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Daniel Bradlow

Chang S. Oh-Turkmani

Ronald E. Pump

Robin L. Rosenberg

Seymour J. Rubin

See next page for additional authors

Authors
Daniel Bradlow, Chang S. Oh-Turkmani, Ronald E. Pump, Robin L. Rosenberg, Seymour J. Rubin, and Franciso J. Velasquez

THE EXPANDING INTERNATIONAL TRADE REGIME: NEW CHALLENGES AND OPPORTUNITIES FOR LEGAL PRACTITIONERS

CHANG S. OH-TURKMANI
RONALD E. PUMP
ROBIN L. ROSENBERG
SEYMOUR J. RUBIN
FRANCISCO J. VELASQUEZ
MODERATOR—DANIEL BRADLOW

PANEL INTRODUCTION

MODERATOR, DANIEL BRADLOW
PROFESSOR, WASHINGTON COLLEGE OF LAW

During the past decade a number of international trade agreements that directly affect trade in the Americas have entered into force. The North American Free Trade Agreement ("NAFTA"), which regulates trade in goods and services, addresses issues related to intellectual property and foreign investment, and has important side agreements dealing with labor and environmental issues was signed on December 17, 1992. The Uruguay Round of Trade Negotiations was concluded in Morocco on April 15, 1994. This round of trade negotiations resulted in a set of agreements establishing the World Trade Organization and trade regimes applicable to trade in goods and services, trade related aspects of intellectual property, and trade related aspects of foreign investment.

In addition, a number of other trade agreements with particular reference to the Americas have been concluded in recent years. These include the agreement establishing Mercosur, and bilateral trade agreements between various Latin American countries. During the next year, it is expected that negotiations to establish a Free Trade Area for the Americas will be initiated at the Summit of the Americas, to be held in Chile in April 1998.

These developments have created both opportunities and challenges for legal practitioners and policy makers in the Americas. The challenges arise from the broadening scope of the international trade regime. International trade law and policy can no longer confine itself to the relatively narrow issue of international trade in goods. It must also address the issues that arise from trade in services, the interactions between trade law and intellectual property law, international trade and foreign investment, international trade law and environmental issues, and international trade and social issues, such as the rights of labor. The resulting complex problems, however, also create opportunities for lawyers and policy makers.

We are privileged to have a distinguished and well-qualified panel to discuss these challenges and opportunities in some detail. The first speaker, who will provide us with a general and historical overview of global trade agreements, is Professor Seymour Rubin, Professor

Emeritus at the Washington College of Law. It is hard to think of a speaker more qualified to address this topic than Professor Rubin. Professor Rubin has had a distinguished career as a legal practitioner and scholar. He was a member of the U.S. delegation to the negotiations on the International Trade Organization in the 1940s and has been involved in many important negotiations related to the global economy since that time. He has also written many books and articles on the subjects of international trade and the legal aspects of the global economy.

GLOBAL TRADE AGREEMENTS

PRESENTATION BY SEYMOUR J. RUBIN
PROFESSOR EMERITUS, WASHINGTON COLLEGE OF LAW

I. INTRODUCTION

In a remote village in the hinterlands, where violence was prevalent, people had a habit of bringing guns into the assembly they were attending. At the moment the speaker began to talk, they would produce their guns and lay them on the table, at which point the speaker became a little apprehensive. His host would turn to him and say, "Don't worry, they're not going to shoot you. They're going to shoot the fellow who invited you." I suggest that if you have any vengeance after you hear me, that you turn to Professor Bradlow, Dean Grossman, and those other characters. They are the real culprits.

I'm not really going to talk very much about practice in the Americas. I'm going to talk a little bit about the background of a great many of the things going on at the present time.

II. GATT AND THE WTO

There has been a lot of change in the course of the past ten years. I suppose that the changes commenced sometime in the years immediately after World War II. About fifty years ago, we went through a series of attempts to reorganize the economic relations of the world. One of the things we tried to work on was the construction of something called the GATT, the General Agreement on Tariffs and Trade,

which the International Trade Organization ("ITO") was supposed to administer. The International Trade Organization never came into existence, however, because a variety of people thought that some of its clauses, mainly those that were designed to protect private foreign investment, were not adequate. The ITO never came to a vote in the United States Senate.

Not very long ago, however, the World Trade Organization came into existence. It is similar to the ITO and the GATT. After the failure of the ITO, the GATT, effectively, became an organization as well as an agreement according to its terms. It was never intended to be an organization. Rather, it was made into an organization by the use of a great deal of ingenuity on the part of very imaginative and dedicated international civil servants. It emerged as a quasi-organization, and the United States Congress recognized it as such through words like, "We'll appropriate some money for the people who are representing the United States in Geneva at an institution called the GATT." This was the standard operative language in the statute.

There were, however, a certain number of extremely important defects in the GATT that are now the focus of a large number of current issues in the WTO. These defects included failed attempts to produce a real agreement on trade in services, to incorporate investors into the trade framework, and to address a variety of other matters dealing with antitrust issues, restrictive business practices, labor standards, etc. The International Trade Organization would have at least attempted some regulation and consultation on all of these matters.

A. GATT Article 1—Most-Favored-Nation Treatment

The problem now seems to be that the essential element of the negotiating system, which is supposed to be the backbone of the World Trade Organization system, is Article 1 of the GATT. Article 1 of the GATT relates to most-favored-nation treatment. That is the cornerstone, in almost everyone's estimation, of the whole GATT system and of the whole liberal trading system. It means that if you give an advantage to anybody within the system, you must give it to everybody in the system.

That raises a number of questions and explains why there is so

much concern over whether we will be able to negotiate agreements with either the Mexicans, the Brazilians, the Chileans, or even the French, particularly if someone else has made an arrangement with them. Theoretically, if you take a look at the primary commitment of the whole GATT system and most-favored-nation treatment, advantage should not be given to one country that is not given to everyone else. Thus, there should be no problem with the United States benefiting if the Japanese make a very favorable arrangement with the Brazilians. We should automatically benefit under Article 1 of the GATT.

B. GATT Article 24—Customs Unions

The problem with this, however, is a clause that came to being in 1947. At that time, the nations debated the formation of the European Economic Community, and Article 24 was put into the GATT. Article 24 began as an article that encouraged the formation of a customs union by allowing countries to forego most-favored-nation treatment. Initially, there were six nations in the European Economic Community. They came together in almost the same way that the original thirteen colonies of the United States were formed. They were entitled to trade freely among themselves without giving the benefit to everyone else. This trading arrangement resulted in Article 24's exception for customs unions.

Customs unions are areas in which member nations eliminate the tariffs among themselves and put into place a common external tariff. Some people, however, want an arrangement among themselves without a common external tariff in exchange. For example, the Swedes, Norwegians, and Austrians might want to develop free trade among themselves, but not a common external tariff. They just want to maintain their own individual external tariffs. Article 24 was expanded to allow countries to establish alternative trading arrangements as long as they do not increase the level of protection against everyone else. This is the foundation upon which the free trade areas arose.

We now have a system in which, on one side, you have what everyone talks about as the global arrangement—the World Trade Organization. It is a new system for the 1990s, the next century, and the next millennium. At the same time, there is a plethora of Regional

Trade Agreements, RTAs, such as what the United States began to negotiate with Canada several years ago. We now have NAFTA, the North American Free Trade Agreement. In Central America, they had the Central American Common Market, which some people believe never came to anything. Although it produced some benefits and is better now, it has not been very effective. We have a similar arrangement between the Caribbean states and the United States.

Thus, we have a system that seems to denigrate from the pattern we were supposed to follow under the World Trade Organization and from the efficacy of Article 1, the most-favored-nation provision of the GATT. I am not sure where that is going to lead, or what will happen, but I know that there is a great debate going on between my economist friends as to whether the regional trade agreements are trade promoting or trade blocking. Do they restrict trade or increase the general flow of trade?

III. FAST TRACK NEGOTIATIONS

Now, fifty years later, there is a great deal of argument about fast track negotiations in the United States Congress. Fast track is a simple term meaning that when the executive branch of the United States Government negotiates a trade agreement, the Congress of the United States must vote up or down, yes or no. Under these procedures, Congress may not attach irrelevant—or any—amendments and demand the acceptance of these amendments along with the trade agreement. The vote is either up or down.

Fast track is a way for the United States to negotiate rules without the same kind of problem that we had, for example, under the previous process, where the United States Government negotiates an agreement, and everyone wants to amend it in some way. It ruins the whole thing. If there are amendments to the implementing legislation, it is then necessary to go back and renegotiate the agreement. A lot of people in the United States find this an ineffective way of operating, and it probably is. Fast track has been available to every administration since President Ford.

The problem now is opposition to the fast track. Its opponents are usually not those concerned with trade, the lowering of tariffs, and the influx of goods into the United States. Rather, current opponents have other, and perhaps broader, objectives, including protection of

the environment, as we'll hear this afternoon. Now, we have cases in which we say: "You cannot ship goods into the United States that are produced in a way that we believe is detrimental to either our environment or your environment or the world's environment." The labor unions are saying: "You shouldn't import goods into the United States or allow them to come in without high tariffs or quantitative restrictions if the people producing these goods abroad are not paid as much as workers in the United States." You have heard, and I am sure that our friend from Mexico has heard, a great deal of arguments along these lines. Ross Perot talked about that "giant sucking sound," which is the sucking of low paying jobs out of the United States into Mexico.

The argument in Washington, particularly in the last couple of months, is a question of whether fast track is necessary, particularly to achieve these kinds of trade agreements. The United States needs the authority to negotiate trade agreements. Otherwise, the United States will be put in a very unenviable position because everyone else will be able to negotiate some kind of special agreement. The United States will be left in the lurch because we will not have the ability to negotiate a trade agreement with these countries and present it to Congress for this up or down vote.

The proliferation of RTAs—regional trade agreements—raises two major problems for the United States. One is that we may be excluded from the advantages of most-favored-nation treatment, especially by the agreements already negotiated or in process between Japan, and, on the other side of the world, the European Union, both with a series of other nations. The second real problem is whether to include clauses designed to protect the environment, or to deal with labor conditions, and the like. These are the issues that have caused rejection, for now, of the fast track procedure, which has served us well for many years, but is now in danger.

IV. CONCLUSION

These are the issues that I think are important at the present time. There is bound to be an enormous fight in Congress over these issues. The President said he would go to the mat on this question of fast track. The whole idea behind fast track is to eliminate the possibility that the regional arrangements will in fact prejudice a country

like the United States, which should, theoretically, be entitled to the same advantages in connection with Article 1 of the GATT. That ends my presentation.

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DANIEL BRADLOW: Thank you very much, Professor Rubin. Your remarks have certainly given us the foundation on which to build the rest of this panel. We want to move from looking at the global picture with the WTO to looking at the regional arrangements, and of course, the most important regional arrangement in the Americas is NAFTA. To speak on the NAFTA, we have Franciso Velasquez, a graduate of the LL.M. program and a lawyer in Mexico at the law firm of Goodrich, Riquelme and Associados. In addition to his position with the law firm, he is National Vice Chairman of the National Association of Corporate Attorneys in Mexico.

REGIONAL TRADE AGREEMENTS: NAFTA

PRESENTATION BY FRANCISCO J. VELASQUEZ
GOODRICH, RIQUELME Y ASSOCIADOS

I. A FREE TRADE AGREEMENT OF THE AMERICAS

The Free Trade Area of the Americas ("FTAA") has two competing versions. One is an expanding NAFTA-type free trade agreement, which would be entered into by Mexico and several Latin American countries, such as Chile, Columbia, Venezuela, Bolivia, and some others. The other is a South American Free Trade Area ("SAFTA"), which Brazil has increasingly promoted. The two competing versions are somewhat different in that the FTAA Agreements between Mexico and other Latin American countries are comprehensive agreements whereas the SAFTA calls for a customs union.

II. THE TRADE BENEFITS OF NAFTA

Let me briefly put some numbers on the different agreements between the countries. Since 1993, Mexican exports to the U.S. have increased by eighty-three percent and exports to Canada by fifty-three percent. Mexico exports US$ 1 million in cars, US$ 2 million

in computers and components, and US$ 40 million in television sets. This accounts for total Mexican worldwide trade since 1996 of close to US$ 2 billion, eighty percent of which has been with the United States. NAFTA has helped Mexico become a worldwide exporter. As a result of NAFTA, Mexico has been able to attract investments of US$ 3.5 billion in plant and equipment. This investment influx into Mexico is second only to China among developing nations. This demonstrates how important NAFTA has been to Mexico.

Mexico changed its import substitution model that it had for forty years, and it joined the GATT in 1986 and started the very substantial process of reclaiming the Mexican economy. Mexico also changed its foreign investment law, passed a new competition law, and entered into agreements with Chile and other countries. Now, Mexico is a member of the OECD.

Two and one-half million jobs were created in one year by NAFTA, whereas in 3.5 years, only one hundred thousand jobs were lost in Canada and Mexico. U.S. exports to Mexico reached a peak in 1996 of US$ 57 billion. The U.S. trade deficit with Canada in 1986 was US$ 23 billion and with Mexico US$ 16 million, although, of course, we had to deal with the Mexican prices and the problem in late 1994 when the peso was declining. The U.S. generally exports services to Mexico, and U.S. exports captured more than forty percent of Latin American and Caribbean market imports. The Canada–Mexico trade has also increased.

III. NAFTA'S IMPORTANCE TO MEXICO

Why is NAFTA important to Mexico? First of all, Mexico has been able to significantly increase its exports of goods to the United States. The free economy is fairly integrated, especially in the electronic and textile areas. The goods produced in Mexico and shipped back to the U.S. contain a significant proportion of U.S. and Canadian components. Therefore, I think that we could, in fact, be blamed for the loss of jobs in the United States. However, if you are going to lose jobs, it is better to lose those jobs to a trading partner who imports your goods.

NAFTA has done several positive things for Mexico in addition to increasing export capacity. NAFTA has helped Mexico increase the transparency of its laws and regulations. This is one area where

Mexico has always been criticized because the administration of the law has been very discretionary. Now, this is no longer the case. We have three new commissions in Mexico engaged in activities supported by the Mexican government. They are the Mexican Competition Commission, the Telecommunications Commission, and the Energy Commission. These three commissions are independent bodies modeled after U.S. agencies and commissions. Discretion is no longer in the hands of the Mexican bureaucrats.

NAFTA has also helped Mexico enhance its prosperity. However, if you look at the macroeconomic numbers, they look too good, and if you really look at the details, you will see that the majority of Mexico has not really benefited from NAFTA.

The last thing I would like to comment on is that since the three NAFTA countries have different legal systems, we need to jointly develop some sort of harmonization in our laws, particularly in the areas of guarantees where Mexico has several problems. In the United States, it is very easy to perfect a security interest, while in Mexico it takes weeks, if not months. We are beginning the harmonization process and making progress in the areas of human rights, protection of the environment, and international trade. NAFTA is developing a body of law through its working groups and committees. I think that we will have to continue working hard in this area to develop a body of law to really help us to facilitate trade. Thank you.

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DANIEL BRADLOW: Thank you very much Mr. Velasquez. It is very interesting to hear about the significant, and possibly unintended, legal spillover effects that can follow from the establishment of free trade agreements. You told us about them from the Mexican side, but Mexico is not the only country being profoundly affected by NAFTA. NAFTA has also had an impact in the United States.

Our next speaker, Mr. Ronald Pump, is a Senior Attorney and Director of AT&T's Federal Government Affairs Office in Washington, D.C. and has followed developments in United States' trade policy since the entry into force of NAFTA. The most dramatic development is the attempt by President Clinton to get new fast track legislative authority so that he can negotiate trade agreements with Chile and other countries in the Americas. Mr. Pump is a graduate of

the Washington College of Law and has remained actively involved with the law school. I am pleased to say that he is on the LL.M. advisory board and has been a good friend and supporter of the LL.M. program for many years.

FAST TRACK LEGISLATION AND ISSUES

PRESENTATION BY RONALD E. PUMP
AT&T, DIRECTOR AND SENIOR ATTORNEY, FEDERAL GOVERNMENT AFFAIRS

I. INTRODUCTION

I think this conference is very timely given the importance of trade relations in this hemisphere. Having it in Miami is also particularly relevant because Miami is the center of United States trade and commerce with a region of exponentially increasing trade. I am envious of the opportunities you will have to work in this growing intercontinental trade. It is a tremendous opportunity for both legal work and additional legal study. As I go through my presentation, I will end with what I think are some key legal issues arising out of the fast track legislation and trade agreements in general.

It is useful to discuss fast track because it provides a prism for looking at many issues. Who would imagine that international trade would evoke the kind of passion that it does? This passion was illustrated, for example, when President Clinton spoke to the AFL-CIO in Pittsburgh and hecklers spoke out against the fast track legislation. I find it amazing how trade has become the central focus of the way we organize our society. I remember during the NAFTA days when there were actually nuns protesting outside the AT&T corporate headquarters. It was very intimidating. Nevertheless, my bias remains in favor of free trade. I work in an industry that has benefited tremendously from trade negotiations. The telecommunications industry has evolved from totally closed markets with monopolies to an open market system, particularly in the equipment area as a result of the Information Technology Agreement and the Basic Agreement on Telecommunication Services concluded in the WTO in February 1997.

II. THE BASICS OF FAST TRACK

I want to briefly cover the basics of fast track, some of the current legislation's objectives, the mechanics of fast track implementation, and some of the key issues. When we talk about fast track, we are talking about the Reciprocal Trade Agreements Act of 1997, which will appear in Title 19 of the United States Code. Fast track is neither fast, nor on track. A Chilean friend reminded me this morning that Chile has been waiting for fast track so long that they are wondering why we don't call it slow track. President Clinton's proposal has drawn criticism from nearly every sector, prompting Mike McCurry, the President's spokesman, to say that the President must be in the right place because so much fire is coming from both sides.

Fast track is merely legislation that renews executive branch negotiating authority for trade agreements requiring congressional approval. Every President since President Ford has had fast track authority. The current authority expired at the end of President Bush's term for various political reasons, such as higher priority for health care and the budget, which precluded President Clinton from initially wading into the current of the fast track debate.

It is important to remember that fast track authority is only given to those trade agreements that necessitate a change in U.S. law. The Clinton Administration is proud to point out that in their first four years they negotiated two hundred and twenty trade agreements. However, only two of these agreements required fast track authority and both were actually completed under the residual authority Congress gave President Bush to complete the Uruguay Round. In the sixty years since the passage of the Reciprocal Trade Agreements Act of 1934, which gave the President authority to reduce tariffs on a mutual basis, the United States has reached a status whereby it has the lowest tariffs in the world on manufactured and agricultural goods.

Fast track is necessary in a common law system because of the unique relationship between Congress and the executive branch. Fast track is meant to, in a sense, express the partnership existing between the executive branch (i.e., the U.S. Trade Representative who actually conducts the negotiation) and Congress. It represents a common effort between Congress and the President, assuring cooperation in the reduction of tariffs and non-tariff barriers such as quotas, product

standards, and subsidies. By ratifying the negotiating objectives, Congress is fully integrated into the process. Under fast track authority, a negotiator knows that the trade agreement presented to Congress will either be voted up or down and not "Christmas treed," as we say in Washington, with a lot of extraneous or pork-barrel amendments. In negotiations with Chile, for example, Chile is not negotiating with 535 members of Congress, it is negotiating with the President of the United States.

In general, it is fair to say that the process has worked. We mentioned the U.S.–Israeli, U.S.–Canadian, and NAFTA free trade agreements that were completed under fast track authority. Nevertheless, there is a debate about whether or not these trade agreements have actually benefited the U.S. economy, industry, and labor. Clearly, there are winners and losers. A fair question is: "How does society deal with the loser?" This is really the heart of the issue for those who oppose the agreements.

Part of what is driving fast track is the strength of the United States economy. I realize that for many Latin Americans this is probably a point of contention. The belief is that, due to United States economic strength and world leadership, the United States has an opportunity to write the rules. This may sound a little jingoistic, but it's a fact. If you have a chance to write the rules for the next decade, hopefully, they will be written in the right way to promote free trade and democracy. President Clinton made one comment in Pittsburgh worth mentioning. He stated: "The global economy is on the fast track, and consequently, we cannot leave our trade relations on hold." Obviously, he was speaking with the hope that he would get fast track authority; there are all sorts of dire predictions if he does not get fast track. The desire for fast track authority is driven by events in the fastest growing market segments, such as Asia and Latin America, where the President hopes to negotiate APEC sectoral agreements and NAFTA expansion in the context of the Free Trade Agreement of the Americas.

One particularly meddlesome trade sector for the United States is agriculture. The President actually delayed introducing the fast track legislation for over one week because he ran into a sort of "buzzsaw" with Western senators who were very much concerned about agricultural issues, such as competition from Canadian and Argentinean

wheat, Canadian beef, and a variety of other agricultural issues. The fact of the matter is that United States agriculture is losing market share, particularly in Latin America because of the Mercosur Agreement. Instead of buying American wheat, Latin Americans are buying Brazilian and Venezuelan wheat. Similarly, there are several examples where U.S. farms lost out to Chile because of the tariff differentials. We are talking about real business and serious tariff reductions. When the President talks about needing authority to negotiate new areas, he is talking about completing the service negotiations in the WTO. One of the most interesting negotiations, however, will be the WTO negotiations on agriculture, which will start at the end of this century or the beginning of the next century. We think that it will be easy with a common agricultural policy in American unions, for example, but it is going to be very exciting.

President Clinton is asking for an extension of fast track authority to the year 2001 with the possibility of a renewal until 2005. Authority is usually only granted for a relatively short period of time. It probably would be better to extend fast track authority in ten-year blocks, but that simply will never happen because of the checks and balances in the U.S. system and the cohabitation of a Republican Congress with a Democratic president. Although President Clinton's political ratings are very high, there is an overarching lack of trust in him and in the Congress.

III. OBJECTIVES OF THE FAST TRACK LEGISLATION

There are two primary objectives of the proposed legislation. The general purposes are, first, to reduce agricultural tariffs resulting from the WTO agreements and, second, to grant authority to carry out sectoral agreements, such as the International Information Technology Agreement Commission, which reduces tariffs on U.S. computers, electronics, and semiconductors. The administration hopes to re-negotiate the ITA to further reduce tariffs on covered products and to expand tariff reduction in additional products. Mutual recognition brings another market opening measure. We must also have the authority to negotiate new bilateral or regional free trade agreements. With the ongoing expansion of the NAFTA into the Americas, even individual countries, such as Singapore, have indicated that they would like to negotiate a bilateral treaty with the United States.

I would like to read the negotiating objectives of the fast track legislation:

> To reduce trade barriers and trade distortions that limit market opportunities for U.S. exports, including those aspects of foreign government policies and practices directly related to trade; to reduce foreign government barriers that discriminate and impose unreasonable regulatory barriers on U.S. service providers; to reduce or eliminate artificial or trade distorting barriers to U.S. foreign investment; to further promote adequate and effective protection for U.S. intellectual property rights and increase access to foreign markets for U.S. businesses that rely on intellectual property protection; to make the proceedings of international trade bodies more open to public view; to secure fair and more open trading relations for U.S. agricultural products; and to promote through the WTO internationally recognized worker rights and sustainable development.

There were hearings in Congress to determine exactly what some of this means. Very skilled trade lawyers drafted the objectives, yet it is amazing how vague and unclear they are. Several members of Congress have said, "Wait a minute, you really don't understand the need here." Writing is obviously a skill, and there is a need for people who write well and clearly.

Another area where the U.S. system differs from many of the systems in the hemisphere is in the issue of transparency; the U.S. system is open and transparent. Theoretically, the United States seeks advice from a broad range of affected industries and affected people. What fast track really means is that Congress has to vote up or down in sixty legislative days on what is appropriately brought to Congress under fast track. The legislative day is a day that Congress is in session. Consequently, sixty legislative days actually can be spread out for four to six months. There is a great advertisement that you might have seen. It is a union advertisement in which somebody with an "Approved" stamp is simply stamping all these agreements as they come in, which really isn't the case. Agreements negotiated under fast track still undergo a great deal of comment and review. Procedurally, in order for an agreement to qualify for fast track treatment, it must meet the elaborate notice and consultation procedures and even public sector advisory group requirements.

IV. KEY LEGAL ISSUES

Finally, and what I hope is of most interest to you, are the key legal issues arising out of fast track and trade agreements. Obviously, comparative legal scholars have an interest in the laws made and the progress of transparency in Congress, or if the administration does not consult Congress and the advisory group, the basis for a motion of disapproval from the Congress. For example, which of the legal issues of compliance with notice and consultation requirements does the president have to address for fast track approval? In addition, constitutional issues may arise between the executive branch, the legislative branch, and even the judicial branch.

Several of the previously mentioned extra-judicial panels were created to deal with some of the environmental issues in NAFTA. There are numerous questions regarding the legal interpretation of some of the phrases. For example, what do "directly related to trade," "necessary and appropriate," and "sustainable development" really mean? In addition, if some of the labor and environmental standards sanctioned are in fact inadequate, there are also issues of extra-territorial application. Another issue involves criticism regarding food safety.

Issues regarding labor have also become prominent. For example, to what extent can the United States, as a condition for allowing rugs to be imported from Pakistan, regulate child labor in Pakistan? The International Labor Organization ("ILO") will play a prominent role in this debate. I also grazed the issue of whether or not states are precluded from establishing a right to work law. When does somebody, in actuality, lose his job because of an import? This particular question has been a ploy to buy votes for this kind of agreement, although there is the interesting legal question of who qualifies as someone who has lost a job because of international trade. Qualification is a determination the Department of Labor must make. The labor issue is fraught with all sorts of political ramifications on issues of appropriateness of sanctions. Can sanctions be viewed as the taking of property under our Constitution?

How does U.S. trade law apply to multilateral agreements, such as the ILO or the WTO or NAFTA? What are the conflicts of law between the state and federal requirements on transportation and health standards or regarding the supremacy clause provisions in some of

the international agreements? What about fairness in our trade adjustment assistance programs? As you can see, many questions can arise in treaty law and treaty interpretation. I hope that these issues and questions give you something to think about, write about, and talk about.

* * *

DANIEL BRADLOW: Thank you Mr. Pump for giving us not only a description of the status of the fast track initiative but also for showing us how complex the issue is. I noticed with interest that we began this panel by talking about free trade. Now, we are talking about fair trade. This expands the range of issues that we need to address.

One of the issues receiving increasing attention, which highlights some of the complexities involved in creating fair trading regimes, is the question of trade and the environment. To speak about trade and the environment, we are delighted to have Dr. Robin Rosenberg, Deputy Director to the North-South Center at the University of Miami. Dr. Rosenberg has a distinguished career as an academic working on international economic and international relations issues. He has written extensively about trade, the environment, and Central American politics. Dr. Rosenberg has no connections to the Washington College of Law, but as a law school which prides itself on our global perspective and on being an international law school, we are delighted to broaden our community of friends.

TRADE AND THE ENVIRONMENT

PRESENTATION BY ROBIN L. ROSENBERG
DEPUTY DIRECTOR, NORTH-SOUTH CENTER

I. INTRODUCTION

It certainly is an honor and a pleasure to be here. A full discussion of this topic is an enormous task. However, the panel has already put all of the issues on the table, so my job is a lot easier. I would like to put forth a few points that do not come from any kind of partisan perspective. I am an advocate for many things, including free trade *and* the environment.

I would like to mention an initiative of the North-South Center called "Monitoring the Implementation of the Summit of the Americas." This program, with Ford Foundation support, is tracking the priority initiatives of the Summit of the Americas. Twenty-three initiatives came out of the Miami Summit of the Americas plan of action, one of which focused on the Free Trade Area of the Americas ("FTAA"). In addition, Chile was invited to join NAFTA during the Summit of the Americas. The North-South Center is tracking twelve of the twenty-three priority initiatives from the Summit. We have commissioned research from leading civil society analysts on these issues. Furthermore, we are bringing together the Washington policy community to discuss these issues and to combine their views with our research. We are also forming an eminent persons group called the Leadership Council for Inter-American Summitry, which is composed of former heads of state and distinguished members of civil society who no longer hold government positions. The Leadership Council will use the research to make recommendations to the presidents and prime ministers who will be meeting at the next Summit of the Americas meeting in April 1998, in Santiago, Chile. There are a lot of agreements out there that need to be monitored. The FTAA is only one, but it is perhaps the most important of the agreements.

II. RECONCILING TRADE AND THE ENVIRONMENT

I am coming at the trade and environment issue from a unique angle. I am sort of a strange animal on the panel in the sense that I am not from the environmental NGO community or business. I think it is very important to hear a variety of perspectives on the issue of the environment and trade. Professor Rubin expressed, in very succinct terms, the obstacles and threats perceived in the system of free trade. Others on the panel referred to the strangeness of viewing trade as the catchall for all of these issues or as the way in which the United States relates to other countries. I want to discuss the reasons for this perception and the reasons why trade has become a vehicle for the aspirations of so many different communities. I am a strong advocate for free trade, but I am also an environmentalist. I do not think that there is any contradiction between the two positions, nor should there be. There are, however, complexities and difficulties in reconciling the two.

Many of you can better conceptualize the problem if you realize

that the entire legal system that Professor Rubin and others have been setting up over the years is now enshrined in the WTO in Geneva. The WTO system is a legal regime based on sovereignty and non-discriminatory principles. It is equipped with dispute settlement and coercion mechanisms, so its efficacy does not necessarily depend solely on political will. It is a place where the United States of America and Belize can sit practically as equals at the table. Maybe that is what frustrates so many people who are against the WTO. The United States cannot necessarily call the shots, but that is the nature of the regime. It is a legal regime; it is law; it holds a unique position.

There is no legal regime for the environment. There is no "general agreement on the environment." There are treaties that speak to specific things, and some of these things are trade related, such as hazardous chemicals, ozone issues, and endangered species, but these agreements are very limited in scope and have regimes still based on soft political will. They do not have adequate dispute settlement methods, and therefore, the communities that advocate for effective environmental protection are legitimately looking toward certain other vehicles to attain their goals. That is why trade becomes so important to this debate. Trade has become a vehicle through which others would like to see their aspirations achieved.

I have actually spoken at the WTO, which surprises a lot of people who characterize the WTO as one of the most secretive organizations in international affairs. That has changed. I am not an official of any government, nor was I part of a delegation. There are many opportunities opening up in the WTO, mainly through the efforts of leaders of civil society. We have had two dialogues. The first was not very productive, but last May in Geneva, there was an NGO dialogue where the delegates outnumbered the civil society representatives. It was a very open and frank dialogue; there was actually an exchange of positions. As a matter of fact, the WTO is going to have another NGO delegates discussion regarding the issues facing smaller countries. Hence, the WTO is transforming. This is not just a United States debate; it is a global debate about transparency.

Let me return to my point about how free trade and environmental protection can be made compatible. In signing the Summit of the Americas agreement, the presidents and prime ministers of the

Americas promised to set up a Free Trade Area of the Americas by the year 2005. They also promised to keep their environmental policies and trade policies mutually supportive. The agreement does not have treaty status, and it has no implementing legislation. Nevertheless, it was a promise that the presidents and prime ministers of the Americas agreed to uphold.

I am optimistic about the issue in the long run because I think the synergies between trade and the environment are positive. It is the "chicken and the egg" problem essentially, but we are talking about the real world. By the "real world," I mean that essentially we are discussing the future of the Americas. The inter-American system, as it is known, is a unique political system because it is dominated to a great degree by the country that accounts for seventy-five percent of the total gross domestic product of the Americas: the United States. History is replete with examples of the ability of the United States to exercise its sovereign power to a greater extent than that of its neighbors in this hemisphere.

What I am trying to say is that the inter-American system is distinct; it is different. If you improve inter-American relations, you improve cooperation in all areas. Today, the *sine qua non* of improved relations among the countries of the Americas is free and fair trade. The United States must show custodianship and put the Free Trade Area of the Americas process back on the fast track. Inter-American relations right now are in the doldrums. They are at the lowest point since the Summit of the Americas. We argue about everything from immigration to drug trafficking. We have trade problems, even with Chile, despite the fact that we are working together in planning the next inter-American summit. What can change all of this?

Obviously, improved trade relations can improve inter-American relations immeasurably. I work with environmental NGOs very closely. During the Summit of the Americas we tried to make sure that the language was appropriate, and during NAFTA we worked to get the agreement approved with the support of the environmental community. Environmental NGOs are not against free trade. Most of the powerful organizations are free traders. They understand the synergies, but they are not necessarily going to place their trust in the Clinton Administration.

The panel talked about the trust between Congress and the Clinton Administration. There is also a problem of trust between the environmental community and the executive branch. That is, the conflict concerns whether the Clinton Administration is in a position to uphold environmental protection in this hemisphere. The fast track debate encapsulates all of these dynamics. It attempts to please everyone; of course, it pleases no one in the process. Fast track attempts to use trade as a vehicle to solve domestic problems and to fulfill certain promises that the United States has made. The trust issue in the environmental community deals with the fact that the processes through which we should address environmental issues in the Americas are not working. As it is presently written, the fast track legislation has principal negotiating objectives and overall negotiating objectives. The overall objectives, in the legal sense, are supposedly more important, but the principal objectives include throwing the more radical issues to the WTO and the labor issue to the International Labor Organization. This is not necessarily the proper approach for the United States or for the international community.

III. THE WTO AND ENVIRONMENTAL ISSUES

The WTO has generally been insensitive to environmental concerns. It favors trade over environmental issues because it is believed this is the only way to maintain a non-discriminatory regime. In most, if not all, dispute settlements, the WTO has favored trade issues over environmental issues. For example, it does not view the process by which products are made as essential. It only looks to the final product and whether that product is dangerous to human health or the environment. The way in which the product is made is completely irrelevant under the WTO's rules. Recall the problem with dolphins getting caught in the nets that were supposed to be used solely to catch tuna. The method used to catch tuna, the production process, is irrelevant to the WTO. The WTO believes that if the tuna in the can is safe for consumption, it can enter the United States.

The WTO is not an effective voice for the environmental community, even though it has brought the issue of free trade and the environment, long dormant under GATT, off the dusty shelf. Its Trade and Environment Committee spent a year and a half in deliberation with papers, non-papers, and non-non-papers. In the first report to the Singapore Ministerial Conference of the WTO, there was no rec-

ommendation for resolution of any of the major problems concerning trade and the environment. Environmental groups are not content with certain countries simply referring the environmental issues to the WTO. They want to see their issues incorporated into the actual overall trade negotiating objectives in free trade agreements.

That brings up the issue of what "directly related to trade" means. This phrase was the compromise language that Representative Archer worked out with the administration in order to mollify the environmental and labor community. The fast track legislation reads as follows: "to address those aspects of foreign government policy practices regarding labor, environment, and other matters that are 'directly related to trade' and decrease market opportunities for United States exports or distort United States trade." No one knows what "directly related to trade" actually means. To the environmentalist, everything is "directly related to trade." Most economic activity is somehow "related to trade." Does that include production processes, which will not be admissible under the WTO? There is no explanation. I have not yet heard a good definition of what "directly related to trade" means. Until that definition is in place, the language will not successfully mollify the environmental or labor community.

IV. CONCLUSION

One of the things that helps in this process is the synergy between trade and the environment. If there is political cooperation at the highest levels, which means free trade in the Americas, and if there is integration, there will be overall cooperation. It trickles down. Once presidents and prime ministers agree on something, all the other bureaucracies will start working together, and environmental cooperation will improve.

It is actually more efficient to produce in an environmentally friendly manner. Companies are learning this just as the world becomes more in tune with environmental issues. Companies have found a market advantage, so much so that they have actually muscled out a variety of firms in various contexts, especially in developing countries. There will be many merger and acquisition opportunities for those companies who cannot live up to the standard that prevails in their countries. Success will be a basic indicator for these companies. Foreign direct investment pours into places, such as Ar-

gentina, at a rate of four to five billion dollars per year or more. New companies that are opening up are beginning to produce in an environmentally friendly way. The national companies that do not incorporate environmentalism into their business dealings will not be able to compete in the long run. They will merge, or they will be acquired.

There are synergies between trade and environment that so-called "eco-efficient" companies can use to gain advantages both politically and in the marketplace. These synergies will lead to better relations between governments, their ministries, businesses, and agencies that work on issues such as environmental cooperation. The reciprocal relationship between trade and the environment can actually get us through this problem, if not in the short term, certainly in the medium term. Thank you.

* * *

DANIEL BRADLOW: Thank you Dr. Rosenberg. Even though there are synergies between trade and the environment, the mechanisms for trade in the WTO do not seem designed to exploit those opportunities. I would also like to thank you for highlighting linkages to the interesting legal, political, social, and economic issues that have come out in the other presentations on this panel.

In addition to thinking about these issues from an academic and intellectual point of view, I cannot help but think about all the opportunities for practicing lawyers and the job opportunities that are being created in international trade. I can think of no one more qualified to speak to this issue than Chang Oh-Turkmani. She is a partner in the Mega Company, a worldwide trading corporation based in Washington D.C. where she is a consumer of legal services. Previously, Ms. Oh-Turkmani was a practicing lawyer, specializing in international trade and government relations. She has demonstrated a remarkable ability to identify opportunities and to exploit those opportunities all over the world. Chang is not a graduate of the law school, but she is a member of the advisory board for the International Legal Studies Program and has been a wonderful contributor to many efforts in the program. I am delighted that Chang could participate in today's panel.

BUSINESS OPPORTUNITIES FOR LAWYERS

PRESENTATION BY CHANG S. OH-TURKMANI
THE MEGA COMPANY

I. INTRODUCTION

I am extremely honored to be a part of this panel. I am not an expert on WTO agreements, nor am I an expert on Latin American countries. In fact, I am not here to provide any profound legal analysis or to make a determination as to whether something promotes real trade, fair trade, or restricts trade. I am here because I represent some alliances in this global economy, and I will give you examples of that. Having represented many Asian companies doing business in Latin America, Latin America has always been my first love, and I am delighted to be here to speak about business opportunities for lawyers in Latin America. I do not have any legislation or comparative legal analysis to make. Instead, I would like to share my personal experiences. I left my legal practice almost ten years ago and decided to go out on my own and actually do trade and make money.

II. RECOGNIZING BUSINESS OPPORTUNITIES

Trade is not a simple matter. For example, I manufacture lubricants and petro-chemical products in the United States. I ship them to Eastern European countries, such as Romania and the Czech Republic. Since the currencies are not convertible, I have to export something out of these countries. I export glass to West Africa, Ghana to be exact. From Ghana, I export lumber to Japan, where after an entire process of about nine months, I finally get my money. Globalization means that trade and investment are intertwined, which means that in order to have this larger global production base, you really have to invest. You have to invest to trade and trade to invest. It is a vicious cycle.

I go wherever the opportunities take me. I cannot say that I think Costa Rica is the place to go or that Mexico is the place to go. I am also not going to talk about specific countries or specific industries except to say that there are many industries in which the opportunities are great. As a private person doing business, I look for the hottest thing in the market. Right now the hot item is privatization. Pri-

vatization occurs when state-owned companies are purchased at a relatively low value and then sold, improved, or any number of things. For example, privatization is taking place in many sectors of agriculture in Latin America, whether it is the privatization of the marketing board of sugar and coffee in El Salvador or soy bean and cotton in Paraguay. Privatization is very exciting, and it is done for good value. That is the opportunity I look for.

The second thing I look for is the difficulty of doing business in that country. In making this assessment, I am concerned about transparency. How difficult is it to get the government procurement contract? It is often not that easy. Do we have more transparency because we have committees and commissions? These commissions or committees may not ever make a decision because interests are so diverse. If I am exporting something from a country, I look for export rules and regulations and legislation in that particular country. Is there an export tax? Is there a one-stop window where you can simplify all of your export documentation, or do you have to run around to sixteen different agencies in order to export?

A. Trading in Services

Trade is not just in goods, it is also in services. Services is a great sector because, for example, in El Salvador services account for sixty-two percent of GDP. In order to promote trade, governments are now focusing on reconstructing, renovating, and enhancing their infrastructure, whether it be ports, inner ports, free trade zones, etc. This is another field that is really exciting for those of us working to develop free trade zones. For example, I represent a Korean company doing business in the Caribbean, and they can take advantage of the duty free privileges in the Caribbean. The opportunities are many.

In the financial sector, the internationalization of the banking sector, including capital markets, commercial banking, and universal banking, is a hot field. In some of the emerging markets, such as in the Eastern European countries of Poland, Hungary, or the Czech Republic, which are only beginning to establish their capital market systems, investors have come in and made 200-300% profit in a year. I have done well, and I have experience, but there are sharks out there, and I have had my own share of hardship.

B. Competition in International Trade

Privatization is not always great. Certain companies, for example in the cement industry, operate in a real cutthroat industry. LaFarge and Holda Bank are the two prominent leaders in this industry. As a strategic move, a company, normally a multinational, can privatize a state-owned competitor and close it the next day. This is not very good for the host country. Privatization, therefore, has been utilized as a method of controlling one's global market share.

Once, I shipped twenty-five thousand pounds of corn, and I did not realize what this meant. The vessel was huge; it was twice the size of a football field. I received a call from one of the big boys in the industry who warned me not to ship again. The competition can be severe. I was bringing cement from Jordan, and the competition was so severe that we had to hire armed guards to guard the vessel twenty-four hours a day because if it was sabotaged with only a handful of sugar, the cement would never harden.

III. LEGAL OPPORTUNITIES IN INTERNATIONAL TRADE

As legal practitioners, we have a number of advantages in the field of international trade, such as knowing the laws and regulations, knowing the legal framework of the country in which we work, and knowing the loopholes. We know how an industry functions, how it is regulated, and how these regulations are enforced. Lawyers make great business people, in my opinion.

I think lawyers also make very good instruments and vehicles for large companies. For example, a Korean automobile manufacturer has invested over 500 million dollars in Romania. They are having many problems because the former government administration completed the original investment agreement with this company. Since there has been a new election in Romania, there is a whole different ballgame. The new coalition government has certain misunderstandings regarding the investment agreement. That is where lawyers come in because we are the instrumental intermediaries that can smooth things over for these companies. By using our analytical skills, we know how to solve these problems.

It is also an exciting time for the traditional legal practice because unilateral reform is necessary in various areas in various countries,

whether it is in customs regulations, the country of origin tax, anti-dumping laws, tax reforms, or exchange rates. There are also bilateral, regional, and multilateral reforms that lawyers are uniquely prepared to handle. There is a lot of work for lawyers. At the same time, it is not just the creation of these wonderful agreements or treaties that is so important. We also have to put a strong emphasis on implementing and enforcing compliance with these agreements because, unless we comply with these agreements, unless we respect these multilateral agreements, we cannot obtain credibility in the WTO, and we cannot maintain confidence in the private sector. As lawyers we are working in a very exciting time where so much work needs to be done.

I am not practicing law these days. Most of my work consists of a lot of negotiations in emerging market countries, mostly in the financial sector. This presents another opportunity for lawyers in the area of sovereign debts. Many countries, such as Bolivia, Brazil, and Chile, are still burdened with their foreign currency debts. Lawyers can help these countries utilize their debts and come up with creative mechanisms to resolve and extinguish their debts, whether through debt equity conversion, taking non-traditional products into traditional markets, or taking traditional products into non-traditional markets. Thus, there are a number of things we can do as legal practitioners.

PANEL DISCUSSION

FRANCISCO VELASQUEZ: I have a couple of comments to Mr. Pump's presentation. He said he was unsure whether or not NAFTA has benefited the United States. My personal opinion is that NAFTA has been instrumental in creating regional competition, and the United States is now better prepared to compete with Asian countries, European Union countries, and South American countries. Taking that into account, NAFTA has benefited the United States.

I will now move on to Mr. Rosenberg's comments about the tuna-dolphin case. The strong support by environmentalists for a measure demanding the dolphin safe label is behind this problem. Apparently, the Chairman of the Chamber in Mexico said that they wanted to keep that business because the label was selling at five cents each.

That is what is behind these problems.

Next, Mexico has been pushing hard for environmental laws and has been enforcing its environmental laws. We just had a case where a Mexican company was bought out by a Chilean company. The company was not operating at the time. The Chilean company renovated the facility and restarted operations, and it acquired the necessary permit from the Mexican government to operate. The company had only been operating for two months when the environmental authorities in Mexico came in and shut down the facility. The facility is in a small town with five thousand inhabitants, and the facility was closed. We managed to have the facility operating again at fifty percent capacity, and the Mexican government persuaded the company to invest four million dollars in the plant, which they had just integrated. The regional buyout of this plant cost the Chilean group ten million dollars, and the company put in forty percent more in order to comply with environmental regulations.

The last issue to mention is drug profiting. There is a very interesting story if you look back to the early 1940s when the United States needed something to support the troops in Europe. The United States encouraged Mexico to grow "grass." They encouraged it, and now they are blaming Mexico for sending marijuana to the United States. I don't think this is something that should be done. This is something the United States used in the past, and now it is blaming Mexico for everything that has happened.

Next, Ms. Oh-Turkmani, you said you did not know whether there was transparency in government procurement rules. In Mexico, the secretariat that handles the objections of awards to Mexican-owned companies has handled over two thousand objections, many of which have been reversed. This procedure was implemented because of Mexico's NAFTA commitment. We have a case with a U.S. company manufacturing goods for a power generation company. This company was disqualified and the contract was awarded to a Japanese company because the Japanese had better financials. We filed our objection, and we are pursuing these business objectives. First, we will try to reverse the reward. Second, we will try to access the file to see whether or not the financing of our client is greater than the financing of the Japanese. Our client is an American company. The U.S. Export-Import Bank has financed our client. They claim

that the Japanese Export-Import Bank has offered lower financial rates, and we are going to try to access the file. The third option is for us to sit down with the U.S. Export-Import Bank and try to negotiate lower rates if, in fact, the Japanese company that won the contract has better financial terms.

RONALD PUMP: There is no doubt in my mind that NAFTA has been beneficial to both Mexico and the U.S. What I said was that there is a fundamental question of whether some of these regional agreements are good, bad, or indifferent. As you know, there was just a study presented to the U.S. Congress on the overall effectiveness of NAFTA. Out of a score of 100, the report gave NAFTA about a 53 or 54. That reminds me of a story that you probably heard. President Mitterand said to Deng Xiaoping, "Do you think the French Revolution was a good idea?" And Deng Ziaoping said that he hadn't had enough time. That is the sort of cop out on the NAFTA study. There really has not been enough time to assess whether it costs jobs, improves jobs, helps the environment, hurts the environment, etc. If anything, I am probably guilty of showing my bias in favor of NAFTA.

I wanted to ask one question. There is a quote, and I am not sure of the context, that there were fifteen Latin American heads of state that said they did not want to see labor and the environment either in fast track or the FTAA. This is not only an American concern. Your heads of state have expressed similar concerns. No one is suggesting that poor labor standards or lax environmental standards are good. It is just that they are not trade related, and they do not belong in a trade agreement because they unnecessarily complicate doing business on a higher level. They should be resolved in a context outside of a trade agreement.

ROBIN ROSENBERG: Mr. Pump is referring to the recent meeting of the Rio Group. The Rio Group is a collection of leading Latin American countries. It includes the largest economies in Latin America and is composed of fourteen countries—thirteen members and one observer. The Rio Group issued a statement saying that they would not entertain labor and environmental issues in future negotiations for the Free Trade Area of the Americas. The Latin Americans have taken this position going into every trade ministerial so far in the FTAA. The United States goes in with very strong labor and

environmental negotiating objectives for every ministerial. These negotiations occur every 12 to 18 months. The United States goes in with very strong objectives, and the Latin Americans usually kick the issue to the WTO. They basically say they will await the report of the Committee for Trade and Environment of the WTO to address the issues of labor and the environment, and that is the problem.

I would like to speak very briefly on the two issues that were addressed regarding my presentation. A major fear of these governments with regard to labor and environment is protectionism. Obviously, the concern is that these issues will be used as a disguise to protect domestic industries. Amongst those constituencies that might support trade sanctions for dolphins or gasoline, I would venture to say that within every constituency there is some protectionist motive. That does not mean, however, that there isn't an environmental value to be protected. There are probably some United States firms asking for protection because they are being undercut by Mexican firms, but not all U.S. firms.

Five to ten years ago, thousands of dolphins were being slaughtered. I am happy to say that the issue was resolved by the WTO, not in favor of the United States, but the United States ignored the ruling and, in the mean time, that issue has been resolved. Environmental organizations together with the Mexican government, Mexican industries, and other industries were able to introduce the necessary technology and place observers on boats. Now, the number of dolphins killed has been significantly reduced, but there is always an element of protection in these things. I don't think anyone should really impugn the overriding environmental goal. It is something the world should come to terms with. But we haven't come to the big issue yet; wait until the administration goes to the American people to ask for sacrifice to meet global climate change standards, if they, in fact, come out of the Kyoto negotiation. This is just the beginning.

On the enforcement issue, there is no doubt that Latin American countries and countries in general are making advances; but, overall, environmental standards, even if they are as high as EPA standards in the United States, are generally not enforced. I would say, however, that Mexico has increased its enforcement. There has been scrutiny. We could have worse problems with no public scrutiny, but because of NAFTA we have public scrutiny. Moreover, there are

major environmental issues that have been resolved or are being addressed by the mechanisms set up by NAFTA. I spoke about stopping the construction that was affecting a coral reef at the Port of Cozumel. There was a bird killed in the Silva Reservoir, which the Mexican government is addressing along with the issues that caused the pollution. These are positive things, but overall, environmental groups are frustrated with the processes used by the international community to address environmental issues. That is why they look to trade, which is the most powerful integrating force in the world. They look to trade and use it as a vehicle to achieve those goals.

CHANG OH-TURKMANI: I am not prepared to dispute whether these governmental commissions or committees preserve transparency in Mexico, but having a committee of several members from different countries does not necessarily facilitate transparency. It does not facilitate a rapid decision making process. For example, in a country run by a coalition government, there isn't one ruling party. If the government is composed of a coalition government consisting of four or five different political parties, these inter-ministerial committees or commissions are surely not representative of any coalition parties. I have never seen a decision rendered by any of these committees because no one can agree on anything. Taking your presentation into consideration, however, I feel encouraged to do more business in Mexico.

SEYMOUR RUBIN: I would like to point out that in every one of these cases there is an extreme. You always find bad cases. As far as the environment is concerned, the European Union clobbered the United States. The issues have been around for awhile, and back in those days, the environmental concerns seemed to be pushed aside except when they were linked to trade considerations. If you adopt the quotas, they have absolutely no effect on health. It may really prejudice health. You keep U.S. beef out of the European markets in order to please the French farmers. Then it is an entirely different matter. The WTO can get into issues of that sort. If the WTO is being opposed by Mr. Eisenstadt and others in the United States Administration on Helms-Burton, which is the most flagrant violation of the sovereignty of the Americas and every other standard you could possibly think of, I don't know if the World Trade Organization can be trusted to do anything except decide a particular subsidy for a particular product.

AUDIENCE QUESTIONS

I. THE TRADE EMBARGO AGAINST CUBA

AUDIENCE PARTICIPANT: Professor, you've just raised a very potent issue regarding the trade embargo against Cuba. The most potent issue of influence over any other country has always been the issue of trade, particularly trade with the United States. I'd like to hear the opinions of each of the panelists as to the efficacy and the advisability of the continuation of the embargo against trade with Cuba.

SEYMOUR RUBIN: I think it is ineffective and wrong. Years ago, I was a chief officer in the State Department working on economic warfare matters and economic boycotts. This economic boycott is absolutely ineffective. It has nothing to do with achieving any objectives. It is also wrong because we are violating our own principles of international law, including general principles of international law and the obligations we have under the Charter of the Organization of American States. The Charter is a treaty that has been approved by the Senate of the United States by a two-thirds vote and contains clauses that absolutely prohibit intervention in the Americas in the most explicit terms—by any means whatsoever, direct, indirect, economic, political, etc. If you take a look at article 16 of the Charter, you will find that Helms-Burton is an absolutely flagrant violation of that treaty.

ROBIN ROSENBERG: I cannot dispute anything just said. The one thing I can say, however, is that it makes a case for combining the legal and political science professions. We are talking about the intrusion of politics into a legal regime. It is causing headaches, but politics are prevailing, not legality. What use is the legal system if we do not understand the politics and the political environment in which we are operating?

There is also the moral argument. If we open up trade with Cuba, we are implicitly recognizing that we are equals, and we cannot do that. Politics, morality, and ethics all intrude on legal regimes, and those people who are interested in the profession will ignore them at their own peril. Our colleague has to go into every country and discover what the real political context is. All these multilateral agreements are totally irrelevant when it comes down to getting a stamp on a piece of paper so you can import or export the product, acquire

financing, get approval, or whatever.

II. LABOR ISSUES IN INTERNATIONAL TRADE

AUDIENCE PARTICIPANT: I understand from your explanation that the fast track authorization was not very clear in its language and objectives. I myself had an experience with this issue. I was in charge of negotiating a trade agreement for Panama in Washington. The trade representative, who had the rank of ambassador, wanted to speak with us and stated, in a very imperialistic way, that Panama was enacting legislation to change its labor standards, that this was very poor as far as the United States Administration was concerned, and that this would affect our negotiation for trade agreements. I told him that I did not know what he was talking about, but I would find out, and we could discuss it later.

I went to our embassy and discovered that there was a decree for certain types of companies that were established in certain areas. In these areas, our labor standards were lower than U.S. standards, but generally, our standards were really higher in both areas than U.S. standards. Does the United States have a clear view of what is going on in the world labor relationship and the level of development in developing countries?

ROBIN ROSENBERG: I enjoy private conversations because they tend to be frank. Ambassador Barshefsky, before she became the U.S. Trade Representative, was the Deputy U.S. Trade Representative. She was on her way to Cartagena for a trade ministerial about a year and a half ago. She said, very frankly, that as complicated as the environmental issue is for trade, it can be resolved. She has a lot of confidence in her Latin American colleagues, and she gets the feeling from them that even though they made these pronouncements, this issue can be resolved.

On the labor side, she is not as optimistic. This is a problem that is not only complex, but it cuts to the core of not only sovereignty but also the issue of competitiveness. It is not something people understand because the winners and losers are not easy to aggregate, but they are very able to express their pain or their success. The United States comes across in a very imperialistic way because we have a very well functioning market and, generally, a large middle-class. We tend to think that our labor standards are high compared to other

countries because there is remuneration, the various packages and perks, but there are also thirty million people without health insurance. There are no laws against layoffs and things like that. Due to the strength of the market and the fact that we know a person can get another job, we don't really understand the issue.

Chile, for example, has very strong labor laws, especially in the last few years after the dictatorship was removed. Chile has higher standards than the U.S., but the issue goes to competitiveness and the fact that we cannot see the world through any other prism than that of a developed country that has certain values. We use our experience to interpret the experiences of others. That is the political reality. I work with administrative officials who will tell you that they do not think that way, but the way the policy and the interests get played out virtually govern how it will be done.

The issue of how small countries are treated, whether they are going to receive the same thing out of trade as a big player, may ultimately be irrelevant. The countries of Latin America and the Caribbean have decided that they are willing to put up with the advantages of big companies, whether it be AT&T or Dow Chemical or whatever because the rewards of getting into this market in a bigger way are much greater to them. These companies are still going to go in, and what these developing countries get out of the arrangement is probably more than enough to compensate.

SEYMOUR RUBIN: I'm an old cynical type, but I think that is a very cynical approach really. I've had a lot of negotiating experience in many matters, and I do think that moral standards have an effect. The problem with the variety of political systems is that you are putting black on one side and white on the other side and saying there is nothing in between. There is something in between. Morality, standards, and so forth have a lot to do with the way things are brought about.

You also have to do something about distinguishing between words that sound as if they are one thing, when they are actually several things. The labor issue, for example, what do you mean by that? Do you mean you cannot fire anybody in Brazil who works for you for six months without paying him five years salary? That is one possibility. That may be a higher standard of labor protection than we have in the United States. Or do you need, as the AFL-CIO said,

a system where you can hire someone in a variety of places for one dollar an hour, a dollar a day, something like that instead of $10 or $15 or $100. Those are "in the labor issue," but they are quite different aspects in the labor issue. I do not think that you can say that these things are black and white. You can do a lot within the environmental issue and trade terms, and you can do a lot with trade to affect the environment and investment and a whole variety of other things.

RONALD PUMP: When we talk about what the United States tries to do to promote democratic values, it makes us feel good to encourage other countries to have fair labor standards, whether it is the right to associate or to eliminate child labor, both of which you have to support. The question is whether or not they should be in a trade agreement. If you put these values in a trade agreement and they are violated, you have to impose trade sanctions and you add a factor of unpredictability into trade. I don't think anyone is in favor of child labor or prison labor.

CHANG OH-TURKMANI: I think I have a different viewpoint. Of course, the United States or any nation will have its own standards and principles regarding labor or the environment, and, of course, we are against child labor and prison labor, but you must remember that Panama is very different. In this type of negotiation that takes place, you cannot just say, "What is the U.S. position with respect to Panamanian labor?" It has a lot to do with the overall general policy of the United States Government concerning Panama. You have to take many things into consideration. You cannot specify certain issues. You must look at the general policy when you negotiate with the United States or any other country.

FRANCISCO VELASQUEZ: I think that Mexican workers have higher standards than the United States. They have the right to ten percent mandatory profit sharing, and this is one of the reasons U.S. companies go to Mexico. The U.S. companies have a holding company, and under that they form a service company, and finally they have an operating company where they keep the profits in order to avoid the ten percent distribution. There were two cases brought by U.S. unions with the NAFTA Labor Commission. One involved a single individual who worked for Sony, and the other one involved the right to form a union. The two cases have not been reversed. Little by little

Americans who claim that Mexico has lower labor standards will learn that this is not true as a result of these types of cases and this type of reality. Regarding the issue of transparency, to me transparency is having clear rules and regulations in order to reduce, to the extent possible, the discretion of authorities.

ROBIN ROSENBERG: I have never been accused of being cynical. I am actually one of the few people out there who thinks the President will get fast track authority. Apart from supporting environmental values, I certainly support labor values. I think the fundamental point to make is that free trade is compatible with these worker positions. When I lived in Spain from 1985 to 1989, I watched worker compensation improve in real terms, and I watched prosperity increase, not for everyone, but overall. I saw how free trade within the European Union could even out wages that started at thirty-three percent of German wages and worked their way up to sixty, seventy percent of German wages. Something along that scale has to happen in this hemisphere. That is why free trade can really help.

DANIEL BRADLOW: Thank you. This has been such a rich discussion, I won't attempt to summarize it in any way. I will merely note that someone once commented to me that he thought the most revolutionary force in the world today was globalization and the impact of free markets on countries. People think that what they are letting in when they liberalize their economies is just more goods and services and more competition, but what follows in the wake of free trade is a whole series of cultural, legal, and social changes that have a profound affect on our lives. Let me end by thanking all the panelists for a very rich and stimulating discussion and to thank all of you for coming.