John Tower. (The FBI summary consists of the following parts: (1) summary memorandum (undated [December 13, 1988]); (2) summary memorandum (December 23, 1988); (3) summary memorandum (undated [January 6, 1989]); (4) summary memorandum (January 13, 1989); (5) summary memorandum (undated [January 25, 1989]); (6) summary memorandum (February 8, 1989); and (7) summary of the ongoing investigation not yet completed by the FBI.) Since these documents are the property of the Executive branch and involve extremely sensitive information, they will be made available only through the Office of Senate Security located at Room S–407, United States Capitol. Only Senators on the SASC and not more than 6 designated SASC staff members (as determined and designated by the Chairman, SASC, and the Ranking Minority Member) and designated members of the Executive branch shall be granted access to these documents at this location. The names of the designated staff members shall be provided, in writing, to the Counsel to the President prior to their being given access to the documents; and the names of the Executive branch officials shall be provided, in writing, to the Chairman, SASC, prior to their access at this location. A record of all persons using these documents in Room S–407 shall be maintained.

Access to these documents will be limited to Senators on the SASC and the 6 designated SASC staff members. These documents may be reviewed in Room S–407 only; no additional copies may be made; and no documents may be removed. Any notes derived from these documents shall be treated as sensitive and shall be used only in connection with the Committee's Executive Session deliberations (and vote). At the conclusion of the Committee's deliberations (and vote), any notes shall be destroyed or considered part of the FBI documents for purposes of this Agreement.

Within 14 days of the conclusion of the Committee's deliberations (and vote) on Senator Tower's nomination, these documents will be returned to the Counsel to the President unless another agreement has been reached with the Senate leadership.

SAM NUNN,
Chairman, Senate Armed Services Committee.
JOHN WARNER,
Ranking Minority Member.
C. BOYDEN GRAY,
Counsel to the President.

THE WHITE HOUSE,
Washington, DC, February 14, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: With respect to our conversation last Friday regarding access by the Senate Armed Services Committee to the Federal Bureau of Investigation's (FBI) summary of its background investigation of Senator Tower in connection with his nomination as Secretary of Defense, I am gratified that we have now reached an understanding on the way in which we will proceed.

I believe the fact that all of the Committee's subsequent deliberations involving the FBI summary on Senator Tower's nomination will occur during Executive Session only, that this nomination has significant national security implications, and the unique nature of the allegations concerning Senator Tower warrant a one-time-only exception to the procedures governing access to FBI background investigations by Committee members.

The documents we will provide are extremely sensitive. Their disclosure could jeopardize the privacy interests of Senator Tower and others, the confidentiality of FBI sources, the FBI's ability to conduct background investigations, and our ability to recruit qualified candidates for positions of governmental service. Therefore, I am pleased that we have agreed on ground rules for Committee access that suit our purposes and yours. The enclosed Terms of Access sets forth the procedures for access, custody, storage, and return to the Executive branch of the FBI background summary. With this understanding, we are prepared to deliver copies of these documents to your Committee immediately.

I believe that this understanding will make it possible for the Committee to proceed expeditiously on this nomination once the FBI has completed its investigation.

Sincerely,

C. BOYDEN GRAY,
Counsel to the President.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WAIVING CERTAIN PROVISIONS OF THE TRADE ACT RELATING TO THE APPOINTMENT OF THE U.S. TRADE REPRESENTATIVE

The PRESIDING OFFICER (Mr. GREGG). Under the previous order, the clerk will report Senate Joint Resolution 5.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 5) waiving certain provisions of the Trade Act of 1974 relating to the appointment of the United States Trade Representative.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I believe under the unanimous-consent agreement the amendment by Senator HOLLINGS is in order at this time.

The PRESIDING OFFICER. The Senator is correct. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, as I understand, the pending business is that I send to the desk an amendment to the waiver amendment of the committee; is that at the desk?

The PRESIDING OFFICER. The Chair would observe that the desk does not have the amendment.

Mr. MCCAIN. The waiver amendment is the pending business. What is not at the desk is the amendment of the Senator from South Carolina to the waiver.

The PRESIDING OFFICER. The observation by the Senator from Arizona is correct.

AMENDMENT NO. 19

(Purpose: To require Congressional approval before any international trade agreement that has the effect of amending or repealing statutory law of the United States law can be implemented in the United States)

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 19.

On page 2, after line 8, insert the following:

SEC. 2. CONGRESSIONAL APPROVAL OF CERTAIN TRADE AGREEMENTS REQUIRED.

No international trade agreement which would in effect amend or repeal statutory law of the United States law may be implemented by or in the United States until the agreement is approved by the Congress.

The PRESIDING OFFICER. The Chair announces there are 3 hours equally divided on the amendment by the Senator from South Carolina.

The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair. Mr. President, I ask that the distinguished senior Senator from North Carolina [Mr. HELMS] be added also as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, the amendment that has just been read is so simple, so fundamental. I am hearkening to our new Members of the U.S. Senate, just in January, a few weeks ago, ''I hereby pledge to support and defend the Constitution of the United States.''

This is constitutional language, that no international agreement that would, in effect, amend or repeal statutory law can be implemented until approved by the Congress. Under the Constitution, article 1, section 8, it is the duty of the Congress to regulate foreign commerce—not the executive branch; not the executive branch.

Obviously, to really change the law you would have to have three readings in the House and three readings in the Senate and signed by the President. The fact that this amendment, which I tried to make as clearcut and as principled as it possibly could be, where there would be no confusion, has been so vigorously opposed by the White House and certain ones in Congress that there is no doubt in my mind that with respect to foreign trade, with respect to global competition, we are in the hands of the Philistines, we are in the hands of the multinationals. Rather than the Congress controlling the multinationals and international trade, the multinationals, by this initiative, are controlling the Congress.

What is the initiative? Well, they could not find any language to amend my amendment. They could not find anybody to really object to it. What they did do, then, was to say, well, we will get some letters written—incidentally, by people who had nothing to do with this particular part of the telecommunications bill—and the comments were that Mr. ARCHER of the

Ways and Means Committee over on the House side then sends a letter on the one hand, saying that he would blue slip this particular appointment of Barshefsky in that the Hollings amendment would involve revenues.

You know that is not going to happen. I think they made some bad mistakes over on that side. I think they have sort of redeemed themselves from the contract. They certainly have redeemed themselves from three budgets. In 1995, they said the President was inconsequential and that they had three budgets, and whether you agreed or not, that is what they were going to do. Now they say, Mr. President, ''Please give us a second budget.'' They do not even give one, much less three. But I do not think they would revert back to nonsensical conduct and try to act like an appointment to be confirmed by the U.S. Senate wherein it had a rider that the law be obeyed, the Constitution be supported and defended. ''Protect and defend'' is the oath we take, and that involves revenues. But be that as it may, Mr. President, that is exactly what they have done. And more recently, they have come by—and I have been vitally interested—and one of the ambassadors in the United States Trade Representative's office was to be appointed ambassador in charge of trade there at Geneva—we have written letters and made calls to the White House—Ms. Rita Hayes. Now we have calls in, indirectly, that that can't be had or done. I think it was about to be approved—''unless HOLLINGS gives up his amendment.''

So they have tried every shenanigan in the world, which tells me—and should tell this Congress—that the executive branch is going to make its agreements, come hell or high water, and they could care less. Not a treaty, but just executive agreements. The media and everybody is supposed to go along and say, well, I think the Senator is right, but we have to go ahead with this appointment. They are changing the law. They admire the three readings in the House and the three readings in the House with respect to Ms. Barshefsky. She does not previously qualify having registered British Steel and foreign competitors. They passed that waiver out, and it no doubt will be adopted here in the U.S. Senate, but to just say ''provided further, that if she enters into an agreement that would amend or change statutory law, that before it be implemented, it first must be approved by Congress.'' Just as simple as that.

So let's get right to the ''meat of the coconut,'' as they say, because this has been going on for 2 years. This isn't any last minute—one of the letters from one Senator said this is a last-minute attempt. Oh, no, this isn't last minute. We had hearings on foreign ownership of telecommunications. We have had testimony of the different entities. Mr. Reed Hunt, the Chairman of the Federal Communications Commission, who was at one time conspiring for this particular approach—I don't know where he is now, but I am checking him. I quote Mr. Hunt:

> I am concerned about the prospects of foreign monopolies being able to buy into our markets while they are still monopolizing their home markets. And as global media developments occur, as the Congressmen mentioned earlier, we must be attentive to the fact that if a foreign company is a monopolist in its own country, it has a prospect of using that monopoly to leverage unfair competition into this country. I am concerned about that.

That is in May 1995, almost 2 years ago.

Mr. President, we also have the statement of the FBI and the DEA, who wrote, also, in May 1995:

> Even with the foreign corporation as privately held, we believe that a foreign-based company could be susceptible to the influence and directives of its own government. There are numerous examples of foreign companies being used and directed by their governments to carry out, or assist in carrying out, government intelligence efforts against the United States Government and all major corporations.

That is a letter to the Honorable JOHN D. DINGELL, on May 24 1995, by the Director of the Federal Bureau of Investigation, Judge Louis J. Freeh, and the Administrator of the Drug Enforcement Administration, Thomas A. Constantine.

Mr. President, the law that we are talking about, and the two sections—section 310(a) of the statutory law of communications—''The station license required under this act shall not be granted to or held by any foreign government or the representative thereof.'' Section 310(b) limits any owning or controlling interest to 25 percent.

Now, I understand somebody is going to say the special trade representative never testified. We had numerous meetings. You have to know how the executive branch works. We haven't had any hearings from them once they got the agreement here in February, just last month—any hearings on the agreement, or anything else of that kind. They just gave away 100 percent in violation of 310(a). They didn't just do the 25 percent in 310(b). They go in, as naive as get out, I can tell you that. I want to build a bridge back to the old-fashioned Yankee trader. Come in and say, look, we have the largest and the richest market; what can you come up with? Let's see what you propose and we will work with it. Instead, like goody-goody two shoes, this touchy-feely crowd that we have up here in Washington says, ''We will give you 100 percent and let's see what you come up with.'' Nippon Telephone & Telegraph says, ''Thank you for the 100 percent, bug off, you get nothing from us.'' And you go down the list. No country gave us any kind of 50-percent ownership. Our best of allies and friends in international trade, Canada and Mexico, in NAFTA, said, ''No, you can't get a 50-percent.'' Under 50 percent. So you can see what a spurious approach they used, in violation of the law.

So I talked to Ambassador Kantor at that particular time, back in 1995, and Senator BYRD wrote a letter on April 3, 1995. And, again, Ambassador Kantor, the United States Trade Representative, came forward with his letter and acknowledged the law. I think that is the important part, because in his letter back to Senator BYRD on April 24, 1995—I am trying to congeal it so everybody understands it—I ask unanimous consent that this letter from Michael Kantor, dated April 24, 1995, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

APRIL 3, 1995.

Ambassador MICKEY KANTOR,
U.S. Trade Representative,
Washington, DC.

DEAR MR. AMBASSADOR: The Senate will soon take up S. 652, the Telecommunications Competition and Deregulation Act of 1995, to promote competition in the telecommunications industry. I am writing to solicit your views on the revision of foreign ownership provisions, specifically the revision of Section 310(b) of the 1934 Communications Act.

As you may know, the Commerce Committee's reported bill would allow the FCC to waive current statutory limits on foreign investment in U.S. telecommunications services if the FCC finds that there are ''equivalent market opportunities'' for U.S. companies and citizens in the foreign country where the investor or corporation is situated.

I would like to have your assessment of the impact of this provision for both enhancing the prospects of U.S. penetration of foreign markets, and for foreign investment in American telecommunications companies and systems.

Specifically, what impacts and advantages can we anticipate will result from enactment of this provision on the ongoing negotiations in Geneva on Telecommunications which has been established under the GATT, to be incorporated into the General Agreement on Trade in Services?

Second, which markets in Asia and Europe are now closed to U.S. telecommunications services in such a way that action on the basis of the concept of Reciprocity in the Senate bill is likely? What timeframes for such action, if any, would you contemplate?

Third, what has been the position of nations whose markets are closed to U.S. telecommunications services in the way of justifying their lack of access, and what likely reactions can we anticipate from those nations as a result of this legislative provisions?

What role do you think can be most usefully played by your office in effectively implementing the provision that has been recommended?

Lastly, in analyzing the legislation reported from the Senate Commerce Committee, do you have any suggestions as to how the provision might be strengthened to better serve the goal of opening foreign markets to U.S. telecommunications services and products?

Thank you for your attention to this matter.

Sincerely,

ROBERT C. BYRD.

Mr. HOLLINGS. I will just read one line:

> By amending the legislation as we suggest, the Congress would provide effective market opening authority for both multilateral and bilateral negotiations on basic telecommunications services.

I emphasize the phrase ''by amending the legislation as we suggest,'' because you got the U.S. Trade Representative Barshefsky, she says, ''You don't have to amend it now. I got agreement. Take it and like it or else.'' But that isn't what the U.S. Trade Representative said in 1995. We heard about this. So on April 25, we wrote a letter—the distinguished majority leader, Senator TRENT LOTT, the distinguished Senator from Texas, KAY BAILEY HUTCHISON, the distinguished Senator from Hawaii, DANIEL K. INOUYE, and myself.

I ask unanimous consent that this letter to the President on April 25, 1996, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, April 25, 1996.

Hon. WILLIAM J. CLINTON,
The President,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our concern with the current negotiations governing trade in telecommunications services. The United States has an open and competitive market for telecommunications services. U.S. companies are the most innovative in the world. Current negotiations should not result in an agreement that unilaterally opens the United States market while barriers, both formal and informal, continue to keep U.S. companies out of foreign markets.

We are deeply concerned about the effects of any trade agreement, including a review by a dispute settlement panel of the World Trade Organization (WTO), on the independence and integrity of the Federal Communications Commission (FCC). Congress did not make any changes to the foreign ownership limitations of the Communications Act when it enacted the Telecommunications Act of 1996 (P.L. 104–104).

We believe strongly that the public interest test contained in the Communications Act of 1934, as amended, must be retained and that current practices governing foreign investment not be altered. Any change in current U.S. law and FCC practices as a result of any trade agreement should be done only with the approval of the Congress in accordance with our Constitutional obligation to regulate foreign commerce.

With kindest regards,

Sincerely,

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
TRENT LOTT,
KAY BAILEY HUTCHISON.

Mr. HOLLINGS. Mr. President, we cite thereon the independence and integrity of the Federal Communications Commission. ''Congress did not make any changes to the foreign ownership limitations of the Communications Act when it enacted the Telecommunications Act of 1996.''

What really occurred was, on the Senate side, we said, fine, we will go along on a majority percentage of ownership by a foreign entity if there is reciprocity. If there is an equal opportunity for U.S. companies to own and control, we will let them own and control, under certain circumstances, with, of course, Judge Freeh's and Mr. Constantine's inhibitions, and we had the same concerns. We would study them and go over them very closely. We had reciprocity with the snapback provision. I authored it. We put it in the bill after hearings and said, look, if the country changes its mind or comes under improper control and they kick us out, snap back, kick them out. Fair is fair. We thought that very reasonable to move an agreement on the international telecommunications. But the representatives of the White House, in particular the Special Trade Representative, now called U.S. Trade Representative, started dealing with Mr. OXLEY on the House side. And we were in the conference.

So all during 1996 in that particular conference, we worked around and we worked around. Finally, in December, I talked to our friend Mickey Kantor, the Ambassador. I said, ''Mickey, we can't get together on this one. There is not going to be any change. Whatever agreement you make will just have to come back. Maybe that is the way. If you want some change in the law, then come on back to Congress.''

We have debated it already now for 3 years. We would be glad to get together on it. But with all the facets of the upgrading and the revision of the 1934 telecommunications act and considering all the various decisions made over a 60-year period, we couldn't agree.

So Ambassador Kantor said, fine, that is what they would do. However, in the early part of the year when we came back—again negotiating all during 1996—to the Congress just a couple of months ago, we kept hearing again that we were somehow going to be ignored and that they were making offers over there.

Mr. President, on February 4, 1997—again Senators ROBERT BYRD, BYRON DORGAN, DANIEL INOUYE, and FRITZ HOLLINGS—the four of us joined in a letter to the White House saying that the USTR should not commit the United States to a trade agreement that limits the scope of the public interest test administered by the FCC, and any changes to current U.S. law should be done only with the approval of the Congress.

So it was clear in January and February, long before they made the agreement, that we were watching closely as best we could. I met on January 17 with Ambassador Barshefksy. I want it clearly understood that at that particular time we meant exactly what we said. I cautioned her. It was on January 17. I had already met. That is why we sent that February letter. When I met with Ambassador Barshefksy, it was crystal clear to this Senator. I have been up here 30 years. I am the senior junior Senator. And my friend STROM says, ''You had better get used to it.'' But I dealt with these trade representatives way back into the 1950's, 40 years ago. I have handled clients as a practicing lawyer, when the individual continues to not answer the question and is sort of hugging up to you and says, ''I want to work with you, I want to work with you, I want to work with you.'' I said to Ambassador Barshefksy, ''Madam, I do not want you to work with me. I want you to work with that statute. Don't go over and say you did not know anything about it because we have been in the debate, and you are going to have many Members really turned off on this one, and we will have to take action.'' But it was quite apparent to me with that ''I want to work with you'' stuff that she had no idea of working with us in good faith. Of course, now we know.

As reported in the Journal of Commerce on February 19, 1997:

> The United States decision to end its statutory restrictions on foreign investment in this sector was crucial to carrying along a global deal in which the rest of the world has made varying levels of commitment to similarly open their markets.

So, to end the statutory restrictions, we have not extended the statutory restrictions. Nothing has been happening. There has not been three readings in the House nor three in the Senate. We haven't even debated it here this year. But they already have the trade press quoting exactly what the public official of the U.S. Government is saying. Here we are all in the uproar. We have the special committees, the independent prosecutors, ''Get them, get them, foreign influence on policy. We can't have anybody give us a contribution and influence policy.'' And over here, while we are not looking, a public official of the U.S. Government is giving it away in violation of section 310(a) and 310(b) of the communications act. So, yes, I talked to Members. I said, ''I just want to make it crystal clear that either we are going to go to conference''—like our lawyer friend Sullivan, who said, ''I am not a potted plant''—''or else we will let the executive pass its own little laws, and we can go on home and forget about trying to work up here to set some valid policy.''

So thereby is the amendment.

Mr. President, it is interesting. I must report to you that even while Ms. Barshefsky couldn't get it, I read that the Canadian official reported in the Wall Street Journal—and, I quote again, prior to the amendment—''We think that when you look at the overall package, our offer is every bit as good as the American offer.'' However, Canada ''has serious reservations about the United States proposal because it won't be backed by U.S. legislation.'' At least the trade negotiator from Canada got my message. I never have talked to that individual. But I can tell you now, we could not get through. We couldn't get through at all.

You have to understand along this line, Mr. President, because you are from the hinterlands where people think straight, that you can tell why this crowd up here operates in the beltway and miasma totally of their own dreams. And when we as Senators go

home—Oneita Mills, which just a couple of months ago closed down, was just not a complicated operation making T-shirts. But I got there some 35 years ago when I was Governor—and I am proud of it—in a little country town of Andrews, SC, and I got 487 employees, and Washington says, ''Don't worry about it. What we need is retraining, retraining, retraining.'' The former Secretary of Labor, my friend Bobby Wright, that is all he thinks: Skills, skills, skills, retrain. We have skills coming out of our ears. We manufacture automobiles. They didn't go to Detroit. We never made one. But we have the skills, and we put in there a technical training system. I put it in. In 1961, we broke ground up there in Greenville on a garbage dump. I guess EPA would catch me now. But that is where the school is. And I broke ground for 16 others. We got the skills.

But back to Oneita, they said, ''Retrain, retrain; get another job; we don't have enough skills. You don't understand the problem. We up here in Washington understand the problem.'' Nonsense. Assume that they retrain as computer operators; tomorrow morning you have 487 computer operators. The average age at Oneita was 47 years of age. Are you going to hire the 47-year-old computer operator or the 20- or 21-year-old? You are not going to assume the retirement costs and the health costs of the 47-year-old. They are out.

Yes, I see it when I look at that GE plant that I brought in from Brazil. In the competition they said, if you want to sell those transformers to us, you are going to have to move your plant. So when I brought one to South Carolina, they closed the plant down and GE is gone, moved offshore.

Malaysia, Baxter Medical. I brought that one in, but we are still giving tax incentives to invest overseas, so they closed down last year and they have gone to Malaysia. Saturday before last, Sara Lee in Hartsville, with 187 jobs, gone to Mexico.

We lost, in the year 1995, 10,000 textile jobs in South Carolina, and I think an equal amount this past year. I am trying to get the figure. When they talk about educate, educate, educate, educate here at the White House, they better buy a few books and read them themselves. They better get hold of ''Looking at the Sun,'' by James Fallows, or ''Blindside'' by Eammon Fingelton or ''The Future of Capitalism,'' by Les Thurow, or our friend Bill Greider, ''One World, Ready or Not,'' and, of course, the most recent book by Robert Kuttner ''Everything For Sale.'' You begin to sober up and understand what the head of Motorola, in Malaysia said as quoted by Mr. Greider that the people of America have no idea in the Lord's world what is happening to them.

What we are doing is making the exception the rule. And what is the exception? The exception is free trade, free trade, free trade. Adam Smith, market forces, market forces. After World War II, that was a valid contention. We had the dominant auto industry. We wanted to foster capitalism in the emerging Third World. We were looking for freedom and democracy to be spread into Europe and into the Pacific rim. So we taxed ourselves by billions for the Marshall Plan and thereupon coaxed our industries to invest overseas. And invest they have.

But if you want to see the sheep dog gobbling up the entire flock, you ought to watch these multinationals that we created. The nationals went over. They resisted it at first. They could not speak the language. The air flights were not good. They did not get good food on them or anything else of that kind. But gradually they learned that in manufacturing, 30 percent of volume is in labor cost—payroll. And you can save as much as 20 percent in a typical manufacturing entity by moving to a low-wage country. So it is that an entity, a manufacturing company that has $500 million in sales can keep its sales force, its executive office back here at the home headquarters but move its production, its manufacture to a low-wage country and make itself $100 million, or it can stay here, continue to work its own people and go broke.

That is what is going on. How do you get that through the news pages so they understand it?

So the nationals gradually became over the 50-year period since World War II, multinationals, and then the national banks, Chase Manhattan and Citicorp, as of 1973, made a majority of their profit outside the United States. So you have got the multinational corporations and the multinational banks. And thereupon you have them making their money and coming back in with the consultants and the takeover of all the think tanks and everything else.

I can bring you right up to date. They just established a chair at the Brookings Institute on free trade, and do you know who is financing it? Toyota. Toyota. So Brookings comes and says, this is great about free trade. Oh, sure, those multinationals, they joined up with the foreign countries. The foreign countries want to dump everything. The multinationals want to manufacture and dump everything back here.

Then, of course, the retailers. The retailers, we proved here in many a debate, do not lower their price. They make a bigger profit. So every time we bring up a reciprocal trade measure or try to get customs agents, which are needed because there is over $5 billion in transshipments in violation of our agreements, whenever we try to get that, the retailers are up here pigeonholing every Senator.

So you have the multinationals, the multinational banks, the consultants, the campuses, the think tanks, and then read ''Agents of Influence,'' by Pat Choate, and that was back 7 years ago when Japan, one country, had a $113 million retainer of—I don't know how many law firms or whatever it was around here—representatives. I got up at that time the total salaries of all the House Members, 435, and all the Senators, 100. Of the 535, we were only paying to have represented the people of America some $71 million. Japan was better represented in Washington at $113 million.

Read the book and you will see how these U.S. Trade Representatives, after putting in time here, went to represent the other side. That is why we have the waiver. Senator Dole said you cannot represent a foreign entity and then come in here and represent us. But, of course, the Finance Committee is in a fix, and there we are. There we are, in the hands of all the lawyers around here. There are 60,000 lawyers registered to practice in the District of Columbia. That is more lawyers than the entire country of Japan. And they come around here and they hate lawyers, they hate lawyers. They are all billable hours. Get yourself charged on an ethics charge and try to find one for less than $400 an hour. They have never been in the courtroom. They never tried a case. They come around here. They ought to all go to work for O.J. Fix that jury. Fix that Congress. That is what we have on us, and you cannot get a word for anybody to represent the reality of this global competition.

There are two schools—two schools of international trade. One, of course, is Adam Smith, the market forces, fostered by David Ricardo, comparative advantage, comparative advantage. But the other school, Friedrich List, which is almost top secret in this body: The strength and the wealth of a nation is measured not by what it can consume but by what it can produce. And that is the global competition. None of them have gone down the road of Adam Smith. They have all gone down the road of mixed economies, and that is what built the United States of America. That is what built this great economic giant, the U.S.A.

The earliest day after we had won our own freedom, the Brits corresponded back to our forefathers and they said, now, as a fledgling little colony here, you have gotten your freedom. You trade back with us what you produce best and we in Great Britain will trade back what we produce best—free trade, free trade, free trade. Alexander Hamilton wrote a book that there is one copy of under lock and key over here at the Library of Congress. I will not read the booklet. We have had a copy of it in my file. But in the line, Hamilton told the Brits, Bug off. We are not going to remain your colony. We are not going to ship our natural resources, our timber, our coal, our iron, our wheat, our farm stuffs, and you ship back the finished products. We are going to make ourselves economically strong. And the second bill that ever passed this U.S. Congress in its history—the first had to do with the seal of the United States—but on July

4, 1789, the second bill to pass this Congress was a tariff bill of 50 percent on 60 different articles. We started with protectionism, protectionism, protectionism.

Later, when we were going to build a transcontinental railroad, they told President Lincoln we could get the steel from England. He said, No, we are going to build our own steel mills. And when we are finished, we will not only have the transcontinental railroad, but we will have an industrial steel capacity.

Again, in the darkest days of the Depression, when people were in food lines, Franklin Roosevelt, with his Economic Recovery Act, put in—what?—put in subsidies for America's agriculture, payments to the farmers that continue today, and protective quotas. And therein is the wonderful success story of America's agriculture.

So, we say, ''Preserve, protect, and defend.'' We have the Army to protect us from enemies without, the FBI to protect us from enemies within, we have Social Security to protect us from the ravages of old age, Medicare to protect us from ill-health—we can go right down the functions of Government. When it comes down to a competitive trade policy, we are in the hands of the Philistines, the multinationals. They are pulling our strings. They want fast track. They do not want any debate. They want to just pass the bills and, if you don't do it, we will make the agreement anyway and bag it. Bug off. That is what they are telling us. So we put in our amendment.

I have had long experience in this field. I testified during the 1950's. I came up here and testified before the old International Trade Commission, and Tom Dewey represented the Japanese. He chased me around the room for a couple of days, and he said, ''Governor, what do you expect the Third World emerging countries to make? Let them make the shoes and the clothing, the textiles. And we, in turn, in the United States, we will make the computers and the airplanes.''

Now, they do not realize it—yes, they are making the shoes: 89 percent of the shoes on the floor of this Congress are imported; two-thirds of the clothing in this Chamber is imported. They are making the shoes and the clothing, the textiles, but they are also making the cameras, the watches, the electronics, the machine tools. You can go right on down the list. And the computers and the airplanes—all of it.

Wake up, America. The majority of that Boeing 777 is made offshore, a good bit of it in China, the People's Republic of China. There are some of them who want to say Communist China, we are going to get a Communist China airplane to ride around in. That is how far we have come, but they do not want to admit to it.

So, there we are. What we have is a situation of the typical promises they make. I am prepared to get into those promises, Mr. President, but, perhaps, I see my distinguished colleagues have been very patient with me. I guess they would be glad to be heard at this time, so I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, under the unanimous-consent agreement, an hour has been provided for the chairman and ranking member of the Finance Committee for debate on the resolution. I will yield myself such time as I may take from that hour.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ROTH. Mr. President, I rise to voice my strong support for Charlene Barshefsky as U.S. Trade Representative. Her nomination was favorably reported by a unanimous vote of the Finance Committee on Thursday, January 30, 1997. It is evident that the nomination of Ambassador Barshefsky has wide bipartisan support in the Senate. This is not surprising when one looks at the impressive record she has compiled as a trade negotiator at the Office of U.S. Trade Representative, first as Deputy USTR and then as acting USTR.

During her nearly 4 years at USTR, Ambassador Barshefsky has succeeded in negotiating an impressive list of multilateral and bilateral trade agreements aimed at opening foreign markets to U.S. exports. She has also distinguished herself as a vigorous advocate and defender of U.S. trade interests. For example, most recently, Ambassador Barshefsky concluded an important agreement on insurance with the Japanese—a matter I was actively involved in on behalf of the United States insurance industry. If this agreement is fully implemented by the Japanese Government, it should result in substantial new opportunities for United States insurance providers.

Similarly, at the World Trade Organization Ministerial in Singapore last December, Ambassador Barshefsky was successful in pushing other nations to conclude a landmark agreement to eliminate tariffs on information technology products. Once put into effect, this Information Technologies Agreement will result in billions of dollars in savings to U.S. companies and consumers.

However, Ambassador Barshefsky has also shown that she can reject bad agreements. She refused to enter into an agreement on trade in financial services that could have left U.S. financial service providers in a worse position than before. Similarly, during the negotiations on telecommunications services last spring, she had the resolve to walk away from the table when other countries had presented patently insufficient offers to open their telecommunications markets.

Her hard-nosed stand in the telecommunications talks forced countries to make substantial improvements in their offers, and the result was a historic agreement reached on February 15 to liberalize trade in basic telecommunications services.

The Agreement on Trade in Basic Telecommunications Services will save consumers hundreds of billions of dollars and will allow our telecommunications industry to compete in foreign markets that were previously closed to them.

Given these accomplishments and her demonstrated toughness and resolve on behalf of U.S. interests, I think there is no question but that Ambassador Barshefsky is extraordinarily well qualified for the position as U.S. Trade Representative. Indeed, her achievements, negotiating skills and professionalism remind me of another able woman USTR, Carla Hills.

We enter a time when we greatly need as U.S. Trade Representative someone with the qualifications that Ambassador Barshefsky brings to the position. The next USTR will be called upon to manage a number of difficult trade issues, including the increasingly complicated trade relationship with China.

Specifically with respect to China, we face a ballooning trade deficit and increasing tensions on trade matters with that country. Moreover, we will soon enter again into the annual debate over whether China should continue to enjoy normal trade relations with the United States, at a time when congressional views on this question will be influenced by China's action during the reversion of Hong Kong to the People's Republic this July.

Ambassador Barshefsky will also be responsible for negotiating with China to ensure that it enters the World Trade Organization on commercially viable terms, which provide for meaningful market access and a commitment from the Chinese to observe the basic rules of the WTO.

In addition, Ambassador Barshefsky will be the administration's point person with respect to the difficult issue of renewal of fast-track negotiating authority. She will also carry the responsibility to ensure that the trade liberalization initiatives through the Free Trade Area of the Americas, the Asia Pacific Economic Cooperation Forum, and the Trans-Atlantic Marketplace proceed according to schedule.

These are all important issues, and I am most confident that they will be handled appropriately working with someone like Charlene Barshefsky.

I would like to comment on the issue of the Ambassador's work for the Government of Canada and the Province of Quebec while practicing law in the private sector.

Questions have arisen whether this work may fall within the terms of section 141(b)(3) of the Trade Act of 1974, as amended in 1995 by the Lobbying Disclosure Act.

That provision prohibits the President from appointing any person to serve as Deputy USTR or U.S. Trade Representative who has directly represented, aided, or advised a foreign government or foreign political party in a trade dispute or trade negotiation with the United States. In my opinion, the vagueness of this new law and the fact that there was no debate or legislative history on the provision when it was added to the Lobbying Disclosure Act, make it difficult to determine whether it covers or even should cover Ambassador Barshefsky's work in the private sector.

In order to resolve this matter, the President formally requested Congress to enact legislation waiving the law in this instance. Senator MOYNIHAN and I agreed that under these circumstances, a waiver was warranted and, therefore, we jointly introduced Senate Joint Resolution 5 to waive the prohibition.

For those who may have questions or concerns about this waiver, I want to point out that Congress has previously passed legislation to waive a statutory requirement on who may serve in a particular Government position with respect to a specific nominee. For example, in 1989, Congress passed a waiver of the law requiring that only a civilian may be appointed head of NASA, so that Rear Adm. Richard Harrison Truly could be appointed NASA Administrator. In 1991, Congress, once again, passed a waiver of the law requiring that only a civilian may be appointed head of the Federal Aviation Administration so that Maj. Gen. Jerry Ralph Curry could be appointed FAA Administrator.

I would also like to say specifically with respect to Ambassador Barshefsky that as Deputy USTR, she has been exempt from the prohibition in the Lobbying Disclosure Act. She has been forthcoming in providing information to the Committee on Finance about the nature of her work while in private practice.

Moreover, in response to a question from me at her nomination hearing, the Ambassador stated that she had never lobbied the U.S. Government on behalf of a foreign government or a foreign political party.

So under these circumstances, and in the interest of moving her nomination as expeditiously as possible, the entire Senate Committee on Finance agreed that a waiver was appropriate in this case and voted unanimously for the joint resolution. Therefore, I hope that all Members of the Senate will also agree that the waiver is in the best interest of confirming this nominee who clearly enjoys broad bipartisan support and has already demonstrated that she is eminently qualified to serve in that position.

Mr. President, I reserve the remainder of my time, and I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise, as is so frequently and pleasantly my lot in this Congress, to support entirely the major statement made by the chairman of the Committee on Finance, our revered BILL ROTH of Delaware.

As he stated just now, this proposal for a waiver, a very technical matter, a prudent matter, comes to the floor of the Senate as a unanimous action of the Committee on Finance. Just last week, we had a revenue measure which also came to the Senate with the unanimous agreement of the Finance Committee and was duly enacted and is now, in fact, law. The President signed that measure.

We are acting today at the request of the administration, which has a very proper principled concern that if there is any question about the application of this statute, then let that question be resolved by a waiver, which is what we are doing.

In the specific instance, Mr. President, as an attorney in practice here in Washington, Ambassador Barshefsky provided legal advice to the Government of Quebec on softwood lumber countervailing measures—I do not fully claim to understand that—and to the Government of Canada itself.

As the chairman has observed and noted—was she seeking to influence actions here in the Congress? She gave legal advice. I cannot but doubt that there are any number of solicitors in Ottawa who provide advice to American firms on trade matters between the United States and Canada. We, after all, have enjoyed a free trade agreement for nearly a decade and more and have been the closest economic partners for a century and more.

The capacities that Ambassador Barshefsky brings to this job are formidable to the point of being dazzling. She is a master of the subject and has a capacity for advocacy of the American position and American interests that is surely unequaled in our time. The chairman referred to one of her predecessors, Carla Hills, who was equally distinguished in this manner.

There has not been a more dramatic example of American diplomacy—because we are talking about relations between nations—at its finest. When the much-announced, much-proclaimed agreement on telecommunications last year found the other nations unwilling to make the kind of reciprocal agreements that we required which were in our interest and where there were times when negotiators from any country, including our own, would settle for less than what might be appropriate in order to get an agreement, Ambassador Barshefsky did no such thing. Charlene Barshefsky did no such thing. She walked out of the conference, only to come back in the recent weeks with a triumphant telecommunications agreement of the very highest importance to this country.

She did it because she is a firm representative of the U.S. interests and can be someone of just a little hard edge when that seems important. Her arrival in a place like Singapore is front page news. I hope she would not mind that on certain Asian missions she is referred to as the ''Dragon Lady,'' although she has disarming, personable qualities. She is a tough negotiator.

I make this point simply because there is one overriding issue upon us right now—as a trading nation, as the world's largest trading nation, and the sponsor of the World Trade Organization—and that is, as the chairman indicated, the terms on which the People's Republic of China will be granted admission to the World Trade Organization, the terms which are going to make it be the real test of that organization. And it will be decisive to its future.

It started well. It took a long time to get going. As the chairman knows, in the Dumbarton Oaks agreements that were reached with the United Kingdom at the end of World War II, we contemplated there would be three major international institutions: The International Bank for Reconstruction and Development, which we know as the World Bank; the International Monetary Fund; and the International Trade Organization—three international organizations, the latter to advance the reciprocal trade programs that had begun in 1934 under Cordell Hull and the administration of President Roosevelt after the calamity of the Smoot-Hawley tariff of 1930.

The World Bank was duly established. The International Monetary Fund was duly established. The International Trade Organization fell afoul, came to grief, if you will, in the Senate Finance Committee. And so it was a matter of some institutional satisfaction to the committee in the 103d Congress to report out the legislation in which we joined, as had been negotiated, the Uruguay Round, the World Trade Organization to succeed the General Agreement on Tariffs and Trade which had a much more limited, although indispensable, role in the period that followed our rejection of the ITO. And now we have the World Trade Organization.

The terms on which you enter this agreement and have membership in this organization require an economy and economic practices very much disparate, very much at a distance, if that is the correct term, from those practices and that economy which we observe in the People's Republic of China.

The terms on which entry can be negotiated are going to be complex and crucial. And we need a negotiator who can say no. The one thing Beijing needs to understand is that they will be across the table, or at a round table, in Geneva with a negotiator who can say ''No, period.'' Other than that, I think prospects for a successful, perhaps staged, entry are good. It certainly

should not be dismissed. But it must be understood we are not going to reach agreement for agreement's sake, and to that end we have confirmed in the U.S. Senate the appointment of a U.S. Trade Representative who can say, no—will do, has done.

So, Mr. President, I have the great honor to join with our chairman in this unanimous action of the Committee on Finance in reporting to the floor this proposal for a waiver just to be on the safe side of the legal question that might arise—and will not when we are finished today—and also, of course, the nomination of the Ambassador which will follow in executive session.

I see my colleague from Iowa is on the floor. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself 15 minutes from the time on our side.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GRASSLEY. Mr. President, would you please notify me when I have used 14 minutes, because I want 1 minute on the Hollings issue as well.

Mr. President, I rise today to speak on the nomination of Ms. Charlene Barshefsky as United States Trade Representative. Ms. Barshefsky has served as acting USTR since April 1996. So we are all familiar with her work. I have personally worked with her and her staff on several issues in the past year. And I had the opportunity to watch her in Singapore, at the WTO ministerial, negotiate the Information Technology Agreement. Based on her job performance and her international reputation as a strong advocate for U.S. interests, I am prepared to support her nomination today.

Mr. President, the next 4 years will be crucial for U.S. trade policy. We are beginning our fourth year under the North American Free-Trade Agreement and third year under the World Trade Organization. The U.S. Trade Representative must closely monitor the implementation of these agreements to ensure they are working to open markets to American exports.

FAST-TRACK NEGOTIATIONS

The USTR will also serve as President Clinton's point person in several key negotiations. First, she will have to negotiate with Congress on fast track authority. As you know, Mr. President, fast track means that Congress grants to the administration its authority to negotiate trade agreements. Once an agreement is reached, it must be ratified by Congress within a specified period of time and is not subject to amendment.

Fast track is necessary because Congress, alone, has the constitutional authority to enter into trade agreements. But as a practical matter, other nations are reluctant to negotiate agreements with the President, that may later be modified by Congress. So I do believe it's necessary that Congress grant fast track authority to the President.

But fast track is a significant delegation of power. So its crucial that Congress carefully tailor this delegation in order to accomplish its goals. And it's important that the President, in carrying out this delegation, negotiate within the parameters of the authority granted to him.

Herein lies the problem. Congress and the President often have different ideas of what should be included in trade agreements. This administration has made it clear that they want the authority to negotiate on labor and environmental issues under the fast track process. But most of us Republicans don't believe that these issues should be part of trade agreements.

So Congress has not given the President fast track authority since 1994. And our foreign trading partners now doubt the desire of the United States to lead on trade issues. We are being left by the wayside. For example, after 3 years of NAFTA we are beginning to see very positive results. Through the third quarter of 1996, for instance, exports to Mexico just from my State of Iowa are up over 34 percent. The three NAFTA nations are now the world's largest trading bloc. And it's time to begin looking at expanding this free trade area to other nations in the Western Hemisphere.

But this cannot happen without fast track. So I implore Ms. Barshefsky to negotiate with Congress in good faith to achieve fast track. Let's put aside our partisan differences. And let's remember that trade is the focus of these agreements. The United States cannot continue to insist on addressing other issues within the context of trade agreements.

Issues such as environmental and labor standards are very important. But there are avenues other than trade agreements that ought to be pursued to influence the behavior of other countries. And the expansion of trade, itself, with another country can be an effective inroad for making change.

So let trade agreements stand on their own. They are difficult enough to negotiate without taking on the weight of these other issues. I'll have more to say on fast track as negotiations progress with the administration.

CHINA'S ENTRY INTO THE WTO

Mr. President, I hope that Ms. Barshefsky does not have to spend all of her time negotiating with Congress. She also faces very critical negotiations on admitting China as a member of the World Trade Organization. These negotiations could affect the U.S. trade balance for decades. I am reminded of Japan's entry into the General Agreement on Tariffs and Trade in the 1950's. It seems that we are still paying for lowering the standards to let Japan into the GATT.

In the area of agriculture trade, which is very important to my State, these negotiations may determine whether China becomes our largest export market or our biggest competitor. The stakes are extremely high for American farmers.

That's why I'm concerned that some members of the Clinton administration want to let China into the WTO at any cost. So I took the liberty of asking both Secretary of State Albright and Ambassador Barshefsky about the terms of China's entry. I want to quote from their answers in order to get their opinions on the public record.

Secretary Albright said,

> We have requested that China make significant commitments to liberalize its agricultural trading regime, including reforming its state trading system, making substantial tariff cuts, eliminating unjustified sanitary and phytosanitary measures, and binding its subsidy levels.

She also stated:

> If China is to join the WTO, we will need to have a commercially acceptable protocol package of commitments by China to open its markets in-hand before we will agree to China's accession. That means real market access for U.S. goods and services, including agriculture.

Then I asked Ms. Barshefsky to comment on Secretary Albright's statements. She said,

> I fully agree with the two above statements. China's WTO accession can only occur on commercially meaningful terms. And, just as you quote Secretary Albright, that means market access for our goods, services and agriculture to the fastest growing economy in the world.

Mr. President, I am pleased with the way that both Ambassador Barshefsky and Secretary of State Albright responded to my questions. I hope this will continue to be the policy of their agencies.

I understand that it is very important to integrate China into these multilateral organizations. I have always believed that we can encourage change in China more effectively if we engage them economically. But we cannot sacrifice the interests of American workers and farmers by allowing China to subsidy their industries while keeping their markets closed.

So I will continue to monitor very closely the ongoing negotiations with China. And I encourage Ms. Barshefsky to continue to take a hard line on this issue. I'm reminded of a meeting that I had with Ms. Barshefsky in Singapore when we were attending the WTO ministerial meeting. Since it was reported in the local press, I don't think I'm breaching any confidences by repeating it here in the Senate.

There was a meeting of the Quad nations, which is the United States, Canada, Japan, and the European Union, concerning China's entry into the WTO. The local Singapore newspaper reported that Minister Leon Brittan of the European Union argued that bringing China into the WTO was so important that conditions of entry should be relaxed. The Japanese minister disagreed very strongly with this position. And apparently Ms. Barshefsky concurred with the Japanese minister.

I repeat this incident just to point out that there are different views on this issue. Many nations will seek to treat China with ''kids gloves.'' So it is crucial that the United States play a leadership role in assuring that our interests are protected.

NAFTA EXPANSION

A third area of negotiations that could be significant in the next 4 years is the expansion of the North American Free Trade Agreement. President Clinton promised back in 1992 that Chile would become a part of the NAFTA. But the lack of fast track authority has undermined this promise. Now, Chile has moved ahead and signed a free trade agreement with Canada. And they have also become an associate member of Mercosur.

This is a good example of what happens when Washington fails to lead. The rest of the world moves on without us. And the consequences are very real in terms of U.S. jobs and standard of living.

Let's just take Chile, for example. Chile has the potential to become a very important market for United States agricultural exports. Over the last 10 years, the Chilean economy has grown at an average rate of 6.5 percent and real per capita income is up 50 percent. And since 1984, poultry consumption has risen 60 percent, pork consumption over 45 percent and beef consumption over 30 percent.

The United States currently supplies most of the feed grain Chile uses to support their livestock production. But this market could be put in jeopardy. Chile is increasingly turning to neighboring countries with whom they have preferential trade agreements to supply agricultural products. So the United States' failure to lead on trade has a real impact in terms of lost markets and lost opportunities.

I also ask the President and Ms. Barshefsky to begin taking a hard look at other nations in the Western Hemisphere for NAFTA expansion. Brazil and Argentina have already moved ahead and formed their own customs union, the Mercosur, with Paraguay and Uruguay. And the economies of the Caribbean nations have been hard hit by the increased trade between Mexico and the United States So they would like to enjoy NAFTA status.

This administration needs to articulate its vision of how free trade should proceed in the Americas. Soon. Or it will be the United States who is left out in the cold.

AGRICULTURE

One last issue I would like to discuss, Mr. President, is agriculture. In his State of the Union Address, President Clinton mentioned that the United States is now exporting more goods and services than at any other time in its history. I am glad he did that, because those of us in Washington need to articulate the benefits of free trade. I was disappointed, however, that the President failed to acknowledge the contribution of agriculture, which is the ''shining star'' of our trade balance.

As most sectors continue to run trade deficits, our farmers continue to produce food that the entire world wants to buy; 1996 was another record year for agricultural exports, totaling over $60 billion. This resulted in a trade surplus in agriculture goods of $26.8 billion. Which is the largest surplus of any sector. Since our total trade in merchandise suffered a $187.6 billion deficit in 1996, agriculture is truly a shining star.

But that isn't to say we can't do better. The Uruguay Round agreement, ratified by Congress in 1994, was really the first step in opening up global trade for agriculture. That agreement not only lowered tariffs and quotas for ag products. It also addressed nontrade barriers, such as unjustified health and safety concerns.

The agreement's sanitary and phytosanitary provisions mandate the use of sound science when setting health and safety standards for imports. No longer is protectionist government policy or politics supposed to decide whether a certain product is allowed into a country. Sound, scientific standards must be used.

Not surprisingly, these provisions are the subject of several current disputes. The European Union's ban on U.S. beef and their failure to certify our meat packing plants for export are just two examples. And there are many more. The Clinton administration must vigorously enforce these important provisions with our trading partners. We can't continue to allow other nations to breach their trade agreements in order to keep out our agricultural goods.

The stakes have never been higher. Our farmers have become more dependent on world markets for their income. The revolutionary farm program enacted last year begins to lessen the Government's role in agriculture. The result is that, according to the U.S. Department of Agriculture, up to 31 percent of all farm income will come from foreign markets by the end of the decade. I don't know too many farmers who can afford to give up 31 percent of their income.

Beyond our current disputes, the next round of agricultural negotiations at the WTO are set to begin in 1999. Ms. Barshefsky will be a key player in these negotiations. That is why I was concerned about recent staffing decisions at the U.S. Trade Representative's office.

On the morning of Ms. Barshefsky's confirmation hearing at the Finance Committee, the Journal of Commerce ran a very disturbing article. The article pointed out that the top two agriculture staffers at USTR had been replaced with a political appointee with no agriculture experience.

I had a telephone conversation and an exchange of letters between Ms. Barshefsky. She is convinced that these decisions will make her office more responsive and effective on ag issues. So I am willing to defer to her judgment and her right to hire her own staff. I will, however, be overseeing her performance on these issues.

CONCLUSION

Mr. President, I have discussed several issues that I believe President Clinton and his nominee for USTR, Charlene Barshefsky, must lead on in the next 4 years. The last 2 years were a disappointment for those of us who believe in the benefits of international trade. The likes of Pat Buchanan and the AFL–CIO called the shots on trade for the 1996 Presidential candidates. The focus was on lost jobs and companies moving offshore.

The press ignored the multitude of stable, high-paying jobs that trade has created in this country. And they ignored the benefits of free trade to the consumers of this country. Let's not forget that tariffs are simply a tax imposed on goods that consumers buy.

The President and Ms. Barshefsky must use their positions as leaders to articulate the benefits of free trade. Tell the American people how workers and farmers benefit from free trade policies. Tell them how much consumers save on their groceries and clothing bills because of free trade. Articulate your vision for expanding economic opportunity in this country by selling our products overseas. Leadership is sorely needed.

President Clinton, I believe you have chosen the right person in Charlene Barshefsky. But you will ultimately be measured by your willingness or failure to lead the American people toward a brighter future in a global economy.

Mr. President, I would also like to say a brief word on the Hollings amendment. It seems to me that Senator HOLLINGS is really concerned with a fundamental question that we all must answer. That is, what is the relationship between Congress and the President in making trade policy. In other words, does the President have the authority to enter into international agreements, that change U.S. law, without congressional consent?

Despite the debate that you will hear today, the answer to this question is relatively simple. Under our Constitution, the President only has the authority that Congress has granted to him. During the fast track debate, which I hope we'll have this year, Congress will define the limits of the Presidential authority on trade matters.

But let's be clear about one thing. The President does not have the authority to change U.S. statutory law without congressional action. That is why Congress had to approve implementing legislation after the President signed the NAFTA agreement and the Uruguay round agreement in recent years. The President did not have the authority to unilaterally consent to these significant changes in U.S. law.

That is why I believe this amendment is unnecessary. But I also think it could be dangerous. The amendment

is drafted so broadly that it could subject an agreement to congressional approval every time it affects a minor regulation or administrative practice. In my opinion, this would result in very few trade agreements being consummated. Our trading partners would never have the assurance they were negotiating an agreement that would be recognized by Congress.

Look at just what we have accomplished in the last few months, negotiating the Informational Technology Agreement and the Telecommunications Agreement. These landmark agreements will result in thousands of high-paying jobs being created in the United States. I don't believe these agreements would have been possible given the chilling effect of the Hollings amendment.

So I urge my colleagues to vote ''no'' on the Hollings amendment and then vote to confirm Charlene Barshefsky. It's time to focus on moving this country ahead by negotiating new agreements and opening new markets to U.S. exports.

Mr. MOYNIHAN. Mr. President, I yield 10 minutes to the distinguished Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my very distinguished colleague from New York. Not only the residents, citizens, and voters of the State of New York, but the rest of us in the country are very fortunate to have in the U.S. Senate the Senator from New York. He has added so much to our understanding of historical issues, cultural issues, and institutional memory. I just want to thank the Senator very much for all he has done for us.

Mr. MOYNIHAN. I thank the Senator from Montana.

Mr. BAUCUS. Mr. President, I support strongly the nomination of Charlene Barshefsky as U.S. Trade Representative. Why is that? Although the Senator from South Carolina raises very important issues—and I underline that; they are extremely important—I think we can't wait. We have very important trade issues facing us at the moment. We have a superb candidate in Charlene Barshefsky, who is awaiting confirmation. I believe we have no alternative, no choice, but to do the right thing. And the right thing is to get on with it, let her get on with the job, and let's confirm her as our USTR. At the appropriate time, at a later moment, we will take up the issues raised by the Senator from South Carolina, and they are very important issues indeed.

I might remind everyone that our international trade is growing dramatically. When Congress created the position of USTR just over 20 years ago, imports and exports, together, made up only about one-eighth of the U.S. economy. Today, international trade makes up nearly a full third of our economy. That is a dramatic increase, from one-eighth to one-third, in just over 20 years. Last year, exports of goods and services reached a total of $835 billion, and in agriculture, which is the largest industry in my State of Montana, we saw exports hit $60 billion last year.

(Ms. COLLINS assumed the chair.)

Mr. BAUCUS. I might say, too, Madam President, that the people understand this. Last year they came from all over Montana to a trade conference I hosted on how we can establish better trade relationships with and engage more deeply with China. People came from all over our State. I was amazed at the success of that conference. The Chinese Ambassador was there, and also, I might add, we invited our U.S. Ambassador to China, the Honorable Jim Sasser—he very much wanted to come but was unable because of a last moment conflict.

I might also remind us that American imports also hit a record of about $949 billion last year. We imported more than we exported. That may not be so good. But the point is that we as Americans are competing more than ever before against foreign competition, whether it is in heavy industry, high technology, or agricultural services. It all underlines the importance of trade in general and also the importance of being sure that we have a top-notch trade negotiator to make sure it is all fair. And we certainly have that in Charlene Barshefsky.

What has she done? For my State of Montana, I'll mention one thing in particular. She and her predecessor, Mickey Kantor, worked vigorously to enforce agreement with Canada to restrict the deluge of grain coming down to the United States as near as 1993 and 1994. Wheat ordinarily received in the United States was about 1.35 million metric tons of Canadian grain. In those 2 years it rose to about 2.4 million metric tons. It depressed prices in the American markets and violated, frankly, a tentative, implicit agreement with the Canadians.

I must say I was very impressed with the vigor and enthusiasm with which Charlene Barshefsky helped negotiate that agreement. Because of her work, Montana farmers got some confidence that trade would be fair.

Second, exports of beef. This is the first time in American history—in 1996—when we exported more beef than we imported. A lot of beef producers in the United States are concerned and have the impression that we import more than we export. That has been true in the past.

I might say that about 5 years ago we imported about 2 million pounds of beef and we exported only about 75,000 pounds, in that magnitude. But in the last 5 years it has reversed, and for the first time, in 1996, we exported more. We exported more beef than we imported because, again, of the vigorous efforts of our trade negotiators in opening up foreign markets for American products.

I am sure other folks from around the country understand and have similar stories that they can pass on to us.

She has done a terrific job. And we need someone of her caliber on the job full time, as we enter a new era in tackling very difficult new issues.

I might remind us that for most of the 1980's and 1990's, trade policy revolved around three major areas: in the Uruguay round of GATT, NAFTA, and our market access problems with Japan. These areas still remain on our agenda. We have to monitor the WTO. We have to monitor the NAFTA closely. And our trade imbalance with Japan remains our largest bilateral deficit yet, although it is being surpassed by that of China.

It is only fair to say that after a great deal of hard work from Charlene Barshefsky and the USTR staff that our performance with Japan has improved markedly. Counting goods and services, exports are up from $75 billion to over $100 billion last year; quite an improvement.

As important as these issues are, we now must look ahead to two new strategic challenges in trade. First is whether to negotiate new trade agreements, and, if so, what should they be? For example, the administration has pledged to work toward a hemispheric trade agreement and also to pursue market access in Asia through the Asia-Pacific Economic Cooperation Forum, and through bilateral agreements.

These are broad, long-term, important goals. Much about them remains to be decided. But the administration will soon ask for fast-track authority to make any serious steps forward, and it is clear that Americans have a right to expect greater market access from these countries.

I look forward, as we all do in the Senate, to hearing from the administration as to what specific agreement it envisions and how these agreements will address contentious issues like treatment of trade-related labor and environmental issues. When that is available, in principle, I believe the Congress should grant fast-track authority. And I will work with Ambassador Barshefsky and the administration as to what the terms are, of how broad the scope is, so that we have in the Congress a very good mutual agreement and partnership with the administration as we work together to develop these trade agreements.

The second is the integration of formerly Communist countries into the world trade system. China, Russia, Ukraine, Vietnam, and other post-Communist nations make up about a third of the world's population. They are large producers of manufactured products, primarily commodities, and agricultural goods. All hope to enter the WTO, the World Trade Organization.

Their reform efforts are commendable but remain incomplete. Most of these countries retain pervasive subsidies, poorly developed price systems, and close links between government and business which make them particularly challenging candidates for WTO membership. Weak accession protocols could make market access very difficult for years to come and could also

promote dumping in a wide range of areas.

China is the largest of these countries and the most immediate candidate for WTO membership—not to mention that it is the world's largest country and the fastest growing large economy. So its WTO access will have enormous consequences in its own right, and it will very likely serve as a model for others.

I will have more to say on this subject at a later date. But the USTR and Congress must be very careful and very rigorous. China and other WTO applicants must meet international standards not only on traditional tariff and quota issues but also on national treatment, trading rights, transparency, subsidies, and safeguards against import surges, and many other issues. On our side of the table, we must be willing to address the question of permanent MFN status for these countries if we are to gain the full benefit of their WTO membership.

These are difficult and complex issues, but I am confident that Ambassador Barshefsky is the right person to take them on. I can think of none better. She is terrific. She is intelligent, tough, capable, and she has proven herself one of the best public servants America has, and we need her on the job.

I support the nomination and I support the waiver to make it possible. And while the Senator from South Carolina has an amendment which raises a very serious and very important issue, that is one which we should bring through the normal committee process. It should not stop the nomination of Charlene Barshefsky. We need a tough negotiator. We have her right before us. We need her now in Geneva. During this week WTO is attempting to negotiate terms with China. We need her there to negotiate for us.

I warmly endorse her nomination. I hope my colleagues will do the same.

Thank you, Madam President.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I yield 7 minutes to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. I thank the Chair, and I thank the distinguished manager of this bill.

Madam President, I wish to express my wholehearted support for Ambassador Barshefsky. In my dealings with her over the years, I have found her to be a skilled and certainly an expert trade negotiator, who has worked tirelessly on behalf of U.S. interests. I have no doubt as to her integrity and her commitment to this job. And I believe that view is shared by every single member of the Finance Committee, all of whom have worked closely with her. Thus, I urge my colleagues to support her nomination with a strong show of support in the upcoming vote.

Before we vote on the nomination, Madam President, we must first vote on the amendment to Senate Joint Resolution 5 offered by the distinguished Senator from South Carolina, Senator HOLLINGS. The amendment requires that any trade agreement that in effect amends U.S. law must be approved by Congress.

I must say that this amendment puzzles me. Trade agreements to which the United States is a party and the call for changes to U.S. law, have no force of law whatsoever until implementing legislation is passed by Congress. Congress always has the final say.

The USTR takes pains to ensure that Congress is involved in every step along the way in these trade negotiations. As a member of the Finance Committee, I can personally testify to the fact that the USTR provides regular and, indeed, frequent—indeed, in abundance, a plethora of—briefings on all of the international discussions.

During 1995 and then again in 1996, the USTR provided literally hundreds of briefings to Members and more than a dozen committees on ongoing trade issues and responded to approximately 200 congressional requests for information every month. That is what was going on in the USTR's office. The Finance Committee staff is briefed exhaustively, as are the staff involved with several other committees. Any Member who has an interest in a particular issue can request personal briefings. That has been the process, not only during this administration but during prior administrations. It is the right process. Trade, obviously, is not solely the privilege of the executive branch but a responsibility conferred by the Constitution on the Congress.

Do Congress and the administration always agree? Of course not. Indeed, if the disagreement is strong enough, the administration runs the risk of Congress flatly rejecting the arguments in question. Thus, in this process is the built-in enforcement mechanism that constantly keeps individuals in touch.

So the amendment that is being proposed puzzles me. It does seem to reiterate current process but there are two words that give me pause. The words ''in effect.'' What exactly does ''in effect amend or repeal statutory law of the U.S.'' mean? Is it a reference to regulations? Regulations are issued under statutory authority. Is it a reference to the administration officials changing the law by themselves? But the Constitution does not allow that. Only Congress can change U.S. law.

So it seems that the amendment may be aimed at the recently concluded telecommunications agreement and at certain provisions of that agreement. As I have outlined, the process of negotiating trade agreements takes into account the individual views of Members of Congress. The end results of trade agreements may include certain provisions that some of us do not like. I can clearly remember Senator Danforth of Missouri was not too pleased with the final provisions of the Uruguay Round on subsidies. He did not like it. Yet, he worked with the administration on the implementing legislation and at the end of the day chose to give the agreement his support.

Disagreement with provisions of final trade agreements is going to happen. Clearly, with 435 Members of the House and 100 Members of the Senate, there are going to be disagreements with the administration. To minimize these, we individually or in groups make sure the administration is aware of our views. We go to the STR during the negotiating sessions and say this is what I am concerned with. This is what we are concerned with in my part of the country. And at the end of the day the agreement may or may not be satisfactory. If we feel strongly enough that it is not satisfactory, we are free to express our views, that is, vote against the proposal, vote against the treaty.

So my conclusion, Madam President, is twofold. First, it simply is not clear what this amendment would do if it is enacted. Any legislation with an unclear meaning simply, in my judgment, is not wise legislation to enact.

Second, if the amendment is to express displeasure with a particular provision of, say, the telecommunications agreement, we already have in place a system that takes into account such views. I might also note that I understand from the leadership of the Finance Committee if this amendment, the Hollings amendment, is adopted, it would cause the House to reject consideration of Senate Joint Resolution 5, thus placing the Barshefsky nomination in jeopardy.

So this is a grave matter, Madam President. It is in the very clear interest of the United States to put in place as soon as possible a strong and effective special trade representative. In other words, Ms. Barshefsky. She needs to be on the job. We have a lot of trade discussions and disputes that are ongoing. Charlene Barshefsky is an absolutely superb advocate and we need to get her confirmed. So for these reasons, I am supporting the nomination and the waiver bill and cannot support the proposed amendment. So I urge my colleagues to reject the Hollings amendment and to vote for the waiver and for the nomination of Charlene Barshefsky.

I thank the Chair.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I yield 5 minutes to the distinguished Senator from Florida, a member of the Committee on Finance, who is one of those who voted unanimously to report this nomination to the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized for 5 minutes.

Mr. GRAHAM. Thank you, Madam President, and I thank the Senator from New York.

I urge the Senate to move expeditiously to confirm Ambassador

Charlene Barshefsky as U.S. Trade Representative. She is the right person at the right time for the very difficult task she will be undertaking.

I also urge the immediate passage of Senate Joint Resolution 5, without amendment, to extend the waiver for the position which Ambassador Barshefsky currently holds as Deputy U.S. Trade Representative. This waiver as granted under Senate Joint Resolution 5 applies only to Ambassador Barshefsky. It does not change the underlying law, nor does it create a precedent for future waivers. This waiver deserves to pass without amendment. The merits of the issue which are being raised by my friend and colleague from South Carolina deserve to be heard, but I would submit that this is not the forum for the resolution of those questions. There will be other more appropriate times which will not entail endangering the expeditious confirmation of Ambassador Barshefsky to her important post.

As Senator MOYNIHAN has just stated, when Ambassador Barshefsky's nomination was presented to the Finance Committee, her record was carefully examined. The result of that examination was a unanimous vote by the committee in favor of her confirmation. Ambassador Barshefsky was referred to at the confirmation hearing as one of the most qualified, seasoned trade negotiators ever to be offered for this position. As Deputy and Acting U.S. Trade Representative, she has been an outstanding advocate of the trade interests of the United States of America. She has proven herself to be a brilliant negotiator. The Finance Committee and, I hope soon, the Senate as a whole will recognize these qualities. Ambassador Barshefsky has demonstrated a consistent focus on opening global markets, opening those markets through bilateral and multilateral trade agreements that increase export opportunities for U.S. businesses and creates jobs for U.S. workers. She has played an instrumental role in solving trade disputes with Japan, China, and numerous other nations on behalf of the United States.

Madam President, I was recently in Florida with a group of representatives of important agricultural interests who were looking forward to going to China with Ambassador Barshefsky to open markets for American agriculture in that tremendous nation of population. That is an example of the aggressive pursuit of opportunities for American industry and agriculture that has hallmarked Ambassador Barshefsky's performance in her current positions and will do likewise when she is confirmed as the U.S. Trade Representative.

It is a pleasure to give this outstanding nominee my unqualified endorsement. I have no question that Ambassador Barshefsky will be an outstanding representative and leader at the U.S. Trade Representative office. I urge my colleagues to join in voting to confirm her nomination today. We need a timely decision. We have already paid a cost for the delay that has occurred to date. The U.S. trade position is weakened when it does not have a confirmed U.S. Trade Representative representing our interests. We need to transfer that weakness into the strength of steel that will come when Charlene Barshefsky represents the United States as our Ambassador, as the U.S. Trade Representative.

I thank the Chair.

Mr. ROTH. Madam President, I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. ALLARD. I thank the Senator from Delaware for yielding me some time.

Madam President, today we must decide to vote in favor of a waiver to allow a very competent and worthy candidate to be the new U.S. Trade Representative or to vote to uphold current law. I have decided to uphold current law. It must be made clear that I do not doubt the competency and ability of Ambassador Barshefsky to faithfully serve as the next U.S. Trade Representative. She has done a tremendous job as the Deputy USTR and has proven herself to be a competent public servant.

The law we are asked to waive is not some arcane law that has been on the books for decades which may have served us well in the past but is a law that was passed only 2 years ago. The Lobbying Disclosure Act of 1995 was a very important piece of legislation that opened the doors to the public to see who is attempting to influence our elected officials. Section 21 of the act specifically states that no person who has represented a foreign entity may be appointed as a U.S. Trade Representative or the Deputy U.S. Trade Representative.

Madam President, I ask unanimous consent to have printed in the RECORD section 21 of the Lobbying Disclosure Act and from the United States Code section 2171(b).

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LOBBYING DISCLOSURE ACT OF 1995

SEC. 21. BAN ON TRADE REPRESENTATIVE REPRESENTING OR ADVISING FOREIGN ENTITIES.

(a) REPRESENTING AFTER SERVICE.—Section 207(f)(2) of title 18, United States Code, is amended by—

(1) inserting ''or Deputy United States Trade Representative'' after ''is the United States Trade Representative''; and

(2) striking ''within 3 years'' and inserting ''at any time''.

(b) LIMITATION ON APPOINTMENT AS UNITED STATES TRADE REPRESENTATIVE AND DEPUTY UNITED STATES TRADE REPRESENTATIVE.—Section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)) is amended by adding at the end the following new paragraph:

''(3) LIMITATION ON APPOINTMENTS.—A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after the date of enactment of this Act.

(b) United States Trade Representative; Deputy United States Trade Representatives.

(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) Limitation of appointments.

A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of Title 18) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

Mr. ALLARD. Madam President, while I regret that I have to vote against Ambassador Barshefsky's worthy nomination, I believe as lawmakers we must not only strive to enact the best laws but also to obey not only the letter of the law but also the spirit of the law. Why do we pass laws if the first time they become problematic, we decide to grant a waiver. In the last couple of months, I have heard too many politicians say that it was out of necessity that they bend the law or ignore the spirit of the law or assume that it may not be illegal, and then promise it will not happen again. My solution to this dilemma is to follow the law or repeal it.

While in the other body, I voted for the Lobbying Disclosure Act and have consistently promised my constituents that I will work hard to enact congressional reform. In this vein, I cannot turn my back on them or on the law that I fought hard to enact. I understand why many will vote for this waiver because Ambassador Barshefsky would make a tremendous USTR, but I must regretfully vote no and only hope that this waiver granting procedure doesn't start a bad precedent for the future. In conclusion, I am voting

against the Hollings amendment and the waiver.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Madam President, I yield myself such time as I may use on the hour for the resolution.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Madam President, on January 30, 1997, the Committee on Finance unanimously reported without amendment Senate Joint Resolution 5, the waiver resolution for Ambassador Charlene Barshefsky's appointment to serve as U.S. Trade Representative. As I said earlier, I strongly support Ambassador Barshefsky's nomination. Therefore, in order to expedite the appointment of this nominee, it is my considered opinion as chairman of the Finance Committee, that the waiver should remain clean and should not be amended.

Now, Senator HOLLINGS has introduced an amendment to the waiver. This amendment would require congressional approval of any trade agreement that ''in effect'' amends or repeals U.S. statutory law.

While I am convinced that as a general matter the Senate should not add amendments to the waiver, I have a number of concerns specifically about Senator HOLLINGS' amendment, which lead me to oppose the amendment most strongly and to urge my colleagues to vote against it.

My primary concern is that passage of the Hollings amendment will seriously jeopardize Ambassador Barshefsky's nomination. I have a letter from Chairman Archer of the House Ways and Means Committee stating that the House would view the Hollings provision as a revenue measure that, under the origination clause of the Constitution, must originate in the House of Representatives. As such, Chairman Archer informs me that he will invoke the constitutional prerogative of the House to refuse to consider the waiver resolution for Ambassador Barshefsky if the Hollings amendment is added.

I ask unanimous consent that Chairman Archer's letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ROTH. I want to emphasize one point to those that support the Barshefsky nomination. Regardless of whether one supports the Hollings amendment on the merits, the House will blue slip it. This means that not only will the House kill the Hollings amendment, but the Barshefsky waiver along with it.

This fact alone is ample reason to vote against the Hollings amendment.

In addition to this procedural concern, I also have substantive problems with the HOLLINGS amendment. I admit this amendment may have some superficial appeal. Nonetheless, it is completely unnecessary because it is based on a false assumption, implying a problem that simply does not exist. The amendment gives the erroneous impression that the President is currently able to implement international trade agreements calling for changes in U.S. statutory law without the passage of implementing legislation by Congress. That is simply not true. If a trade agreement requires changes in U.S. statutory law, Congress must enact the legislation to implement those changes. Congress must pass that legislation in order for the agreement to have full force and effect with respect to the United States.

A good example is the OECD Shipbuilding Subsidies Agreement, a trade agreement that was negotiated in 1994. Congress has been unable to pass legislation to implement the changes in U.S. law called for under that agreement. As a result, the agreement has no force and effect with respect to the United States. Absent congressional passage of implementing legislation, there is nothing the President can do to implement the agreement on his own.

Now, what if Congress and the President have a legitimate disagreement about whether a particular trade agreement calls for a change in U.S. law? My understanding is that this issue is the basis of Senator HOLLINGS' concern—that the President can act to supersede laws passed by Congress.

First of all, this is not a situation where trade agreements are somehow deemed to be treaties, with the full force of law, but which, unlike a treaty, the President is able to implement without Congressional approval. Trade agreements are executive agreements. And the simple fact is that if there is an inconsistency between an executive agreement and a statute, the statute prevails. In other words, a law passed by Congress remains on the books in full force and effect and cannot somehow be trumped by an executive agreement or any other action by the President.

In my opinion, the language in the Hollings amendment requiring that Congress approve any trade agreement that ''would in effect amend or repeal'' U.S. statutory law also suffers from several other defects.

It is vague, subjective, leaves undefined what ''in effect'' means, and does not specify who determines whether a law is effectively changed by a trade agreement.

Trade agreements cannot effectively change or repeal U.S. law. An agreement may call for actual changes in U.S. statutory law, in which case, as I have already explained, Congress must pass implementing legislation in order for it to have force and effect with respect to the United States. Or an agreement does not call for such changes, in which case it can be implemented without congressional action. Indeed, the language in the Hollings provision is so vague and ill-defined, that it could require congressional approval of any and every trade agreement the President negotiates, even those not calling for actual changes in U.S. statutory law. This could immobilize our ability to negotiate trade agreements, even on relatively minor issues, as Congress would be required to approve tens, if not hundreds of such agreements.

All of these agreements would also be fully amendable. The result would be to shackle our capacity to conduct any trade policy.

Because the language in the amendment is so vague, I also fear that it could call into question the legal status of previous agreements that have not been fully implemented, including the recently concluded Information Technologies Agreement. This landmark agreement was completed pursuant to authority provided to the President by Congress under the Uruguay Round Agreements Act, and currently needs no further congressional action in order to be fully implemented. However, that situation could change under the Hollings amendment, which would seriously jeopardize this historic agreement to provide a market opening for U.S. companies worth $500 billion a year.

The amendment appears to be driven, in part, by Senator HOLLINGS' concerns about the telecommunications agreement recently negotiated at the World Trade Organization.

My understanding is that Senator HOLLINGS believes the commitments the administration makes in the telecommunications agreement will change current U.S. telecommunications law without Congress having the opportunity to pass implementing legislation.

I would like to point out that others disagree with Senator HOLLINGS' view that this agreement will change current U.S. law. Senator MCCAIN, chairman of the Senate Committee on Commerce, Science and Transportation, Senator BURNS, along with Congressman OXLEY, vice-chair of the House Telecommunications Subcommittee, wrote a letter to the President expressing their view that no implementing legislation is necessary.

I ask unanimous consent that this letter also be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ROTH. In conclusion, Madam President, we must keep focused on the task at hand—fulfilling the Senate's constitutional prerogative with respect to Ambassador Barshefsky's nomination. We should not be bogging this nomination down with extraneous and controversial matters, such as the Hollings amendment. Therefore, I urge my colleagues to join me in voting to table the Hollings amendment, which will be made at the appropriate time.

Madam President, I reserve the remainder of my time.

EXHIBIT 1

COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, February 13, 1997.

Hon. WILLIAM V. ROTH, Jr., Chairman,
Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN ROTH: I am writing in reference to legislation that would waive the application of section 141(b)(3) of the Trade Act of 1974, as amended by the Lobby Disclosure Act, with respect to the nomination of Ambassador Charlene Barshefsky as United States Trade Representative. As you know, I fully support Ambassador Barshefsky's nomination and urge the Senate to pass quickly legislation permitting her confirmation so that the House may then consider it promptly.

At the same time, I am concerned that the legislation passed by the Senate may include provisions that contravene the origination clause of the U.S. Constitution, which provides that revenue measures must originate in the House. Specifically, I understand that the Senate may be asked to consider particular provisions, such as one suggested by Senator Hollings, which would change the manner in which Congress considers trade agreements and legislation having a direct effect on customs revenues. Although I strongly support Ambassador Barshefsky's nomination, I would have no choice but to insist on the House's Constitutional prerogatives and to seek the return to the Senate of any legislation including such a provision.

I look forward to working with you on this matter.

With best personal regards,

BILL ARCHER,
Chairman.

EXHIBIT 2

CONGRESS OF THE UNITED STATES,
Washington, DC, February 11, 1997.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We write regarding inaccuracies in correspondence you reportedly have received from a few of our colleagues regarding the World Trade Organization (WTO) telecommunications talks and restrictions on international investment.

As you are aware, officials of the United States Trade Representative (USTR) are hard at work negotiating a market-opening agreement in the WTO Group on Basic Telecommunications (GBT). Questions have been raised concerning the Administration's authority to negotiate an agreement lowering barriers to international investment.

It has been stated that USTR sought amendments to the Telecommunications Act of 1996 to clarify legal limits on foreign investment in U.S. telecommunications firms. This is incorrect. As the authors of the Senate and House foreign ownership provisions, we wish to state for the record that we were acting on our own initiative and that no Administration official requested that we legislate in this area. Any discussions we had with the Administration on these issues came at our request.

We firmly believe that the Administration possesses the authority to negotiate an agreement without implementing legislation. Indeed, the correct legal interpretation of the relevant statute is that private foreign firms are free to invest in American firms without restriction unless "the [Federal Communications] Commission finds that the public interest will be served by the refusal or revocation" of a telecommunications license. To allege that implementing legislation is necessary is to misinterpret the law. Indeed, it is the very prevalence of such misreadings that caused us to attempt to reform the ownership rules.

We wish to state our support for USTR's negotiators. We appreciate their work to promote free trade in goods and services. We believe that a freer flow of capital is a logical extension of this policy. Artificial limits on international investment only harm U.S. firms by denying them access to foreign capital and foreign markets.

Thank you for your consideration on these thoughts.

Yours truly,

JOHN MCCAIN,
Chairman, Senate Committee on Commerce, Science and Transportation.

MICHAEL G. OXLEY,
Vice Chairman, House Subcommittee on Telecommunications, Trade and Consumer Protection.

CONRAD BURNS,
Chairman, Senate Subcommittee on Communications.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Madam President, I rise simply to endorse, with fullest conviction, the statement of the chairman in this matter, and to emphasize, if I may be allowed, that executive agreements can never override statute. If they do, they are null and void, and the courts will so hold.

For us even to suggest that that might be possible would be to introduce into our governmental administrative arrangements matters of ambiguity and doubt and uncertainty that would have the capacity to incapacitate what has turned out to be an extraordinarily successful procedure in world trade.

It has taken us 60 years—63 from the Reciprocal Trade Agreements Act of 1934—to reach a point where we are the world's largest trading nation and leading the way in these matters in the world and hugely respected for that and known to have the capacity to negotiate when the Congress gives that authority to the President. The subsequent negotiations are executive agreements. If any part of them should, by inadvertence or intention, be contrary to present statutory law, they are null and void. That proposition must never be put into question as I fear this matter before us might do.

I yield the floor and thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair.

Madam President, it is difficult to really determine the position of our distinguished leadership on the Finance Committee. In one breath, they say it is unnecessary and, in the next breath, they say it is going to really ruin $500 billion in trade. Then they come back and say the statutory law pertains and talk at length about how they have worked over the years with Ambassador-designate Barshefsky.

In fact, the point was just made by my distinguished colleague from New York, since 1934, they have been working. I have been on the Communications Subcommittee of the Commerce Committee for 30 years, and I watched it develop over that 30-year period. When we had a majority on our side of the aisle, I introduced the formative legislation to revise that 1934 Communications Act with the initiative that would allow the trade representative to negotiate an international telecommunications agreement.

I am totally familiar, during the past 3 to 4 years, with what they are talking about because this is a Senator who has been working with the White House and with the trade representative, be it Ambassador Kantor or now Ambassador Barshefsky.

It was Ambassador Kantor who said the law needed amending. I already had that letter printed in the RECORD. Now they say there is no law to be amended. Heavens above. In fact, the distinguished Senator from Iowa, Senator GRASSLEY, comes in here and says it is totally unnecessary. He said, "Actually, my provision, which is constitutional"—that is all it does, is cite a fundamental of the Constitution that you have in order to amend or repeal a statute. It is not a regulation, as the Senator from Rhode Island tried to read into it.

It is very simple, very clear, not vague, not vague at all. It is the constitutional provision of three readings in the House, three readings in the Senate, and signed by the President.

When they say it is unnecessary, just look at the letters just inserted in the RECORD. I refer to the letter of the Senator from Arizona, Senator MCCAIN, the Senator from Montana, Senator BURNS, and Congressman OXLEY on the House side, and they say:

> We firmly believe that the administration possesses the authority to negotiate an agreement without implementing legislation.

Now, heavens above, we know Ambassador Kantor thought so and asked that it be changed. I ask unanimous consent to have printed in the RECORD section 310(a) and section 310(b) of the Communications Act of 1934.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEC. 310. [47 U.S.C. 310] LIMITATION ON HOLDING AND TRANSFER OF LICENSES.

(a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

Mr. HOLLINGS. Madam President, let's just read 310(a):

The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof. . .

And in section (b) starting off:

No broadcast or common carrier license—

And I jump down to four:

. . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country.

It is just as plain as can be and very simple, totally disregarded by Ms. Barshefsky. We kept telling her, we wrote the White House letters, we admonished, ''Wait a minute, your predecessor came before us, testified, asked that it be changed,'' and then we see in the letter by these three gentlemen the phrase ''as authors of the Senate and House foreign ownership provisions.'' False. Mr. OXLEY, yes, at the request of the administration. On the House side, it put in there the 100-percent ownership which could be negotiated away. That was never agreed to.

I authored the reciprocity provision with the snapback condition on the Senate side. So I have to correct the distinguished chairman of my committee and the chairman of our subcommittee, Senators MCCAIN and BURNS. As the authors, this is very misleading to the particular body here and the other Senators reading that. And then reading further, ''No administration official requested that we legislate in this area.'' These gentlemen were not intimate to the negotiations or members of the conference committee that actually did the work.

Let me refer to, on August 4, 1995, the CONGRESSIONAL RECORD. Page 8451 is the page. I am quoting Mr. BLILEY, the chairman of the Commerce Committee on the House side and the chief negotiator for the House membership. I quote:

Additionally, we have addressed the issue of foreign ownership or equity interest in domestic telecommunications companies. The new language reflects the hard work of Messrs. DINGELL and OXLEY, who sponsored the proposal in committee, the administration and myself. I must observe, Mr. Chairman, that the foreign ownership issue is the only matter on which the administration offered specific language to the Commerce Committee. And I believe this administration's concerns have been largely resolved.

Madam President, there it is. We made the official RECORD. The administration, after they did not get their desired result on the Senate side, went to work on the House side. And they did request, where they say no request after requesting us. We talked to them back in 1995 several times. We knew exactly what they had in mind. We tried to comply. But we did not change the law.

Now we have leading Senators, the chairman of our full committee and the chairman of our subcommittee, saying that the administration possesses the authority to give away 100 percent in violation of sections 310(a) and 310(b). That is why it is necessary. To be told now on the Senate floor that the Constitution, that we all take an oath to support and protect—it has a chilling effect that is out of the whole cloth. To come now and say it is vague is out of the whole cloth. You cannot make language any more categorical. I did not say ''regulation,'' like they tried to read and make for confusion. It is just as plain as can be.

I have talked with many of the Members, and asked if they wanted it changed in any way. And they said they did not see how you could vote against it. Well, the way they vote against it is to come up and now argue the capabilities of what I was going to hear again.

Heavens above. When we had Ambassador Carla Hills, who is now gone in representation I guess, we had to put the provision in law. I am glad to see the Senator from Colorado on the floor saying that he did not agree with that waiver. That was the Dole waiver that we are talking about. The Hollings waiver, which is on the appropriations bill, that is in relation to the special trade or U.S. Trade Representative, that you shall not engage in the representing of foreign interests in trade for a 5-year period, which applies of course to our distinguished friend, Mickey Kantor.

But when we had Carla hills, every one of these negotiators—the Finance Committee leadership comes with again the ''Dragon Lady, Dragon Lady,'' ''Oh, man, tough, tough, tough.'' He did say, the Senator from New York, that Ms. Barshefsky was formidable to the point of being dazzling. Well, I will agree. She has been dazzling. And this Senator has not. That is exactly the point I am trying to make.

I met with Ms. Barshefsky, and she did have a dazzling approach of ''I want to work with you. I want to work with you. I want to work with you.'' As I have stated earlier, ''Madam, I want you to work with the law, not me. Just adhere to this law.''

We have had this in dispute. We have had this in discussion. We have had this in negotiation with Members and Senate leadership in the Congress, leadership in the White House. And the law is the law. It has not been changed.

And they go there and can justify further that the distinguished negotiator is so tough she just walked away on the telecommunications negotiations.

Well, that is not what the Wall Street Journal stated on May 20 of last year. And I quote:

U.S. negotiators did pull back from a telecom deal at the 11th hour, but not because Clintonites were queasy about inking another market opening pact in an election year. Administration trade officials would have been delighted to trumpet a telecom deal to counter mounting U.S. skepticism about the WTO's accomplishments, but they walked away from the table after industry executives and leading Republican and Democratic Senators balked.

Madam President, that is exactly what happened on the telecom deal.

And they mention the capacity deal out there in Singapore. One would say how she worked so hard. Well, she gave away the store, without talking to the capacity manufacturers, specifically she gave away 4,000 jobs in the Carolina's.

The Japanese make these capacities, but when she did away with the 9.6-percent tariff, you have the weakness of the yen combined with the tariff phased out. The existence of Kaymet in Greenville, SC, I remember that. And I asked the officials there, and they were never contacted. Just at the last minute they agreed to it. Fine, you can get when you give away the store in capacities, when you give away your broadcast entities.

Under this agreement—I want to make it crystal clear—Nippon Telephone & Telegraph can come in here and buy CBS, ABC, NBC.

I talked earlier with one Senator. He was talking about the opportunity that Castro seems to do business with the Canadians. He could get the Canadians to come in and buy a station down in Miami and really turn the particular Senator from Florida into an upset condition. He is wanting to get into China and we have to move in a hurry. I have a good eye here today, but the Senator from Florida wants to be able to have any foreign entity come in, Castro or otherwise, Qadhafi, the whole kit and caboodle of the rascals around the world or any foreign country. They delight now in coming in and buying these that we have been trying to protect.

That is why the Members would not agree. They held fast. I am speaking on behalf of the majority of the U.S. Senate, 95 votes, if you please. We approved that. And that was in discussion up until the last minute, and they would not yield. So there it is. They do so well on these other agreements.

Let us see, Madam President, how they have done on this particular one.

If you believe the U.S. Trade Representative, world commerce would come to an end unless we continue to negotiate these one-sided agreements. But the truth of the matter here is Ambassador Barshefsky, in announcing the successful conclusion of this telecom negotiations stated—and I quote:

This agreement represents a change of profound importance.

U.S. companies now have access to nearly 100 percent of 20 telecommunications markets. Now, unfortunately, Madam President, nothing has changed. Nothing has changed at all. Once again, the trade representative has obtained inadequate concessions.

A review of those agreements—not these laudatory press releases—reveals that the market openings are limited, at best, or nonexistent, at worst.

While the United States has agreed to permit complete foreign ownership of our broadcast properties and U.S. telecommunications providers, our major trading partners have severely restricted our access to their most well-established and entrenched companies. USTR claims that Australia, Italy, Japan, France, New Zealand, and Spain have all agreed to permit ownership or control of all telecommunications providers. Yet, you take a closer look and you see there are severe foreign ownership restrictions still remaining in place for Vodafone and Telstra in Australia, with Stet in Italy, KDD and Nippon Telephone and Telegraph in Japan—you cannot own any of it—Telecom NZ in New Zealand, Telefonica in Spain, France Telecom in France that prevents U.S. providers from owning the controlling interests or no interest at all in these telecommunication giants.

U.S. companies have access so long as they are not interested in getting into the best and most sophisticated and competitive companies. They could come in and buy AT&T, not just the companies like GTE, or whatever. They can come in and buy the broadcast properties, which is most disturbing to this particular Senator.

Now, going further, Madam President, Korea, Thailand, Malaysia, India, Hong Kong, the Philippines, and Canada permit no foreign control for facility-based providers. The fastest growing and most important markets in the world are closed tight as a drum. Take the Korean market. Foreign individual shareholding in Korea Telegram is limited to 3 percent—3 percent. We gave away our most powerful negotiating tools, just for 3 percent. When you give away 100 percent, there is no more negotiations, you are through. Ask Senator Dole—been there, done that. It is over with. You got no more negotiating authority or any negotiating tools.

Or take Canada. The Canadians provide for no foreign control of facility-based providers—none. Yet, under this agreement, Bell Canada can purchase any United States-based provider it wishes. What a wonderful agreement. What a wonderful agreement they are all bragging about.

The other developing markets also include severe restrictions. Brazil has liberalized ownership restrictions only with regard to seller, satellite, and nonpublic services. Mexico has retained ownership restrictions on all types of services except seller. Poland retains foreign ownership restrictions for wireless, international, and long distance. So the total liberalization of the U.S. marketplace, what incentive was that liberalization? What incentive do these countries have to liberalize their particular markets any further? None whatever. None whatever. We have given away the store.

I told you in the very beginning about clothing, and they keep exporting the jobs faster than we can possibly create them —300,000. We were going to create 200,000, but we have exported already, lost 300,000 jobs in textiles alone. And we can go further.

The FCC recently issued an international notice of proposed rulemaking. This particular rulemaking would force foreign providers to lower their prices. However, many of the enforcement mechanisms contained in this particular rulemaking are violations of the MFN, most favored nation provisions. Different benchmarks based on the gross domestic product, denying access to providers from countries who refuse to meet the benchmarks, and granting waivers to those who restructure more quickly are all integral parts of these benchmark policies, but illegal and likely to be challenged, no doubt in the WTO.

So the agreement on telecom can have perverse effects on the price system they are trying to tell us about now, telling the competing countries we have a question there with respect to ownership and MCI, and with respect to Sprint, so they stay quiet. You do not find them all coming in here. And they are being told, ''Hush now, at the FCC we will help you with the access places in these international long-distance calls, and we are going to get something done.'' They will never get it done. Watch this MFN provision and watch the World Trade Organization.

These are the kind of promises that continually come up when we have one of these agreements. Just remember, Madam President, the promises they made with NAFTA. You have to realize, we must learn from experience. As George Santayana said, those who disregard the lessons of history are doomed to repeat them. We should see the history of this wonderful U.S. trade agreement that they had with NAFTA. At that particular time, they said if we fail to pass NAFTA, one, Mexico would face economic collapse; two, immigration would increase; three, drugs would flow freely; four, 200,000 new jobs would not be created; five, the U.S. exports surplus would disappear; six, Asian investors would move into Mexico to take advantage of the growing markets. That is why they said we had to approve NAFTA.

We have approved NAFTA, and this is exactly what happened—exactly what happened. Mexico is in economic collapse; immigration has increased; the drugs flow freely down there; 200,000 jobs have not been created; the U.S. exports surplus has disappeared. We had a $5 billion surplus. It is now a $16 billion deficit. The Asian investors who were going to be prevented from moving in are moving in like gangbusters and dumping back here under NAFTA free trade arrangements into the United States.

I could go on further. I see some here who want to talk, but I will complete this thought now, because we had the classic case for free trade with an emerging country, and the Secretary of Treasury, in particular, the Deputy Secretary of Treasury, Lawrence Summers, said, this is really it, we really are getting free trade now. And everybody is going to get, I think they said, about $1700 for everybody, and we were going to have everybody better off.

Well, Lawrence Summers, he is the one that sold this thing to the House memberships and the Senators. Since that time, he has now appeared on Thursday, January 16, in the Congress, and I quote from the Wall Street Journal of that particular date. ''By many measures, most Mexicans are worse off than they were before the financial crisis,'' Deputy U.S. Treasury Secretary Lawrence Summers conceded.

The Members do not have a sense of history, understanding, or appreciation. What happened is that a million Mexicans have lost their jobs since NAFTA has passed. Wages have fallen by a third. Mexico's external debt reached $150 billion, higher than that during the debt crisis back in 1982. The bold visionary man of the year, Carlos Salinas—that is right, in December, after we voted in November, they made him the man of the year. Now he is living in exile in Ireland and you cannot catch him. He is the man of the year.

This is the kind of nonsense that we have to put up with. If we want to go through the same act, same scene, dragon lady, tough, and everything else, it makes a sorry agreement, sells out the store. And we call that progress, and we have to create jobs, and education, education, education is the solution. Well, Madam President, like I say, if they read one thing, they ought to read the book, ''One World, Ready Or Not'' by Bill Crider. They will get an education on where we are, because the author spent 2 years going around the world, as well as in the United States, talking to the various executives and quoting them at that particular time. You can't understand some of the various provisions.

I think, since I have the opportunity to present them, we ought to understand, in country after country, the precious rules of international trade. In India, for example, when General Motors wanted to sell its European-made Opal, the price of admission was a radiator cap factory. So GM moved the factory from Britain. In Korea, to sell fast trains, the French agreed to subcontract the assembly to the Koreans. In China, AT&T agreed to manufacture advanced switching equipment as a quid pro quo for wiring Chinese cities. In Australia, if your sales are above a certain threshold, you must negotiate with the Government on an agreement locating research and development in Australia. For production,

you must export 50 percent of what you import, and it must have 70 percent local content. At least 33 electronics companies from Japan, Europe, and the United States have agreed to do that.

According to an official from Motorola, ''If you don't cooperate with the Australians, they have the statutory authority to exclude you from bidders' lists and deny regulatory permits for products.''

Well, Madam President, it's not just out there in the Pacific rim, where the control—Friedrich List kind of control—trade that works, that builds them up. Right this minute, one-half of the world's savings is in the country of Japan. While they are talking about the yen and the devaluation of it and while they are talking about the banking difficulties, watch what Edmund Finkleton said in ''Blind Side.'' Come the year 2000, while they are a bigger manufacturing country, with 120 million, compared to our 260 million and the vast natural resources that we have in the United States, they already outproduce us. They will have a larger economy and gross domestic product—that little country of Japan. Why? They control it. As Friedrich List says, the wealth and strength of a nation, if you please, is measured not by what they consume, but what they produce. Akio Marita went on further—I was at a forum with him about 16 years ago up in Chicago. We were talking about the Third World emerging nations, and he commented: ''The emerging country has to develop a manufacturing capacity in order to become a nation state.'' After we talked a few minutes, he pointed to me and said, ''Senator, that world power that loses its manufacturing capacity will cease to be a world power.''

We have gone, in a 10-year period, from 26 percent of our work force in manufacturing down now to 13 percent. We are back to Henry Ford. Henry Ford said that he wanted his workers to be able to purchase the article they were producing. Madam President, today, middle-America workers, not having those manufacturing jobs, can't afford the car. They can't purchase it. We are losing our middle class, all along, if you please, competing with ourselves.

Over 50 percent of what we are importing, if you please, is U.S. multinationally generated. The U.S. multinationals are the fifth column in this trade war that we are in. They are in behind the lines gutting us here in the Congress, working through the special trade representative, trying to take away the authority under the Constitution to make laws and otherwise regulate foreign commerce. That is the authority of the Congress, and that is the reason we have that particular amendment. But we always talk, and I listened to the distinguished President when he talked about trade. He only mentioned exports.

I want to challenge anybody to go to a CPA when they do their tax return next month and say, ''Let's just talk about what we got in, not what we spent, just one side of the ledger.'' If you had a CPA that made up your return that way, you would fire him. But that is constantly, constantly, constantly the way we look at the returns with respect to international trade.

What really happens is, yes, while we in the United States are the most productive industrial workers, whereas we have improved productivity, and whereas we are, for example, in my State, an exporting State—I was just down at a Presidential Exporting Council meeting in Greenville, SC, and we are proud of it—the imports far and away outdistance the exports.

In the last 15 years, before we got to last year, there has been an average of over $100 billion a year deficit, imports, in the balance of trade. That means we have bought from the foreigners $1.5 trillion more than we have sold to them. But how do you get that through to the Finance Committee where they just casually go on and on talking about dragon ladies and what a wonderful agreement we have? What, Madam President, is the merchandise deficit—I say ''deficit''; I repeat ''deficit''—in the balance of trade last year? The merchandise deficit in merchandise trade was $187 billion.

(Mr. BROWNBACK assumed the chair.)

Mr. HOLLINGS. Now, we made some money off of loans, insurance, and services. So the overall deficit was quoted to be $114 billion. But I am looking at that industrial backbone. I am looking at that economic strength. I am looking at that world power trying to continue being a world power. I am realizing more and more every day that the 7th Fleet and the atom bomb don't count anymore. They just don't regard it. You are not going to use a nuclear attack; we all know that. I was bemused when they moved the fleet into the Taiwan Strait, because, in 1966, I was on an aircraft carrier, the *Kitty Hawk*, up in the Gulf of Tonkin, and we could not stop 20 million North Vietnamese. They didn't have planes and choppers and all this equipment that we had. But we have already tried that aircraft carrier. I wondered how an aircraft carrier or two in the Taiwan Strait was going to stop 1.2 billion Chinese when it could not stop a mere 20 million Vietnamese. Come on. Money talks. The economic strength, and in the world trade councils and otherwise in this global trade war that we are in—we are unilaterally disarming. We are giving away capacity. That capacity agreement in Singapore was where they manufacture them in Japan but Japan very cleverly got the Europeans to bring the pressure on us. And we walked away and said it was a good agreement. And I have lost 4,000 jobs in my State. I am losing thousands of jobs with NAFTA. I am looking around. Now I am seeing in telecommunications—what effect is this going to have? I guess in order to keep the Senator from South Carolina quiet they will buy the TV stations and run them because under the agreement they can. There is no question about it. They can own these broadcast properties.

Down to the basic fundamental involved, just a couple of weeks ago we had Washington's Farewell Address here. The very Founding Father talked about the fundamental of the Hollings amendment. I can almost quote word for word. He said, If, in the opinion of the people, the modification or distribution of the powers under the Constitution be in any particular wrong, then let it be changed in the way that the Constitution designates, for while usurpation in the one instance may be the instrument of good it is the customary weapon by which free governments are destroyed.

That is the line of this particular amendment. We are giving it away. We proceed by a fifth column. We are talking about jobs but we are exporting them faster. We are importing even faster the finished goods. We are weakening the democracy. The middle class is disappearing. And they are all hollering ''Whoopee. The economy is good, and let's give some millions so that politicians of one group can investigate politicians of another group about politics.'' That is the most asinine thing that you have ever seen. But that is where they give all the time. I can see some impatience. They don't want to listen about international trade, and the trade war. No. They don't want to listen about that. But they want to talk about independent prosecutors and investigators. I would give millions to the Federal Election Campaign Commission. They are bipartisan. Let them investigate, no holds barred. I would give even more millions to the Department of Justice. Let them investigate, no holds barred, for any violation of the law.

But mind you me. It seems like we have learned enough here from that Whitewater thing. We went through an exercise. We had 44 hearings, millions of dollars wasted, and time and everything, all hoping to get on TV and investigate each other. Now they want to start up this session and talk about bipartisanship, and not talking about what is eroding the democracy itself in this country. I say that because when I talk about the middle class, Chesterton wrote that the strength of this little democracy here in America was that we had developed a strong middle class.

We are headed, if you please, the way of England. That is what they told the Brits after World War II. ''Don't worry. Instead of a nation of brawn, you will be a nation of brains. Instead of producing products, you will provide services; a service economy. Instead of creating wealth, you will handle it and be a financial center.'' And England has gone to hell in an economic hand basket. You have the haves and the have-nots, London is no more than an amusement park. You go there, and the Parliament is talking the same kind of

extraneous nonsense that we are engaged in, and investigating each other and not getting on with the serious matters of truth in budgeting. Let's have it. I am going to talk to a group here in just a minute, and I hope we can get to them so that we can bring the record out about truth in budgeting.

And truth in trade negotiations agreements and trade—an agreement has been made, not a treaty. They insist that you don't have to come back to the Congress itself when they amend the law, and they are in 100-percent agreement of foreign ownership. There is no question about that. They just say it is not necessary while other Members say it is necessary. I thought that we ought to clarify once and for all our duties here, and have a clarion call, or a wake-up call, on this most important issue.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 20 minutes to the distinguished Senator from Arizona.

Mr. MCCAIN. Mr. President, I will not be able to use that time because I have to go to another meeting. I appreciate the time and the courtesy of the Senator from Delaware, Senator ROTH. But I would like to use 20 minutes because my friend from South Carolina covered a broad variety of issues, some of which I assure my colleague from South Carolina we will be addressing in hearings in the Commerce Committee—the results of NAFTA, the results of free trade; perhaps some of the reasons why unemployment is at its lowest in America. The last quarter it was just downgraded to 3.9 percent GNP growth—the reason Americans finally in the lower middle-incomes are seeing increases; why this economy is the envy of the world; why it is that free trade has played such an important role.

I had the pleasure—the distinct pleasure, I say to my friend from South Carolina—of spending some time in his State. There happened to be an important Republican primary in the last election. It was a great privilege and honor for me to get to know many of the wonderful citizens of his State. In case he has not noticed, they are doing very well. They are working at the BMW plant. They are working at the Sony plant. They are working at all these corporations and companies that have come to this terrible country of ours which is so protectionist and so outrageous. They are coming to our country, I am sure the Senator from South Carolina has noticed. And in the view of the South Carolinians that I spoke to, they think it is a lot better with the high-paying jobs at the BMW plant than at a textile mill; than standing in front of a loom in that kind of back-breaking, sweat labor that existed; where they are getting higher salaries and more benefits, thanks to the companies and corporations that have come into South Carolina; thanks to the enlightened leadership of the State of South Carolina, including the Senator from South Carolina who has attracted them.

Mr. HOLLINGS. Will the Senator yield?

Mr. MCCAIN. I would love to yield. But I just listened for the last 45 minutes to the Senator from South Carolina, and, as much was I would like to hear from him again, I have to go to another meeting. I apologize. But if the Senator from South Carolina would promise me to be brief, I will be glad to yield to him for a brief answer.

Mr. HOLLINGS. We are very proud that the Senator from Arizona has been to the showcase area up there in the Piedmont. But down there we have that situation where there is 11 percent unemployment in Richland, 14 percent in Williamsburg and Barnwell, and, 12 percent over in Marlborough. So we have the haves and have-nots.

I am very proud. I made the first trip to Europe where we have 100 German plants, 50 Japanese plants now. And I am very proud that I instituted the technical training which makes us most productive at BMW. We thank the Senator, very much, for his visit. I would be glad to show him the other parts that I am also worried about.

Mr. MCCAIN. Mr. President, I would say to the Senator from South Carolina that I did travel the entire State. His point is well made that it is not a totally even economy. He can come to my State and find out that in the southern part of my State it is as high as 35 to 40 percent unemployment in the city of Nogales. But the overall economy is good. It is better, in my view, because of free trade, and again the enlightened policies of seeking and obtaining foreign corporations who come in and give high-paying jobs.

I also, by the way, have had the chance to go to Hilton Head and Charleston and some of the other areas that are doing extremely well. But there is no sense in going through a road map of the depiction of the State of South Carolina which is a lovely and beautiful State, as certainly the Senator from South Carolina well knows.

But I want to repeat to him again. We will have hearings in the Commerce Committee about the state of the American economy, about the impact of trade, where protection works and where it doesn't, and what the effects of NAFTA has been and whether we should expand NAFTA, which would be a proposal of the administration.

I will say with all respect to the Senator from South Carolina, I believe the members of the committee and the American people will be enlightened by our debate because I know that the Senator from South Carolina is well informed and holds very strong views, as do I and other members of the committee. I note the Senator from West Virginia is here, who also has his problems within his State.

So I hope the hearings we will have will not only have a legislative result but also will perform the much-needed function of enlightening the American people and our colleagues as to what free trade is all about, its effects, and, by the way, the effects of protectionism and restraint of trade.

I do oppose the amendment offered by Senator HOLLINGS, and I will at the appropriate time offer a motion to table. This amendment, in my view, jeopardizes Ms. Barshefsky's nomination. The chairman of the House Ways and Means Committee, Mr. ARCHER, has conveyed to Finance Committee Chairman ROTH that the House will reject the amendment and thereby kill the nomination of a very qualified individual.

I share with my colleagues the position of the President of the United States. Mr. President, I think it is very important. I ask unanimous consent that the statement of administration policy be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

S.J. RES. 5—WAIVER FOR USTR APPOINTMENT (ROTH (R) DE, AND MOYNIHAN (D) NY)

The Administration strongly supports the enactment of S.J. Res. 5, which would authorize the appointment of Charlene Barshefsky as the United States Trade Representative.

When the Senate Considers S.J. Res. 5, Senator Hollings' amendment relating to the President's long-standing authority to carry out trade agreements may also be considered. The Administration strongly opposes the Hollings amendment, which would effect a major change in trade agreement implementing procedures with immediate and harmful effects on U.S. consumers, firms, and workers. The Hollings amendment would hinder, delay, and, in some cases, jeopardize agreements that greatly serve the Nation's interests.

HARMFUL EFFECTS OF THE HOLLINGS AMENDMENT

The Hollings amendment could require congressional approval of every trade agreement that might be construed to require a change in U.S. law. The amendment is unnecessary to assure that the Executive Branch is conforming to congressional mandates on trade negotiations, is overly burdensome for both the President and the Congress, and could endanger the benefits to the United States of some trade agreements.

The overwhelming majority of trade agreements that the President concludes can be—and traditionally have been—implemented under existing statutes. If the authority to implement an agreement does no already exist, then the President must seek that authority. If the President were to implement an agreement in a manner that is not authorized by law, the courts can strike down such actions. If the Congress disagrees with a trade agreement, it can pass legislation directing the President to implement the agreement in a particular way or to refrain entirely from implementing that agreement. If a trade agreement requires a change in statutory law, Congress along has the authority to make such a change. The Hollings amendment is unnecessary to clarify this point.

However, the Hollings amendment goes much further, and the absence of hearings has precluded a full opportunity to determine precisely what the implications of the

amendment are. By requiring congressional action whenever a trade agreement would ''in effect'' change U.S. law, the Hollings amendment could impose long delays on implementing trade agreements that would otherwise bring immediate benefits to U.S. consumers, firms, and workers. Moreover, the vague term ''in effect'' would cause great uncertainty, since the amendment leaves undefined who determines when an agreement ''in effect'' requires a change in law and what implications arise for implementing changes in regulation or administrative practice called for in trade agreements.

The burdensome character of the amendment becomes clear when one considers that the Administration concluded approximately 200 trade agreements in the last four years. Under the Hollings amendment, any such agreement that occasioned any change in law, including technical and typically noncontroversial changes to our tariff schedule, would have to be approved by the Congress.

The prospect of nearly continuous consideration of trade agreements by the Congress also raises the possibility of delaying the entry into force of agreements beneficial to the United States. For example, the Hollings amendment could greatly delay—and perhaps jeopardize—recent agreements that:

Elminiate tariffs on 400 pharmaceutical products shipped to key markets around the world (these tariff cuts had been widely sought by our medical community because of their potential to quickly lower the costs of producing anti-AIDS drugs and other lifesaving pharmaceuticals);

Cuts $5 billion in global tariffs on semiconductors, computers, telecommunications equipment, software, and other information equipment (these are tariff cuts that directly benefit high-technology products made by some of our most highly competitive industries, and that support 1.5 million manufacturing jobs and 1.8 million related services jobs); and

Open the global market for basic telecommunication services, providing enormous benefits to our dynamic U.S. telecommunications industry.

If the Hollings amendment were applied to these agreements, they would have to be submitted to Congress for review and approval. Yet each of these agreements was negotiated under congressional authorization and in close consultation with Congress, and each enjoys overwhelming industry support.

Mr. McCAIN. Mr. President I will not go through the whole statement of administration policy except to say the administration strongly supports the resolution which will authorize the appointment of Charlene Barshefsky as U.S. Trade Representative. Among other things it says:

The Hollings amendment could require congressional approval of every trade agreement that might be construed to require changing U.S. law. The amendment is unnecessary to assure the executive branch is conforming to congressional mandates on trade negotiations, is overly burdensome for both the President and Congress, and could endanger the benefits to the United States of some trade agreements.

The prospect of nearly continuous consideration of trade agreements by the Congress also raises the possibility of delaying the entry into force of agreements beneficial to the United States. For example, the Hollings amendment could greatly delay—and perhaps jeopardize—recent agreements that eliminate tariffs on 400 pharmaceutical products shipped to key markets around the world * * * cut $5 billion in global tariffs on semiconductors, computers, telecommunications equipment, software * * * open the global market for basic telecommunication services, providing enormous benefits to our dynamic U.S. telecommunications industry.

Mr. President, what does the Washington Post say about it? It says:

The Telecommunications Deal. After 3 years of tough negotiations, the world's leading economies have reached a landmark agreement to liberalize trade in telecommunications services. Acting U.S. Trade Representative Charlene Barshefsky, who led both sets of talks, predicted the U.S. information technology industry will now lead the growth of the U.S. economy as the car industry did 40 years ago. This wasn't a traditional agreement in which one country grudgingly agreed to accept textile imports, say, in order to gain access for its tomato exports. Instead, every nation involved acknowledged the benefit to itself of liberalization and deregulation of the model that the United States and Great Britain have pioneered. Half the world's people have never made a phone call. Poorer countries, where most of them live, will attract the investment that they need only if they play by these new rules of openness and competition.

The Washington Times:

Teleco Mania. For the second time in three months, tough minded and determined U.S. trade negotiators under the auspices of the 2-year-old World Trade Organization have hammered out a multinational high tech trade agreement that will be immensely beneficial to firms and workers based in the United States and consumers worldwide.

The list goes on and on, Mr. President, of the almost universal praise of this landmark agreement that Ms. Barshefsky has been able to achieve. Frankly, there were a lot of pessimists who believed that she could not do that. I believe she is well qualified for the job. President Clinton referred to Ambassador Barshefsky as a brilliant negotiator for our country. She is a tough and determined representative for our country, fighting to open markets to the goods and services produced by American workers and businesses.

I will not go through her qualifications, Mr. President, in the interest of time because they are illustrious.

Her foresight and depth of understanding of our country's international trade relations are essential to our Nation's continued economic growth. She is exceptionally qualified, and I am sure that the full Senate will join me in confirming her nomination to be the U.S. Trade Representative.

From financial services to Japanese insurance to global telecommunications, Ambassador Barshefsky has proven herself to be a tough negotiator. For example, in April of 1996, as one of her acts as USTR, Ambassador Barshefsky walked away from the poor efforts made under the auspices of the World Trade Organization regarding basic telecommunications services. She made everyone come back to the table and last month concluded the WTO's basic telecom agreement which represents a change of profound importance. A 60-year tradition of telecommunications monopolies and closed markets will be replaced starting in January 1998 by market opening, deregulation and competition, the principles championed here by many of us for a long time.

Senator HOLLINGS has concluded that the recently announced telecommunications agreement of the World Trade Organization would change U.S. statutory law. Not only do I disagree, but as I mentioned, the Senator finds himself on the other side of the argument with President Clinton.

Mr. President, I ask unanimous consent that written responses to questions from Senator LOTT and Senator KERREY be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WRITTEN RESPONSE TO QUESTIONS FROM SENATOR LOTT

TELECOMMUNICATIONS

Could you please explain in greater detail the administration's position that no implementing legislation, or legislation of any kind, will be required for the telecommunications agreement currently under negotiation in Geneva.

The U.S. offer will reflect our statutory obligations. While at this time we do not believe its implementation will require any legislative changes, we are continuing to consult with Congress on this issue.

The offer allows market access to the local, long distance and international services markets through any means of network technology, either on a facilities-basis or through resale of existing network capacity. The U.S. offer limits direct foreign investment in companies holding common carrier radio licenses, as is required by Section 310 (a) and (b)(1), (2) and (3) of the Communications Act of 1934 (the ''Act''). The offer specifically states that foreign governments, aliens, foreign corporations and U.S. corporations more than 20% owned by foreign governments, aliens or foreign corporations may not directly hold a radio license.

Based on Section 310(b)(4) of the Act, the offer places no new restrictions on indirect foreign ownership of a U.S. corporation holding a radio license. Section 310(b)(4) allows such indirect foreign ownership unless the Federal Communications Commission finds that the public interest will be served by the refusal to grant such a license. The U.S. offer is to allow indirect foreign ownership, up to 100%, under this provision.

The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest. Under the public interest test, the FCC looks at many factors, such as financial and technical ability of the applicant, international agreements, national security concerns, foreign policy concerns, law enforcement concerns and the effect of entry on competition in the U.S. market. In the event of a successful conclusion to these negotiations, the U.S. offer will allow the FCC to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services.

The U.S. offer maintains COMSAT's monopoly on access to INTELSAT and Inmarsat, as required by the Communications Satellite Act (47 U.S.C. 721).

The offer does not contain any restrictions on licenses to land submarine cables based on the statutory authority of the President (delegated to the Federal Communications Commission in consultation with the Secretary of State) to issue landing licenses. The statute permits withholding such licenses to assist in obtaining landing rights

in other countries maintaining the rights or interests of the United States and its citizens and protecting U.S. security (47 U.S.C. 35). The United States will obtain landing rights in other WTO member countries if the negotiations conclude successfully and will retain its ability to protect its national security.

WRITTEN RESPONSE TO QUESTIONS FROM SENATOR BOB KERREY

TELECOMMUNICATIONS

Last April when the parties agreed to postpone the deadline for negotiations in the GBT, the U.S. offer did not reflect the statutory language under sections 310 (a) and (b) that the foreign ownership limitations under the law apply to ''foreign governments or their representatives.'' Does USTR intend to modify the U.S. offer to adhere to the statutory language of sections 310 (a) and (b)? If not, why?

The U.S. offer will reflect our statutory obligations. While at this time we do not believe its implementation will require any legislative changes, we are continuing to consult with Congress on this issue.

The offer allows market access to the local, long distance and international services markets through any means of network technology, either on a facilities-basis or through resale of existing network capacity. The U.S. offer limits direct foreign investment in companies holding common carrier radio licenses, as is required by Section 310 (a) and (b) (1), (2) and (3) of the Communications Act of 1934 (the ''Act''). The offer specifically states that foreign governments, aliens, foreign corporations and U.S. corporations more than 20% owned by foreign governments, aliens or foreign corporations may not directly hold a radio license.

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The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest. Under the public interest test, the FCC looks at many factors, such as financial and technical ability of the applicant, international agreements, national security concerns, foreign policy concerns, law enforcement concerns and the effect of entry on competition in the U.S. market. In the event of a successful conclusion to these negotiations, the U.S. offer will allow the FCC to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services.

The Administration is continuing to consult with Congress and the FCC to determine whether it would be helpful to modify the U.S. offer to include any additional parts of the statute's text in the offer's text.

In the alternative, if USTR does modify its offer, please cite what precedent gives USTR the authority to hold that the exception under the public interest waiver of section 310(b)(4) vitiates the statutory limitation of control by a ''foreign government or the representative thereof'' under 310(a), which has no waiver?

Section 310(a) prohibits direct ownership of a radio license by a foreign government or its representative. Similarly, Section 310(b)(1) prohibits direct ownership of a radio license by an alien or its representative. Section (b)(2) contains the same prohibition for foreign corporations. Section 310(b)(3) prohibits direct ownership of more than 20% of a U.S. corporation holding a radio license by a foreign government, an alien or a foreign corporation. All these prohibitions on direct ownership are contained in the U.S. offer.

Section 310(b)(4) explicitly allows indirect ownership by all three—a foreign government or its representative, an alien or its representative or a foreign corporation, unless the FCC determines that such ownership is not in the public interest. This is also reflected in the U.S. offer. In preparing the offer, the Administration has consulted closely with Congress and FCC staff and is continuing to consult on the question of implementing legislation and whether to modify the offer.

If USTR successfully negotiates an agreement, would there be any change or limitation on the FCC's use of the Effective Competitive Opportunities test to examine the openness of a foreign market, which it adopted pursuant to the public interest waiver test of section 310(b)(4)?

If the GBT concludes successfully, the FCC will continue to apply the public interest test to applicants under section 214 and to applicants for radio licenses under section 310. The only change that would occur would be that the Executive Branch would advise the FCC not to consider reciprocity as a prong of the test on the basis that the U.S. would have obtained substantial market access commitments from its major trading partners and the vast majority of countries whose carriers are likely to apply for radio licenses in the U.S.

Mr. MCCAIN. Mr. President, the reason why I ask that is because there are many technical and legitimate questions that are raised by Senator LOTT, Senator KERREY, and by Senator HOLLINGS. The responses that Ambassador Barshefsky made, I think, are important to be in the RECORD. I will not take the time of the Senate to read those.

The amendment, I believe, is not only not good for America, but I believe that the amendment represents a different view of trade and how nations should treat each other in this world competitive marketplace. I believe that the American worker can compete with any worker in the world. I believe that the American worker is the finest in the world. I would rather have an American working to build a product than any other nationality, without any disrespect to any of them. With that fundamental belief that American workers can compete and do a better job, then I am in favor of reducing the barriers, which the agreement that Charlene Barshefsky has negotiated will accomplish.

Telecommunications is a $600-billion-a-year industry. The World Trade Organization's basic telecom agreement will double the size of the industry over the next 10 years. There is not a single telecommunications business in America that does not totally support this agreement. The agreement will lead to the creation of countless jobs in U.S. communications companies, in high tech equipment makers, and in a range of industries such as software, information services and electronic publishing that benefit from telecom development.

This agreement is literally unprecedented. It covers over 90 percent of world telecommunications revenue and includes 69 countries, both developed and developing. It ensures that U.S. companies can compete against and invest in all existing carriers. Before this agreement, only 17 percent of the top 20 telecommunications markets were open to U.S. companies. Now they have access to nearly 100 percent of these markets.

The range of services and technologies covered by this agreement is breathtaking—from submarine cables to satellites, from wide-band networks to cellular phones, from business internets to fixed wireless for rural and underserved regions. The market access opportunities cover the entire spectrum of innovative communications technologies pioneered by American industry and workers.

Most important, the agreement will save billions of dollars for American consumers. The average cost of international phone calls will drop by 80 percent, from approximately $1 a minute on average to 20 cents per minute over the next several years. The agreement, as I said earlier, was widely lauded by those in the telecommunications industry.

Mr. President, of equal concern is the impact this amendment would have on the ability of the President to negotiate future trade agreements. The Hollings amendment could require congressional approval of every single trade agreement that might result in any change in regulations or administrative practice, no matter how slight the change. The overwhelming majority of trade agreements that the President concludes can be—and traditionally have been—implemented under statutes that the Congress has already put on the books. If the President tries to implement an agreement in a manner that is not provided for under legislation, the courts can prohibit him from taking those steps.

The amendment is harmful to our Nation's trade interests. The approval requirement imposed by the amendment would impose long delays and could create uncertainties for lucrative trade agreements that would otherwise bring immediate benefits to American consumers, firms and workers. It is the American workers who would be hurt by this amendment.

Under Senator HOLLINGS' amendment, the President could not use the powers already granted him if he intends to make any change in regulatory or administrative practice, no matter how insignificant. This amendment would require an act of Congress every time the President allocates a new cheese or sugar quota, adds a quota on a textile or apparel product, or implements a tariff rate quota on agricultural products, such as those recently negotiated on imported goods such as tobacco. The President has traditionally made these routine changes

under proclamation authority granted by the Congress.

Finally, Ambassador Barshefsky will also have a busy coming year. It is my hope that she will move quickly to send the Congress legislation to provide for a clean reauthorization of fast-track authority so negotiations can begin immediately to expand the North American Free Trade Agreement to Chile. Pending successful expansion of NAFTA, negotiations should continue on the development of a free trade area of the Americas.

Substantial questions will also arise regarding extension of MFN status to China and the accession of China into the World Trade Organization. I am confident that Ambassador Barshefsky is up to these challenges.

Mr. President, the United States has historically been a world leader in opening markets and expanding trade. I believe leadership waned over the first term of the Clinton administration. It is my hope, and, indeed, my prediction, that under the leadership of Charlene Barshefsky, the United States will again take its place as the world leader for open and fair trade.

I urge my colleagues to oppose the Hollings amendment and support Senate Joint Resolution 5 so that Ambassador Barshefsky can be confirmed and appointed to serve as our next U.S. Trade Representative.

Mr. President, I regret there is not time, but there will be opportunities in the future to debate these issues with my friend from South Carolina, who I have said on many occasions is not only enlightening but on occasion entertaining as well, which makes for spirited and involved debate.

Mr. President, I yield the remainder of my time back to Senator ROTH.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I yield 5 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized for 5 minutes.

Ms. COLLINS. Mr. President, I rise today to support the nomination of Charlene Barshefsky to be the next United States Trade Representative. In representing a State with a long history of trade with Canada, I have taken particular interest in President Clinton's nominee for USTR.

I have had serious concerns about this administration's lack of aggressiveness in pursuing the concerns of Maine's farmers and businesses regarding unfair trade practices by neighboring Canada. Canada is Maine's No. 1 trading partner, and Mainers value this relationship, but we want it to be a fair relationship. When evidence is found that trading practices are not fair, the United States needs to take strong and effective action.

To underscore my concern about this problem, I withheld my support for Ambassador Barshefsky until I had an opportunity to meet with her to discuss several trade issues important to the people of my State. Farmers, fishermen, and others in natural resource industries have long been concerned about unfair trade practices by the Canadian Government.

Maine potato farmers, in particular, have labored under trade practices that have threatened the very survival of some farms. Particularly troubling are apparent subsidies from the Canadian Government that allow Canadian farmers to sell their products at artificially low prices, thus enabling Canadian farmers to dump large volumes of potatoes into the American market. At the same time, there is concern that Canadians may be erecting trade barriers that make it difficult for our farmers to sell their products in Canada.

We cannot continue to tolerate Canadian trading practices that adversely affect Maine potato farmers, who have seen more than their share of hard times. However, I am encouraged by Ambassador Barshefsky's recent actions, which include asking the International Trade Commission to undertake an investigation to determine the nature and extent of Canadian potato subsidies. This is a step in the right direction and a good sign that these issues will finally get the attention they deserve. But it is only a first step. It is critical that the administration follow through and take action to assure a level playing field.

Another issue I raised with the Ambassador was the frustration of some Maine shellfish companies with newly instituted inspection fees on shellfish products exported to Canada. Maine shellfish exporters have been concerned that the Canadians are unfairly targeting their products for inspection in an attempt to make it more difficult for Maine shellfish to be shipped to Canada. On this issue I found the Ambassador to be very responsive. She has been helpful with gathering information, and I am pleased USTR officials have begun meetings with their Canadian counterparts to review these onerous fees.

Finally, I also raised the issue, which the distinguished Senator from South Carolina has talked about, and that is the issue of the U.S. tariffs on capacitors. As part of the Information Technology Agreement negotiated in Singapore last year, the administration agreed to a European proposal to eliminate the current 9 percent tariff on capacitors entering the United States. Under the agreement, the tariff would be eliminated in July of this year.

The elimination of this tariff could pose a serious hardship on several American companies, one of which is in my State of Maine. The Ambassador and I discussed this hardship, and I made the case that the industry was unaware of even the potential that this tariff could be eliminated. I asked what measures could be taken to provide some relief.

I was impressed with the Ambassador's knowledge on this issue, and I was very encouraged by a commitment she made to me to find middle ground with the Europeans that would give American manufacturers of capacitors more time to adjust to a tariff elimination.

Specifically, we talked about the possibility of having a phaseout of the tariff, rather than the abrupt elimination in July.

In closing, I would like to address the issue of the need to waive a provision passed last Congress as part of the lobbying disclosure act. This provision prohibits the appointment of any person who has represented a foreign government in a trade dispute with the United States from serving as USTR or deputy USTR. Like many of my colleagues, I was very concerned about the need to exempt someone from a law that is on the books and has been passed so recently. Since the foreign country involved is Canada, I was particularly concerned because of the contentious trading relationship that my State has had over the years with Canada on many important products. However, after addressing this issue with Ambassador Barshefsky, I learned that she was previously exempted from this provision in her capacity as deputy USTR. It, therefore, does seem reasonable to me to allow this waiver to follow her into her new duties as USTR, and I agree with the Finance Committee's unanimous recommendation to waive the law.

I am pleased to have had the opportunity to meet with Ambassador Barshefsky and her staff to discuss these important issues. They are critical issues to my constituents. I found her to be very knowledgeable and responsive. I am hopeful that her tenure as USTR will bring about renewed interest, commitment and, most of all, action on trade issues confronting the people of Maine.

I appreciate the distinguished chairman of the Finance Committee yielding me time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 15 minutes to the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 15 minutes.

Mr. ROCKEFELLER. Mr. President, I rise to express my extremely strong, very enthusiastic support for the nomination of Charlene Barshefsky to be our U.S. Trade Representative. This is an important vote for America, for its future. I urge my colleagues to give her the unanimous vote of confidence that she has, in fact, already earned through her record of incredible fortitude, ability, and a long list of trade accomplishments, even as acting USTR.

The President has put forward, frankly, a most unusual person—unusually skilled, highly qualified, for one of the most important jobs in the U.S. in Government, and that is being

our Nation's lead trade negotiator and keeping up with all developments all over the world all the time. It is an incredible job.

She now should have the official title to proceed with the job awaiting her in trade negotiations and efforts that offer immense opportunities and extremely high stakes for our industries, for our workers, and for our economy.

In just the last year alone, on a whole host of other things, as our acting trade representative, Charlene Barshefsky has concluded a renewal of our critical semiconductor agreement with the Japanese; seen through an agreement to remove tariffs around the world on information technology products; and won agreement of a massive telecommunications pact that promises more than $1 trillion in worldwide economic benefits through the year 2010, all of this as acting trade representative.

Beyond that, I would point to one of Charlene Barshefsky's strongest qualifications: Her masterful grasp of complicated issues surrounding China's integration into the global economy.

We have all read, hopefully, all of the writing that has come out about China since the death of Deng Xiaoping. I believe that China is the single biggest long-term macroeconomic challenge facing the United States. We cannot duck it. We must handle it intelligently.

China is the world's largest country, in terms of population, and its economy will surpass ours sometime in the not too distant future. If its accession to the World Trade Organization, in particular, is not handled properly, the ramifications for the United States could be serious and long lasting. This takes the hand of a master. That hand belongs to Charlene Barshefsky.

We are also very fortunate to count on Ambassador Barshefsky as we face the challenge of our trade relationship with Japan. This winter I took, as I always do, a delegation of West Virginia business people to Japan and Taiwan. One of the messages we heard, in a troubling fashion very frequently, was that Japan was looking much more toward turning to the World Trade Organization for the settlement of previously negotiated bilateral trade agreements, turning, therefore, away from the bilateral process which has traditionally characterized our negotiating relationship with Japan.

I don't blame them if they are trying to avoid a U.S. negotiating team headed by somebody as forceful and capable as Charlene Barshefsky. My response is that overall United States-Japan relations depend on our ability to deal with one another, on a bilateral basis, on our trading issues, and then have occasional recourse to the WTO, but none of this could we do any better than by having Ambassador Barshefsky at the helm representing our country, our people, the people from my State.

It is impossible for me to explain how strongly I feel about the nomination and the confirmation of that nomination hopefully on this day.

To turn to the amendment we are now debating, the Senator from South Carolina is one of the most forceful advocates in the Congress for American interests in the global economy. I learned a great deal about issues coming from discussions with him about the globalization of the economy. He talks about it a great deal with great erudition, and I admire and share his intense commitment to American workers and industries.

The Senator from South Carolina also has a very long-time interest in the issue of foreign ownership of American telecommunications services, which, in fact, happens to be the root cause of the Senator's amendment, although this dispute is not about broadcast rights but about telecommunications services—not about broadcast rights but about telecommunications services—like cellular or international calling.

Clearly, there is a difference of opinion about what U.S. law allows in the area of ownership of telecommunications services. This is a difference of opinion, not only between the Senator from South Carolina and USTR, but between the Senator and something called the Federal Communications Commission, which he declines to recognize on this matter.

The Senator, as the former chairman of the Commerce Committee and the ranking member now, also disagrees with the current chairman of the committee, Senator JOHN MCCAIN, who has just spoken, as well as the chairman of the House Commerce Committee, Mr. BLILEY, over this law.

As I understand it, the U.S. offer in the telecommunications agreement tracks U.S. law, meaning this dispute is really over the interpretation of current U.S. law by the FCC, which the ranking member of the Commerce Committee does not like, not the trade agreement reached by USTR.

I thoroughly agree with the Senator from South Carolina that Congress must assert its constitutional right and responsibility to oversee international trade and international commerce, and I am in full agreement Congress should act when a trade agreement makes commitments that differ from current law. But that is already the law of the land. That exists now under the current law.

If a trade agreement reached by the executive branch requires a change in law, Congress must act to implement the agreement. When the President agreed to the Uruguay round, Congress had to pass implementing legislation for us to meet its terms, which we did. However, to cite another example, when the President agreed to the shipbuilding agreement at the OECD, Congress did not agree to change American law to implement that particular agreement.

As somebody who, like the former chairman and ranking member of the Commerce Committee, opposed NAFTA as I did, I am certainly not saying that we should signal that this or any other administration has a blank check to make trade agreements that are not in America's interest. But that is not what the amendment of the Senator from South Carolina is about. This amendment would create a whole new role for Congress that could have a chilling effect—would have a chilling effect—on trade negotiations that, in fact, seek to serve and strengthen U.S. interests, which he talks about.

My problem with the Senator's amendment is that it would do much more to reaffirm Congress' role in responding to trade agreements that require a change in our laws. By using the language in the amendment which says that any trade law which would—and then the keywords are—"in effect amend or repeal statutory law," I am afraid it would entangle Congress in a constant, complicated, unnecessary process of acting on trade agreements that do not embody actual changes in U.S. law and don't require congressional involvement to obtain the benefits of those agreements.

I respect the fact that the Senator questions a part of the new telecommunications trade agreement negotiated in Geneva. Disagreements between members of the legislative branch and executive branch are very common, even on an intraparty basis. But we have existing procedures to resolve disputes like that when they come up. A challenge can be taken up with the courts or something called legislation can be offered to change the particular practice in dispute.

The problem with the amendment of the Senator from South Carolina is that instead of proposing a specific change of law, which addresses his interpretation of the law affecting ownership of telecommunications services, he is proposing a new, generic, far-reaching role for Congress that could affect nearly all future trade agreements.

For example, USTR recently concluded an agreement which would eliminate tariffs that were on some widely sought after anti-AIDS drugs. Under current law, this could be put into effect—under current law—in 60 days under Presidential proclamation authority. However, if the Hollings amendment were to pass, such routine and noncontroversial changes would require a new act of Congress that could mean waiting months or maybe even watching the benefits of this trade agreement never materialize.

The amendment by the Senator from South Carolina calls for a major shift in U.S. trade policy. It has not been discussed or considered in the Finance Committee, which has jurisdiction over all reciprocal trade agreements.

Finally, even if all these questions could be answered, the House has already said that they will "blue slip" the waiver resolution if it contains this amendment, because it goes against

the constitutional provision that all measures which affect revenues must originate in the House of Representatives. So this amendment on the waiver resolution would doom the underlying nomination, and Charlene Barshefsky is too good a nominee to see that happen.

With respect for my colleague from South Carolina, I strongly urge my colleagues to vote against his amendment. This is not the way, not the time, nor the policy to use in resolving the Senator's dispute over a specific provision of a specific trade agreement. That disagreement should be pursued through other avenues that all of us use on a very regular basis. In this case, the amendment would establish an entirely new process, a new law, a new role for Congress regarding all trade agreements. It is a role that is unnecessary and could prevent our trade negotiators from doing the kinds of work that we charge them to do in representing our best interests.

Rarely, if ever, have I seen an international agreement that has virtually no opponents in either the business community or from American workers. Usually, people point to winners and losers in international trade agreements. Sometimes people are afraid they could lose their jobs, or they feel that their business could be disadvantaged relative to their competitors. But on this Telecom agreement, notwithstanding the objections of the Senator from South Carolina and a couple of others, I've heard barely a peep.

This international telecommunications agreement truly breaks new ground. For the first time ever, an international trade agreement effectively guarantees competition. The United States put forward regulatory guidelines modeled on our own telecommunications law, and 65 countries agreed to adopt most, if not all, those procompetitive principles. That is extraordinary.

This agreement between 69 countries will open nearly 95 percent of the worldwide telecommunications services market to competition. A market which will exceed $600 billion in gross revenues this year alone. Mr. President, I'd point out that in April of last year, Charlene Barshefsky walked away from the talks when only 40 countries had made offers, representing only 60 percent of global revenues.

Included in this agreement are local, long-distance, and international calling services; submarine cables; satellite-based services; wide-band networks; cellular phones; business intranets; and fixed wireless services for rural and underserved regions. What this agreement did not cover are broadcast services.

It is believed that competition by telecom service providers is expected to lead more than $1 trillion in economic benefits for consumers around the world through 2010. While U.S. consumers have already reaped much of the benefit of deregulation and increased competition, the FCC has pointed to billions of dollars of savings from this deal for American consumers due to the eventual lowering of costs for international calling by 80 percent—from more than $1 per minute to less than 20 cents—the actual cost of placing such a call.

I'll admit that I am disappointed that some countries, such as Japan, Korea, and Canada, didn't offer to open up their markets quite as much as the United States did, but reaching this agreement doesn't in any way prevent us from further negotiations with them in this area.

I'd also point out two things. First, even though these countries, and some others, maintained limits on purchasing existing providers, in most cases, American firms can still go in to those same countries and compete on their own—and the regulatory principles will guarantee that they are not blocked from connecting to existing telecommunications networks.

Second, if it is Japan we are talking about, the idea that anyone plans to purchase more than 20 percent of NTT any time soon, is ridiculous. NTT is the world's largest company, worth well over $100 billion—I'm told that 20 percent would cost about $23 billion. Right now, 3 percent of NTT is owned by foreigners, and I haven't heard that anyone plans to buy much more than that. What American firms are talking about is the chance to start or invest in new common carriers in Japan, such as Japan Telecom, which is connected to the Japanese Railroad, and which anyone can invest in with no limitations. I'll admit that I am concerned with the 20-percent limitation on KDD, which is a much smaller company than NTT—about the size of one of our Baby Bells, but I'm hopeful we can work this out in future negotiations.

To conclude, today we have finally reached the moment to extend the title of United States Trade Representative to somebody who I think is magnificently qualified to take that job. Superb qualifications, superbly tested, and now prepared to advance America's interests even further. What we are going through today threatens to block her, which hurts her in China, which hurts her in Japan, which hurts her all over the world, and therefore through hurting her, our interests.

So I urge the unanimous vote that she deserves, that she be made Ambassador, the granting of the Dole waiver that is required, and the defeat of the amendment that does not belong here and has consequences that could truly harm, not help, American interests. I yield the floor and thank the distinguish Finance chairman.

Mr. BYRD. Mr. President, I strongly support the adoption of the amendment introduced by the senior Senator from South Carolina [Mr. HOLLINGS]. On the face of it, it is a straightforward, simple proposition that attempts to preserve the integrity of the laws that we pass, and that are the subject of discussion and/or negotiation between the United States and other nations. It says that if our Executive branch negotiators reach an agreement which amends or repeals U.S. law, that agreement may not be implemented until the agreement is approved by the Congress. Who could dispute such an obviously valid proposition?

The case at hand, the negotiation of a new telecommunications services agreement, apparently effects changes in U.S. law dealing with access to the U.S. market in relation to the access of American companies into foreign markets. This is a matter which was very controversial in connection with the consideration of the landmark Telecommunications Act of 1996. In working with the Commerce committee on this legislation, I was involved in developing certain changes to section 310(b) of the underlying statute dealing with foreign ownership. The matter was so controversial that the conferees on that legislation were unable to reach agreement, and changes to the foreign ownership provisions were dropped from the final conference agreement.

It is all the more important that our negotiations, in the light of the controversial nature of this matter, take care not to effect what amounts to a change in the law by virtue of negotiating a provision of an international agreement without taking the role of the Congress into account. The law and an agreement should not be put into conflict on such a matter, and Senator HOLLINGS is right to insist that no such negotiated change should be implemented until the Congress has agreed by amending the law which governs the situation.

Mr. HATCH. Mr. President, I support the joint resolution before us waiving certain provisions of the Trade Act of 1974 relating to the nomination of Ambassador Barshefsky to the position of United States Trade Representative.

Let us make no mistake as to the quality of Ambassador Barshefsky's service. We are not simply endorsing her as an exception to the act. Rather, she could not be more deserving of confirmation. Let's examine her record.

Her service has been marked by substantive accomplishments on an unprecedented scale. Over 200 trade agreements have been enacted, and she has been in the middle of the dispute process for the most difficult of all—the Chinese anti-piracy agreement—and more than 20 separate agreements with the Japanese in such areas as auto parts, telecommunications, government procurement, semiconductors, and medical equipment and technology. Many of her accomplishments have directly benefited my State of Utah which, despite its small size, is one of the Nation's leading exporters of technology and software.

Like many other members of the Senate Finance Committee, I have been inundated by letters from hundreds of Barshefsky supporters. This

outpouring of support underscores my own impression, as I expressed at the recent Finance Committee hearing, that she is a most qualified nominee for U.S. Trade Representative.

But let me draw attention to one particular comment regarding her success in the Chinese trade negotiations. I refer to a statement from the Recording Industry Association of America, a sector that has been especially hard hit by Chinese intellectual property piracy. In his recent letter to me, RIAA chairman and CEO, Jay Berman, reported, ''I personally witnessed her negotiations with China in June, 1995, that led to the immediate closing of 15 pirate CD [compact disc] plants.''

She has been repeatedly credited with breakthroughs in other sectors as well.

As my good friend from Delaware said only moments earlier, she has vastly expanded market access for American business—in Asia, Latin America, and Europe. More importantly, her work will be seen as an advent to still another American century, a century that will be marked by rising prosperity everywhere.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Delaware.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROTH. Mr. President, I have a unanimous-consent request which has been cleared with the minority. I ask unanimous consent that following the allotted times for debate, the Senate proceed to a vote on or in relation to the Hollings amendment No. 19: Senator HOLLINGS 9 minutes, Senator CONRAD 5 minutes, Senator DASCHLE 10 minutes, Senator BURNS 6 minutes, Senator ROTH 5 minutes; and immediately following that vote the joint resolution be read a third time and the Senate proceed to a vote on passage of Senate Joint Resolution 5; further, if the resolution passes, the Senate then proceed to executive session and immediately vote on the confirmation for the nomination of Charlene Barshefsky. I further ask unanimous consent that prior to the second and third vote there be 2 minutes of debate equally divided in the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROTH. Mr. President, I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise to briefly address two questions: No. 1, the question of a waiver for Ambassador Barshefsky; and, No. 2, the approval of Ambassador Barshefsky as our trade representative.

Mr. President, I represent the State of North Dakota. We are right next to Canada. The question of a waiver for Ambassador Barshefsky relates to the question of her previous representation of Canada on trade issues, and that requires a waiver if she is to become our trade representative.

Mr. President, anyone who has worked with Ambassador Barshefsky understands her full commitment and dedication to the trade interests of the United States.

My State has been involved in a longstanding dispute with Canada with respect to unfairly traded Canadian grain coming into this country at below their cost and having a devastating effect on the farmers of my State, not only the producers in North Dakota but farmers in Montana, farmers in South Dakota, Minnesota, Kansas, Nebraska. Charlene Barshefsky has stood with us shoulder to shoulder to get a fair result.

Mr. President, this issue first came up when she was approved as the Deputy USTR 4 years ago. She has done a superb job in her position at the trade representative's office. I think anybody who has followed her career and watched the job she did in negotiating to open up Pacific rim countries to our trade, the job that she has done fighting for U.S. interests in trade disputes with Canada, that she represented for a brief time on limited issues when she was in the private sector, would understand there is no reason—none—to deny a waiver to allow Charlene Barshefsky to become our trade representative.

Mr. President, Charlene Barshefsky is superb. I have dealt with many trade representatives. Rarely does one find someone of her background, her intelligence, her talent and her commitment. Those are qualities that we want working for the United States in these very difficult trade negotiations. And she has shown her mettle over and over and over. I urge my colleagues to vote for the waiver and to vote for Charlene Barshefsky to be our next trade representative. I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank the Chair and I thank my friend from Delaware.

I rise today with some concerns about the new trade representative, Charlene Barshefsky. But I also rise to support her nomination. She has proven herself to be a tough negotiator as the acting trade representative. She recently played a major role in the opening of foreign markets in telecommunications, an agreement which we hope will decrease the costs of international calls and likely to have similar impact on domestic rates as well as U.S. companies competing on a worldwide basis.

But on the other hand, Ms. Barshefsky's bidding on the administration's behalf of NAFTA to expand into some South American countries has me somewhat concerned.

There is nobody in this body who fights harder for his people than the Senator from South Carolina. And I think I know why, because I visited that State one time, and he walks among those people who have lost their jobs in textile mills and understands those people's pain.

We are now suffering that kind of a pain because of the border wars with Canada in the State of Montana. Whenever you start talking about fast tracking authority to expand NAFTA, and you understand the effect NAFTA has had on us in the beef industry and the grain industry—and that is what I am; I am not anything else fancy—then I say we have to approach that very cautiously, because I am not going to lower the living standards of my farmers for the sake of so-called free trade unless it is fair trade. If left unchecked, it will also contribute to the devastation of other sectors in our Nation's economy as well, if we do not just look at some of these things.

We live in a free economy, we live in a global economy. I admit while Canadian livestock producers reap the benefits of new profit markets, Montana producers are hit with a flood of imports at the same time that the cattle market is already at the bottom of its scale. So we cannot afford any more of this. To stem that, we will have to do it through enabling legislation.

I say that the pending amendment is one that has to be discussed among the FCC, keeping in mind that the final rule of last year's telecom bill has not been written yet. So, I have some very strong concerns about the expansion that this President and this administration want to take. We see loaded trucks with cattle going through Montana, and we say, are they stopping here? And they say, no, they are going south. We lost the Mexican market, plus we lost some of our own markets through the last little deal. We got snookered a little bit talking about NAFTA.

I oppose any kind of fast track as far as the expansion of NAFTA is concerned because I think it has to be done the right way. I voted against it the first time, understanding where the Senator from South Carolina and the Senator from Montana were coming from, and I will probably, unless we have a mechanism we can work out these troubles that we have, playing on a level playing field, I am saying right now that if you want to ship cattle into the United States, I want you to have the same rules and regulations, the same environmental laws as we have to comply with in this country. That is only fair.

If Ms. Barshefsky is a tough negotiator, I will stand beside her, but do not use agriculture as a pawn and then sell it out like we have in times past. One has to remember that agriculture is still the largest contributor to the GDP in this country. I will support her in the upcoming confirmation vote and hope that she works with us in Congress whenever negotiations of expansion get under way.

I yield back the remainder of my time.

Mr. HOLLINGS. Mr. President, let me acknowledge the one kind word we got this afternoon in this debate. The Senator from Montana is on target. He is right. We go home and we see the jobs not only created at the BMW's but we see the jobs that have been lost, and that retraining out of Washington will not suffice. I do appreciate it very much, and I agree with him. He brings it right to the fore, the straw man they have put up.

They talk fast track, they talk regulations, they talk the differences between broadcast and common carrier under the statute, as there being a distinction, and, of course, the most serious one they bring is the character of the lady herself, which I never would suggest anything otherwise, and is of the finest character as an individual, Ms. Barshefsky. That is not a debate.

She happens to say that you do not need any approval of Congress. Well, then, I ask, why did the previous man of character, and just as dazzling as Ms. Barshefsky, Mickey Kantor—and I inserted in the RECORD his request that we amend the law so he could agree on foreign ownership. Now she is saying there is not any agreement, and there are all kinds of straw men.

The junior Senator from West Virginia was saying there is a distinction here. I am talking about broadcast rights and television services. I put these two sessions in there, and it can be read, ''No broadcast or common carrier license shall be granted to the foreign government'' and on and on and on. It is crystal clear that there is no distinction. That is why none other than the Chairman of the FCC asked that it be changed.

So we really come to the floor after 2 to 3 years of asking for a change, not effecting the change, the 95 Members of the U.S. Senate voting and saying, all right, we agree that there be no change, and now they are all coming and saying, ''Well, this is going to have a chilling effect,'' when the special trade representatives change the law and give away the store, the 100 percent ownership.

Heavens above, we cannot make it more clear to everyone. We read section 8, article 1, of the Constitution: ''The Congress shall have power'' and it goes on ''to lay and collect taxes'' and No. 2, to borrow money, and No. 3 ''to regulate commerce with foreign nations.'' It does not say regulate foreign nations on a fast track. It does not say regulate commerce regulation laws. It says regulate commerce. These fellows could not have voted for the Constitution if they had been a forefather back in the founding days.

I never said anything about regulations. The Senator from Rhode Island came in and brought that up, and they keep on bringing up these straw men and talking about a complicated process. You could not make an agreement or anything else of that kind, having a chilling effect. The language is just as simple and constitutionally clear as you can possibly make it: ''No international trade agreement,'' which is what we have in the telecommunications agreement ''which would in effect remand or repeal statutory law''—I put the two statutes in that have been amended or repealed; not regulations or anything else or fast track and all the other things—''of the United States may be implemented by or in the United States until the agreement is approved by Congress.'' It says that is approved by Congress under its constitutional duty.

Now, there is absolutely a terrible misunderstanding about this so-called free trade. It is just like the crowd running around acting like they have revenues—the doubletalk on the budget. Everybody wants to cut the revenues, cut the revenues, taxes are too burdensome, cut the revenues, but ''I want to balance the budget and I have a plan to balance it.'' How can they pay the bill by cutting the revenues? How can we possibly have free trade when we restrict the trade?

We say to that U.S. corporation, ''Before you can do business, you have to have a minimum wage. You have to comply with the Social Security requirements for pension and retirement rights. You have to have Medicare requirements by the Finance Committee. You have to have clean air. You have to have clean water, plant closing notice, parental leave,'' and on down the list of all these requirements—OSHA, safety workplace, safe machinery. All these requirements that Congress put on and then say, ''I have free trade.'' Well, you can go to Mexico and you do not have to have any of that. That is why we immediately ipso facto with that NAFTA agreement went from a plus balance of trade to a whooping negative, which they promised otherwise, losing all the jobs and wrecking Mexico and the United States.

Some question was raised about the Pacific rim. We have a deficit in the balance of trade with Indonesia of $4.1 billion. We have a deficit in the balance of trade with Japan of $47.5 billion. We have a deficit in the balance of trade with China of $39.4 billion. A deficit in the balance of trade with Malaysia, $9.4 billion. Taiwan is $11.4 billion. A deficit in the Philippines of $1.7 billion. A deficit in Thailand of $4.9 billion. A deficit in Singapore of $3.2 billion. And we can cite the European ones. I had them here on a list a minute ago. We know there is a deficit in Canada, and, yet, they talk about everything so magnificent. Let's rush over to China and get another agreement—quick. Heavens above, don't they understand that we are losing, we are not winning? This crowd around here act like they are accomplishing something.

Well, we have the Federal Republic of Germany, minus $15.4 billion; Venezuela, minus $8.1 billion; Italy, deficit and a balance, minus $9.4 billion. We can go right on down the list. It is all in all in all—I said the sum total of merchandise trade in deficit. That is, we bought manufactured goods. There is the great productive United States—not the workers. We know the workers are the most productive. That is why we got 100 German industries. That is why we have 50 Japanese industries. That is why we have, companies Michelin—I called on them 35 years ago, and now we got 11,600 jobs from France in my State. We are not talking about productivity. We are talking about the productivity of this Congress, this Government up here. We are the ones that are not producing. We are the ones that are not producing, chasing our tail around the mulberry bush, with independent prosecutors and investigations.

We know the problem is too much money in the game. Everyone has to skirt around this, twist this, turn that, and along goes the Supreme Court saying, soft money, you can do this and that and the next thing. So there we are. We are not producing here. We have $187 billion more than we bought in merchandise than what we sold. They keep on talking about exports, exports. So we are going out of business and nobody wants to talk about it. They bring up all these straw men about the complicated process, the chilling effect, new role for Congress—there is no new role. It is the only role that we have, a constitutional role. I think that we ought to just retain the balance of the time.

I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. I retain the balance of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, we have had a great deal of debate on the Hollings amendment. So, in closing, I will be brief, but I want to make two simple points. First, no trade agreement—I emphasize ''no trade agreement''—has the stature to supersede U.S. statutory law. If a trade agreement seeks to accomplish a result not in conformity with U.S. statutory law, the Congress must enact legislation to achieve that result.

Second, the amendment, whatever its merits, will cause Senate Joint Resolution 5 to be blue-slipped in the House if the amendment is agreed to. The only result that the amendment can accomplish is to derail the Barshefsky nomination. Make no mistake, I have a letter from BILL ARCHER, chairman of the Committee on Ways and Means. He says that, ''Specifically, I understand that the Senate maybe asked to consider particular provisions, such as one suggested by Senator HOLLINGS, which would change the manner in which Congress considers trade agreements

and legislation having a direct affect on customs revenue. Although I strongly support Ambassador Barshefsky's nomination, I would have no choice but to insist on the House constitutional prerogative and to seek the return to the Senate of any legislation including such a provision.''

So I urge my colleagues to vote ''no'' on the Hollings amendment. I yield whatever time I have to my distinguished colleague from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, the chairman and I have a letter we have just received from Charles F.C. Ruff, counsel to the President, and after the upcoming vote, we will vote on the resolution itself. He states:

Because the President strongly desires to appoint Ambassador Charlene Barshefsky as USTR, and in order to ensure the absolute propriety, without question, of her appointment, President Clinton will not appoint Ambassador Barshefsky until S.J. Res. 5 has been enacted.

I ask unanimous consent that the full text of the letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, March 5, 1997.

Hon. WILLIAM ROTH, *Chairman,*
Hon. DANIEL PATRICK MOYNIHAN, *Ranking Member,*
Senate Finance Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN ROTH AND SENATOR MOYNIHAN: I write to urge you to pass S.J. Res. 5 as quickly as possible without amendment. As you know, Section 21(b) of the Lobbying Disclosure Act of 1995 prohibits the President from appointing anyone to serve as United States Trade Representative (USTR) or Deputy USTR if that person had in the past directly represented, aided or advised a foreign government in a trade dispute or trade negotiation with the United States. Because the President strongly desires to appoint Ambassador Charlene Barshefsky as USTR and in order to ensure the absolute propriety, without question, of her appointment, President Clinton will not appoint Ambassador Barshefsky until S.J. Res. 5 has been enacted.

Sincerely,

CHARLES F.C. RUFF,
Counsel to the President.

Mr. MOYNIHAN. Mr. President, I yield the floor.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I have had the opportunity to listen to the debate this afternoon, and I appreciate and commend the participation of the distinguished Senator from Arizona and our ranking member on the Finance Committee, and certainly the chair of the Finance Committee, the Senator from Delaware, for their leadership on this issue.

I think it has been shown this afternoon that, as a representative of the United States in trade negotiations around the world, Ambassador Barshefsky has proven herself to be a tough and effective advocate of American interests. Her solid record of achievement has done much to level the playing field for American producers. She understands the challenges facing the United States in the world trading system. Her negotiating style combines careful preparation, great stamina, determination, and a willingness to exercise the leverage provided by U.S. trade laws when circumstances warrant it.

For example, as a key architect of the United States-Japan Framework Agreements, she used the leverage provided by tariffs on Japanese luxury car imports to gain better market access in Japan for American car manufacturers without penalizing consumers back home. Thanks, in part, to her efforts, exports of foreign vehicles to Japan have increased by 30 percent last year, and the number of American franchise dealer outlets reached near 20. American companies are making substantial investments in Japan and forging important new partnerships with Japanese business.

Ambassador Barshefsky has also demonstrated she appreciates the crucial role agriculture trade plays in the American economy. Last year, the trade surplus in agricultural products reached $28.5 billion, the largest of any industry. Still, as she has acknowledged to me, we could do far better. Annual surveys compiled by the Office of U.S. Trade Representative indicate that roughly half of the foreign trade barriers facing U.S. products are in the agricultural sector.

Persistent market access barriers and other unfair trade practices continue to be a source of concern, and although agricultural exports, as a whole, have risen, problems remain in many areas, including beef and cattle prices.

In my view, liberalizing world trade is part of the answer to problems in the agricultural economy. However, our negotiators must be prepared not only to seek new global agreements but also to ensure that individual trading partners comply with their market access commitments from previous ones.

Thankfully, in Charlene Barshefsky, we have found someone who understands this challenge. In recent years, she has worked to increase beef exports to Korea, increase the availability of fresh produce in Japan and China, and thwart European trade barriers that could have devastated American soybean and corn exports. There has been a 30 percent increase in the value of agricultural exports since 1994, and I am confident that we will continue to build on this progress under her leadership.

Ambassador Barshefsky has been widely praised and supported by industry leader in many sectors of the economy. Alfred J. Stein, chairman of the Semiconductor Industry Association and VLSI Technology Inc., has stated that ''the President could not have found a more talented and dedicated envoy to represent the U.S. trade interest.'' John E. Pepper, Chairman of Procter and Gamble Company, has said that ''Ambassador Barshefshy . . . represents U.S. trade interests in an aggressive yet diplomatic manner. The nation is fortunate to have [her] as our U.S. Trade Representative.'' Gary Hufbauer, a scholar at the Institute for International Economics, has described her as ''easily the most qualified, most knowledgeable person on trade law ever nominated to this post.''

In my opinion, Ambassador Barshefsky's experience, knowledge and tenacity make her the best person for the job. She has my full support, and I urge my colleagues to support her nomination and the proposed waiver from the Lobbying Disclosure Act.

The waiver is necessary because she performed a limited amount of work for Canadian interests while she was an international trade lawyer in private practice. Effective January 1, 1996, the Lobbying Disclosure Act bars anyone who previously represented a foreign government from being nominated for a senior USTR post. The Ambassador was exempted from this requirement during her service as Deputy USTR, and it is appropriate to ''grandfather'' her tenure as U.S. Trade Representative as well.

The distinguished ranking member of the Commerce Committee, Senator HOLLINGS, is proposing an amendment to the waiver that I must reluctantly oppose. I have sympathy for the issue he raises and might well support his efforts under different circumstances. However, the leadership of the body has expressed its firm opposition to Senator HOLLINGS' legislation, and House Ways and Means Committee Chairman ARCHER has indicated that he will seek to have any bill including the language ''blue-slipped'', or sent back to the Senate, on the grounds that it would constitute a revenue measure that must originate in the House.

For these reasons, adoption by the Senate of the Hollings amendment would almost certainly delay Ambassador Barshefsky's nomination for an unacceptably long time. The Senate has a responsibility to approve the President's Cabinet nominees as expeditiously as possible. Ambassador Barshefsky is a particularly fine choice, and, in my view, the Senate should not take any action that would delay her confirmation further. Accordingly, I must ask my colleagues to vote no on the amendment of the distinguished Senator from South Carolina.

Again, Mr. President, let me urge all Senators who support the nomination

to support the joint resolution waiver to give Ambassador Barshefsky the kind of bipartisan support that her record, that her ability, that her intellect, and that her potential demand.

With that, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I move to table the Hollings amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona to lay on the table the amendment of the Senator from South Carolina. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. SANTORUM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 84, nays 16, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—84

Abraham	Glenn	McConnell
Akaka	Gorton	Mikulski
Allard	Graham	Moseley-Braun
Baucus	Gramm	Moynihan
Bennett	Grams	Murkowski
Bingaman	Grassley	Murray
Bond	Gregg	Nickles
Boxer	Hagel	Reed
Breaux	Harkin	Reid
Brownback	Hatch	Robb
Bryan	Hutchinson	Roberts
Bumpers	Hutchison	Rockefeller
Burns	Inhofe	Roth
Campbell	Jeffords	Santorum
Chafee	Johnson	Sarbanes
Cleland	Kennedy	Sessions
Coats	Kerrey	Shelby
Cochran	Kerry	Smith, Gordon H.
Collins	Kohl	Specter
Coverdell	Kyl	Stevens
D'Amato	Landrieu	Thomas
Daschle	Lautenberg	Thompson
DeWine	Leahy	Thurmond
Dodd	Levin	Torricelli
Domenici	Lieberman	Warner
Durbin	Lott	Wyden
Enzi	Lugar	
Feinstein	Mack	
Frist	McCain	

NAYS—16

Ashcroft	Faircloth	Kempthorne
Biden	Feingold	Smith, Bob
Byrd	Ford	Snowe
Conrad	Helms	Wellstone
Craig	Hollings	
Dorgan	Inouye	

The motion to lay on the table the amendment (No. 19) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will read the joint resolution for the third time.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senate will please come to order. There are 2 minutes equally divided.

The Senator from Delaware.

Mr. ROTH. Mr. President, before the Senate votes on Senate Joint Resolution 5, I want to reiterate the importance of passing this waiver. The waiver is essential.

Mr. FORD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator from Kentucky is correct. Senators will take their conversations to the cloakroom.

The Senator from Delaware.

Mr. ROTH. The waiver is essential to ensure that the President is able to appoint this capable nominee to the post of USTR.

I want to make just two points. First, when the Lobbying Disclosure Act was passed, Ambassador Barshefsky was serving as Deputy USTR. As such, the act expressly did not apply to her in that position.

Second, the Ambassador never lobbied the U.S. Government on behalf of a foreign government or foreign political party.

Under these circumstances, I strongly feel that passage of the waiver is appropriate to assure the appointment of Ambassador Barshefsky as USTR.

The PRESIDING OFFICER. The Senator from New York will suspend. The Senate will please come to order.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, just to supplement the chairman's remarks, I would like to point out that he and I have received a letter today from Charles F.C. Ruff, Counsel to the President, stating:

Because the President strongly desires to appoint Charlene Barshefsky as USTR and in order to ensure the absolute propriety, without question, of her appointment, President Clinton will not appoint Ambassador Barshefsky until S.J. Res. 5 has been enacted.

I yield the floor and thank the Chair.

Mr. ROTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the passage of the joint resolution.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced, yeas 98, nays 2, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—98

Abraham	Cleland	Feinstein
Akaka	Coats	Ford
Ashcroft	Cochran	Frist
Baucus	Collins	Glenn
Bennett	Conrad	Gorton
Biden	Coverdell	Graham
Bingaman	Craig	Gramm
Bond	D'Amato	Grams
Boxer	Daschle	Grassley
Breaux	DeWine	Gregg
Brownback	Dodd	Hagel
Bryan	Domenici	Harkin
Bumpers	Dorgan	Hatch
Burns	Durbin	Helms
Byrd	Enzi	Hollings
Campbell	Faircloth	Hutchinson
Chafee	Feingold	Hutchison
Inhofe	Mack	Sarbanes
Inouye	McCain	Sessions
Jeffords	McConnell	Shelby
Johnson	Mikulski	Smith, Bob
Kempthorne	Moseley-Braun	Smith, Gordon H.
Kennedy	Moynihan	Snowe
Kerrey	Murkowski	Specter
Kerry	Murray	Stevens
Kohl	Nickles	Thomas
Kyl	Reed	Thompson
Landrieu	Reid	Thurmond
Lautenberg	Robb	Torricelli
Leahy	Roberts	Warner
Levin	Rockefeller	Wellstone
Lieberman	Roth	Wyden
Lugar	Santorum	

NAYS—2

Allard	Lott

The joint resolution (S. J. Res. 5) was passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 5

Whereas paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) became effective on January 1, 1996, and provides certain limitations with respect to the appointment of the United States Trade Representative and Deputy United States Trade Representatives;

Whereas paragraph (3) of section 141(b) of the Trade Act of 1974 does not apply to any individual who was serving as the United States Trade Representative or Deputy United States Trade Representative on the effective date of such paragraph (3) and who continued to serve in that position;

Whereas Charlene Barshefsky was appointed Deputy United States Trade Representative on May 28, 1993, with the advice and consent of the Senate, and was serving in that position on January 1, 1996;

Whereas paragraph (3) of section 141(b) of the Trade Act of 1974 does not apply to Charlene Barshefsky in her capacity as Deputy United States Trade Representative; and

Whereas in light of the foregoing, it is appropriate to continue to waive the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 with respect to the appointment of Charlene Barshefsky as the United States Trade Representative: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) or any other advice and consent of the Senate, is authorized to appoint Charlene Barshefsky as the United States Trade Representative.

Mr. ROTH. I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the nomination of Charlene Barshefsky, of the District of Columbia, to be the U.S. Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary, vice Michael Kantor.