention on International Trade and Endangered Species, to the Basel Convention on Trans-boundary Shipment of Hazardous Waste, and to the Montreal Protocol for the Protection of the Ozone Layer.

A year ago last spring, the administration committed to address concerns about Mexican-U.S. environmental problems. On a parallel track, while the negotiations on NAFTA proceeded, we announced a joint plan for environmental protection of the border last spring.

Now, that was the first of the three elements of our parallel track efforts. The key provisions of the border plan are: strengthened enforcement of existing laws and regulations in both the United States and Mexico; reduction of pollution through new joint initiatives, which include increased support for the expansion of waste water treatment facilities; and improvements in the handling and disposal of solid and hazardous waste. Increased involvement by the United States and Mexican publics and their State and local governments in addressing border environmental issues are also committed to in that border plan.

Now, on the U.S. side, this includes the creation of an EPA border environmental committee, composed of a broad-based group of 24 border citizens who are advising me on border plan implementation. The border plan has already resulted in a much greater level

of cooperation and awareness of border environmental issues, and particularly with respect to enforcement issues.

The success of our complementary environmental efforts to the NAFTA depends, however, on appropriate funding. U.S. support for the border plan initiatives in fiscal year 1993 is, unfortunately, in a very precarious state.

The President has requested \$241 million to fund projects to build drinking water and waste water treatment systems, track hazardous waste, facilitate emergency response, monitor environmental quality, and inform and educate the public on a whole variety of environmental issues.

The House and Senate, however, have chosen to cut this request by as much as \$98 million, and \$120 million, respectively. To put this in context, the Mexican Government has committed some \$460 million to border environmental investments over the next 3 years.

I think those reductions that we suffer will severely constrain our efforts to clean up the border, and to support our proposed program of United States-Mexico environmental cooperation. These needs, I would like to point out, have merit, irrespective of your opinion on the NAFTA. They meet the test of risk, of protection, of health, that we apply across the board to our programs.

In closing, Mr. Chairman, I would just like to reiterate that I am pleased with this agreement. I think it is the "greenest" trade treaty ever negotiated. I am quoted today as having said it is the greatest trade treaty. I did not say that yesterday, I said it is the "greenest." And I am pleased to see, in the National Wildlife Federation testimony today, they make a similar statement. I do not have enough experience with trade treaties to know whether it is the greatest.

I think that the cooperation that USTR has shown with environmental groups, with the Environmental Protection Agency, the consultation processes that they have pursued with the Congress, have resulted in a very important environmental breakthrough.

The NAFTA recognizes that, as we move towards unified trading on this continent, we are going to need a higher standard of environmental protection. From our perspective, opposing the NAFTA on environmental grounds would be a major environmental mistake.

No larger opportunity has come along, in my memory, to improve the conditions of the border, to up-ratchet the environmental conditions of some 85 million Mexicans, than this treaty represents.

We are fundamentally, I think, in this country, trying to reconcile our economic and our environmental aspirations. This treaty represents a very concrete and practical example of a positive way to do that. Therefore, I think the agreement very much deserves your support. I would be pleased to answer any questions you may have.

Senator BAUCUS. Well, thank you, Mr. Administrator. I, first, want to commend you for all of your work on this treaty. It is obvious that you have worked long and hard and you have accomplished many successes. It is obvious, though, that when negotiating a treaty with Mexico, we are bound to address environmental issues. So, there is a reason why this is a first.

I mean, Mexico is a developing country. It is not a developed country. There are major environmental problems in Mexico that have to be dealt with if the United States is going to enter into an agreement.

I guess the major concern, as I outlined in my prepared remarks, is lack of enforcement of environmental provisions in this treaty. And I say that because, in my experience in dealing with treaties and trade commitments made by other countries, promises sound good but they are often not followed up. That is, we are looking for deeds, not words.

It is clear that the Salinas administration very much wants this agreement. It is also clear that they are bending over backwards at every corner to try to encourage the United States to agree to the agreement.

Therefore, I am more concerned that, if this agreement is ratified by the Congress next year, that that will be, if not the end of the Salinas promises, that there will be a lot of backsliding.

I appreciate what the agreement provides in standards. I think those are major achievements. They are very important achievements. But the agreement is glaringly deficient, in my view, in its failure to address enforcement.

Now, the issue before us and before the Congress this year is not whether to accept or reject this treaty. That is not the point. We all know that this treaty is not going to come before the Congress until next year. The issue before us here today is how can we improve upon the treaty before the treaty is then sent to the Congress for either rejection or ratification.

The treaty has not yet even been signed. I do not know when the administration will send it up. And, under the law, the administration cannot sign the treaty for 90 days after it is sent up. So, we have at least 3 months, at least, during which this administration can improve upon the treaty.

My experience, say, with Canada, is that treaty provisions often do not amount to much. Canada promised exclusively and expressly in the United States-Canada FTA to work to reduce subsidies. Nothing has happened because there is no enforcement provision in the treaty to require Canada to do so.

Now, Mexico may make all of these promises to do all of these great things. We all know that Mexican environmental laws are quite good, but they are just not enforced very aggressively. I do not know of any judicial proceeding in Mexico where a company or person is brought to justice successfully and is successfully prosecuted, for example.

Senator Riegle pointed out Senator Moynihan's statement where an organization has concluded that, among all of the countries in this hemisphere, that Mexico is the most authoritarian, but for Cuba. And the PRI party controls Mexico, controls the judiciary; it controls virtually everything in Mexico. So, if the government wants to backslide after the treaty is agreed to, it fairly easily can do so.

So, my question to you really is, why has the administration not worked for some enforcement provisions in here so that, once the treaty is concluded—if it is—that Americans can rest more assured that the promises are going to be lived up to.

Mr. REILLY. Mr. Chairman, let me say, first, I think we should be very clear that, with respect to a number of issues, there is an explicit address of them in the treaty itself, and there is no question about the enforceability either of our laws, or of our commitments under treaties.

If you are talking about the prospect of animal life, or plant life, or chemical products coming into the United States, those are subject to our laws and we are capable of banning any of those products which include, for example, a pesticide for which I have not issued a tolerance, or a residue of a chemical that exceeds our standards.

So, from that point of view, we have guaranteed firm protection for our own laws. In terms of downward pressure on our own laws, also, we have guaranteed the right of States and localities, as well as the Federal Government, to maintain our environmental standards—even those which affect trade—is ensured.

If the concern has to do with the creation of a pollution haven, I think some regard has to be paid for the very significant effort that Mexico has made in recent years to strengthen its enforcement.

They have conducted, over the past 4 years, some 7,600 inspections; 1,926 of them have resulted in closures of the companies involved—109 of those permanently. That is, I think, evidence of a country that is becoming aware, that is becoming committed, that is beginning to put resources to an unprecedented degree in the developing world.

One percent of their gross national product is now devoted to environmental protection. There are developed countries that do not spend that much on the environment. So, I think they are moving in the right direction.

If you are asking for comparability of enforcement or of resources, I think we have to simply recognize that it has taken the United States some 20 years of serious commitment to environmental protection to reach the degree that we have reached.

Senator BAUCUS. Well, I appreciate what you are saying. I am not addressing health and safety standards, because I think those provisions are, by and large, adequate.

Mr. REILLY. I appreciate that.

Senator BAUCUS. I am, rather, addressing the lack of enforcement provisions in this treaty with respect to environmental laws in, say, Mexico, which could potentially—and, unless adequately addressed—probably allow American companies more easily to move to Mexico to escape more strict environmental control in this country. It is the point that Senator Breaux was making in his prepared remarks.

Now, I understand that Mexico has now hired, what, some 300 inspectors?

Mr. REILLY. Yes, sir.

Senator BAUCUS. Well, you at EPA, have, what, 5,000 inspectors.

Mr. REILLY. They have 200 on the border.

Senator BAUCUS. The point is, we hear these great statistics and great figures that are supposed to indicate Mexico's progress in addressing the environment. It is true that it is progress. It is also true that the environmental standards that Mexico now promises

to meet are much lower than the environmental standards that the United States now meets.

So, then we face the second problem: the degree to which we are guaranteed that Mexico is going to live up to its promises, which already are below those of the United States. That is, the number of inspectors, the inspectors' salaries are very, very low.

It is my understanding that Mexico inspectors get their income, in part, from bribes, in addition to the government salary. So, we have to know what is the government salary that is going to be paid to the inspectors to avoid the temptation of bribes, for example.

The main point is, we have an opportunity here now in these next several months before the treaty is signed to get a better agreement, and that is what I think we should devote our efforts to achieve.

Mr. REILLY. If I could just respond.

Senator BAUCUS. My time is up.

Mr. REILLY. Is mine?

Senator BAUCUS. One minute. Other Senators here want to speak.

Mr. REILLY. I would just like to say, with respect to the issue of inspectors, these are new inspectors that Mexico has hired. Just as they have discharged their Customs Agents in wholesale numbers, they have gotten new environmental inspectors; 200 of those have already passed through EPA training exercises. They are better-paid, better-educated than ever before.

And one of them, who was offered a bribe last summer, tipped us off to the hazardous waste shipper who was trying to violate our and their law, and we were able to use that to bring an action against them. In fact, we had some 17 actions jointly conducted with Mexico. So, I think on that front, as well, we are making a lot of progress.

Senator BAUCUS. All right. Thank you. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. Mr. Reilly, the flow of the questions frequently in this committee are directed toward the suggestion that somehow through this agreement we are opening up a pollution haven in Mexico. The question is, what are we going to do about it?

If I understand the current situation, American plants are already down there. This agreement is not somehow newly opening the border for American plants to go to Mexico. We have got lots of American plants already in Mexico. Would this agreement vastly change the existing situation regarding the exodus of U.S. plants going to Mexico? Could you address that, please?

Mr. REILLY. I believe, Senator Chafee, that the current average tariff applied by the United States to imports from Mexico is in the range of 4 percent or less, which is less than half of what it is going the other way. It is significantly less than that in some other areas.

We did an environmental review that we conducted prior to the negotiations of U.S. industries, of environmental compliance costs, of tariff levels, and discovered that, of 442 industrial sectors, 11 currently have the conjunction of high tariff protection and of high environmental compliance costs. The average environmental com-

pliance cost in the United States for industry is 1.1 percent; a small percentage, something like 14 percent of industry, I think, has compliance costs of 2 percent. In those cases where—

Senator CHAFEE. Percent of what, their sales?

Mr. REILLY. Two percent, I think, of value added.

Senator CHAFEE. All right.

Mr. REILLY. In those cases where there would seem to be some significant advantage because of lower environmental compliance cost to an industry to move to Mexico, the industries, typically, were those of very high capital investment, those with great sunk costs—steel, petro chemicals, chemicals, generally—a number of enterprises that obviously, when they are looking at location, have many other and considerably more important concerns to take into account.

So, the number of companies that, because of this treaty as we lower our own tariffs and as Mexico lowers its, would be tempted thereby to move to Mexico, is relatively small.

Senator CHAFEE. Now, in my statement—and Senator Packwood said somewhat the same thing in his very brief opening statement—I asked, will the adoption of NAFTA further the long-term enhancement or protection of our and Mexico's natural resources, or will it not? It seems to me that this is the crucial question. While I personally do not expect this agreement to solve all of Mexico or all of our environmental problems, but will it make progress?

And, then, while you are answering that, would you also tell us what we can do about enforcement. The suggestion made here is that there is a lot of corruption in Mexico, and that somehow they are not going to enforce these agreements.

Mr. REILLY. I think, Senator Chafee, that the trade treaty is being asked to carry a lot of environmental freight. It is carrying a lot of environmental freight. But one needs to ask the question you have asked. What is likely to be the prospect for improving the environment of the border the day after NAFTA is rejected by the United States?

Senator CHAFEE. Gets rejected, you say?

Mr. REILLY. Is rejected by the United States.

Senator CHAFEE. Yes.

Mr. REILLY. What is likely to be the capacity or interest of the Government of Mexico to which, when it has given its highest priority to negotiating this treaty at some political risk and as a break to all tradition and previous economic policy in Mexico, if that is frustrated, I think the prospect exists here for the resources which we expect will accrue to Mexico from the trade advantages from this treaty to do as countries do when they have more wealth, and that is, allocate more of it to social improvement.

Every study that I am aware of has shown that there is a direct correlation between economic resources in a country and environmental quality. I think that is what Mexico is banking on, improving its environment just as it improves other aspects of its standard of living. That will benefit the United States, and certainly very strongly benefit our border.

Senator CHAFEE. I want to ask you one quick question. A pledge was made by the President in May of 1991. In that plan, he said, we will maintain our right to prohibit the entry of goods that do

not meet our health, safety, pesticide, food and drug. Suppose they are using DDT in Mexico. What can we do about that?

Mr. REILLY. Ban it. It was banned a long time ago in the United States. Any product that contains DDT would not be eligible for entry into the United States.

Senator CHAFEE. Thank you.

Senator BAUCUS. Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman. Mr. Reilly, I am surprised, really, that you would argue that the environmental advantages of locating in Mexico would be so minimal as not to provide the encouragement for businesses to locate there.

I find in States across the country, given the competitiveness that States have demonstrated in trying to recruit businesses, regulatory frameworks, tax frameworks, a whole range of factors involving a business' competitive position, are put forth as the reasons for companies to locate in a certain area.

I must say, I would be amazed if Mexico, or at least certain Mexican officials would not say, look, there is a substantial difference between locating in Minnesota and locating in Mexico. We think your advantages from a regulatory point of view would mean X amount of dollars, so we think you ought to locate here.

So, I am surprised, given that likely scenario and competitiveness is so critical today that you would say that environmental regulation would have a minimal effect. My question relates really to a clarification of the agreements thus far.

As I understand it, there are two, one, affecting Mexico City, and the other affecting the border, and that the agreements were reached with the understanding that a third agreement affecting the rest of the country will be consummated at some point. What is the progress on that third agreement?

Mr. REILLY. We are meeting tomorrow with the Mexican Environment Minister and his Canadian counterpart, and also with the trade representatives to discuss that issue. We have made considerable progress trying to fill in the gap, as you suggest, between the City of Mexico and the border, with a technical assistance agreement that will affect the whole country and that will have us working very closely with Mexico on issues of environmental impact assessment, on enforcement, on pesticides, on hazardous wastes, on air and water pollution. We expect that we will have an agreement on that within the fairly near future.

Senator DASCHLE. Let me ask you, are the boundaries that we are describing in the two agreements so far—that is, Mexico City and the border area—are these boundaries written into the agreement. What we are referring to when we say the border area or when we say Mexico City?

Mr. REILLY. The border area refers to an area on each side of the border of 100 kilometers, so that is quite explicit. Mexico City is Mexico City.

Senator DASCHLE. But does it include the suburbs, say, of Mexico City?

Mr. REILLY. Yes, sir; it does.

Senator DASCHLE. All right. Now, what happens if a company, looking over the environmental considerations that we have tried to incorporate in these agreements, comes to the conclusion that it

really might be in that company's best interests to locate in the areas not described in either agreement and not covered yet in any kind of negotiation that you just referred to. Is that not a fairly significant loophole in this whole process? I mean, how do you get around that kind of a situation?

Mr. REILLY. Well, first of all, as I mentioned, we expect to have this agreement in place relatively soon, and certainly before NAFTA goes into effect. Second, they are free to do that now. My point with respect to environmental compliance costs is that it is rarely that significant a cost to an industry to cause it to pick up and relocate.

We had an experience, an allegation that was made some months ago, about, I think it was, wood treatment, wood preservers in the California area who were leaving Southern California in some numbers. And, when that was looked at, it emerged that, in fact, a number of those companies were going to Mexico. But, I think more than half of them were moving to other States.

Senator DASCHLE. Well, there is a difference between relocating and expanding. I could see a lot of plants expanding and finding sites in that remote part of Mexico not covered by either agreement providing a tremendous incentive for them to do so.

In the short time I have left, let me just ask you this. Obviously, you have considered and discarded the idea of committing all businesses from the United States which locate in Mexico to U.S. environmental laws. Why would you have discarded that proposition?

Mr. REILLY. Well, I would present a very large number of practical, and, I think, significant political problems. First of all, to require that the laws of our country obtained in the sovereign jurisdiction of another is not something I would expect another country to approve of or agree to. Second, the issue of enforcement of our laws against such companies would be pretty problematic.

Senator DASCHLE. Well, we are out of time. But basically, we are telling businesses that locate there, you have got the opportunities, you have got the advantages, but you do not have the responsibilities. And I think that is something that, as we debate this treaty and the accompanying agreements, we are going to have to look at very carefully. But thank you. Thank you, Mr. Chairman.

Mr. REILLY. Thank you, sir.

Senator BAUCUS. Thank you, Senator. Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. Mr. Reilly, I get the impression from your statement that, in regard to the President's attempts to work out with Mexico improving sewage and other environmental problems along our borders, that you may not be getting the cooperation you would like to have on the President's program being followed through on. Would you expand on what you said in your statement on this point?

Mr. REILLY. Well, Senator Grassley, we did a very careful assessment of border environmental problems and needs over the last couple of years and developed our joint plan with Mexico for the environmental protection of the border and made a number of significant commitments consistent with current budget realities in that agreement.

And Mexico, I am very pleased to see, committed \$460 million—a very substantial amount of money—over the next 3 years to

waste water treatment, to infrastructure improvement, to better management of waste, construction of new waste facilities, and the like.

We committed, for the first budget cycle, \$241 million in new funding. That is more than \$100 million more than we are currently spending on these needs, and currently see that those numbers have been cut very substantially. We think that, irrespective of an opinion on NAFTA, this is important environmental investment.

I think, particularly, of the Colonias in Texas and New Mexico, unsewered, unsewered by safe drinking water, high rates of hepatitis, dysentery, and other diseases that seriously need the funds that we are proposing to provide.

And I think that those who will look at the risk that these people are bearing will see that they are off the scale, and that, without regard for the treaty, we ought to move ahead and get some of the funding here that we have asked for.

Senator GRASSLEY. So, at the very least, if people in Congress have concerns about the NAFTA treaty and the environmental issue, that there could be a lot of progress made just by the United States making its commitment along with the same commitment that Mexico has made to see that the amount of money to accomplish this is delivered by Congress.

Mr. REILLY. Yes, sir. And I would emphasize that these funds will benefit the people of the United States. They are to deal with problems that we currently bear, environmental problems, and that we have made a strong commitment to try to address.

Senator GRASSLEY. On the issue of pesticide residue and other environmental issues connected with that—and I know this is kind of divided between USDA, EPA, and FDA, to some extent, and I think you are involved with the tolerance levels—Mexico, to a considerable extent, does not have the standards that we would have through our FIFRA regulation. And, obviously, some of those residues could come into the country. How will you be able to enforce that, not only as a matter of fairness for our producers, but also as a matter of safety for our consumers?

Mr. REILLY. We committed, in the letter that we sent to the Congress a little more than a year ago, to develop with Mexico good laboratory practices and to try to ensure that we have equivalent systems of protection for our people for health and safety relative to chemicals. We are working on that, and there have been extensive consultations between our two governments—my agency and the counterpart agency in Mexico.

By and large, though, I would say that the standards that Mexico applies to chemicals are comparable to our own. We have consulted over the years well before the negotiations on the NAFTA on that, and many of the chemicals that we do not approve of, they do not either.

So, I think that the problems of getting some symmetry or mesh in our two systems will not be large. In any event, the Food and Drug Administration does engage in all of the testing, all of the monitoring, to try to ensure that food products imported into our country meet our laws.

Acts of Council, and, on the basis of our consultations, our States were distinctly not in favor of having, as you put it to have others enforce our laws. They were distinctly unenthusiastic, as were a number in the Federal Government.

In the investment provisions, we did, however, renounce the right of any country to lower their environmental standards in order to attract investment and provide for consultation in the event there was alleged transgression.

And we believe that that is the best way to approach this issue, as we do not think that there is a real concern that there will be a lowering of standards. However, it is a grounds for consultation to be brought before the Trade Commission that will administer this agreement. And we believe that this country, this Congress, and our States, want to enforce their own laws.

Furthermore, we believe that it would not be a good precedent, that it would be an invitation for other countries, perhaps Europe, to decide that they would follow suit and seek to have snap-back tariffs, countervailing duty actions, where they felt that their environmental measures exceeded ours. In short, we felt that that was not a good public policy, and, on consultation, the majority of people agreed with us.

Senator BAUCUS. Well, I do not want to quibble with you. But it is not fair to use Europe as an example because we are not addressing whether Europe has higher environmental standards compared with American. That is not the issue. The issue is the degree to which we can use the Canadian proposal as an opportunity to build upon new ways to enforce transnational environmental provisions.

It is my impression, frankly, that the administration, in a rush to conclude an agreement, did not pay nearly the amount of attention that it should have to the Canadian proposal to try to work out the differences, work out the bugs.

Now, as we all know, the agreement does allow States to have stronger health and safety provisions, and that is fine and good. And the States may have a legitimate complaint with the Canadian proposal, but it seems like, in a rush for conclusion, the administration did not flesh this one out. It is clear to me that there is fertile ground. It is a good opportunity for much stronger environmental provisions with enforcement tools.

Now, this joint declaration that you talked about, as I understand it, has virtually no enforcement tools. I mean, the joint declaration, the matter is referred to the joint body, and they may make a decision on something, but there are no enforcement mechanisms. Am I correct on that?

Ambassador HILLS. Where we have a consultation and we have a serious issue, we address it in a serious way. But let me say to you, you twice mentioned today that we rushed to conclusion.

I can tell you that we did not rush to conclusion. Trade negotiations tend to have a momentum of their own. This one has taken 14 months, that was predated by roughly 6 months of notice given to this body, and a long debate on fast track.

In fact, trade negotiations reach a pinnacle rather like the top of a bell curve, and optimally they should be concluded at the top. Because when you stay at them too long, they begin to erode. But

there was no rush here at all. And if you, perhaps, recall, you and I met about 6 weeks before the conclusion of this agreement with a group of environmentalists and had a lengthy discussion on this very issue.

Following that meeting, I consulted very broadly and came to the conclusion—as you and I have subsequently talked—that having others attack our laws would not be a good public policy, for a number of reasons.

And my reference to Europe is because trade agreements are often used as precedents and are copied, and we did not think this would be a good precedent in a trade agreement.

Senator BAUCUS. Well, I appreciate that, Madam Ambassador. My time is up. But these are ideas that I did impress upon you, as other groups have impressed upon you. And, again, I can only reach my own independent judgment and conclusion that it seems like these were given short shrift. You did listen, but did not seem to be taking the next step to see how we can work with them to make them work.

Ambassador HILLS. Well, I think we have a lot of provisions in this agreement that try to address upward harmonization, for example, which is part and parcel of what you are trying to achieve.

We have provisions for sustainable development, and we have protected the right of a country to put rigorous conditions on new investment—environmental conditions—so long as they are willing to apply those conditions in a non-discriminatory fashion to their native population, as well as to the foreign population, we have no objection.

So, we think that we have a very good agreement and provisions within the four corners of the agreement that deal with the environment. And, of course, you will hear a lot from Administrator Riley about the parallel discussions that we have had which I think are quite remarkable.

Senator BAUCUS. Well, I do not want to take any more of the Senators' time. I thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Madam Ambassador, I guess I am fortunate. I represent a State that is right up against the Canadian border. It is a pretty large State; it has got 4.5 million people in it, and most of them perceive themselves as being part of a much larger world. So, there is a lot of just a basic sympathy to fair trade agreements.

And, I must say, between the 12th of August and today we had a 12-day State fair, which was almost 2 million people from all walks of life walking through there.

And I got an awful lot of comments, one way or the other, from people who have either been anticipating this, did not believe it was going to come this early, and who generally would like to be optimistic, except that they are guarded because they have not seen the fine print, and the lawyers, and all the rest of that sort of thing. But I want to convey that to you.

Second, we are right up against the Canadian border. We have a sensitivity to what happened in the United States-Canada agreement. And, from all I can tell by listening to people, including spending a week fishing up on the border, with one or two excep-

tions—one of which I want to talk about—the Canadians think they got the raw end of the deal, that we did a pretty good job in negotiating the United States-Canada agreement some time ago.

Third, I heard a number of people observe that perhaps the same thing, even to a greater degree, may have happened to the Mexicans. In their anxiety to have some kind of a Free Trade Agreement that they will find that, in the short-term, some substantial disadvantage to Mexico, as well. So, it does bother me to hear us expressing our concerns for this in rather narrow terms.

I was amazed to find that a lot of my dairy farmers generally support it. But it is from the dairy farmers that I found out that Mexico is by far the largest importer of U.S. dairy products.

I mean, what would we do for dairy if we did not have Mexico, they tell me. And they wish that Mexicans would import a little bit more low-fat dry milk right now because it would help the market a little bit.

But you cannot take pictures. Cows do not give milk into bottles, so you cannot take pictures of it like you can of Willow Run, or someplace like this.

I mean, it does not get to the bottle or the carton until somewhere else down the line. But I have got to tell you, there are a lot of cows out there being milked for the benefit of a lot of people in other countries as well, including Mexico.

When you do represent a constituency which has got the kind of broad interest that I have, it is much larger to have some confidence that, in the short-term, you are going to have some dislocation, if you will. But, in the long-term, there is a tremendous benefit for both sides.

I must tell you, the most difficult time that I have had is one that will be commonly experienced by a number of people on this committee, and that is the United States-Canada wheat relationship. We did not deal with that issue in its totality with we did United States-Canada.

A lot of people thought that it might get dealt with in its totality, price transparency, some of the subsidies on trans-Canada shipments, and so forth. We thought it might get dealt with in this particular round, but it did not. And when we ask about it, we are told, that is going to be done in connection with the GATT.

And so, we are sort of asking ourselves, is that likely, and, if so, why have some of the major, major issues that relate to United States-Mexico/Mexico-Canada/United States-Canada—particularly with regard to wheat—why were they not dealt with at this particular time.

I have in front of me some of the impact of Canadian—what some people would call—predatory pricing in the Mexican wheat market for the year 1991-1992, and it almost blows your mind how much more the Mexicans have imported from Canada in the last year than from the United States.

So, can you tell me why that issue did not get dealt with with greater specificity in this particular round, and, if so, what are the prospects for dealing with it in the future?

Ambassador HILLS. Senator, the North American Free Trade Agreement provided substantially increased access for wheat to Mexico from the United States. We have had a dispute with Can-

ada with respect to the transparency of export sales through the Canadian Wheat Board and how they are pricing their wheat sales.

And we have consulted with them, and, indeed, initiated a dispute settlement procedure. The panel is due to rule in December. So, that is under way. The two governments have differing points of view, and it will be resolved in the course of the dispute settlement process that was set forth in the Canadian Free Trade Agreement.

Senator DURENBERGER. That same does not apply to rail subsidy issues, does it?

Ambassador HILLS. There are two issues involving bail subsidies.

Senator DURENBERGER. They do.

Ambassador HILLS. That is part of the wheat problem.

Senator DURENBERGER. And you believe that both of these issues are going to be settled, or are they going to be clarified by this?

Ambassador HILLS. They will be resolved by the panel proceeding that had already been initiated under the dispute settlement mechanism of the Canadian-United States Free Trade Agreement.

Senator DURENBERGER. All right. Thank you.

The CHAIRMAN. Thank you. Senator Danforth, for any comments you might have.

Senator DANFORTH. Madam Ambassador, please tell me where I am missing something in the debate on this Free Trade Agreement. It is said that the United States is now exporting jobs to other parts of the world, including to Mexico, and that the North American Free Trade Agreement would escalate this process of exporting good U.S. jobs to Mexico.

I had thought that the trade barriers in Mexico were higher barriers than the trade barriers in the United States and that, to the extent that we seek parity between our country and Mexico, instead of exporting jobs, we will be preserving jobs. But this point has been made with such insistence by people who are opposed to the agreement, maybe I am missing something.

Ambassador HILLS. No, Senator Danforth, you are not missing anything. In effect, I have often said we have a one-way Free Trade Agreement with Mexico. Our tariffs, on average, are below 4 percent. More than half of Mexican goods come in to the U.S. duty free. What we are trying to do is get down very high trade barriers that our exporters face in trading into Mexico. Mexico's tariffs are 250 percent higher than ours.

They have an import licensing regime that covers 25 percent of our agriculture; they have a licensing regime that covers even the sale of used computers and the like. And they have export performance requirements that mandate that they export a certain percentage of product before they can import—for example, two cars before they can import a car.

That means that we literally have had export opportunity blocked, and, for every billion dollars' worth of exports, we gain jobs. You are absolutely right.

More importantly, these barriers to trade have been a real restriction on small and medium-sized businesses that are the largest generator of jobs in this country. While the multinationals could locate in Mexico—some of the auto companies have in order to tap that market of 80 million-plus consumers—smaller businesses can-

not. And they simply have had that very rapidly growing market cut off from them.

So, you are right. By reducing trade barriers—and that is what this agreement seeks to do—we will increase our exports and generate jobs—new jobs—and better paying jobs. Because our jobs connected to exports pay, on average, 17 percent more than the jobs in our overall economy.

Senator DANFORTH. Now, I represent an auto producing State. I was astounded by the figure that Senator Riegle had that 70 auto plants of the Big Three auto companies have been located in Mexico. What is this going to do to the U.S. auto industry, are we going to be further hurt by the Free Trade Agreement?

Ambassador HILLS. I believe not. And the reason I believe not is because the auto industry has had to locate in Mexico to tap into the Mexican market.

Now, by eliminating export performance requirements—that is, the export and import balancing—and by eliminating the local content requirements—that is, the mandate to use Mexican content in the building of vehicles—the auto industry will be able to locate production where they will. It may be suggested that they will immediately locate in Mexico for the lower labor rates.

But, in fact, American workers in the auto sector are about two times more productive than Mexican workers in the auto sector. And I am told that the differential in quality of infrastructure makes that proposition of relocation less attractive.

I am further told that, because we have excess capacity here in North America and the auto companies do not have a lot of capital to build new plants, that it is predictable, and they say themselves that relocation is not in their future.

Senator DANFORTH. If an auto manufacturer is going to locate in Mexico because of low labor rates, that auto manufacturer can do that right now. Can it not?

Ambassador HILLS. Absolutely.

Senator DANFORTH. Is there anything different in this proposal, in this agreement, that would encourage auto manufacturers, or anybody else, for that matter, to locate in Mexico because of cheap labor? There is no impediment now for locating in Mexico because of cheap labor.

Ambassador HILLS. Correct.

Senator DANFORTH. This does not remove impediments that now exist, because the impediments do not exist now.

Ambassador HILLS. That is absolutely true. There are no impediments to relocation for any industry. And, in fact under this agreement, there are now encouragements not to relocate because, in the past, they had had to relocate if they wanted to sell into the Mexican market. And those impediments will be removed.

Senator DANFORTH. Thank you.

The CHAIRMAN. Thank you. Senator Grassley, for any questions you may have.

Senator GRASSLEY. I believe during the times you have met with us, you have explained that you expect—at least midwestern agriculture—for this agreement to be very beneficial.

And I want to make a point and compliment you for helping us answer questions in regard to a newspaper article in the Des

Moines Register August 23 that says, "Impact of Trade Accords. Report says farm income would drop in Iowa. Overall agriculture income would be reduced by up to 6 percent," the study concludes. And then it refers to a report done by the Dallas Federal Reserve Bank.

Now, I think what you have helped us find out is that this Dallas Federal Reserve Bank report was not even referring to NAFTA or GATT, it was referring to the hypothetical, if, in the entire industrialized world there was absolutely no barriers to exports at all, what might have happened to agriculture.

So, I want to point that out just in case there is some fear here about what it does for agriculture. But I think you have made very clear that you expect this to be very beneficial to agriculture—at least midwestern agriculture: grains, wheat, et cetera.

Ambassador HILLS. Yes.

Senator GRASSLEY. Now I want to go on to a non-agricultural point, and then back to some agricultural issues. We have also had some concern in my State because we do a lot of household appliance manufacturing.

And you have responded to a point I have made via a letter on this letter, but I have a specific question to ask of you—and this is in regard to the phase out of tariffs if something is manufactured in Mexico and comes into the United States—whether or not you would be willing to renegotiate Mexican tariffs on major appliances so that they would fall into the 5-year category, or into some other rapid phase-out arrangement.

And this is directly related to the fact that we have a 10-percent tariff on what is coming into the country, 20 percent of what is going into Mexico, and, over the long phase-out that is in the agreement, whether or not that is not going to be terribly detrimental to America, and maybe even encourage some companies that might go across the border to then have the benefit of lower wages, plus lower tariff coming into this country.

Ambassador HILLS. Actually, Senator, we have negotiated, on appliances, a range of tariff reductions. On microwave ovens, it is immediate elimination. It is 5 to 10 years on refrigerators and freezers. I cannot here give you the staging for tariffs for each appliance.

But the United States already has given Mexico a zero duty in most of those areas. We do not believe that the Mexican tariff that exists today and which will be phased down is going to be an incentive for U.S. manufacturers to move to Mexico. We have a surplus in our appliance trade. We actually have been building a surplus in this area in our trade with Mexico, notwithstanding the duty that exists.

What we have done is to lock in the current Mexican applied duty and then reduce it, because, of course, without the agreement Mexico has the right to raise those tariffs to 50 percent. They are not bound under the GATT.

We have a growing U.S.-manufactured goods surplus with Mexico, notwithstanding our very low tariff. Actually we see this phenomenon in many, many tariff lines because our average tariff is incredibly low with respect to most goods coming from Mexico into

the United States. We do not think that Iowa's exports to Mexico will suffer.

As I think I may have pointed out in my letter, manufactured exports account for 95 percent of Iowa's sales to our North American Free Trade partners. And, since 1988, they have gone up by 64 percent.

Senator GRASSLEY. Well, then, let us leave it this way. Maybe we misread what it does, and we will take a look at it again and get back to you if we have any concerns.

One criticism of the United States-Canadian Free Trade Agreement is that our meat products must meet tougher standards than Canadian meat products exported to the United States. What mechanisms will be in place to ensure Mexican meat products being imported into the United States meet the same food safety standards as U.S. products?

Ambassador HILLS. The rule will be national treatment. That is, there cannot be discrimination.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Riegle.

Senator RIEGLE. Thank you, Mr. Chairman. Madam Ambassador, there was an indication that I had gotten that somewhere in the NAFTA there is a provision—I do not know if it is in writing or if it is an oral understanding being reduced to writing—that would allow for the cancellation of duties owed by Honda under the Canadian Free Trade Agreement (CFTA).

This relates to the Honda dispute about shipments into the United States that did not meet the content requirement of 50 percent North American made parts. I understand that, as part of working out provisions that generally fall into the rule of origin area, that it may well be that we are letting the Honda case and Canada off the hook on this issue under the CFTA. Is that true, or not?

Ambassador HILLS. That is false.

Senator RIEGLE. Is there nothing to it whatsoever? There is absolutely no understanding or provision relating to the Honda case?

Ambassador HILLS. There is no understanding. What we have negotiated in the North American Free Trade Agreement is a clearer rule of origin than we had in the Canadian-United States Free Trade Agreement.

The new rule will be the net cost of production, rather than direct costs of manufacturing. There have been in the past quarrels over what is a direct cost and what is not a direct cost.

We had hoped that after we had put in place the North American Free Trade Agreement because these rules of origin are clearer, that the implementing legislation specify that the new rules apply to any entry that has not been finally liquidated, and that recommendation is simply to clear up outstanding disputes.

If the new rules were to apply to the Honda dispute, if they were then not liquidated and if they qualified under the new rules—and I am not at Customs and I do not know—then it is possible that the dispute would be resolved. My understanding is that Honda has not yet paid any duties.

Senator RIEGLE. No, they have not.

Ambassador HILLS. And, so, it would not be a cancellation of or a giving back of duties. But it is conceivable that this new rule could be applied to resolve an old dispute.

Senator RIEGLE. Well, that is helpful. Let me go just a little bit further then. Is the change one where the rule of origin will now involve a shift from net cost to direct cost?

Ambassador HILLS. No. No.

Senator RIEGLE. No. Is it the other way around?

Ambassador HILLS. Yes.

Senator RIEGLE. So, we have gone from direct cost to net cost formula for the rule of origin on autos. Was there any discussion that you are aware of when the change in formula was being done, which made reference to the outstanding Honda case?

Ambassador HILLS. Not that I am aware of. Well, let me clarify that. There certainly was a discussion of the lack of clarity that we had in the old direct cost rule, and I personally talked to people connected with Customs of the problem of two reasonable minds disagreeing as to what is a direct cost of manufacturing.

Senator RIEGLE. So, you do not know as you sit here now, one way or the other, about the effect of the new rule of origin on the Honda case if it is still unresolved. Will you apply the new measurement technique to the Honda case? Your testimony today relays that you do not know one way or the other whether this new rule absolves Honda of that adverse finding in the case.

Ambassador HILLS. Well, I do know that, by itself, the passage of the North American Free Trade Agreement would not absolve Honda, as you say.

I do also know that it would be my recommendation—and I hope the administration's, although I don't think there's been an administration position on this—that we would apply a clearer rule rather than a cloudy rule to resolve any outstanding disputes.

Senator RIEGLE. Well, I want to take a look at the difference between the two calculations. What I would want to find out—and you are phrasing your answers very carefully, as you should—is if there is any relationship between the change in the basis of calculation of the rule of origin and resolution of the outstanding Honda issue, which is a very sore point of contention, as you may well know. I gather you do not know one way or the other, in terms of the fine details of this issue.

Ambassador HILLS. Well, I do not want to mislead you, Senator. It is not a question of resolving it, it is a question of having a clear rule of origin. We can not administer these trade agreements without good, clear rules of origin.

If governments and all parties in commerce cannot understand them, and we are creating disputes because of a cloudy or unclear rule of origin, then I certainly would want to get that clarified.

Senator RIEGLE. Well, there was no doubt in the mind of the U.S. Customs Service. The Customs Commissioner sat exactly where you are sitting, and there was absolutely no doubt in the mind of the Customs officials on the Honda North American content issue. Now, Honda has a disagreement; our Customs officials have been very clear in their ruling.

But they have not applied the penalties that are required here, and I am concerned that, in effect, by changing the basis of calcula-

tion in the name of a better regime, we have taken Honda off the hook.

Is your answer to me that you do not know one way or the other whether the change in the rule of origin will have that effect on the Honda case? In addition, is it your view that the application of the NAFTA rule of origin for autos depends on whether the Honda case is still outstanding at the time the NAFTA is passed by the Congress.

Ambassador HILLS. It also depends on whether we have a new rule or origin, which will depend on whether we have a North American Free Trade Agreement.

Senator RIEGLE. Well, we will come back to this rule of origin issue at another time.

The CHAIRMAN. Thank you. Senator Chafee.

Senator CHAFEE. Thank you very much, Mr. Chairman. Madam Ambassador, I would like to ask you the following. There is a good deal of concern voiced throughout this hearing about what happens if we adopt the agreement. I would like to explore with you what might happen were we to reject the agreement.

Every day we watch what is happening in Europe. I do not know what the results of the upcoming French referendum on the Moastrict Agreement will be. But, clearly, Europe is moving toward greater integration; there is no question about it. And so, we soon will see within the EC an integrated purchasing group of some 300-plus million consumers.

In light of these events, I am asking you what might happen if we were to reject this agreement? Where would we be then in the global marketplace, and in terms of global competitiveness? Some are telling us about the possibility of a down side if we go forward with an agreement. But I would like to hear from you: what is the down side if we do not have a North American agreement?

Ambassador HILLS. Senator Chafee, I think we miss an opportunity to become more globally competitive. Mexico is our fastest-growing export opportunity. Seventy percent of the growth to our economy today comes from our exports, so we certainly should ferret out every rapidly growing export opportunity, and Mexico is at our back door.

We also miss the opportunity to have growth throughout North America. That will make us globally less competitive, and we miss the opportunity of seeing a neighbor grow economically, becoming, thereby, a better customer, and more stable. One of the best ways to control illegal immigration is to have legally created jobs in Mexico.

So, for a host of reasons, I think that this is a very good opportunity for our Nation. And I think historians would turn around a decade or so from now, if we miss the opportunity, and really shake their heads and wonder what we were about.

Senator CHAFEE. I agree with you. I think that is well said. Let me also ask you about some concerns expressed here that Mexico is a low-wage area, and, therefore, that they are going to take all our jobs away. Now, if I understand the statistics you gave, currently we run a \$7 billion trade surplus with Mexico.

Ambassador HILLS. Correct.

Senator CHAFEE. Well, if they have all of these low-wage workers down there who are working at low wages, why do we end up with a trade surplus with them?

Ambassador HILLS. Mexico has lower wages than we have, but we are more productive, and we sell to a lot of developing countries. Our wealth in this country and our economic growth are hinged on our ability to export to all countries. What we are trying to do with this Free Trade Agreement is to garner to ourselves greater opportunities to export. This agreement will bring down trade barriers that prevent us from having as much opportunity to sell as we would have but for the barriers.

Mexico is a poorer country, but it buys a lot from us. It is our third-largest trading partner, and it is growing. The rate of growth of United States sales to Mexico is much faster—twice as fast, in fact—as the rate of growth of our sales throughout the world.

Mexico, today, yes, it is poor, but it buys 35 percent more per capita from us than does the far more affluent European Community. So, it makes sense for us to try to get those markets open so that we can be competitive and generate better paying jobs for our people.

Senator CHAFEE. I would like to ask you another question. There is always considerable attention paid on the benefits or the dangers that await our manufacturers and our workers in the event of a trade agreement with another country. But there should be equal attention paid to the potential benefits of an agreement that awaits our consumers.

In other words, if our consumers can import some desired product at a lower price, presumably they can benefit. I assume that there are going to be some imports from Mexico that are going to benefit our consumers in that consumers are going to be able to purchase those products at a lower price than would otherwise be true. Is that correct?

Ambassador HILLS. Absolutely. There will be an opportunity to purchase a broader range of goods at a lower price, and it will be beneficial to our companies who are consumers in and of themselves. The agreement will be beneficial to investors as well, because collaborative production is very much a part of our globalized economy.

We have many, many companies that tell us that, because of an investment they have made in Mexico, they have been able to expand their gross sales, and, therefore, their U.S. work force, as they have become more competitive in a cost sense than they were before their investment in Mexico.

Senator CHAFEE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bradley.

Senator BRADLEY. Thank you very much, Mr. Chairman. Carla, could you tell us what is your latest assessment and sources for that assessment of net job creation?

Ambassador HILLS. There have been a number of studies that have been undertaken to develop the economics. About 12, I think, were covered in the ITC symposium that evaluated the studies that had been conducted over the past several years.

And the ITC found that there was a "surprising unanimity" in the fact that there would be an increase of output in this Nation—GDP, employment, and real wage gains.

Last spring, Brookings did an analysis. I believe they looked at 30–40 studies, and they found, too, economic growth, jobs and an increase in real wages.

The Institute of International Economics has made a projection based upon their in-house analysis, and they, too, come to the conclusion that there will be about 325,000 jobs created.

There have been studies at UCLA that have found that urban, unskilled and rural wages will increase as a result of this agreement, primarily because of the decrease of illegal immigration, resulting in fewer people seeking the lower skilled and rural jobs. But there are a number of studies, and we would be happy to share them with you.

Senator BRADLEY. So, the tentative conclusion by all of these studies is that there will be more economic growth, more jobs created than lost, higher-wage jobs created, and the most difficult areas served with more job opportunities, including urban American and poor rural America.

Ambassador HILLS. Yes.

Senator BRADLEY. Could you tell me, what is the dispute settlement mechanism that is embodied in the agreement, and what is your level of confidence that it will actually work?

Ambassador HILLS. The agreement provides for panels, not unlike the Canadian Free Trade Agreement. And, in order to have a lack of bias, it requires that the disputants pick from the panelists of the other two countries. The resolution should be in 8 months. And we think that it is an improvement on the current dispute settlement mechanism that we have in the United States-Canada Free Trade Agreement. There is an additional dispute resolution, and that is through investor-state arbitration.

We were, in this agreement, able to negotiate an investor State arbitration mechanism, which we welcome, that protects the investor in event of monetary damage, where his rights that he would look for from the agreement are abused: right to repatriate profits; expropriation; lack of national treatment, and the like.

Senator BRADLEY. So, that if there is a disagreement over national treatment, what happens? Could you go through the steps, one, two, three, four, so that people could clearly understand that there will be a resolution of any dispute?

Ambassador HILLS. In a government to government dispute, we would request consultation in the first instance. And if that did not work, we would seek a panel and the panel would make its determination. Under the rules that we have negotiated, the resolution should be final in 8 months.

Senator BRADLEY. If an exporter to Mexico felt that the internal court proceedings of Mexico had not been fair to that particular exporter, does he have any recourse at all under the agreement?

Ambassador HILLS. If that exporter is accused of dumping or of having its goods subsidized—and that is a common complaint—after resolution of the issue at the administrative level, at the equivalent of our Department of Commerce and the ITC, the entrepreneur would have a choice of going to a panel—a panel that

would serve as an appellate body rather than going to a court within either of the other two countries.

Senator BRADLEY. I know that the environment is not your area, and I assume we are going to have Mr. Riley up here at some point to talk about that, but you did talk about parallel negotiations.

Might you share with us the prospects of improving the Mexican environment, and, therefore, the threat that that may or may not pose to the United States absent an agreement with Mexico, and one with an agreement with Mexico?

Ambassador HILLS. I think that what we have done in the environment is one of the grand stories of this negotiation. The parallel discussions with Mexico have literally blossomed.

We have not only a master plan for the border where enforcement is strengthened by focusing on the border—through cooperation initiatives to reduce pollution and cooperative enforcement—we have already brought cases where the two governments have worked together.

But that has expanded so that there is now, I am told, soon to be an agreement for a bilateral joint committee for the environment that will cover all of both nations, not just the border. And here again, it will focus on pollution prevention, strategies on enforcement, pesticides; important issues to Americans.

Director Reilly has called a meeting of the three environmental ministers for September 17. He has invited me to participate in the meeting. To my knowledge, this is one of the first meetings where the three environmental ministers and trade ministers will be talking together.

And I think that, were we to vote down the North American Free Trade Agreement, it would have a very damaging effect on the kind of cooperation that we have been able to engender through the course of these negotiations. Plus, of course, we would lose the extraordinary provisions that are contained in the agreement on the environment.

I simply cannot understand how a good environmentalist can say, I would vote against the agreement because you did not get enough, or you did not get what I wanted for the environment, when the agreement is laced with environmental protections. The new focus and the parallel discussions are just leagues better than when we started this negotiation some 2 years ago.

Senator BRADLEY. Thank you.

The CHAIRMAN. Senator Symms.

Senator SYMMS. Thank you, Mr. Chairman. And thank you, Ambassador Hills, for your answers thus far. Mr. Chairman, before I ask my question I wanted to get into on NAFTA, I would like to insert four questions for the record on a subject that is not directly related to NAFTA, with respect to intellectual property rights, if I might.

The CHAIRMAN. Without objection.

[The questions appear in the appendix.]

Senator SYMMS. They are only indirectly related, and that is why I will not tie up the committee with them now. I think that it helps us to keep on the record answers of the enforcement of our current trade laws to pass new trade agreements. We have discussed that many times.

But the question I wanted to get to, because I believe, as I said earlier, that the potential for this trade negotiation and the culmination of the agreement to NAFTA, can be very helpful to all sectors of the American economy, including agriculture. It just so happens that I come from a State where sugar is a very important crop; it generates a lot of revenue for the State.

And before this agreement ever got out, I was quite interested to see that other people—maybe they had information that I did not have—were making all kinds of statements—particularly the Beet Growers' Association in Idaho—about how terrible this agreement would be for sugar producers.

That was before there was any information about what was in the agreement was made available to my office, or any of the other congressional offices. And, as you said earlier, while the lawyers were still trying to write the agreement, there was no information out.

Could you give us—and I have a little fact sheet here on what is in the sugar agreement—a kind of direct answer that you would give to a beet producer in Idaho, or a cane producer in Louisiana, Texas, or Florida, how this will impact their situation in the coming years, and how you would foresee that it would impact them?

Ambassador HILLS. The agreement will reduce the Mexican tariff, and Mexico is a net importer of sugar. It is a 15-year reduction; 15 percent over the first 6 years, then a straight-line reduction over the next 8 years.

Mexico will harmonize its border protections with ours before the year seven, so we will have a common tariff. We have negotiated a tariff rate quota with the Mexicans, and, from year one to six, their quota is what it is today, 7,000-plus metric tons. If they become a net exporter, they have the opportunity during that period of time to export up to 25,000 metric tons. And, in years 7 to 15, if they are a net exporter, they could export up to 150,000 metric tons.

Senator SYMMS. To the United States.

Ambassador HILLS. Yes. At the present time, they are not a net exporter. We do not see—and our consultants did not see—that they would easily become such. The consumption of sugar in Mexico is growing very, very rapidly as their population increases. We are also a net importer of sugar.

Senator SYMMS. Do you have the figures there of how much sugar we import net today?

Ambassador HILLS. Worldwide?

Senator SYMMS. Yes.

Ambassador HILLS. I do not have those with me.

Senator SYMMS. Well, we are talking in terms of 3 or 4 million metric tons. Is that correct? In that range.

Ambassador HILLS. No. Our current quota is 1,231,000 metric tons.

Senator SYMMS. Five or 6 million, maybe.

Ambassador HILLS. I know within the past 3 or 4 years we have been the major supplier to Mexico of its sugar, and it has been over a third, I believe. 38 percent sticks in my mind. During the 1990–91 marketing year, we exported 250,000 metric tons of sugar to Mexico.

Senator SYMMS. All right. That will be fine.

Ambassador HILLS. But our worldwide imports, because we are a net importer of sugar, are, I believe, over 1 million metric tons.

Senator SYMMS. All right. But the point is, the 150,000 tons which could grow over about a 6 or 7-year period at 10 percent a year, so it could easily double to, say, 300,000 tons, even that is not a huge amount of sugar. Is that not a fair statement?

Ambassador HILLS. I believe that is fair statement.

Senator SYMMS. There has been an awful lot of unrest from the agricultural community in the State about that, and I am just trying to find out. I have got this sheet, and I appreciate your answer. I would like to get, if you have it, someone who could give us what the STR would anticipate the long-range view would be of the U.S. sugar producer with the ratification of this agreement.

Ambassador HILLS. I would be pleased to get that. I am sure we can obtain that from the Department of Agriculture.

Senator SYMMS. All right. Thank you.

[The information follows:]

EFFECTS OF NAFTA ON THE SUGAR INDUSTRY

Summary Under the NAFTA, the United States and Mexico will gradually reduce barriers to sugar trade between the two countries and harmonize border protection with the rest of the world. During the 15-year transition period, any additional access to the U.S. market beyond Mexico's current 7,258 metric ton quota will be conditioned on Mexico becoming a net surplus producer of sugar. Mexico is currently a large net importer of sugar. The United States has exported substantial refined sugar to Mexico in recent years and the sugar re-export program will remain in place.

Current Policies and Proposed Changes. Mexico eliminated its sugar import permit requirement system in late 1989 and instituted a variable levy system on sugar imports. The government announces a target internal price each month, which is adjusted to stay at about 18.7 cents (U.S.) a pound. The variable levy is adjusted to bridge the gap between the target price and world price. This price support system will work only when Mexico is a net importer, which has been the case in recent years.

The United States maintains a quota and tariff on over-quota amounts of sugar. Any imports over a country's quota allotment face a second tier tariff of \$0.16 per pound, raw sugar. The United States also has re-export programs under which sugar can be imported, refined, or further processed, and then re-exported without being subject to a quota or a tariff. These programs will remain in place under the NAFTA.

In the first 6 years, the United States will reduce its second-tier tariff on sugar from Mexico by 15 percent and during years 7-15, both U.S. and Mexican tariffs will be reduced linearly to zero. By the end of year 6 of the transition, Mexico will align its tariff regime that applies to the rest of the world with that of the United States, and phase out this tariff on imports from the United States by the end of year 15.

Mexican sugar exports to the United States will be subject to several conditions relating to its net surplus production status. The NAFTA provides for Mexico's current access of 7,258 metric tons of raw sugar, duty-free. But during the transition period, any additional duty-free access above this amount is limited to no more than Mexico's projected net production surplus of sugar. In addition, for the first 6 years of the agreement, duty-free access may not be more than 25,000 metric tons, raw value.

In year seven of the agreement, the maximum duty-free access quantity becomes 150,000 metric tons, raw value. In each subsequent year of the 15-year transition period, the maximum quantity of Mexican sugar allowed duty free access will be increased by 10 percent.

However, beginning in year seven the United States shall provide duty-free access to the full extent of Mexico's projected net production surplus for that year if (1) Mexico has been a net surplus producer for any two consecutive marketing years (including years one through six of the agreement), or if (2) Mexico has been a net

things are very comparable to the differentials between ourselves and Mexico.

And I am simply making the point that the Europeans decided that those differentials were so vast that they could not be accommodated in that arrangement and they did not allow Turkey to participate. And I am saying that we have fundamentally the same problems here with Mexico.

Now, some want to paper over that. They want to sort of treat Mexico, not as if it were a Third World economy with Third World environmental standards, and absence of standards, and other things, and sort of pretend that it is like Canada, which is roughly on an equal footing with the United States. They are vastly different. Vastly different. And the Europeans saw that difference, and I think we had better understand and see those differences as well.

Senator CHAFEE. Well, Mr. Chairman, I do not want to prolong this. But let me make one point. We have had no testimony—certainly not before this committee—dealing with why Turkey was or was not admitted to the European Community. Thank you.

Senator BAUCUS. Thank you very much. Thank you both very much. Let us begin, first, with Ms. Fuller. Would you begin?

STATEMENT OF KATHRYN S. FULLER, PRESIDENT, WORLD WILDLIFE FUND, WASHINGTON, DC

Ms. FULLER. Thank you, Mr. Chairman. I am Kathryn Fuller, president of the World Wildlife Fund. We have more than 1 million members in the United States, and affiliated offices in about 40 countries around the world, including Canada and Mexico, carrying out a variety of policy initiatives and field projects.

We are the largest private organization dedicated to the conservation of nature, and perhaps best known for our logo, which is China's Giant Panda. So, you might wonder why it is that we have taken such a strong interest in the North American Free Trade Agreement.

Let me state at the outset that we have recognized that trade liberalization, in general, promises to help developing countries improve their economies, thereby enabling them to devote more resources to conservation and to environmental protection.

For us the key question is whether steps towards trade liberalization incorporate adequate environmental safeguards, either within trade agreements themselves or in tandem. As Senators Packwood and Chafee said earlier, are we better off with or without a NAFTA?

Certainly, when you look at threats to nature—to forests, to biological diversity—one of the over-arching problems is poverty. The forces that drive deforestation and excessive exploitation of wildlife around the world are largely the product of poor people who are struggling to make a living.

It is enormously important that we try to address that poverty to improve living standards in countries around the world if we are going to successfully provide for resource conservation over the long term. Mexico is an excellent case in point.

Mexico, as many people may not be aware, is one of the five leading countries in the world in terms of biological diversity, that is,

the total numbers of plant and animal species. It still has somewhere in the neighborhood of 11.5 million hectares of tropical forest, as I understand it.

It is very encouraging, indeed, that the NAFTA text recognizes the need to move towards sustainable development of resources. We were encouraged to see the reference to sustainable development in the preamble of NAFTA, and view the NAFTA draft as important progress in incorporating environmental considerations such as sustainable development into a trade agreement.

It is certainly not an answer to all conservation problems. It certainly does not provide comprehensive mechanisms to deal with issues of how one really would attempt to ensure that the prices of goods and services reflect their true environmental and social costs; how you would work to eliminate hidden subsidies.

Perhaps it is not surprising, since this really is the first time that these kinds of issues have ever even been raised in the context of trade negotiations, that one of our principal concerns is that there is not yet an adequate mechanism for looking at the kinds of natural resources and environmental consequences that may well flow from trade liberalization.

For example, there is really a quite impressive beginning social forestry effort in southern Mexico; efforts by local people to use forest resources on a sustainable basis.

Now, the NAFTA will not be a success, from our point of view, if the products from those sustainable forestry undertakings are out-competed by cheaper Canadian and U.S. timber, resulting in an irresistible incentive to transform important tropical forests to citrus production or other forms of agri-business. NAFTA, within its four corners, does not address this. To us, it is really critical that, whether within the NAFTA itself, or within a parallel process we begin to come to grips with some of these over-arching policy issues.

And that is why we have so strongly urged moving to establish a North American Commission on Environment, with full participation of the public, to take a look at what are really not very well understood long-term environmental implications of liberalized trade.

[The prepared statement of Ms. Fuller appears in the appendix.]
Senator BAUCUS. Thank you, Ms. Fuller. Mr. Hudson.

STATEMENT OF STEWARD J. HUDSON, LEGISLATIVE REPRESENTATIVE, NATIONAL WILDLIFE FEDERATION, WASHINGTON, DC

Mr. HUDSON. Thank you. I am Stewart Hudson, the legislative representative for the International Programs Divisions of the National Wildlife Federation, and, of course, I appreciate the opportunity to present our views on environmental issues related to the NAFTA.

I also want to thank the chairman for his sustained interest in this issue, which has, I believe, resulted in an improved version of the NAFTA text. I would like my full remarks to be included in the record, and I will try to summarize quickly.

Senator BAUCUS. Without objection, that will be done.

[The prepared statement of Mr. Hudson appears in the appendix.]

Mr. HUDSON. I also want to pay attention to something that Senator Chafee said earlier with respect to credibility. I think that the Federation recognizes that credibility is a precious resource, and our remarks are guided by that belief.

I have to say, I think some of the folks who have had trouble with responding to the text have only had it for a few weeks, and there is still a great deal of secrecy associated with these kinds of proceedings in terms of trade negotiations.

I want to begin by clarifying some inaccuracies that were contained in a New York Times article of yesterday, which seems to suggest that the Federation has now decided in favor of NAFTA.

In fact, as we have expressed to Ambassador Hills and in conversations with committee staff, though we are encouraged by the progress that has been made in addressing environmental issues, some areas of the text require greater clarification to assure that the agreement strengthens, rather than weakens, the adoption and maintenance of tough environmental standards in all three NAFTA countries.

Moreover, with respect to funding and enforcement of environmental protection measures, and also with respect to effective follow-through and monitoring of NAFTA-related environmental issues, further action on the part of the NAFTA parties is required.

The testimony that follows will touch upon each of these areas. One caveat I want to make is that we know that the final Congressional vote on NAFTA, if and when it occurs, takes into account implementing legislation, which is going to be a significant factor. We, of course, will not be addressing that today.

One of the positive aspects of the NAFTA is the inclusion of language on sustainable development and sustainable development is reflected as the central goal of this agreement. This is very important. It suggests that some of the conclusions reached at the U.N. conference on environment and development are now being taken into account.

We have also noted some improvements in the general exceptions that will be allowed for environmental protection measures. One area, however, which remains to be clarified, has to do with the requirement that measures that are taken are those necessary to achieve a given objective, and I think it would be useful for the committee and Congress to focus in on how that so-called necessary test will be interpreted.

Standards, both in the sanitary and phytosanitary area, and more generic technical standards, are also of great concern to us. While the NAFTA provisions are a marked improvement on what has been negotiated in the GATT for example, some important questions on the current text still need to be resolved.

Now, attention to protecting legitimate environmental standards in the NAFTA can be seen in a variety of areas. Article 754, for example, makes explicit a country's right to adopt sanitary or phytosanitary measures that are higher than an international standard, and there is similar protection for technical standards in the environmental area.

Article 757 allows for countries to adopt standards even when full scientific evidence is not available. There is also, in other articles, a guarantee of upward harmonization. The harmonization process that this agreement will pursue will not be done at the expense of higher standards in the NAFTA countries.

Finally, with respect to sanitary and phytosanitary measures, the burden of proof is going to be placed and remain with the party challenging a given standard. This has been a very important provision for us, and a similar provision is added in Article 914 that affects technical standards. Now, the provisions cited above represent progress.

As I said earlier, there are some areas of clarification that Congress must seek, and, again, the necessary test affects both areas of standards. There is an attempt to create greater protection in the area of technical standards, but we urge the Congress to seek greater clarification on the use of that term.

Another area of concern related to standards is the lack of public accountability and public participation in the operations of the committee on sanitary and phytosanitary standards, and the committee on technical standards.

There are other parts of the agreement dealing with international and environmental agreements where greater protection is carved out, but, again, greater clarification is needed in that area.

In dispute settlement there are some positive steps, in that the burden of proof in environmental disputes will rest with the challenger. Unfortunately, again, public participation needs to be added to that portion of what has been negotiated.

I would like to discuss four other areas that are important. First of all, with respect to the investment chapter, two important provisions have been added. One, allows countries to undertake measures related to investment that have to do with environmental protection. That is quite positive.

Another measure was added which discourages parties from derogating from environmental standards, and that is important, as well. Congress should seek greater clarification on some of the meanings of terms, like "derogate from."

I will conclude quickly. We think that a signal should be sent to future countries—those seeking to be part of the NAFTA—that environmental issues will be considered in future negotiations. We think there must be greater attention to funding issues.

And, finally, although I probably should have started with this, we believe that it is absolutely essential that a trilateral commission that deals, at least in part, with enforcement and follow-through on NAFTA environmental provisions be formed. It is important that this commission have something to do with the environmental provisions of NAFTA, and it is quite important that it be trilateral. Thank you.

Senator BAUCUS. Thank you very much, Mr. Hudson. Dr. Emerson.

**STATEMENT OF DR. PETER M. EMERSON, SENIOR ECONOMIST,
ENVIRONMENTAL DEFENSE FUND, AUSTIN, TX**

Dr. EMERSON. Senator Baucus, and members of the Subcommittee on International Trade, my name is Pete Emerson. I am an

economist employed by the Environmental Defense Fund in Austin, TX.

Throughout the debate on the North American Free Trade Agreement, the EDF has advocated strategies that combine trade liberalization with measures to protect the environment. We have put forth recommendations to make progress on environmental protection using cooperation, efficiency, economic growth, and markets, rather than resorting to measures that would pit trading partners against each other.

The text of the trade agreement that was released to us at the Environmental Defense Fund and to the rest of the public only a few days ago is exceedingly complex. The EDF will not make a final decision on the proposed NAFTA until we have had time to thoroughly analyze and debate the text. This process is expected to take several weeks.

Our analysis of the NAFTA text will focus on two practical questions that must be answered. First, how will the environment and public health be protected? And, second, who is going to pay for it? These questions represent threshold concerns and should be successfully answered in a way that contributes to the sustainable use of natural resources in a safe environment.

To us, the free trade debate has revealed that the North American environmental problem is not one, primarily, of sharply different standards, but, rather, the level of commitment each country has to paying the costs of enforcing environmental law and financing badly needed infrastructure projects.

For its part, Mexico is taking definite, positive steps in all of these areas. I am not going to repeat what is in the testimony, but this action by Mexico is important. We recognize it. We also recognize, as Senator Baucus has pointed out by citing the recent GAO study, many problems remain to be solved in Mexico.

Our preliminary review of the NAFTA text reveals that it is a step in the right direction in terms of linking environmental concerns with trade and development, and vice versa. This is important, for many reasons that I will not be able to get into at this time.

On a positive side, we are certainly pleased about the fact that the NAFTA text seems to give deference to existing Federal and sub-Federal environmental and public health standards. We seem to have made improvements in the dispute resolution area, also.

In the environmental language dealing with investments, we have something that looks very positive. In fact, I want to come back to this in just a few minutes. I believe this language offers an opportunity for the trading partners to consult with a view of eliminating distortions in business activity that might be caused by lax enforcement of environmental law.

As we get into our analysis—and I am looking into a crystal ball here—I think we are going to come back with concerns in three areas: one, environmental law enforcement in Mexico; two, United States–Mexico cooperation on border environmental issues; and, three, the ongoing need to respond on trade-related environmental problems in North America.

To achieve better environmental law enforcement in Mexico, there are basically three things that can be done. Mexico can put

more inspectors and technical resources into it; they can increase citizen involvement; and they can introduce incentive-based mechanisms that internalize the responsibility for compliance.

We think, on the first two alternatives, that Mexico is definitely making a real start and building on what they already had. We think that the United States is cooperating and that more needs to be done.

But, in my opinion, the real opportunity here lies in tapping incentive-based mechanisms that will contribute to better environmental protection. Let me give just one example to get your thinking started on this. Along the border, we have had a continuing problem with hazardous waste management. We have good laws that would seem to deal with this; but the laws are ignored. And the usual argument is that they are ignored because there are not enough inspectors and Government workers to deal with the problem.

The way to solve this problem is to institute a trans-border deposit/refund system for containerized hazardous waste. That puts the problem in the hand of the business firms who are profiting from using the chemicals in the first place. Why not make them into good environmentalists?

While we are thinking about an incentive-based approach to solving problems, lets go back to the NAFTA and ensure that the text of the trade agreement requires consultation between the trading partners when there are allegations of lax environmental laws.

Consultation would be carried out with the explicit view of achieving a better understanding and negotiating a solution to the enforcement problem. Creating such an incentive to better enforcement of each country's own environmental laws would be preferable, in my opinion, to imposition of trade sanctions.

To improve United States-Mexico cooperation on border environmental issues, there are a few simple things that need to be done. One, we need an EPA office in the border region; two, we need Congress to hold annual oversight hearings with respect to what is happening on the border plan; and we need more funds for wastewater treatment facilities and other projects.

A variety of ideas have been proposed for infrastructure fundings. One possibility is to use the value-added tax that is now paid on imports from Mexico to solve these infrastructure needs. This could be done fro a transition period, say 10 years.

Finally, I could emphasize that in our examination of the USTR's environmental review of the proposed NAFTA there is clear evidence of a need for an ongoing capacity to monitor and respond to trade-related environmental problems.

We think that the trading partners should agree as a condition of signing this agreement that they will contribute to an annual tri-national report on environmental standards and practices, and participate in a trilateral commission aimed at negotiating a solution to environmental problems. Thank you.

Senator BAUCUS. Thank you, Dr. Emerson.

[The prepared statement of Dr. Emerson appears in the appendix.]

Senator BAUCUS. Mr. Ward.

STATEMENT OF JUSTIN WARD, SENIOR RESOURCE SPECIALIST, NATURAL RESOURCES DEFENSE COUNCIL, WASHINGTON, DC

Mr. WARD. Mr. Chairman, I would like to begin by thanking you and this committee for raising the profile of environmental issues in the North American Free Trade Agreement and in international trade more generally. I believe that, regardless of the final outcome, the NAFTA process has focused long overdue attention on the environmental dimensions of trade and economic integration.

Our organization has been heavily involved in the process, and we have, on many occasions, presented specific recommendations to the negotiators. We believe the proposed trade agreement contains some positive features, but that Congress should insist upon stronger environmental safeguards as a condition of final approval.

The focus of my testimony today is environmental enforcement, one of the most compelling issues surrounding the NAFTA debate. Our statement argues, first of all, that environmental enforcement remains a serious problem facing North America. Lax enforcement is harmful to the environment and can result in serious distortions of trade and economic competitiveness.

It is, therefore, critical that any new trade agreement provide checks against industrial exploitation of pollution havens. In this regard, I do not want to diminish the significant leaps that Mexico has made recently in environmental law and policy. At the same time, a realistic look at the situation suggests that serious enforcement problems persist.

One example, noted several times earlier in this hearing, is the recent GAO study documenting that none of six Maquiladora plants sampled had completed requisite environmental impact assessments for their Mexican operations.

I should note here that a number of Mexican environmental leaders we have spoken with believe that the Mexican environmental impact statement provision has substantial, but unrealized, potential as a tool in that country for stronger enforcement and greater citizen involvement in pollution control and conservation activities.

My second point is that the current response under NAFTA is inadequate to remedy failures to enforce environmental laws. With limited exceptions, the agreement generally neglects specific measures to bolster North American environmental enforcement.

We share the belief that expanded trade is one essential element of a comprehensive strategy for environmental protection and economic development. We disagree, however, that economic growth under NAFTA will, in and of itself, translate into environmental benefits.

The United States-Mexico border plan is the centerpiece of the so-called parallel activities under the administration's commitments made during the fast-track debate last year. We recognize that the border plan provides for increased cooperation between EPA and Mexico's SEDESOL, and that the border plan provides for installation of some badly needed waste water treatment facilities in parts of the border region.

Nevertheless, as our written statement points out, and as we pointed out in extensive comments to EPA last fall, the border plan is very weak on the basic issues of environmental funding and en-

forcement, and it has no formal connection to the NAFTA agreement. The plan is a vague and discretionary instrument that will not solve current problems or deal adequately with increased environmental pressures under a free trade scenario.

Our list of recommended solutions begins with enforceable provisions to treat environmental dumping subsidies resulting from lax standards or enforcement practices as an unfair trade practice. We also propose creation of a new North American commission on trade and the environment to monitor enforcement practices throughout the United States, Mexico, and Canada.

We believe, further, that Congress and the administration should institute a much more ambitious border protection strategy. Among other proposals, we are calling for community right-to-know requirements to make information on toxic releases from U.S. companies operating in Mexico readily available to citizens in both countries. This is something that is not currently required in Mexico.

Finally, the NAFTA parties must pursue a substantial and enduring boost in funding for environmental programs in Mexico and throughout the continent. One approach we favor is to create an environmental trust fund from a portion of tariff revenues on traded goods during the NAFTA phase-out period.

For example, dedicating tariff revenues on current levels of U.S. imports from Mexico would yield approximately \$1.4 billion in funds to help strengthen regulatory and enforcement capacity, and to serve infrastructure needs in the border region.

The question is now being framed in stark terms. Will environmental protection be better served by the proposed NAFTA or without it? The administration clearly contends that rejection of the treaty would be a profound environmental policy mistake. I believe this presents a premature choice that seems to reject the possibility that the congressional consultation phase of the process could lead to strengthening modifications of the current proposal.

In conclusion, we hope that bipartisan efforts between Congress and the administration will produce progressive environmental reforms during NAFTA consultations and as the implementing legislation takes shape. Thank you very much.

Senator BAUCUS. Thank you very much, Mr. Ward.

[The prepared statement of Mr. Ward appears in the appendix.]

Senator BAUCUS. Your last statement, I think, pretty much hits the nail on the head. I think it is also important to note that there are many environmental organizations in this country. You represent four; there are many, many more than four in this country. It is also, I think, fair to say that there are groups not represented here that are as vigilant as you, but perhaps are more militant in their means than you.

I say all this, because I think three of you are on the President's Advisory Council with respect to NAFTA. In that capacity, I would like to ask each of you, does your organization support the NAFTA, from an environmental perspective, as it is written today? Start with you, Dr. Emerson, and go right down the line.

Dr. EMERSON. We have not participated in the advisory committee process.

Senator BAUCUS. All right. You are not.

Dr. EMERSON. We first had access to NAFTA text just a few days ago.

Senator BAUCUS. Well, does your organization support the NAFTA as it is written today?

Dr. EMERSON. We are now analyzing a very complicated text, and we have not made a decision at this stage.

Senator BAUCUS. All right. Mr. Hudson.

Mr. HUDSON. Well, Jay Hair, who is the president of the Federation, sits on the Investment Advisory Committee, which we have found to be extremely useful. And I stand by the statement that was made this morning, which is, that we are encouraged by the progress that has been made, but we are not ready, at this time, to take a position on the NAFTA.

Senator BAUCUS. All right. Mr. Ward.

Mr. WARD. We have wanted, and continue to want this process, ultimately, to succeed. During the course of the process, we have made recommendations. We are happy to see some of those incorporated in the proposed text. We are hopeful that the next phase of the process will include additional recommendations that we made that have, so far, not been incorporated.

Our organization continues to be optimistic that the creation of the implementing bill, the statement of administrative action, and the overall record, including hearings such as this one, will lead to strengthening measures.

I think that it is, as I said in my earlier statement, premature at this stage to frame the issue as, a categorical thumbs up or thumbs down decision. We clearly are not faced with such a choice today, and I think that it is counterproductive now to pass judgement.

Senator BAUCUS. I am not asking for a categorical thumbs down or thumbs up. I am just wondering, would your organization support it as it is drafted today, or not. I am not asking whether you would reject it, but would you support the present NAFTA as it is presently drafted, with its present provisions.

Mr. WARD. No.

Senator BAUCUS. All right. That was my question. Ms. Fuller.

Ms. FULLER. Well, Russell Train, who is the chairman of our board, is a member of the Advisory Committee on Trade Policy and Negotiations. He has been very much involved over the last several months. I personally have not been. The organization is supportive of progress NAFTA has made, while viewing the current document as part of an ongoing process. If it were impossible to improve upon the current draft, clearly we see ways that that could be done. If one had to say up or down, and that is the question that has been raised, we would be in favor.

Senator BAUCUS. Well, it is not quite up or down, it is, do you support the NAFTA as it is presently written. Do you support it, or not support it right now?

Ms. FULLER. We are supportive of NAFTA, assuming that there is an ongoing process that can help to address some of the issues that are not now incorporated within the text itself.

Senator BAUCUS. I would like to ask the panel, now, just in your experience, what are the major environmental deficiencies? Not so much with the text itself, but your experience in Mexico. That is,

what goes on in Mexico that causes you concern from an environmental perspective? Dr. Emerson.

Dr. EMERSON. The first thing that comes to my mind is inadequate waste water treatment and water delivery systems. Perhaps this concern reflects the fact that my office is in Texas and we deal with a lot of United States-Mexico border issues.

Senator BAUCUS. Now, is that an issue not only on the border, but somewhat throughout Mexico?

Dr. EMERSON. Yes, but I have much less expertise off the border.

Senator BAUCUS. All right. Mr. Hudson.

Mr. HUDSON. Quickly, I think, first of all, it is worth recalling that we are as concerned about environmental issues in the United States and Canada as we are in Mexico, but I would say it is three different categories of concern. First of all, funding—lack of adequate funding. Second of all, lack of adequate enforcement, which can be a function of funding. And then, third, one issue that often gets missed is public participation.

Now, that is improving in Mexico, but we will be watching over the next several months to see how the non-governmental organizations are involved in this process in Mexico. Citizen participation is a pretty good place to start if you are thinking about effective enforcement and dealing with environmental problems.

Senator BAUCUS. Mr. Ward.

Mr. WARD. I would echo that. The administration argues a lot that Mexican laws and regulations in the environmental area are comparable, and, in some cases, stronger than U.S. requirements. That is true in certain areas. But I think what that overlooks is that there are very significant, fundamental differences in the environmental legal systems and institutions in both countries.

In Mexico, environmental law lacks some of the basic features that have been central to the success of some of the U.S. requirements, including community right-to-know provisions for toxic emissions, freedom of information requirements, regular notice and comment procedures, for public participation in agency rule-makings, and citizen enforcement of environmental laws, among other provisions. These are important distinctions that I think have to be highlighted as part of the process.

Senator BAUCUS. Ms. Fuller.

Ms. FULLER. Well, the issues of poverty that I alluded to before, and, flowing with that, of course, the need for resources, one of the reasons to promote improved economy so that Mexico would not be dependent upon outside contributions to help with resources management. Equally important is more citizen participation. The growing, vigorous Mexican NGO community needs to be strengthened so there can be more public participation and comment that has already been made.

Senator BAUCUS. Thank you. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. Mr. Ward, in your comment you said one of the big problems was the lack of the Bush administration's financial commitment to the 1992 Environmental Border Plan. You are chastising the wrong person, Mr. Ward. You ought to be chastising Congress. It was Congress that cut the administration's requested funding for the border plan by \$100-\$120

million. So, that is the fault of Congress, not of the administration in that particular area.

Now, I have heard each of you, particularly Mr. Ward, say that you want the companies in Mexico—I am not sure whether you said U.S. companies or all companies in Mexico—to have a right-to-know statute so their citizens would know of releases of toxic chemicals. That, of course, is a statute that we have just recently adopted in our own country, certainly within the last decade.

I have a little trouble in getting into the internal affairs of Mexico and their statutes. Yes, we would like them to adopt a right-to-know law. But we in the United States do not have every statute that every other country has, either. So, it seems to me that you are pressing a little far if you say that as part of this agreement, we should require that Mexico have right-to-know, citizen participation, and so forth and so on.

I would just like to discuss, if I might, the concerns that one of the results of adoption of this agreement might be that there would be increased pressure on Mexico to produce beef or oranges.

Ms. Fuller pointed out that we might have a perverse effect here, that the tropical forests that currently exist in Mexico might be cut down if there is a surge to clear more land for beef or for oranges. That is a legitimate concern, but I am not quite sure what we can do about it.

We in the United States have the same tensions. For example, we have loggers in the northwest part of this country that want the virgin timber from primitive forests—they want them cut. And we have legislators who, and they make no secret about it, say very candidly that if it comes to saving the spotted owl or having jobs for loggers, the issue is clear-cut: go for the logging jobs and forget the spotted owl. And if, indeed, that means the elimination of the spotted owl in the United States of America, so be it.

Now, what do you propose we do? Are you suggesting that this agreement contain a provision that, should there be what one might call a degradation of the environment in one nation, that there be some kind of a tribunal that could prevent that degradation from occurring? In other words, that tribunal or group could get together and say, no, you are not going to cut those logs in the northwest part of our country? If that is your proposal, that is a very dramatic proposal. Is that what you are suggesting, Mr. Ward? I am sorry that you will have to be kind of brief, because the time I have left for questions is rapidly disappearing.

Mr. WARD. Well, our statement today did not specifically address the NAFTA's treatment of issues concerning forest and biodiversity protection.

I would like to say that that issue has come up in the administration's environmental review of the NAFTA agreement. And in our comments on that document, we found that particular section to be particularly superficial and limited, and to constitute a very unsophisticated look at what the possible impacts might be.

It drew what we consider to be a rather simplistic conclusion that the implementation of the free trade agreement would result in significant net benefits for forest and biodiversity protection in Mexico and throughout the continent.

Senator CHAFEE. Let me just say that my problem is this: That the attitude, certainly as I understand it this morning, seems to be that the Mexicans are not behaving very well and we want to be able to straighten them out. We want to make sure that they are not going to be dumping toxic materials, or that if they do they are not going to be releasing them without their citizens knowing about it.

But, in any kind of agreement, it cuts both ways. So, I just want a direct answer. If we in the United States are going to be able to get into Mexico and make sure that they are not going to be dumping toxic waste, are the Mexicans likewise going to be able to make sure that we in the United States are not cutting down northwest forests? How about that, Ms. Fuller?

Ms. FULLER. First, let me say that I have been enormously impressed with a lot of the commitments that the Mexican Government has made to the environment in the time that I have been at World Wildlife Fund. The record really is impressive in many respects, and with respect to conservation of biological diversity. That is not to say that it cannot be improved upon.

It is not clear to me at all that you can set up a tribunal in advance that is going to be able to deal in a litigation mode with these extremely complicated social/political/economic issues.

But what is clear to me is that you have got to have some forum in which these issues can be addressed; in which you can attempt to quantify what really are the implications of trade liberalization on the environment. A lot of this is really a black box and we are stuck with making policy in the absence of real information.

All three countries have expressed a desire for trade liberalization; all three countries, in one fashion or another, have expressed their own commitments to conservation of biological diversity. How do we get those policies to work in tandem; what are the fora; who gets to participate? That is why we are trying to raise these issues here.

Senator BAUCUS. Thank you, Senator. Senator Riegle.

Senator RIEGLE. Thank you, Mr. Chairman. Let me try to make three points in the time we have. I really appreciate your leadership on this issue today and over a long period of time on environmental questions.

First, I would hope that we could get some of the other environmental groups an opportunity at some point to also testify and bring their thinking to us. I think the Sierra Club, and the Friends of the Earth, also, are important and have things to say and ought to be a part of the record that we are building and the ideas and suggestions that we are taking.

Also, Ms. Fuller, I want to say that I generally am in agreement with your point about the need to lift world economic standards in order to, at the same time, enable us to preserve the environment, repair the environment where damage has been done, not add additional damage to it. We have got terrible economic problems on our hands.

I mean, it is hard to over-estimate. They are being papered over right now because we are in a political season, but we have very, very serious economic problems in this country and worldwide. We have got a huge job shortage in this country. I just want to make

the point, and then I want to move on to something else. This is an item off the wire service this morning. Dateline: Reuters. This is New York City Today. It reads as follows: "Turmoil in Europe's market sent the dollar soaring Wednesday and initially undermined stocks and bonds on Wall Street amid worries about growing financial havoc overseas. With France due to vote Sunday on a key referendum on European union, volatile European currencies took off on a roller coaster ride of interest rate shifts and Central Bank intervention."

Listen to this, written today. "It raised interest rates twice, lifting the Bank of England's minimum lending rate from 10 percent to 15 percent in hopes of staving off a devaluation. Sweden hiked its rates to a phenomenal 500 percent, while the Netherlands and Belgium cut rates."

Further, it says, "On Wall Street, initial reaction was concern, leading to a blue chip sell off of as much as 17 points." This is just a little news flash of the context of the enormous economic difficulty, and instability and imbalance that exists. It is directly a part of what is in the center of this trade agreement, particularly because we are trying to integrate a Third World economy now with two modern, industrial economies—ourselves and Canada's—in this arrangement.

There are tremendous financial incentives here, putting everything else aside, to cut corners on environmental standards, to cut corners on judicial proceedings that would adjudicate points of contention, to, I think, exploit cheap labor where it exists; take advantage of situations that can be turned into major private gain. I mean, it is the way that the economic market system works. There is nothing new about it.

Although, if you put it together in a package which fosters and rewards exploitation, history shows you will get a lot of exploitation because people will seek a lot of reward in order to enhance their own situation. So, I am for lifting economic standards. But how we do this in a way that works is a very, very difficult matter.

And every time I see a photograph of children in Mexico drinking water out of an old pesticide can, I must say I am very troubled about it. Everybody in this room, I would think, is a committed environmentalist, and we want to preserve the species as well as all kinds of other things.

We have got terrible environmental problems in Mexico, and it is an outrage. What is going on there this minute is an outrage, and we have got environmental outrages going on in the United States, as well.

And, frankly, we do not do very much about it; partly because it is expensive and because we have got major economic problems and they are all kind of incentives not to spend the money to deal with environmental issues. I am concerned here, because I do not think we have a regime worked out that guarantees that we are going to get tough environmental enforcement and that we can depend upon it.

I think that the minute this agreement is signed, if it is signed, I think you are going to see backsliding all over the place. There is an awful lot of money to be made by not enforcing environmental standards, whether they are to protect people or other living forms.

Now, let me just ask you, Mr. Hudson. The National Wildlife Federation asked the administration to provide a list of environmental safeguards, and they are very discreet. And I want to list them here today and then I want to ask you a question about it.

As I understand it, the Federation asked for the following: allowing public participation in both the negotiation of applicable issues and the adjudication of appeals; ensuring that any environmental degradation that occurs can be addressed to reverse the trend; creating a binding council for enforcement of environmental standards; not allowing a NAFTA country participant to challenge another NAFTA country for being environmentally sound or for having higher standards; and strengthening the environmental remediation process of the three countries. Now, I have looked through the agreement, and I frankly do not find much in there that addresses head-on these issues. Have these issues all been addressed in this package?

Mr. HUDSON. Let me answer this way. There are several provisions in this agreement that are positive steps. Not about maintaining what we have already achieved as an environmental movement, but that have gone further. The investment area is a good example.

Senator RIEGLE. How about these items?

Mr. HUDSON. You have raised some specific items with regard to the adjudication of environmental disputes and some other things. Binding council—I am not sure exactly what you are referring to there. What I have said today—and stick to—is that we need to have a trilateral commission.

Now, I do not think that trilateral commission is necessarily going to have the power to make binding, adjudicatory decisions. That is something that we are going to have to consider. I do not think we got everything we wanted in this agreement; I will grant you that. But we view it as a package. We have not adopted a position in favor of the NAFTA. We have pointed out things we think are positive and things that we think need to be added to.

Senator RIEGLE. Well, then do you support an agreement that would not give us safeguards for public participation, for having a counsel that is really going to make sure that enforcement takes place without making sure that we have got the ability to really see that environmental remediation is actually carried out?

I mean, if those things are not there and solid and iron-clad, I mean, in light of what you asked for in the beginning, which I assume are the critical benchmarks, I would assume that you would not support an agreement where those things were missing.

Mr. HUDSON. I think an accurate representation of our position would be to say that progress has been made in both of those areas, and that we have outlined further progress that needs to be made.

So, what I am saying is if you take the Committee on Sanitary and Phytosanitary Standards, for example, they are not only required to accept comments from non-governmental organizations, but they are required to discuss those comments when they render their decisions. So, there are elements in this agreement that attach to both of the concerns that you have raised.

Senator RIEGLE. Well, it sounds to me—and I will finish now, because my time is up—when I look at your list and the analysis that we have been able to do of this treaty, it looks pretty anemic on these items that you yourself have laid out.

I mean, I see a sort of rounding off at the edges here, and I am not quite clear why all of that is going on. I am troubled about it, quite frankly. I think this is why we need to be able to amend this on the floor, and I would hope you would support my resolution.

If there is no need, by the way, for an amendment in the environmental area, then no one has to offer one. But if it turns out we need one, that any one of your organizations, or some other organization feels is critical, we will have the opportunity, under my resolution, to be able to offer it on the Senate Floor and get an up or down vote.

And this is within a fixed time limit. I am talking about 15 legislative days, final up or down vote, but it would give us a chance to make absolutely certain—not guesswork, not understandings, not all the legal gobbledy-gook and so forth—to have safeguards built right in that we understand and that everybody is on the record for. So, I would urge you to take a look at it. We would like your support for that.

Senator BAUCUS. Thank you very much, Senator. One brief question I have of the panelists is, what enforcement recommendations you asked of the administration. I understand that there is some talk about this trilateral, tri-national, whatever it is, commission. Did you make that recommendation, did any of you? And, if you did, did you recommend more enforcement provisions than seem to be included in the administration's proposal? Just very briefly, Dr. Emerson.

Dr. EMERSON. Well, as I said in my testimony, one of the additions that we are thinking about at this stage is asking, as a condition of signing the NAFTA, that each trading partner agree to consult when there are allegations with respect to lax environmental enforcement, with respect to any country's laws, and that they would agree to consult with the objective of negotiating a solution to the problem.

We think, in the agreement as now drafted, at particular sections—the investment Chapter 11—in the last paragraph of the environmental language, there is a suggestion that consultation and negotiation is the way we are going and we think that it might also be combined with part of the responsibilities in Chapter 20 under Article 2001.

Senator BAUCUS. I guess my basic question is, did you make recommendations to the administration, and what was the response, what was the reception that you got? That is my basic question.

Mr. HUDSON. Yes. Let me answer that.

Senator BAUCUS. With respect to enforcement.

Mr. HUDSON. Right. First of all, again, the trilateral commission is a proposal that we have made on the table with several other groups, three of whom are here today.

Senator BAUCUS. Are you satisfied with these enforcement provisions?

Mr. HUDSON. Well, first of all, what I have said in the testimony is that it has not been announced that the administration supports

this, so, in fact, we do not believe enough progress has been made at all in this area, and we are eagerly awaiting further progress.

Senato. BAUCUS. All right.

Mr. HUDSON. Second, with regard to the investment provisions that are in here, I think Congress would be well-served to get a clarification of the term, "derogate from." We believe that that ought to refer to enforcement.

Now, again, this will affect the United States and Canada, as well as Mexico, and that would be effective. And, as Dr. Emerson has suggested, the consultative mechanism there is something that could be useful. We have gone further, and we have suggested to the administration and negotiators that this issue of consultation should be revisited a year after implementation of the agreement to see if it has worked.

Finally, I would note that there are provisions in the text that do seek to improve enforcement of environmental measures. The Committee on Standards is charged with enhancing environmental protection and the enforcement of those standards. And I think it is important to review this agreement as a whole, too.

All of us are concerned about economic problems here at home; it touches us personally in a variety of different ways. But I do not think, as Kathryn Fuller has pointed out, that we can ignore that a great deal of poverty exists in Mexico. And, until those issues are dealt with, environment is always going to suffer.

Senator BAUCUS. All right. Mr. Ward or Ms. Fuller, do you have any further testimony?

Ms. FULLER. No.

Senator BAUCUS. All right.

Mr. WARD. I have one comment. We did, in fact, make specific recommendations, outlined in our statement today to the negotiators in the area of enforcement and the closely related area of funding. And, as I indicated in our testimony, we believe that those proposals have not been adequately addressed at this stage.

Senator BAUCUS. All right. Well, thank you all very much for your testimony. This is not the last word we are going to have on this subject, obviously. But your testimony here helps us advance the ball forward. Thank you very much. The hearing is adjourned.

[The prepared statement of Senator Hatch appears in the appendix.]

[Whereupon, the hearing was concluded at 12:55 p.m.]



APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF PETER M. EMERSON

Our preliminary review of the NAFTA text reveals that a modest step in the right direction has been made in linking environmental concerns with trade and development, and vice-versa. This is very important. If successful, it will help provide funds and technical resources needed to protect the environment. Also, it will help guard against any country gaining a trade advantage through environmental abuse.

On a positive note, it appears that the NAFTA does accord deference to the existing federal and sub-federal environmental and public health standards of the trading partners. It would also appear that there was an effort to insulate international environmental agreements, although further clarification would be useful. And, the environment measure related dispute resolution provisions properly place the burden of proof on the challenging party, encourage input from environmental experts, and allow the responding party in a complaint to choose a NAFTA panel rather than a GATT panel.

In addition, there is environmental language dealing with investments that will help discourage new pollution havens." Furthermore, I believe this language offers an opportunity for the trading parties to consult with the view of avoiding distortions in business activity that might be caused by lax enforcement of environmental law.

We also look forward to the upcoming meeting of North American Environmental Ministers and to real progress on trilateral environmental problem solving.

As we pursue our analysis of the NAFTA text and its consequences, I believe that EDF will be raising concerns in at least the following areas:

1. Environmental law enforcement in Mexico;
2. U.S.-Mexico cooperation on border environmental issues; and
3. The need to respond to trade-related environmental problems on a regular basis.

To achieve improved environmental law enforcement, Mexico has three important options: bring more inspectors and technical resources to bear on the problem; increase citizen involvement in enforcement; and introduce incentive-based mechanisms that internalize the responsibility for compliance.

With respect to inspectors, technical resources and citizen participation, Mexico has begun to expand its effort and the U.S. government is cooperating. Certainly more needs to be done in these traditional areas. However, an opportunity that remains largely untapped is the use of incentive-based mechanisms that could lead to better environmental protection.

For example, one of the most difficult environmental issues in the border area is hazardous waste management. Under Mexican environmental law and the La Paz Agreement, U.S. based companies are required to return hazardous wastes generated in Mexico to the U.S. for disposal. However, due to inadequate resources for enforcement and the lack of a comprehensive system for tracking the movement of hazardous waste-producing substances, these requirements have not been met.

This problem could be solved by the creation of a transborder deposit-refund system to control hazardous waste. Because of the deposit-refund system, manufacturers who use the various chemicals would have an incentive to provide the information and responsible management needed to protect the environment. Furthermore, this positive result could be accomplished without a huge increase in government spending or more bureaucracy.

While we are thinking about possible incentive-based mechanisms, we should ensure that the text of the trade agreement requires consultations between the trading partners when there are allegations of lax enforcement of environmental law. Consultations would be carried out with the explicit view of achieving better understanding and then negotiating a solution to the enforcement problem. Creating such an incentive for better enforcement of each country's environmental law would be preferable to the imposition of trade sanctions.

To improve U.S.-Mexico cooperation on border environmental issues, the Congress should direct the Administration to establish an EPA border region office. This would bring the EPA staff closer to the problem and provide a focal point for public involvement and scrutiny. Congress also needs to conduct annual hearings on implementation of the Border Plan.

Every review conducted over the past two years has called for funds earmarked to deal with a huge backlog of border-infrastructure needs. Federal, state and local governments in both countries have responded, but available funds are inadequate. One possibility is to use, on a temporary basis, revenue from the existing value-added duty on imports from Mexico. This revenue is scheduled to decline to zero under the trade agreement. We believe these revenues could and should be used during the transition period to finance important environmental infrastructure projects.

Starting with the USTR's environmental review of the proposed trade agreement, we learned that there is a need to monitor, understand and respond to the environmental consequences of trade on a regular basis. Therefore, as a condition of signing the NAFTA, the trading partners should agree to contribute to an annual report on environmental standards and enforcement practices in each country and to participate in a trilateral commission aimed at negotiating solutions to environmental problems.

The annual report and public hearings in each country will provide government officials, business leaders, and interested citizens with information on trade and the environment. They will also serve as a basis for recommendations on environmental policy, enforcement problems, changes in administrative structure and other matters of interest to the trading partners. Based on recommendations of the trilateral commission, each trading partner would commit to accept new environmental obligations in a staged fashion over several years.

In sum, the motivation for the trade agreement is straightforward: freer trade holds the potential to increase the net value of each country's economic pie. However, trade and the environment are not separate issues, and balancing economic and ecological concerns is not an either/or matter. Trade contributes to a strong economy and a strong economy requires a healthy environment. The North American Free Trade Agreement is an excellent opportunity to put these principles to work.

PREPARED STATEMENT OF KATHRYN S. FULLER

Good morning. I am Kathryn Fuller, President of World Wildlife Fund. With over 1.2 million members in the United States, and affiliated offices in over 40 countries that combine policy work and field projects in over 100 countries, World Wildlife Fund is the world's largest private organization dedicated to conservation of nature.

I appreciate the opportunity to give WWF's reactions to the proposed North American Free Trade Agreement. Let me state at the outset that WWF recognizes that trade liberalization in general promises to help developing countries improve their economies, thereby enabling them to devote more resources to conservation and environmental protection. For us the key question is whether steps toward trade liberalization incorporate adequate environmental safeguards—either within trade agreements themselves or in tandem.

We believe that while the NAFTA text before you includes important provisions aimed at enforcement of environmental laws and standards, it has not adequately addressed the broader environmental ramifications of liberalized trade—that is, the extent to which shifts in capital and competitive advantage will alter patterns of natural resource use throughout the NAFTA region. Of particular concern to us is the apparent absence of a mechanism for anticipating trade-driven changes in land use, and for mitigating the resultant impacts on biodiversity.

Thus, while WWF can endorse the NAFTA as a positive first step, we feel it essential that governments take a broader view of trade and environment, and commit to pursue additional needed environmental safeguards. Some of these issues can fairly be said to lie at a policy frontier, and could not have been settled by our negotiators. But it is equally certain that they must be addressed, if not in NAFTA itself

then in a designated parallel process. Currently, however, we lack an adequate institution or forum to begin this important task, much less a clear expression by our governments of their intention to do so. Therefore, we urge:

(1) The establishment of a North American Commission on Environment, involving all NAFTA parties, to provide a forum for addressing environmental issues, including those related to trade, and to promote sustainable development throughout the region;

(2) That the Commission be charged with monitoring environmental impacts of liberalized trade in the NAFTA countries, with a mandate to prepare recommendations to the parties for mitigating adverse impacts where they appear; and

(3) That the Commission be open to full participation by interested organizations, citizens, and expert bodies.

Mr. Chairman, the past two or three years have witnessed a growing, if somewhat belated, recognition that global trade policies and global environmental health are inextricably linked—a recognition that has led to an important rapprochement between trade specialists and environmental advocates, whose world views and even language are often vastly different. World Wildlife Fund's own work on trade issues is now several years old, and was strengthened last year when the U.S. Trade Representative's office invited our founder and current board chairman, Russell E. Train, to become a member of the Advisory Committee on Trade Policy and Negotiations.

From the earliest days of the NAFTA discussions, it has been said that Congressional acceptance of the agreement would depend in no small degree upon its environmental impact. We are greatly encouraged by this public Congressional recognition of the trade-environment linkage. Yet, as our World Resources Institute colleague Jessica Matthews wrote several months ago in "The Washington Post," the connection between trade and environment is a tangled knot, whose strands go every which way, and, indeed, often conflict. Because of this complex net of relationships, the truth is that, while predictions can be made about the NAFTA's effect on certain environmentally-sensitive sectors, its overall environmental consequence simply cannot be stated with confidence at this time.

As each of you is aware, there has already been substantial public discussion of such important environmental aspects of the NAFTA as its safeguards for U.S. sanitary and phytosanitary standards, the structure of its dispute resolution process, and the possibility that the NAFTA will cause increased pollution because of relatively weak enforcement of Mexican laws and regulations. I know that you, Chairman Baucus, have taken a strong interest in these issues, and I hope and expect that my colleagues will address these aspects here today. Yet, these concerns are only part of the complex trade/environment relationship NAFTA would affect. Today I want to direct my remarks to two other areas: (1) NAFTA's relationship to poverty and sustainable development; and (2) NAFTA's potential adverse impact on Mexico's tropical forests and biodiversity. I conclude with our recommendations for steps to ensure that a strong parallel process is established to deal with the important environmental issues NAFTA has not addressed.

I. POVERTY, SUSTAINABLE DEVELOPMENT, AND THE NEED TO INTERNALIZE ENVIRONMENTAL COSTS

Last year, I participated in a group of environment, business, and government leaders, including Senator Chafee, from twelve countries in our hemisphere organized under the auspices of the World Resources Institute to prepare a far-reaching policy document called *Compact for a New World*. As part of the process leading up to the Compact's policy recommendations, we studied the current economic reality in the Western Hemisphere. Let me quote briefly from our findings:

Poverty and hunger are growing throughout the hemisphere, forcing people to despoil the environment in their struggle to survive . . . [T]here were at least 204 million poor people in Latin America and the Caribbean in 1990 . . . The official figures for the United States and Canada add another 38 million . . . Real per capita income for Latin America as a whole fell by almost 1 percent a year from 1981 through 1990 . . . Wages have deteriorated badly, by 50 percent or more in some places. Income disparities in the hemisphere are among the world's highest, posing threats to political and social stability in some places . . . The most vulnerable groups, women and children, suffer the most from poverty throughout the hemisphere . . . In Latin America and the Caribbean, 44 percent of the labor force is unemployed or eking out a substandard living . . . The quality of housing,

health care, and education grows steadily worse . . . Most of our countries are deeply in debt, and the need to service it keeps budget deficits high, fuels inflation, saps investor confidence, and . . . distorts economies.

This scale of poverty in our hemisphere is simply not acceptable, and no responsible environmentalist or policymaker can ignore it. We must find economic resources to work jointly to eliminate debilitating poverty. To that end, our final Compact Document made eight interrelated policy recommendations, including lowering trade barriers and lifting investment restrictions. We noted, however, that while trade liberalization is necessary, by itself it is insufficient, and must be accompanied by several kinds of complementary measures to ensure that the benefits of growth are equitably distributed and sustainable in the long run.

Trade liberalization in general and the NAFTA in particular are vital as means to bring additional resources to bear on the problems of devastating poverty in our hemisphere. However, the NAFTA is not in and of itself sufficient to assure that the benefits of economic development will be equitably distributed or that economic development will not destroy the natural resources which make development and all of life possible.

It is a positive step that the negotiators agreed to include a reference to sustainable development in the preamble of the NAFTA text. "Sustainable development" must be more than symbolic, however. All three governments—the United States, Mexico, and Canada—must develop concrete plans both to institute policy reforms and to provide the necessary financial resources to make sustainable development not a slogan but a reality.

By making economic opportunities more widely available, the North American Free Trade Agreement promises to help raise the standard of living of people in Mexico, in the United States, and throughout the hemisphere, particularly where conditions are the most desperate. If the agreement can achieve this without causing significant offsetting harm to the environment, it has much to recommend it.

In dealing with environment, the NAFTA negotiators focused their attention primarily on protection and enforcement of environmental standards. Among their accomplishments: provisions requiring that strict standards be maintained and that signatories "harmonize upwards" so that equivalence is reached at the highest relative level of stringency. No signatory, moreover, may relax environmental standards to attract investment. And the parties are to cooperate to ensure effective and more uniform enforcement.

What these provisions and assurances have in common is a recognition that where a legal standard requires care and expense to protect the environment, a producer or manufacturer unanswerable to that standard, or that evades it, enjoys an unfair competitive advantage. Put another way, the ability to pass on "environmental costs" in reality operates as a hidden subsidy.

Much of the environmental damage in this hemisphere—and the rest of the world—comes from the fact that many environmental goods and services lie outside our current market system. They are so-called "public goods" that, however valuable to us they may be, do not carry a price. As a result, they are frequently over-utilized and under-protected, often with profound and adverse social consequences. For so-called "externalized" environmental values, the highly-touted miracle of the market place fails us. The need to find ways to bring environmental values into the market system is a matter of urgency both in the environmental community and for society in general.

Environmental externalities—hidden environmental costs not reflected in the market price of goods and services—are a trade distortion that NAFTA must work to eliminate. A trade regime that does otherwise in effect confers a competitive advantage on those who do the least to protect the environment, and risks becoming an instrument that works against sustainable development. I emphasize here that I am not speaking simply of pollution, the transborder area, practices in Mexico, or of the frequently expressed fears that countries to the south will evolve into pollution havens. What I am speaking of extends to agriculture, forestry, and the entire range of land-use and resource consumption patterns, throughout the NAFTA region. Let us consider for a moment the case of tropical forests.

II. TROPICAL FORESTS AND BIODIVERSITY

Policymakers increasingly acknowledge the importance of tropical forests to the future of our planet. What many do not recognize is that Mexico contains an incredible variety of habitats ranging from vast deserts and snow-covered mountain peaks to mangroves, coral reefs, and over 11.5 million hectares of lush tropical forest. Mexico's terrestrial vertebrates include more endemic species than any other coun-

try in the hemisphere, and its flora are among the world's most strikingly diverse. It ranks among the five largest national repositories of biological diversity on Earth.

As in many developing countries, however, these natural assets are rapidly disappearing or seriously threatened as a result of population expansion and inappropriate development schemes. If present land use trends continue, by the end of this century Mexico will have lost more than half of its 80 million hectares of natural ecosystems. While government policies under the Salinas administration are now beginning to address massive deforestation, reconciling the twin goals of economic growth with environmental protection is a slow process. The contrary financial incentives are powerful, especially where valuable natural resources are concerned.

The reduction or elimination of tariffs may well exacerbate these land conversion trends. Incipient community forestry industries seeking to maintain the forest cover while deriving economic benefits for local communities could be jeopardized by intrusion of cheaper wood products from the US or Canada. Such a boost for the timber industry in the southeast US should not be counted as a NAFTA benefit if as a consequence sustainable forestry in the Yucatan peninsula is replaced by orange groves and cattle farming.

Similarly, Mexico's apparent advantages in the production of citrus fruits and lean beef must not discount the cost of deforestation. A reduction in the price of frozen orange juice or hamburger beef in the American supermarket should not be regarded as a benefit derived from NAFTA if the production of those items is subsidized by loss of biodiversity and the local and global ecological services that tropical forests provide.

A careful examination of the production of timber, cattle, and citrus in North America underscores the risk that liberalized trade could accelerate destruction of Mexico's tropical forests. The NAFTA parties should commit themselves now to addressing this risk. In particular, they should seek ways to assure that the prices of all products traded accurately reflect their true environmental costs. The prices of beef, oranges, or old growth timber must reflect the costs of deforestation, so as markets open, sustainable forest management can compete on a more nearly level playing field.

CONCLUSION AND RECOMMENDATIONS

Where businesses have undertaken extra expense and effort to protect the environment, as in the case of Mexico secondary forest management, it is essential that they not be put out of business by foreign enterprises that undertake no such measures. And where a change in tariff schedules carries with it the potential to precipitate major shifts in land use, it is essential that the costs to habitat, watersheds, and biodiversity be figured into the accounting.

For all its concentration on protection of environmental standards, the NAFTA text fails to tackle this most central task. Perhaps this is unsurprising. As a frontier in policy, finding ways to protect the environment through the market is an exceedingly complex, even daunting undertaking. There are and will be honest disagreements about how to go about it. But there is no question that we must begin.

Two good places for NAFTA to make a start would be to acknowledge more explicitly that patterns of international trade have profound implications for the environment and for sustainable development. NAFTA's preambular language resolving to reduce distortions to trade should expressly include environmentally linked distortions. And the goal of promoting sustainable development deserves a place in the treaty's objectives section.

More important than drafting placement and emphasis, however, is the need to provide some institutional framework for addressing these questions. WWF has long urged our negotiators to establish a tripartite Commission on Environment to begin looking at environmental issues. The Commission could play a valuable role monitoring the effects of liberalized trade on the environment, throughout the NAFTA region, and could develop policies and make recommendations to the parties on trade and other measures needed to minimize environmental impacts.

If the Commission conducts its work with full participation of the public, it could make a significant contribution to the environmental future of our hemisphere. We note with regret that the most that has currently been agreed to in this regard is a bilateral commission to look at pollution in the transborder area—without the Canadians at the table. Issues beyond pollution, particularly those having the greatest potential to impact biodiversity, will go unaddressed.

I hope my remarks today illustrate the need to go further.

In sum, Mr. Chairman, we do not believe that organizations concerned with global environmental protection must fear liberalized trade. Nonetheless, people and governments must realize that with the loosening of the bonds of political isolationism

and economic protectionism comes the responsibility to tighten the bonds of international cooperation. We urge you and your colleagues in the Mexican and Canadian governments—and other governments throughout the world—to take this challenge seriously and to create new cooperative means to protect our natural heritage.

We take some encouragement in the fact that each of the countries involved in the NAFTA negotiations has pledged to protect tropical forests and biodiversity, through a variety of international agreements and arrangements. The United States, while not yet a party to the Convention on Biological Diversity, has put forward a potentially important initiative in this regard—the Forests for the Future Initiative. Congress, too, has an important role to play in this process by making sure that adequate funds are provided so these programs can meet their full potential.

In regard to the NAFTA specifically, we are prepared to offer our provisional endorsement with the recognition that the text is insufficient to the environmental protection tasks before us. We reiterate our concern that the NAFTA could encourage destructive patterns of land use, but we accept the commitment of President Salinas and his government to the aggressive preservation of biological diversity, and hope to continue working closely with them in this endeavor. We propose that a new institution be created in North America to cooperatively address environmental questions, and strongly encourage the members of this committee to encourage all three governments to do so.

Thank you.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Mr. Chairman, I want to join in welcoming EPA Administrator Bill Reilly and the distinguished panel of environmentalists—the presence of this assembly of witnesses makes a very important statement about NAFTA—*no other trade agreement in history has ever been more sensitive to environmental issues.*

Let me preface my remarks accordingly: This is a *good* precedent; a *good* model for future agreements; a *good* framework within which to debate these issues; a *good* business arrangement for environmental equipment and service providers; and a *good* commitment to environmental improvements backed by substantial resources.

Mr. Chairman, let me detail why NAFTA is a landmark commitment to the linkage of trade to the environment.

The perceived value of the treaty itself has been vastly understated by NAFTA opponents.

- No trade agreement in history has made such an in depth commitment to coupling manufacturing with environmental standards.
- NAFTA sets the stage for a still greater global commitment in GATT.
- No President of the U.S. has ever committed us to a such a politically charged manifesto for global housecleaning—this agreement, in writing, disgorges the rhetoric of the U.N.'s Rio Conference on the Environment which was little more than a forum for slamming the U.S. Our critics haven't learned the lessons of the late 1970's—when our own leaders join others in doubting and scorning the U.S., the rest of the world suffers.
- I agree with Bill Reilly: NAFTA is the model, the standard that trade agreements from this moment forward will struggle to emulate.

NAFTA has highlighted the issues that need to be worked out in subsequent discussions conducted in the normal course of business established by this agreement. The absence of details on the many facets of environmental cooperation identified by the NAFTA negotiators should not be the reasons for holding up approval of the agreement. This would penalize the negotiators for having the courage to take the first bold steps and would discourage future initiatives.

There is much to be done:

- We need to develop enforcement and compliance procedures, standards, and forums between sovereign states.
- We will have to find a formula for industrialized nations tolerance of developing countries which may not be able to progress unless allowed a different set of temporary standards.
- We will have to decide the reasonableness, and even the morality of appropriate import restraints on products made by standards less rigorous than our own, which in some cases, also conferred a price advantage.

I am very optimistic toward NAFTA in this regard. After all, President Salinas's "best effort" is a very tough standard, even for us: he has shut down 1,000 polluting

firms in two years, while raising his pollution control budget by eleven fold. Mexico now devotes more of its GDP to environmental cleanup activities than any other country in the world.

We should not overlook the real business advantages that can accrue to a good environmental cleanup policy—in my judgment, it will ultimately prove to be *good* business to control groundwater contamination, to eliminate solid hazardous waste during the manufacturing process, and to assure breathable air.

—The Border Plan evinces the U.S. commitment—and brings forward the resources: \$700 million from both Mexico and the U.S.

—The earmarking of one percent of Mexico's GDP to environmental improvements has not escaped the attention of equipment and service providers in my state of Utah—they are already beating a path to the border market.

Most importantly, to my way of thinking, the combined effect of the Border Plan and NAFTA should encourage environmentalists:

—There is a mutual commitment, with Mexico clearly demonstrating its determination to prevent NAFTA from fostering an industrial wasteland.

—There are conditions for excluding offending products.

—There is every opportunity for the broadest possible public comment and scientific evaluation of every proposed change in standards.

—And, there has been put in place a joint commitment by contiguous nations to an environmental policy that has no parallel elsewhere in the world.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF STEWART J. HUDSON

INTRODUCTION

Good morning, Mr. Chairman. I am Stewart J. Hudson, Legislative Representative for the International Programs Division of the National Wildlife Federation. The Federation is the nation's largest private conservation organization with over 5.3 million members and supporters, dedicated to the wise use and management of natural resources and protection of the global environment.

I appreciate the opportunity to testify today on environmental concerns related to the North American Free Trade Agreement (NAFTA). On behalf of the Federation, I also want to thank the Chairman for his sustained interest in this issue which has, I believe, resulted in an improved version of the NAFTA text.

The testimony that follows represents the Federation's views on the NAFTA text as it was made available to us less than two weeks ago. I must begin, however, by clarifying the inaccuracies contained in a *New York Times* article of Tuesday, September 15 1992, which seems to suggest that the Federation has now decided in favor of the NAFTA.

As we have expressed to Ambassador Hills, and in private conversations with Committee staff, the Federation has *not* taken a position on the NAFTA. We are encouraged by the progress that has been made in addressing environmental issues, but some areas of the text require greater clarification to assure that the agreement strengthens, rather than undermines, the adoption and maintenance of the toughest possible environmental standards in all three NAFTA countries. Moreover, with respect to the funding and enforcement of environmental protection measures, and also with respect to effective follow-through and monitoring of NAFTA-related environmental issues, further action on the part of the NAFTA Parties is required.

The testimony that follows will touch upon each of these areas in turn, suggesting where greater clarification is needed, and proposing alternatives where further action to protect the environment may be necessary.

Before preceding to the next section of the testimony, however, there are two caveats attached to my remarks.

First, it should be understood that the testimony is based on the September 4, 1992, NAFTA text and not the "notification text" that will be delivered to Congress. If the notification text is substantively different in the areas of concern to us, we will provide an amended version of my remarks, to the Committee.

Second, we are all aware that when the next session of Congress votes on this agreement, the NAFTA implementing legislation is likely to be as important as the actual NAFTA text. The National Wildlife Federation intends to play an active role in examining the NAFTA implementing legislation and making our views known to the Congress and the Administration.

However, since the legislation is not the subject of today's hearing, our comments are solely directed towards issues related to the agreement itself.

ENVIRONMENTAL ISSUES RELATED TO THE NAFTA

Sustainable Development

The promotion of sustainable development was arguably the most important goal endorsed by governments attending the recent United Nations Conference on Environment and Development (UNCED). In addition to preserving for future generations the same opportunities (or better) than those we enjoy today, another central tenet of sustainable development is the belief that economic decision-making, and environmental protection, are necessarily intertwined.

The NAFTA is the first test case of sustainable development in the post-UNCED era, and we are pleased that one of the primary goals of the NAFTA, as reflected in the preamble, is the promotion of sustainable development. Other language in the preamble underscores the resolve of NAFTA Parties to undertake the agreement, "in a manner consistent with environmental protection and conservation," and the Parties also agree to, "Strengthen the development and enforcement of environmental laws and regulations."

While language in the preamble is not binding on any of the NAFTA Parties, it sets the tone for what the agreement is expected to achieve. We strongly support the language in the preamble and, although this is a subject for a later date, we urge the Congress to integrate these objectives into U.S. trade law in order to guide future trade negotiations.

General Exceptions for Environmental Protection

Within the GATT, Article XX(b) allows for measures "necessary to protect human, animal or plant life or health." Further protection, under the GATT, is provided in Article XX(g) which relates to the conservation of natural resources. Due to the narrow interpretation given to these exceptions, environmentalists have argued that they are not sufficient to protect legitimate environmental measures. Accordingly, the Federation and several other environmental groups urged NAFTA negotiators to amend the GATT exceptions for incorporation into the NAFTA.

Important progress has been made in response to our concerns. Article 2101 (General Exceptions) states:

The Parties understand that the measures referred to in GATT Article XX(b) include *environmental measures* [emphasis added] necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of *living and non-living* [emphasis added] exhaustible natural resources.

Though we might have amended Article XX(b) differently, the direct reference to *environmental measures* in the NAFTA text marks a significant improvement over the GATT, where the word "environment" never appears. The reformulated language of Article XX(g) also affords a wider protection to legitimate measures seeking to conserve natural resources.

One area which remains to be clarified has to do with the requirement in Article XX(b) of the GATT, and the current Article 2101 of the NAFTA, which permits exceptions only for those measures "*necessary* [emphasis added] to protect human, animal or plant life or health." This so-called necessary test seems innocuous, but is subject to a wide degree of interpretation and could encourage panels to rule against legitimate environmental standards. For example, a NAFTA panel might rule that a ban on the importation of tuna caught in a manner which kills dolphins is unnecessary, and that labelling a can of tuna as "dolphin safe" is a more appropriate remedy.

The "necessary test" shows up again and again in NAFTA provisions touching on the environment, and needs to be clarified in order to ensure that it will not be used to endanger legitimate environmental safeguards.

Standards

One of the most contentious issues in the NAFTA has been the proposed harmonization of sanitary and phytosanitary standards, as well as other technical standards designed to protect the environment.

The harmonization proposals contained in the NAFTA, and based largely on provisions negotiated in the Uruguay Round of GATT, derive from a concern that *phony* environmental standards are being used as a protectionist device to strengthen domestic industry. Environmentalists have expressed their concern that these provisions, particularly those negotiated as part of the Uruguay Round, could be used to undermine *legitimate* standards.

While the NAFTA provisions are a marked improvement on what has been negotiated in the GATT, some important questions on the current text still need to be resolved.

Attention to protecting legitimate environmental standards in the NAFTA can be seen in the following areas:

- Article 754(1) makes explicit a country's right to adopt a sanitary or phytosanitary measure that is *higher* than an international standard. Other provisions, such as Article 755(2), suggest that standards that *are higher* than these international floors are not, "for that reason alone . . . presumed to be inconsistent." Articles 904 and 905 afford similar protection for more generic environmental standards.
- In departing from international standards for sanitary and phytosanitary measures, countries must demonstrate that their standards are based on scientific principles, and that they are, according to Article 755(3)(b) "not maintained where there is no longer a scientific basis." Scientific basis, as defined later in the text, requires that the standard be based on data or information generated using scientific methods. Legitimate U.S. standards should not be endangered by requiring the use of scientific methods.
- Further protection of environmental measures is provided by Article 757(4) which allows for countries to adopt a provisional sanitary or phytosanitary measure in the event that scientific information is insufficient to complete a risk assessment. Similar language regarding technical standards is contained in Article 907(2). Both provisions reflect adoption of the precautionary principle, where the absence of full scientific information is not allowed to serve as an obstacle to the adoption of environmental protection measures.
- Upward harmonization, which prohibits countries from seeking the lowest common denominator in environmental standards, is guaranteed by language in Article 755(1) which states that harmonization will occur "Without reducing the level of protection of human, animal or plant life or health . . ." within a given country. For sanitary and phytosanitary measures this language is repeated in Article 756, and in the Technical Standards Chapter in Article 906 which also commits the Parties to "work jointly to *enhance* [emphasis added] the level of safety and of protection of human, animal and plant life and health, the environment, and consumers.
- With respect to sanitary and phytosanitary measures, the burden of proof, under NAFTA, remains with the Party *challenging* a given standard. Article 765(6), on Technical Consultations states:

The Parties confirm that a Party asserting that a sanitary or phytosanitary measure of another Party is inconsistent with the provisions of this Subchapter shall have the burden of establishing such inconsistency.

A similar provision, Article 914(4) provides similar protection in terms of technical standards. Maintaining the burden of proof on the challenger in these situations was one of the highest priorities for those concerned about the impact of harmonization U.S. standards. We are pleased to see that this burden has been placed on the challenger.

The provisions cited above provide protection for legitimate environmental measures, and for the most part represent an improvement on what has been negotiated within the GATT Uruguay Round. Nevertheless, Congress should carefully examine the NAFTA Chapters on Sanitary and Phytosanitary Measures, and Technical Standards, and assure that our interpretation of the provisions is consistent with the interpretations of those who negotiated the agreement.

Furthermore, there are two areas where additional clarification, and perhaps a technical amendment of the agreement, is necessary to assure that these two chapters do not endanger legitimate U.S. standards.

The first area relates to the definition of what is a *necessary* standard. In the chapter on Technical Standards, Article 904(4) prohibits a Party from establishing measures "with a view to or with the effect of creating an *unnecessary* [emphasis added] obstacle to trade between the Parties." In this case, the possibility that the so-called "necessary test" may be used to challenge a standard is reduced by Article 904 (4)(a) which states that an unnecessary obstacle will *not* be presumed to be created if, "the demonstrable purpose of such measure is to achieve a legitimate objective."

In the definitions section at the end of the chapter, "legitimate objective" is defined as including:

- (a) safety;

(b) protection of human, animal or plant life or health, the environment or consumers (including matters relating to quality and identifiability of goods or services); or

(c) sustainable development

While this provision helps reduce the possibility that the "necessary test" will be used to undermine legitimate environmental standards, the provision is still subject to wide interpretation and should be clarified through appending an interpretive note to the NAFTA text. Furthermore, it would be useful to add this kind of protection to other areas of the NAFTA, such as the Sanitary and Phytosanitary Standards Chapter, where the "necessary" test will come into play.

Another area of concern related to standards is the lack of public accountability and public participation in the operations of the Committee on Sanitary and Phytosanitary Standards. The same concern also applies, to a lesser extent, to the Committee on Technical Standards which may include or consult with non-governmental organizations, but is in any event not required to do so.

The work of both Committees should be open to the public, and greater public participation in their deliberations should be a requirement, not an afterthought. This Committee should ask the negotiators why greater accessibility and accountability is not part of the NAFTA text in these areas.

International Environmental Agreements

While protection for international environmental agreements, at least those with trade-related provisions, is included in the NAFTA, the provisions contain new language which may undermine the stated intent of those provisions.

The approach taken in the NAFTA is to list international environmental agreements which may be inconsistent with the NAFTA, and suggest that they will generally be free from challenge under the NAFTA.

Unfortunately, language was added to this provision which was not in earlier drafts. The new language of Article 104(1) suggests that a Party's obligations under international agreements will prevail in the case of an inconsistency with the NAFTA, "provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement."

The Committee should seek from the Administration some clarification as to why this provision was deemed necessary, and what it is intended to achieve. As written, the provision seems to imply a new burden on those seeking to negotiate or implement international environmental agreements.

One final complication with respect to the treatment of environmental agreements under the NAFTA is that future agreements may only be listed if all Parties agree. While understanding that individual nations cannot be coerced by the NAFTA into joining international agreements, at the same time NAFTA cannot be used as a tool to undermine agreements to which only one or two NAFTA Parties are a signatory. Greater clarification of U.S. policy in this area should be sought.

Dispute Settlement

In most cases, Parties to the NAFTA will have the choice of bringing disputes under the GATT, or under the NAFTA. Given that NAFTA provisions on the environment are preferable to the GATT, we have sought to assure that the NAFTA provisions would come into play in the case of a dispute related to environmental issues. This concern is addressed by Articles 2005(3) and (4) which allow a Party defending an environmental measure to have the matter resolved under the NAFTA rather than the GATT.

Unfortunately, one of the important aspects missing from the dispute settlement procedures is any meaningful attempt to open up the process to public participation. While NAFTA Parties and dispute settlement panels may call on outside experts in resolving environmental disputes, there is no *requirement* or even strong encouragement that they do so.

Another troubling aspect of the Dispute Settlement procedures under NAFTA is that the process seems mired in secrecy, as evidenced by Article 2012(b) which requires that the dispute panel's, "... hearings, deliberations, and initial report, and all written submissions to and communications with the panel shall be confidential."

We understand the need for some confidentiality in the resolution of disputes, but there is no reason for this secrecy to extend beyond a reasonable period of time. We would suggest that a transcript of the panel's hearing and a record of their deliberations be available to interested persons after a final decision has been rendered. Furthermore, while Article 2017(4) suggests that the final report of a dispute resolution panel "shall be published 15 days after it is transmitted to the Commission"

there is no guarantee that this will occur since it requires approval by the Commission itself. Release to the public of final reports should be automatic.

Investment

As we learned more about the proposed NAFTA in 1990, the environmental implications of its investment provisions, particularly in Mexico, became clear. Billions of dollars have been invested in the Mexican economy in anticipation of NAFTA approval, generating the hope that future development will occur, but at the same time raising fears that such development will come at the cost of environmental protection.

The Federation has followed negotiations on NAFTA investment quite closely and we are pleased with, and would like to credit the negotiators for, including two provisions designed to address environmental concerns.

The first provision, adopted as Article 1114(1) of the NAFTA Investment Chapter, states:

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure, otherwise consistent with this chapter, that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

The language of this provision is clearly hortatory, and does not *require* any action to be taken by NAFTA Parties. Nevertheless, its significance should *not* be underestimated. The provision expressly protects a Party's right to undertake an environmental measure related to investment in a Chapter which, as a whole, reduces or eliminates most other conditions on new or existing investment.

The second environmental provision related to investment is even more important and seeks to prevent the creation of pollution havens in NAFTA countries. Article 1114(2) states:

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety, or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention in its territory of an investment of such an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

We are concerned that merely requesting a consultation between NAFTA Parties where disputes arise under this provision may not prove an effective incentive for enforcement. Consequently, we have urged the Parties to review the implementation of this provision after one year to determine if consultation has proven to be an effective mechanism for resolving disputes.

We are, in addition, concerned about the meaning of "derogate from" and urge Congress to press for clarification on both these concerns with the Administration. We believe that for this provision to be effective, the meaning of derogation should include, but not be limited to lax enforcement of environmental laws and regulations.

Accession Clause

Early in the NAFTA negotiations, we had voiced our concern about the conditions under which countries would seek to become part of the agreement in the future. One of the problems that we encountered in the negotiation of the NAFTA itself, was the lack of any expectation on the part of negotiators that environmental issues would be integral to their work. While this attitude changed over time, we still believe that the NAFTA would have been better served if all countries understood at the outset that environmental issues related to trade would be dealt with in the negotiations.

We urge that a signal be sent to countries that may wish to join the NAFTA in the future, such as Chile, that environmental considerations will *necessarily* be one of the factors determining whether they will become part of the NAFTA. Article 2205, which deals with the accession of other countries to the agreement, fails to establish any of the conditions that would send the kind of signal that we think is important for future negotiations. This deficiency should be remedied.

Funding for Environmental Protection

One of the thorniest issues related to the negotiation of the NAFTA is funding necessary for environmental protection programs. In some cases, the most immediate funding need is identified as the need for environmental infrastructure, such as waste-water treatment plants along the U.S.-Mexico border. At other times, at-

tention is given to other pollution prevention programs, such as the use of best available technology by new industries, and the retrofitting of existing plants and equipment. Funding is also required for enforcement of environmental laws and regulations, and much has been made of the disparate levels of support for these activities among the three NAFTA countries.

The government of Mexico has made great strides in coming up with funding for environmental protection programs along the border with the USA and efforts are underway to seek appropriated amounts from the U.S. Congress for this same purpose.

Unfortunately, even if the current impasse between the U.S. Congress and the Administration on funding for border environmental clean-up is broken, billions of dollars more will need to be found to deal with the environmental impact of increased trade within North America.

Certainly, environmental protection costs might be reduced by trade that promotes a more efficient allocation and use of resources between the three NAFTA countries, but even this depends on adequate enforcement of environmental laws.

It is also possible that the NAFTA will inspire economic growth in North America, and generate additional budgetary resources for the purpose of environmental protection, but there is no guarantee that increased budgetary resources will be targeted for this purpose. Moreover, a fatalistic belief that increased economic growth means greater protection for the environment ignores the environmental wear and tear that is *inevitably* associated with liberalized trade and increased economic activity.

Clearly, it is the responsibility of the NAFTA Parties to explore unconventional sources of financing for environmental protection necessitated by increased trade. While mainstream economists tell us that taxes are the most effective means of paying for environmental protection, politicians in the U.S., with a few exceptions, are loathe to endorse the concept.

Proposals to raise funds for environmental protection through public bond offerings, represent another more unconventional approach, but are given short shrift due to the budgetary implications inherent in such proposals.

One thing is for certain. Before the next session of Congress votes on the NAFTA, they should ask themselves whether the price tag for environmental protection has been fully demonstrated, and whether adequate funding sources are in place to assure that the environmental benefits of free trade are realized. Again, despite what was *inaccurately* reported in Monday's *New York Times*, the Federation believes that freer trade *does* lead to environmental deterioration unless adequate funding mechanisms and environmental safeguards are in place. Congress should be aware of the environmental price tag of this agreement before signing on the dotted line.

North American Commission on the Environment

The gravest shortcoming of what has been accomplished by NAFTA negotiators to date is the failure to establish a mechanism for follow-through on NAFTA-related environmental issues. This failure underscores the concerns that many environmentalists have expressed with regard to the enforcement of environmental laws and regulations once the NAFTA is approved, and it suggests one of the reasons that non-governmental environmental organizations in Canada, Mexico, and the United States have called for the creation of a North American Commission on the Environment.

The North American Commission on the Environment would serve as an inquiry point on NAFTA-related environmental issues, and would receive and investigate complaints from private citizens, non-governmental organizations, as well as governments, with regard to the failure of any Party to adhere to NAFTA environmental provisions. The Commission would help facilitate the resolution of environmental disputes arising under the NAFTA, and issue reports on the NAFTA Parties' adoption and enforcement of environmental laws and regulations.

At the same time, the mandate of the Commission would not be limited to *trade-related* environmental concerns. Another important role of the Commission will be to facilitate cooperative approaches to environmental problems common to NAFTA Parties, or that can best be dealt with on a trilateral, bilateral, or regional basis. In this regard, promoting cooperative approaches to environmental protection should in the long run reduce the risk of trade-related environmental disputes.

Failure to provide for a trilateral mechanism for following through on NAFTA-related environmental issue endangers approval of the NAFTA itself. It is our sincere hope that the September 17, 1992 meeting of environmental ministers of Canada, Mexico, and the U.S., which will also be attended by the trade ministers of the three NAFTA countries, will result in the announcement of a trilateral North American Commission on the Environment.

A short description of the proposed Commission is attached to this testimony.

CONCLUSION

In conclusion, we credit the negotiators with having made unprecedented progress in addressing environmental issues as part of the NAFTA negotiations. The NAFTA is, most assuredly, the "greenest" trade agreement that has yet been negotiated, and it represents a positive step towards unifying economic and environmental concerns in the pursuit of sustainable development throughout North America.

At the same time, further clarification of several NAFTA provisions should be sought by the Congress to assure that the agreement can meet its stated goal of "promoting sustainable development." Moreover, further actions on the part of the NAFTA Parties are necessary to address concerns related to the enforcement and funding of environmental protection measures including through the establishment of follow-up mechanisms such as the North American Commission on Environment.

The Federation is hopeful that Congressional interest, coupled with Administration intent, will remedy the remaining concerns that we have with respect to the NAFTA and its ability to promote, rather than inhibit, sustainable development.



NATIONAL WILDLIFE FEDERATION

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NORTH AMERICAN COMMISSION ON ENVIRONMENT

To assure that the North American Free Trade Agreement (NAFTA) will promote sustainable development, and to enhance cooperative approaches to environmental problems faced by all three NAFTA countries, conservation organizations in Canada, Mexico, and the United States renew their call for the creation of a North American Commission on the Environment. The Commission, which is essential to the successful implementation of the NAFTA, must be in place prior to final approval of the NAFTA itself, and must include Canada as well as Mexico and the United States.

Background

Economic integration among nations, as the existence of the European Community has shown, can cause environmental problems not always envisioned by trade negotiators. Therefore, it is imperative to include in international economic and trade agreements specific provisions to promote socially equitable and environmentally sustainable development. In addition, it is essential to establish the actual mechanisms that would respond to these concerns on an on-going basis. The North American Commission on the Environment would serve this purpose and would also provide a focal point for trilateral environmental protection efforts.

The Role of the Commission

Resolution of Environmental Disputes—To assist in the resolution of environmental disputes under the NAFTA, and the effective implementation of NAFTA environmental provisions, the Commission would:

- Be granted specific authority to gather and disseminate information relevant to environmental disputes, and serve as the inquiry point on trade-related environmental matters. The Commission would provide expertise to dispute resolution panels, and oversee the implementation of NAFTA environmental provisions.
- Receive and investigate complaints from government agencies, non-governmental organizations, and private citizens concerning the failure of any Party to enforce NAFTA environmental provisions.
- Develop mechanisms to assure effective participation of private citizens, and non-governmental organizations in its deliberations.
- Issue reports on the NAFTA parties' adoption and enforcement of domestic environmental laws and regulations. Implementation of the respective party's obligations under international environmental agreements would also be covered by these annual reports. The reports would make recommendations to the parties to help avoid the creation of pollution havens or undue advantage in trade between the three countries.

Cooperative Problem Solving—Of course another important category of activities of the North American Environmental Commission would be to support, encourage, and coordinate cooperative approaches to environmental problems that affect or are common to the three countries. The Commission's mandate in this regard would include:

- Target environmental concerns that can best be dealt with on a trilateral or binational basis and bring the parties together to develop and undertake a plan of action to address such concerns.
- Coordinate programs for sharing technical expertise necessary to deal with environmental problems that are of interest to NAFTA countries.

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PREPARED STATEMENT OF WILLIAM K. REILLY

Good Morning, Mr. Chairman and Members of the Committee. I am pleased to be able to discuss the North American Free Trade Agreement (NAFTA) and, in particular, the environmental provisions of the Agreement and complementary environmental efforts.

Recognition of the growing convergence of international trade and environmental protection issues has presented us with a significant opportunity—bridging the gap between economic opportunity and environmental values. The challenge is to ensure that trade policies are environmentally sensitive and that environmental programs support free trade and sustainable growth. The completion of negotiations for the NAFTA represents an unprecedented degree of integration of economic growth and environmental protection—and is, by any measure, the “greenest” trade agreement ever negotiated. NAFTA marks a watershed in the history of environmental protection demonstrating the role that environmental issues can—and must—play in the development of international economic and trade policies. I firmly believe that for some time to come, when other nations negotiate with their neighbors to open up markets, NAFTA will be their model for dealing with related environmental issues. I would like to discuss the environmentally significant aspects of the Agreement.

NAFTA AND EPA'S ROLE IN THE NEGOTIATION PROCESS

As part of the President's May 1 commitment, the Administration undertook a nine month assessment of U.S.–Mexico environmental issues with particular emphasis on the possible environmental effects of the NAFTA.

Prior to starting work on the review, the Administration solicited public comment in a Federal Register notice on the proposed NAFTA, including its environmental effects, and held public hearings in six cities in August and September of 1991. Over 260 witnesses presented testimony on all aspects of the NAFTA and over 400 written submissions were received. Many of these provided valuable information on environmental issues which were subsequently examined in the environmental review itself.

An interagency task force led by the United States Trade Representative (USTR) and composed of 14 departments and agencies including the EPA, produced an analysis of the potential environmental effects of the NAFTA in a document entitled “Review of U.S.–Mexico Environmental Issues.” Three thousand copies of a draft of the Review were distributed to Congress, State and local government officials and the public in October 1991. Comments were received from both individuals and organizations and were carefully considered prior to release of the final Review in February of 1992. The results and recommendations informed U.S. negotiators and helped to set environmental goals and shape the U.S. negotiating position.

I might also note that USTR's outreach to EPA throughout the course of the negotiations was extraordinary. Specifically, the EPA negotiating team played a role in nine of the nineteen negotiating teams including Dispute Resolution, Investments, Government Procurement, Sanitary/Phytosanitary (SPS), Energy, Services, Land Transportation, Intellectual Property Rights, and Standards. We co-chaired two key sub-groups within the U.S. Standards negotiating team that sought to ensure that the ability of the U.S. to adopt, maintain and enforce environmental, human health, and product safety standards was protected.

I would make special mention of EPA's role in negotiating the Standards and Sanitary and Phytosanitary texts of the NAFTA. EPA worked closely with USTR to develop texts in the areas of standards related measures and SPS measures that reflected environmental sensitivities.

THE “GREEN” PROVISIONS IN THE NAFTA

As a result of the strong consideration given to environmental protection, a number of important and environmentally beneficial provisions have been woven into the fabric of the NAFTA, which have come to be known as the “green” provisions, and I would like to briefly review ten of the most significant highlights.

(1) **Sustainable Development:** There is explicit recognition in the NAFTA of the need for economic development to take place in an environmentally sustainable manner. The NAFTA text states that a primary purpose of the Agreement is to:

“Contribute to the harmonious development and expansion of world trade . . . in a manner consistent with environmental protection and conservation; . . . promote sustainable development; . . . [and] strengthen the development and enforcement of environmental laws and regulations.”

By promoting Mexican economic growth, NAFTA will create more resources which may be directed toward environmental protection in Mexico and along our common border. Independent studies show that as a country's national income reaches certain levels, certain *per capita* polluting emissions generally decrease.

(2) Environmental Standards: NAFTA maintains existing U.S. health, safety and environmental standards. It allows us to continue to prohibit the entry of goods that do not meet our standards and to set standards that are more stringent than those adopted by international bodies, including specifically approved levels of pesticide residues or the use of food additives in food products that may cross the border. The U.S. maintains the right to make its own determination regarding the level of protection it considers appropriate to protect human, animal, or plant life. The U.S. explicitly maintains the right to prohibit imports until the domestic approval process is completed. When disputes arise concerning U.S. standards, the burden of proof is on the Party challenging the standard.

(3) Ability to Maintain Higher than International Standards Protected: NAFTA allows the parties, including their political subdivisions (e.g. provinces, states, municipalities), to enact even tougher SPS measures than national or international standards.

(4) Sanitary and Phytosanitary Measures:¹ The NAFTA also calls for the establishment of a body to facilitate enhancement of food safety and sanitary conditions. It will promote upward convergence of Sanitary and Phytosanitary measures. Technical cooperation and consultation on specific trilateral and bilateral issues will be pursued and time sensitive matters will be expedited. Again, each country has a right in the Agreement to set and enforce measures more stringent than internationally-adopted standards, and to decide upon the level of protection it finds appropriate.

(5) Enforcement of Standards: NAFTA encourages the Parties to work towards enhancing their standards to improve environmental and health protection. It explicitly provides that any efforts to make standards of the parties compatible shall be undertaken without reducing the level of safety or the protection of human, animal or plant life or health, the environment or consumers.

(6) International Environmental Agreements (IEAs): NAFTA protects the use of mandatory trade measures to achieve the goals of certain international environmental and conservation agreements. The United States, Mexico and Canada are signatories to the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Flora and Fauna, and the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal. In the event of any inconsistency between NAFTA and the mandatory trade provisions of these key IEAs, the IEA agreements will prevail. Also, whenever a responding party claims that its action relates to any such trade provision and the precedence of the NAFTA, the respondent may have the matter considered exclusively under the dispute resolution provisions of the NAFTA, rather than under those of the General Agreement on Tariffs and Trade (GATT).

(7) Investment: NAFTA enhances environmental protection through its investment provisions. These provisions specifically reinforce the rights of Parties to ensure that investment activity is undertaken in an environmentally sensitive manner. NAFTA Parties are permitted to impose stringent environmental standards on new investments, as long as they apply equally to domestic and foreign investors. The Agreement also firmly renounces the lowering of environmental standards as a means to induce investment, thereby squarely addressing the so-called "pollution haven" issue. The United States, Canada, and Mexico have committed themselves not to compete for investment dollars by lowering or relaxing any environmental measures.

(8) Dispute Resolution: The NAFTA expressly provides that dispute settlement panels may call on scientific experts for advice in trade disputes in which issues of fact arise relating to environment, health, safety, and conservation. Reports prepared by such scientific panels must be taken into account before a dispute settlement panel can reach its final decision. The report itself must be released to the public at the time the Panel's final decision is publicly released.

As I discussed earlier, in previous trade agreements, countries complaining that environmental, health or safety measures violated those agreements could have those disputes decided exclusively by GATT panels. Under the NAFTA, whenever a dispute concerns a standards-related measure or sanitary or phytosanitary measures, adopted to protect the environment, and it raises factual issues concerning the

¹ Those dealing with protecting human or animal life or health from contaminants in foods, and protecting animal or plant life or health from pests or disease.

environment or relates to the trade provisions of the IEA's I just mentioned, the country defending the measure can elect to have the dispute decided under the NAFTA with its more environmentally-sensitive provisions.

(9) Land Transportation: The land transportation provisions will lead to decreased border congestion by allowing trucks to transport cargoes directly to their destinations in both countries, cutting idling time and ending the need to switch trailers at the border and return them home empty. This will reduce air pollution and also reduce the risk of hazardous waste spillage in the environmentally stressed border area.

(10) Access for U.S. Environmental Companies: The NAFTA will also ensure access to the Mexican market for U.S. environmental engineering, hazardous and municipal waste management and treatment services, firms and professions. Mexico must provide treatment no less favorable than that provided its own nationals to such activities, including the right to establish businesses and conduct business affairs. In addition, NAFTA's temporary entry provisions will allow U.S. firms to send qualified U.S. scientists and environmental engineers to Mexico to provide services as part of a contract.

U.S.-MEXICO BILATERAL COOPERATION

An extensive program of intensified U.S.-Mexico environmental cooperation undertaken as a parallel track to the NAFTA was launched last February with the release of the *Integrated Environmental Plan for the U.S./Mexico Border Areas*, the "Border Plan." Specific objectives of the Border Plan are to strengthen the enforcement of existing environmental laws; to work cooperatively to help reduce pollution through joint initiatives in such areas as wastewater treatment, air pollution, chemical emergency response, hazardous waste management, and planning for the border region; to expand planning, training and education programs between the two countries, and to improve mutual understanding of environmental conditions along the border. The Border Plan was established pursuant to the 1983 Border Environment Agreement (the "La Paz Agreement"), which provides for bilateral cooperation in addressing environmental problems in the U.S.-Mexico border area, and establishes a mechanism for action.

ENVIRONMENTAL ENFORCEMENT

Under the 1983 Border Environment Agreement, as discussed in the Border Plan, the U.S. and Mexico have initiated a Cooperative Enforcement Strategy Work Group to help expand both countries' environmental enforcement capacity through concentrated efforts to enhance enforcement cooperation. In the past several years, Mexico has significantly expanded its enforcement of environmental laws. In recent years, there has been a threefold increase in the number of inspectors throughout the country to more than 300, including 200 inspectors in the Mexican states along the U.S. border.

On June 3, 1992, U.S. and Mexican officials simultaneously announced separate clusters of enforcement actions taken by each government against violations of their respective environmental laws on either side of the border. Mexico's actions involved 42 facility inspections, resulting in 7 temporary partial closings, one temporary total closing, 22 notices of infractions, and 4 forfeitures of surety bonds. The U.S. actions involved 17 state and Federal civil enforcement cases, seeking total penalties of over \$2 million, as well as two criminal cases. One of the criminal actions was the result of a tip from Mexican Customs officials, who had refused an alleged bribe to allow illegal importation of hazardous wastes into Mexico.

In March and June of 1992, EPA and the Secretariat of Social Development (SEDESOL) conducted two five-day "Multi-Media Inspector Training" courses in Tijuana and Ciudad Juarez for 95 SEDESOL environmental inspectors. Two more inspector training courses are scheduled in Matamoros and Mexicali to take place later this month. Additional cooperative bilateral training exercises are planned, and pending funding, will include training to assist SEDESOL in implementing its requirements that new private enterprises conduct environmental impact assessments, additional multi-media and media-specific inspector training, and training of Mexican officials in the broader policy issues associated with environmental enforcement.

In addition to efforts to expand cooperation in environmental enforcement covered earlier, other initiatives under the Border Plan include significantly increased support for the expansion of wastewater treatment facilities in the border area, such as the international wastewater treatment facility at Nogales/Nogales, the new wastewater treatment system at Tijuana/San Diego, and the wastewater treatment plant at Nuevo Laredo. In another major effort, the U.S./Mexico Hazardous Waste

Work Group is working with Mexico to develop a binational database, to be used in tracking hazardous wastes generated by the maquiladora industry, to help ensure that they are properly managed and disposed of in compliance with both Mexican and U.S. requirements.

Other major initiatives, among many, include programs to:

- protect drinking water supplies;
- improve the handling and disposal of solid waste and hazardous waste;
- improve air quality by improving traffic circulation throughout the border area and by increasing vehicle inspection and maintenance programs in Mexico; and
- assist state and local governments in developing and implementing plans and procedures for addressing chemical emergencies.

I am pleased to report that the Border Environmental Plan Public Advisory Committee, a 24 member committee of individuals from the border area with professional and personal qualifications and experience, met in June. This committee provides the EPA with citizen input and recommendations aimed at strengthening implementation strategies under the Border Plan.

NEW U.S.—MEXICO ENVIRONMENTAL COOPERATION AGREEMENT

Another important aspect of the environmental "parallel track" to complement the NAFTA will be a new U.S.—Mexico Cooperation Agreement to deal with pollution and environmental initiatives. This Agreement will establish a Joint Committee for the Protection and Improvement of the Environment (the "Joint Committee"), consisting of representatives from relevant Federal agencies within each government, and will be led by a National Coordinator named by each Party. The U.S. National Coordinator will be the Administrator of the EPA. The Committee will meet regularly and on an emergency basis, if the Parties agree that matters of common concern require immediate attention. Moreover, EPA will serve as the primary implementing agency within the U.S. government for the Agreement and as the U.S. National Coordinator of the Joint Committee. The Joint Committee will establish work groups as it deems appropriate.

We anticipate that the Agreement will highlight the role of the public in the United States and Mexico in preventing and controlling environmental pollution. It will specifically commit the Parties to establish appropriate forms of public participation. The Joint Committee would be required, under the Agreement, to produce an annual report on the state of U.S.—Mexico environmental cooperation under the Agreement, and to make it available to members of the public upon request.

This agreement and the activities that will be launched under it, along with the range of cooperative activities that is already underway with Mexico, will ensure that the environment will benefit from the NAFTA.

FUNDING

Perhaps most critical to all of the complementary environmental efforts to the NAFTA is that of funding. To support these programs and initiatives, funding is expected to come from a variety of sources.

The Mexican government has committed \$147 million this year and over \$460 million overall to be used primarily for infrastructure development projects including sewage systems, wastewater treatment systems, and solid waste projects.

While I don't wish to belabor the matter since others have spoken of it previously in hearings, I am concerned about how we keep our pledge to our neighbors and meet our commitments.

The U.S. support for Border Plan initiatives in FY 1993 is, unfortunately, in a precarious state. The President has requested \$241 million to fund projects to build drinking water and wastewater treatment systems, track hazardous waste, facilitate emergency response, monitor environmental quality and inform and educate the public on a variety of environmental issues. The House of Representatives and the Senate have chosen to cut that request by as much as \$98 million and \$120 million respectively. These reductions will severely constrain our efforts to clean up the border and to support our proposed program of U.S.—Mexico environmental cooperation.

In addition, I have made two important reprogramming requests this year for badly needed resources for implementing the Border Plan. On both occasions these requests were not favorably considered. In January, EPA's \$5 million request for funding for wastewater treatment plants and other projects critical to public health in that area was not accepted. Finally, the Agency's most recent request of \$7.4 million for increases in such important programs as enforcement assistance, emergency response, and pesticide control is in doubt. Please recognize that these are simply requests to redirect funds, already appropriated, to where they are now needed the most.

CONCLUSION

As President Bush stated in his address to the nation on August 13th, this Agreement marks "the beginning of a new era" for North American economic cooperation that will "create jobs and generate growth in all three countries." It will also provide Mexico with resources and tax revenues to fund environmental progress.

I believe the Administration has met its commitment to the Congress to make the NAFTA environmentally sensitive. For the first time, policymakers in the fields of trade and environment have recognized and addressed the concerns of one another. The conclusion of the NAFTA negotiations represents an historic and landmark effort toward trade liberalization and the enhancement of environmental protection. It deserves your support.

 PREPARED STATEMENT OF JUSTIN WARD

The Natural Resources Defense Council (NRDC) appreciates the opportunity to testify on the North American Free Trade Agreement (NAFTA).¹ Our organization has participated extensively throughout the negotiations. NRDC's involvement has included testimony before USTR's staff policy committee and Congressional oversight hearings, detailed comments on the U.S.-Mexico border plan and environmental review documents, frequent discussions with the negotiators, and service on USTR's private sector advisory system.

During the process, we have worked closely with other environmental groups in all three countries to offer specific recommendations to the trade negotiators. We believe the proposed NAFTA contains some positive features, but that Congress should insist upon stronger environmental safeguards as a condition of final approval. Strengthening measures are particularly essential in the area of environmental enforcement, which is the focus of our testimony today.²

ENFORCEMENT PROBLEMS THROUGHOUT THE FREE TRADE REGION

Lax enforcement practices compromise the effectiveness of sound environmental laws. For example, administrative delay and deregulatory policies hamper implementation of U.S. statutes for clean air, clean water and other environmental purposes. Poor enforcement can exacerbate competitive imbalances within the U.S.-Mexico-Canada trading relationship, as firms gain economic subsidies by exploiting pollution havens.³

We know that Mexico has made important strides in development of strong environmental laws and regulations. Having met with several Mexican government officials and leading private environmentalists, we are impressed by their rapid progress in crafting a legal and institutional framework for pollution control and natural resource protection.

Monumental problems remain, however. Examples include the air pollution emergency this winter in Mexico City, as well as the catastrophic gas leak explosion in April that left more than 200 people dead in Guadalajara. Certain environmental pressures could intensify under NAFTA. Under one trade and investment liberalization scenario, for example, toxic releases from manufacturing enterprises in Mexico will increase by nearly 10.5 million pounds.⁴

Documented enforcement lapses continue to plague Mexico's environmental programs. A recent General Accounting Office (GAO) study found that none of six U.S. majority-owned maquiladoras sampled had prepared an environmental impact assessment (EIA) for new plants established in Mexico, as required under Mexico's 1988 General Ecology Law.⁵

¹NRDC is a national, non-profit environmental organization with more than 165,000 members, dedicated to the protection of natural resources, public health and environmental quality in the United States and worldwide. For over 15 years, NRDC has had an active interest in the environmental impacts of U.S. foreign aid, trade policy and investment.

²We have a number of other continuing concerns, including issues surrounding preemption of health and environmental standards, public participation in dispute settlement procedures, and energy policy.

³See Office of Technology Assessment, *Trade and Environment: Conflicts and Opportunities*, pp. 64-68 (OTA-BP-ITE-94, May 1992).

⁴G. Grossman and A. Krueger, "Environmental Impacts of a North American Free Trade Agreement," pp. 33-34, Table 7 (National Bureau of Economic Research, Working Paper No. 3914, November 1991).

⁵U.S. General Accounting Office, "U.S.-Mexico Trade: Assessment of Mexico's Environmental Controls for New Companies," p. 13 (GAO/GGD-92-113, August 1992).

The GAO findings are consistent with the observations of Mexican environmentalists who have described chronic and widespread violations of Mexico's EIA requirements. Implementation of those requirements has routinely neglected timely disclosure of assessment documents, as well as full notice and comment procedures that are essential to informed public participation.⁶ This poor enforcement record casts doubt on the Administration's characterization of the Mexican statute's EIA provisions as "more inclusive" than comparable requirements under the U.S. National Environmental Policy Act (NEPA).⁷

Low funding hampers environmental law enforcement in Mexico. The 1990 federal budget for pollution control activities throughout all of Mexico equalled just six percent of the water pollution and hazardous waste budget for the state of Texas alone.⁸ Although Mexico has raised its pollution control budget nearly threefold since 1990, as part of recent significant increases in overall environmental protection spending the current levels continue to fall short of actual needs.⁹

THE LIMITED RESPONSE UNDER NAFTA

The proposed NAFTA admonishes that countries should not relax their environmental regulations to entice new investment, but otherwise does very little to recognize pollution "dumping" as an unfair trade practice. The agreement unfortunately contains no specific provisions to ensure better enforcement of environmental laws throughout North America.

The Administration contends that trade-induced growth under NAFTA will bolster environmental enforcement. According to one EPA official:

The fundamental premise of the NAFTA is: the economic prosperity Mexico should experience under a free trade agreement will enable Mexico to strengthen its existing environmental program: to achieve the rising levels of environmental quality it needs; [Trade = prosperity = enhanced environmental protections = further prosperity = environmental quality.]¹⁰

This theme runs throughout the environmental review the Administration prepared in connection with NAFTA.¹¹

We strongly favor steps, including expanded trade, to promote greater economic prosperity in Mexico. But Congress should not accept, as an article of faith, that liberalized trade and investment will automatically produce positive environmental results. As discussed below, much stronger enforcement initiatives are needed to make the "trade = prosperity = environmental improvement" doctrine a reality.

Within the environmental review document, the Administration projects long-term benefits for the U.S.-Mexico border region, attributable to greater geographic dispersion of growth and development.¹² The "Integrated Environmental Plan for the Mexico-U.S. Border Area" constitutes the Administration's main response to the serious pollution and public health threats facing the 2000-mile frontier.

Although it represents helpful progress in binational cooperation and in construction of some needed public works projects, the border plan is a vague and highly discretionary instrument with no formal linkage to NAFTA. Unlike the trade agreement, the plan lacks the status of an international treaty that would place obligations on current and future governments in both countries.¹³

Moreover, the plan omits a comprehensive, long-term strategy to fund environmental monitoring, enforcement and infrastructure. According to an analysis by the U.S.-Mexican Policy Studies Program at the University of Texas:

⁶ Human Rights Watch and NRDC, *Defending the Earth: Abuses of Human Rights and the Environment*, pp. 69-70 (June 1992).

⁷ The Administration notes specifically that the Mexican statute requires that EIAs be conducted for most private as well as public development projects, whereas the scope of NEPA is limited to "major federal actions" with significant environmental impacts.

⁸ Texas Center for Policy Studies, "A Response to the Bush Administration's Environmental Action Plan for Free Trade Negotiations With Mexico," p. 9 (May 1991).

⁹ U.S. GAO, *supra* note 5, p. 20. Funding administered by Mexico's environmental protection agency in 1992 is approximately \$67 million, more than 15 times 1989 levels.

¹⁰ Speech by John Wise, Deputy Regional Administrator, EPA Region 9, before the American Bar Association's First Annual Conference on North American Energy, Trade, and Environmental Policy, 1991.

¹¹ See USTR Interagency Task Force, "Review of U.S.-Mexico Environmental Issues," pp. 222-224 (February 1992).

¹² We have criticized the environmental review's limited attention to environmental impacts outside the border area. Comments of NRDC, Instituto Autonomo de Investigaciones Ecologicas and Grupo de los Cien on the Draft Review of U.S.-Mexico Environmental Issues, pp. 3-5 (December 1991).

¹³ See Comments of NRDC on the Draft Integrated Environmental Plan for the Mexico-U.S. Border Area (September 30, 1991).

[T]he plan . . . relies heavily on border state financing at a time when all U.S. states are undergoing cutbacks in federal funding that are, at least in the case of southern border states, drawing down funds available for border assistance projects. Too little emphasis is given to the contributions that industry could make to environmental programs. The plan makes no attempt to even discuss the possibility of user fees for border industry or other revenue-raising mechanisms.¹⁴

The border plan is long on general statements of good intentions, but short on concrete initiatives to clean up and prevent pollution.¹⁵

THE NEED FOR STRONGER MEASURES

The environmental experts comprising a recent "New World Dialogue" have stated:

We . . . welcome current initiatives to liberalize trade and to revive growth in [the Western Hemisphere] and more broadly. But . . . unless major complementary initiatives are undertaken to bring environmental, economic, and social objectives together in the new synthesis called 'sustainable development, liberalizing trade and reviving growth could lead to short-term gains and long-term disaster.'¹⁶

This is sound advice to guide Congressional consultation on NAFTA.

Several steps will be essential to an effective enforcement strategy that protects the environment and levels the economic playing field. First, NAFTA should explicitly affirm that lax environmental regulations or enforcement practices constitute unfair trade practices. As noted above, the agreement's response on this issue is limited to discretionary language to discourage countries from relaxing standards to entice new investment. Without enforcement triggers, this provision will have limited effect in practice.

Second, the NAFTA parties should create a new North American environmental commission to ensure that further economic integration protects and improves natural resources, human health and environmental quality region wide. Key features and functions of this commission would include: independent, non-governmental representation from each NAFTA country; open, transparent procedures; annual reports on environmental enforcement practices in the U.S., Mexico and Canada; and the ability to investigate citizen complaints of lax enforcement, and to recommend remedial actions.

A leading goal of the commission's efforts would be to raise environmental standards and enforcement practices to the highest levels within the free trade area. This new trilateral body would in no way supersede the work of EPA or its counterpart agencies in Mexico and Canada, and would complement additional legal and institutional reforms needed to deal with trans-boundary environmental problems in the U.S.-Mexico and U.S.-Canada border regions. A description of the possible structure and workings of a new trilateral commission is attached as an appendix to this testimony.

We understand that a U.S.-Mexico joint committee on the environment will soon be announced. Although few details are available, we urge Congress to evaluate this new entity in light of the basic criteria outlined above. One puzzling issue is that the committee will apparently exclude Canadian representation; such representation is essential to deal with the full range of environmental challenges throughout the continent.

Third, Congress and the Administration should institute a much more ambitious border protection strategy, specifically to include proposals from a new report by the

¹⁴J. Rich, "Planning the Border's Future: The Mexican-U.S. Integrated Border Environmental Plan," p. 45 (LBJ School of Public Affairs, University of Texas at Austin, March 1992). This important critique assesses how the final plan incorporated comments raised by border area residents at hearings on the draft version last summer.

¹⁵See Texas Center for Policy Studies, "A Response to the EPA/SEDUE Integrated Border Environment Plan" (March 1, 1992, Austin, Texas). This analysis found that of the 87 identifiable commitments in the border plan for 1992, more than three-fourths fell into the categories of information exchange, meetings, training, promises to enforce existing laws, further plans, or studies. Only six percent of the commitments, by the Texas Center's reckoning, were aimed directly at fixing a problem.

¹⁶The New World Dialogue on Environment and Development in the Western Hemisphere, *Compact for a New World*, p. 1 (World Resources Institute, October 1991).

Texas Center for Policy Studies.¹⁷ Examples of the report's major recommendations include: mechanisms for citizen enforcement to redress injury caused by U.S. corporations doing business in Mexico; a new U.S.-Mexico environmental treaty to strengthen the legal framework for cooperation on trans-boundary pollution; and community "right-to-know" requirements to make information on toxic emissions and other environmental impacts of U.S. companies operating in Mexico readily available to citizens of both countries.

Fourth, the NAFTA parties must ensure a substantial and enduring boost in environmental funding in Mexico and throughout North America. A significant portion of the needed funding must be obtained through recapture of a fraction of new revenues associated with trade. This has not occurred historically; for example, preferential tax treatment has enabled maquiladora industries in Mexico to avoid contributing significant financial support for local infrastructure in the border region.¹⁸

It is unrealistic to assume that general treasury revenues will provide adequate budgets for environmental programs. General treasury outlays are a necessary part of the funding mix, but such outlays should not come at the expense of existing environmental programs.

One sensible suggestion offered by some members of Congress would create an environmental trust fund from a portion of tariff revenues on traded goods during the NAFTA phase-out period.¹⁹ Congress should elaborate and adopt these and other innovative funding proposals during the next stage of the NAFTA process.

CONCLUSION

Former Arizona Governor and leading conservationist Bruce Babbitt has called the NAFTA negotiations one of "the most important international events in the history of the environmental movement," because of the opportunity it presents to link environmental conditions to regional economic integration. Governor Babbitt's observations reinforce NAFTA's importance for North America, and as precedent for future trade reform in the Western Hemisphere and worldwide.

We hope that bipartisan efforts between Congress and the Administration will produce progressive environmental reforms during NAFTA consultations, and as the implementing legislation takes shape. An ambitious commitment to environmental enforcement must be central to this effort.

APPENDIX

[Excerpt from NRDC et al., *Environmental Safeguards for the North American Free Trade Agreement: Priority Recommendations to Negotiators and Congress, With Model Language for Key Provisions* (June 1992)]

Article 1—North American Commission on Trade and the Environment

1. *The Parties hereby establish the North American Commission on Trade and the Environment (the Commission) to ensure that trade and economic integration arising from this agreement throughout the region protects natural resources, and improves environmental quality as well as the health and safety of citizens in all three countries.*

2. *The Commission shall be composed of four representatives from each of the three Parties, including multiple representatives from national and local non-governmental organizations dedicated to environmental protection. Commission members shall have demonstrated expertise in environmental science and policy, and shall not have a vested economic interest in trade and investment arising under this agreement. Commission members from the United States shall be appointed by the President, subject to the advice and consent of the Senate. (with comparable appointment and confirmation procedures in Mexico and Canada)*

3. *The Commission shall convene at least quarterly in regular session. Regular sessions of the Commission shall rotate among the three countries.*

4. *The Commission shall establish its rules and procedures, including provision that all meetings of the Commission and all records of its actions, shall be open to the public.*

5. *The Parties agree to provide the Commission with an adequate budget to carry out its functions under this agreement, including employment of professional staff.*

¹⁷ Texas Center for Policy Studies, *NAFTA and the U.S./Mexico Border Environment: Options for Congressional Action* (September 1992).

¹⁸ J. Gilbreath, "Financing Environmental and Infrastructure Needs on the Texas-Mexico Border: Will the Mexican-U.S. Integrated Border Plan Help?" *1 Journal of Environment and Development*, p.20 (1992).

¹⁹ See, e.g., Policy address by Senator Max Baucus before the National Association of Manufacturers Special Forum on Trade and the Environment, August 12, 1992.

6. The parties shall foster the development in each country of local citizen committees to oversee, implement and make recommendations on local environmental issues, including collection and dissemination of data and other concerns of the Commission, and act as liaisons between the Commission and local communities affected by trade and economic integration arising from this agreement

Article 2—Reports on Enforcement of Environmental Laws

1. Within one year after this agreement enters into force, and at least annually thereafter, the Commission shall issue reports on the Parties' adoption and enforcement of, and industries' compliance with, domestic laws, regulations and norms for protection of health, natural resources and the environment. The reports shall also evaluate the effects of standards harmonization activities under this agreement, and shall assess the Parties' participation in, and adherence to, international treaties and agreements concerning environmental protection. The reports shall be issued in draft form subject to public notice and comment in all three countries, and in particular after notice in the Federal Register in the United States. The Commission shall conduct public hearings in all three countries to collect testimony on the draft reports and related matters.

2. For all three countries, the reports shall assess the status of legislative actions, administrative regulations and procedures, and technical norms, and shall describe instances of regulatory delay. The reports shall assess changes in the administrative structure and functions of environmental and natural resource agencies within each country, and shall assess progress toward the Parties' commitment to fund environmental protection programs fully (see section IV below).

3. The reports shall provide detailed discussion of administrative and judicial enforcement, including citizen actions, of environmental laws and regulations in each country.

4. The reports shall recommend areas in which the Parties need to strengthen requirements to ensure that increased trade and economic integration under this agreement does not result in environmental degradation, and that no Party gains an unfair competitive advantage through relatively weak standards or enforcement.

5. The reports shall include steps taken by and options available to parties to implement enforceable pollution prevention programs to reduce the use of hazardous and toxic materials. The Commission shall verify that host country infrastructure is capable of managing toxic and hazardous materials, including hazardous waste, to the highest standard within the free trade area. In the absence of such capability, the Commission shall verify that the materials are denied entry to the host country or, in the case of hazardous waste, are repatriated to the NAFTA country of origin where proper management shall be ensured.

(Note: Mexico's hazardous waste treatment and disposal capabilities are currently inadequate to handle the quantity and type of waste produced by foreign and domestic industries. This creates serious environmental and public health risks. Increased investment in Mexico under NAFTA will create further disposal and treatment problems without adequate pollution prevention measures and hazardous waste management infrastructure in Mexico. Currently, maquiladora industries are required under the La Paz Agreement annex III and Mexican national law to return their hazardous waste to the United States; loopholes have hampered the effectiveness of these requirements. It is anticipated that NAFTA will phase out the hazardous waste repatriation requirement along with the maquiladora designation, potentially creating additional waste problems in the border region and throughout Mexico. The trade agreement must contain specific safeguards to preserve and extend the repatriation requirement beyond the border until such time as Mexico has instituted hazardous waste management capabilities equivalent to the highest standards within the free trade area at the time NAFTA goes into effect.)

6. The Parties shall supply the Commission with all documents and information necessary to complete the reports.

7. For all three countries, the reports shall incorporate detailed information on toxic releases such as the reports required under the U.S. Emergency Planning and Community Right-to-Know Act and the Pollution Prevention Act.

8. The reports shall address illegal trade in wild fauna and flora, as well as poaching and shall assess Parties' actions to correct these practices.

9. With the cooperation of the local committees described in Article 1, paragraph 6, the Commission shall disseminate the reports to the public in all three countries.

Article 3—Environmental Compliance Investigations

1. The Commission shall receive complaints from governments, non-governmental organizations, and citizens concerning the failure of any Party to enforce environ-

mental laws or to abide by international environmental agreements. The identity of complainants shall be confidential at their request. The Parties agree to take no retaliatory action whatever against complainants.

2. The Commission shall investigate the factual and legal bases for complaints received. Parties shall supply the Commission with all documents and information necessary to complete the investigations. The Commission shall conduct independent monitoring and inspections.

3. When investigations reveal violations of domestic or international requirements, the Commission shall file a formal notice with the affected Party. The notice shall specify the nature of the violation and necessary remedial actions.

4. No later than 60 days after receipt of a formal notice, the Party shall inform the Commission of the steps taken to correct the identified enforcement lapses. Failures to take corrective actions shall be described fully in the annual reports required under Article 2 above.

