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FORGING A NEW CONSENSUS ON TRADE.

check against delivery

Good morning. My name is Beth Baltzan. I'm a trade lawyer currently in the private sector, as well as a fellow at the Open Markets Institute. I spent six years in the General Counsel's office at USTR, litigating disputes and drafting trade agreement text. For the last six months of the Obama Administration I worked for Ambassador Froman on dispute settlement against China.

I also worked for this Subcommittee from 2012 to 2016.

For that reason, it is a particular privilege to appear before you today to discuss enforcement in the New NAFTA. I've submitted detailed written testimony for the record, and I will touch on a few key points this morning

The architects of the multilateral trading system were true visionaries. Out of the rubble of World War II they sought to promote peace and prosperity through trade. Contrary to popular understanding, however, they didn't think peace and prosperity would be achieved through tariff cuts alone. They recognized that liberalized trade, and liberalized capital flows, would lead to labor arbitrage – and instability. For that reason, their vision for the system included enforceable labor standards.

Unfortunately, the American business community rejected the architects' vision, preferring to have no disciplines on their conduct. As a result, even today, the WTO has no labor – or environmental – standards.

Because of these omissions, there is what can only be considered a structural bias against viewing labor and environmental issues as

genuine trade issues, that is, issues that affect global conditions of competition.

But they *are* trade issues. As globalization has intensified, multinational corporations have seized on opportunities to arbitrage labor and environmental standards – as well as tax laws – to minimize their costs. The costs to others, however, have been incalculable.

We need look no further than the tragedy of Rana Plaza in Bangladesh. In 2013, a building housing garment factories – likely illegally - showed cracks, and workers were forced to return the next day despite the danger. The building collapsed, killing more than 1100 people and trapping others under rubble for days.

The United States has, on a bipartisan basis, sought in its bilateral and regional trade agreements to reduce the incentives to engage in this kind of exploitative arbitrage. One of the real improvements in NAFTA is the fulfillment, in large part, of the bipartisan May 10th agreement to make labor and environmental standards enforceable, on the same terms as the other chapters in the agreement, such as market access.

But with 12 years of enforceable labor and environmental standards under our belts, the record on enforcement remains disappointing. The U.S. government has been slow to bring any labor or environmental disputes, and as of today there is just one example of each.

This structural bias against treating labor and environmental issues as what they are – conditions of competition – means that we cannot rely on repairing the NAFTA dispute settlement system to solve the problem.

Fortunately, there are innovative solutions. For example, one of the lessons learned from the original NAFTA is that textile transshipment is a real problem. Thus CAFTA included a novel verification system at the factory level. Those provisions are now part of the new NAFTA. The Peru FTA includes a logging annex modeled on the CAFTA verification

provisions, in recognition of the endemic corruption problem Peru has in its logging industry. That annex has been used, by this Administration, to identify illegal shipments and bar them from entry.

Drawing on the success of that approach, Senators Wyden and Brown have devised a verification system that would allow Mexico and the United States to work together, as Peru and the United States worked together, to address these violations at the factory level. The proposal allows *both* governments to focus on the violations where they are happening, and to facilitate enforcement of Mexico's own labor reforms. One of the benefits of this approach is that it provides a valuable mechanism for addressing these problems through cooperation, rather than litigation.

Finally, there is a significant amount of consternation over the sunset clause. But one of the potential benefits of the sunset clause is that it – perhaps more than even a binding dispute settlement system – might incentivize the parties to uphold their end of the bargain.

Again, as detailed in my written testimony, the history of U.S. trade relations with Europe and Japan in particular is of achieving concessions that are then frustrated through other means. No amount of rulemaking, or modifications to dispute settlement – including creating the WTO itself -- has changed that dynamic.

It is worth at least asking whether a sunset clause might produce a different result.

Thank you for the opportunity to present these views to you.