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(Volume 1 of 5)

104th Congress
1995-1996

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UNITED STATES - JAPAN TRADE RELATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

MARCH 28, 1996

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UNITED STATES-JAPAN TRADE RELATIONS

THURSDAY, MARCH 28, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room B–318, Rayburn House Office Building, Hon. Philip Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
March 6, 1996
No. TR-19

CONTACT: (202) 225-1721

Crane Announces Hearing on United States-JapanTrade Relations

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on United States-Japan trade relations. The hearing will be the second in a series to be held throughout 1996 on the status and future direction of U.S. trade policy. It marks the first hearing of the series to review one of our major bilateral trade relationships as the United States approaches the 21st century.

The hearing will take place on Thursday, March 28, 1996, in Room B-318 of the Rayburn House Office Building, beginning at 2:00 p.m. Additional hearing days will be scheduled at a later date.

Oral testimony will be heard from both invited and public witnesses.

BACKGROUND:

One of America's most important and contentious trading relationships is with Japan. As our second largest trading partner, Japan absorbed more than $64.3 billion in U.S. exports in 1995. Overall U.S. exports to Japan have increased more than 20 percent over 1994 levels, reducing the trade deficit with Japan more than 10 percent, the first year-to-year decline since 1990. Yet, the overall size of the bilateral trade deficit with Japan -- $59.3 billion in 1995 -- continues to be a source of deep friction between the two countries. A significant cause of the deficit is macro-economic imbalances between the two countries, primarily the excess of total spending over total savings in the United States, and the high rate of savings in Japan. In addition, Japan needs to sustain and expand efforts to open its economy to internationally competitive U.S. goods and services.

In 1993, the United States concluded the Framework for a New Economic Partnership with Japan. This umbrella agreement identified macro-economic goals and outlined areas for sector-specific and structural negotiations. The Administration has negotiated agreements under the Framework in key sectors such as automobiles and auto parts, financial services, and investment. In other sectors, such as photographic film, further negotiations are necessary. As well, the Administration is seeking renewal of the United States-Japan Semiconductor Agreement which expires on July 31, 1996. Many of these issues will be on President Clinton's agenda when he visits Japan on April 16, 1996.

FOCUS OF THE HEARING:

The focus of the hearing will be to review the overall state of United States-Japan relations, including U.S. trade policy towards Japan and prospects for increased trade in the future. In particular, the hearing will evaluate the effectiveness of various sectoral agreements in increasing U.S. exports to this important trading partner and progress in resolving ongoing bilateral trade issues.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Wednesday, March 20, 1996. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. The full written statement of each witness will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Tuesday, March 26, 1996. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Thursday, April 11, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

*****

Chairman CRANE. Will everyone please be seated. Good afternoon; this is a meeting of the Ways and Means Trade Subcommittee to continue our series of hearings on U.S. trade policy in the post-Uruguay round environment. We will receive testimony today on the status and future direction of United States-Japan trade relations.

This hearing is being held in anticipation of the President's trip to Tokyo to meet Prime Minister Hashimoto on April 16 where many of the issues we want to review today will be discussed. Accounting for 40 percent of the world's GDP, the relationship between the economies and the United States and Japan is as immense as it is complicated. Overwhelmingly dictated by macroeconomic forces, notably a high budget deficit and low savings rate in the United States, the large bilateral trade deficit with Japan continues to fuel protectionist measures in the United States. The good news is that after years of stubborn resistance to increased import penetration, the Japanese economy is showing measurable signs of true structural reform. For example, Japan increased overall imports last year by 22.8 percent.

Japan has become a much more hospitable market for high value-added manufactured imports than in the past. With this movement, Japan has begun to address its historic status as an outlier country not participating fully in the give and take of international trade. The stubborn bilateral trade deficit, which has defied all of our best efforts, shows marked improvement in 1995. As we evaluate prospects for the United States-Japan relationship in the 21st century, the need for better communication and cooperation is evident.

In light of China's military aggression, more should be done to coordinate bilaterally with Japan on security issues in the region. General deregulation of the Japanese economy also continues to be a high priority for solving market access problems on a large scale. Market-restricting measures identified by the industries represented here today, while the result of larger systemic problems, must also be addressed by Japan directly. While I agree we should use the WTO and APEC wherever possible to consult and negotiate solutions, recent Japanese resistance to discussing issues which are the subject of 301 investigations only encourages those in the United States who want to limit trade with Japan.

As the Washington Post recently reported, Japan may be the vanishing villain of the trade deficit drama. Japan is America's second largest trading partner, buying more than $64 billion of U.S. products during 1995. Yet, as the world's greatest exporter, improved living standards for U.S. workers depend on getting a fair chance to compete across the fast-growing Asian market. The Japanese market remains the key to a successful Asian strategy, and we must work with Japan to achieve trade liberalization both in Japan and throughout the Pacific rim. The stakes are high, and market access problems remain deep in Japan.

I look forward to today's testimony, which will help us to better evaluate preparations for the President's trip in April. As a result of scheduling conflicts with other Subcommittees, we have begun later than I would have liked today, and we were also interrupted on the floor by some head knocking that produced a recorded vote

that was not predicted. I urge Members and witnesses to abbreviate their comments where possible and try to stick to the 5-minute rule. But all statements that you may have prepared will be inserted in the record, and we will be following a highly compressed schedule, so I would hope that all of our members—when they get over here—— [Laughter.]

[The opening statement follows:]

OPENING STATEMENT
CONGRESSMAN CHARLES B. RANGEL
SUBCOMMITTEE ON TRADE
HEARING ON U.S.-JAPAN TRADE RELATIONS
MARCH 28, 1996

Mr. Chairman, thank you for holding these hearings today to review U.S. trade policy towards Japan and to evaluate the effectiveness of our numerous bilateral trade agreements with Japan. This hearing is particularly timely in view of President Clinton's upcoming visit to Japan in mid-April. In his meetings with Prime Minister Hashimoto, the President will undoubtedly discuss a number of ongoing trade problems we have with Japan and ways to resolve those problems. I hope these hearings can assist the Administration in preparing for the President's visit. I welcome Ambassador Shapiro, Congressman Levin, Congressman Dreier, and our other witnesses to help take us through the issues today.

Japan is our second largest trading partner behind Canada. Our merchandise exports to Japan reached an all-time high of almost $65 billion last year, but our merchandise deficit, while coming down, is still unacceptably high at almost $60 billion. While our bilateral trade deficit with Japan can be attributed in part to macroeconomic forces, it is still true that the Japanese market is less open to U.S. imports than the American market is open to Japanese imports. While progress has been made, Japan over the last two decades has been probably the largest source of trade policy frustration for the United States.

Since 1980, we have negotiated well over 50 bilateral trade or trade-related agreements with Japan. The Clinton Administration has negotiated some 20 of these agreements. Despite our success in negotiating these agreements, the success of the agreements themselves in opening the Japanese market to U.S. exports has been mixed. Some agreements have indeed led to a demonstrable and impressive increase in U.S. exports. Others have not been fully implemented or have been less effective.

It is important to learn from our past negotiating and implementation experiences which trade agreements with Japan have worked well and why. It is also important to ensure that the agreements are being fully complied with and that we are getting the most out of them. In this connection, the private sector, in addition to the government, has an obligation to monitor implementation and to take full advantage of the market access opportunities opened up by the agreements.

Finally, with respect to ongoing negotiations, we must do what we can to assist our negotiators in reaching effective outcomes with Japan. In this regard, I was somewhat discouraged to read in the paper recently statements made by high-ranking Japanese officials that the era of trade bilateralism between the United States and Japan is over. Our ability to reach bilateral trade agreements with Japan has contributed to a modicum of stability in what has been at times a rocky trade relationship. I would hope that Japan would recognize this and continue to reach bilateral trade agreements with us to address specific trade problems.

In closing, Mr. Chairman, I would like to publicly acknowledge that USTR has just issued its 1995 Annual Report on the Trade Agreements Program. In Annex II of this report, USTR has compiled and publicly presented for the first time ever a consolidated list of all the substantive trade agreements entered into by the United States since 1984 to increase foreign market access and reduce barriers and other trade distorting policies and practices. This addition to USTR's annual report is in response to an amendment I sponsored to USTR's authorization bill last year. Although that authorization bill has not been enacted into law, USTR nonetheless saw fit to implement the substance of the amendment and I wish to thank them publicly for their work in this regard.

Thank you again, Mr. Chairman.

Chairman CRANE [continuing]. All of our Members would adhere faithfully to the clock on the table there. And with that, I would like to introduce Ambassador Shapiro for his opening statements.

STATEMENT OF HON. IRA SHAPIRO, SENIOR COUNSEL AND NEGOTIATOR, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. SHAPIRO. Thank you, Mr. Chairman. It is a pleasure to be here. I welcome the opportunity to speak with the Subcommittee to discuss the administration's Japan trade policy, and my comprehensive statement, I am glad, will be in the record, and I will try to abbreviate my remarks.

From the start of this administration, Mr. Chairman, the President has said that we reject what he described as the false choice between unilateral free trade on the one hand and protectionism on the other hand. He has affirmed that open and competitive commerce enriches us as a Nation, and that we will compete, not retreat. But he has also stated that we will welcome foreign products and services into our market, but we will insist that our products and services be able to enter other markets on equal terms.

For more than 3 years, the administration has followed this view: Open trade but with comparable access. We believe American companies benefit from and will support free trade but only if it is fair trade as well. In our experience, Mr. Chairman, nowhere are those principles more applicable and nowhere have we worked harder to apply them than with respect to Japan. We have insisted from the beginning that our companies and workers needed greater access to the Japanese market and have tried to redress and rectify the longstanding imbalance and lack of access to that market.

We have said from the outset that we would work to open Japan's market multilaterally where possible; regionally where appropriate; and bilaterally where necessary, and we have worked steadfastly to do so. Nearly 3 years ago, our two countries signed the United States-Japan Economic Partnership Framework, which was a comprehensive approach to macroeconomic, sectoral and structural issues. We felt that we had to attack these questions together, that if macroeconomic change occurred, if structural change of the sort that you referred to had occurred, it would reinforce our efforts on the sectoral front, but also, our sectoral activities would reinforce the drive for a deregulated, more open, more competitive market. And we also said that making progress required not only concluding trade agreements with Japan but ensuring that they were implemented and enforced.

We have followed a consistent course, and we are beginning to see some important progress after negotiating 20 trade agreements with Japan, including our Uruguay round agreements. As the Chairman indicated, last year, the trade deficit between our countries started coming down and according to Japanese figures, fell to its lowest level in about 12 years. We have seen great progress on the Japanese current accounts surplus, which went down from 3.5 percent to less than 2.6 percent this year. The United States exports to Japan—and I looked at the numbers, and I realized that from 1990 to 1993, they were almost totally flat—at about $48 billion. But in 1994, we saw an 11-percent increase, and last year, it was a 20-percent increase as the results of a number of things

came into play at the same time, including our agreements and the Uruguay round in its first year. And we are seeing export growth in all major categories, from autos and auto parts, capital goods, agricultural products, and we have seen impressive growth in the sectors that are covered by our trade agreements.

I want to make it clear that we do not attribute what is going on entirely to trade agreements or even to trade efforts on our part. U.S. companies and workers have dramatically increased their competitiveness and expanded resources that they are putting forth to crack the tough Japanese market. Macroeconomic factors also enter into it, but nothing in our standpoint—these things come together—nothing the government does to open the Japanese market will work if our companies and workers are not ready to take advantage of opportunities. But at the same time, their efforts need to be reinforced by continuing government effort in this regard. And I think from our standpoint, the auto agreement that we reached with Japan and developments in the automobile area reinforce the message that government, industry, workers have to combine their efforts and tie into the forces at work in Japan as well. What we have seen since we reached the agreement is significant deregulation, beginning in Japan in the so-called aftermarket; more opportunities for U.S. partsmakers that have been shut out of Japan for 20 years—immediate opportunities, in fact, in certain of the areas; greater commitment of resources and new product offerings from the Big Three, knowing that we are determined to back up their efforts by opening the market.

So we are seeing progress on a number of fronts. There are certain areas where the progress has been less promising, and we remain concerned about certain dealership issues and remain talking to Japan about those. But overall, we are seeing growth of U.S. autos to Japan; growth of sales and auto parts; increasing use of U.S. parts in production that is done here; increasing amounts of automobiles produced here instead of in Japan. And so, overall, we are seeing progress for a number of reasons.

Let me say that when we say we have seen progress, it does not mean that the work is done by any means. We have a lot more to do; we are pledging constant, sustained effort; we have got a full agenda to carry forward from here. We intend to work vigorously on our existing trade agreements and to resolve other outstanding issues. Let me just comment briefly on several of the major issues: The first is we are pleased that earlier this week, the State Department and the Transportation Department negotiators were able to reach an agreement on cargo in their negotiations with Japan, and that is an agreement that expands opportunities for U.S. cargo producers, builds upon what was already there and goes beyond it for a number of our cargo carriers and at the same time extends increased reciprocal opportunities to the Japanese and resolves an important issue between us.

With respect to semiconductors, as you all know, the current United States-Japan semiconductor agreement is due to expire on July 31. We believe that the semiconductor agreement has been an important agreement; that we have achieved a great deal under that agreement; and that it has contributed to harmony between U.S. companies and Japanese companies; relationships have been

stronger than ever before; both countries have benefited from the semiconductor agreement; and an atmosphere of confrontation that existed before has given way to more cooperation. In our view, the record, which I have tried to lay out in our written statement at length, points to the need and the value of a new semiconductor agreement, which, based on industry efforts coupled with a government-to-government agreement, we believe that it ought to be possible to fashion an agreement that reflects the changed conditions in the industry, where we are now, but carries forward the progress that has been made. Japan has indicated thus far a belief that the agreement should not be renewed or extended, but we believe that discussions that go on concerning this issue between now and June and July hopefully will bring about a recognition that both sides value and benefit from a continuation of the government-to-government agreement and the increased industry cooperation that the semiconductor agreement has had.

Mr. Chairman, if I may, I'd like to say a word about the insurance issue. For some months, we have conveyed to the government of Japan our concern that their plans to implement the insurance agreement were not consistent with the agreement as it has been written, and our concerns have only intensified in recent weeks. The basic issue here, Mr. Chairman, as the Subcommittee knows, is the linkage between primary sector deregulation, primary life and nonlife on the one hand, and the so-called third sector, the smaller sector in which foreign providers have been able to carve out some market share. The agreement is quite clear: Primary sector liberalization has to proceed before the third sector is subject to radical change. You open up the primary sector; you have competition; foreign providers have the opportunity to compete. And only after that, and only after a period of time—several years—has passed, do you allow the third sector to be opened to radical change.

The Japanese have, in their interpretation of this agreement, in my mind seriously departed from that understanding. They have focused their efforts on the opening of the third sector and have not moved forward with primary sector deregulation, and we are continuing to talk with them about it; we continue to want to resolve this issue in the near future. But we will not stand by for an interpretation of the agreement that departs dramatically from the agreement as written. This is a fundamental issue, because it is the implementation of an existing framework agreement.

Last, Mr. Chairman, in terms of current issues—and I am conscious of the time—on the film dispute, in response to a petition filed by Eastman Kodak, we have initiated an extensive investigation of Japanese barriers in the film and photographic paper sector, and Kodak's petition alleges many of the types of problems and pervasive anticompetitive business practices that we have sought to deal with in negotiations in the past on autos, glass, paper and other sectors. Those include direct Japanese Government participation in the creation of a distribution system that severely limits foreign access through interlocking financial relationships and other practices.

Kodak is a first-rate American competitor which has a strong presence in markets around the world. But despite decades of ef-

fort, it has not been able to make more than a small dent in the Japanese market. We are spending significant time and resources on this investigation. We have not concluded the investigation, nor have we reached any conclusions at this time. But I think we are working fully to understand the makeup of the market, potential barriers, and the interrelationship of these barriers to anticompetitive practices.

On February 21, the Japanese Government indicated that the JFTC would conduct a survey in this sector. That survey notwithstanding, we have indicated to Japan that this issue is best resolved through negotiations that would involve MITI because of the market access questions involved. Thus far, as the Subcommittee knows, MITI has preferred not to discuss the issue, saying that this is simply a JFTC matter. In our view, Mr. Chairman, this issue is best resolved through discussions, but we are going to continue our investigation and defining the market and move ahead to resolve this issue after our investigation is finished.

Let me say that some in Japan have argued that Kodak's treatment in the market has been mirrored by Fuji's treatment in the U.S. market, and in my view, that myth needs to be debunked. Comparing market shares can be illuminating if the circumstances are the same, but superficial comparisons of different systems do not work very well if you just look at numbers. As a general matter, foreign firms have no problem gaining access to the distribution system in the United States, and Kodak's activities in the United States have been carefully scrutinized over the years by our antitrust authorities. In contrast, the Japanese Government implemented liberalization countermeasures which effectively restricted foreign producers' access to the Japanese market.

Mr. Chairman, there are a host of other issues that I would be happy to respond to questions on. I want to just indicate that we share your view, and we share the view that I know Congressman Dreier has, that we all would benefit, and the situation in trade would be benefited by broad deregulation and structural change in Japan. We have aligned ourselves with the forces that favor that kind of change, and we have made comprehensive presentations to the Japanese Government on that. I have met with the Diet member, Mr. Mizeno, who is supervising that effort. I meet with him whenever I am in Tokyo. But we believe that we will make the most progress by moving forward on that issue, that set of issues, as well as pursuing the sectoral issues that remain between us and Japan.

I would say after 3 years of sustained work, we believe that we have made good progress, but much remains to be done. We have always benefited from the bipartisan consensus in Congress and the country that the level playingfield between us and Japan portrayed was long past due. We will keep working to enforce our trade agreements, resolve outstanding issues, and deal with new issues as they arrive.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Testimony of Ambassador Ira Shapiro
Office of the United States Trade Representative
House Ways and Means Trade Subcommittee
March 28, 1996

Mr. Chairman, I appreciate the opportunity to appear before the committee today to discuss the Administration's Japan trade policy.

President Clinton made it clear that our trade policy would not be business as usual within weeks of taking office. On February 26, 1993, at the American University, he rejected the false choice between unilateral free trade and protectionism. He affirmed the view that "open and competitive commerce enriches us as a nation," and that "we would compete, not retreat." But he also stated "we will continue to welcome foreign products and services into our markets but insist that our products and services be able to enter theirs on equal terms." For more than three years, this Administration has followed this view: open trade---but with comparable access. American workers benefit from, and will support, free trade, but only if it is fair trade as well.

Nowhere are those principles more applicable, and nowhere have we worked harder to apply them, than with respect to Japan. When this Administration came to office, we were determined to obtain for U.S. companies and workers the same level of access to Japan's markets as Japanese exporters have enjoyed in U.S. markets. We indicated then that we would work to open Japan's market: multilaterally where possible, regionally where appropriate and bilaterally where necessary, and we have worked steadfastly to do so.

Nearly three years ago, our two countries signed the U.S.-Japan Framework for a New Economic Partnership. This agreement was carefully conceived and is part of the Administration's broader trade policy. The Framework agreement represents a comprehensive approach to macroeconomic, sectoral, and structural issues. Previous Administrations had focused on one or another of these areas with Japan, this Administration realized that the impact of our efforts to resolve trade problems in specific sectors would be enhanced significantly if they were reinforced by macroeconomic and structural changes in the Japanese economy, which would improve the competitive environment.

The Framework agreement also is distinctly results oriented, a focus that distinguishes it from virtually all previous approaches. In each sector we identified major barriers to access, negotiated to resolve them, and agreed to assess the progress through a series of objective criteria. The Administration recognized that making progress would require not only concluding trade agreements with Japan, but ensuring that they were implemented and enforced. In this regard, when we have faced problems with regard to implementation of our trade agreements, we have taken the steps necessary to enforce our rights under these agreements -- in sectors ranging from construction to cellular phones to sound recordings.

We have followed a consistent course, and we are beginning to see some important progress. Overall, in the past three years, we have negotiated 20 trade agreements with Japan. Last year, the U.S. trade deficit with Japan fell 9.7 percent. Moreover, Japan's current account surplus declined to 2.2 percent of GDP last year, down from 3.2 percent in 1994 and 3.5 percent in 1993. Given that the Framework calls for a highly-significant reduction in Japan's current account surplus in the medium term, the declines we have seen over the past two years are gratifying.

U.S. exports to Japan have grown to record levels, rising 20.3 percent last year over 1994 levels, which had been the previous record high. Since the beginning of this Administration, U.S. exports to Japan have increased by 34 percent.

This growth has not been limited to just a few sectors. We are seeing export growth in all major categories: foods, feeds, and beverages (up 15 percent in 1995); autos, auto parts, and engines (up 36 percent); other capital goods (up 22 percent); industrial supplies (up 20 percent);

and consumer goods (up 17 percent). These gains are particularly impressive given the slow growth that the Japanese economy has experienced for the past several years. In those sectors covered by trade agreements reached by this Administration (from telecommunications to autos to rice), exports grew by more than 80 percent through since the President took office -- nearly 2.5 times as fast as overall U.S. exports to Japan.

This growth of U.S. exports benefits our firms and workers, but it also benefits Japanese consumers. The imported housing initiative recently announced by Prime Minister Hashimoto is a good example of how market opening initiatives can be mutually beneficial. This initiative would reduce the cost of housing in Japan, provide greater choice to Japanese consumers, and provide new opportunities to U.S. firms, which are leaders in housing and building materials.

Obviously, we do not attribute this progress entirely to our trade agreements. U.S. companies and workers have dramatically increased the competitiveness of U.S. products and services, and have expended considerable efforts and resources on marketing these products and services in Japan. Macroeconomic factors also have played an important role. Moreover, Japanese consumers seem more willing to buy high quality, reasonably priced foreign products that they were several years ago. A recent Washington Post story reinforces anecdotally what the statistics are showing: new opportunities and sales in Japan for everything from U.S. autos and auto parts to refrigerators to furniture to blue jeans to breakfast cereal.

However, it is important to recognize the contribution that our trade agreements have made to the recent progress we have witnessed. Opening Japan's market requires a partnership between our government and our companies and workers. Nothing the Government does to try to open the Japanese market will ever be successful unless U.S. companies and workers are poised to take advantage of the opportunities. But at the same time, all the best efforts by U.S. companies and workers may fall short without the pressure and sustained efforts by the U.S. Government to help open the market.

The automotive sector illustrates just how our trade agreements, efforts by U.S. companies and workers, and changes in Japan are combining to open the Japanese market and change the imbalance of U.S. trade. For 20 years, world class U.S. auto parts producers have been closed out of the Japanese market. But because of the trade agreement reached last summer, which committed Japan's Ministry of Transport (MOT) to major steps to deregulate the aftermarket for replacement parts, real competitive opportunities for U.S. parts makers, for sales of everything from roof racks to transmissions, began to appear almost immediately in Japan. Because the agreement required MOT to remove shocks and struts from the "critical parts/disassembly repair list," Monroe shocks will be sold shortly at hundred of gas stations and Toyota is offering them throughout its distribution system in Japan. Thanks to the changes required by the auto agreement, real competitors to the certified and designated garage system in Japan have emerged, opening the door for the first time to high quality, lower cost foreign auto parts. U.S. firms are beginning to seize these new opportunities, and significant progress should continue in coming years.

At the same time, Big 3 vehicle sales to Japan increased 46 percent last year. The trade agreement reinforces the Big 3's intensified commitment to the Japanese market, which was reflected in the extremely positive reaction that the Big 3's new right-hand drive models got at the Tokyo motor show in November.

However, there remain some areas where progress under the auto agreement has been somewhat disappointing. In particular, recruitment of new auto dealers in Japan has been slow, with only 30 new dealers signed up since the agreement was signed. We well understand the frustration of the Big 3 at the limited progress, especially given their serious efforts and the release of new models. We also understand that unless significant progress toward the goal of 200 new dealers is made by the end of 1996, exports of Big 3 vehicles to Japan will continue to be constrained. The Administration will use every opportunity to raise this issue with the Japanese Government, and we expect that the dealer recruitment pace will pick up as the attractiveness of the new U.S. models become evident.

In the United States, Japanese transplants are planning increases in their production consistent with their global business plans. Toyota plans to construct a new plant in Indiana, employing 1,300 workers, with half the parts likely to come from U.S. parts suppliers. Nissan is planning to significantly expand its engine manufacturing complex in Tennessee. Many of the autos that were until recently being made in Japan for the U.S. market are now being made in the U.S. Reliance on U.S. auto parts continues to increase.

There is no doubt that the global automotive market will be extraordinarily competitive in the coming years. But I believe that we are witnessing a situation which has been significantly transformed by the trade agreement and the events of the past few years. We are looking forward to release of the semi-annual auto report in mid-April, which will allow us to fully assess progress and closely monitor implementation of this agreement.

The Current Trade Agenda

While we are encouraged by the recent progress, opening the market in Japan requires a constant, sustained effort. Over the next several months, we intend to work vigorously to enforce our existing trade agreements and to resolve other outstanding issues. Let me highlight the three issues that are of immediate concern: semiconductors, insurance, and film, and say a few words on the civil aviation agreement reached earlier this week.

Semiconductors

The current U.S.-Japan Semiconductor Arrangement is due to expire on July 31. It constitutes an important and successful agreement that we believe should be extended.

We have achieved a great deal under the Semiconductor Arrangement -- particularly over the last three years:

- Foreign market share of the Japanese semiconductor market has increased significantly and the U.S., which has the largest and most competitive semiconductor industry in the world, has been the major beneficiary of this development.

- The agreement referenced the U.S. industry expectation that foreign market share should reach 20 percent by the end of 1992 if adequate market opening measures were undertaken. The foreign market share now has exceeded 20 percent for nine consecutive quarters. In 1995, foreign market share averaged 25.4 percent, fully three percentage points above the 1994 average share of 22.4 percent and six percentage points above the 1993 average share of 19.4 percent.

- Relations between the U.S. industry and the Japanese industry have greatly improved -- much to the benefit of both parties. Long-term commercial relationships and alliances between U.S. and Japanese companies have taken hold and are flourishing. By creating an environment in which Japanese user companies and U.S. suppliers were able to take advantage of the market opportunities and the competitive strengths offered by each party, the agreement has resulted in increased sales for foreign suppliers and better products, better service, lower input costs and a broader array of semiconductors for Japanese users. The result has been better end products, and more competitive industries on both sides of the Pacific.

- The harsh confrontation which had characterized discussions between the U.S. and Japan on this issue has been replaced by an atmosphere of cooperation.

The conclusion that the Japanese government has drawn from this situation is that the Arrangement that expires on July 31, 1996 should not be extended. Understandably, we draw a very different conclusion. We think it is important that the gains made under the agreement be preserved and that the progress made in recent years be continued -- and that continuation of some kind of government-to-government arrangement is needed to achieve these objectives.

The current Arrangement (and the earlier 1986 Arrangement) was negotiated to address

persistent problems of foreign access to the Japanese semiconductor market. These problems were largely the result of the tightly-knit relationships (initially developed behind a wall of formal trade barriers) between Japanese users and suppliers of semiconductors. For years, despite the demonstrated world class competitiveness of U.S. and other foreign semiconductor producers, their participation in the Japanese market remained extremely limited -- as reflected by very low foreign market share. The framework of commitments and activities established by the bilateral agreement, both by governments and industries, has provided a means of overcoming these impediments and of achieving the major strides in market access that we have seen in recent years. They have been a critical factor in encouraging U.S. industry to make the sort of major efforts and investments needed to "crack" the notoriously tough Japanese market. Without an arrangement, our companies see the prospects for further progress as uncertain and the risk of backsliding to be a real concern.

Although much progress has been made, we believe there is still plenty of room for further improvement and that a continuation of the sort of efforts called for under the agreement will yield additional gains in terms of industry cooperation and increased market access. In particular, we think improvements can be registered in:

- The automotive, telecommunications, and video game sectors, where foreign share remains rather low and U.S. and foreign suppliers have very competitive products to offer.

- Increased foreign participation in design-ins -- particularly, so-called heart of the system, big ticket design-in contracts. Foreign participation in the Japanese market is still disproportionately focused on commodity products, or products such as microprocessors where Japanese firms are not competitive.

- Sales to small and medium-sized Japanese companies which have not yet integrated foreign products to the point where sales could be expected to be sustained or improved in the absence of an intergovernmental semiconductor agreement.

Moreover, this is a highly cyclical industry. Worldwide growth in demand for semiconductors increased by 40 percent in 1995, the highest level ever. But this is an industry where growth is characterized by peaks and valleys. As recently as 1990, the world semiconductor market grew by only 1.6 percent, and in 1985 there was negative growth. Growth in 1996 is forecast at approximately 22 percent, or only about half the growth we saw in 1995. We are now seeing clear signs of a weakening of demand for semiconductors, particularly for DRAMs.

The point is, although the long-term prospects for growth in the semiconductor industry are very good, we should still expect periodic downturns and, in particular, we should not expect the rosy economic conditions of recent years to continue without interruption. These downturns breed disputes and the established consultative mechanisms of the bilateral agreement will provide a way of constructively dealing with these problems and addressing them effectively.

We believe that a new agreement should reflect the progress made and the improvements in industry cooperation that have occurred under the current arrangement. We frankly anticipate a reduced role for government in a new agreement. Moreover, we have made clear to Japan that we are prepared to address any of their specific concerns seriously and flexibly, including the fact that the agreement should not include a new numerical target.

We believe that the merits of continuing the progress and the improvements we have achieved under the current agreement are overwhelming, and we are optimistic that common sense and pragmatism will eventually lead to a mutually beneficial resolution of this matter.

Insurance

For months, the Administration has conveyed to the Government of Japan our serious

concerns about the Ministry of Finance's apparent plans to implement the insurance agreement reached between our countries in 1994 in a way that would violate the agreement. Our concerns have only intensified in recent weeks, as the Ministry of Finance has moved closer to the point when it would have to issue ordinances to implement its new insurance law.

The core of the dispute with Japan centers on the linkage between deregulation of Japan's primary life and non-life insurance markets and the entry of Japanese insurance firms into the so-called "third sector," a segment of the market consisting of such products as personal accident and cancer insurance. Currently protected by overregulation and anti-competitive corporate practices, the primary life and non-life sectors combined make up 95 percent of Japan's total insurance market, the world's second largest at over $380 billion in total premiums in JFY1994.

The Ministry of Finance's imposition of excessive uniformity among insurers has prevented foreign firms from competing in the primary life and non-life sectors based on their strengths of product innovation, pricing and marketing. As such, foreign firms were forced to concentrate their efforts in building a presence in the remaining 5 percent of Japan's market consisting of third sector products. Foreign firms currently rely on the third sector market for more than half of their total premium income generated in Japan.

In light of the dependence of foreign firms on the third sector market, the U.S. sought during the negotiations of the insurance agreement to prevent MOF from engaging in immediate, discriminatory and selective deregulation of the third sector, while retaining protections for Japanese insurance firms in the primary life and non-life sectors. We believed that MOF should first focus its deregulatory efforts on the 95 percent of the market dominated by large Japanese insurers, rather than the 5 percent of the market critical to foreign and small and medium-size Japanese firms.

That is what the agreement establishes. It contains a clear linkage between deregulation of the primary life and non-life sectors and new or expanded activities by Japanese companies in the third sector. Before Japanese companies -- including the new subsidiaries to be formed later this year -- can undertake significant new or expanded activities in the third sector, there must first be substantial deregulation in the primary sectors.

Precisely put, the key provision of insurance agreement currently under dispute states that, "with respect to new or expanded introduction of products in the third sector, it is appropriate to avoid any radical change in the business environment, recognizing that such change should depend on medium to small and foreign insurance providers first having sufficient opportunities (i.e., a reasonable period) to compete on equal terms in major product categories in the life and non-life sector through the flexibility to differentiate, on the basis of the risk insured, the rates, forms and distribution of products."

As far back as last spring, USTR began to hear growing concerns from U.S. firms about the MOF-led reform process, in particular with regard to the third sector provisions. Contrary to the agreement, MOF's interest in deregulation appeared targeted solely on the third sector, where it is prepared to allow new non-life subsidiaries of life insurance companies to market insurance. We raised this issue repeatedly with MOF and at all levels of the Administration. Yet despite several months of discussions, Japan continues to adhere to a position inconsistent with this basic linkage.

In fact, MOF appears determined to resist timely and meaningful deregulation in the primary sectors. For example, a February 29 Kampo announcement sets forth a threshold of 30 billion yen insured risk for commercial fire insurance above which firms will be allowed to innovate based on price. Unfortunately, this "market opening" on the part of MOF applies to less than 2 percent of this important market segment.

Our officials have put forward proposals for longer-term substantial deregulation of Japan's insurance market. Unfortunately, MOF has rejected our proposal on long-term substantial deregulation. The U.S. position is pro-deregulation and pro-consumer. It would

benefit Japanese consumers and companies and would be consistent with the thrust of deregulation espoused by Prime Minister Hashimoto.

I am not at all optimistic that we will be able to bridge our differences in the absence of a reaffirmation by MOF of the basic, long-term linkage between deregulation in the primary sectors and expansion by Japanese companies in the third sector. Without the assurance of this basic linkage, our industry faces long term decline in its competitive position in Japan, contrary to the very premise of the agreement. The U.S. remains willing to continue our bilateral talks if MOF will positively address this issue. However, we will not stand by if a priority sector Framework agreement is not implemented as intended.

Film

Let me now turn to the film sector. In response to a petition filed by Eastman Kodak, USTR initiated an investigation of Japanese barriers in the film and photographic paper sector. Kodak's petition alleged many of the types of pervasive anticompetitive business practices that the U.S. sought to deal with in negotiations on autos, glass, paper, and other sectors. Among these are direct Japanese government participation in the creation of a distribution system that severely limits foreign access through interlocking financial relationships, exclusionary rebates, and other anticompetitive practices.

Kodak is a first-rate American competitor, which has a strong presence in markets around the world. Despite decades of intensive efforts, however, Kodak has made little more than a dent in the Japanese market.

The structure of the Japanese film market, which features a complex and rigid distribution system, differs significantly from the structure of the market in the U.S. Primary wholesalers or subsidiaries of film manufacturers deliver most of the film that is distributed to the 279,000 outlets that sell film in Japan. Japan's four largest film wholesalers have distributed Fuji film exclusively since 1975. Fuji maintains close ties to these distributors, through a variety of means.

Because foreign manufacturers have been unable to gain access to this channel they have attempted to develop parallel distribution networks, but with only limited success. Foreign manufacturers use secondary wholesalers to distribute a small percentage of their film (approximately 15 percent), but none of these secondary wholesalers have the national coverage or size of the tokuyakuten. In fact, the largest secondary wholesaler of photographic goods is about one-third as large as the smallest tokuyakuten. Foreign manufacturers also have tried to increase their market share through direct sales to discount stores. Agfa's use of this distribution channel has been hailed as evidence that it is possible to enter the Japanese market without going through the tokuyakuten. Unfortunately, Agfa has not been able to obtain more than a token market share using this channel of distribution.

Without full access to the distribution network, retail sales of foreign film will remain constrained. About half of all film sales in Japan are made through photospecialty stores (as compared with about 3 percent in the U.S.). Foreign film is more available in large discount stores, but these stores are located mainly in major metropolitan areas and their number, size, and hours of operation are limited by the Large Scale Retail Store Law.

Even without getting into the allegations of anticompetitive practices for the moment -- and we are still investigating these issues -- these are some of the complex distribution problems that foreign firms face. There is clear evidence that the Japanese Government played a key role in setting up this distribution structure. Nonetheless, the Government of Japan has refused to meet with us to discuss this matter, insisting that it is strictly a company-to-company dispute. In the Japanese Government's view, Kodak is alleging anticompetitive practices by Fuji, and thus, should go to the Japan Fair Trade Commission, (JFTC) which has jurisdiction over the Antimonopoly Act and anticompetitive practices.

On February 21, the Japanese Government announced that the JFTC would conduct a survey of the film and photographic paper markets. This survey notwithstanding, we are continuing to seek consultations with the Government of Japan given that the JFTC survey cannot address the full range of issues involved in this case. Among the topics we would like to discuss are laws, administrative guidance, and recommendations regarding distribution and the conduct of competition in the Japanese market issued by the Japanese Government during the past five years, all of which could be used to improve market access in Japan. These include the 1991 Guidelines for Improving Business Practices, 1993 Recommendations on Medium-Small Wholesale Industry Business Practices, 1995 New Business Reform Law, 1995 Vision for Distribution in the 21st Century, the 1995 Economic Plan for Structural Reform, the Large Scale Retail Store Law, and Japanese Government implementation of its commitments under the Structural Impediments Initiative.

We have made it clear to the Japanese Government that we would prefer to address this issue in a cooperative manner. However, if the Japanese Government remains unwilling to consult with us, we will be left with no choice but to consider what other steps are necessary.

Some in Japan have argued that Kodak's treatment in the market is "mirrored" by Fuji's treatment in the U.S. market. This myth needs to be debunked. Market share comparisons can be illuminating if supported by evidence of market barriers, but superficial comparisons of market share are misleading and distort the serious nature of the problems faced by foreign firms in the Japanese market. First of all, as a general matter, foreign firms have no problem gaining access to the distribution system in the U.S. Moreover, beginning in the 1920s, the U.S. Government has taken anti-trust action against Kodak's practices in the U.S. market. In contrast, the Japanese Government implemented liberalization countermeasures which effectively restricted foreign producers' access to the Japanese market.

Civil Aviation

Turning to civil aviation, negotiators from the Departments of State and Transportation reached agreement with Japan on Wednesday, March 27, on the elements of an air cargo agreement which creates significant new commercial aviation opportunities for both sides. It is expected that the parties will meet again in Washington in mid-April to finalize the text of a Memorandum of Understanding on Air Cargo Services. The agreement, which meets the goals the U.S. and Japan set out in Los Angeles last year, is a balanced package which liberalizes and expands our bilateral aviation regime. This successful negotiation illustrates our ability to work bilaterally and to reach agreement on a difficult and complex commercial issue.

Other Agenda Items

While the Administration considers it a priority to make progress on the issues I have outlined, we also intend to vigorously monitor and enforce our other bilateral agreements with Japan in such critical areas as autos and auto parts, telecommunications, supercomputers, computers, wood, paper, and glass. We are fully committed to ensuring that Japan is living up to its obligations under the WTO. Moreover, to complement these sectoral efforts, we also are pursuing structural initiatives.

Let me briefly summarize where we stand on these issues. We have challenged Japan in the WTO for its failure to protect existing sound recordings in a manner consistent with its obligations under the TRIPs agreement, and are gratified by indications that Japan has decided to change its law to provide the 50 years of protection required by TRIPs. We are consulting with Japan about disturbing evidence that recent supercomputer procurements have not been made in accordance with the procedures of the Supercomputer agreement, which had produced significant gains in recent years. While we are pleased about the strong showing made by U.S. personal computers in the Japanese market, we have brought to Japan's attention evidence of deep discounting on computers by Japanese companies which has cost our companies sales in the public sector market.

We are concerned about lack of progress under the NTT agreement. Foreign share

reached 10 percent in 1994, which is disappointing given the global competitiveness of U.S. firms in this sector. In addition, we are extremely concerned about the reluctance of NTT's personal handyphone subsidiary to follow the NTT procurement procedures. We have hope for progress in the area of wood products, where Prime Minister Hashimoto has put forth the concept of an ambitious imported housing initiative, but remain troubled that Japan has not moved further to reduce tariffs and to adopt performance-based, rather than prescriptive, standards for building materials. We remain seriously concerned about the lack of effective implementation by Japan of our bilateral agreement on paper and paper products, which led to continued 301 watch listing in this sector. We note the 93 percent increase in U.S. exports since the conclusion of the glass agreement, but we are continuing to monitor implementation of this agreement carefully, to insure that the current level of imports represents the beginning of growth that the competitiveness of our companies' warrant.

To complement our sectoral efforts, we have been working closely with the Japanese Government on structural issues, in particular on deregulation, competition policy, and administrative reform. Japan is currently revising its deregulation plan and the new final plan is scheduled to be released tomorrow. In support of these efforts, the U.S. presented a 42-page submission on deregulation and competition policy to the Japanese Government last November. The submission includes specific deregulation proposals in 12 areas, including agriculture, autos and auto parts, construction, energy, insurance, financial services, telecommunications and transportation. We discussed our submission with Japan in December, and met again in late February in an effort to encourage Japan to factor our suggestions into its revised plan.

While we have been disappointed with Japanese Government efforts so far, we hope that our support will help advance Japan's deregulation agenda, providing benefits for both Japan and the U.S. We intend to stay involved vigilantly in the deregulation effort, and are gratified that the European Union is doing the same, to ensure that deregulation is carried out in a way that provides real opportunities and equitable access for foreign companies.

We also hope for strong leadership in this area from Prime Minister Hashimoto. He has stated his view that Japan would benefit from strengthened competition policy from by the Japan Fair Trade Commission. He also spoke sweepingly about the importance of deregulation and economic reform in his recent book, in a speech delivered in Vancouver in May 1995, and in his inaugural speech to the Diet as Prime Minister, delivered on January 22. In that speech, he committed his administration to weeding out regulations that "have been perverted into citadels of protection for vested interests" and to more vigorous enforcement of the Antimonopoly Act by the JFTC.

Conclusion

In sum, after three years of sustained work, the Administration believes that we have made good progress in the long effort to open the market in Japan, but much remains to be done. We have benefitted from the bipartisan consensus in Congress and the country that a level playing field for trade between the U.S. and Japan is long past due. We will continue aligning our efforts with those in Japan who believe that their country should continue moving in the direction of a more competitive, less regulated, more open economy. We will keep working to enforce our trade agreements, resolve outstanding issues, and deal with new issues as they arise -- to expand trade and open the Japanese market for the benefit of both our countries.

Chairman CRANE. Thank you, Mr. Ambassador.

Given his experience as a former trade negotiator, how does Prime Minister Hashimoto approach bilateral trade disputes with the United States?

Mr. SHAPIRO. We have had considerable experience with Prime Minister Hashimoto in both 1994 and 1995. He is obviously a strong advocate of Japan's interests and a strong negotiator. He is also someone who has always valued the United States-Japan relationship in the broadest sense and recognized the need to resolve problems and move forward. So I believe that we will be able to continue making progress. I believe it will never be easy. It has not been easy in the last 3 years; it will not be easy now. I checked with my predecessors, Mr. Chairman, they said it was not easy then. [Laughter.]

So we are going to continue making progress.

Chairman CRANE. Well, given Prime Minister Hashimoto's commitment to strengthen competition policy, are you optimistic that the Japanese Fair Trade Commission will become a more vigorous enforcer of the Japanese antimonopoly act?

Mr. SHAPIRO. Mr. Chairman, I hope so. We share the view that Japan would benefit from a vigorous JFTC, and I know that the Prime Minister does feel that way. So we want to be optimistic about it. At the same time, the track record over the years has not been that of a strong antitrust and enforcement agency nor one that has been a strong policeman of fair competition. I noted in the Financial Times recently an article which quoted the chairman of the JFTC as saying that the tradition of antimonopoly enforcement had never really taken strong root in Japan. So we are hopeful; we are optimistic; but we want to be realistic about the need to change things.

Chairman CRANE. Well, we appreciate all you are doing, and I am also glad that we are not attempting to pursue unduly some of the disruptive threats of trade retaliation under section 301. But we wish you Godspeed in the effort, and with that, I would like to yield to Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman, and thank you, Mr. Shapiro, for your testimony and for the work you are doing. As you know, Mr. Shapiro, I would like to turn our attention to intellectual property rights, which we have discussed before in the context of several high-tech companies in my home State of Minnesota. As you know, one such company, Cyber Optics, is currently experiencing some serious problems with patent application flooding by a large Japanese motor company. I know that Japan is on the priority watch list with respect to the enforcement of intellectual property rights or market access for persons relying on intellectual property. Can you comment on what steps have been taken to push the Japanese Government to address this problem of patent flooding by Japanese companies?

Mr. SHAPIRO. Mr. Ramstad, we have taken up the issue of patents, patent scope and patent flooding with Japan over the years. We have actually made some progress but not enough as yet. The issue of the difference between their patent system and our system remains a serious one, and patent flooding is a problem with which we are familiar. USTR at the moment is in the middle of its annual

special 301 review, and we are considering the submissions that we are getting from parties about inadequate IPR protections. And based on that information, including submissions from companies like Cyber Optics, we are going to announce the results of our review on April 30. But we continue to push forward on these patent issues and try to bridge the differences between our systems.

Mr. RAMSTAD. I have heard a lot of anecdotal evidence about the effects of patent flooding on U.S. market shares and trade balances, and I look forward to seeing the results of the research. I understand there is a study being done as to how this affects the competitiveness of our industrial sector.

Mr. SHAPIRO. Well, you also may have spoken to some of our people about this.

Mr. RAMSTAD. Right; I have.

Mr. SHAPIRO. But I want to make sure you are in touch with the people who are actually negotiating.

Mr. RAMSTAD. I would like to ask you one final question, Mr. Shapiro. As far as I am concerned, this is a new low. As I know you are aware, there is a lawsuit currently pending under Japanese law against Cyber Optics for—can you imagine?—the terrible offense of contacting the U.S. Embassy for assistance in resolving its pending legal matters. Is that practice common in Japan or atypical?

Mr. SHAPIRO. Well, I do not know if I would characterize it as a new low or not. I have not heard of one quite like that so——

Mr. RAMSTAD. That is a first as far as your knowledge?

Mr. SHAPIRO. I mean, I think we would take quite seriously the rights of companies to try to seek recourse, and I would like to look into that problem. I am not aware of that suit.

Mr. RAMSTAD. I would appreciate if you would do that and get back to us.

Thank you very much again, Mr. Shapiro.

Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman.

Mr. Shapiro, I appreciate your candid remarks on the issue of insurance. What I would like to ask is if the Japanese Government fails to comply fully with the terms of the insurance agreement, what specific actions or responses would the USTR propose be taken?

Mr. SHAPIRO. Mr. Zimmer, first, of course, I am first still hoping that we will successfully resolve the issue, and we are continuing to discuss it with our counterparts. I am not in a position now to talk about specific steps that would be taken in response to this problem if it is not addressed. And I should say that, as you know, the steps that we are concerned about, the issuance of ordinances that carry out the new insurance business law contrary to the agreement, those things have not occurred as of yet, so we are looking at something that we have been worried could occur. But we are looking at all realistic and all possible and appropriate options for responding.

But let me say that this is, in our minds, the most serious case that we have, potentially, of nonimplementation of a framework

agreement, and we would have to respond appropriately but strongly.

Mr. ZIMMER. Without committing yourself to a specific course of action, could you describe what specific legal recourse is available under our trade statutes?

Mr. SHAPIRO. Without specifically committing myself to a course of action, I think we have a number of areas that we would need to look at in terms of section 301. You know, obviously, one would look at the whole range of options that are available, including the services area.

Mr. ZIMMER. I understand that no further talks have been scheduled between USTR and your Japanese counterparts between now and the President's visit to Tokyo next month. Assuming this issue is not resolved by then, can we expect these negotiations to drag on, as we have seen in the case of other trade disputes?

Mr. SHAPIRO. I think we have to see what happens. Japan has to decide how quickly it is going to move ahead and implement the new insurance business law. So while this is a pressing matter right now, and our concerns are being registered right now, I think we will just have to see how it goes. But I do not regard this as something that is going to play out over a long period of time.

Mr. ZIMMER. At what point do you say that further negotiations will no longer be productive, and it is time to take other measures? Can you describe the point at which you would conclude that?

Mr. SHAPIRO. I would rather not prejudge that at the moment, because as I indicated, a lot depends on actions that are taken that would put forth ordinances or regulations that were contrary to what we think the agreement is. And thus far, we are still dealing with a problem to be anticipated.

Mr. ZIMMER. So even in principle, you cannot describe that one?

Mr. SHAPIRO. It is a pressing matter now.

Mr. ZIMMER. Well, thank you. I appreciate your sense of urgency. I yield back my time.

Chairman CRANE. Thank you.

Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. I am going to have a chance to participate later, so let me just be very brief and ask a few quick questions. First of all, I would like to congratulate the Ambassador and Mr. Kantor and the administration for its active efforts. But let me ask a few questions specifically.

Recently, MITI Vice-Minister Sakamoto said that he thought bilateralism was dead, and all trade issues should be pursued in the WTO. I wondered if Mr. Shapiro would like to comment on that comment.

Mr. SHAPIRO. Well, Congressman, first, I would say that we are dealing with a lot of issues with Japan right now on a bilateral basis. With respect to Mr. Sakamoto's speech, which did seem to go beyond MITI's stated position, which is well known, on film and semiconductors to make a broader point, we fundamentally disagree with that view. And I would subscribe to what Chairman Crane said. Frankly, we have a United States-Japan bilateral framework. We are always going to have bilateral issues that need to be addressed bilaterally.

Second, we need no reminders of the importance of the WTO, and we will take appropriate disputes to the WTO. But the WTO does not cover all trade issues; it does not cover all trade disputes. We said throughout the Uruguay round proceedings that we would take disputes to the WTO where appropriate, and we would proceed bilaterally with our consultations and our negotiations. We reserve the right to do that, and all member States do that. And it is particularly noted that the WTO, like the GATT before it, does not address certain kinds of trade barriers, informal barriers, of the sort found in Japan that have burdened many of our industries. So the suggestion that we should seek recourse through the WTO on those matters or wait until some international consensus emerges is not one we accept.

Mr. LEVIN. And I assume those comments would apply to the semiconductor field as well as others.

Mr. SHAPIRO. Well, I think that is certainly right. And on semiconductors, we believe that the semiconductor agreement has benefited the participants in the agreement, the United States and Japan, but we also believe that other foreign providers of semiconductors have benefited from the opening of the Japanese market. It is an MFN agreement, and we do not subscribe to the view that it needs to be handled in the auspices of the WTO.

Mr. LEVIN. One last question; you referred to deregulation and to Mr. Dreier's statements, and he and I are going to be testifying subsequently. Let me just ask you to comment briefly on the proposition in Mr. Dreier's testimony: "Our trade policy should focus on deregulation and competition rather than look for managed market access for select American exports."

Mr. SHAPIRO. Well, I endorsed the part about deregulation and competition. We really do believe that the structural efforts and the sectoral efforts need to go together. We are trying to open the markets in many key sectors for U.S. companies and workers and for other foreign providers to get into Japan, and we think we are having success in doing so. To be honest, our sectoral efforts also come back to deregulation oftentimes, Mr. Chairman. In autos and auto parts, in insurance, and in many of our agreements, you get deregulation of certain sectors because you approach them sectorally rather than waiting for a broad blueprint. So I think the two go together.

Mr. LEVIN. Thank you.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, and Mr. Shapiro, we want to express again appreciation and support for all your efforts, and with that, I want to suggest that we bypass our colleagues, Congressman Levin and Congressman Dreier next on the panel, because there are plane connections, I know, that some of the panelists would like to make. We would like to bring up next George Fisher, chief executive officer with Eastman Kodak Co., who is accompanied by Ken Deline, founder of Deline Box and Display and Thomas Armstrong, the president of the Semiconductor Industry Association.

And in the interim, the Subcommittee will stand in recess to make this vote. We are down to about 10 minutes, guys, and if you

could rush over and rush right back, I would appreciate it. Thank you.

[Recess.]

Chairman CRANE. We will commence with you, Mr. Fisher, and again, I would like to ask you all to keep your formal remarks to under 5 minutes, but any further remarks you have will be made a matter of permanent record.

Mr. Fisher.

STATEMENT OF GEORGE M.C. FISHER, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, EASTMAN KODAK CO.

Mr. FISHER. Thank you, Mr. Chairman. I appreciate this opportunity to testify on the topic of United States-Japan trade relations. Given the importance of your time, I will, as usual, simply submit my formal remarks for the record and highlight some of the key points and then address your questions.

In the United States, you can literally walk down any street or through any mall and find a store that sells Japanese film today. Unfortunately, the converse cannot be said. In most stores in Japan, Kodak film, the most popular film in the world, is completely absent. While Kodak produces products geared specifically to Japanese tastes and has spent over $750 million in the last 10 years promoting them and building a business, while Kodak's commercial efforts in Japan have led to many product design awards, including one last year from MITI, and while Kodak has competed successfully in other markets in Japan with motion picture film, x-ray film and microfilm, for some set of reasons, we seemingly can achieve little more than a 10-percent share of the consumer photo market, thanks to what we believe is anticompetitive behavior that is currently condoned and facilitated by the Japanese Government.

In what is the most complete survey to date of the Japanese consumer photo film market, we surveyed more than 2,000 retail outlets in 45 of Japan's 47 prefectures this past December and January. For greater accuracy, that study is weighted according to the sales volume of specific retail outlets. We are releasing that study today. In summary, it shows that Kodak film is wholly absent from two-thirds of the Japanese retail market, and in the 34 percent where Kodak film is available, we are able to compete on price in only 10 percent of the Japanese market. Why? Quite simply, the Japanese Government has helped create a market structure that shields its domestic photo industry, particularly Fuji, from meaningful competition. These barriers are in effect today and include but are not limited to a complex web of distributors, financial institutions, wholesalers and retailers that limit our access to retail shelf space; photo wholesalers who are induced by discriminatory rebates and promotional payments that Fuji uses to exclude competitors and discourage price competition; a premiums law that allows private trade associations to create fair competition codes, which limit the use of advertising and market strategies to lower prices, and a large scale retail store law which restricts Kodak's sales by impeding the establishment and expansion of large discount and photo specialty retail stores.

These governmental actions not only hurt our ability to compete on a level playingfield; they are inconsistent with Japan's obliga-

tions under international agreements and in some cases even at odds with Japan's own antimonopoly law. The Japanese Government's position not only excludes foreign suppliers; it has created a profit sanctuary for Fuji and a worldwide competitive threat to Kodak and the American jobs we provide. Over the last 10 years, we figure this has cost us about $5.6 billion in sales or, to use a Commerce Department equivalent in jobs, tens of thousands of U.S. jobs.

What is it that we seek? Kodak's goal is truly resolution, not retaliation or dictated market shares. We know we have high-quality products that will sell and do sell all over the world if only consumers have access to them. We simply seek a more open marketplace and the ability to put Kodak film on more Japanese store shelves. In fact, where we are allowed to compete in that small fraction of the Japanese market, we do reasonably well, with market shares in excess of 20 percent.

Let me summarize our objectives under three headings: Getting on the shelf, getting off the shelf and getting more shelves. Getting on the shelf means essentially ending the restrictive distribution system that I described under which Fuji exercises control over Japan's distributors of photographic supplies and prevents even open-minded, well-intentioned distributors from even dealing with Kodak products. Getting off the shelf means ending a related practice under which retailers who are dependent on Fuji financially are induced to mark up the price of Kodak products so that retail consumers never see our discounts. Getting more shelves means lifting government restrictions on distribution at large-scale photo specialty stores and discount retailers, where our consumer photo products in Japan have actually fared reasonably well when allowed to compete.

These seem to me to be modest and somewhat reasonable goals, and they are consistent with Japan's international obligations as well as the expressed commitment of Japanese officials to deregulation. But we do not expect to get resolution of this issue without U.S. Government resolve. After all, in the last 36 years, there have been only 15 private antitrust cases in Japan. Now, compare that with the over 26,000 private antitrust cases in the United States in only the last 24 years.

But we need to remind ourselves that the barriers I speak of are not old news, something that happened yesterday, they are in place today, as we speak, and they are sanctioned, condoned and tolerated by the Japanese Government. That is why last May, after having carefully researched the situation, we did file a section 301 petition with the U.S. Government. In July, the USTR agreed to investigate and proceed with government-to-government negotiations to correct the situation. As incredible as it may seem, to date, almost 9 months later, the Japanese Government still is refusing to discuss the matter. In fact, on March 15, just 13 days ago as has been mentioned twice in this hearing so far, MITI Vice-Minister Sakamoto made a speech in which he said the era of bilateralism is over.

In short, this means that the Japanese Government has very publicly refused to address our market access issue without providing U.S. negotiators an opportunity even to present their views.

This is unprecedented behavior and reflects, in my mind, an unacceptable denial of legitimate American interests. It also has broad ramifications that will go well beyond this particular film case. Failure to come to positive resolution on a case documented as thoroughly as this one sends a negative signal to every American company trying to compete in Japan today, not to mention that Japan would then be successful in unilaterally redefining our bilateral trading relationship.

The simple fact is this case is not about film; this case is about fairness and true market access. If a company like Kodak, whose brand name is recognized throughout the world and associated with quality and value, cannot compete in Japan on an equal footing, what American company can when faced with the same inhibitors in the marketplace? The administration and Congress clearly made it known during the Uruguay round that the WTO agreements, with minor exceptions, do not address foreign measures that encourage or tolerate private anticompetitive practices. Rather, in such cases, 301 was to and is to remain a fully available tool. Indeed, the continuing need for bilateral approaches in such cases was broadly recognized by all countries in those GATT negotiations.

While certain discrete actions of Japan's Government could be presented to the WTO panel for adjudication, its toleration of systematic anticompetitive activities that block market access is not covered by WTO rules. Any retreat from the commitments made in the Uruguay round to bilateral approaches would be disastrous and not in keeping with the commitments made during those negotiations. This Subcommittee should not consider retreat as a viable option. I continue to hope that Prime Minister Hashimoto will determine that Japan's interests are truly best served through deregulation and enhancement of competition. During a recent press briefing with President Clinton, he acknowledged exactly that.

That would be in the long-term best interests of both of our countries. After all, when you consider that both of these countries have about 40 percent of the world's GNP, failure to deal with the legitimate trade concerns that we are facing will only frustrate both economies and both nations in general and subsequently increase tensions and leave consumers with fewer choices and higher prices and Americans with fewer jobs.

Thank you.

[The prepared statement follows:]

Testimony Before the Committee on Ways and Means
Subcommittee on Trade
Hearing on U.S.-Japan Trade Relations

George M.C. Fisher
Chairman, President and CEO
Eastman Kodak Company

March 28, 1996

Thank you for the opportunity to testify today on U.S.-Japan trade relations. This is an important and timely topic. Active participation by the Congress, and especially this Subcommittee, on U.S.-Japan trade relations has never been more essential.

As most of you are aware, despite Kodak's reputation as a world-class company that has long produced quality products which are competitive in virtually all other world markets, we have been unable to gain true access to the Japanese market. Before going into that specific dispute, I would like to describe to you the importance of the industry involved.

Importance of Imaging to Jobs and the Information Economy

Human communication has traversed many media over the ages, from pictures drawn on cave walls, to smoke signals, to spoken and then written language, to the typewriter and printing, to telegraph, telephone, radio and television. Yet, today there is only one readily available means for sharing pictures over distances in real-time: television, which is predominantly a one-way medium for most of us.

That reality is about to change.

The power of computers (in millions of instructions per second) is doubling virtually every 18 months, and the cost for that computing power is decreasing by 20-30% a year. These technological advances are eliminating physical barriers to real-time transmission and communication -- not just of sounds, but of documents, still images, and even moving images. And when it comes to images and pictures, Kodak sits at center stage.

So the imaging business is not only about photographs of one's grandchildren, but much more. It is a constantly evolving technology-driven industry. And it is important, not just to human communications, but to U.S. jobs.

Kodak's manufacturing operations mean good U.S. jobs. Kodak employs nearly 50 thousand workers in several U.S. states. Our operations also support those of numerous suppliers and distributors with thousands more employees.

Our contribution to the export picture is equally important. In New York State, we are not just the leading manufacturer but the leading exporter as well.

At the same time, one of the key facts I have to consider as Chairman of Kodak is that half the people in the world have yet to take their first picture. There is dramatic growth potential in developing markets such as Russia, India, Indonesia and China. In China alone, if we could get people on the mainland to take as many photos as the people in Taiwan, the number of film exposures worldwide would grow by 50%.

So we have launched special initiatives to improve access to those markets, to get to know their governments and their people better -- and to begin selling more of our products.

The potential is tremendous.

But with these opportunities come significant challenges. Some of our most promising markets remain closed because of unfair trade practices. That is clearly the case with Japan.

Closure of the Japanese Market

It is somewhat ironic that I am here today with bad news, because Kodak has participated in Japan's market for over 100 years and has been cited by both U.S. and Japanese officials as a model of a U.S. company that has "done it right" in Japan. We produce products geared specifically to Japanese tastes, and we have spent over three quarter of a billion dollars in the last ten years promoting them. Our commercial efforts in Japan have led to product design certificates and marketing awards.

We have competed successfully in Japan with a number of our products, such as motion picture film and microfilm. This should not surprise anyone, because Kodak is a world class producer with tremendous product development and marketing acumen. If we can't compete in Japan, no one can.

Yet, here we find ourselves engaged in a major struggle over access to Japan's market for basic consumer photographic supplies.

If I achieve nothing else today, I hope I can at least make you all aware of the context, so that you can appreciate the importance of that effort.

It is important not simply because Japan itself is a huge market -- the world's second largest, worth over $13 billion annually -- where Kodak should be selling much more than it does today. The problem is that Fuji Film, operating in a profit sanctuary created for it by the Government of Japan, has amassed a "war chest" of more than $8 billion using current exchange rates which it can use, and is using, to attack Kodak's position world-wide.

Revenues derived here and abroad from consumer photographic film and paper are critical to Kodak's ability to remain on the imaging industry's cutting edge technologically.

In short, our long-term growth, and many thousands of U.S. jobs in this important sector of the economy, depend on the success of our effort to break into the closed Japanese market.

We have been unable to gain significant access for consumer photo film and paper. Our share of Japan's consumer photo products market is only 10 percent. Kodak commissioned a survey of Japan's retail outlets which was conducted in December 1995 and January 1996. The survey sampled 2028 retail outlets in 45 of Japan's 47 prefectures. The survey found that:

- Kodak film was wholly absent from two-thirds of the Japanese retail market (by volume).
- And in the one-third of the market where our product is available, Kodak film is available and able to compete on price in only 10 percent of the Japanese market.

These results are far worse than those we have achieved in other world markets -- even those where we face domestic competitors.

Why? The Japanese Government has helped create a market structure shielding its domestic photo industry, particularly Fuji, from meaningful competition for more than 20 years. Kodak and other foreign suppliers face an exclusionary distribution network that denies us full market access. These protective measures have focused not just on foreign competition generally but on Kodak in particular. Japan's government-industry strategy to exclude Kodak from the market continues today.

After carefully researching the barriers confronting Kodak in Japan, we filed a petition with the U.S. Government in May of 1995 under Section 301. We did not take this action lightly. Looking at all of our efforts, both past and present, we concluded that no matter what we did to market our products in Japan, it would never be enough to succeed unless something was done about the Japanese Government's active role in keeping us out.

We were gratified to have our case accepted for investigation by the USTR. We are also gratified that the leadership in both major parties and in both houses of Congress, as well as the President, all seem to recognize the seriousness and strength of our case.

The evidence we have presented is overwhelming -- and it comes almost entirely from Japanese sources. This is regularly cited as the best documented market access case in history. No one, with the predictable exception of Fuji and the Japanese Government, has challenged its validity.

What are the barriers and how do they work? Both the government and the private sector play a role. As far as government action is concerned, the most serious current barriers are the Premiums Law, the Large Scale Retail Store Law, and toleration of illegal anticompetitive practices.

- Under the Premiums Law, the Japan Fair Trade Commission ("JFTC") delegates power to trade associations to create and self-enforce "fair competition codes" which limit the use of advertising and marketing strategies to lower prices. Arm-in-arm with the JFTC, Japan's domestic suppliers in the photo film industry maintain high, stable prices while disciplining independent-minded retailers who may be tempted to offer promotional or discount incentives to consumers. As a result, Kodak is effectively prevented from competing on price.

- The Large Scale Retail Store Law also restricts Kodak's sales by impeding the establishment, expansion and operation of large discount and photo specialty stores. These are the very stores where we have best been able to market our products.

- The Japanese Government also knowingly tolerates and encourages anticompetitive practices designed to keep out imports and maintain artifically high prices.

The private sector's role involves restrictive business practices designed to keep our products out of the distribution system entirely or -- in those instances where our products do reach the retail shelf -- to prevent them from being priced competitively.

These practices are real today, and they have been in existence for a long time. It sounds astonishing, but we have documented that beginning in the 1970s and with the government's active support all the way along, Japan's photographic film and paper industry has been purposefully reorganized to blunt Kodak's entry.

The Japanese Government has essentially "privatized protection," helping private parties to form a complex web of distributors, financial institutions, wholesalers and retailers. Within this unusual market structure and through anticompetitive practices tolerated by the government, Fuji and others (acting as agents of the Japanese Government) are able to suppress import penetration. Examples include:

- Fuji's control of photo wholesalers through rebates and massive security deposits;

- Fuji's threatened supply cutoffs to wholesalers that use or promote Kodak's products; and

- trade associations enforcing high prices to the consumer.

The Japanese Government's actions in this sector are inconsistent with its obligations under international agreements. And the private actions undertaken by Fuji and other players violate Japan's own Anti-Monopoly Law. Yet the government sits idly by. The intended result -- and the actual result -- is that Kodak has limited access to the retail shelf and, where we are able to sell, we are not allowed to price competitively.

That's the short version. The long version is available in thousands of pages, in the reading room at USTR.

But we must not get so wrapped up in the details of these practices that we ignore their effect. The Japanese Government's active involvement in the market place to exclude foreign suppliers has created a profit sanctuary for one Japanese company and a real, long-term, world-wide competitive threat to Kodak and the U.S. jobs we provide.

If the Japanese market had been open, Kodak estimates that it would have made additional sales of $5.6 billion over the last 10 years. Using the Commerce Department's figures linking export revenues to jobs, that's the equivalent of tens of thousands of U.S. jobs.

What Kodak is Seeking

Kodak's goal in this effort is resolution, not retaliation or artificial quotas. We know we have high quality products that will sell, if only consumers have access to them. We simply seek a more open marketplace and the ability to put Kodak film on more store shelves in Japan. In fact, in those portions of Japan where competition exists, we do very well, capturing over 20% of the market.

Our objectives in the trade case can be summarized under three basic headings: "getting on the shelf," "getting off the shelf," and "getting more shelves."

- Getting on the shelf means gaining access to retail outlets for Kodak film, which in turn requires access to the major wholesalers that supply those outlets.

- Getting off the shelf means ending anticompetitive practices under which retailers are induced to mark up the price of Kodak's products so that, no matter how competitively we price at the wholesale level, retail consumers seldom see our discounts.

- Getting more shelves means lifting onerous government restrictions on distribution such as the regulations that limit large-scale photo specialty stores and discount retailers -- one type of sales environment in which our consumer photo products in Japan have fared well.

These are modest and reasonable goals, and they are consistent with Japan's international obligations as well as the expressed commitment of Japanese officials to deregulation. Japan's political leadership for years has stressed the need for deregulation and stronger competition policy. Yet this rhetoric has not been matched by action.

While our goals are modest and reasonable, the stakes for us as a company are high. And the case is time-sensitive. We have been effectively shut out of Japan for many years already, and we are already feeling the world-wide competitive impact of the profit sanctuary that exists in Japan. Resolution of this case cannot simply be delayed for a few years until the Japanese Government finds it more convenient to address the problem.

The Japanese Government recently announced that the JFTC will compile a study of competition in the photo supplies market worldwide. This announcement appears to be intended to deflect the U.S.

Government's Section 301 initiative, but it must not be allowed to succeed in doing so.

The JFTC has tolerated anticompetitive practices while permitting industry groups to squelch rather than promote price competition. To resolve these issues, direct involvement by Japan's Ministry of International Trade and Industry and the JFTC will be necessary, and enforceable international commitments to implement real reforms -- not just to carry out studies -- must be included in any agreement settling the case.

Japan's Refusal to Negotiate and Effort to End "Bilateralism"

Notwithstanding the overwhelming evidence, Japan has refused to discuss this matter. Without providing U.S. negotiators an opportunity to present their views, the Japanese Government has publicly refused to address our serious market access problem.

This is unprecedented behavior, and it has broad ramifications that go well beyond this case. Japanese officials are plainly testing the resolve of the U.S. Government to deal effectively with market access issues, attempting to redefine the bilateral relationship as one that focuses solely on non-commercial interests.

This attempt cannot be taken lightly. Failure to come to positive resolution on a case documented as thoroughly as this one would send a negative signal to every U.S. company attempting to obtain access to Japan. If this case cannot be resolved satisfactorily, then no industry can be successful.

Other countries also have reason to be concerned by a Japan that has closed its home market and then refuses even to discuss the barriers with an affected exporting country.

The Administration and Congress expressly recognized, in the Uruguay Round Statement of Administrative Action, that the WTO agreements, with minor exceptions, do not address foreign government measures that "encourage or tolerate" private anticompetitive practices; rather, in such cases, section 301 is to remain "fully available." Indeed, the continuing need for bilateral approaches to cases of this type was broadly recognized by all countries during the Uruguay Round.

Certain discrete actions of the Japanese Government in the photo sector raise very serious questions under WTO rules and could perhaps be presented to a WTO panel for adjudication. However, the Japanese Government's toleration -- over a period of more than 25 years, and continuing to this day -- of systematic anticompetitive activities that block market access for U.S. and other imported products simply is not covered by WTO rules.

The Administration pledged to Congress that it would continue to use Section 301 aggressively in this context and that, notwithstanding the new WTO dispute settlement rules, the continued viability of Section 301 as a bilateral trade tool for addressing problems falling outside WTO jurisdiction was assured.

These commitments were fundamental to Congress' decision to ratify the results of the Uruguay Round, as was the accompanying amendment crafted by Congress to clarify the Section 301 provisions on toleration of anticompetitive activities.

Japan has called into question the resolve of the U.S. Government to address the many unreasonable trade barriers not eliminated through the Uruguay Round negotiations. If Japan is successful with this tactic, it will affect U.S. efforts to open virtually any market for U.S. exports.

Any retreat from the commitments made in the Uruguay Round implementing process would be disastrous. This Subcommittee should not countenance such a retreat.

Conclusion

In the end, the focus of this case must be on Japan and not on Washington. Resolution ultimately depends on the same Japanese Government that created the market barriers in the first place.

And the dynamics within Japan have changed significantly in the past months with the elevation to power of Prime Minister Hashimoto. During a press briefing after his recent meeting with President Clinton, Mr. Hashimoto noted that deregulation is his answer to market access problems.

I continue to hope that the Prime Minister will determine that Japan's interests are best served by finding a way to deal with this case productively through deregulation and enhancement of competition. Given the strength of Kodak's case, the case should lead to negotiations that in the long run will improve the often acrimonious economic relationship between our two countries.

As Mr. Hashimoto is well aware, our economic destinies are inextricably linked. Between our two countries, we account for 40 percent of the world's GNP. And failure to deal with legitimate trade concerns only frustrates the economies of both nations, increases tensions, and leaves consumers with fewer choices and higher prices.

Chairman CRANE. Thank you.
Mr. Deline.

STATEMENT OF KEN DELINE, FOUNDER, DELINE BOX AND DISPLAY; ON BEHALF OF EASTMAN KODAK CO.

Mr. DELINE. Mr. Chairman, thank you for the opportunity to testify today on United States-Japan trade relations. My name is Ken Deline; I am the founder of Deline Box and Display in Windsor, Colorado. I would like to speak briefly in support of Eastman Kodak Co.'s effort to gain access to the Japanese market. The success of this case, and the continuing ability of the United States to address market access barriers abroad, is important not just to the large domestic manufacturers like Kodak but to their suppliers as well.

Deline Box and Display produces packaging for Kodak products, many of them destined for Japan. These products fall into three broad categories: Medical x-ray film products, graphic art film products and photographic paper products.

There are two primary points I would like to make today. The first is that it is not only Kodak that has a stake in better access to Japan's photographic film and paper market. We and other suppliers are affected as well.

Our facility in Colorado was originally dedicated 100 percent to Eastman Kodak. Anything impacting Kodak's sales volume positively or negatively translated directly into an impact on Deline's volume as well. Although we have diversified, Kodak still accounts for about 50 percent of our business.

So, our fortunes rise and fall with Kodak's. Sales by Kodak into foreign markets translate into sales and jobs for us. So, you can understand the impact on us when, as market surveys conducted during this case have documented, Kodak film is available and able to compete on price in only 10 percent of the Japanese market. The second point is that Kodak has been extremely proactive and energetic in its efforts to crack into Japan—more so, in fact, than any other customer Deline deals with.

This applies particularly to packaging design. It may surprise you, but I have seen many instances in which Kodak's product and packaging design have been based not on European or even U.S. market factors but on factors specific to Japan. There have been instances when we have changed the packaging used domestically in the United States just to achieve economies of scale, to cater to the Japanese needs.

It is incredible to me that there have been allegations that Kodak has been unwilling to do what is necessary to succeed in Japan. From my perspective, I assure you those charges are not true.

Mr. Chairman, we at Deline Box and Display appreciate your efforts and those of this Subcommittee to facilitate a successful outcome in this case. It is important that we continue to be able to address issues like this bilaterally with Japan in a businesslike manner. I hope the forceful but constructive message being sent today will find its target and contribute to a solution that is in both countries' best interests.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Mr. Deline.
Mr. Armstrong.

STATEMENT OF THOMAS W. ARMSTRONG, PRESIDENT, SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. ARMSTRONG. Thank you, Mr. Chairman, for this opportunity to speak on behalf of the Semiconductor Industry Association. As president of the SIA, I can assure you of our industry's deep belief in and support for open markets. We strongly supported GATT and NAFTA. To continue the process of opening markets, we strongly support renewal of the 1991 United States-Japan Semiconductor Agreement. We would like to do this through cooperation, not through confrontation.

As you know, semiconductors are a pervasive part of our lives and are becoming more so. Our industry employs 240,000 people nationwide, and our products are the enabling technology behind the nearly $400 billion U.S. electronics industry, which provides employment for 2.5 million Americans. Yet, our industry is a very young industry. Next year will mark the 50th anniversary of the transistor, and this year marks the 25th anniversary of the microprocessor, the heart of a personal computer.

We have been very successful in having our products accepted not only in the United States but throughout the world. The reason for that success is that we have continuously introduced succeeding generations of state-of-the-art technology at consistently lower prices, and that, of course, is a formula for success. It has been, except in one place. In Japan, despite our technological edge and our highly competitive prices, we could not sell much product, and this was because the market was closed to us for many years. Fortunately, primarily through the efforts of the U.S. Government, we entered into an agreement with the Japanese which gave us access to the Japanese market.

When we first signed the agreement in 1986, foreign producers had only 8 percent of the Japanese semiconductor market. In 1995, foreign market share was 25 percent, with an 18-percent share for U.S. producers. On its face, it would appear that this agreement has worked well and that we have made remarkable progress in the last 10 years, and for the most part, I think the agreement has worked well, certainly a lot better than the alternative, which would be no agreement. But there is much left to be done. For example, while the United States has an 18-percent market share in Japan, we have a market share of about 50 percent in the world outside Japan, and in combined markets which include neither Japan nor the United States, we have a 40-percent market share.

These numbers indicate quite clearly that Japan's markets, while more open now than in the past, still have a long way to go before they become truly open. It is for that reason that I am here today to support the government's efforts to renew the agreement. The agreement does four very important things: First, it calls for a commitment for continued progress increasing market access for non-Japanese—not just United States—semiconductors. Second, it provides a mechanism for measuring market share in such a way that the numbers are monitored and verified by both nations' governments and are not subject to dispute. Third, it establishes a net-

work of relationships where outside suppliers and Japanese purchasers can communicate regularly to provide opportunities for design in and sale of projects. And fourth, it establishes a procedure under which the Japanese chip producers calculate and maintain their chip production costs so that they can be quickly produced in the event of dumping allegations.

These four elements have been highly beneficial to both the United States and to Japan. They have made possible extraordinary cooperation between the United States and Japanese industry. The agreement has increased foreign market access, and it has dramatically reduced trade frictions. The agreement has made these positive things happen, and without this agreement, they may not continue. Without it, in fact, we would not even have an agreement on what the market share numbers are today.

The United States and Japan need this agreement to build on the progress of the past 10 years, because there is still more progress to be made. We are flexible on the specific terms of a new agreement. We are not seeking a numeric target. We just want continued and steady progress; we are not seeking a guaranteed market share. But we do believe strongly that the job of obtaining full access to the Japanese market is not yet done.

Mr. Chairman, thank you for this opportunity to present our views.

[The prepared statement follows:]

STATEMENT OF THOMAS W. ARMSTRONG
PRESIDENT, SEMICONDUCTOR INDUSTRY ASSOCIATION

HEARING ON U.S.-JAPAN TRADE RELATIONS
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

MARCH 28, 1996

I appreciate this opportunity to appear before the Subcommittee on Trade of the Committee on Ways and Means to present the views of the Semiconductor Industry Association ("SIA") on U.S.-Japan trade relations.

The central issue for the SIA in terms of trade with Japan is renewal of the 1991 U.S.-Japan Semiconductor Trade Agreement, which is scheduled to expire this July 31. As I will explain in greater detail below, SIA believes that the Agreement has been extraordinarily successful in promoting cooperation between the U.S. and Japanese industries, has increased foreign market access in Japan, and has reduced trade frictions in this sector. Therefore, SIA strongly believes it is in the best interests of both the United States and Japan, as well as both U.S. and Japanese industry, to ensure that continued progress is made through a new government-to-government agreement with Japan.

Before going into greater detail on the Agreement, I would like to take a minute to give the Subcommittee a sense of the dynamic and growing U.S. semiconductor industry.

The U.S. Semiconductor Industry

Semiconductors are an increasingly pervasive aspect of everyday life, enabling the creation of the information superhighway and the functioning of everything from automobiles to advanced medical equipment. Semiconductors are also the linchpin underlying this nation's advanced military weapons systems. A growing proportion of the value of these systems is dependent upon electronics products -- up to 40 percent in some cases. The current design of the F-16 Fighter, for example, includes 17,000 electronics components. They are also intrinsically important in radars, weapons guidance and control systems.

U.S. semiconductor makers employ 240,000 people nationwide. Their products are the enabling technology behind the nearly $400 billion U.S. electronics industry, which provides employment for 2.5 million Americans.

The U.S. semiconductor industry is currently the world market share leader, with 1995 world sales reaching $59 billion, representing almost 41 percent of the $144 billion world market. Moreover, the world semiconductor market is expected to double by the year 2000, with projected sales of over $300 billion.

U.S. semiconductor producers are highly committed to maintaining their lead in both semiconductor manufacturing and technology. The U.S. semiconductor industry devotes on average 20 percent of its revenues to capital spending and another 11 percent to research and development -- among the highest of any U.S. industry.

This commitment to product quality and innovation has paid off. U.S. semiconductor manufacturers remain on the cutting edge of technological development, and are often the first to bring to market advanced new products.

While investing heavily in the industry's future competitiveness and technological capabilities, SIA members also have always actively sought to secure foreign market access for U.S. products. Because the semiconductor industry is so global in nature -- roughly half of the U.S. industry's revenues are derived from overseas sales -- SIA has been dedicated since its inception to promoting free trade and opening world markets.

For example, the U.S. industry has been in the forefront of efforts to eliminate tariffs on semiconductors and related products worldwide. At SIA's urging, both the United States and Japan eliminated their semiconductor tariffs in the mid-1980s. During the Uruguay Round, the

U.S. industry succeeded in convincing Korea to eliminate its tariffs on these products. Today, SIA continues to push more broadly for semiconductor tariff elimination as part of the proposed Information Technology Agreement.

However, the elimination of tariffs and other traditional trade barriers has proven to be insufficient to ensure full market access in key markets, particularly Japan, the second largest semiconductor market in the world.

History of U.S.-Japan Trade in Semiconductors

U.S. efforts to obtain access to the Japanese semiconductor market date back more than twenty years. Until the first U.S.-Japan Semiconductor Agreement was signed in 1986, U.S. and other foreign semiconductor suppliers had little success entering the Japanese market. By bringing together both the U.S. and Japanese industries and both the U.S. and Japanese governments, the Agreement made substantial progress in opening Japan's market possible.

Before the 1970s, the Japanese semiconductor market was protected by a wide range of formal and informal barriers, including import restrictions, investment restrictions and local content requirements for computer equipment. During that period, Japanese semiconductor producers became internationally competitive, and began challenging the U.S. industry in world markets.

In 1971, under pressure from the Nixon Administration, Japan agreed to begin liberalizing its restrictions on semiconductor imports and foreign investment. However, due to the use of liberalization countermeasures put in place by the Government of Japan (including the issuance of administrative guidance to discourage purchases of foreign products), the foreign share of the Japanese market remained virtually static, ranging around 10-11 percent of the Japanese market.

In a number of specific cutting-edge product sectors, U.S. semiconductor companies encountered a recurring phenomenon during the 1970s and early- to mid-1980s: They could achieve sales in Japan only until Japanese companies developed a competing product, at which time domestic sourcing replaced foreign supply. By 1982, the U.S. share of the Japanese market was below what it had been in 1974, the last year the Japanese market was protected by quotas.

In 1982, the U.S. and Japanese governments tried to remedy the problem of inadequate foreign market access through the formation of the U.S.-Japan Work Group on High Technology Industries, which issued a set of recommendations aimed at increasing foreign market access in Japan. After an initial modest increase in share coinciding with a boom in demand for semiconductor products, U.S. sales in Japan dropped sharply. By mid-1985, U.S. share of the Japanese market was lower than it had been when the High Tech Work Group's recommendations were adopted in 1983.

The U.S.-Japan Semiconductor Agreement

In 1986, President Reagan sought and concluded a five year agreement with the Government of Japan to open the Japanese market to foreign semiconductors. Because of the frustration brought about by the failure of previous agreements to produce market opening results, the 1986 Agreement included a side letter which stated that the Government of Japan recognized and welcomed the fact that the U.S. industry expected foreign share of the their market to grow to and exceed 20 percent by 1991. It also provided for joint efforts to increase the number of foreign semiconductors that are "designed in" new Japanese electronics products.

Unfortunately, the 1986 Agreement did not immediately lead to any progress in opening Japan's market. In 1987, the U.S. Government imposed sanctions on Japanese electronics products in response to breaches of the Agreement. Following the imposition of sanctions, U.S. share of the Japanese semiconductor market began to improve.

One year before the Agreement was set to expire in 1991, after three years of fairly steady, gradual progress, foreign share of the Japanese market again began to decline. It was apparent to all parties that the threshold objective of 20 percent foreign share would not be met by July 1991, and that, despite an increase in design-in activity, further market share progress was not self-sustaining.

In July 1991, President Bush sought and concluded a second agreement with the Government of Japan to continue the market opening process. The 20 percent figure was to be reached by December 31, 1992, and with an unprecedented 4 percentage point increase in the third and fourth quarters of 1992, this objective was achieved.

The Agreement has led to tremendous progress in opening the Japanese market. Foreign share increased from 8.5 percent in 1985 to 25.4 percent in 1995.

SIA's Commitment to Japan

Many in America, who had been pessimistic that investments in Japan would not result in the increased sales that similar efforts in other markets yielded, gained confidence that due to the Agreement their efforts in the Japanese market could yield increased purchases by Japanese firms. Under the 1986 and 1991 U.S.-Japan Semiconductor Agreements, U.S. semiconductor makers have invested heavily in Japan. In order to meet the needs of their Japanese clients, SIA members not only maintain sales offices in Japan, but also have factories as well as extensive test and research and design facilities, as well as a number of joint venture operations in that country.

As an example of the increased commitment to the Japanese market, the eight largest SIA member firms report that since 1988 they have doubled the number of technical employees, including design engineers, they have in Japan. These firms also continue to steadily increase their sales expenditures in Japan. These extensive efforts -- undertaken in conjunction with the activities put in place by the Agreement -- have yielded progress in recent years.

SIA's Board of Directors has met annually in Japan every year since the two governments signed the 1986 Agreement. These meetings not only symbolize the commitment of the U.S. industry to serving the Japanese market, but also provide an opportunity for the leaders of the U.S. industry to meet with their Japanese counterparts, as well as the Japanese government and media. SIA is the only U.S. industry association to hold regular high-level meetings of this type in Japan to demonstrate a sustained commitment to that market.

Joint Efforts with Japanese Industry

SIA members participate regularly in the Joint Working Group established under the Agreement, which brings together representatives from the two industries and the two governments three times a year to discuss progress under the Agreement. The Joint Working Group has been an effective forum through which both U.S. and Japanese firms can raise their concerns and address them in an open manner.

Since the first Agreement went into effect, there have been more trade promotion events related to semiconductors than any other industry. The events have spanned a broad range, including seminars on specific sectors of the industry to broad trade missions sponsored by the Electronic Industries Association of Japan (EIAJ) and the Department of Commerce. Literally hundreds of small one-on-one meetings have been held, as well as numerous large conferences sponsored by the International Semiconductor Cooperation Center (INSEC) and the Japanese Ministry of International Trade and Industry.

SIA and EIAJ have cooperated directly on numerous projects, such an effort last year to increase personal computer use in Japan. The two industry associations also have worked on "Chip In" campaigns, originally proposed by EIAJ, aimed at focusing attention on the role and responsibilities of both suppliers and users in successfully designing foreign semiconductor devices into Japanese systems. SIA and EIAJ also have joint committees which focus on specific sectors of the Japanese market, including the consumer, telecommunications, and automotive sectors.

While both SIA and EIAJ members benefit from the results of such joint activities and increased design-ins, they are not the only winners. The major beneficiaries from these cooperative ventures are worldwide consumers of Japanese electronics products.

These mutually beneficial activities -- made possible by the U.S.-Japan Semiconductor Agreement -- are at the root of increased market access in Japan, and are worth continuing.

The Case for Renewal of the Agreement

The purpose of the 1991 U.S.-Japan Semiconductor Agreement, like the 1986 Agreement which preceded it, is to allow foreign manufacturers equitable access to the Japanese semiconductor market. The goal of the Agreement is to open the Japanese market to the point where sales generally occur without respect to the nationality of the supplier.

It is a well-known fact and a regular subject of discussion both inside and outside Japan that there remain structural impediments in the Japanese market and a need for "deregulation." The U.S.-Japan Semiconductor Agreement was negotiated to overcome market access impediments. There exist ingrown interrelationships both within keiretsu groups and among other Japanese firms and a mentality that favors dealing first with those within the same family of companies or corporate group, and second, with other Japanese companies, before any foreign products will be considered. Overcoming these structural impediments requires Japanese government action, as provided for under the Agreement.

The Agreement has resulted in a significant amount of progress being made. Japanese purchasing agents have told U.S. semiconductor sales representatives on numerous occasions that they are very pleased with the existence of the current Agreement because it provides them with a degree of flexibility within their companies without which it would be impossible to consider buying foreign products. That is what the Agreement is all about.

The issue of renewal of the Agreement turns on whether the Japanese market is now fully open and, therefore, no further action is needed. No foreign company which sells in the Japanese market believes that the market is fully open. At the same time, Japanese politicians and government officials continue to speak out in favor of deregulation. In the semiconductor sector, the path of deregulation has been established and the method for achieving it exists in the terms of the U.S.-Japan Semiconductor Agreement. The Agreement must be renewed if the effort at deregulating the Japanese semiconductor market is to continue.

The Agreement has opened the lines of communication between U.S. semiconductor suppliers and Japanese end-equipment producers, and between the U.S. and the Japanese governments. It provides a structure within which both industry-to-industry and government-to-government cooperation are fostered. An extensive network of inter-industry institutional arrangements and joint projects have been created under the umbrella of the inter-governmental U.S.-Japan Semiconductor Agreement.

The members of SIA are committed to continuing progress, but the job is not done. A large gap remains between the sales of all non-Japanese semiconductor producers outside Japan and their sales in the Japanese market. U.S. semiconductor makers account for 50 percent of the world semiconductor market outside Japan -- almost three times the market share they have been able to achieve in Japan. Much work remains to be done in opening the Japanese market.

The Gap

U.S. semiconductor manufacturers are extremely competitive in all open markets across a wide range of applications and a wide range of products. There remains a sharp disparity, though, between the share U.S. manufacturers account for in the world market outside Japan and the share they account for inside Japan. In the world, excluding Japan, American manufacturers accounted for 50 percent of all semiconductor sales in 1995. In Japan, U.S. semiconductor makers accounted for only 18 percent of sales in the Japanese market that same year.

This huge disparity between U.S. sales outside Japan and sales inside Japan is evidence that sales in that country are, unfortunately, still not always made solely on the basis of market forces such as technology, price, quality, service and delivery. Moreover, the gap is both consistent and persistent not only across the full range of applications, but across the full range of semiconductor products made by U.S. manufacturers.

Furthermore, the wide disparity between U.S. sales outside Japan and inside Japan is <u>not</u> explained by the argument that the U.S. industry does better in the United States and the Japanese industry does better in Japan. A comparison of the 40 percent share U.S. firms earn in world markets outside both the United States and Japan with the 18 percent share U.S. firms have in

Japan demonstrates that a significant gap remains. By contrast, there is only a small difference between the 23 percent share Japanese firms have in the U.S. market and the 28 percent share they have in world markets outside both the United States and Japan.

EIAJ has argued that the importance of the domestic Japanese market is decreasing, reducing the need for a bilateral agreement. They claim this is due to the shift offshore of much Japanese consumer electronics manufacturing, along with the exponential growth in electronics manufacturing in Pacific Rim countries outside of Japan, such as Malaysia, Thailand, Taiwan and Singapore. However, this argument does not take into account the fact that although the domestic Japanese market is decreasing in terms of its relative size with respect to overseas markets, it remains the center of high value-added, custom design-ins. Most Japanese electronics producers design products in Japan for manufacture at their facilities throughout Southeast Asia. In order to make sales to these Japanese affiliates, it is necessary to win design-ins that are awarded in Japan.

In addition, the majority of products being produced in other Asian nations by large Japanese multinationals are mass volume, relatively less sophisticated products. Japan, despite its decline in size relative to the rapidly expanding markets of Asia, is still the second largest semiconductor market in the world and the center of highly advanced, high value-added production.

Moreover, the movement of low foreign content consumer electronics production from Japan offshore in part explains the why total foreign share in the Japanese market has increased in recent years, even though no additional solid opportunities have been created from this movement. For example, according to EIAJ data, foreign share in Japan increased from 22.2% in 1993 to 23% in 1994, but this was largely due to the fact that consumer semiconductors represented only 32% of the Japan market in 1994, compared to 37.6% in 1993. In fact, according to EIAJ data, foreign share in all products outside of consumer goods actually declined during this period.

Similarly, an analysis of one particular market segment -- Gate Arrays/Standard Cells/Full Custom circuits -- demonstrates the need for continued progress in improving foreign market access in Japan. Both the U.S. and Japan have strong, competitive companies producing these chips, and the close relationship between suppliers and users required to design in these semiconductors make them a good indicator of whether U.S. suppliers have become firmly entrenched in the Japanese market. Yet in this category, foreign suppliers' share increased from 8.4% in 1990 to 17.5% in 1993, and actually declined to 17.0% in 1994 -- according to a Nomura Research Institute study sponsored by EIAJ. This is far below the share that U.S. suppliers are capable of, based on their demonstrated competitiveness in world markets.

Continuation of an arrangement between the United States and Japanese governments is needed to maintain a framework for cooperation which will allow further market opening to take place. The existing framework has allowed both the two governments and the two industries to prevent a return to the litigiousness and friction that once characterized this sector, while facilitating market opening progress.

The way to continue building on the results that SIA and EIAJ have worked so hard to achieve over the last few years is to renew the Semiconductor Agreement prior to its expiration in July 1996, thereby avoiding a return of bilateral friction in the semiconductor sector and allow work to continue toward narrowing the gap between competitive outcomes in the world outside Japan and those which take place within the Japanese market. In short, the Japanese market must become fully contestable to all competitive producers regardless of nationality.

The Threat of Renewed Dumping

During the mid-1980s, Japanese dumping of semiconductor products in foreign markets drove nine of eleven American makers of commodity memory chips (DRAMs) out of the DRAM business (and one company -- Mostek -- out of business altogether). This dumping also had a severe impact on the financial health of U.S. makers of other memory chips (EPROMs). Trade in semiconductor products became a source of tremendous friction between the United States and Japan. To deter renewed dumping of semiconductors, Japanese firms are required under the current Agreement to collect and maintain certain cost and price data that would be necessary to

determine whether their products were being dumped. This data remains in the possession of each company and is not provided to any government official -- U.S. or Japanese -- unless a formal antidumping investigation is initiated.

Although there has been no allegation of Japanese dumping under the 1991 Agreement, this is most likely due to tight world market conditions which have existed through late 1995. The antidumping provisions of the Agreement will not be tested unless and until there is a very sharp decline in prices for a particular semiconductor product. The semiconductor market is very cyclical in nature, as recent sharp downturns in the prices of DRAMs clearly shows. Moreover, it is an industry where products have very short life cycles and one in which change can be very rapid. All of this makes renewed dumping a possibility.

The world semiconductor industry is currently experiencing a period of explosive growth. The global chip industry is expected to more than double in size to approximately $300 billion by the turn of the century. Meeting the demand generated in the next five years will require the construction of over 100 new production facilities or "fabs," each of which will cost anywhere from $1 billion to $2 billion -- and 70 percent of which will be obsolete within three years of their construction due to the short product life cycles of this dynamic industry. Capital expenditures deemed necessary to boost competitiveness may lead in fact to overcapacity and dumping. Several factors contribute to these capacity swings. Most notably, forecasting demand beyond a few months is highly uncertain, and periods of demand start and end abruptly. As a result, periods of overcapacity closely follow periods of undercapacity in the semiconductor industry.

The emergence of Korea and Taiwan as major producers of semiconductors is adding significantly more capacity, which in turn further increases the risks of dumping should a downturn take place in any product segment of the world semiconductor market. However, while Korean and Taiwanese production could help tip the market into overcapacity, the market leaders in DRAMs remain Japanese producers, who have 39 percent of the world market for semiconductors overall and 49 percent of the world DRAM market.

Given the history of the industry -- and the devastating impact dumping has had in the last decade and could have again in the future -- it is in the best interests of both the U.S. and Japanese industries that the minimal level of protection against dumping afforded by the Agreement be continued.

The Need for Businesslike Solutions, Not Trade Litigation

Some critics have argued that with the establishment of the World Trade Organization (WTO), the bilateral cooperative arrangements of the Agreement are no longer necessary. While SIA believes that the WTO provides an important forum for enforcing many rules governing international trade, we disagree strongly with the suggestion that the WTO can replace the Agreement. This is neither practical nor reasonable; rather, it is a litigious, bureaucratic approach that should be rejected.

Filing complaints at the WTO about market access is not a realistic solution in disputes in the semiconductor sector. The WTO provides for panels of judges to consider broad issues through a process that can take well over a year. The only remedy available through the WTO is trade sanctions.

The U.S.-Japan Semiconductor Agreement, on the other hand, provides for pragmatic solutions to specific problems through joint industry-to-industry and government-to-government meetings. At these meetings, the U.S. and Japanese industries and governments discuss such detailed issues as the need to make available devices for surface mounting, or the need to open additional design centers. These are not matters for judges in Geneva to resolve.

Avoid Disputes Before they Occur

The U.S.-Japan Semiconductor Agreement has served as a mechanism to diffuse concerns before they develop into major trade disputes. The U.S. and Japan semiconductor industries have moved from rancor to cooperation in less than a decade. Continuation of a government-to-

government agreement is the best means to maintain and build on the harmonious relations that have developed and are continuing to grow.

Under the Agreement, SIA and EIAJ, and the U.S. and Japanese governments, meet jointly three times a year. These meetings have allowed SIA to establish very valuable relationships with our EIAJ counterparts through an extensive series of joint activities. Under the Agreement, the two governments work together to calculate foreign share of the Japanese market, and jointly issue quarterly reports. Calculation of foreign market penetration in Japan by the United States absent any government-to-government consultations on the issue is likely to lead to disagreements between Washington and Tokyo.

The members of SIA believe it is in the interests of both the U.S. and Japanese industries and the Governments of Japan and the United States, not only to provide a context in which these relationships are maintained, but also to keep this vital industry free from the strife that would likely arise in the absence of an Agreement. Renewal of the Agreement will help ensure not only that progress continues in opening Japan's markets -- where work remains to be done -- but that friction does not develop between the U.S. and Japanese governments over trade in semiconductors.

Conclusion

The American semiconductor industry's consistent commitment to product quality and innovation have allowed U.S. producers to regain their technological leadership. Retaining that leadership is critical to America's defense capabilities as well as for its commercial interests. In an era in which multibillion dollar investments are required simply to keep up with growing demand, maintaining technological competitiveness will require not only the industry's continued commitment to technological advances, but also attaining full access to markets worldwide -- particularly the world's second largest market, Japan.

Although the U.S.-Japan Semiconductor Agreement has been tremendously successful in making progress toward opening the Japanese market and building cooperation between the two industries and the two governments, much work remains to be done.

- The gap between U.S. share in Japan and in the rest of the world remains substantial: 18 percent in Japan versus 50 percent in the world outside Japan. For a product that is shipped around the world in a half-day's time, and given the extensive efforts of the U.S. industry in Japan, this gap can only be due to continuing structural barriers in the Japanese market.

- U.S. companies still find it difficult to win high-value design-in contracts in Japan.

- Market access problems in Japan -- the world's second largest market -- remain real. Substantial gaps exist between U.S. and other foreign industry's performance outside and inside Japan.

- Without the structure of cooperative activities between the Japanese and foreign semiconductor industries, supported directly by the government-to-government efforts under the Agreement, the future of U.S.-Japan cooperation is in doubt.

- Worldwide investment patterns show a tremendous growth in capacity which could result in renewed dumping should there be an unexpected market downturn as has happened in the past. The minimal, non-intrusive antidumping provisions of the Agreement should therefore be maintained.

- The World Trade Organization has been established, but its sanctions-based judicial approach will not promote cooperative, businesslike solutions in technical, product-specific market access issues as has the U.S.-Japan Semiconductor Agreement over the last ten years.

SIA believes that the only way to continue building on the progress that has been achieved over the last few years is to renew the Agreement prior to its expiration in July 1996. Absent renewal of the Agreement, it is clear that the level of government-to-government and industry-to-

industry cooperation that exists today will not be continued. Without regular government-to-government consultations and joint calculation of foreign market share data, independent publication by the United States of market share information would undoubtedly lead to immediate disagreement with both the Japanese government and the Japanese industry. In addition, continuing sales to small and medium sized Japanese companies, which tend to be more insulated from foreign suppliers, would be difficult absent a continuation of the Agreement. The potential for bilateral trade friction evolving around trade in semiconductors is thus very real.

The existing Agreement structure has been instrumental in helping build the progress which has been achieved to date and the members of SIA are committed to continuing this progress. Maintenance of the current arrangement, by which the U.S. and Japanese governments and their respective industries work together in a cooperative effort to promote greater sales opportunities for foreign producers in Japan, will continue to benefit both the U.S. and Japanese industries.

Mr. Chairman, I would like to thank the Subcommittee for this opportunity to present the views of the SIA on this important issue in U.S.-Japan trade relations. I would be happy to answer any questions from the Subcommittee.

Chairman CRANE. Thank you, Mr. Armstrong.

I would like at this point—because again, we may be interrupted by a vote shortly—to yield to Mr. Paxon to welcome his corporate constituent to the Subcommittee today.

STATEMENT OF HON. BILL PAXON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. PAXON. Mr. Chairman, thank you, and I apologize for being delayed at a leadership meeting. But I wanted to be here and to welcome George Fisher. On behalf of our community, we are very proud of the leadership of George Fisher and Kodak Co. for 100 years in the Rochester region.

Let me just make a couple of quick points: First of all, George Fisher is a recognized leader in opening global markets to American products, whether at Motorola or today at Kodak. He uses every tool at his disposal to bring barriers down overseas so that American products like Kodak film can be marketed in those corners of the world. He believes in free trade.

But today, unfortunately, the playingfield is unfair and unlevel, and his goal and Kodak's goal is to not only bring about a level playingfield but to, as a result, create jobs and economic growth in this country, and I think that that is to be lauded. I would note that in addition to his tremendous track record at both Motorola and today at the Eastman Kodak Co., Mr. Fisher is a recognized leader in this city in the area of trade policy, serving as an advisor to two administrations on competitiveness and trade as chair of the U.S. Council on Competitiveness and currently a member of the Advisory Council for Trade Policy and Negotiations.

And I would note very clearly that Kodak is and always has been interested as a corporate entity in helping to promote American products overseas and create jobs here—54,000 jobs in this country alone, and Kodak has traditionally been one of the top 10 exporters nationwide. However, the actions by the Government of Japan are undermining Mr. Fisher's ability as well as Kodak's ability to continue to produce jobs and economic growth here as well as overseas. You employ nearly 100,000 people around the world. And I think it is important to note that the policies that are being pursued in Japan clearly are harming Kodak's ability and other companies' abilities to market these products.

Kodak has made a good faith effort, Mr. Chairman, to establish a presence in the Japanese market, investing $750 million there over the past 10 years. Kodak did not just walk in here and say we want help; they fought and fought and fought to open markets in that nation. Kodak's goal is simple and fair: Allow U.S. companies to compete in Japan as they do all over the world. While Fuji has access to 100 percent of the American market, Kodak is blocked from two-thirds of the Japanese market. And most disturbingly, Japan, one of our closest allies, has absolutely refused, categorically, completely, continually, to respond to American inquiries on this matter. The refusal to respond to requests from U.S. officials is more than disappointing; I think it should be a cause for deep concern in this country, especially considering their stated desire to open markets in their nation.

The President, as it is well known, will be meeting with the Japanese Prime Minister in Tokyo on April 15. The Kodak case must be discussed at that meeting, and I am very pleased that Congressman Houghton and Congressman Levin have circulated a letter to the President asking him to raise this issue. I have just signed the letter, Congressman Houghton and I. I am pleased to be part of the effort to bring about that discussion, and we will do everything we can to continue to help facilitate it. But I want to particularly tip my hat to a gentleman who has not only turned Kodak's fortunes around but is helping to turn America's fortunes around in the global marketplace.

I yield back.

Chairman CRANE. Thank you.

Mr. Fisher, I understand the way you explained it that there are distributors and retail stores over there selling Kodak who are creating artificially high prices for Kodak products. How can Fuji exert that kind of control on a distributor? How do they control the ones that will not even let you in?

Mr. FISHER. The ones that primarily will not let us in in two-thirds of the market are basically controlled through this keiretsu form of distribution system which Fuji owns part of or Mitsui Bank and Sumitomo Bank own part of. Those banks are the two largest shareholders of Fuji. So it is a combination of ownership, rebate systems, security deposits and various horizontal and price-fixing mechanisms that go on within that distribution system. And they just simply keep us out, because those people—the distributors and retailers—even if they wanted to, do not dare step out of line, because their financial future is at stake.

Chairman CRANE. I am sure you have heard the charge that you folks have offered rebates to U.S. drugstores and hotel concessionaires and airport concessionaires. Could you respond to that?

Mr. FISHER. Yes; I clearly stand on the ethics, integrity and record of Eastman Kodak. Also, I must say that whether I like it or not, the U.S. Justice Department has examined us up one side and down the other, and I think the persistence of the U.S. Justice Department to pursue investigations of poor market behavior, that record stands on its own. And as I pointed out, if only the Japan Fair Trade Commission were doing nearly one-tenth as good a job, we would all be better off.

Chairman CRANE. I would like to direct one quick question to Mr. Armstrong, and then, we are going to have to recess. But what evidence do you have that if the arrangement expires that your market access opportunities will diminish in Japan?

Mr. ARMSTRONG. Well, our greatest concern is actually the social and business structure which Mr. Fisher just referred to in the sense that Japan has probably been most successful as an insular nation for years by being very self-reliant. It tends to look toward itself. The businesses look toward themselves, first in a business family and then other Japanese businesses for supply of products. The agreement which we put in place has given us an opportunity to go into Japan and talk to potential purchasers and show them our wares, and it has given also an announcement or an edict by the Japanese Government that it is all right to talk to us.

If we can go in, and we have the opportunity to show our wares, to offer our products, we feel that we can compete very well head to head. But absent that approval and absent that network, we feel that we will start regressing and going back to the bad old ways.

Chairman CRANE. We have time. Mr. Houghton, do you have any questions of these witnesses?

Mr. HOUGHTON. Well, I do not know whether we will have any time; great to see you; thank you very much for coming down.

I guess I just have one question: George, you talk about the focus of this case must be in Japan and not in Washington, and I do not know whether I agree with that, because in the final analysis, it is our problem, and somehow, we must do something about it. I can remember going over to Japan on this television issue many times, and they kept saying why are you coming here? Why do you not solve it yourself?

Suppose they do not do what you want. Suppose Mr. Hashimoto does not come to the table the way that you want. What do we do as a country?

Mr. FISHER. Well, I think Mickey Kantor and the administration and Congress have certain tools they can use. From all my experience in United States-Japan relationships, I think it would be a failure on all our parts if this comes to the United States having to retaliate in some way. But that is a tool that is left at the end of the day, and it is probably a tool of failure on all of our parts. Every experience I have had in the past with the Japanese Government says that once the Japanese Government gets engaged—whether it was the semiconductor issue, cellular telephones, pagers, two-way police radios, all of which I have been involved in, once the government gets engaged and understands that the U.S. Government is really serious—that is important—once they understand that, they are very creative, and solutions do exist to these problems, and we will find them.

Mr. HOUGHTON. So you are optimistic?

Mr. FISHER. If the U.S. Government shows the resolve and does not let somebody like Vice-Minister Sakamoto unilaterally declare that Japan is going to talk to us on only those issues it wants to talk to us. That is ridiculous.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Well, let me congratulate George Fisher for the excellent job he did in getting the cellular telephones into the Japanese market when he was at Motorola. As many of you as can stay, please do, and we will recess to answer this vote and be back promptly.

[Recess.]

Chairman CRANE. Because of the chaotic conditions on the floor, I would like to get underway. We know that our colleague, David Dreier, has a commitment to make that he is already running late to, so I will recognize David first and then our colleague on the Subcommittee, Sandy Levin. So, you may proceed. But let me suggest if you can to try to keep your remarks within 5 minutes, and then, we will put any other submission into the record.

STATEMENT OF HON. DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DREIER. Great; thank you very much, Mr. Chairman, and I hope to have it even less than 5 minutes. I have a full statement which I see Mr. Levin has already perused, that I hope to have inserted in the record.

Let me just say that it is a privilege for me to once again testify before this very important Subcommittee in this hearing on trade, commercial and economic relations between the United States and Japan and for allowing me to make this brief presentation. It was nearly 3 years ago that I had the privilege of appearing with you, and I believe that the two most important policy recommendations regarding our relationship with Japan remain the exact same as they were 3 years ago. And frankly, they have been reinforced over this 3-year period since I was here.

First, we should not try to make the American economy more like Japan. That has been one of the things that we have constantly seen in the past: People trying to get us to do that, to emulate Japan, and I think that is a real mistake. Our openness, Mr. Chairman, is our primary strength. Japan does not benefit from closed or protected markets; it suffers from the closed and ineffective nature of its own economy. If they are to thrive in the 21st century information age, the Japanese economy must become more open like the United States.

And the second point is that we should not ignore the United States-Japan security relationship. A very strong United States-Japan alliance is critical to maintaining long-term stability along Asia's Pacific rim. Stability is a prerequisite to continued strong economic development in the region. Given the unquestionable benefit to the United States of strong economic growth along the Pacific rim, we should remain committed to supporting regional security and stability, and let me expand on those two points briefly.

There is no better evidence of the structural weakness of Japan's closed and inefficient economy than to look at their economic performance in this decade of the nineties. Japan is now in its sixth year of essentially stagnant economic growth. The Japanese economy is clearly plagued by significant structural problems, which include the government-managed industrial and trade policies so often advocated by those who wanted to see the United States become more like Japan.

One manifestation of the structural problems confronting Japan has been the difficulty many U.S. firms have exporting to Japan. However, the fundamental problem in Japan is not a trade problem; instead, Japan's problems go to the heart of their domestic economy. Japan must undertake significant internal reforms to restore long-term economic growth and remain a leading force in the international economy. There will be significant long-term benefits to the United States from a Japan that has corrected its internal problems. A healthy Japanese economy is good for the United States of America. A Japan with an open and competitive domestic market that is navigable by foreign firms will be the type of export market that U.S. companies have dreamed about for two decades.

However, we must recognize that the primary beneficiaries will be the Japanese people, not U.S. taxpayers. The best trade strategy

to deal with Japan is to encourage deregulation and other reforms that move Japan toward more internal openness. This entails encouraging Japan to adopt economic policies that bring about the kind of healthy competition that is a hallmark of the U.S. economy. This also means we should not negotiate trade agreements that make the United States function more like Japan. Do not try to protect selected U.S. industries. Do not pick winners and losers. Do not accept the worst aspects of Japan's governmental interference in the economy and attempt to manage market access for select U.S. exporters. This type of government interference runs directly contrary to our fundamental interests in Japan.

The prolonged Japanese recession is doing what trade negotiators could never do: Forcing slow but steady changes in many areas of the Japanese economy, including the distribution system, keiretsu supplier system, and their tradition of lifetime employment. This is good news for U.S. exporters, as Japan's distribution system and keiretsu practices have been major factors inhibiting U.S. exports. During the past year, American exporters have begun to make significant gains selling products to Japanese consumers, products as varied as furniture, refrigerators and computers. However, this is not the time to be complacent, as the U.S. Government can play a positive role in encouraging reform in Japan.

The second major aspect of our Japan policy that is being underemphasized by the current administration is our security relationship with Japan. It was almost inevitable, following the repeated criticism of Japan policy leveled by candidate Clinton that security policy would take a back seat to trade disputes. The critical error in this policy formulation was the lack of recognition that a stable regional security environment is absolutely critical to continued economic development in Asia. This economic development is needed so that Asian countries can develop into the kind of export markets that can play an important part in our Nation's economic growth. Only the United States and Japan, acting in concert but with America in the lead, can establish a regional security balance in which market economies can continue to thrive. This reason more than any other, Mr. Chairman, is why the United States and Japan have the most important bilateral relationship in the world. The biggest failure of this administration in our trade policy with Japan as well as with the administration's overall trade policy is the failure to maintain strong public support for open trade.

By failing to stand up for free trade, by hedging and adopting the "fair trade" rhetoric that protectionists so often use, the President now faces the most antitrade American public since 1930. The administration helped create this problem by basing its support for trade on the 18th century mercantilist myth that trade is good only so far as it leads to exports. The administration has the trade story backward: Imports improve domestic living standards—we know that—and they improve efficiency and productivity. It is time for our Japan trade policy to move away from public brinkmanship over disputes that are both large and small. This tactic strengthens the misimpression that the United States alone, favors open markets, and that Japan simply exploits American naivete.

On the issue of selling the American people on the importance of maintaining a close relationship with Japan, I am saddened to say that while we have worked closely with the administration during the first couple years of working on their trade policy issues, they have failed in this area, and I hope very much that it will change.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

Statement of the Honorable David Dreier

before the
Subcommittee on Trade
Committee on Ways and Means
March 28, 1996

Mr. Chairman, Members of the Committee, thank you for holding this important hearing on trade, commercial, and economic relations between the United States and Japan, and for allowing me to make a brief presentation.

Mr. Chairman, nearly three years ago I had the privilege of appearing before this subcommittee to discuss this same issue. The first half of 1993 was noteworthy in our two countries' bilateral relations. President Clinton had run for office championing an aggressive trade policy toward Japan, insisting that his predecessors had sacrificed American economic interests on the alter of foreign policy. Our two governments completed negotiation of the "Framework Agreements," which I hoped would become the point of embarkation for negotiations to create a U.S.-Japan free trade agreement, rather than the basis for government-managed trade relations. More important than events here at home, 1993 marked Japan's third year in a recessionary economic downturn, and internal political reforms resulted in Japan's first non-LDP Government in 38 years.

Three years later, I believe that the two most important policy recommendations regarding our relationship with Japan remain the same. First, do not try to make the American economy more like the Japanese economy. Our openness is our primary strength. Japan does not benefit from closed or protected markets, it suffers from the closed and inefficient nature of its economy. If they are to thrive in the 21st Century information age, the Japanese economy must become more open like the U.S. economy.

Second, do not ignore the U.S-Japan security relationship. A strong U.S.-Japan alliance is critical to maintaining long-term stability along Asia's Pacific Rim. Stability is a prerequisite to continued strong economic development in the region. Given the unquestionable benefit to the United States of strong economic growth along the Pacific Rim, we should remain committed to supporting regional security and stability.

Mr. Chairman, Japan enjoyed a remarkable period of consistent growth during the 1970's and 80's. Those who advocate more government interference in the economy used Japan as a model, advocating Japanese-style industrial and trade policies for the United States. Looking back, it is clear that Japan enjoyed considerable advantages in their post-war economic recovery, particularly their highly skilled work force, low crime rate and base of industrial knowledge. Each will again help Japan grow in the next century.

However, there is no better evidence of the structural weakness of Japan's closed and inefficient economy than to look at their economic performance in the 1990's. Japan is now in its sixth year of essentially stagnant economic growth. It is clear that they are suffering from more than just a bursting real estate or financial bubble. Instead, the Japanese economy is plagued by significant structural problems, which include the government-managed industrial and trade policies so often advocated by those who wanted to see the United States become more like Japan.

Mr. Chairman, one manifestation of the structural problems confronting Japan has been the difficulty many U.S. firms have exporting to Japan. However, the fundamental problem in Japan is not a trade problem. Instead, the problems go to the heart of the Japanese domestic economy. Japan must undertake significant internal reforms to restore long-term economic growth and remain a leading force in the international economy.

There will be significant long-term benefits to the United States from a Japan that has corrected its internal problems. A healthy Japanese economy is good for America. A healthy Japan that has undertaken the necessary reforms to create an open and competitive domestic market that is navigable by foreign firms will be the type of export market that U.S. companies have dreamed about for two decades. However, we must recognize that fundamental reform of the Japanese economy must be driven primarily by forces within Japan. The primary beneficiaries will be the Japanese people, not U.S. exporters. While a long-term proposition, this is clearly a situation where we enjoy shared interests with the Japanese people.

The best trade strategy to deal with Japan is to encourage deregulation and other reforms that move Japan toward more internal openness. This essentially entails encouraging Japan to adopt economic policies that bring about the kind of healthy competition that is a hallmark of the U.S. economy. This also means we should not negotiate trade agreements that make the United States function more like Japan. Do not try to protect selected U.S. industries. Do not pick winners and losers. Do not accept the worst aspects of Japan's governmental interference in the economy and attempt to manage market access for select U.S. exporters. This type of government interference runs directly contrary to our fundamental interest in Japan. which is to promote deregulation and reduce government interference in the economy. These industrial policies will also weaken our domestic economy.

During the past year, American exporters have begun to make significant gains selling products to Japanese consumers; products as varied as furniture, refrigerators and computers. Many U.S. exporters are going after Japanese consumers that finally appear willing to abandon high-priced Japanese suppliers for American exporters that are combining low-price, high quality and strong customer service. A recent report of the Mitsubishi Bank research division indicates that foreign firms have doing strikingly well in a Japanese business environment afflicted with prolonged slow growth and uncertainty. In contrast to Japanese firms struggling to cope with stagnant economic demand, foreign firms have "rapidly expanded sales and increased market shares in the face of heightened competition."

The prolonged Japanese recession is doing what trade negotiators could never do, forcing slow but steady change in many areas of the Japanese economy, including the distribution system, *keiretsu* supplier system, and the tradition of lifetime employment. This is good news for U.S. exporters, as the distribution system in Japan and the *keiretsu* system of long-term exclusive suppliers have been major factors inhibiting U.S. exports. However, this is not the time to be complacent, as the U.S. Government can play a positive role encouraging reform in Japan.

From a policy perspective, the Administration must not lose sight of long-term objectives in the rush for short-term gains. Deregulation is more important than any single market access dispute. While individual industrial sectors might highlight particulr Japanese practices that have inhibited imports, our trade policy should focus on deregulation and competition, rather than look for managed market access for select American exports.

For example, the United States should be advocating deregulation of the Japanese telecommunications market, including breaking up the corporate monopoly of Nippon Telephone and Telegraph. We should also be pushing Japanese political leaders to reduce the regulatory control of the Ministry of Telecommunications. **The Telecommunications Act of 1996,** which I believe will be remembered as one the most important reforms of the 104th Congress, sets up the United States to be the world leader in the 21st Century Information Age economy. It will result in hundreds of thousands of good American jobs, and will contribute to maintaining U.S. leadership in numerous related industries. Breaking the grip of both the corporate and government telecommunications monopolies in Japan will similarly help reinvigorate the Japanese economy.

Similarly, during the Administration's hard-fought negotiation over market access for U.S. autos and auto parts last year, the focus should have been on deregulation and the promotion of fair competition within Japan, rather than negotiating market access to compensate U.S. firms for past Japanese Government practices. The Administration came far too close to starting a trade war that would have sacrificed the California economy, where growth depends on a strong relationship with Japan and the rest of the Pacific Rim, in order to bring short-term benefits to Midwest auto manufacturers. A Japan policy that focusses on broad deregulation and promoting competition benefits all U.S. exporters and all regions equally.

The second major aspect of our Japan policy that is being underemphasized by the current Administration is the critical importance of our security relationship with Japan. It was almost inevitable, following the repeated criticism of Japan policy leveled by candidate Clinton, that security policy would take a back seat to trade disputes. The critical mistake in this policy formulation was the lack of recognition that a stable security environment is absolutely critical to continued economic development in Asia. This economic development is essential if Asian countries are ever going to develop into the kind of export markets the President claims are critical to our own economic growth.

The President and many of his trade advisors had claimed that the Cold War caused the United States to make security a higher priority in our dealings with Japan than economic relations. In reality, the post-cold war environment in Asia involves a greater likelihood of security confrontations. The current Administration has seen its Japan policy faced with the North Korean nuclear program as well as the recent tensions in the Taiwan Straight. All the countries of the region are getting wealthier and dedicating greater resources to modern military equipment. In addition, the rise of China as a major economic and military power has pushed regional security issues to the fore.

Within this environment, the United States offers the only good leadership prospect oward establishing a stable 21st Century security arrangement for Asia's Pacific Rim. The countries of Asia clearly see China becoming a major regional power with significant implications for regional stability. Japan, likewise, carries a regional trust deficit on security matters which disqualifies it from playing the role of security broker. However, the United States and Japan can together play the vital role of establishing a regional security balance in which market economies can continue to thrive. This reason, more than any other, is why the United States and Japan have the most important bilateral relationship in the world.

Tensions in the U.S.-Japan alliance, revealed for all to see last fall with the incidents on Okinawa, have been developing for years and could worsen. A top priority of the Administration must be ensure against deterioration of the security relationship. They can best do this by working with the Government of Japan to reestablish what our vital shared national interests are, and how we can best secure them in the changing regional environment. In fact, many of the preeminent issues are of a security nature, which if mishandled, will make our economic concerns moot.

Mr. Chairman, the biggest failure of the Clinton Administration in our trade policy with Japan, as well as with the Administration's overall trade policy, is the failure to maintain strong public support for maintaining an open international economy. Unfortunately, the rhetoric of the President and his leading trade advisors have served to reaffirm the mislaid fears of many Americans regarding trade. By failing to stand up for free trade, by hedging and adopting the "fair trade" rhetoric of protectionists, this President now faces the most anti-trade American public since 1930.

The Administration created this problem by basing support for trade on the 18th century mercantalist myth that trade is good only so far as it leads to exports. By stressing exports and ignoring imports, the Administration gets the trade story backwards: imports improve domestic living standards and force domestic companies to become more efficient and productive. In addition, many import products are used as inputs in the manufacture of high value-added products, helping make American producers competitive and cost-efficient.

Since the 1930's, the Congress and the Administration have had a relationship in which the President upheld free trade while Congress, regrettably, gave voice to local protectionist constituencies. The Clinton Administration has failed to uphold their role in the relationship. The result has been a public that is increasingly inclined to protectionism. At this point, the greatest threat to an open international economy at the end of the 20th Century is not Japan or the European Union, it is public opinion here in the United States.

It is time for the our Japan trade policy to move away from public brinkmanship over disputes large and small. This tactic strengthens the misimpression that the United States alone favors open markets and that Japan simply exploits American naivete. It is no wonder that more Americans believe the protectionist rhetoric of politicians whose policies would, if practiced, devastate American prosperity in the 21st Century. On the issue of selling the American people on the importance of maintaining a close relationship with Japan, this Administration has clearly failed.

Chairman CRANE. Thank you. Let me ask a question first to Sandy.

Sandy, are you on a tight time constraint too?

Mr. LEVIN. No.

Chairman CRANE. Then let me yield to Charlie to direct any questions to David first.

Mr. RANGEL. Is he leaving before Mr. Levin testifies?

Do you have to leave?

Mr. DREIER. Yes, I have a 4:30 meeting, Charlie.

Mr. RANGEL. Well, since you have to leave, you can put your answer in writing. I see where you are very critical of the internal policy of the Japanese Government as well as President Clinton, and you, like everyone else, want free and open trade and less rhetoric. It is my understanding that the negotiators are bogged down; everyone is trying to resolve our differences without sanctions and without a breakdown completely in negotiations. So, in reading your testimony, I think everyone wants to reach the same objectives. But what would you have the President to do specifically that he has not already done?

Mr. DREIER. Well, the one point that I was making already in my testimony is that we have unfortunately had the entire emphasis on the issue of exports, not realizing that we have the potential to benefit from the flow of Japanese products which are sold in this country, improving the standard of living of the American people. And by pursuing that goal, it plays into that hand of not trying to recognize the overall benefits of open markets and free trade for all. And I think that quite frankly, while we worked long and hard on the NAFTA and the Uruguay round of the GATT, and I have traveled with both of you, other Members, and I was privileged to travel with this Subcommittee to Latin America last year, we have not seen what I believe is the kind of emphasis that the administration should place on the overall benefits of free trade. Because when they start talking about fair trade, it does, again, play into the hands of those who would be less than geared toward the goals that we share.

Mr. RANGEL. Well, I would agree with you that we should not have broad and general rhetoric, but I cannot buy American-made anything electronic anywhere in the city of New York because of the great value of free trade.

Mr. DREIER. But you can buy everything in New York because of the great values of free trade.

Mr. RANGEL. Yes; I am not knocking it. The Japanese have done a fantastic job. If you want anything, you have got to buy Japanese. But I have people who manufacture in New York, and they want to sell a couple of rolls of film, you would agree that they should be able to get on the Japanese markets as well.

Mr. DREIER. Absolutely.

Mr. RANGEL. Then we are saying the same thing; it is just that you complain when you are losing jobs from manufacturers against those that are shipping here but for those who are the creators——

Mr. DREIER. I do not complain about it.

Mr. RANGEL. I do not mean you specifically, but in New York, we welcome the trade, because if it was not for the imports, we would be out of business in a lot of areas.

Mr. DREIER. I am glad you recognize it. I am glad that you recognize it, Charlie.

Mr. RANGEL. So I look forward to working with you, whether in the minority or the majority. [Laughter.]

Mr. DREIER. Well, let us just keep things as they are. [Laughter.]

Mr. RANGEL. Thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Nothing, thank you.

Chairman CRANE. Mr. Graham, do you have any questions?

Mr. GRAHAM. No.

Chairman CRANE. And do you have any questions?

Mr. CAMP. Camp.

Chairman CRANE. Camp, I know; do you have any questions?

Mr. CAMP. It is easy; it is a four-letter word.

No, I have no questions, but I want to thank Mr. Dreier for his very excellent testimony and his leadership on trade issues in general in the Congress, and I appreciate the testimony.

Chairman CRANE. Well, thank you for coming, David.

Mr. DREIER. Thank you very much. I am sorry I have to leave.

Chairman CRANE. We will excuse you early, and Sandy can get in the last word.

Mr. DREIER. No, I will let you do that, Mr. Chairman. [Laughter.]

STATEMENT OF HON. SANDER LEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. LEVIN. I do not think David wants me to have the last word, but let me try.

Mr. Chairman and Mr. Rangel and my colleagues from various States, including my colleague from Michigan, I will tell you that this discussion today only underlines my strong feeling as I say in my testimony that I know you will put in the record that few areas have been as besieged by rigid theories or by the pitfalls of an either-or framework as trade policy. The issue has been cast as a choice between fair trade and protectionism or unilateralism and multilateralism, and I think we have just heard kind of another dichotomy of exports and imports.

As our trade imbalance with Japan grew in the seventies and eighties, the dominant voice was that of complacency. Suggestions to act vigorously were usually dismissed as protectionism. There were some efforts—MOSS and SII—that a number of us here participated in, but they were handicapped either by rigid opposition or by ambivalent execution. And then, in 1988, a number of us joined together to enact super 301 and also to strengthen regular 301 with the language making it an unfair trade practice for foreign governments or when foreign governments tolerated anticompetitive practices.

And in the last few years, under the leadership of the Clinton administration, there has been an effort to actively work the ground that lies between the extremes of unreciprocal free trade and rigid protectionism, and it should be clear that what this effort does is to look at bottom-line results. It tries to open foreign markets, not build walls around our own. It starts with the proposition that free trade is not truly free if one side is rigged. And from there comes the notion of fair trade as well as free trade, and this results-

oriented approach has been applied to a number of sectors, especially as to Japan, our largest creditor. And particular importance was placed on the largest single component of that bilateral deficit: Autos and auto parts. Two-thirds of our deficit, as you know, Mr. Chairman, has been in autos and auto parts.

This results-oriented approach has brought substantial progress on the overall bilateral trade deficit with Japan. In 1995, it declined by more than 10 percent, and that trend continues in 1996. An important part of that results-oriented approach was the agreement last year on autos and auto parts. I thought at the time it was an important step—not a complete one but an important one in the right direction—and the data so far show that that is true: Foreign vehicle sales in Japan are up 30 percent in 1995, and foreign auto parts have also risen, and there will be a report in a few weeks that will summarize the first year.

But much remains to be done. U.S. automakers have made grudging progress in securing dealerships in Japan, with only 30 new dealerships to date out of an expected 200. So I think that the reports of the keiretsu system demise are greatly exaggerated, but there has been progress to date opening the door to the possibility of market reform and substantial exports. More work has to be done, clearly, in the auto parts sector, where the Japanese promised deregulation. But so far, only one critical part has been deregulated.

So, it is clear that we have to continue this results-oriented approach. In this increasingly global economy, we must take steps to ensure that our businesses and workers are prepared to compete, and we have to stand up for them to ensure that they have a fair chance to compete.

Mr. Chairman and my colleagues, I list in my testimony some of the voices that I think would take us off course, for example, that of European Union Commissioner Sir Leon Brittan, who said just a few days ago that there is no longer a place for unilateral action. What the Europeans have done is to let the United States knock down doors, and then, they have come in to take advantage of it, sometimes, though, cutting a deal with the Japanese themselves in a much more rigid way than we ever did, for example, in autos.

Also, I point out to the briefing memo that talks about a bilateral trade deficit with Japan—this is the briefing memo prepared by the majority staff saying that a bilateral trade deficit with Japan does not affect lost production or lost jobs or lost wages. Whatever may be the case in macroterms, in terms of specific industries, I think that is clearly not correct.

Let me just say a word if I might about deregulation, and then, I will finish. I think this is an example of the unnecessary polarization and the unwise dichotomies. Mr. Dreier and I have been talking trade for a long time. I am sorry he had to leave. He said we should not negotiate trade agreements that protect selected U.S. industries; do not pick winners and losers; our trade policy should focus on deregulation and competition rather than look for managed market access for select American exports. We are not picking winners or losers; we are not looking for managed access for selected American exports. We are not elevating exports to the derogation of imports. Look: Everybody who came here before me was

from a specific industry. Everyone said the American Government needs to stand up for us. And we on that side sat there congratulating the witnesses here for their activism in trying to open up the Japanese market, and they had applauded the efforts of the U.S. Government to help them: Insurance, high technology, film, semiconductors, we were not picking winners or losers when the U.S. Government does that. It is industry that has picked the winners and losers and says let the winners compete abroad like their winners compete in the United States.

So I do not understand that. And where it says here: "By failing"—on page 3—"to stand up for free trade, by hedging and adopting the fair trade rhetoric of protectionists, this President now faces the most antitrade American public since 1930," every one of the businesspeople who came here in the last few hours talked about fair trade. And they are all not protectionists; they want the opposite. But as they said, they do not want foreign protectionists to keep us out. So I close where I started, and that is: This area has been beset by this unnecessary polarization, by these dichotomies.

What this government increasingly has tried to do in the last years is to say that we want other countries to open their markets like we have opened our markets to them. And I think it is about time that we not use the rhetoric invoking the ghosts of the past to try to make some progress in the present and in the future. I have felt that for so long this trade issue has been beset and besieged by this polarization, and it is up to us who are opposed to it to speak out. It is when we do not that we give ammunition to those on the fringes who, indeed, would build or try to build walls around America.

Thank you very much.

[The prepared statement follows:]

Testimony of the Hon. Sander Levin

On United States-Japan Trade Relations

Before the House Ways and Means Trade Subcommittee

March 28, 1996

Thank you, Mr. Chairman, for giving me this opportunity to express my views on United States-Japan trade relations at this critical moment.

Few areas have been as besieged by rigid theories or by the pitfalls of an either/or framework as trade policy.

The issue has been cast as a choice between free trade and protectionism, or between unilateralism and multilateralism, while our persistent trade imbalance is described by economists as either irrelevant or fateful.

As our trade imbalance with Japan grew in the 1970s and 1980s, the dominant voice was that of complacency. Suggestions to act vigorously were usually dismissed as protectionism. There were some efforts -- MOSS and then SII - but they were handicapped either by rigid opposition or ambivalent execution.

Nevertheless, in 1988, several of us sought to legislate a more vigorous trade policy by enacting Super 301 and by adding language to regular 301 that attacked a growing and pernicious form of trade barrier -- foreign government toleration of anticompetitive practices.

And in the last few years, under the leadership of the Clinton Administration, there has been an effort to work the ground that lies between the extremes of unreciprocal free trade and rigid protectionism.

This effort looks at bottom-line results. It aims to open foreign markets, not build walls around our markets. It starts with the proposition that "free" trade isn't truly free if one side is rigged. And it recognizes that trade imbalances can undermine particular sectors important to the American economy.

This results-oriented approach has been applied to a number of sectors involving a number of nations. Special attention has been given to the country with which we have had the largest deficit: Japan. And particular importance was placed on the largest single component of that bilateral deficit: autos and auto parts, which consistently have accounted for a whopping two-thirds of our bilateral trade deficit with Japan. In 1995, $35.3 billion of the $59.2 billion bilateral deficit was in this sector. Auto parts alone made up 20 percent of the deficit. Other targeted sectors include glass, semiconductors, film, air cargo, telecommunications, medical equipment and insurance.

The results-oriented approach has brought substantial progress on the overall bilateral trade deficit with Japan. In 1995, the bilateral trade deficit declined by more than 10%, the first year-to-year decline since 1990. The trend continues in 1996, with February marking the ninth consecutive monthly decline in the merchandise trade deficit. And Japan remains our second largest trading partner, absorbing $64.3 billion U.S. goods and services in 1995.

An important part of the results-oriented approach was the agreement reached last year with Japan on autos and auto parts. I believed at the time that the agreement was an important step in the right direction, and the data thus far supports that view. A vital part of the effort continues today through the most comprehensive monitoring and enforcement mechanism ever undertaken by government and industry. In the past in other Administrations there was a failure to follow through on agreements.

As a result, there has been refreshing change in the automotive sector. Foreign vehicle sales in Japan were up 30% overall in 1995, including a 30% increase for U.S.-built Big 3 vehicles and an overall 46% increase for Big 3 vehicles produced worldwide. Foreign auto parts sales in Japan were up 13.5% January-November 1995 over the previous year, while Japanese transplant facilities in the U.S. reportedly are using more domestic parts. And important progress has been made in deregulating the aftermarket for auto parts, progress which will continue under the review process set up under the agreement.

As a result of this results-oriented approach, eager Japanese consumers for the first time are beginning to have real opportunities to buy American cars and other American goods and services. And many U.S. companies for the first time are reaching levels of production that justify investments targeting the Japanese market.

But, of course, more remains to be done. For example, U.S. automakers have made grudging progress in securing dealerships in Japan, with only 30 new dealerships to date out of an expected 200 by the end of 1996. Also, almost 60 percent of vehicles going to Japan from the U.S. are built by Japanese transplants, which in turn use fewer "actual" U.S. parts than the Big 3. Thus, Japan is still trading to a large degree with itself. Reports of the keiretsu system's demise are greatly exaggerated, although the progress to date cracks open the door to the possibility of real market reform and substantial exports of Big 3 vehicles and other U.S. goods.

More work also remains in the auto parts sector. For example, of the 32 auto parts on Japan's restrictive "critical" parts list, only 1, power steering, has been deregulated to date, while only 7 of the 42 auto parts on the "modified" parts list have been deregulated. Pursuant to the terms of the agreement, Japan is conducting a one-year review of these parts lists, so that deregulation may continue to move speedily in the right direction.

And let us not forget that, overall, Japan continues to represent our largest current account deficit: $59.3 billion in 1995 (down from $65.7 billion in 1994 and $59.31 billion in 1993).

That's why I strongly urge that we continue this results-oriented approach for all nations that do not allow a level playing field for U.S. businesses and workers. In this increasingly global economy, we must take steps to ensure that our businesses and workers are prepared to compete, and we must stand up for them to ensure they have a fair chance to compete.

We must reject the voices that attempt to steer us off course:

-- European Union Commissioner Leon Brittan, who was in Washington last week to proclaim that "the days of the old U.S. approach surely are numbered." "In our view," he said, "there is no longer a place for unilateral

action, or the threat of it." Instead, he puts his faith exclusively in cooperative dialogue with Japan based on mutual respect for the multilateral system.

I've always taken particular exception to these complaints by the Europeans. They are hiding right behind us when we push to open a market while criticizing our methods in order to curry favor with protectionist nations. They then will cut a deal with such countries for a rigid limit on access to the European markets, as they did on autos as to Japan.

-- The briefing memo prepared by the majority staff, which blithely claims that "[O]ur bilateral trade balance with Japan is largely the result of macro-economic imbalances. ...[A] bilateral trade deficit with Japan does not reflect 'lost' production or 'lost' jobs or 'lost' wages."

But in the 1980s jobs <u>were</u> lost -- indeed, key parts of <u>industries</u> were lost. Sure, macroeconomics plays an important role. But I remember when the pundits said if we could only cut the budget deficit and bring the value of the dollar down to 200 Yen, the trade deficit would disappear. Now the budget deficit has been halved, and the Yen is around 100, yet the trade deficit persists. Meanwhile, other nations run trade surpluses while maintaining even larger budget deficits than the United States. Case in point: Japan, whose budget deficit is larger as a share of GDP than the United States'.

-- Others are calling for "deregulation" in Japan and other nations to mirror calls for deregulation in this country. Deregulation is important, but in Japan it won't happen without continued outside pressure and is no magic bullet.

Those who are unwilling to take an aggressive path between the extremes of unreciprocal trade and no trade only give aid and comfort to extreme voices.

It took us a long time to escape the rhetoric and ghosts of earlier days and to develop this hard-headed, commonsense approach. We must remain vigilant. This is no time to return to the failed policies of the past.

Chairman CRANE. Thank you, Sandy.

Has that agreement of last year improved the ability of American auto companies to get dealerships in Japan?

Mr. LEVIN. The answer is yes, not enough, but yes. There are 25 more. It is only part way toward the target. And I do not see—and some of this is, in a sense, Japanese deregulation—it will not happen unless there is more pressure from us. So it is a partial breakthrough.

Chairman CRANE. Immediately after that agreement, Ambassador Kantor indicated that the United States estimated that private-sector plans would lead to a $9 billion increase in American-made parts in 3 years. In your estimation, are the U.S. auto parts manufacturers beginning to realize that target that Mickey referred to?

Mr. LEVIN. Yes; Mr. Houghton and I and others have been in regular contact, I think, with the industry, and the parts industry feels that the agreement has helped to open the doors. There is much more to be done. The deregulation is too small. As I mentioned, only one critical part has been deregulated; and you know what that means: These critical parts are so listed and so controlled that foreign suppliers—I used to carry around my universal joint that I picked up at Joe's Auto Parts on Main Street for $11.46, and it costs 10 times that in Japan. So the answer is I think there has been some progress, but there is going to be a report, Mr. Chairman, to you and to other Members of this Subcommittee and to the American people, I believe, within the first 2 weeks of April, a specific report on specific progress under this agreement. And we will see. I think your conclusion and mine will be that it opened the door that was very much shut for auto parts producers, at least most of them, but there is a long way to go for the door to be as open there as it is here.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. Well, let me thank you, Sandy, and I look forward to working with you now and in the next session on sensitive issues.

Mr. LEVIN. Thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Sandy, it is good to see you, and of course you know you and I have worked lockstep on many of these different issues. I think the question that I keep asking myself is why are we not going faster? When you take a look at the global deficit with Japan, it hovers between $40 and $60 billion every single year, and it may get a little bigger on auto parts, a little worse on flat glass. Something else comes in here. We just do not seem to be able to make any headway. So on a scale of 1 to 10, 1 being jawboning, 10 being cut off everything, what do you think we ought to do? Where in the middle should we be in order to signal that we really are serious here? Because it is not just Japan, but it is Korea, and it is China, and it is others who have to understand that we have a set of rules that if they want to play in our market—which is our most precious asset—they have to abide by, as we would in theirs. What do we do?

Mr. LEVIN. Well, it seems to me we need to have an activism, an aggressiveness that goes way beyond 1, which is jawboning, and is not a building the walls around this country; that simply will not work in this kind of an international economy. And I think what we really need to do is to actively press Japan in this case to live up to its agreements. We have section 301 in our artillery. We have got to make it clear that we will use it as we have in the past.

Mr. HOUGHTON. Can I just interrupt 1 minute?

Mr. LEVIN. Sure.

Mr. HOUGHTON. But, you know, every time, Sandy, we seem to come up to an agreement, we never have any numerical standards, no index and no goals, no anything. It is just we want to do this; we want to do that. It is probably true on both sides. Is it not possible to, at a minimum, say that if we are going to have a multilateral or a unilateral trade agreement, or if we are going to abide by the conditions of GATT, then we have got to have some numbers.

Mr. LEVIN. Yes, and, of course, in the semiconductor agreement, there was a number. But also, there have been numbers in the auto agreements with Japan. There was a number in the agreement or the understanding that was reached by President Bush, and there are some numbers in the agreement of last year. And while it is not a goal like the semiconductor agreement, it is an expectation on our part, for example, 200 dealerships. We also have an expectation of the deregulation of the auto parts industry by the Japanese, and there are some numerical values attached to it. And I think what we have to be sure of is that the Japanese understand that if they do not take these steps, the United States will take further action. It is in their mutual interest, in their interest; it is in our mutual interest; it is in their specific interest to open up this market. But as you know, Amo, for the first time, there is a monitoring device that will implement this agreement, and the first report will emanate from that monitoring arrangement.

So we mean business, and what the businesspeople here today were saying in a nutshell was for us to do business, the private sector, the government has to mean business in terms of helping the markets be open. And I think that is the exact right balance.

Chairman CRANE. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

And to my colleague from Michigan, I thank you for your testimony, and I think that the comment that you made that more work needs to be done is an understatement. When the auto parts breakthrough occurred, I think there were many who questioned what it really might mean. And additionally, maybe not as much as we had hoped, this report will be very helpful. Clearly, we are still having trouble in the dealership sections, but I agree with you; we have a lot more to do, and your testimony today, I think, helps clarify that, and we are all going to be looking very closely at that April report and try to understand more what that means. So I just want to thank you for your testimony. Thank you.

Mr. LEVIN. And let me just comment briefly. There has been a bipartisan effort in the past, and I hope that will not break down this year. We will see. I think the auto and auto parts areas are so serious that we have to continue to work on a bipartisan basis. Nancy Johnson, Marcy Kaptur and I went on a bipartisan basis to

talk about auto parts. It is 10 years now. And you and others have joined in on this. And unless the Japanese and other countries understand that this country is serious about their opening their markets, they will not do it. Korea is another case in point. In a sense, it is like free enterprise in this country. To win, you have to stand up for yourself. People do not give you much in a free enterprise system. You have to stand on your own two feet and fight for yourself. And that is exactly what we ought to be doing within a framework where disputes can be resolved in an amicable way, hopefully.

Mr. CAMP. Thank you.

Chairman CRANE. Well, Sandy, thank you so much for your testimony.

Mr. LEVIN. Thank you.

Chairman CRANE. And I would like to now invite John Patrick, general counsel for Fuji Inc.; Oakley Johnson, vice president, corporate and international affairs, of the American International Group, Inc.; Ed Rozynski, senior vice president of the Health Industry Manufacturers Association; and Maureen Smith, vice president of international affairs, American Forest & Paper Association to come forward. And before we commence with your testimony, I would like to yield to Mr. Graham to welcome Mr. Patrick.

Mr. GRAHAM. Thank you, Mr. Chairman. I appreciate that. John, I am glad to have you here. John Patrick is general counsel of Fuji from, of all places, Greenwood, South Carolina. That is right in the middle of my district. And John is going to talk a little bit about Fuji North America, and I appreciate the Subcommittee listening to the other side of the story, and I will have a statement a bit later. But John, welcome, and I appreciate your being here and sharing your testimony with the Subcommittee.

Thank you, Mr. Chairman.

Chairman CRANE. And we will start with you, Mr. Patrick.

STATEMENT OF JOHN PATRICK, GENERAL COUNSEL, FUJI PHOTO FILM, INC.

Mr. PATRICK. Thank you, Mr. Chairman and Members of the Subcommittee. I am here to discuss a dispute involving a company that has 70 percent of its home market and pays premiums to retailers to exclude competitors from store shelves. I am not talking about Fuji Film in Japan; I am talking about the Eastman Kodak Co. in the United States. This case is not about an American industry trying to level the playingfield; it is about one company, Kodak, trying to use the U.S. Government to gain an advantage over Fuji Film in a global commercial battle.

In the last 10 years, Fuji Film has invested nearly $1.5 billion in the United States, and we have 5,000 employees in the United States. In our U.S. manufacturing plants, we have American workers making American products and exporting them around the world. To the best of our knowledge, Kodak has no manufacturing facilities in Japan. Yet despite our enormous commitment to the U.S. market, our share of the consumer film market in the United States continues to hover around 10 percent. We were, therefore, amazed, when Kodak, complaining of its 10-percent share of the Japanese market, filed a 301 complaint. Kodak's claims are groundless.

Let me review the key facts. Fact one: Kodak film is widely available in Japan. Kodak has made a lot of allegations about how Fuji controls distributors to create a distribution bottleneck. The facts, data we would be happy to have this Subcommittee or USTR verify, show that almost 80 percent of the retailers served by Fuji's distributors actually buy or have access to Kodak film. Figure 1 attached to my statement shows these findings. There is no distribution bottleneck that keeps Kodak film off the store shelves.

Fact two: Price competition is alive and well in Japan. We have shown that if you compare the same type of film at the same type of retail outlet, prices throughout Japan are comparable to the United States. The map of Japan attached to my statement demonstrates how widely available discounted film is in Japan. Fuji Film cannot and does not control retail film prices. The market is open to competitively priced film.

Fact three: The Japanese Government does not restrict access to the film market, nor has it tolerated anticompetitive activities. Government restrictions were eliminated decades ago. While Kodak is protected by a 3.7-percent U.S. tariff, there are no Japanese tariffs on consumer photographic products. Furthermore, the Japanese Fair Trade Commission has monitored our industry carefully, and Fuji has taken recommended actions to assure full compliance with Japan's antimonopoly law.

Fact four: Kodak's problems in Japan are the result of its own mistakes. Kodak claims that it has "done it right" in Japan. The facts are that Kodak has refused to compete on price for over 10 years. Kodak was 2 years behind Fuji Film in the introduction of high resolution 400 speed film and 2 years behind Fuji Film in the introduction of one-time use cameras. Today, these two products account for almost two-thirds of the Japanese consumer film market. And Kodak has not advertised aggressively. For the period reported by Kodak, Fuji Film outspent Kodak by a factor of 10 to 1. Kodak cannot expect to increase its market share against an incumbent entrenched with a home team advantage if it refuses to compete on price, is behind in product innovation and does not invest heavily in advertising. Clearly, Kodak is not a company that has done it right.

Fact five: Kodak engages in exclusionary activities in the United States aimed directly at keeping Fuji film off retailers' shelves. This is relevant because it is fair to look at reciprocal opportunities in the United States and because the practices provide a benchmark against which to compare its allegations. The facts are: Until December 1995, Kodak had a rebate program that ensured retailers a 4-percent rebate even if they did not reach a target quantity of sales as long as they agreed not to carry Fuji film. Kodak has paid premiums to companies like Eckerd Drug, Publix Supermarkets, Bradley's and major airport and hotel concessionaires in return for them agreeing not to carry any brand but Kodak. If you walk through National Airport, you will not find any Fuji film. By comparison, you will find Kodak film at Tokyo's Narita and Haneda Airports. Kodak engages in practices far more exclusionary than even what they allege against Fuji Film.

In conclusion, Mr. Chairman, we believe the facts demonstrate that Kodak's case is just plain wrong. It proves only that most Jap-

anese consumers do not buy Kodak film, not that they cannot buy Kodak film. We are confident that the facts will prove that the Japanese film market is open and that Fuji Film is a fair competitor. Antitrust cases are fact-intensive and very complex. Yet, there is enormous pressure here to decide in Kodak's favor with little fact finding. We have suggested neutral fact finding mechanisms to USTR. These include the use of a special panel of experts; appointing a U.S. administrative law judge as well as multilateral mechanisms.

Kodak objects to this and argues USTR should accept Kodak's facts at face value and insist that Japan negotiate. But it has yet to be established that there is any problem to negotiate. Today, we again call on Kodak to let the facts decide.

This completes my statement, Mr. Chairman. Thank you for allowing me to testify.

[The prepared statement and attachments follow:]

STATEMENT OF JOHN PATRICK
GENERAL COUNSEL
FUJI PHOTO FILM, INC.

Mr. Chairman and Members of the Subcommittee:

My name is John Patrick and I am General Counsel and Secretary to Fuji Photo Film, Inc., the Greenwood, South Carolina manufacturing subsidiary of the Japanese photographic materials company Fuji Photo Co., Ltd. I am joined today by Paul Hudak from our sales and marketing headquarters in Elmsford, New York, and by one of our attorneys, Jim Durling, from the law firm of Wilkie Farr & Gallagher.

On behalf of all of us, I want to thank you for the opportunity to appear before this subcommittee to discuss U.S.-Japan trade relations as they affect the photographic materials industry.

Let me begin by saying that one reason we are here today is to discuss a dispute between two companies. One of those companies has 70% of its home market, controls and excludes competitors from its distribution network, and pays premiums to retailers not to do business with its competitors. I am not talking about Fujifilm in Japan. I am talking about the Eastman Kodak Company in the U.S.

This case is not about an American company trying to level the playing field with a Japanese company. It's about one company -- Kodak -- trying to use the U.S. Government to gain a competitive edge over another company -- Fujifilm.

Fujifilm got its start in the U.S. in 1958 with a liaison office of only one person. Fujifilm's sponsorship of the 1984 Los Angeles Olympics provided a significant boost to our U.S. presence. By the early 1990s, our U.S. sales exceeded $1 billion annually and personnel increased to nearly 2000 employees.

Since then our operations have grown rapidly with the establishment of Fuji Trucolor, Inc., our U.S. photofinishing operation, and the investment of hundreds of millions of dollars in our presensitized printing plate, videotape, film packaging, photographic paper, and Quicksnap single use camera plants in Greenwood, South Carolina.

Indeed, in the last 10 years Fujifilm's total U.S. investments were more than $1.5 billion. Meanwhile, we have increased our U.S. personnel to 5,000 employees; our U.S. sales have grown to now exceed $1.5 billion per year; and our exports out of the United States this year will exceed $100 million. By 1997, our facilities in Greenwood alone will employ more than 1,200 workers and total investments there will exceed $700 million. Already, our Greenwood facilities manufacture videotapes for export to Japan and Quicksnap cameras to Europe. Overall, we export to more than 40 countries from our Greenwood facilities. We are an American company with American workers making American products.

Despite this enormous commitment in the United States, our share of the U.S. consumer photographic film market continues to hover around 10 percent. Meanwhile, excluding the U.S. and Japanese markets, we have about one third of the world market. Indeed, right here in North America, Fujifilm's share of the Canadian market is 35 percent.

We were therefore amazed when Kodak -- complaining of <u>its</u> 10 percent share of the <u>Japanese</u> market -- filed a Section 301 petition with USTR claiming that Fujifilm, with the assistance of the Japanese Government, has engaged in anticompetitive activities that restrict Kodak's access to Japanese markets.

Kodak's claims are groundless. We have spent the last eight months disproving Kodak's case with thousands of pages of rebuttal and we are absolutely confident that the facts are on our side.

With this case, we think Kodak has truly crossed the line. Kodak now seeks to use government intervention as a substitute for hard-fought competition to increase its sales in

Japan. Kodak is pursuing this case in the face of its own questionable practices here in the U.S. -- which arguably can be blamed for Fujifilm's 10 percent share of the U.S. market.

It is not enough that Kodak continues to be protected by a 3.7 percent tariff in the United States, while Japan has no import duties at all on consumer photographic products. Kodak wants more.

Let me review the key facts in this case.

Fact Number One -- Kodak film is widely available in Japan. Kodak claims that Fujifilm controls its four primary distributors and thereby prevents Kodak from reaching the Japanese retail shelf -- the so-called "distribution bottleneck."

We've shown that there is no such control, and more importantly that there is no bottleneck. The facts -- data that we would be happy to have USTR or this subcommittee verify -- show that almost 80% of the and dealers served by Fuji's distributors actually buy or have access to Kodak film. Sales to those customers account for almost 90% of the distributors' sales volume. Figure 1 attached to my statement shows these findings.

Again, this data is verifiable. Kodak has never offered any evidence showing that it cannot get on to retail shelves in Japan. Kodak's market share numbers only show that people won't buy Kodak, not that they can't buy Kodak.

Kodak decided to own its Japanese distributor, just as it does in most of its markets. Kodak has made a lot of allegations about how Fuji controls its distributors. The facts are that Fujifilm's distributors can and, in fact, do carry Kodak products. But why should they want to sell Kodak film, when Kodak owns a distributor that performs this function? Perhaps Fujifilm should buy its four primary distributors, and then Kodak's invented "bottleneck" would be eliminated. The bottom line right now is that Fuji does not have access to Kodak's distribution network in the U.S., Japan, or anywhere else.

Fact Number Two -- Fuji cannot and does not control retail film prices in Japan. Kodak claims that Fujifilm controls prices, thus keeping all prices artificially high. We've shown that if you compare the same film sold at the same type of retail outlet, prices throughout Japan are actually comparable to prices in the U.S.

Kodak's supposed evidence of resale price maintenance is also distorted and manipulated. The map of Japan attached to my statement demonstrates how widely discounted film is available in Japan. Again, the numbers are verifiable. No resale price maintenance exists in Japan.

Fact Number Three -- The Japanese Government has not had any role in the wholesale film market for a quarter century. Kodak claims that the Government of Japan has assisted Fujifilm in restricting the market. Again, this claim is groundless.

The Government of Japan removed any restriction on foreign capital, ownership, prices or other actions decades ago. In addition, the Japan Fair Trade Commission has monitored our industry very closely for years and has recommended that Fujifilm take certain actions to assure full compliance with Japan's antimonopoly law -- actions Fujifilm has taken.

Fact Number Four -- Kodak caused its own problems in Japan. Kodak claims Fujifilm is the problem, but we have provided USTR with evidence showing that Kodak's problems in Japan result not from Fuji's actions but from Kodak's own mistakes.

Former Kodak officials -- including former Kodak president Kay Whitmore and former Kodak Japan president Albert Sieg -- have stated that there were no barriers to competition in Japan's consumer photographic industry. Indeed, Al Sieg said in a recent interview that "I clearly believe that one of the biggest problems that Kodak has in Japan is

that for clearly 10 years of good opportunity, we neglected Japan. . . . So you know, we did it to ourselves."

Kodak has refused for over 10 years to compete on price in Japan. Kodak claims it has no incentive to cut prices, but the facts show that in the 1980s, when Kodak film was substantially cheaper than Fujifilm, Kodak's market share went up to about 18 percent. Then, as soon as Kodak prices went up, their market share went down. Kodak has never lowered prices again despite a falling dollar that would have justified cutting prices.

The real truth is what an unnamed Kodak official told a Nikkei Business reporter in 1993 -- "If we would sell film at even cheaper prices than the current price, this cheaper film would be reverse exported back to the U.S. or other markets and end up destroying the global price structure of Kodak prices." In other words, Kodak worries that its own very profitable sales in the U.S. might be threatened by reimports of gray market film from Japan.

Kodak has not been innovative and market sensitive. Kodak claims it has "done it right" in Japan, but the facts show that Kodak has been unresponsive to the preferences of the Japanese consumer. For instance, we have provided USTR with evidence showing that Kodak lagged two years behind Fujifilm in the most important product innovations to hit the Japanese market in the past decade -- high resolution ISO 400 speed film and one-time use cameras.

We've also shown that Kodak has failed to demonstrate a full-fledged long-term commitment to the Japanese market. Unlike Fujifilm in the U.S., Kodak has never set up any manufacturing facilities for consumer products in Japan. And on a purely cultural level, Kodak made perhaps its biggest mistake in 1993 when it canceled job offers to incoming college graduates -- a gaffe that one observer called "maybe the worst marketing decision ever made by a foreign company" in Japan.

Kodak has just not "done it right" in Japan. Kodak talks about its advertising budget in Japan of 5.3 billion yen between 1986 and 1989. Yet, this is only 10% the amount Fujifilm spent in Japan during the same period. How can a company expect to increase market share without investing in advertising?

Fact Number Five -- Kodak has tried to exclude Fuji film from the U.S. market. Kodak and USTR claim Kodak's U.S. practices are irrelevant, but we have provided USTR with information that responds to the requirement in Section 301 that USTR consider the extent to which reciprocal opportunities exist for foreign firms competing in the same industry in the United States.

As I stated earlier, Kodak's share of its home market mirrors Fujifilm's. Kodak has 70 percent of the U.S. market and Fujifilm has 10. Kodak claims that the U.S. market is completely open and that Kodak's share is simply the result of Kodak's well recognized brand and long standing reputation.

In fact, there is an abundance of evidence demonstrating that Kodak engages in exclusionary activities in the United States, aimed directly at keeping Fuji brand film off retailers' shelves. We do not bring this up to justify or explain some problem in the Japanese market. We bring it up because Section 301 requires USTR to investigate the U.S. market to ensure that the principle of reciprocity -- the basic principle that underlies Section 301 -- is upheld. And, it provides a useful comparison.

Despite Kodak's insistence that the U.S. market is open, Kodak has actually stepped up its efforts to exclude Fuji brand film, particularly since last year's termination of Kodak's decades-old consent decrees. Kodak has paid premiums to companies like Eckerd Drug, Publix Supermarkets, Bradlees, and major airport and hotel concessionaires in return for their agreeing not to carry any brand but Kodak. Walk through Washington National Airport. You cannot find any Fuji brand film. By comparison, you will find Kodak film at Tokyo's Narita and Haneda airports.

Until December 1995, Kodak had a VIP rebate program that ensured retailers a four percent rebate even if they didn't reach a target quantity of sales--as long as they agreed not to carry Fujifilm.

Finally, since termination of the consent decrees, which prohibited Kodak from vertical integration into photofinishing, Kodak has bought numerous photofinishing labs, thus capturing for itself a significant portion of that market. Ironically, when Kodak has made these acquisitions, all of which have resulted in significant job losses, Fujifilm has been the one to pick up the pieces and provide jobs to those people Kodak has fired.

As you can see, this case is fact-intensive, and very complex. Although we believe the facts demonstrate Kodak's case is just wrong, Kodak continues to dispute these facts. This is in essence an antitrust case, which would take years to resolve in the U.S. courts. Yet there is enormous pressure here to decide in Kodak's favor with little or no fact-finding.

These factual disputes need to be sorted out - carefully and objectively. To that end, we have suggested alternative neutral fact-finding mechanisms to USTR. These include use of a special panel of experts, appointing a U.S. administrative law judge, as well as multilateral mechanisms. USTR is currently considering a mechanism under the auspices of the WTO. Unsurprisingly, however, Kodak objects to this approach. It appears that Kodak is the only party to the dispute that maintains such a position. In Kodak's perfect world, USTR would simply take Kodak's facts at face value and insist that Japan negotiate. But, as our submissions prove, it is not yet established that there is any problem to negotiate.

What is the bottom line in this case? If you cut through all the rhetoric and the groundless claims and the threats, it's very simple. Fujifilm's biggest competitor in Japan and the U.S. is trying to use the U.S. Government to increase its market share in both countries.

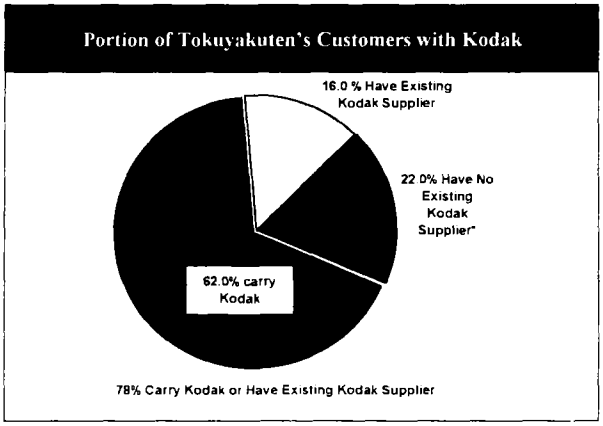
If Fuji's conduct in Japan were the real issue here, then Kodak would have filed a case with the Japan Fair Trade Commission, if for no other reason than to prove its complaint that the JFTC would not do anything. Kodak did not file a claim because Kodak knows that the JFTC watches this sector closely, and that the facts are not on its side.

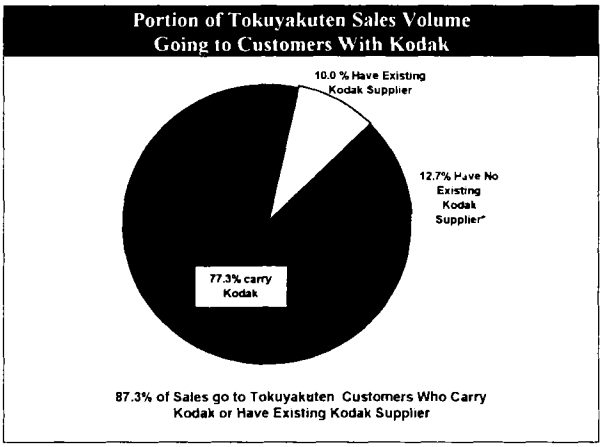
I want to close by emphasizing that all we want in this case is an outcome based on the facts. If the facts control, they will prove that the Japanese film market is open, and that Fujifilm is a fair competitor.

This is not a fight we sought and we don't enjoy it. Fujifilm makes the finest photographic products in the world. We are ready to get back to the business of competing with Kodak, company-to-company. It is time to stop the fiery rhetoric, get the facts, settle the issues, and return to the marketplace that has made Fujifilm and Kodak great companies and competitors. We are looking forward to that day.

This completes my statement. I am happy to answer any questions you may have.

FIGURE 1
Most of the Tokuyakuten's Customers Already Carry Kodak

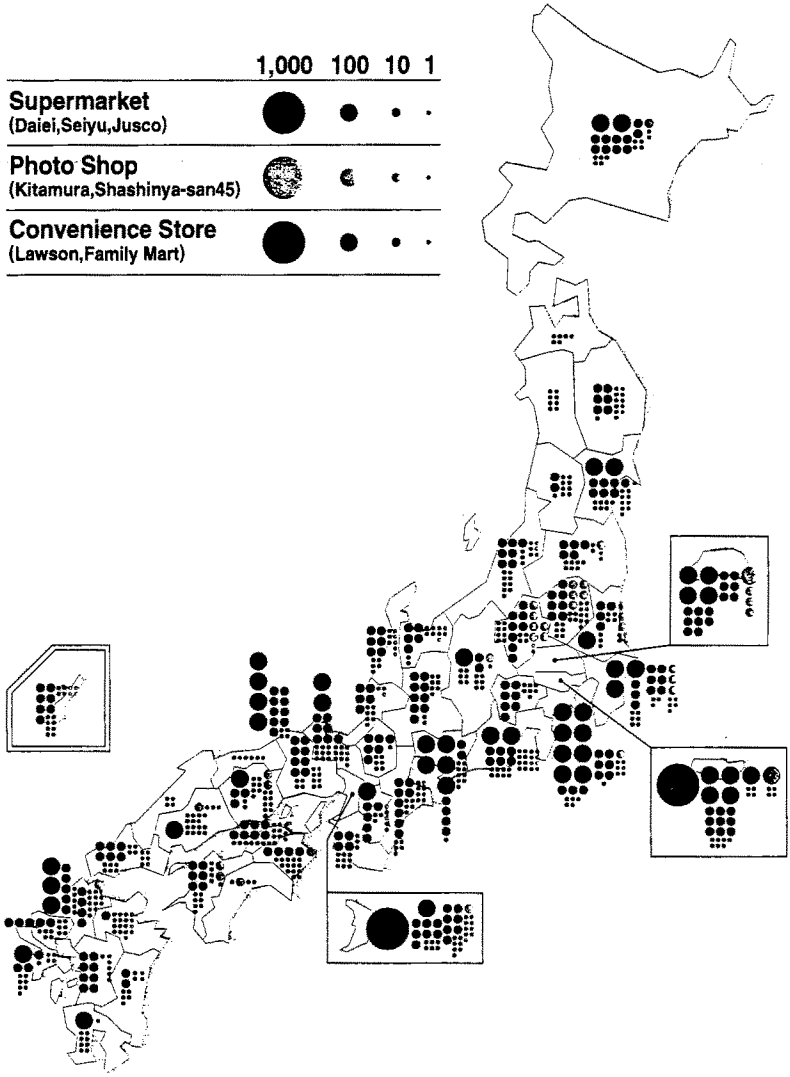




Source: Survey of Tokuyakuten Customers

* Where the answer was unknown, we classified the customer as not having a Kodak supplier. These numbers are therefore conservative.

Outlets Offering Private / Dual Brand Film by Prefecture



"DISTRIBUTION BOTTLENECK"

KODAK CLAIM	FUJIFILM RESPONSE
Kodak claims that Fujifilm, with the help of its distributors, engages in practices that result in a "distribution bottleneck" through which Kodak is unable to reach retail shelves.	• The vast majority of customers of the Fujifilm tokuyakuten already carry Kodak or have an existing relationship with a Kodak supplier. According to a survey of the tokuyakuten's customers, 78% of them -- accounting for 87% of the tokuyakuten's total surveyed sales volume -- either carry Kodak or have ready access to it. This degree of penetration applies equally throughout Japan, not just in Tokyo and Osaka. There can be no "bottleneck" blocking Kodak's access if the tokuyakuten's customers already carry Kodak. • The tokuyakuten are not an "essential facility." Indeed, although there are many outlets in Japan, 17% of the outlets represent 73% of the sales volume. The survey results demonstrate that Kodak has substantially penetrated these high volume outlets. • Kodak is carried by a wide range of secondary dealers and those dealers thoroughly cover the entire country of Japan. Indeed, if one considers the effective sales areas of only 17 of the 91 dealers listed in "Rewriting History," these alone provide coverage for all of Japan. • In the survey of tokuyakuten customers, Fujifilm separately identified those customers that provided a significant reselling function -- secondary dealers, photofinishing labs, and those who resell to small outlets such as resort shops. Approximately 80% of the sales volume to those resellers goes to resellers either carrying Kodak or having an existing relationship with a Kodak supplier. • In a third party survey of Kodak availability in retail outlets, the results show Kodak widely available throughout Japan. Kodak is present in outlets accounting for between 56 and 77% of total film sales volume, depending on the geographic region. This finding fundamentally undermines Kodak's case. • Kodak's best coverage is in photo shops, the outlets where Kodak alleges the greatest degree of Fujifilm control. Depending on geographic region, Kodak is available in photo shops representing between 74 and 92% of total sales volume for this outlet type. • Consumer preference survey results corroborate what the coverage survey results show: that in any one region of Japan no more than 17% of consumers cite lack of availability as a reason not to purchase Kodak film. The vast majority of Japanese consumers do not perceive any problem with Kodak's availability at the retail level.

PRICE

KODAK CLAIM	FUJIFILM RESPONSE
Kodak claims that film prices in Japan are twice as high as in the U.S. and that this disparity in prices is evidence that the Japanese market for film is closed to competition, particularly outside Tokyo and Osaka.	• Prices in the two markets are actually quite similar. The problem with Kodak's prices is that, while they are not necessarily inaccurate, they are woefully unrepresentative of the two markets. Kodak compares high price photo shop data in Japan to low price discount store data in the United States. Even if these are the largest store types in each market, comparisons across store types inevitably distort the result. This is because both markets are divided into distinct market segments: outlets that cater to service-conscious consumers, and those that attract price-conscious bargain hunters. Of course Kodak's analysis shows higher prices in Japan -- Kodak has rigged its comparisons precisely for that purpose. • Kodak has been disingenuous about other elements of its price comparisons. It compares Japanese data that specifically exclude promotional prices to U.S. data that include such discounted prices. It compares the leading brand in Japan to a discount brand in the United States. Finally, Kodak compares after-tax prices in Japan to tax-free prices in the United States. • Kodak analyzes only single rolls of ISO 100 speed film, but in doing so conveniently ignores market conditions that make such a choice invalid. As Kodak knows, Fujifilm has been promoting its ISO 400 speed film more aggressively than ISO 100 for many years; ISO 400 sales now top ISO 100 sales in Japan. Meanwhile, discounted multipack sales are rapidly overtaking single packs; by 1994, multipacks accounted for roughly 40% of total film sales in Japan. Kodak therefore limits its comparisons to a product/packaging combination that is quickly losing ground to more aggressively priced film. • Kodak claims that the Nippon Research data used by Fujifilm in its October 24, 1995 submission are geographically unrepresentative of the Japanese market because they cover only the competitive "shark tanks" of Tokyo and Osaka. However, while the specific storefronts Nippon Research surveys are located primarily in the Tokyo and Osaka areas, several are members of large retail chains with outlets covering practically the entire country. Given that these chains sell at basically the same prices throughout Japan, it is simply not true that the Nippon Research data are only representative of Japan's "shark tanks." Other survey results confirm the existence of competitive prices throughout Japan. Indeed, the data Kodak uses confirm this reality. • The similarity in film prices all over Japan can only mean one thing: the competition that Kodak concedes exists in Tokyo and Osaka is alive and well all over Japan. This is small wonder. Evidence shows that stores selling low-priced film are located throughout Japan and that low priced multipack film and private or dual brand film are available in stores all over the country as well. • Finally, Kodak's claim that film prices in Japan are "extraordinarily stable" suffers from the same kinds of failings that exist in its price comparisons. Kodak focuses on the least aggressively priced product/packaging combination sold in the highest priced outlets and finds stable prices. But, an analysis of price trends in this case is valid only if it incorporates a full picture of market conditions, including: the rising popularity of aggressively priced ISO 400 film; the surging market share for multipack film; the increasing popularity of discount stores; and the explosive growth of private and dual brand film.

CONTROL

KODAK CLAIM	FUJIFILM RESPONSE
Kodak claims that Fujifilm controls the tokuyakuten through the use of illegal rebates, guarantee deposits, and its Mitsui keiretsu relationships.	• Rebates: The "remarkably progressive rebates" about which Kodak complains simply don't exist. The JFTC reviewed Fujifilm's rebates years ago, and Fujifilm made the changes necessary to ensure strict compliance. Any remaining rebates used by Fujifilm do not have the effect of either excluding competitors or inducing resale price maintenance. Kodak's rebates in the U.S., on the other hand, are explicitly exclusionary, since they are provided even if volume targets are not met -- as long as the retailer agrees not to carry Fuji brand film. • Guarantee Deposits: These are merely one form of security held against the accounts payable of the tokuyakuten: they are commonly used as a tool for security in Japanese business. Indeed, Fujifilm uses them widely with other customers besides the tokuyakuten. These financing tools have no effect on a distributor's behavior, and particularly no effect on whether a distributor deals exclusively with Fujifilm. The tokuyakuten can withdraw their guarantee deposits at any time on the condition that they substitute some other form of security to cover their accounts payable. In fact, Fujifilm holds no guarantee deposits for one of the four main tokuyakuten. • Mitsui Keiretsu: Fujifilm is not a member of the Mitsui keiretsu. While some sources may so list Fujifilm, these sources have simply sought to place every publicly-traded Japanese firm in one of the major industrial groups. Other sources say otherwise. Indeed, common sense would suggest that Fujifilm is a member of the Sanwa Group, given that its largest shareholder, Nippon Life Insurance, is a member of that keiretsu. More than anything else, this inconsistency shows just the various and broad definitions observers give to the term "keiretsu." Indeed, application of Kodak's definition places Kodak, through its affiliation with Nagase, in the same keiretsu as Ohmiya, one of the four main tokuyakuten used by Fujifilm. But, even if it were true that Fujifilm is part of the Mitsui Group, the real question is: So what? Kodak itself recognizes that the tokuyakuten are not members of the Mitsui keiretsu. Furthermore, tokuyakuten borrowings from Mitsui Bank prove nothing but that there are a limited number of main banks in Japan -- why would they not borrow from Mitsui Bank?

SO, WHY IS KODAK'S MARKET PERFORMANCE WEAK IN JAPAN?

Home team advantage: Although Kodak and Fujifilm share nearly 70% of the world market -- 36% for Kodak, 33% for Fujifilm -- in the markets where each company has the advantage of incumbency, the companies' shares are a high 70%. In each others' countries, their shares are about 10%. Consumer surveys in both countries confirm that this phenomenon of home team advantage exists; consumers simply prefer their national brands.

Kodak's own missteps: In addition to home team advantage, Kodak simply took none of the necessary steps to position itself to compete with Fujifilm on Fujifilm's home turf:

- Kodak has not tried to challenge Fujifilm's position in Japan by a consistent, aggressive policy of discounting prices. In the early 1980's Kodak's distributor Nagase pursued a discount strategy, and Kodak's film market share reached 18%. When Kodak and Nagase later increased their prices, Kodak's market share declined. Kodak also failed to take advantage of the significant yen appreciation in 1985 to cut prices and gain market share. Instead, Kodak sought to maximize short term profits and protect its U.S. profit sanctuary from potential gray market imports from Japan.
- Kodak has not beat Fujifilm to the market with consumer-preferred new products since introduction of the 110 system in 1973 (which gained Kodak 4-5 points in share of sales). Kodak rested on its laurels and eventually lost its innovative advantage. In the two most important product innovations in recent years -- high resolution ISO 400 film and the single-use camera -- Kodak has lagged two years behind Fujifilm in introducing comparable products. Together these two products account for nearly two-thirds of color film sales in Japan.
- Kodak rebuffed Asanuma's 1973 initiative to re-establish a relationship with Kodak and consequently lost this distribution support in 1975. Kodak chose instead to rely solely on Nagase, an independent distributor. Despite the obvious problems with ceding control of its distribution to a single independent company, Kodak waited until 1986 to create a joint venture with Nagase -- a full 15 years after such a venture was permitted, eleven years after the supposedly crucial loss of Asanuma, and ten years after full capital liberalization. By that point, Fujifilm had grown to one-third Kodak's size and was its technological equal, if not its superior. While Kodak tarried, Fujifilm had grown into a formidable competitor worldwide and the entrenched incumbent in Japan.
- Kodak's missteps in Japan are well-documented, even by the very sources Kodak itself cites. While former Kodak Japan President Al Sieg did good things for the company in the mid-80s, he was more than a decade too late -- and the company continued to make mistakes even during and after Sieg's tenure. Indeed, Kodak's image in Japan may never recover from the cultural faux pas it committed in rescinding job offers to Japanese college graduates in 1993.

Chairman CRANE. Thank you very much.
Mr. Johnson.

STATEMENT OF OAKLEY JOHNSON, VICE PRESIDENT, CORPORATE AFFAIRS, AMERICAN INTERNATIONAL GROUP, INC.; AND INTERNATIONAL INSURANCE COUNCIL

Mr. JOHNSON. Mr. Chairman, thank you for the opportunity to testify today. In addition to representing American International Group, it is my privilege also to appear with the support of the International Insurance Council, whose insurance and reinsurance member companies represent the overwhelming majority of U.S. firms operating worldwide.

AIG has been in Japan since the end of World War II. Through much hard work, perseverance and innovation, we have become the largest foreign insurer in Japan. Due to a wide variety of formal and informal barriers, however, we and other U.S. insurers have never been able to successfully penetrate major areas of the Japanese market.

Historically, the insurance business in Japan has been tightly regulated by the Ministry of Finance. The market is dominated by a few giant domestic companies which maintain a powerful presence from keiretsu and/or cross-shareholding relationships, often to the exclusion of newcomers. Japanese companies today control 97 percent of the market. All foreign firms combined have 3 percent.

Pursuant to the United States-Japan Framework for a New Economic Partnership mentioned by Ambassador Shapiro, the respective governments began negotiating in 1993 to open Japan's insurance market on a priority basis. Negotiations lasted over 15 months. Throughout that period and up to the present, the U.S. insurance industry consulted closely and regularly with the USTR. Let me state here for the record, Mr. Chairman, that our industry has been entirely satisfied with the vigorous and persistent efforts of the administration, and we fully support the comments made earlier today by Ambassador Shapiro.

The agreement itself is unprecedented. It is the first bilateral insurance agreement in which such detailed obligations are undertaken by two countries. By signing, the Ministry of Finance agreed to enact laws and regulations in conformity with that agreement.

The most important and certainly the most controversial provision in the agreement deals with the linkage between the so-called primary sectors—all major types of life and nonlife insurance—and the so-called third sector: Niche products, such as personal accident, cancer, travel accident and hospitalization insurance.

The primary sectors, dominated by the large Japanese companies represent over 95 percent of the market. The third sector, represented by the remaining less than 5 percent, is critical, however, because it is the only area in which foreign firms have been able to establish a meaningful presence.

Several years ago, the Japanese Ministry of Finance authorized a handful of foreign companies to begin developing what today represents the third sector. After much hard work, top-quality service, and considerable investment, this market has grown from nothing. It was only recently that the large Japanese companies took notice and sought to target the sector for entry.

Now, under the guise of "deregulation," the Ministry of Finance is taking aim at the tiny fraction of the market where Americans have been able to establish a position. This is being done despite the prohibitions in the agreement. As Ambassador Shapiro said earlier, the very essence of the agreement is intended to make possible an increase in the foreign insurance presence in Japan. This is to be done by first liberalizing the primary areas of life and nonlife to allow foreign insurers to compete on equal terms and to apply their established strengths for the benefit of the Japanese consumer. Only after the primary areas have been substantially liberalized for a reasonable period of at least 3 years may the third area then be deregulated.

The Ministry's current deregulation plans threaten to do just the opposite. It seems that the Ministry is not seriously considering true deregulation. It does not seem interested in permitting new, innovative products; competitive pricing; and new distribution channels, all of which would redound to the benefit of Japanese businesses and consumers. Instead, the Ministry seems more intent on maintaining the status quo in the primary sectors while considering radical change in the third sector.

There are other concerns regarding the Ministry's intentions as well.

The new law is scheduled to begin taking effect next week. If the Ministry does not alter its plans, the United States-Japan agreement will be grossly violated.

There is ample evidence that the administration and the Congress share this view. In this regard, specific references to several statements and letters are included in my written statement for the record.

Mr. Chairman, the U.S. insurance industry is not alone in calling for Japan's faithful implementation of the agreement. In fact, all foreign insurers anxious to expand in Japan are resolute in their support as well.

American insurers are among the most innovative and competitive in the world. The United States-Japan insurance agreement is intended to bring about a more open market. If faithfully implemented, we are confident that we can compete and bring tangible benefits to the United States and Japan.

I thank you for the opportunity to appear today.

[The prepared statement and attachment follow:]

STATEMENT OF OAKLEY JOHNSON
AMERICAN INTERNATIONAL GROUP, INC.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on the U.S.-Japan Insurance Agreement. My name is Oakley Johnson, and I am Vice President for Corporate Affairs at American International Group, Inc. (AIG). AIG is a leading U.S. based international insurance and financial services organization, and the largest underwriter of commercial and industrial insurance in the United States.

It is my privilege also to appear with the support of the International Insurance Council, whose insurance and reinsurance member companies represent the overwhelming majority of U.S. companies operating worldwide.

AIG has been in Japan since the end of World War II. Through much hard work, perseverance, and innovation, we have become the largest foreign insurer in Japan. However, despite these efforts, we and other U.S. insurers have never been able to successfully penetrate the major life and non-life insurance sectors of the Japanese market. This is in contrast to the fact that we have had success in doing so in virtually every other significant market in the world.

This lack of fair market access was the prime reason the Clinton Administration undertook to negotiate the U.S.-Japan Insurance Agreement, which was signed in October, 1994.

The Japanese insurance market is the second largest in the world, with private sector premium volume of over $350 billion. Japan's life insurance market is the world's largest, with a premium volume of nearly $300 billion.

Historically, the insurance business in Japan has been tightly regulated by the Ministry of Finance (MOF). The market is dominated by a few giant, domestic companies which maintain a powerful presence from Keiretsu and/or cross shareholding relationships, often to the exclusion of newcomers. Japanese companies control more than 97 percent of the market; all foreign firms combined have 3 percent. By way of contrast, foreign penetration of the U.S. market and the EU market are in excess of 10 percent and 30 percent, respectively.

In the late 1980's, Japan developed an awareness of the fundamental need to modernize the regulation of its insurance market. The Ministry of Finance initiated a process designed to develop a consensus on how to bring this about. Following three years of deliberations, an advisory group to the Ministry (called the Insurance Council) issued a report in 1992 which contained early warnings of some troubling recommendations which would surface later.

In June, 1993, several leading American business groups issued a joint analysis of the Council's report raising serious concerns about the Insurance Council's recommendations. The report noted that:

> "There is concern on two fronts... First, many industry experts believe that the MOF will target the Third Area* for more rapid and/or more comprehensive liberalization than the primary areas. Given that the Third Area is significantly more important to foreign insurers than to local companies, any deregulation of the Third Area without first liberalizing the primary insurance areas would constitute de facto targeting of foreign companies, seriously damaging them and probably forcing some of them to leave the market. Second, reform by the Ministry of Finance and the Diet will be flawed if it does not fully address Keiretsu, cross-

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*See next page for definition.

shareholding, and other structural barriers which restrict penetration by foreign insurers into the primary insurance areas. From the perspective of insurance consumers and small/foreign insurance companies, all de facto and de jure barriers to fair and open competition in the primary areas should be targeted for reform by the MOF and the Diet. Otherwise, large/Keiretsu insurers will continue to be protected by structural advantages in large "captive" markets and use that strength to overwhelm foreign companies in the Third Area."

[Excerpt from Japan's Financial Services Market: The Case for Expanded Access, June, 1993, prepared by the U.S.-Japan Business Council, American Chamber of Commerce in Japan, and the U.S. Financial Services Group of the Coalition of Service Industries.]

Significance of the Agreement

Shortly after taking office, President Clinton and then Japanese Prime Minister Miyazawa launched a new effort to address trade matters. Called the U.S.-Japan Framework for a New Economic Partnership, one of its key goals was to "increase access and sales of competitive foreign goods and services...". Insurance was selected as one of the four "priority" sectors (along with autos and auto parts, government procurement, and flat glass).

Pursuant to the Framework, the respective governments began negotiations with the objective of opening Japan's insurance market. The negotiations lasted over fifteen months, during which time the U.S. insurance industry consulted closely and regularly with the U.S. Trade Representative (USTR).

The U.S.-Japan Insurance Agreement is unprecedented. It is the first bilateral insurance agreement in which such detailed obligations are undertaken. Among its many provisions, the Agreement provides for:

- A more open regulatory process, where foreign insurers are to have the same access to information as domestic insurers;
- Assurance that procedural protections are provided and that administrative guidance will be consistent with legal constraints;
- Vigorous application of anti-monopoly laws to insurance, including industry association activities;
- Liberalization of rate and form in accordance with three stages of deregulation, and;
- Regular monitoring of the Agreement by means of qualitative and quantitative indicators to determine whether and how foreign opportunities and market access are increasing.

But perhaps the most important, and certainly most controversial, provision in the Agreement deals with the linkage between the "primary" sectors (all major types of life and non-life insurance) and the so-called "Third Sector" (niche products such as personal accident, cancer insurance, long term disability).

The primary sectors represent over 95 percent of the premiums collected in the market and are dominated by a small number of large Japanese firms. The less than 5 percent represented by the Third Sector is critical because it is the only area where foreign firms have been able to establish a meaningful market position. Some interests in Japan have alleged that foreign firms have a "monopoly" in this tiny area, whereas

the actual foreign presence is 36 percent of the total.

It is important to mention that, several years ago, the MOF authorized a handful of foreign companies to begin developing what today represents the Third Sector. After much hard work and considerable investment, this market niche began to grow from scratch. Then, just a few years ago, the large domestic companies began to take notice, and sought to target the sector for entry.

Foreign companies (and smaller domestic companies) have brought substantial benefits to Japanese customers in the form of creative new products, marketing practices and services through the limited Third Sector. However, through a variety of formal and informal barriers, we have been denied the opportunity to provide these same benefits in a wide range of life and non-life products, including voluntary automobile insurance, which represents a significant proportion of the market overall.

Now, under the guise of "deregulation" and under pressure from the larger companies, the Ministry of Finance is taking aim at the tiny fraction of the market where Americans have a sizeable presence. They are trying to do this despite the prohibitions in the Agreement, while leaving the overwhelming bulk of the market virtually untouched.

The MOF seems to define deregulation as simply the introduction of more competitors. They are leaving in place a highly structured regulatory environment where there is little, if any, differentiation in rates, forms and methods of distribution. They are not addressing many of the practices common in Japan, where everyone uses the same rates, same forms, and where consumers can only purchase insurance products through agents. Automobile drivers, for example, are charged the same whether they live in Tokyo or rural Hokaido.

In essence, the Agreement is intended to set the stage to make possible an increase in the foreign insurance presence in Japan. This is to be done by liberalizing the "primary" areas of life and non-life, to allow foreign insurers to apply their established strengths of creativity and innovation to benefit the Japanese consumer. Only after the primary areas have been substantially liberalized for a reasonable period of at least three years may the Third Area then be deregulated.

The Japanese Government recognized in the Agreement that:

> "[the] dependency of small to medium [domestic] and foreign insurance providers on the Third Sector is high, and that these medium to small and foreign insurance providers have made the efforts to serve the specific needs of consumers in the Third Sector."

The Agreement states further that, based on this dependency:

> "... it is appropriate to avoid any radical change in the business environment, recognizing that such changes should depend on medium to small and foreign insurance providers first having sufficient opportunities (i.e., a reasonable period) to compete on equal terms in major product categories in the life and non-life sectors through the flexibility to differentiate, on the basis of the risk insured, the rates, forms and distribution of products."

MOF's current deregulation plans threaten to do just the opposite.

The Current Situation

The high expectations of the October, 1994 Agreement are reflected in a press statement issued by the International Insurance Council at the time:

> "This agreement offers meaningful possibilities for all our members, and we expect it to increase their business significantly. Those already active in Japan, seven at present, can be confident that progress to date will not be wiped out by radical change in the Japanese regulatory approach to niche markets, and those seeking expansion or new entry will benefit greatly from a commitment to clearer administrative processes and to rate and form flexibility that will serve both insurance companies and their customers. Effectively implemented, we would expect that the agreement will result in foreign insurance providers earning upwards of $1 billion additional in premium in their Japanese operations over the next several years."

Regretfully, despite vigorous, concerted efforts by the Administration, those high expectations have not been realized. Beginning in mid-1995, the U.S. industry and USTR developed serious concerns when it became evident that the MOF was preparing draft ordinances to implement the newly-passed Insurance Business Law which failed to take into account core provisions in the Agreement.

In a recent letter to Congress, Ambassador Kantor noted that, during USTR's November 1995 consultations with the Ministry, the MOF had "for the first time set out an understanding of key provisions of the Agreement which we view to be clearly at odds with the commitments Japan made under the Agreement."

The new law is scheduled to begin taking effect next week. If the MOF does not alter its plans, the U.S.-Japan Agreement will be grossly violated.

There is strong evidence that the Congress and the Administration justifiably share this view. Several bilateral consultations have been held at the highest levels over the past several months, but these concerns have not abated. Ambassador Ira Shapiro stated in a February 28 speech before the American Chamber of Commerce in Japan:

> "... Japan has failed to implement important provisions of the insurance agreement concluded in October, 1994. We have made it clear to the Japanese Government that we view this issue as the most important implementation problem facing our two governments."

During a March 14 speech at the Foreign Correspondents' Club in Tokyo, U.S. Ambassador Walter Mondale said:

> "We are pressing Japan to honor their commitments under the 1994 agreement... there's a real chance that Japan will simply open the Third Sector and ignore what we think are the clear terms of the insurance agreement. So that is very worrisome."

In a March 14 letter to Japanese Ambassador Saito, Chairman Bill Archer of the House Ways and Means Committee wrote about the Agreement:

> "Only full and prompt compliance with all its terms will remove the cloud of uncertainty now surrounding implementation."

In a March 13 letter to Ambassador Saito, Senator William Roth, Chairman of the Senate Finance Committee, said:

> "... Japan's good faith in carrying out its obligations under an important bilateral agreement is in question."

And in a March 19 letter to President Clinton, 20 Republican and Democratic Congressional leaders said:

> "...should the MOF follow through with plans discussed with Japan's domestic insurers, U.S. firms would likely face a reduction in market share. Such MOF actions would unquestionably violate this agreement. Should such violations occur, we would support any and all appropriate action, including the imposition of sanctions as required under our applicable trade laws."

The U.S. International Insurance Council is deeply concerned about the current situation and expressed its views recently in a letter to Ambassador Kantor, which is attached to this statement.

The letter strongly supports the Administration's efforts to ensure faithful implementation of the Agreement prior to the April 16-18 summit between President Clinton and Prime Minster Hashimoto in Tokyo. The letter addresses the following items in particular:

- Deregulation must result in genuine deregulation, not re-regulation;
- There is a critical need to liberalize the primary sectors before granting additional access to the Third Sector;
- Adherence to the important commitments on transparency of regulation must be honored, and;
- There should be prompt implementation of the joint study of Keiretsu practices, as specifically called for in the Agreement.

Mr. Chairman, I would like to emphasize that the United States is not the only voice calling for faithful implementation of the Agreement. The leading representatives of all foreign insurance interests in Japan as represented by the Foreign Non-Life Insurance Association (FNLIA) are resolute supporters of the U.S.-Japan Insurance Agreement. In addition, it is our understanding that the European Union has consistently supported efforts to gain MOF compliance with the Agreement.

As the terms of the Agreement are accorded on a most favored nation (MFN) non-discriminatory basis, all foreign insurers have a direct stake in the MOF acting in accordance with its obligations under its Agreement with the United States. If Japan proceeds with its current plans, the total foreign, as well as American, presence in the market will decline, not increase.

Several Japanese industry leaders and government officials have argued that U.S. insistence on maintaining the status quo in the Third Sector "goes against the trend of liberalization." Some have even suggested that all the U.S. industry wants is protection from increased Japanese competition in the Third Sector area.

This is disingenuous, to put it mildly. Government regulation and restrictive business practices (Keiretsu) have limited foreign companies to a tiny share of the second largest market in the world. While providing no meaningful liberalization of the primary sectors, the MOF now intends to "deregulate" the Third Sector to benefit the largest Japanese insurers. Given the resources, market power and extensive sales forces of these large companies, it will only be a matter of time before the foreign market presence in Japan is even lower.

The voices of opposition we are hearing today are the same voices that were taken into account during the fifteen months of negotiation leading up to the October, 1994 Agreement. When it was concluded, there was no misunderstanding between the negotiators. Within days after the Agreement was signed, USTR briefed the U.S. industry to ensure that all interests were properly informed of the details.

Conclusion

Mr. Chairman, may I leave you and the Committee with this thought. U.S. insurers are among the most innovative and competitive firms in the world. We favor real deregulation and liberalization of the entire market, not new MOF control of the market. We make a positive contribution to the U.S. balance of payments, and we favor open markets where we can compete on an equal footing.

The U.S.-Japan Insurance Agreement is intended to bring about a more open market. If faithfully implemented, we are confident that we can bring tangible benefits to Japanese businesses and consumers alike.

Thank you.

Attachment

INTERNATIONAL
INSURANCE
COUNCIL
1212 New York Avenue, N.W. • Suite 250
Washington, D.C. 20005 (202) 682-2345

February 14, 1996

By Hand Delivery and Facsimile

The Honorable Michael Kantor
United States Trade Representative
Office of U.S. Trade Representative
600 17th Street, NW
Washington, DC 20506

Dear Mr. Ambassador:

The U.S. international insurance and reinsurance industry has strongly supported USTR efforts to ensure faithful implementation of the U.S.-Japan Insurance Agreement. Over the last several months, we have met regularly with USTR officials in connection with the several consultations that have been held between USTR and the Japanese Ministry of Finance (MOF). We express our gratitude and offer our continuing support for USTR's vigilant efforts to ensure that all the Agreement's objectives are met.

It is widely known that the U.S. international insurance industry supports liberalization of Japan's insurance market because it will lead to increased benefits for Japanese consumers and new opportunities for foreign insurers. In this context, we believe that the following points are crucial to achieving those benefits and acting on those opportunities, and we urge USTR to emphasize them in its upcoming meetings with officials from the Ministry of Finance:

- It is critical that the de-regulation process result in genuine de-regulation, and not re-regulation;

- Substantial liberalization of rate, form, and distribution, particularly in the First and Second Areas, must be achieved so that both foreign and Japanese firms may soon bring new products to market;

The Honorable Michael Kantor
United States Trade Representative
February 14, 1996
Page 2

- Strict compliance with the Agreement's terms relating to the Third Area must be obtained. There is a crucial relationship in the Agreement between the ability of foreign companies to compete on equal terms with Japanese companies in the First and Second Areas and any authorization to Japanese companies to increase their presence in the Third Area. Failure to implement the Agreement's terms concerning that relationship would be extremely harmful to the progress U.S. companies have made in Japan to date;

- Japan has made important commitments with respect to transparency of regulation, and those commitments must be respected;

- The *Keiretsu* Study called for by the Agreement is seriously overdue; it must be completed without further delay. To be worthwhile, it must deal adequately with case agents and must differentiate in a statistically valid way among the various types of *keiretsus*.

We pledge our continuing support for the Administration's efforts to ensure full and faithful compliance with this important Agreement. We encourage Japanese and U.S. negotiators to resolve outstanding differences concerning the Agreement prior to the upcoming April summit meeting between President Clinton and Prime Minister Hashimoto in Tokyo

Sincerely,

Gordon J. Cloney
President

Chairman CRANE. Thank you, Mr. Johnson.
Mr. Rozynski.

STATEMENT OF ED ROZYNSKI, SENIOR VICE PRESIDENT FOR GLOBAL STRATEGY AND ANALYSIS, HEALTH INDUSTRY MANUFACTURERS ASSOCIATION

Mr. ROZYNSKI. Mr. Chairman, thank you for the opportunity to testify. My name is Ed Rozynski, and I work for the Health Industry Manufacturers Association. HIMA represents more than 700 member companies that manufacture medical devices, diagnostic products and health information systems. Our industry is globally competitive. We account for about half of the world's sales of medical technology.

Our industry has never run a trade deficit. In 1995, our trade surplus measured $5.7 billion. However, our market share in Japan lags behind our market share in other countries. Outside of the United States, our average market share is about 40 or 45 percent. In Japan, it hovers around 20 or 25 percent. However, before identifying a specific concern that we have in Japan, I would like to mention that the biggest trade barrier facing this industry is the way our own FDA regulates medical technology in this country. FDA policy is pushing U.S. industry, U.S. jobs and patients to Europe to access American-made medical technology.

I would urge you to join us and more than 300 patient and doctor groups to address this growing problem by supporting the bipartisan FDA reform legislation that is currently working its way through the Senate and soon the House.

Back to Japan. We enjoy good relations with the Ministry of Health and Welfare leadership because we share the same basic goal, and that is to get quality products and care to patients. The U.S. industry is recognized as the world leader in this area. I would like to highlight, though, one problem that we do have there. While it is relatively easy to get your product approved in Japan, it is very difficult to get your product on the market in Japan, and that is because a handful of midlevel Ministry of Health officials tell you what gets on the market, when it gets on the market, and at what price you will be reimbursed. They call that a market system.

You cannot sell an approved product until MHW gives you that reimbursement price. Moreover, MHW systematically lowers the price of many products every 2 years. Recently, we negotiated a deal with the Health Ministry to reduce the chance that products brought under their price control system would have their prices unfairly and significantly cut every 2 years. Unfortunately, a few midlevel officials are now making noises that they may unilaterally change a key assumption upon which that deal was struck. Two days ago, Commerce Secretary Ron Brown wrote a letter to the Japanese Health Minister urging him to not alter key aspects of this recently concluded agreement. We would urge this Subcommittee to send the same basic message to the Japanese.

Thank you very much.

[The prepared statement follows:]

House Ways and Means Committee
Subcommittee on Trade
Hearing on General Oversight of U.S.-Japan Trade
March 28, 1996
2:30 p.m.

Testimony
by
Ed Rozynski
Senior Vice President for Global Strategy and Analysis
Health Industry Manufacturers Association

Good afternoon, Mr. Chairman. My name is Ed Rozynski and I am senior vice president of global strategy and analysis for the Health Industry Manufacturers Association (HIMA). HIMA is a Washington, D.C.-based national trade association representing more than 700 manufacturers of medical devices, diagnostic products, and health information systems. HIMA's member companies comprise one of America's most globally competitive industries, supplying almost one-half of the $112 billion global market for medical technology.

It is a privilege to be here today to discuss the state of U.S.-Japan trade in our industry. I would like to briefly share with you our recent successes in Japan and our hopes for the future of our trading relationship. I would also like to bring to your attention one single issue that could potentially undermine some of our efforts to date to open Japan's market for medical devices and to positively influence Japan's health care system.

Finally, I would like to state for the record that the biggest trade barrier facing our industry is not Japanese trade-related policies, but rather it is the way our own FDA regulates medical technology in this country. In this regard, you can take a major step to promote U.S. competitiveness and better access to quality health care in this country by supporting the bipartisan FDA reform legislation that is currently working its way through both the U.S. Senate and House of Representatives.

Background on U.S. Medical Device Industry Trade with Japan

Japan is the world's third largest market for medical technology. With a market size estimated at

$20.3 billion, it trails only the United States ($47.7 billion) and Europe ($29.2 billion) in its importance by value. In recent years, the Japanese market has been an important focus of U.S. manufacturers not only because of its sheer size, but because our companies have traditionally not been as successful there as they have been in other foreign countries. Indeed, U.S. market share in Japan prior to 1990 had amounted to only about 20 percent, or about one-half of our average foreign market share of more than 40 percent.

Over the past seven years, I have seen U.S. industry take a number of steps that have successfully resulted in an improvement in our market position in Japan. One such step has been to work closely with key officials in the Japanese Ministry of Health and Welfare (MHW) and the U.S. Government. The Commerce Department's Office of Japan, part of the International Economic Policy Division, has been a key player for the past ten years in helping to create an environment in Japan that is much more receptive to imports of the innovative, life-saving and life-enhancing products that this industry produces. Our companies, too, have consistently increased their investment in their Japan sales efforts. I am happy to report that, as a result of a coordinated U.S. Government - U.S. industry strategy, U.S. exports to Japan of medical technology are consistently growing, even while the overall Japanese market for medical technology products is relatively stagnant. This growth is a testimony to U.S. industry's ability to develop innovative medical products that patients need and that improve the overall quality of health care. HIMA now estimates U.S. market share in Japan at about 25 percent, representing a sustained increase in market share since 1990. We hope to be able to further penetrate the Japanese market until our performance in Japan rivals our performance in other foreign markets.

As a general matter, we are pleased with the discussions that we have had with MHW regarding their plans for next week's scheduled price revision and also for their decision to reimburse some important new medical devices starting next month. I must say that HIMA's relations with the leadership at MHW are very good at this time. Moreover, we look forward to working with them as they contemplate some very critical structural changes to their health care system, such as a new health care program for the elderly.

Japan's Health Care System

As some of you may know, Japan has a national health insurance system, under which all health care is directly or indirectly controlled by the national government. The goal of MHW is to offer quality health care to everyone at an affordable price.

As the leading manufacturers of new life-saving medical technology, we also have a keen interest in helping to provide high-quality, affordable health care. However, we do have a few specific concerns with how MHW tries to achieve this shared goal. Japan is one of the few countries in the world that maintains a system of centralized technology assessment where a handful of mid-level MHW officials decide when a new technology will be allowed on the market and at what price the new technology will be reimbursed. Under arcane rules in Japan, new medical technology may only be introduced on April 1 of every even numbered year. These types of bureaucratic barriers disadvantage both patient and companies alike because they slow the introduction of new medical breakthroughs even when those medical breakthroughs are cost-effective compared to existing treatments.

Furthermore, MHW sets the price for a new medical technology based on a straight-forward cost accounting estimate of the price of the new technology multiplied by its expected usage in the future. Because decision-making in MHW is compartmentalized, these mid-level MHW officials have no responsibility to consider whether the new medical technology is, for example, cost-effective in shortening a patient's hospital stay or replaces an existing more invasive and expensive form of treatment. This self-imposed, narrow view of new medical technology creates structural *de facto* discrimination, especially against U.S. firms, as we lead the world in breakthrough medical advances. Working with MHW to overcome some of these inherent inefficiencies in their health care system will help to reduce the *de facto* discrimination that efficient, high-tech companies face in that country.

The most prominent example of inefficiency in the Japanese health care system is the handling of long-term care for the elderly. In Japan, the average length of stay in a hospital is over 30

days, more than five times the average length of a hospital stay in the United States. What accounts for this difference is that the Japanese have never really developed long-term care facilities or invested in home care for the elderly, so many elderly patients are confined to the hospital for extremely long periods of time. The inability to treat these patients in less expensive settings costs the government billions of dollars per year.

Fortunately, there are currently several enlightened government officials at the top of Japan's health care bureaucracy who genuinely want to implement a more efficient long-term care program. One such individual is the current Director-General of the Health Insurance Bureau, Mr. Nobuharu Okamitsu, with whom HIMA is working to exchange ideas on effective health care reform strategies. However, as is the case with any major structural reform, making progress will undoubtedly be extremely difficult, because Japan needs to reduce the number of hospitals and to redeploy health care personnel into more efficient long-term care facilities or home care delivery services. Moreover, paying for the proposed long-term health care program for the elderly will continue to be a significant political issue in Japan.

Another perplexing aspect of Japan's health care delivery system is its complex and multi-layered distribution system for medical technology and other health care products. With every layer of distribution comes an additional margin, and higher health care costs. The Japanese distribution system pushes up the price for medical technology, as it does many products in Japan, which frustrates MHW and industry alike. It also helps to render international price comparisons meaningless. Many of our companies have tried to by-pass the traditional distribution network and gain a competitive advantage by selling directly to Japanese hospitals, only to be told by hospitals that they will only buy through established distributors. While policy issues relating to distribution of health care products fall within the jurisdiction of the Ministry of Health and Welfare, action to address this age old problem and to enhance hospital efficiency is slow to materialize, again because this could mean the displacement of Japanese workers.

A Specific Cloud on the Horizon for U.S. Medical Device Firms

While the U.S. medical technology industry sympathizes with the difficulties facing our Japanese colleagues at the Ministry of Health and Welfare, we are not willing to finance inefficiencies elsewhere in the health care delivery system through measures to unfairly cut our prices. Such a measure is apparently now being contemplated, according to statements made by the Ministry of Health and Welfare at its most recent meeting with the U.S. Commerce Department under a decade-old trade agreement known as the Medical Pharmaceutical MOSS (Market-Oriented, Sector-Specific) talks.

To help understand the problem a little more clearly, let me explain how most medical technologies sold by U.S. manufacturers are reimbursed in Japan. The government sets reimbursement prices for most medical device products. Unlike pharmaceuticals which are priced individually by company brand, medical devices that are similar in function and performance all receive the same reimbursement price in most cases. Products may not be sold to hospitals at prices above the official reimbursement price, although distributors or other agents may offer discounts to hospitals. While a product's price may never rise under the price control system, even for reasons of high inflation or extreme exchange rate shifts, the official price can be reduced permanently if distributors (whose pricing decisions are not controlled by manufacturers) discount by an average rate exceeding 15 percent. Because most medical devices, of a similar type, are priced by function rather than by individual company brand, medical devices can be more susceptible to price reductions than pharmaceuticals.

U.S. industry is not always happy with this pricing scheme, but again, the scheme itself is not why we are here today. Rather, what we are troubled by is the Ministry's stated intention to change the rules of the system by reducing the allowable discount zone (also known as the reasonable zone, or "R-zone") from the existing 15 percent. Industry just finished a round of negotiations with MHW under which we had to agree to bring even more of our products under the overall price control system. The negotiations, which included agreement on what were fair initial prices for various products, were conducted with the understanding that the R-zone would continue to be 15 percent. While industry clearly asked MHW during the course of the negotiations whether the R-zone was to be reduced, MHW never indicated that indeed such a

plan was in the works for medical devices. No sooner than industry had agreed to new prices for new products to be brought into the system than did MHW tell the Commerce Department that a new, lower R-zone would be used to reduce product prices during the next two year cycle.

We do not know what the new R-zone would be under MHW's plan. However, we can tell you that during the last price revision, reimbursement prices for products brought under the price control scheme since 1990 were not reduced when the 15 percent R-zone was applied. Under a smaller R-zone, our prices would be permanently reduced, and for every five percentage point decrease in price for a product grouping, such as heart pacemakers or orthopedic implants, we estimate that U.S. industry would lose at least $10 million per product grouping. If the prices of U.S. products sold in Japan were cut five percent across-the-board as a result of a smaller "R" zone, U.S. losses would amount to $250 million every two years, and some U.S. product lines would become unprofitable in Japan.

The bottom line is that MHW should not seek to unfairly balance the Japanese health care budget on the backs of U.S. manufacturers of advanced medical technology products, and they should not be allowed to change some key assumptions in a negotiation after a deal has been struck. As previously indicated, while we are generally pleased with MHW's recent actions and leadership, we want to avoid situations, such as this, that can undermine some of our mutual trust.

HIMA and its member companies in the U.S. and in Japan are now working closely with the Department of Commerce to send a signal to the Japanese government that the policy change being contemplated is inappropriate for a number of reasons, and that MHW's suggestion that the R-zone for medical device products be reduced should be withdrawn. Along those lines, we would appreciate the subcommittee's assistance in sending that same signal.

Thank you.

Chairman CRANE. Thank you, Mr. Rozynski.
Ms. Smith.

STATEMENT OF MAUREEN R. SMITH, INTERNATIONAL VICE PRESIDENT, AMERICAN FOREST & PAPER ASSOCIATION

Ms. SMITH. Thank you, Mr. Chairman, for this opportunity to testify on behalf of the American Forest & Paper Association regarding the market access problems of the U.S. forest products industry in Japan. Japan is a priority export market for our industry. The total Japanese market for paper and allied products is estimated at about $60 billion and ranks second only to the United States. The Japanese wood products market totals about $30 billion. The United States and Japanese Governments have concluded two separate trade agreements in this sector: The Wood Products super 301 Agreement of 1990 and the Paper Market Access Agreement of 1992. Although there have been some positive developments since these agreements were concluded, the bottom line is there has been no meaningful improvement in our ability to penetrate these markets.

Turning first to the wood products industry, our industry has had an aggressive promotion program in Japan for more than 10 years. We have worked with the U.S. Government to negotiate changes in Japanese standards and building codes to permit the greater use of wood in construction and interior applications. While progress has been made on some technical issues, the U.S. share of the Japanese market for value-added wood products has increased only marginally over this period, and even today probably averages less than 5 percent.

While there are several important steps which could be taken to ensure improved market access for U.S. wood products in Japan, the single most important step would be the elimination of Japanese tariffs. We believe that the central accomplishment of the upcoming Clinton-Hashimoto summit must be a Japanese commitment to early wood tariff cuts in the APEC process, and we would hope that the recently announced Hashimoto initiative would lead to the elimination of tariffs as part of Japanese efforts to reduce housing costs.

On the paper side, the story is much the same. The United States-Japan agreement on paper market access has failed to produce the results anticipated. Last year, the U.S. share of the Japanese paper market stood at 1.8 percent, only one-tenth of 1 percent higher than in 1991, the year before the agreement was concluded. Japan's paper and paperboard imports from all sources accounted for just about 4.2 percent of the country's consumption, the smallest such ratio in the world, and again, only slightly ahead of the figure for 1991, which was 3.7 percent.

U.S. industry believes that this is due to an array of Japanese business practices which are amazingly similar to those described in his testimony by Mr. Fisher and which are intended to deter the entry of new paper suppliers, particularly foreign suppliers. For a detailed description of how these practices have excluded foreign paper suppliers, I am submitting for the record a report which our industry submitted to USTR in December 1994.

[The report is being held in the Committee's files.]

The existence of these collusive business practices in the Japanese paper market was confirmed in surveys conducted by the Japan Fair Trade Commission in 1993 and again in 1994, and Japanese press reports continue to document discussions among Japanese paper producers regarding prices and other market conditions. I am submitting a representative sampling of these reports for the record. They include such intriguing headlines as: "Paper manufacturers to set up committee to construct new price structure for paper." I would think at a minimum, these practices and these headlines should have prompted JFTC inquiries, but there were apparently none.

[The information was not available at the time of printing.]

As a result of these developments, USTR placed the paper agreement on the super 301 watch list in October 1994 and again in September 1995 and initiated negotiations to improve Japanese compliance. Since that time, the Government of Japan has variously announced it would not negotiate, or, when discussions did take place, declined to negotiate seriously. And just last week, the English language Nikkei reported that MITI will refuse to renew the Paper Market Access Agreement when it is scheduled to expire in April 1997. While this may be a trial balloon, it is consistent with Japan's continuing refusal to negotiate about improving the agreement and thus merits a strong policy response.

U.S. acceptance of Japan's unilateral withdrawal from the agreement would reward a strategy grounded in a complete disregard of Japan's obligations under a trade agreement with the United States and set an unfortunate precedent for other agreements in other sectors. From the industry's point of view, the absence of a government-to-government agreement would mean that the substantial efforts which our companies have made to develop a Japanese customer base would be deprived of the impetus of U.S. Government pressure, which has been absolutely necessary for even the modest breakthroughs we have made. As a public policy matter, acceptance would fatally undermine the credibility of the NTE/super 301 process and indeed the whole framework approach to enforcing Japan's compliance with trade agreements.

We believe the example of our paper industry argues strongly for renewed attention to the enforcement of existing agreements, and we are fully supportive both of the enforcement capability which has been established at USTR and the complementary monitoring effort at Commerce. At the same time, we view the current Kodak case as a unique opportunity to come to grips with the pervasive market-distorting effects of Japanese business practices as they affect many segments of American industry, and we urge the administration to develop a negotiating plan which will fully take into account the broad precedential nature of the issues raised by Kodak.

Finally, we were gratified to hear Ambassador Shapiro's response to Vice-Minister Sakamoto and his reaffirmation that the administration will continue to make the fullest use of the remedies available under U.S. trade law to ensure that competitive American industries such as ours will have access to the Japanese market.

Thank you.

[The prepared statement follows:]

TESTIMONY OF
MAUREEN R. SMITH
INTERNATIONAL VICE PRESIDENT
AMERICAN FOREST&PAPER ASSOCIATION
ON
UNITED STATES-JAPAN TRADE RELATIONS
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

MARCH 28, 1996

Thank you, Mr. Chairman, for the opportunity to testify on United States-Japan trade relations, and specifically on market access problems of the U.S. forest products industry in Japan.

I am testifying today on behalf of the American Forest & Paper Association (AF&PA), the national trade association of the U.S. wood and paper products industry. America's forest products industry accounts for seven percent of all U.S. manufacturing output and employs 1.6 million Americans. Our members grow, harvest, and process wood and wood fiber; manufacture pulp, paper and paperboard products from both virgin and recovered fiber; and produce solid wood products. The industry's shipments are valued at more than $200 billion.

With 1995 paper and wood exports exceeding $23 billion, our industry makes an important contribution to the U.S. balance of payments. In recent years, the growth in exports sales has outpaced the growth in domestic shipments. In order to maintain our strong export growth, our industry is committed to aggressively developing foreign markets, and supporting initiatives by our government to remove trade barriers to U.S. products.

Japan is a priority export market for our industry. The total Japanese market for paper and allied products is estimated at about $60 billion and ranks second only to the U.S. The Japanese wood products market totals $30 billion.

The U.S. and Japanese governments have concluded two individual trade agreements covering market access for U.S. forest products in Japan: The Wood Products Super 301 Agreement of 1990; and the Paper Market Access Agreement of April 1992. The goal of both agreements was to improve substantially U.S. access to the Japanese market. Although there have been some positive developments since the Agreements were concluded, there has been no meaningful increase in Japanese imports of wood and paper products.

Wood

The U.S. wood products industry has been committed to an aggressive promotion program in the Japanese market for more than 10 years and has worked with the U.S. government to negotiate changes in Japanese standards and building codes to permit greater use of wood in construction and interior applications. Progress has been made on certain technical issues but the U.S. share of the Japanese market for value added wood products has increased only marginally over this period.

Several important steps can be taken to ensure improved market access for U.S. wood products. These include tariff cuts, changes in Japanese building codes and standards, and joint data collection:

- We believe that the central accomplishment of the upcoming Clinton-Hashimoto Summit must be a Japanese commitment to early wood tariff cuts in the APEC process and we would hope that the recently announced Hashimoto initiative would encourage wood tariff reductions as part of Japanese efforts to reduce housing costs.

- A commitment to a true performance basis in Japanese building codes would allow wood use in areas currently prohibited. Prescriptive height and area limitations, and regulations prohibiting wood frame structures in quasi fire protection zones, continue to inhibit the promotion of high quality, safe, and affordable housing.

- A Japanese Government commitment to a joint data collection system would provide both sides with the ability to monitor the operation of Japan's market for wood products, and to establish the ultimate credibility of the recently announced Hashimoto initiative.

We are appreciative of the U.S. government's efforts to translate the Hashimoto initiative on housing costs into meaningful market opportunities for U.S. wood suppliers. We regard this as a potential "win-win" which could match Japan's need to lower the cost of housing with our long-standing efforts to gain real access to the Japanese market. With the active engagement of the U.S. Government, we are hopeful that the Hashimoto initiative can provide concrete evidence of a serious commitment to reform Japan's regulatory system in ways which will achieve an open market in the solid wood building products sector, and assist the Government of Japan in achieving its priority reform objective of reducing housing costs.

Paper

The U.S.-Japan Agreement on Paper Market Access has failed to produce the results anticipated by either the U.S. negotiators or our industry. In 1995, the U.S. share of the Japanese paper market stood at 1.8%, only one tenth of one percent higher than in 1991--the year before the agreement was concluded. Japan's paper and paperboard imports from all sources accounted for just 4.2% of the country's consumption in 1995, the smallest such ratio in the world, and only slightly higher than 1991's import share of 3.7%. In fact, in kraft linerboard, one of the product categories covered by the 1992 agreement, the U.S. share, as well as the export volume, was actually well below what it had been in 1991.

The U.S. industry believes that the U.S. market share has remained minuscule because of the continuing existence of an array of business practices intended to deter the entry of new paper suppliers, particularly imports. Some of these barriers are:

- A complex and largely closed distribution system,
- Interlocking relationships between members of the same keiretsu, or corporate family, which include manufacturers, agents, wholesalers, trading companies, printers, publishers or other end users, and financial institutions,
- A lack of transparency in corporate purchasing practices,
- Inadequate enforcement of Japan's anti-monopoly laws.

Other common business practices in the Japanese paper market which have tended to lock out U.S. paper suppliers are the promissory note payments system and after-sale price adjustments provided by Japanese paper manufacturers to their major distributors. While MITI has reported that these practices have been discontinued, at least among the large manufacturers-distributors, we can not confirm this fact since these financial arrangements were not recorded in written contracts.

The existence of collusive business practices in the Japanese paper market was identified by surveys conducted by the Japan Fair Trade Commission (JFTC) in 1993 and again in 1994. However, the JFTC surveys concluded that the practices were not in violation of Japan's anti-monopoly laws. At the same time, the JFTC encouraged Japanese companies to desist from these practices. Nevertheless, Japanese press reports continue to document discussions among Japanese paper producers regarding prices and other conditions of the Japanese paper market. At the minimum, these practices should have prompted JFTC inquiries.

Beginning with the 1994 National Trade Estimate Report, USTR identified the failure of the Government of Japan to live up to its obligation in implementing the agreement as the underlying cause of the disappointing results in achieving greater access to the Japanese paper market. Emphasizing the gravity of Japan's non-performance, USTR placed the issue on the Super 301 Watch list in October 1994 and again in September 1995 and initiated negotiations to restructure the agreement in ways which would make the Japanese Government obligations more explicit and

thus improve results.

Since that time, the Government of Japan has variously announced it would not negotiate or, when discussions did take place, declined to negotiate seriously. And just last week, the English language Nikkei Weekly reported that MITI will refuse to renew the Paper Market Access Agreement which is scheduled to expire in April, 1997. While this might be a trial balloon, it is consistent with Japan's continuing refusal to negotiate U.S. proposed measures that would strengthen and enhance Japanese government and industry implementation of the 1992 Paper Agreement.

U.S. acceptance of Japan's unilateral withdrawal from the agreement would reward a strategy grounded in a complete disregard of Japan's obligations under a trade agreement with the United States--and set an unfortunate precedent for agreements in other sectors as well. From the industry's point of view, the absence of a government-to-government agreement would mean that the substantial efforts which our companies have made to develop a Japanese customer base would be deprived of the impetus of U.S. government pressure which has been necessary for even the modest breakthroughs we have achieved. As a public policy matter, acceptance would fatally undermine the credibility of the NTE/Super 301 process and indeed, the whole Framework approach to enforcing Japan's compliance with our trade agreements.

We believe the example of our paper industry argues strongly for renewed attention to the enforcement of existing agreements, and we are fully supportive both of the enforcement capability which has been established at USTR and a complementary monitoring effort at Commerce. At the same time, we view the current Kodak case as a unique opportunity to come to grips with the pervasive market-distorting effects of Japanese business practices as they affect many segments of American industry and we urge the Administration to develop a negotiating plan which will fully take into account the broad, precedential nature of the issues raised by Kodak.

Finally, we are gratified to hear the Administration's unequivocal response to Vice Minister Sakamoto, and the reaffirmation that the Administration will continue to make the fullest use of the remedies available under U.S. trade law to ensure that competitive American industries will have access to the Japanese market.

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Chairman CRANE. Thank you, Ms. Smith.

Mr. Patrick, you accused Kodak of the very thing that Kodak has accused you of. How can we get an impartial third party to examine on both sides of the ocean the question of whether there is implicit subsidization or kickbacks or special relationships that prohibit either your access here in our markets or their access over in Japan?

Mr. PATRICK. Mr. Chairman, that is an excellent question, and it is one that we have suggested needs to be addressed by USTR. All of the factual issues in this case are hotly disputed by Fuji, and as you point out, we have complained about their practices in the United States.

We have asked for a neutral fact-finding body. We have suggested, as I said in my statement, any neutral fact-finding body of USTR's choice. We have suggested that they could consider convening a panel of experts; appointing a U.S. administrative law judge as well as multilateral mechanisms. We are open to any mechanism, so long as it is a neutral fact-finding body that can sort out the different surveys and the different data that conflict with each other.

Chairman CRANE. And let me ask a quick question of Mr. Johnson, and that is who is responsible for the delay in beginning the keiretsu study that was required under the agreement?

Mr. JOHNSON. Well, Mr. Chairman, we have our own views about that. I would refer to the USTR for an authoritative view.

The study itself, as you probably know, was to have begun in December 1994. The private sectors in Japan and the United States, the insurance industry representatives, were called upon under the terms of the agreement to meet together to fashion the terms of reference for that study, and select the consultant or consultants that would conduct the study in keeping with the provisions of the agreement. Discussions between the private sectors began in the fall of 1994 with the objective of reaching that December deadline to begin the study, and as of today, that study has not begun.

The effort to come to agreement on the terms of reference, the selection of the consultants, took hundreds of hours of discussions between the two private sectors under the oversight of the Ministry of Finance and the USTR and only recently reached agreement to start the study.

But I think it does reflect a broader concern that you have heard addressed today, namely, how to verify some of the systemic and shareholding type pressures that exist in Japan that make it very difficult to penetrate their market. That is something that the Japanese do not want to have explained.

Chairman CRANE. Thank you.

Ms. Smith, does Prime Minister Hashimoto's imported housing initiative contain any better news for the U.S. forest products industry?

Ms. SMITH. We are optimistic. At the moment, it has not been articulated, and it does not contain very many specifics. But it would appear to make eminent good sense in that there is a Japanese political mandate to reduce the cost of housing in Japan. However, for us, the litmus test will be the tariff issue. If the objective is to lower housing costs in Japan, certainly deregulation will be

of some assistance, but there is one single step that would immediately substantially reduce the cost of housing, and that is the elimination of Japanese tariffs on wood products imports. And that is really going to be our measure of whether this initiative is going to be successful.

Chairman CRANE. And Mr. Rozynski, in the October 1995 agreement, the Japanese Government announced that it would use open bidding and instruct officials to consider foreign bids and establish an appeal process for losing bidders. Have these reforms been adequately implemented?

Mr. ROZYNSKI. Yes; we are very pleased that those reforms have been implemented. We think that the Japanese have been very cooperative, and we have also been tracking the data fairly closely using consultants in Japan to go and measure the hospital purchases. So we do not have any complaints about that agreement at this time.

Chairman CRANE. Very good.

Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

I just want to confine my remarks to Mr. Patrick, since Kodak is a big manufacturing employer in my State. I was pleased to hear that you said that—is it the Government of Japan or Fuji is open to independent study of what the facts actually are? That is Fuji?

Mr. PATRICK. Well, Congressman, I cannot speak for the Government of Japan, of course.

Mr. RANGEL. No, no; I am asking you. You said Fuji is open?

Mr. PATRICK. Yes, Fuji is open to that, yes, sir.

Mr. RANGEL. OK; now, this matter is going before the U.S. Trade Representative, is it not?

Mr. PATRICK. Yes, sir.

Mr. RANGEL. Do you have any problem with them reviewing this?

Mr. PATRICK. Well, sir, this case, I think, is really an antitrust case. It is highly complex. It involves application of——

Mr. RANGEL. The facts on both sides are very difficult and complex, and you and Kodak are diametrically opposed. They say one thing; you are saying another. I am only asking is there any objection that the U.S. Trade Representative get involved in order to adjudicate it? Is that——

Mr. PATRICK. Yes, sir.

Mr. RANGEL. There is?

Mr. PATRICK. That is exactly our position.

Mr. RANGEL. You oppose it?

Mr. PATRICK. Yes, sir. Mr. Rangel, we believe the USTR is not equipped to handle this kind of investigation in a complex antitrust case. The issues are hotly disputed.

Mr. RANGEL. I know; but—you know——

Mr. PATRICK. Kodak submits surveys; we submit surveys.

Mr. RANGEL. I know. But now, you are saying the U.S. Trade Representative is not competent to understand what Fuji understands, right?

Mr. PATRICK. No, sir; not at all. The U.S. Trade Representative is highly competent to understand these issues. It is the verification of the facts that we have a concern with.

Mr. RANGEL. You believe that the facts are so complex that the U.S. Government will not be able to determine them; is that what you are saying?

Mr. PATRICK. Well, no, sir; I think I would not want MITI to decide this case either.

Mr. RANGEL. You would not want what?

Mr. PATRICK. I would not want the Ministry of International Trade and Industry to decide this case either. Both agencies are negotiating agencies of their respective governments. The Department of Justice in the United States and the FTC in the United States has jurisdiction over anticompetitive complaints. In Japan, the Japan Fair Trade Commission has jurisdiction over anticompetitive complaints. Our position is that this complaint should have been submitted first to the JFTC in Japan for review and for investigation.

Mr. RANGEL. And is it your understanding that this matter should be resolved by the Japanese courts?

Mr. PATRICK. This matter—I think Kodak would have had a much stronger argument if they had brought their case before the JFTC.

Mr. RANGEL. In the Japanese courts?

Mr. PATRICK. Before the JFTC in the first instance, yes, sir.

Mr. RANGEL. And the Japanese Government refuses to discuss this case, I understand, with the United States Government.

Mr. PATRICK. Well, again, I think what the Japanese Government has said—not speaking for them, but as I understand it—what they have said is that the JFTC has jurisdiction in Japan over complaints of anticompetitive practices and that Kodak has a remedy. Kodak has not exhausted its remedy in Japan.

Mr. RANGEL. We went through that. All I am asking, sir——

Mr. PATRICK. They have not even begun their first complaint in Japan.

Mr. RANGEL. All I want to know is that when you get to the bottom line—and I know you do not represent the Japanese Government, and I do not represent the U.S. Trade Representative. But it is my understanding that the Japanese Government for whatever reasons—maybe they have international legal reasons—will not discuss this matter with the U.S. Government; is that your understanding?

Mr. PATRICK. It is my understanding that MITI has refused to negotiate this case until such time as Kodak refers it to the JFTC.

Mr. RANGEL. Period, OK; I am not saying who is right or wrong. It just appears so—and I am an advocate for a constituent manufacturing company. But the bottom line is that the Japanese Government will not discuss it with the United States Government; Fuji will not discuss it with the U.S. Trade Representative. All of the things that I am asking——

Mr. PATRICK. Well, Congressman, we have discussed it with the USTR. Fuji Film has made a number of submissions rebutting each factual claim that Kodak has submitted. So we are definitely talking to USTR and cooperating with their investigation, yes, sir.

Mr. RANGEL. Then it is possible that you are cooperating with the 301 proceeding.

Mr. PATRICK. We are responding to Kodak's allegation, yes, sir, through USTR.

Mr. RANGEL. Well, do you not believe that this will be resolved in your favor and that this will take care of the whole thing?

Mr. PATRICK. Well, at this point, we have seen very little verification of the data that we have submitted.

Mr. RANGEL. Well, that inures to your benefit, does it not? Since they are incompetent and have not put it together while you have got your case together. And in your view, Kodak has not got a case that is worth anything.

Mr. PATRICK. Well, if Fuji Film had a complaint about anticompetitive practices in the United States and took that complaint to the Ministry of International Trade and Industry and said negotiate on our behalf, I suspect the first thing USTR would suggest is that we file suit in the United States. I think what we are suggesting here is that the real threat to 301 here from Kodak is that they have brought a complaint without going to the JFTC in the first instance, the organization that has the jurisdiction over the matter. That fundamental flaw, combined with a weak case on the facts, is the real threat to 301.

Mr. RANGEL. But that is 301. If Kodak's case is nearly as bad as you say it is, then they cannot prevail on the facts, can they?

Mr. PATRICK. Well, sir, I do not think USTR is equipped to adjudicate, make judicial judgments about factual disputes in the antitrust area. These cases would normally take years to resolve in a U.S. court. They do not have the tools of discovery. They do not have verification of the data.

Mr. RANGEL. But you are saying that the only group that is competent to handle this is the Japanese Government, are you not?

Mr. PATRICK. No, sir; we have suggested a neutral fact finder, whether it is a U.S. administrative law judge——

Mr. RANGEL. Have you recommended any names of people that you would like to see on this——

Mr. PATRICK. We have suggested to the USTR a number of mechanisms, Congressman, that could include a panel of experts who could be chosen through a neutral arbitrator.

Mr. RANGEL. Is that in writing?

Mr. PATRICK. Yes, sir, it is; it has been submitted in writing.

Mr. RANGEL. Do you have this, Mr. Houghton? Do you have a copy of Fuji offering that? Does staff have what he is talking about? Would you give it to staff?

Mr. PATRICK. Yes, sir; we would be happy to provide that to the Subcommittee.

Mr. RANGEL. OK.

[The following was subsequently received:]

FUJI PHOTO FILM, INC.
P.O. BOX 1306
GREENWOOD, SOUTH CAROLINA 29648
TELEPHONE: (864) 223-2888, -1626, -0248
FAX: (864) 223-8171

April 1, 1996

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1104 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of myself and Fuji Photo Film, Inc., I want to thank you for giving me the opportunity to testify before the March 28 hearing of the Subcommittee on U.S. - Japan trade relations. I was most impressed with the wide range of viewpoints that the Subcommittee sought and the interest of the Members attending.

During the hearing, Representative Rangel requested that Fujifilm provide the Subcommittee staff with the correspondence between Fujifilm and USTR with respect to options for neutral fact-finding in this case. I am enclosing copies of the cover letter and options paper provided to USTR and USTR's response. I hope these will be helpful to the Subcommittee. I am also sending Mr. Rangel copies of these materials.

If you or your staff should have any questions or need any additional information concerning this case, please do not hesitate to contact me.

We were also happy to welcome you to the Fujifilm facility in your district, and we invite you to visit whenever you can. Again, thank you for your interest in Fujifilm's point of view, and for inviting me to the March 28 hearing.

Sincerely,

John Patrick
General Counsel and Secretary

JP:lae

enclosure

DOWNEY CHANDLER, INC.

1401 I Street NW, Suite 1210, Washington, DC 20005

November 15, 1995

Honorable Michael Kantor
United States Trade Representative
Washington, DC, 20506

Dear Ambassador Kantor:

I appreciate the opportunity to follow up our earlier conversation regarding Fuji Photo Film's views of Kodak's request for Section 301 action on the consumer color photo film market in Japan.

The broad United States - Japan strategic relationship is at a critical juncture. The situation in Okinawa and the press reports of CIA intelligence gathering during the recent automobile negotiations have reinforced tensions significantly. It is important that "next steps" on United States - Japan issues be directed toward easing those tensions. U.S. economic and strategic objectives in the region need to go forward with as little bilateral conflict as possible.

I believe that there is an opportunity here for you to deal with our relationship with Japan in a way that will do credit to this Administration, move the whole process of resolving our trade disagreements forward and defuse the situation regarding the pending Section 301 petition. The accompanying paper presents an analysis of the situation and explores a number of options for resolving the factual disputes at the heart of the petition. I will briefly summarize the paper in the following paragraphs.

Before proceeding with this investigation, two issues must be resolved: whether, in fact, Fujifilm engages in practices in Japan which violate Japanese antimonopoly law and which are tolerated by the government and whether or not Fujifilm is denied "reciprocal opportunities" in the United States.

The almost total conflict between Kodak and Fujifilm's positions, coupled with Kodak's failure to use legal avenues open to it in Japan, seriously undermine Kodak's complaint and explain the Japanese government's unwillingness to negotiate. Kodak's amassing of allegations can in no way substitute for a rigorous investigation of the facts that these legal processes would entail. Nor can the issue of Fujifilm's reciprocal access to the market here in the United States be resolved without a rigorous investigation of our domestic consumer film market. There are options available to resolve the factual basis of the complaint in a manner that should be acceptable to all parties involved.

Fujifilm supports a credible fact finding process in which 1) the fact finding is done by a neutral party acceptable to both Fujifilm and Kodak, 2) the fact finding also focuses on reciprocal access issues, 3) the process is transparent, and 4) there is an opportunity to address the applicable legal standards.

The first option is to use a working group of the Organization for Economic Cooperation and Development (OECD). U.S. business groups have advocated the use of an OECD competition law mechanism to address problems such as this. The second option would be for the World Trade Organization to use its already established and multilaterally accepted mechanism for dispute resolution.

The use of non-binding arbitration is a third option. The American Arbitration Association or the International Chamber of Commerce are two potential fora for neutral experts to find facts and make conclusions of fact and law. As a fourth option, Fujifilm, Kodak and USTR could agree to set up a panel of experts to hear submissions from both sides, pose questions and issue a report. This option would function in a way similar to a WTO panel.

As a final option, USTR could employ an Administrative Law Judge to determine the facts in this case. Agencies regularly use ALJs and there are many ALJs with the requisite expertise in competition policy and law. The International Trade Commission has adopted procedures in Section 337 cases for ALJs. The ALJ's report would then serve as the basis for USTR's decision.

I hope that this summary is helpful to you. The accompanying paper develops these ideas in greater detail and provides you with a possible sequence to pursue these options. I look forward to discussing this issue with you further.

Sincerely,

Thomas J. Downey

Enclosure

POSITION PAPER OF FUJI PHOTO FILM CO., LTD.
AND FUJI PHOTO FILM U.S.A., INC.

* * *

Proposals and Rationales for Mechanisms to Address the Legal and Factual Disputes in the Section 301 Investigation of the Consumer Photographic Color Film and Color Negative Paper Markets in Japan

November 15, 1995

Introduction

In the context of the current Section 301 investigation, the statute places two formidable burdens on USTR. First, USTR must determine whether Fujifilm is engaged in practices in Japan that violate the Japanese antimonopoly law or other norms of competition policy. Absent a determination that Fujifilm has engaged in anticompetitive practices, there can be no government toleration of such practices and no action is justified under Section 301.

Second, even assuming that it is determined that Fujifilm is engaged in anticompetitive practices in Japan and the Government of Japan has tolerated those practices, USTR still must determine, as required by Section 301(d)(3)(D), whether Kodak's exclusionary practices have denied "reciprocal opportunities" to Fujifilm in the U.S. market. Specifically, as stated in the House Report accompanying the enactment of this provision, the

foreign practice being examined must be compared to existing U.S. practice. Thus, complex factual investigations of the practices in both markets must be examined to provide a basis to determine whether any action under Section 301 is justified.

Before reaching these factual issues, however, USTR must determine what legal standards should be applied in this investigation. Kodak has not addressed satisfactorily the threshold issue of market power and would likely have its complaint summarily dismissed in a U.S. court or administrative agency. Since non-price vertical restraints such as alleged by Kodak to exist in Japan are in fact procompetitive unless exercised by a company with market power, USTR must decide what standard should be applied to determine the existence or absence of market power. If Kodak has no market power in the U.S. market as it has argued successfully in U.S. courts, then Kodak is arguably legally estopped from asserting a different definition of market power with respect to Fujifilm in Japan. USTR must determine whether it is appropriate under Section 301 to impose a different or more exacting standard on foreign companies than is imposed on U.S. companies under U.S. antitrust law.

These issues, and others, need to be thoroughly analyzed, briefed, and decided before beginning the factual investigations. These threshold questions significantly affect the scope of the factual investigation that will be necessary. After considering these threshold issues, we believe a neutral fact finder would deem many of the factual allegations raised by Kodak can be

ignored as being legally irrelevant to any discussion of anticompetitive conduct.

The Current Impasse in the Investigation

Both Fujifilm and the Government of Japan have urged USTR to dismiss the Kodak Section 301 complaint on the grounds that Kodak has not even attempted to use the legal mechanisms available in Japan to address its complaints. Kodak argues that the Japan Fair Trade Commission (JFTC) is part of the problem, not part of the solution. Whatever one thinks about the efficacy of JFTC enforcement, a party with an allegation of a violation of Japanese competition law should be required at least to try using the local remedy. Moreover, Kodak appears unaware of the fact that under Japanese law it could also pursue its complaint in a private action in the courts in Japan. Nevertheless, USTR does not appear disposed to require that Kodak, consistent with the norms of international law, exhaust its local remedies before bringing the matter to USTR.

Substantively, the Kodak-Fujifilm dispute is at a stalemate. After two major submissions by each party during the summer, another large submission by Kodak on November 6, and the promise of more to come, the parties disagree about both the history and the current situation of the Japanese photographic products market. Unlike other situations, where some non-Section 301 context provided a basis for a government-to-government dialogue, there appears to be no existing alternative mechanism for such discussions in this case. The strong belief that Kodak has

seriously misrepresented the facts reinforces the Government of Japan's refusal to negotiate.

USTR's priority at this stage should be to develop a core of neutral, credible facts. Kodak's allegations cannot serve as the starting point for negotiations, because the allegations are not true. Moreover, any unilateral action by the United States on the basis of Kodak's allegations would almost inevitably cause a negative reaction from Japan and the international community. There can only be issues for negotiation to the extent that Kodak's factual allegations are able to withstand neutral, critical scrutiny. If they do not, USTR has no legal or policy justification to continue the Section 301 investigation or take further action. Were USTR to take action based on unsubstantiated allegations, a WTO challenge to USTR actions would surely result.

Fujifilm devoted approximately eight man years of lawyer, economist and staff time to develop the facts presented in "Rewriting History." We assume Kodak has devoted comparable if not significantly greater resources. Both Fujifilm and Kodak continue to provide additional information to USTR. At this point, it should be obvious to USTR that a few casual conversations between USTR and Embassy officials and the Japanese Government, Fujifilm, distributors and retailers will not resolve the factual conflicts present in this investigation. Furthermore, other than Fujifilm's efforts, there has been no effort to develop facts related to the issue of Fujifilm's

reciprocal access to the U.S. market. It is simply not sufficient to assume that the U.S. market is open and the Japanese market is closed. There must be facts supporting the conclusions being drawn.

Under Section 301, however, there are no established procedures for conducting this kind of factual investigation. Section 301 does not provide for even the most elementary safeguards to ensure balance and an opportunity for all parties to address the facts. There is not even a requirement that parties be served information submitted in the course of the investigation. There are no provisions for protective orders for obtaining or validating information necessary to make a determination. In short, the current Section 301 procedures are clearly not adequate in investigations where the validity of the allegations are dependent on fundamentally disputed, highly fact-specific determinations and where the applicable legal standard is not clear.

Options

The key concept behind each of the alternatives discussed below is neutral, expert, credible fact finding. The objective is not to limit the authority of USTR under the statute as the decision-maker and negotiator. Rather, the objective is to create a fact-finding mechanism that would consider the relevant practices and result in a detailed factual report responding to the allegations and counter-allegations involved in the investigation. USTR could then decide, based on the report and,

in all likelihood, a hearing commenting on the report, whether to take further action and, if so, the nature of any such action.

For Fujifilm, the prerequisites for such an approach are: (1) the fact finding is undertaken by someone neutral that is mutually acceptable to Fujifilm and Kodak, (2) the fact finding also focuses on reciprocal access in the U.S. market, as required by the statute, (3) the process is transparent, and (4) there is a full opportunity to address fully the applicable legal standards in the process. In other words, the process has to be fair and comprehensive, and insulated completely from "political" pressures.

If USTR is to avoid stalemate and confrontation in this case, it must devise a mechanism for resolving this dispute that has credibility with the international community. In this regard, USTR must recognize that a business-as-usual Section 301 investigation lacks such credibility. First, USTR is regarded internationally as a negotiator and an advocate, not a neutral fact finder. Second, the unilateralism inherent in Section 301 renders its legitimacy suspect in the eyes of the international community. In light of these unavoidable political realities, a constructive outcome to this dispute is possible only if USTR pursues a fact finding process that addresses these international concerns.

OECD Committees

The OECD has working groups and staff that could address this issue. The OECD already has working groups that address competition law issues. These working groups provide the necessary expertise to evaluate these complex facts and the related competition law issues. In a sense, the OECD staff could function as arbitrators -- reviewing submissions, asking questions, and preparing a factual report.

Interestingly, U.S. business groups have been advocating the use of an OECD competition law mechanism to address such problems. Given the broad-based support for the creation of such a mechanism, it is appropriate to consider seriously the option in this case.

The OECD mechanism may not have quite as much credibility as other alternatives, since there is a somewhat greater potential for political factors to influence the work of the staff. Nevertheless, the OECD option has more credibility than USTR's undertaking fact finding on its own.

WTO Panel

The WTO provides an established, multilaterally accepted mechanism for resolving disputes. A WTO panel would meet the requirements of neutral, credible fact finding. Depending on the particular individuals who serve as panelists, the WTO panel might not have as much expertise as the OECD working groups. But neutrality and credibility are more important considerations than technical expertise.

Some have questioned whether the Kodak complaint can properly be brought before the WTO. Decisions about the scope of WTO rules, however, should be decided by the WTO itself, not unilaterally by individual member countries. The issue is not whether the right to invoke national laws is reserved; the issue is whether multilateral solutions should at least be attempted before resorting to unilateral measures.

Non-binding Arbitration

Arbitration provides a mechanism for allowing neutral experts to undertake fact finding. The arbitral forum could be either U.S.-based (such as the American Arbitration Association) or international (such as the International Chamber of Commerce). Parties would agree on knowledgeable, neutral arbitrators. Parties would make factual submissions, the arbitrators would pose questions, request further facts, and the arbitrators could then issue a report.

Although it is doubtful either party -- Fujifilm or Kodak -- would agree to binding arbitration, non-binding arbitration should not be a problem. The arbitrators need not actually reach a decision -- they need only to find facts and make conclusions of fact and law.

Neutral Panel of Experts

This option would not involve any preexisting mechanism, and could therefore be tailored in whatever way the parties wished. Parties would agree on a panel of neutral, credible,

knowledgeable experts. These experts could be academics, former government officials, think tank scholars or recognized international experts on competition law issues. The panel would receive submissions by both sides, pose questions, and issue a report. The panel could function in a manner similar to a WTO panel.

Administrative Law Judge

Dozens of agencies use ALJs for fact finding pursuant to express statutory authorization. But other agencies also do so without express authorization. The Social Security Administration, for example, uses numerous ALJs for fact finding without express statutory authorization. The Department of Justice uses ALJs to fulfill its statutory responsibilities under the Newspaper Preservation Act. Interestingly, the DOJ uses ALJs when there is a factual dispute, and does not use them when there is no material dispute as to the facts.

ALJs offer two advantages. First, there is a well developed mechanism for using ALJs for fact finding. The ALJ issues a factual report, which is then used as a basis for ultimate decision making by the responsible agency. Second, many ALJs have specific expertise in the field of competition policy and law. The ALJ would thus have the necessary expertise to evaluate complex legal and economic facts. While the ALJ option would undoubtedly have to be adapted to allow prompt fact finding (i.e., limits on discovery agreed to in advance) and avoid endless motions, this could be accomplished by an agreed upon

schedule and defined timetable for presentation of factual information. The ALJ option thus would easily allow USTR to have a credible, expert, neutral party undertake fact finding.

* * *

In terms of a sequence of events, we would propose the following:

- USTR would discuss with Fujifilm and Kodak a mechanism for comprehensive and neutral fact finding. All three would agree on the type of mechanism.

- All three parties would decide on procedures and tentative timetables for the factual investigation.

- Although tentative timetables are possible, it would be a mistake to create artificial deadlines for fact finding. The goal is accurate facts. Therefore, USTR should suspend the current Section 301 investigation. The recent USTR decision on the Section 301 investigation of the EU banana regime -- where it terminated one investigation and started another as part of a WTO complaint -- shows the great flexibility provided USTR under Section 301 procedures.

While reserving the right to discuss and agree upon the details of any procedure adopted, Fujifilm has no objection to procedurally fair, neutral fact finding. Fujifilm is not afraid of the facts. If Kodak continues to resist efforts at neutral fact finding, USTR should be very skeptical of the underlying merits of Kodak's complaint.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20506

DEC 10 1995

The Honorable Thomas J. Downey
Downey Chandler, Inc.
Suite 1210
1401 I Street, N.W.
Washington, D.C. 20005

Dear Mr. Downey:

Thank you for your letter of November 15, 1995 concerning the pending Section 301 investigation of color photographic film and paper. As the Chairman of the Section 301 Committee, Ambassador Kantor has asked me to respond on his behalf.

I certainly appreciate your suggestions for ways to resolve the factual disputes between Kodak and Fujifilm regarding Fuji's business practices and their impact. However, our section 301 investigation concerns market access for foreign color photographic film and paper in Japan and related practices of the Government of Japan. This is an important bilateral trade matter between the Government of the United States and the Government of Japan -- not between Kodak and Fuji -- and we will conduct the investigation accordingly. Therefore, there is no basis for USTR to delegate investigatory and decision-making authority to third parties such as the OECD, arbitrators, a panel of experts, or an administrative law judge.

As your letter points out, section 301(d)(3)(D) does provide that "[f]or purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign national and firms shall be taken into account, to the extent appropriate." I must disagree, however, with your position that this provision requires USTR to determine "whether or not Fujifilm is denied reciprocal opportunities in the United States," and more specifically, whether "Kodak's exclusionary practices have denied 'reciprocal opportunities' to Fujifilm in the United States."

Section 301(d)(3)(D) is a discretionary provision intended to facilitate the determination of whether a foreign government's acts, policies, or practices are unreasonable by considering the lack of reciprocal access afforded U.S. companies in foreign markets relative to foreign companies' access to the U.S. market. Congress' clear objective was to promote greater access to foreign markets by U.S. firms, not create a procedure for examining whether the U.S. market was sufficiently competitive. Both the Senate Finance Committee and the House Ways and Means Committee used identical language to express this objective:

The Honorable Thomas J. Downey
Page Two

> The amendment provides that in determining the existence of an "unreasonable" act, policy or practice, appropriate consideration could be given to the denial by a foreign government of access to the market in that country and opportunities within that market generally reciprocating those available within the United States.

S. Rep. 100-71, 100th Cong., 1st Sess. 87 (1987), and H. Rep. No. 100-40 Part I, 100th Cong., 1st Sess., 69 (1987) (emphasis added). Neither the plain language of the statute nor its legislative history support the interpretation that section 301(d)(3)(D) requires USTR to ensure "reciprocal opportunities" in the United States. In fact the House Ways & Means legislative history cited above further provides:

> . . . even if the market opportunities provided in the foreign market equaled or exceeded those provide in the United States, the particular foreign practice could be actionable if it were nonetheless unfair and inequitable. . . .

Id. Nor does the plain language of the statute and its legislative history support the interpretation that section 301(d)(3)(D) requires USTR to apply a "clean-hands" test to Kodak. Even if that interpretation were in accordance with the law, it is difficult to see its relevance in this case given that the United States Court of Appeals for the Second Circuit affirmed the district court's holding that Kodak was not engaged in anti-competitive practices in the United States.

As you know, your client Fujifilm is invited to submit any information it deems relevant for the record of the Section 301 investigation. My staff has been, and will continue to, review all submissions carefully. In addition, we are available to meet with you as needed to discuss both factual and legal issues.

Sincerely,

Irving Williamson
Acting General Counsel

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Houghton.

Mr. HOUGHTON. No questions.

Chairman CRANE. Mr. Camp.

Mr. CAMP. Thank you.

What I understand you are saying, Mr. Patrick, is that you would like a neutral arbitrator to verify the facts and then take it before the JFTC or ultimately to MITI after that? Is that what I understand? Or maybe I misheard that.

Mr. PATRICK. I think yes, sir. I think MITI has suggested it be taken to JFTC first. What Fuji Film has suggested is that there be some neutral fact-finding body that will review these facts.

Mr. CAMP. And establish a factual basis first?

Mr. PATRICK. Yes, sir.

Mr. CAMP. And then go to the appropriate entity——

Mr. PATRICK. Exactly.

Mr. CAMP. Thank you; I appreciate your answer.

No further questions.

Chairman CRANE. Mr. Coyne.

Mr. COYNE. No questions.

Chairman CRANE. Mr. Graham.

Mr. GRAHAM. Thank you, Mr. Chairman.

One brief question, Mr. Patrick. You seemed to get all the questions here. There was a mention about the Japanese Government's role in providing information and cooperating. And your suggestion—this is what I am trying to understand here—is that you want to pick a neutral independent party, as the gentleman just said, to arbitrate the facts? And if the Japanese Government refuses to cooperate with that independent body, that is a bridge we will cross when we get there?

Mr. PATRICK. Yes, sir; I think so. As we understand it, 301 is supposed to be a tool of last resort rather than first resort.

Mr. GRAHAM. Thank you.

Chairman CRANE. Well, I thank all of you folks for your patience and endurance, and we will include any printed matter you have that you did not deliver in testimony in the record.

And I would like to now call our last panel: Dr. Ellen Frost, senior fellow, Institute for International Economics; Stanton D. Anderson, counsel, Electronic Industries Association of Japan on behalf of the Japanese semiconductor industry; Cyril Murphy, vice president, international affairs, United Air Lines; and Dr. Don Hilty, senior fellow, Economic Strategy Institute.

And Mr. Graham, do you have a unanimous consent request?

Mr. GRAHAM. Yes, Mr. Chairman. I would like to make a 2- or 3-minute statement for the record to give the Subcommittee some information about my district and how this relates.

Chairman CRANE. Without objection, so ordered.

STATEMENT OF HON. LINDSEY O. GRAHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. GRAHAM. Thank you, Mr. Chairman. I have enjoyed being here, and I have learned a lot. I am obviously not on the Subcommittee, and I have a lot to learn about trade issues. But I have

been a lawyer before I was in Congress, and I do have a fairly good sense of fairness. I have been in a lot of courtrooms where you go into the courtroom and you wonder "Hmm, I wonder if this crowd is going to give me a fair trial?" And what I want to speak to here today is not so much who is right and who is wrong but about a procedure that I think could take our Nation forward and will help resolve a potential problem greater than free and fair trade, and that is the way you arbitrate disputes.

Let me tell you a bit about the Third District of South Carolina. We have in our district an evolving economy that reflects what is going on in the world very much so. We have felt directly the impact of industrial change in America and around the world. During the primary in South Carolina, you had Mr. Buchanan in front of closed textile mills railing on NAFTA and GATT, and you had Senator Dole at the BMW plant sitting in a car. And I thought it brought it all home what is going on in the world and what is going on in America, and it is going on in my district where you have one area of the economy that is suffering, and you have a district in the South where the average income is $13,200. That is the per capita income in the Third Congressional District of South Carolina, $13,200. We are a poor district but very proud. We are trying to grow, and we are trying to get good jobs into the district.

The textile industry has suffered greatly through trading conditions in the world, and in my opinion, some of them have been unfair. You have unfair labor practices in China, government subsidies throughout the world that have hurt the textile industry. We have lost 9,500 jobs as a result of trying to balance the budget and downsize the Department of Energy facility in my district, Mr. Chairman, the Savannah River site, which is the largest site in the chain.

Some good news has been Fuji. Fuji has chosen South Carolina for billions of dollars in investments in modern, clean, efficient plants. These plants have provided high wage employment opportunities to an enormous pool of enthusiastic and committed workers. I would like to highlight the Fuji story just for 1 minute so the Subcommittee can understand how this talk impacts a district in South Carolina with an average income of $13,200. Fuji began in 1989 in Greenwood, South Carolina, in the middle of my district, producing photographic plates. A second facility for producing VHS videotape was completed in 1992. It may be of interest to the Chairman that all of the Fuji one-half inch VHS videotape sold in Japan is manufactured in Greenwood, South Carolina.

In 1995, Fuji Greenwood completed a third facility that produces one-time use, quick-shot, quick-snap cameras, and I have a lot of them in my office. We are trying not to violate the gift ban, but we will be glad to show you one of them.

Fuji Greenwood will soon bring online a facility for the production of color photographic paper. Fuji Greenwood began this year by announcing plans to build a central distribution and graphic arts film plant in Greenwood, and less than a month ago, Fuji announced again that it will soon open a facility that will package more than 10 million rolls of 35 millimeter Fuji color film every month in Greenwood, South Carolina. In all, by completion date 1997, employment at the Greenwood manufacturing complex will

exceed 1,200 American associates. Factory space will total almost 2 million square feet, and total investment in Greenwood, South Carolina will be approximately $700 million.

As you saw from the many news reports during the primary, what is going on in South Carolina and what is being talked about in the world, I can tell you that Fuji has been a good corporate citizen and that they have been doing good things for the economy of a district that is poor and needs all of the jobs it can get. It is my understanding that the situation between Fuji and Kodak is unique in the sense that the Kodak Co. has chosen to go to the 301 complaint route without following the traditional complaint process. Japan has acknowledged problems in the past in other areas and has sat down at the table. Unfortunately, in this case, we never got to that step in the process; we have gone directly to the American Government to say decide this.

Because all of the facts are in question, it is impossible for me to know who is right. For every chart that they produce at Kodak, Fuji has a chart. Now, I am not beginning to tell you I know the answer, but I do know this: That what we need to do is have some semblance of fairness. And I will say this in answer to Mr. Rangel's question that I believe the U.S. Trade Representative has a role to play, but he should not be the prosecutor, the judge and the jury. I believe that is an extension of his powers beyond what was intended and will set up a dynamic that will be bad for America, because if you have multinational corporations located in America, like they are in my district, it is unfair, I think, for an American company to make a complaint, bypass traditional complaint methods and make allegations and ask the person who is negotiating for American businesses, who can impose sanctions, to be the fact finder.

All I am asking—and I do not know what the facts are—is that some party other than the U.S. Trade Representative, who has too many hats to wear in this case, decide what the facts are in a neutral, unbiased way, and if the Government of Japan does not cooperate, that is something that we need to know and we need to fix. But get a third party in to decide the facts; then, we can act and act responsibly. If we go down this road in this case, it is going to lead to a situation that will not only create the perception of unfairness for multinational businesses who want to locate in America but will chill foreign investment; and foreign investment in my district has been positive.

Thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Yes; I would just like to add on to what my colleague has said. Kodak is not in my district; it is in Bill Paxon's district and others, probably Louise and probably John LaFalce's. But I do know the Kodak people, and everything that I have known about them, they have been decent, forthright, honest people to a fault. And I think that they would dearly love—and I really cannot speak for them—but my impression is they would dearly love to be able to do in Japan—which they are not allowed to do because of access to the market—what Fuji has been able to do here because they do have access. Thank you.

Chairman CRANE. Very good.

Dr. Frost.

STATEMENT OF ELLEN L. FROST, SENIOR FELLOW, INSTITUTE FOR INTERNATIONAL ECONOMICS

Ms. FROST. Thank you very much, Mr. Chairman.

Although I spent 10 years working for two multinational corporations that were seeking to expand business in Japan, I am not going to comment specifically on the business conflicts that have dominated this hearing. What I will try to do instead is to sketch the broader context in which these disputes are unfolding. My bottom line is twofold: First, changes in the global pattern of business dictate a shift in priorities with respect to our trade policy toward Japan; and, second, that new regional and global institutions give us an opportunity to pursue those priorities more effectively. With respect, I submit that these are the areas that the Subcommittee should be focusing on, and not bilateral statistics or empty rhetoric.

My first category is changes in the pattern of global business. The first change that I single out in my written testimony is the importance of investment, services and intellectual property. This stems directly from changes in the way companies are beginning to do business around the world. The much touted word globalization has very specific meaning, as I observed in the private sector. It means first and foremost that thanks to the revolution in transportation, information and communication, companies can engage in flexible manufacturing and customized production in local markets around the world. It means that they can disperse different phases of the industrial life cycle throughout different countries, from research and development through production of components, system integration, final assembly, marketing, and aftermarket sales and services. And to do all of this, they have to move knowledge around the world. In a nutshell, that is my sketch of globalization.

Taken together, these changes have three major implications for U.S. trade policy. The first is that trade has become inseparable from investment. The second is that merchandise trade has become inseparable from trade in services. The third is that this diffusion of knowledge requires the protection of intellectual property.

So to begin with, I would say that the main focus of U.S. trade policy vis-a-vis Japan in the first instance ought to be investment, services and the protection of intellectual property. Of these areas, Japan is something of an outlier in investment as other witnesses have noted. In the United States, foreign direct investment is on the order of 7 percent of GDP, but in Japan, it is well under 1 percent. This is certainly a problem that impedes the opening of the market.

The key role of investment leads directly to another feature of the changing global business environment, and that is the importance of deregulation and competition. As companies become active in more and more countries, it matters more and more how they are treated in those domestic markets. In other words, how they are treated in domestic markets affects their international competitive position around the world. This is why the scope of trade rules has been expanding steadily to encompass practices hitherto considered domestic.

Unfortunately, one of the domestic practices that is most relevant here is not yet covered by the rules of the World Trade Organization, and that is competition policy. Clearly, as you have heard this afternoon, anticompetitive behavior can impede access to markets. This is a frontier policy area about which considerable thinking is going on, but there is as yet no consensus about how to coordinate policies in this area. The United States and Japan are already cooperating to some extent, but they need to go even further.

But competition policy needs to be accompanied by deregulation. There is a lot of talk about deregulation in Japan. Just as Mark Twain used to say about giving up smoking, the Japanese Government has announced deregulation packages dozens of times—with results that are still rather limited. In addition to bureaucratic caution and vested interests, I think the Japanese tend to hold the government responsible for safety and order in ways that an American would not understand. I remember that at the time of the Tylenol poisoning case, some Japanese friends of mine said, "Why didn't you blame the government?" Frankly, it would not occur to Americans to blame the government. Some madman got into the Tylenol and put poison in the bottles; it wasn't the government's fault. This difference feeds a large amount of bureaucratic caution in Japan that makes deregulation even more difficult than it would be here.

The fact is, as Congressman Dreier noted, that competition policy and deregulation are the keys to opening up the Japanese market, and they must go together.

So to sum up so far, I would emphasize investment, services, intellectual property, competition and deregulation as central targets of U.S. trade policy toward Japan.

The third change in the global business environment is the sea change in developing countries. I added this because I want to put United States-Japan disputes in perspective. The developing world is where the real growth is going on, particularly Latin America and East Asia. Growth rates in some regions are two or three times higher than they are in the United States or Japan. When asked why he robbed banks, Willie Sutton said, "Because that is where the money is." The Clinton administration has looked at these regions and said, "That is where the growth is." Hence the importance of regional trade initiatives. If handled correctly, these regional agreements can ratchet up multilateral standards, but that is a subject for another day.

I think the growth in developing countries has implications for both Japan and the United States. In my written testimony, I single out three real opportunities for the United States: Goods and services associated with the American lifestyle, ranging from blue jeans to American films, where there is just no competition from Japan at all; goods and services associated with productivity; and goods and services associated with modernizing the infrastructure, broadly defined to include everything from roads to telecommunications. We are tremendously competitive in these areas.

The implication of this same sea change for Japan is that Japan needs to continue to expand manufactured imports from developing countries, not just from the United States. Along with growing faster, this is the best thing that Japan could do for these regions.

The second category of change that I want to bring to your attention has to do with the institutional environment. In my testimony, I single out the Asia-Pacific Economic Cooperation Forum or APEC and the new dispute settlement mechanism in the World Trade Organization.

There are several features of APEC that have direct bearing on United States-Japan trade tensions. The first is that APEC offers an institutional mechanism in which not only the United States but other countries can work in a cooperative atmosphere to open the Japanese market. APEC leaders have committed themselves to address all barriers to trade and investment, ranging from agriculture to competition policy. This is a potentially significant contribution. In Osaka specifically, the APEC leaders beat back challenges to scale back the comprehensiveness of APEC's commitment to free trade.

Moreover, APEC can help depoliticize United States-Japan trade disputes and offer a larger role to business. Finally, APEC offers both countries the chance to become more firmly embedded in the emerging Asia-Pacific community, and I think that enhances the security and stability of the region. Clearly, APEC offers no short-term results, but I think a historical process is beginning to operate.

With respect to the new WTO dispute settlement procedures, the United States has a tremendous opportunity. Some Japanese have recently claimed that these procedures mean that bilateral disputes are now unnecessary because the age of bilateral trade is behind us. Actually, the WTO dispute settlement procedure encourages bilateral discussions in the first instance. In addition, there will be disputes that are not yet covered by WTO rules, so I think this prediction is a little bit premature. Nevertheless, there are many more areas that are covered by WTO rules, and we thus have more opportunities to address our concerns in the World Trade Organization.

On a different topic, I want to say just a quick word about both substance and style in United States-Japan relations. On the substance, I notice that every time the Commerce Department releases its statistics, there is a great scramble to put a spin on the bilateral trade numbers. But the truth is that bilateral trade statistics are being blown way out of proportion. For reasons I have already explained, they are becoming somewhat irrelevant to the real life of global business. They disguise rather than illuminate the trends that I have been describing. And, in purely economic terms, of course, they have always been irrelevant, because what counts is a country's global current account surplus. This is the distorting element in the world trading system: The size of the Japanese surplus. Here, the news is modest but good; the Japanese current account surplus is coming down noticeably, from 3.2 percent of GDP in 1992 to 2.2 percent in the third quarter of 1995.

Another weakness of these trade statistics is that they often exclude services, in which the United States is so competitive. As you know, our service surplus last year offset more than a third of our deficit in goods.

I also want to comment on the issue of style. This is a delicate matter, but I believe that an unduly aggressive and self-righteous

public posture vis-a-vis Japan helps to explain why Japan won the public relations contest surrounding managed trade. It is staggering to think that Japan and the European Union accused Washington of managed trade when, in fact, they have been engaging in managed trade for years. The purpose of our trade policies is to open markets, not to limit trade, but we seemed to lose our case in the court of public opinion. Now, you might well ask, what does it matter? Who cares? Foreigners do not vote. We are not in a popularity contest. But public opinion abroad makes a difference: It influences the political climate in which a trade official has to operate when he or she is coming to Washington. I believe that hostile publicity worsens the situation for U.S. negotiators, because that official is under domestic pressure not to give in to U.S. bullying.

Finally, I want to comment very briefly on what Congressman Dreier said about public education and support for open trade. At my institute, we think a lot about this, and we agree that it is a serious problem. In fairness, however, I would not limit the failure to educate the public to the Clinton administration. The explosion of trade in our economy ever since the late seventies has not been accompanied by corresponding efforts to educate the public by administrations of either party. I encourage the Subcommittee to address this problem.

Thank you very much for this opportunity to present my views.

[The prepared statement follows:]

U.S.-JAPAN TRADE: THE BROADER CONTEXT

Dr. Ellen L. Frost
Senior Fellow, Institute for International Economics

Testimony Before the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives

March 28, 1996

Mr. Chairman, and members of the Subcommittee, my name is Ellen Frost. Roughly half of my 24-year career in Washington has been spent in the private sector, and half in the U.S. Government. Until last June I served as Counselor to U.S. Trade Representative Mickey Kantor, a non-legal position roughly analogous to Director of Policy Planning. I am currently a Senior Fellow at the Institute for International Economics, headed by C. Fred Bergsten. The Institute is a private, non-profit, non-partisan research institution devoted to the study of international economic policy.

I will not attempt to evaluate the specific conflicts that dominate much of today's hearing. Instead, I will try to sketch the broader context of these disputes. My "bottom line" is that changes in the pattern of global *business* dictate a shift in priorities vis-a-vis Japan, and that new regional and global *institutions* give us an opportunity to pursue those priorities more effectively. These are the areas the Subcommittee should focus on, not bilateral statistics or overheated rhetoric.

I. CHANGES IN THE PATTERN OF GLOBAL BUSINESS

A. The Importance of Investment, Services, and Intellectual Property Protection

Changes in the way companies do business around the world have specific implications for U.S. trade policy toward Japan.

The twin revolution in information and transportation enable companies to engage in flexible manufacturing and customized production for local markets. Mass production in a single location is disappearing. In globally traded sectors, companies are dispersing different phases of the industrial life cycle among different countries: research and development, production of components, system integration, final assembly, marketing, and after-market sales and service. Dispersing these various phases means moving a company's knowledge around the world.

Taken together, these changes have at least three major implications for U.S. trade policy. First, trade has become inseparable from investment. More than 40% of U.S. exports go to U.S. subsidiaries abroad. Second, merchandise trade has become inseparable from trade in services. U.S. service exports are now equivalent to about 40% of merchandise exports, and they are catching up rapidly. World trade in services are expanding at roughly 12% a year, leading some observers to believe that trade in services will exceed trade in goods within a decade or so. Third, the diffusion of knowledge requires adequate protection of intellectual property.

These trends suggest that the main focus of U.S. trade policy vis-a-vis Japan should be on investment, services, and the protection of intellectual property. Product-specific disputes should be pursued as usual, but they should not be blown out of proportion.

In the area of investment in particular, Japan is an "outlier." In the United States, foreign direct investment is equivalent to over 7% of GNP, but in Japan that figure is less than half of one percent. In 1994 U.S. investment in Japan amounted to only $37 billion, while Japanese investment in the United States

was $103 billion. By contrast, U.S. investment in Europe exceeded $300 billion, as did European investment in the United States. This gap reflects a number of obstacles: structural barriers associated with the corporate groupings known as keiretsu, the exorbitant price of land, and excessive regulation, to name a few. The current economic recession in Japan only makes things worse.

All three of these priorities -- investment, services, and intellectual property -- are the subject of multilateral agreements negotiated during the Uruguay Round. Along with Europe, Japan and the United States share a common interest in strengthening these agreements. Scheduled reviews of Uruguay Round agreements and the December ministerial meeting in Singapore should provide opportunities for closer U.S.-Japan collaboration.

B. Deregulation and Competition Policy: The Twin Essentials

As companies become active in more and more countries, it becomes increasingly important to improve the way they are treated in domestic markets. It does little good to achieve free trade at the border if domestic barriers effectively block new entrants to the market.

This is why the scope of trade rules has expanded over time from border-based measures such as tariffs and quotas to a variety of measures hitherto considered "domestic." Examples encompassed in the Uruguay Round include government procurement, subsidies, and protection of intellectual property. Since the United States is already a relatively open economy, with few domestic barriers to new business, we stand to gain considerably from this trend.

One key area is not covered by Uruguay Round agreements, however, and that is competition policy. In 1948, the Havana Charter explicitly recognized that anti-competitive behavior could act as a barrier to market access. But the Charter never came into effect, nor was it revived during the Uruguay Round negotiations. Many U.S.-Japan trade disputes stem from anti-competitive behavior in Japan, not because Japan lacks adequate laws, but because they are not enforced. In the absence of WTO rules, the United States has no choice but to use bilateral or even unilateral measures.

Along with competition policy comes deregulation. The Japanese government recognizes the need and has firmly committed itself to deregulation. But like Mark Twain's effort to give up smoking, officials have done it hundreds of times, with only limited results. Bureaucratic caution and vested interests impede the process. More than most other societies, the Japanese tend to hold the government responsible for safety and order in ways that would not occur to the average American.

Competition policy and deregulation are the keys to a more open Japanese market, and they go together. Deregulating an industry will not open up opportunities for new entrants to the market unless an effective competition policy is in place.

C. The Sea-Change in Developing Countries

To put U.S.-Japan trade disputes in perspective, the biggest single change in the global environment since the declining years of the Cold War is the sea-change in policy in developing countries, especially those in Latin America and the Asia-Pacific region. As a result of a shift toward market-oriented policies, many developing countries are exhibiting rates of growth that are two or even three times higher than growth rates in developed countries. This sea-change has consequences for both the United States and Japan.

A major consequence for the United States is that the growth that is now taking place in developing countries has sparked an enormous demand for goods and services that Americans excel at

producing. First, the population of these countries includes a very high proportion of young people hungry for products of the American lifestyle, from blue jeans to American movies. In this huge and lucrative market, American exporters face virtually no competition from Japan. Second, there is a growing demand for the goods and services associated with productivity -- the same goods and services that have given rise to the revolution in American manufacturing. Third, there is a pressing need to modernize the infrastructure of these countries, from ports and roads to modern telecommunications and environmental products and services. Again, Americans are world-class competitors in these areas.

A major consequence for Japan is that the Japanese market needs to more open to manufactured exports from developing countries in order to sustain their growth. As the world's second biggest national economy, Japan has a responsibility to help promote global growth. By any measure, however, Japan accepts a far lower proportion of manufactured exports from developing countries than other industrialized countries. There are definite signs of improvement, much of which stems from Japanese investment abroad, but progress is hampered by the sluggish rate of growth in Japan. The best contributions that Japan could make to developing countries would be to further open its markets to non-Japanese affiliated companies and to grow faster.

II. CHANGES IN THE INSTITUTIONAL ENVIRONMENT

A. The Role of APEC

The new factor in U.S.-Japan trade relations is the Asia-Pacific Economic Cooperation forum (APEC), whose eighteen members account for about half of the world's output. At the 1994 APEC summit, APEC leaders made a political commitment to achieve "free and open trade and investment" in the region by 2010 for industrialized countries (which account for about 85% of APEC's trade) and 2020 for the rest. APEC's Osaka Action Agenda, announced last November, reaffirmed this commitment and declared that APEC economies "will take the lead" in strengthening the open multilateral trading system, possibly including initiatives for the first WTO Ministerial Meeting in Singapore.

Several features of APEC have bearing on U.S.-Japan trade tensions. First, APEC offers an institutional mechanism in which many nations, not just the United States, can work to open Japanese markets. At Osaka, APEC leaders beat back challenges to scale back the comprehensiveness of their commitment to free trade and investment, notably from Japan and South Korea on agriculture. Second, APEC's goal is to identify and remove all barriers to free trade and investment, including competition policy. Since many U.S.-Japan trade disputes arise from anti-competitive behavior, and since competition policy is not yet encompassed by WTO rules, APEC can make a real contribution here. Third, APEC can help to de-politicize U.S.-Japan trade disputes by offering regional mediation services and allowing a bigger role for business.

APEC has other positive effects as well. As nations scramble to compete for investment, APEC stimulates what C. Fred Bergsten calls "competitive liberalization" and thus reduces the chances of mercantilism and protectionism. Moreover, APEC offers opportunities for leverage. For example, U.S. interest in APEC and Latin America arguably helped to bring about a conclusion to the Uruguay Round by sending a signal to European leaders that the United States had alternatives.

Finally, APEC has geopolitical significance. In the words of trade expert Geza Feketekuty, Director of the Center for Trade and Commercial Policy in Monterey, regional free trade agreements have become "the principal focus for organizing relations among states." APEC offers both Japan and the United States a chance to become more firmly embedded in the emerging Asia-Pacific community and

thus to enhance the stability of the region. It is probably healthy for both countries to stop loading so much onto the bilateral relationship alone.

B. WTO Dispute Settlement Procedures

Another change in the institutional environment is the enormous improvement in dispute settlement procedures in the World Trade Organization. With the active encouragement of the Congress, U.S. negotiators fought for and won strong and disciplined language on dispute settlement in the Uruguay Round. This was an important victory. Because its interests are global, the United States historically brings more complaints against other countries than they do against the United States. The new procedures will prevent Japan from stonewalling a U.S. complaint.

As my colleague Jeffrey J. Schott testified before this Subcommittee on March 13, the new WTO dispute settlement mechanism has handled about 30 requests for consultations. The United States has directly challenged foreign practices in eight cases and has joined plaintiffs in other disputes as an interested third party. Three cases have been brought concerning U.S. practices.

Some Japanese have recently claimed that the existence of these new procedures means that the United States and Japan have outgrown the era of bilateral trade negotiations. Such statements reflect misunderstanding of the way dispute settlement works. The WTO process encourages bilateral resolution of disputes and provides a positive framework within which bilateral discussions can be pursued.

III. SUBSTANCE AND STYLE IN U.S.-JAPAN TRADE RELATIONS

A. "Damned Lies and Statistics"

Whenever the Commerce Department releases U.S. trade statistics, both the Japanese government and the U.S. Executive Branch scramble to prove that the bilateral imbalance is improving. Much of this showmanship is aimed at the Congress.

The truth is that bilateral trade statistics are being blown way out of proportion. In terms of changes in global business patterns, they are becoming irrelevant. They disguise rather than illuminate the trends in global competition that I have just described. In purely economic terms, they have always been irrelevant. What counts is a country's global current account position, which includes returns on investment. From this perspective, the news is good: Japan current account surplus has fallen from 3.2% of GDP in 1992 to 2.2% in the third quarter of 1995.

Another weakness of bilateral trade statistics is that they often omit trade in services. Last year, the U.S. ran a surplus in services that offset more than a third of our deficit in goods.

Emphasizing bilateral trade balances reinforces the wrong-headed idea that trade policy determines the size of the trade balance, which is not the case. Trade policy has a lot to do with the distribution of trade and the composition of jobs, but trade balances are primarily determined by macroeconomic policy, and specifically by the size of the gap between what a country saves and what it spends. Growth rates and exchange rates also play a part. As long as we spend more than we save, we are going to have a trade deficit with someone. As long as Japan is experiencing such flat growth, the demand for imports will remain sluggish. It is precisely because our economy is so healthy that our appetite for imports is so vigorous. Members of the Subcommittee should not be misled by the "spin" placed on bilateral trade statistics.

B. Style Matters

The Japanese word ijime means bullying or hectoring. Ijime among schoolchildren is something of a national problem in Japan. When Americans appear to be resorting to it in the context of trade, reactions can be swift and negative. The result strengthens the hand of precisely those groups least willing to accommodate U.S. interests. It certainly helped Mr. Hashimoto to become prime minster.

I believe that an unduly aggressive and self-righteous public posture vis-a-vis Japanese trading practices helps to explain why, in the context of last year's auto parts dispute, Japan won the public relations contest on "managed trade." It is staggering to think that Japan and the European Union accused Washington of "managed trade" when they have been managing trade between them for years. The goal of U.S. trade policy is to expand trade, not to limit it. The use of quantitative indicators is one way of measuring what the market would have achieved if the market were free to operate. Yet the United States took a drubbing in the court of world opinion.

Why does it matter? Well you might ask. We are not in a popularity context, and foreigners don't vote. But it does matter, for a very simple reason. When a country's newspapers are full of emotional articles accusing the United States of bullying and urging politicians not to back down, a trade minister who comes to Washington to negotiate is not going to have as much flexibility as he or she would have otherwise. We will do better in Japan if we stop grandstanding, respect the courtesies, and adopt the style of patient endurance that the Japanese admire.

Thank you for this opportunity to present my views.

Chairman CRANE. Thank you, Dr. Frost.

Mr. Anderson, what are the time constraints for your opening remarks?

Mr. ANDERSON. My constraints?

Chairman CRANE. The reason I asked is, as you know, we have two votes back to back coming up right now, and we might recess if it is all right with you——

Mr. ANDERSON. Sure.

Chairman CRANE [continuing]. And come back here right after these two votes.

The Subcommittee stands in recess.

[Recess.]

Chairman CRANE. Everyone back? All right.

Mr. Anderson.

STATEMENT OF STANTON D. ANDERSON, COUNSEL, ELECTRONIC INDUSTRIES ASSOCIATION OF JAPAN

Mr. ANDERSON. Thank you, Mr. Chairman, for the opportunity to testify here this afternoon on the United States-Japan semiconductor arrangement. I am here on behalf of the Electronic Industries Association of Japan or EIAJ. EIAJ is a trade association made up of approximately 600 members, representing both Japan's semiconductor manufacturing industry as well as companies that use semiconductor chips.

Mr. Chairman, the message I would like to convey here today is that the mission of the semiconductor arrangement has been accomplished. Its objectives have been achieved in full. And because the objectives have been achieved, we believe the arrangement should expire as scheduled at the end of July. The arrangement was intended to be temporary. It was not intended to be a permanent, government-sponsored affirmative action program for the U.S. semiconductor industry.

The arrangement had two basic objectives. The first was to increase market access opportunities in Japan for foreign semiconductor companies. The second was to prevent dumping of semiconductors. Since there have been no allegations of dumping in many years, I would like to focus on the market access side of the arrangement.

The record of foreign success in the Japanese chip market over the past decade is remarkable. Foreign market share has exceeded the U.S. industry's 20 percent expectation for the past 2 years. The figures released earlier this month for the fourth quarter of 1995 show that foreign share in the Japanese market now is up to nearly 30 percent. Foreign sales have increased more than tenfold over the past decade, from about $900 million in 1986 to more than $9.5 billion in 1995. Design-ins have gone up in a similar fashion, rising nearly 900 percent between 1986 and 1995. Close business relationships have been forged between United States and Japanese semiconductor companies.

As you know, there was some dispute as to how much of this dramatic change is attributable to market forces and how much is due to the arrangement itself. U.S. observers tend to credit the arrangement; frankly, we do not. We believe market forces have been

the prime mover behind increased foreign sales in the Japanese market.

The past couple of years have seen a digital revolution in electronic products, including most consumer products, personal computers and portable telephones. U.S. semiconductor manufacturers lead the world in digital semiconductor technology. As a result, Japanese semiconductor users have turned to foreign suppliers, mostly American, to provide them with cutting-edge devices based on this new digital technology.

Whatever the answer, the inescapable fact is that foreign chips are doing extremely well in the Japanese market. Remember the United States defined its expectation under the arrangement as 20 percent foreign market share. SIA said in 1990 that the 20-percent figure was a threshold after which market forces should be allowed, "to take over and operate." We are now at 30 percent. We do not believe that there can be any real dispute that the objectives of the arrangement have been achieved.

While these dramatic increases in foreign chip sales have been occurring, the structure of the global semiconductor manufacturing industry has undergone fundamental changes as well. There has been an explosion in joint ventures and other types of long-term alliances between major chipmakers around the world. Driven in part By huge capital requirements, the biggest names in the semiconductor industry have joined hands in R&D, production and marketing in the latest generations of semiconductor products.

Ten years ago, bilateral issues dominated the semiconductor sector. Over the past decade, a new global semiconductor industry has emerged, with trade, investment and production focused in many parts of the world, including Southeast Asia, Korea and Taiwan. In this new global environment, the challenges facing the semiconductor industry demand multilateral private sector solutions. The era in which problems in this sector can be solved bilaterally between governments of the United States and Japan is over.

In closing, Mr. Chairman, let me repeat that the mission of the semiconductor arrangement has been accomplished. Its objectives have been achieved in full. We believe, therefore, it is time now to get the government out of the semiconductor sector and let the companies and the market dictate the shape of the future.

Thank you.

[The prepared statement follows:]

STATEMENT
OF
STANTON D. ANDERSON
COUNSEL, ELECTRONIC INDUSTRIES ASSOCIATION OF JAPAN
BEFORE THE
HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON TRADE
HEARING ON U.S.-JAPAN TRADE RELATIONS
MARCH 28, 1996

Thank you for the opportunity to testify here this afternoon on the U.S.-Japan Semiconductor Arrangement.

I am here today on behalf of the Electronic Industries Association of Japan, or "EIAJ". EIAJ is a trade association made up of approximately 600 members, representing both Japan's semiconductor manufacturing industry as well as companies that use semiconductor chips.

The U.S.-Japan Semiconductor Arrangement was concluded 10 years ago as a temporary measure to deal with allegations raised by the U.S. semiconductor industry of barriers to access to the Japanese market and injurious dumping of Japanese semiconductors in the U.S. market. The objectives of the Arrangement were to increase market access opportunities in Japan for foreign semiconductor companies and to prevent dumping of semiconductors.

Today, ten years later, the mission of the Arrangment has been fully accomplished.

Although U.S. observers tend to attribute the change to the Arrangement, we firmly believe that market forces have been the prime mover behind this accomplishment.

- The demand structure of the Japanese semiconductor market has changed considerably over the life of the Arrangement, opening up a wide range of new business opportunities for foreign semiconductor suppliers. Historically, Japanese demand was dominated by consumer electronics. American companies are not highly competitive in this market segment. In the past several years, however, sales of personal computers and portable telecommunications equipment have increased rapidly. With the arrival of the new multimedia era, consumer electronics products have become more sophisticated due to developments in digital technology.

As a result of these and other advances in technology, the Japanese market has provided a wide range of new business opportunities for foreign semiconductor companies.

- The U.S. semiconductor industry has regained its competitiveness over the course of the Arrangement. American companies occupy dominant positions in key product areas, from microprocessors to flash memories, on the strength of their technological superiority. Many of the problems which the U.S. industry suffered in the 1970's and early 1980's in the areas of quality, supply, performance, cost and service have been solved.

In the mid-1980's, only a handful of U.S. companies had sales offices in Japan. Even fewer American companies had support departments to handle technical problems or design and testing operations, which were important to Japanese customers. Moreover, in the early 1980's U.S. chips suffered from high defect rates and a reputation for inferior quality. In the past

ten years, the situation has changed dramatically. U.S. companies have made significant efforts and committed large amounts of financial and human capital towards fulfilling the needs of the Japanese market. American products have improved significantly while U.S. companies have established numerous design centers in Japan to provide customer service.

- The changes in Japanese demand structure, the regained competitiveness of the U.S. semiconductor industry and the massive increases in design-in activities (involving foreign semiconductor manufacturers in the design of a product from the initial development stage) have led to skyrocketing foreign sales in the Japanese market. Foreign market share in Japan has exceeded the U.S. industry's 20 percent expectation for nine consecutive quarters. In 1990, SIA said that the 20 percent figure was a threshold, after which market forces should be allowed to "take over and operate." The latest figures put foreign market share at nearly 30 percent. Foreign sales (according to Dataquest) have gone up more than ten fold over the past decade, from $900 million in 1986 to more than $9.5 billion in 1995. Design-ins have gone up in similar fashion, rising nearly 900 percent between 1986 and 1995. Inevitably, close cooperative ties have been forged at a business level between the U.S. and Japanese semiconductor industries. Competitive foreign semiconductors have been firmly established as indispensable products in the Japanese market.

- In addition, new types of assembly operations are becoming increasingly common in the semiconductor industry. For example, in the computer segment, chips are being sold, not only as individual components, but also embedded on semi-finished products such as motherboards. These products are being sold internationally in increasing numbers, but the chips contained in these products sold into Japan are not counted as semiconductor imports for purposes of the Semiconductor Arrangement.

- Japanese user companies procure semiconductor products from competitive suppliers irrespective of nationality. The Japanese market is completely open to foreign semiconductors; no trade barriers exist. Success in the Japanese market is a function of meeting users' needs in terms of QCDS -- quality, cost, delivery time, and service.

- Cooperative activities among Japanese and foreign semiconductor companies have increased significantly. These cooperative activities have served to cement a network of commercial alliances between Japanese and foreign companies in this sector. One type of cooperative activity is the design-in project, which Japanese user companies actively engage in with foreign suppliers. Design-ins and other cooperative activities are promoted by EIAJ's Users' Committee of Foreign Semiconductors (UCOM), a group of 63 of the major semiconductor user companies in Japan. The International Semiconductor Cooperation Center (INSEC), made up of foreign suppliers and Japanese user companies, also promotes such activities. These organizations host seminars, dispatch trade missions abroad, receive trade missions from foreign countries, and arrange one-on-one business meetings between Japanese companies and foreign suppliers. These types of cooperative commercial activities have increasingly flourished, and have assisted in making foreign semiconductor suppliers a permanent fixture of the Japanese semiconductor market.

- The world semiconductor industry has experienced dramatic structural change over the past decade, becoming increasingly globalized and interdependent. There has been an explosion in joint ventures and other types of long term alliances between the major chipmakers in all countries. Driven in part by huge capital requirements, the biggest names in the semiconductor industry have joined hands in R&D, production, and marketing in the latest generations of semiconductor products.

The following are examples of major international alliances:

- Hitachi-Texas Instruments. Established a joint venture, called TwinStar Semiconductor, Inc. with production facilities in Richardson, Texas, for the production and development of the next generation of DRAMs.

- Toshiba-Motorola. Established a joint venture company, called Tohoku Semiconductor Corporation, with production facilities in northern Japan.

- Fujitsu-AMD. Established a joint venture company, called Fujitsu-AMD Semiconductor Limited, with production facilities in Japan, for development and production of flash memory devices.

- NEC-ATT. Engaged in the joint development of CMOS devices.

- Toshiba-IBM-Motorola-Siemens. Joint development of the next generation of DRAMs.

- Toshiba-IBM. Will establish joint production facility in U.S.

- The world's largest semiconductor manufacturers are teaming with each other on an international basis to develop, produce and market the latest generations of semiconductor devices. Given the global character of the industry, with operations being conducted on an increasingly borderless basis, the notion that it made sense to distinguish semiconductors according to nationality is no longer valid.

Indeed, distinguishing semiconductors by nationality leads to anomalous results under the statistical system used under the Semiconductor Arrangement. For example:

- Semiconductors manufactured in Japan by TI Japan, Nippon Motorola and IBM Japan are characterized as "foreign" products, even though they are manufactured in Japan, while semiconductors manufactured in other countries by Japanese capital-affiliated companies are considered "Japanese" products, so that their import into Japan is not treated as a foreign import for purposes of the Arrangement's statistical system.

- In the case of semiconductors manufactured by a U.S.-Japan joint venture company, half of a single product batch can be judged "foreign" and the other half "Japanese."

- Even more peculiar results can be found in the case of a factory that is purchased by a Japanese company. Chips that were classified as "foreign" suddenly become "Japanese" the day after the purchase, even though they are the same chips made in the same factory by the same workers.

While the statistical system used under the Arrangement is fundamentally defective, we believe that any system that seeks to employ numerical benchmarks is bound to be flawed given the dynamic nature of the global semiconductor industry and the complex structure of trade in this sector. Moreover, identification according to nationality leads to unfair treatment which is inconsistent with WTO principles.

- Worldwide sales of the U.S. semiconductor industry sales are expected to top $70 billion in 1995, a 27% increase from 1994. The profits earned by the semiconductor industry as a whole are also increasing sharply, totaling $9.95 billion in 1995, up 20% from 1994. Given its current profitability and prospects for future growth, this is the last industry in America that needs a permanent government-sponsored affirmative action program in the form of a continuing bilateral trade agreement with Japan.

- With the double-digit demand growth of the past several years expected to continue through the end of the century,

semiconductor manufacturers around the globe are engaged in new investments intended to keep pace with the direction of the market. Ten years ago, the U.S. complained that Japanese companies were engaged in a so-called capacity expansion race which led to excess capacity and dumping on the U.S. market to shed excess inventories when the market turned down. Today, this is not the case. Japanese investment is being carefully calibrated to be responsive to forecast demand. Indeed, a substantial amount of new Japanese investment is being made in joint ventures with American and other foreign business partners, who have a mutual interest in accurate forecasts of future demand and production capacity necessary to meet that demand.

- There are a series of reasons why a further governmental agreement in the semiconductor sector makes no sense.

- As noted above, Japanese user companies procure semiconductor products from competitive suppliers irrespective of nationality. The Japanese market is completely open to foreign semiconductors; no trade barriers exist. Success in the Japanese market is a function of meeting users' needs in terms of QCDS -- quality, cost, delivery time, and service.

- Market share is just one of the factors identified by the Arrangement to evaluate progress in market access. Even the Arrangement recognizes that market share is affected by commercial factors such as supply and demand structures, competitiveness of foreign products, sales efforts by suppliers, etc. As such, the rise and fall of the market share figure, which fluctuates based on long and short term commercial factors, bears no discernible relationship to whether the market is open or closed.

- Moreover, under the Arrangement the 20% market share figure is specifically stated to be an "expectation" of the U.S. industry, not a "guarantee, a ceiling nor a floor." Notwithstanding the clear and plain language of the Arrangement, the U.S. has unilaterally interpreted the 20% figure, not only as a numerical target, but as a Japanese promise or commitment. Moreover, the U.S. has consistently "re-interpreted" the Arrangement's call for gradual and steady improvement in foreign market <u>access</u> as mandating increases in foreign market <u>share</u>. The consistent U.S. policy of distorting the plain language of the Arrangment is clearly inconsistent with WTO principles and is another reason why any form of continuing agreement in this sector is unacceptable.

- We are now living in a new era of international trade rules established at the World Trade Organization (WTO), which became operational in January, 1995. Trade agreements that are consistent with WTO principles are necessary under this new regime.

- Given the facts as described above, it is clear that the objectives of the Arrangement have been achieved in full -- indeed, well beyond the expectations of the U.S. industry. And because the objectives have been achieved, the Arrangement should be allowed to expire as originally intended at the end of July. Moreover, since the 1991 Arrangement was concluded there have been no allegations of dumping by Japanese companies. Each company has been carefully implementing its own management of pricing.

In closing, let me repeat: First, the mission of the Semiconductor Arrangment has been accomplished. The objectives have been achieved. Second, the Semiconductor Arrangement has lost its raison d'etre due to the dynamic structural changes in the semiconductor sector. Finally, the accession of the new WTO regime requires trade policy to conform with WTO rules. We believe, therefore, it is time now to get government out of the semiconductor sector and to let the companies and the market dictate the shape of the future.

Thank you.

Chairman CRANE. Thank you, Mr. Anderson.

Mr. Murphy.

STATEMENT OF CYRIL D. MURPHY, VICE PRESIDENT, INTERNATIONAL AFFAIRS, UNITED AIR LINES, INC.

Mr. MURPHY. Perfect timing; did you notice the light went out just as he said the last word? [Laughter.]

I do not know if I can promise that kind of brevity.

Thank you, Chairman Crane, for allowing us to be here today. I wanted to commend the Subcommittee first of all for expanding its focus on United States-Japan trade relations this afternoon to include international aviation issues. I would like to take a few minutes to explain to you why it is critical for this Nation's policymakers to examine aviation in the broader context of our overall trade policies.

We believe that a review of the role of aviation in our international economy is both timely and necessary. There are a number of reasons for this. First, aviation is an integral part of the travel and tourism sector of the economy. It has become too important to ignore in determining overall trade policy. For example, the Economic Strategy Institute, in its recent study entitled "Turbulence over the Pacific," reported that the aviation industry's direct and indirect impact had reached nearly 6 percent of U.S. GDP, supporting 8.8 million jobs. Dr. Hilty here is one of the authors of that report, and I am sure he will be expanding upon it.

But second, the aviation industry is itself becoming increasingly globalized as air carriers set up international networks of hub-and-spoke services similar to those which have proven so successful for carriers in the United States since domestic deregulation. An isolated system of bilateral agreements can no longer serve the needs of this industry.

Third, the importance of aviation to the world economy is gaining recognition in international trade organizations such as the Asia-Pacific Economic Cooperation Forum, APEC. APEC represents the first multilateral trade forum to include air transport as an integral part of its trade liberalization agenda. We recognize there are both opportunities and risks involved in dealing with aviation trade issues in a multilateral forum such as APEC. The bilateral focus of our aviation relationships, however, is now too constraining. Only by placing aviation in a broader multilateral context along with other trade issues can we expect to achieve the progress toward our goal of becoming a truly global industry. Just as one can today send one's voice to any part of the world, send a fax to virtually any destination or even find parcel services with global scope, the air transport industry needs to develop the same seamless system of services integrated into a global network. International multilateral trade forums such as APEC can provide the opportunity that the straitjacket of our present bilateral system cannot.

On the other hand, there is a risk that aviation issues may continue to be isolated, even in a broader trade negotiation. At the APEC meeting last November in Osaka, the members reached an agreement to liberalize trade, including aviation services, by 2010, and in the interim, they adopted an immediate standstill on the en-

actment of any new restrictions in any trade sector. The ink was hardly dry on the standstill agreement before the Japanese air transport officials continued their efforts to impose additional restrictions. A mere 2 months later, to blunt any possible adverse reaction from other Asian APEC members and to enlist the support of generally supportive Asian Transport Ministers, the Japanese called a transport meeting in Kyoto of a truncated APEC assembly from which key countries such as the United States, Canada, Hong Kong and Mexico were excluded. The Japanese used the gathering of Transport Ministers as a pretext for making it appear that they were not alone in effectively abrogating the APEC accord. Aside from being in violation of its air services agreement with the United States, Japan's blatant actions fly in the face of the multination agreement on the APEC action agenda.

The other risk we face in including aviation within a multilateral trade forum such as APEC is that an effort such as that recently made by the Japanese Ministry of Transport might succeed and become the model for other sectors seeking to also undercut their APEC commitment. The Japanese are seeking protection for their air carriers and may offer concessions to other Asian countries in other sectors in exchange for protection in the aviation area. Such "logrolling" could have a cumulative impact, substantially undercutting the overall APEC liberalization efforts. We have recommended to USTR that they prevent aviation from becoming an isolated issue, dealt with by Transport Ministers alone, and seek instead to ensure that it is handled at the level of Trade Ministers along with other trade issues.

United, for its part, will continue to play an active role within APEC in an effort to achieve progress on air service issues in this broader trade forum. We will be active participants in the upcoming transport meeting in Vancouver next month. More importantly, we hope to play an active role in the Trade Ministers' meeting in May.

With respect to our immediate aviation issues with Japan, it is important to understand how we got to where we are now. Throughout the eighties, aviation negotiations resulted in the trading of restrictions on the existing U.S. carrier rights in return for gaining limited access for new carriers. The damage done to consumer choice, and the competitiveness of the U.S. industry is more fully explained in my written testimony. In short, in an era of expanding global airline networks, the U.S. carriers are being prevented from including in their networks points in Japan and Asia which are the fastest growing aviation markets in the world.

The United States has recently recognized in its international aviation policy statement issued last year that it must "adjust its focus to bargain for the bundles of rights that will permit airlines to develop global networks." We have indicated an approach to our aviation negotiators who we feel is an absolute prerequisite to successful aviation negotiations with Japan. Nevertheless, even the most capable negotiator, using the most successful techniques, may face defeat unless he is operating in an environment that permits success and rejects even the possibility of failure.

With a nearly $60 billion trade deficit with Japan, the one thing that the United States cannot permit Japan to accomplish is to iso-

late individual sectors of trade and manage the outcome where U.S. firms do well. Aviation has a long history of isolation that makes it particularly vulnerable to these techniques, but given its strategic importance, particularly in the Asia-Pacific marketplace, the United States cannot afford to present anything but an integrated, united front. This Subcommittee, we believe, is in a position to provide leadership to ensure that in this area as in others, the United States is speaking with one voice.

Thank you.

[The prepared statement and attachments follow:]

STATEMENT OF

CYRIL D. MURPHY

VICE PRESIDENT - INTERNATIONAL AFFAIRS

UNITED AIR LINES, INC.

Chairman Crane, Congressman Rangel, Members of the Subcommittee.
Thank you for allowing me to appear before you today. Testifying before this committee is a new experience for United Airlines and also for the Committee.

Aviation, of course, is not a subject that has often been discussed in an overall trade context. This is, in itself, rather novel. Imagine for a minute how much international trade would be impeded if we did not have air transport to carry our business men and women, as well as our high value products, to the world's trade centers.

A country without transportation integrated into its trade policy is somewhat akin to a corporation setting up a distribution department and then telling it to go off and do whatever it wants. On the other hand, many corporation departments function with a great deal of autonomy -- as long as they continue to meet the corporation's overall business needs.

Countries are not much different. In theory, one can isolate each sector of our trade and allow it to be administered individually -- again, as long as each is contributing to the overall needs of our international economy.

But whether in a corporation or a country, there must be periodic reviews of how the individual departments or sectors are functioning to serve the larger corporate or public interest.

We believe this is one of those times when just such a review of the role of aviation in our international economy is necessary. There are a number of reasons for the need to focus on aviation from a broader trade perspective at this time:

First: aviation is an integral part of the travel and tourism sector of the economy that has become too important to ignore in determining overall trade policy.

Second: the importance of aviation to the world economy is gaining recognition in international trade organizations such as the Asia Pacific Economic Cooperation (APEC).

Third: the aviation industry is itself becoming increasingly globalized as air carriers set up international networks of hub-and-spoke services similar to those that have proved so successful for U.S. carriers since the domestic U.S. market was deregulated.

We would like to address each of these reasons in greater detail before recommending an approach to resolving the huge issues that face this industry and, in particular, its problem with Japan in the context of the Asian-Pacific region.

The world's economies are becoming increasingly integrated. The growth of foreign trade and investment and the development of regional trading blocks reflects a natural evolution toward more global economic interaction.

This increased integration is in part attributable to the development and spread of international services such as aviation and telecommunications. As one recent report[1] observed:

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[1] Economic Strategy Institute, Turbulence over the Pacific, March 1996, p 5.

> If telecommunication services are the nerve system of the new international economy, then aviation services may be called its bloodstream. Airlines carry the nutrients of the system -- people, documents, and goods -- to its vital organs. Global sourcing, just-in-time delivery, technical support, technology transfer, multinational management, and global economies of scale and scope would all be impossible, or much more difficult, without extensive and efficient air service. Beyond this, long-distance leisure travel, and the massive tourism industry it has spawned, which is the driving force of economic development in many important regions, would have remained merely a perk of the wealthy elite without the growth of modern air services.

Yet despite its obvious importance to world trade and economic activity, air transport has historically been excluded in whole or in part from international trade agreements, such as GATS. Moreover, international air transport has been subject to significant impediments to trade and investment from the world's economies, primarily through restricted market access and disparate national treatment found in most bilateral aviation agreements or national law. This is exemplified in the 16 APEC economies, where the level of impediments to air transport services, particularly freight and passenger transportation, is among the highest of any service industry. (See Charts 8 and 9). As Mr. Cheong Choong Kong, Singapore Airlines managing director, stated recently at a Financial Times conference on commercial aviation in Asia-Pacific, "The minister who negotiates air service agreements pursues a policy philosophically opposed to that of the minister of trade, the person responsible for negotiating everything else."

Fortunately, it appears that more economies are recognizing the critical importance of aviation to them and to the world economy. The International Air Transport Association (IATA) estimates the impact of aviation on gross world product in 1992 at $1 trillion, accounting for 22 million jobs. For every dollar spent by airlines and airports, at least three additional dollars of economic activity was generated. The industry has created 3 million direct jobs and 7 million indirect jobs. The multiplier effect is another 12 million jobs. The volume of passengers and freight carried by the world's airlines has risen at twice the rate of real GDP over the past ten years.

The importance of aviation to the U.S. economy is equally staggering. A recent study[2] found that the industry accounts for about 1% of private-sector GDP and is one of the largest industries in the U.S., ranking just behind the motor vehicle industry and ahead of other vital industries such as petroleum and textiles. Moreover, the industry generated nearly 6% of U.S. GDP in 1993 through the indirect impact of the off-airport activities of passengers and shippers, and the induced impact of successive rounds of spending by those who receive direct or indirect payments. Finally, U.S. air transport accounts for nearly 1 million jobs.

The travel and tourism sector of the economy, of which air transport is a leading part, is also important to Japan. According to the World Travel & Tourism Council (WTTC), travel and tourism accounted for 10.5 percent of Japan's GDP in 1995, contributing 10.6 percent of its total wages and salaries.

Even individual states, such as California, recognize the importance of efficient air transport services to their economies. In California, foreign trade, together with tourism and entertainment, are two of the key pillars of California's economy that rely on air transport services. In addition, the transportation sector contributes to California's job growth.[3]

The importance of aviation to international trade has begun to gain recognition. This is clearly evident in the U.S. The U.S. government has been advocating and actively seeking to establish "open skies" aviation agreements with other countries. The U.S. International Air Transportation Policy Statement noted, "The availability of efficient international air

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[2] Economic Strategy Institute, supra.

[3] Report of the Economic Advisory Council of the California Institute (October 11, 1995).

transportation will greatly enhance the future expansion of international commerce and the development of the emerging global marketplace."

On an international level, the APEC organization is also working to remove some of the impediments to air transport services in its region. APEC was the first multilateral trade forum to include air transport specifically in its agenda, and has committed to its liberalization by 2010. APEC has also created a transportation working group to study this issue. At the APEC ministers meeting at Osaka, Japan in November 1995, an Action Agenda was adopted which, among other things, specifically addresses the progressive reduction of restrictions on trade in transportation, and calls for a "standstill" in the creation of new impediments.

The APEC initiative is of critical importance to the international aviation industry. According to IATA, the Asia-Pacific market already accounts for more than one-third of scheduled international passenger traffic. By 2010, according to IATA, this area is expected to account for over 50 percent of scheduled passenger traffic.

The APEC initiative is also vitally important to the U.S. As the U.S.T.R. Mickey Kantor recently stated:[4]

> The Asia Pacific region is of growing importance to the United States. Our trade across the Pacific is 50% greater than our trade across the Atlantic -- our merchandise exports alone to Asia have grown over 50% in the last four years and support over two million high-paying U.S. jobs. If the United States maintains its current market share, Asia, excluding Japan, is estimated to be our largest export market by the year 2010, absorbing approximately $284 billion of our goods. Growing U.S. services sales to Asia will add many tens of billions of dollars more to U.S. exports.

The APEC initiative to liberalize air transport services has, however, caused a reaction in at least one key member country. No sooner had APEC adopted an air transport liberalization agenda that included an immediate standstill in the spread of additional restrictions, than Japan violated that standstill agreement by pursuing more restrictive regulations. Barely two months after the APEC Osaka meeting, Japan sponsored a partial gathering in Kyoto, Japan of some APEC members that was designed to circumvent U.S. initiatives by formulating a more protectionist policy for Asian carriers. The U.S., Canada, Hong Kong and Mexico, all APEC members, were excluded from the Kyoto meeting. The Japanese used the gathering of transport ministers at the Kyoto meeting as a pretext for making it appear that they were not alone in abrogating the APEC accord. Aside from being in violation of its bilateral treaty with the U.S., Japan's protective actions fly in the face of the APEC Action Agenda.

Because of its geography and large local population, Japan is a natural intermediate point for travel between the U.S. and the fast-growing Asian economies. In an effort to protect its airlines from their more efficient U.S. competitors, however, Japan has consistently used regulation to deny U.S. carriers increased access to both Japan and beyond to Asia, notwithstanding the existence of U.S. carrier rights under the 1952 U.S.-Japan Air Services Agreement. Japan's recent actions in violation of the APEC Action Agenda indicate Japan's continuing desire to keep competition out of the Asia-Pacific region.

APEC's recognition of the importance of aviation reflects the increasing globalization of this industry. There are two major events that have contributed to this globalization process.

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[4] USTR Kantor Statement on White House Announcement of Chair and Vice Chair of Commission on U.S.-Pacific Trade and Investment Policy, March 14, 1996.

The first took place in 1958 with the establishment of transatlantic jet service. Within five years more passengers were traveling across the Atlantic by air than by ship, and a trend was established. The industry had also begun its shift from being a specialty service to becoming a mass mover of people and products. What the railroads were to the industrial age, the airlines would be to the century ahead.

The second turning point took place in 1978 with the deregulation by the U.S. of its domestic airline industry. Much has been said and written about the effects of that daring step -- and of the troubles it inflicted on airline managements, employees, and customers. History will note, however, that deregulation's most important contribution to the industry and to the economy is that it forced the airlines to become competitive, to exercise the judgment and apply the business standards long required in other sectors.

It took a while for the lessons to sink in, but today U.S. airlines are by a significant margin the world's most cost-effective and competitive. By making the huge changes demanded by competition, U.S. carriers opened air travel to the masses. Low fares and virtually shuttle service throughout the country revolutionized Americans' use of planes for both pleasure and business travel. To cope with the major rise in demand, carriers created the hub-and-spoke passenger distribution system to enable them to serve an ever wider range of markets efficiently, here and around the world.

Today, travellers expect global air service to be as seamless as global telecommunications. If you, Mr. Chairman, needed to make a call to Tokyo this afternoon, all you would have to do is dial one number. The telephone company would do all of the switching required to actually make the connection. No matter where you live in the world, you need only one number to reach your party. So it should be in aviation. A traveler who wants to go to Japan should be able to call one number and have all the necessary connections made behind the scenes to ensure a smooth, uninterrupted journey.

It is for this reason that United has wholeheartedly supported the Administration's efforts to sign open skies and liberalized agreements. These agreements allow competitive market forces to develop air service between countries that matches customer demand rather than supports outdated, protectionist policies.

To date, the U.S. has signed open skies agreements with 10 European countries, with Germany being the most recent example. In Asia, the U.S. has signed liberalized agreements with Korea, Singapore, and Taiwan. As Chart 6 shows, the impact of these agreements has been significant. Carriers in these three countries have expanded at almost double the rate of their Japanese counterparts since 1978. That means that more Koreans, more Singaporeans and more Taiwanese are spending money around the world.

Looking at it another way, as shown in Chart 5, in U.S.-Asia markets, these carriers have doubled their marketshare from 13 percent to 27 percent since 1978, while the market share of Japanese carriers, which are among the world's most costly and inefficient, has dropped from 30 percent to 18 percent.

These Asian carriers are poised for even greater growth in the next 20 years as Asia's consumer economy explodes. By 2010, as shown on Chart 3, 10 Asian markets will match or surpass the two current largest markets -- Tokyo and Hong Kong -- in the number of air passengers transported annually. In fact, as previously noted, IATA predicts that Asia-Pacific international passengers will account for more than half of the world's scheduled air traffic in the next 14 years.

Japan is trying to constrain U.S. participation in that growth. While the world economy presses relentlessly forward, outpacing regulation and demanding the freedom to move swiftly as demand dictates, Japan is seeking to increase restrictions on aviation. Rather than working with the U.S. to allow a seamless journey for all U.S. travellers who have interests in Asia not yet served under our existing agreement, Japan is seeking to monopolize its natural status as a gateway to Asia and protect its high cost carriers.

In 1952 the U.S. started out with a liberal, open-entry agreement with Japan. If its provisions had not been whittled down over the years, there would be no Japan access issues today. The 1952 Agreement guaranteed the U.S. the right to designate as many carriers as it wanted to serve Japan with as many frequencies as those carriers felt the market required, and to continue those flights beyond Japan to any point in Asia. How then did we get from there to here?

Well, according to a recent article by Mr. Hanyu, the Chairman of Japan's aviation delegation, the impetus for change was the British "success" in negotiating the highly protective Bermuda II agreement with the U.S. in 1977. To the Japanese bureaucrat, that agreement was a regulator's dream come true. With a Pacific version of Bermuda II, not only could Japan control every aspect of competition by U.S. air carriers, but it could structure the environment to favor Japanese carriers - - even when, as is the case today, U.S. carriers are more competitive.

According to Mr. Hanyu, in 1977 Japan had decided that it too wanted a Bermuda II style agreement with the U.S. It called for renegotiations.

To its credit, the U.S. had learned its lesson with the British. We did not jump at this opportunity to shoot ourselves in the other foot.

Then, in a tactic that has served it well over subsequent years, Japan simply ignored its commitments under the agreement. When the U.S. government in the late 1970's designated a new carrier, United, to operate to Japan from the Pacific Northwest, Japan refused to honor the designation.

What followed was a series of agreements and actions that step-by-step effectively gutted the liberal provisions of the 1952 Agreement. Those steps are outlined on Chart 1.

-- In 1982, to resolve the dispute over United's new authorization, the U.S. agreed that all new designations would be negotiated with Japan and that they would not have the ability to operate hubs in Japan. This insured that all subsequent awards would be in the form of point to point authority, with no rights to operate beyond Japan. The MOU carrier concept was born.

-- In 1985, the restrictions were expanded to include the 1952 carriers. U.S. carrier operations were capped to those U.S. points that the CAB had previously named in the '52 carriers' certificates at that time. Because of that, the U.S. cannot today integrate its highly efficient domestic hub structure with its international routes to the Pacific even for the original 1952 carriers. For instance, United, the biggest U.S. carrier to Asia, can fully integrate its Pacific routes with only one of its principal domestic hubs, San Francisco.

-- In 1986, Japan designated a second Japanese carrier to perform international services and it began developing Asian hubs and seeking access from them to the U.S.

-- In 1989, Japan expanded the number of U.S. routes and capacity under its regulatory control by limiting the expansion of new points to those only under MOU conditions.

-- In 1994, Japan announced a freeze on both U.S. carrier passenger and cargo airport operating slots when the new Osaka Airport opened, foreclosing long-awaited growth in Japan's second largest city and, with Narita slot-constraint since 1989, the only potential for growth into and beyond Japan for the foreseeable future.

- Under domestic pressure, Japan agreed with U.S. carriers on a multi-year schedule of constrained growth at Osaka then reneged on that agreement only months later by disapproving our Seoul service and Fedex's Subic Bay service in early 1995.

-- In 1995, Japan and the U.S. reached an understanding that Japan would honor most of the beyond rights of U.S. cargo carriers.

-- In March 1996, Japan is again threatening to withdraw those promised U.S. cargo rights. The U.S. passenger rights beyond Japan remain both frozen and unaddressed.

What we are left with now is a Bermuda II agreement without a formal document. The only remaining item outside Japan's formal control is the 1952 carriers' rights to operate hubs in Japan in order to serve the rest of Asia. And even there, as Fed Ex's experience and our own demonstrate, Japan now has its eyes on that last regulatory prize. Because of the rights previously surrendered, Japan can dangle the carrot of allowing some new service in front of our communities and carriers if in return they will support Japan's negotiating efforts before the U.S. government. That is where we find ourselves today with Access U.S.-Japan, and that is why the *Japan Times* can confidently predict -- as the excerpts in Chart 2 show -- that Access U.S.-Japan "is likely to be a strong supporter of Japan," and leading an MOU official to say that "Tokyo welcomes the efforts of the MOU carriers." Sad to say, Japan has succeeded in pitting U.S. carriers against each other, and should Japan succeed, the economic loss for the U.S. economy will far outweigh the incremental gains by one or two U.S. carriers.

Why then is Japan so set on tightly regulating U.S. participation?

The answer is that Japan's Ministry of Transport seeks to salvage a disastrous regulatory policy that has left JAL and ANA unable to compete effectively with U.S. and other lower cost carriers. This is illustrated in Chart 4, which plots a comparison of JAL and United's costs based on ICAO statistics. As you can see, as late as 1985, JAL's costs were below ours. By 1993, however, they were dramatically above ours and were continuing to trend in the wrong direction.

Not surprisingly, it was after 1985 that U.S. carrier share of the transpacific market began to exceed that of the Japanese carriers. Clearly the reason is relative costs -- but to admit that, Japan's MOT must confess that its regulatory policies are an abject failure. It is far easier, they believe, to repeat their myth that the underlying 1952 Agreement is somehow unfair.

Japan wants to salvage the reputation of its bureaucrats and carve out a protected market for its uncompetitive carriers by denying U.S. and foreign carriers the means to compete effectively. Japan's current objective, therefore, is to eliminate the right of U.S. carriers to operate hubs in Japan to serve the growing Asian market.

Equally important, we must recognize that no U.S. carrier today operates any nonstop service to any Asian point (except Japan) unless that carrier also operates a hub in Japan. These nonstop and hub services are complimentary, giving U.S. carriers a presence in an Asian city that is competitive with both Japanese and other Asian carriers. If we lose hub access beyond Japan, then all U.S. carriers will be in the same position that a number of U.S. carriers, most recently Delta, have been in when they tried and failed to maintain a system of service to other Asian points without a hub in Japan. It leaves Japan with the only efficient carrier networks in the Pacific.

Simply put, Japan intends to gain through regulation an advantage its carriers cannot win in the marketplace.

What should we do about it?

Just last month, Charles Hunnicutt, DOT's Assistant Secretary for Aviation and International Affairs, stressed the need for U.S. policy makers to concentrate on the long-term: "It is important to underscore that in our dealings with Japan, we ought not settle for short-term gains at the cost of sacrificing long-term needs into the next century."[5] His comments echoed those of Secretary Peña in conjunction with his recent extended trip through Asia.[6] We agree completely. It has been our concern about the future consequences of any negotiations with Japan that led us to commission Booz Allen and Hamilton to look at what the Japanese policies would mean to the U.S. in the coming decades. We believe that no policy can be relied upon if it is not based on economic reality. That is why we took the lead in gathering these facts.

The study conducted by Booz Allen and Hamilton concluded that over the next two decades the cumulative reduction in U.S.-Asian trade balance from restrictions on the U.S. expansion of passenger transportation in Asia through Japan could exceed $100 billion. Japan, the Booz Allen study suggests, would be the primary beneficiary.

A subsequent independent study conducted under the supervision of Clyde Prestowitz of the Economic Strategy Institute reached much the same conclusion. In that analysis, a cap on U.S. carrier beyond rights would mean that in the year 2010, U.S. carriers as a group would earn almost $3.2 billion less in the best case and $5.4 billion less in the worst. In that same year, the cap would reduce U.S. employment by between 111,000 and 213,000 jobs and reduce U.S. trade receipts by up to $5.1 billion in that year alone. Unfortunately, we believe the worst case is the most probable one.

These are real dollars and real jobs that will be lost to the U.S. economy if Japan has its way. And, just as it is now easy to criticize the mistake we made in Bermuda II, it will be easy in 2010 to recognize in retrospect the damage done by concessions to Japan in 1996. The challenge is to recognize those downsides in advance, and negotiate accordingly. In this regard the economic analyses of Booz Allen as well as the Economic Strategy Institute have armed the U.S. Government with the knowledge it requires. What is needed now is the political will to act to avoid the dominance of another successful U.S. industry by Japan. In our view, and we hope in yours, the responsible course requires that the U.S. first reconcile its well-crafted International Aviation Policy with its negotiating objectives. That Policy states that:

> carriers wishing to establish global networks require a higher quality and quantity of supporting route authority than they have sought in the past. Airlines will become increasingly concerned with every market that enables them to flow passengers over any part of their system network. These airlines will be looking for broad, flexible authority to operate beyond and behind hub points, in addition to the hub-to-hub market between two countries. At present, governments operating in a bilateral context naturally focus on opportunities for their respective carriers to serve the local market between their two countries. In a bilateral context, services destined for or coming from third countries receive less consideration. <u>In the future, governments will have to adjust their focus to bargain for the bundles of rights that will permit airlines to develop global networks</u>. (Emphasis added.)

We cannot continue to proceed by committing the same mistakes in the 90's as we did in the '80's. As the International Policy recognizes, adjusting our focus should mean that integrating domestic and international hubs has to have the highest priority. Specifically, it

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[5] <u>Response of Assistant Secretary for Aviation and International Affairs, Charles Hunnicutt, to ACCESS U.S.-Japan Announcement</u>, February 21, 1996.

[6] "Peña Asserts Shift in Focus from Europe to Asia," <u>Aviation Daily</u>, November 1, 1995, p. 179.

means that undoing the damage of the '80's must be undertaken so that those carriers that can still hub in Japan can once again have the ability to integrate those hubs with their domestic systems. Japan recognizes this need for its carriers. We can do no less for ours.

In addition, as indicated in Chart 7, we should approach negotiations with the following framework in mind:

- First, insist that Japan honor its current agreements;
- Second, steadfastly refuse to fall into the Japanese trap of accepting restrictions on existing rights as a way to secure other opportunities; and
- Third, set as our negotiating goals objectives which are first determined by economic analysis to be in the best interests of the U.S. as a whole.

Let us first be clear on what we are not recommending. We do not propose to demand simply the dismantling or wholesale restructuring of the network of agencies, congressional committees, laws and regulations, and other mechanisms that have generally served this industry well.

We are, however, strongly recommending that there are times when the larger public interest is better served by a more comprehensive approach to the issues facing this industry. Just as the National Economic Council was established by the President to oversee and coordinate the work of various agencies of the Executive Branch to ensure that they work together to achieve common and often broader goals then any one agency can handle, similarly, Congress should be open to working with other committees and agencies when the need occurs. This, we feel, is one of those times, and Japan is one of those countries where such a coordinated approach is necessary. The challenge we face is not limited to aviation; it is a basic challenge to our trade policy with Japan and our presence in the largest market in the world, Asia-Pacific. If Japan can isolate and effectively control this strategic area of economic activity where the U.S. has led the world since the days of Kitty Hawk, not only in operations but manufacturing as well, then Japan will feel emboldened to just say no in all such areas.

We have indicated an approach to our aviation negotiations which we feel is an absolute prerequisite to successful aviation negotiations with Japan. Nevertheless, even the most capable negotiator, using the most successful techniques, may face defeat unless he is operating in an environment that permits success and rejects even the possibility of failure.

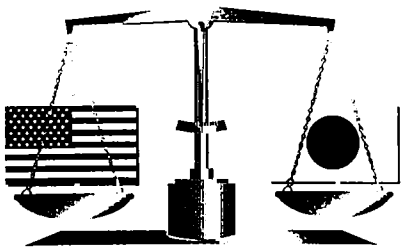
With a nearly $60 billion trade deficit with Japan, the one thing the U.S. cannot permit Japan to accomplish is to allow them to isolate individual sectors of trade and manage the outcome in sectors where U.S. firms do well.

This pattern of isolating sectors where U.S. firms are competitive is not limited to aviation. In semi-conductors or photo film the response is similar. Where U.S. firms are competitive the Japanese adherence to free trade suddenly disappears. It quickly becomes heads I win, tails you lose. Where Japan has a competitive advantage, they demand and quickly exploit any freedom, but when the situation is reversed, they resort to a variety of techniques to prevent the comparative advantage of U.S. firms from being made available in the Japanese marketplace. If these practices are allowed to continue they will create an insurmountable barrier to ever achieving balanced trade with Japan. Moreover, many of the other countries in Asia will quickly adopt the same practices.

Aviation has had a long history of isolation that makes it particularly vulnerable to these techniques. But given its strategic importance, particularly in the Asia-Pacific marketplace, the United States cannot afford to present anything but a united front. This committee, we believe, is in a position to provide the leadership to ensure that in this area as in others, the U.S. is speaking with one voice.

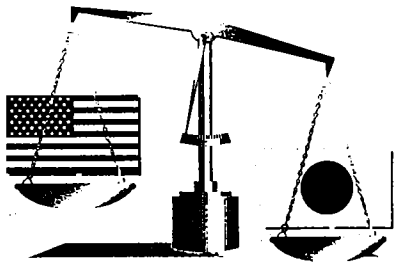
Chart I

U.S. - Japan Aviation Relationship 1952-1996



Bermuda I

- ✔ *No limits on the number of designated carriers*
- ✔ *No limitations of frequencies*
- ✔ *No limitations on U.S. gateways*
- ✔ *Unlimited "beyond" rights to Asia*



Bermuda II

- ✘ ~~*No limits on the number of designated carriers*~~
- ✘ ~~*No limitations of frequencies*~~
- ✘ ~~*No limitations on U.S. gateways*~~
- ✘ ~~*Unlimited "beyond" rights to Asia*~~

1952	1982	1985	1986	1989	1994	1995	1996
U.S. Japan Civil Air Transport Agreement	U.S. surrenders right to unilaterally designate new carriers. "MOU" carrier classification created	U.S. surrenders rights of '52 carriers to serve any U.S. gateway	Japan designates second carrier to operate internationally. All Nippon Airlines (ANA) begins development of Asian hub.	Japan allows expansion to new U.S.-Japan points only on frequency controlled point-to-point routes.	Opening of Osaka's Kansai Airport. Japan announces freeze on future U.S. carrier rights	Japan refuses to honor its obligation with respect to beyond rights of '52 carrier.	Japan again threatens to withdraw U.S. cargo rights beyond Japan.

Chart 2

Access: U.S.-Japan – Japan's Trojan Horse

"The group is likely to become a strong supporter of Japan, which has been urging the U.S. government to renegotiate the pact."

"By forming the group, the airlines could influence the U.S. government in its negotiations with Japan."

"A senior Japanese Transport Ministry official said Tokyo welcomes the efforts of the U.S. MOU carriers, and expressed hope that it will lead to an early start of passenger service talks."

Japan Times

AIR PACT AT ISSUE

February 15, 1996

Group to lobby White House

Chart 3

Asia - Pacific Markets

(Millions Passengers)

1993	COUNTRY	2010
35	Japan	91
24	Hong Kong	72
8	China	62
19	Singapore	60
14	Taiwan	57
13	Thailand	54
11	Australia	43
11	South Korea	43
6	Indonesia	26
8	Malaysia	25
6	Philippines	22
7	India	21
4	New Zealand	10
3	Pakistan	7

By 2010
10 Asian markets will match or surpass the two largest '93 markets – Tokyo and Hong Kong

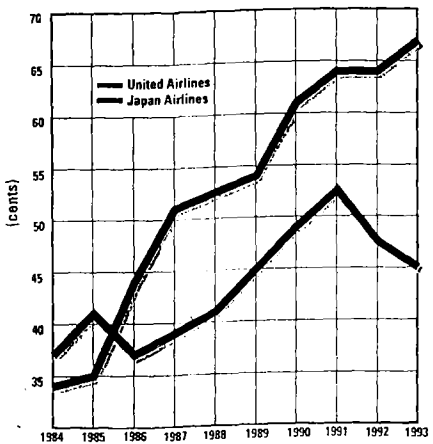
Source: IATA

Chart 4

U.S. Marketshare Correlates Directly with Cost Efficiency of U.S. Carriers

Airline Unit Cost

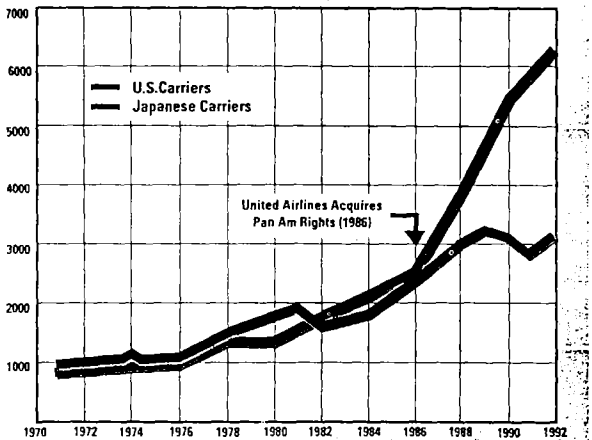
(Total Operating Expense per Available Ton Kilometer)



Source: ICAO Financial Data

Scheduled Airline Passengers Between U.S. - Japan

(in thousands)



Source: Japan Economic Institute

Chart 5

Asian Open Skies Carriers Marketshare Expanding More Rapidly than Japanese

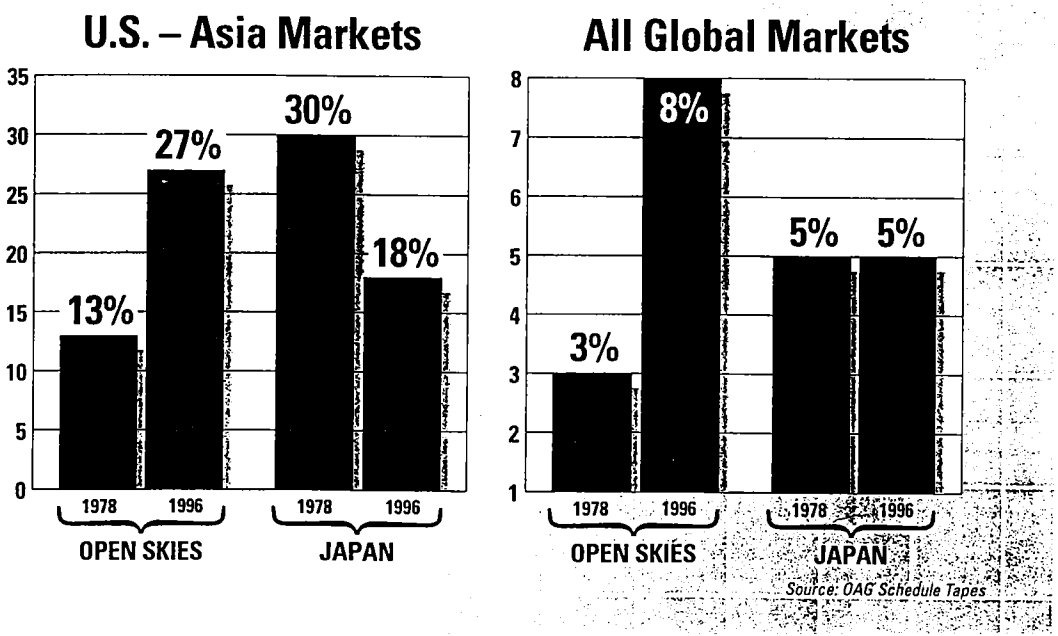
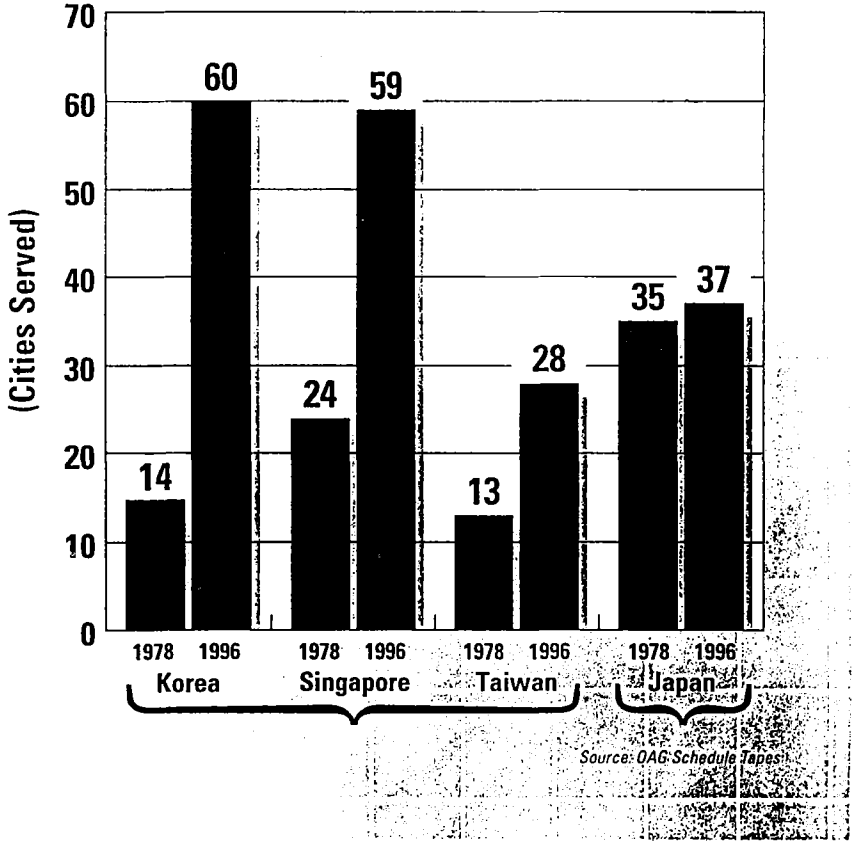


Chart 6

Asian Open Skies Carriers Expanding More Rapidly than Japanese Carriers

All Global Markets



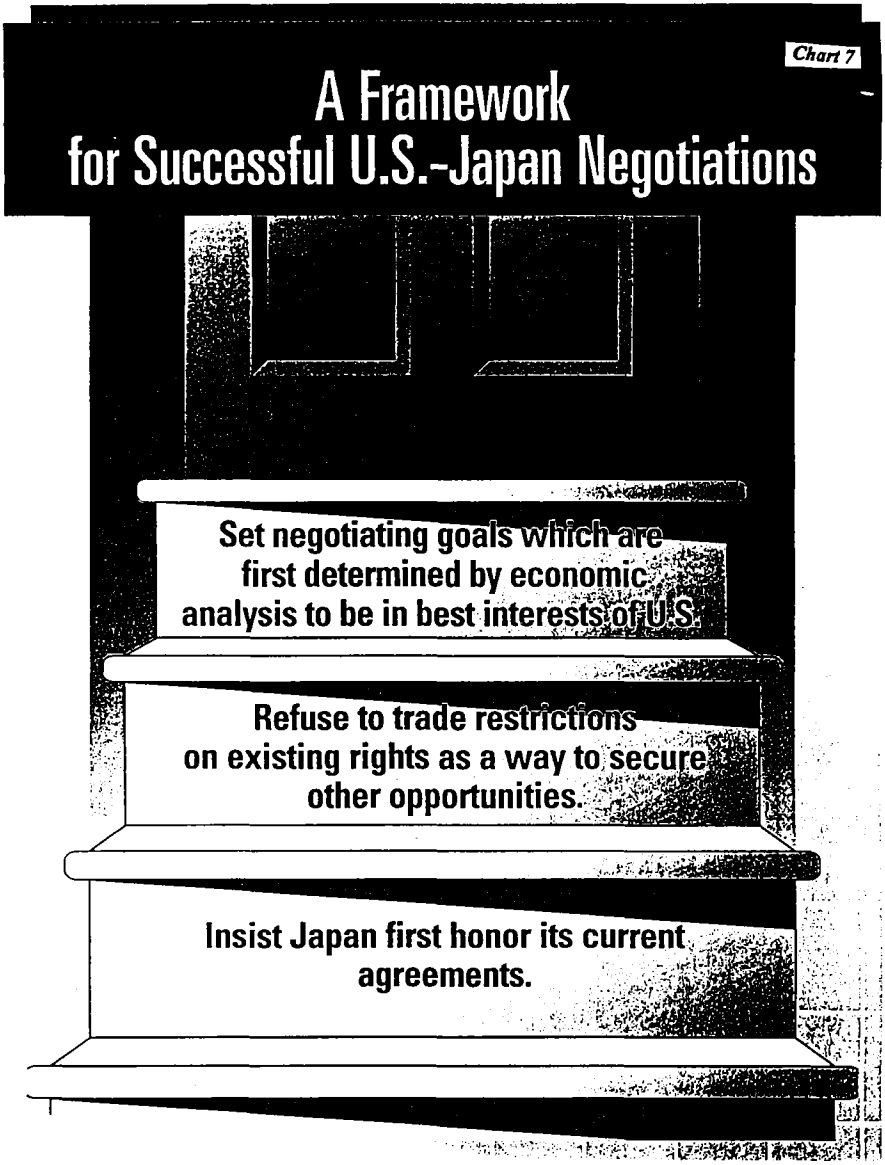
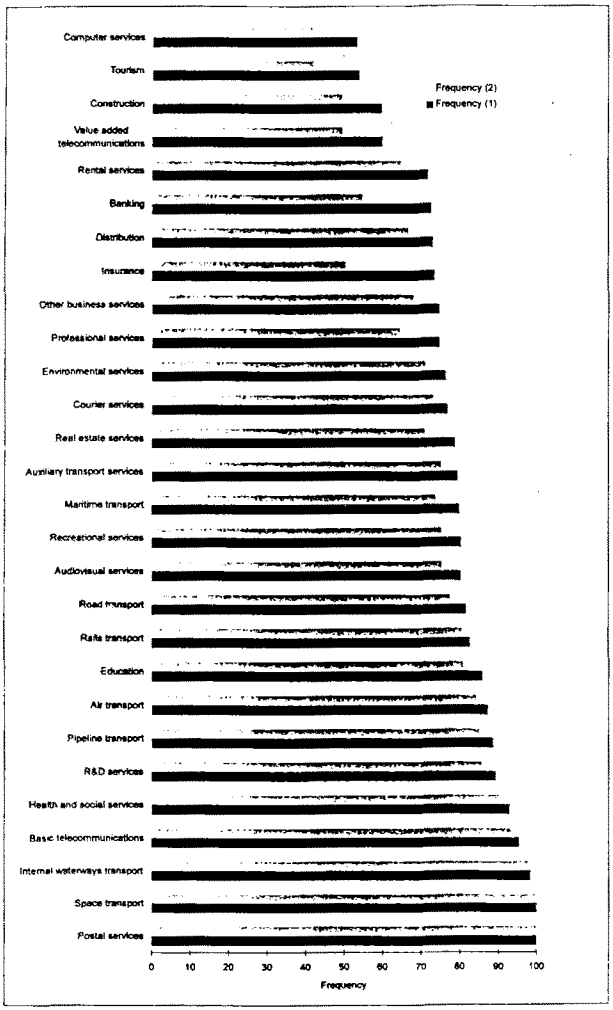


Chart 7
A Framework
for Successful U.S.-Japan Negotiations
Set negotiating goals which are first determined by economic analysis to be in best interests of U.S.
Refuse to trade restrictions on existing rights as a way to secure other opportunities.
Insist Japan first honor its current agreements.

CHART 8

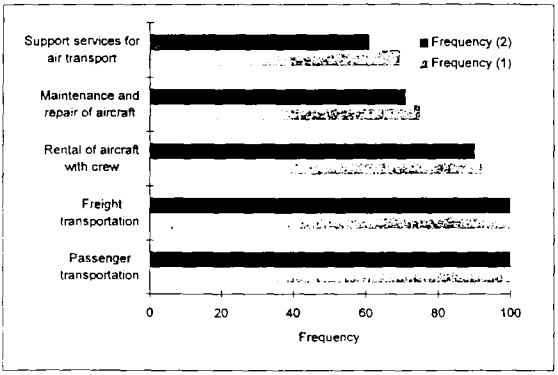
Frequency measures for selected 1- and 2-digit service industries for 16 APEC economies



Source Constructed from the GATS schedules.

CHART 9

Frequency measures for the air transport industry for 16 APEC economies



Source: Constructed from the GATS schedule

Chairman CRANE. Thank you.
Dr. Hilty.

STATEMENT OF DONALD P. HILTY, SENIOR FELLOW, ECONOMIC STRATEGY INSTITUTE

Mr. HILTY. Thank you, Chairman Crane, I will briefly summarize my written comments.

Air transport is a leading global industry. Some people comment that telecommunications is the nerve system of the global economy. If that is true, air transport is the bloodstream. It transports nutrients to the global community, that is, documents, people and goods. It is a very large industry in the United States. The direct output of the airline industry is $54 billion. That is 1 percent of private sector GDP. It employs 1 million people. It ranks just behind motor vehicles and is ahead of the petroleum and textile industries in size.

U.S. carriers have become the lowest cost operators in the world, mainly because of deregulation in the United States in 1978. The average cost structure of U.S. airlines now is one-fourth the cost of the Japanese airlines, one-half the cost of the Europeans and two-thirds the cost of other Asian airlines. So it is not surprising that U.S. airlines are the number one carrier in the world. They have a 20-percent share of the international air traffic business; this is double the share of second-ranked Britain, which in turn, is double the share of third-ranked Japan.

So airlines have become one of the United States' most competitive international industries. The potential, therefore, is enormous.

In this context, the new round of aviation negotiations between the United States and Japan are very important. As Mr. Murphy mentioned, Asia-Pacific is the fastest-growing market in the world. Forecasters in the industry expect United States-Japan traffic to double in 15 years and the intra-Asian market to triple during that time. One big problem is that Japan is one of the world's great bottlenecks. It is the number two economy in the world and the only practical hub for air service between the United States and the rest of Asia. Yet its major business center, Tokyo, has only one runway for international traffic. The Japanese people have fewer international flights available per million people than any of the developed nations and fewer than most of the developing nations in Asia. Recently, Japan has been giving very bureaucratic interpretation to the bilateral 1952 civil air agreement that the United States has with Japan. So with inefficient carriers but a crucial hub location, Japan is using regulations to protect its airlines by giving them the immense leverage entailed in the control of this key hub.

To assist U.S. negotiators, the Economic Strategy Institute studied the economic impact on overall U.S. welfare of various potential settlements. We studied three main scenarios. The open skies scenario is by far the most favorable. I will not go through the numbers; our results are in my written comments, and I have given copies of our complete report to your staff members. An extension of the 1952 agreement is second best; that is, if all our carriers are allowed to grow with the market, as it is now structured.

Some have suggested that we should trade the ability to fly beyond Japan for more flights between the United States and Japan.

We studied that scenario and it comes out a poor third. One of the fundamentals of beyond air service is that about half of the traffic on Japan-beyond flights is flowthrough traffic on United States-Japan flights. Thus, the loss of two direct Japan-beyond flights causes the loss of one United States-Japan flight. This is a fundamental that argues against any capping of beyond flights or any trading of beyond flights for more United States-Japan frequencies.

So the following strategy for U.S. negotiators is recommended: One, we feel that they should insist on open skies for both cargo and passenger carriers. Two, at a minimum, they should insist that current rights under the 1952 agreement are not subject to negotiation. Three, declare that if Japan restricts fifth freedom rights of U.S. carriers, the United States will restrict Japan's sixth freedom operations. For example, if they will not allow us to fly from the United States to Japan and beyond to Bangkok, we will restrict their Bangkok-Japan-United States flights. And four, seek affirmation of the APEC agreement on free trade in aviation services in the Asia-Pacific area. The Japanese did agree to free trade in the Asian market; further restrictions do not seem to be the way to move toward a freer market.

To conclude, Mr. Chairman, the United States, we feel, has not put air transport services in the appropriate global context or to assign them proper priority. The United States has been the primary moving force in efforts to expand trade in the world. As a result, we have lost many jobs in sectors where other countries had the competitive advantage. We have lost many jobs in consumer electronics, textiles, apparel manufacturing industries. Yet, the United States does not aggressively promote airline services where the United States has a major competitive advantage.

Thank you for this opportunity to present my views.

[The prepared statement follows:]

STATEMENT OF DONALD P. HILTY
SENIOR FELLOW
ECONOMIC STRATEGY INSTITUTE

A new round of aviation negotiations is currently underway between the United States and Japan. These talks are extremely important because of the large impact the U.S. airline industry has on the health and growth of the American economy, and because aviation has become one of the United States' most competitive international industries.

I. Importance of the Aviation Industry

The aviation services industry has become so large and so linked to all other industries that it must be considered one of the fundamental industries of any economy. As shown below, its direct output of $54 billion constitutes about one percent of U.S. GDP and generates one million jobs.

GDP for Selected Industries
In billion dollars

	1993
Food and kindred products	$106
Motor vehicles and equipment	$68
Transportation by air	$54
Petroleum and coal products	$48
Textile mill products	$25

Source: U.S. Department of Commerce

Beyond the direct impact of its own spending and employment, the aviation industry also contributes significantly to the creation of earnings and jobs in virtually all major sectors of the U.S. economy. Through the indirect impact of the off-airport activities of passengers and shippers (such as spending at hotels, restaurants, and tourist attractions) and the induced impact of successive rounds of spending, generated on everything from new cars to groceries, by those who receive direct or indirect payments (the so-called multiplier effect), the U.S. aviation industry, according to one estimate, generated nearly six percent of U.S. GDP in 1993, as shown below.

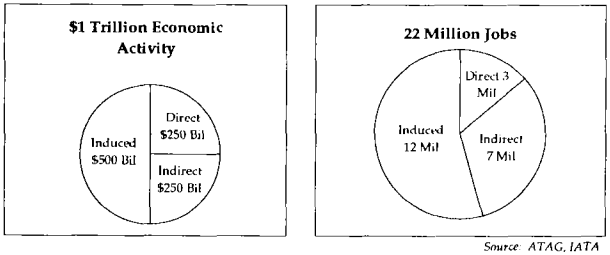
Air Transport Contribution to the U.S. Economy
Summary

	1993	
Economic Impact		
Aviation spending, plus ripple effect	$771	Billion
Earnings of affected industries	$230	Billion
Employment effect	8.8	Million Jobs
Contribution to GDP	5.9	Percent
Impact on Trade Balance		
Passenger air fares	$5.3	Billion

Source: Wilbur Smith Associates. U.S. Department of Commerce

On a global basis, the industry generates over $1 trillion in economic activity and more than 22 million jobs.

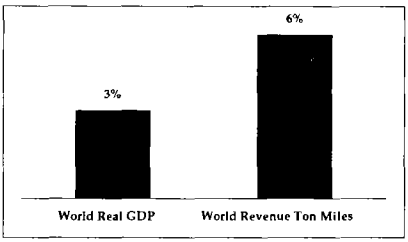
Estimates of Worldwide Air Transport Benefits, 1992



Source: ATAG, IATA

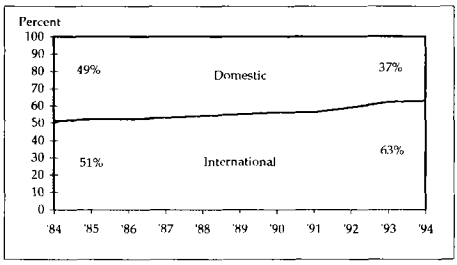
Even more important than the size of the aviation industry is its growth rate and, in particular, the location of most of the growth. As shown below, the volume of passengers and freight carried by the world's airlines has risen at twice the rate of real growth in the world economy over the past ten years and is expected to continue growing at about a six-percent annual rate over the next fifteen years.

Growth Rate Comparison
Past Ten Years



Of great significance for the future shape of the industry is the fact that the bulk of the growth has been, and will continue to be, in international skies, particularly the skies over the Asia-Pacific region. In the ten years between 1984 and 1994, world scheduled airline traffic shifted from being about half domestic and half international to being nearly two-thirds international. This trend is expected to continue, largely because of the explosive growth in Asia-Pacific skies (see exhibits below).

World Scheduled Airline Traffic



Source: Ton-Miles Performed, ICAO

International Scheduled Passenger Traffic
Annual Rates of Growth

	Actual	Estimates	
	1985-1993	1993-2000	2000-2010
Rest-of-World	5%	4%	3%
Asia-Pacific	10	9	7
World Total	7%	6%	5%

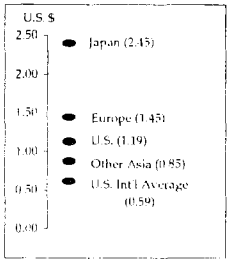
Source: IATA

Thus, it seems clear that a strong and growing U.S. airline industry is necessary for the U.S. economy to grow at an acceptable rate in the future, and anything that would hurt the U.S. airline industry would be a major impediment to overall U.S. economic growth.

II. The United States is Competitive

As a result of having a large domestic airline services market, and of having faced the competitive pressures created by airline deregulation, U.S. carriers now enjoy a strong comparative advantage in airline services, as shown in the figure below.

Relative Cost Structures
Average Operating Expenses per Revenue Ton Mile, 1993



Source: ICAO

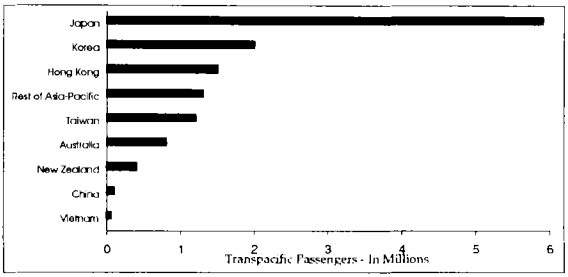
The implications of this superior competitiveness are enormous. When the Japanese consumer-electronics industry gained a similar, competitive superiority it was able to use that advantage to gain absolute dominance of most world markets. Indeed, the U.S. consumer-electronics industry was virtually driven out of business. U.S. airlines are in a position to do the same thing in the world's aviation markets. Aviation service, even under today's restricted conditions, is one of the few industries in which the United States has a trade surplus. Based on U.S. carrier experience in key international markets when restrictions were relatively few, American carriers could easily achieve two-thirds of total market share, with a gain of billions of dollars in airline revenue and profits, as well as thousands of new jobs for U.S. residents.

III. Liberalization Efforts

The U.S. government has been negotiating to liberalize international skies and has, in fact, concluded "open skies" deals with a number of European countries, including, most recently, Germany, Europe's largest economy. Progress in the Pacific has been much slower, largely reflecting Japan's reluctance to liberalize.

As shown below, Japan is by far the largest transpacific air traffic market in the region. This, in addition to its location as the gateway to Asia, make it the only practical hub for aviation service between North America and the Asia-Pacific region.

Transpacific Traffic, 1993



Source: IATA

Just as the hub-and-spoke system of air service has proven to be most efficient domestically, so it is proving to be internationally, and the world's carriers are racing to establish strong footholds at key hubs around the globe. With inefficient carriers, but a crucial hub location, Japan's Ministry of Transportation has used regulation to protect its airlines and has attempted to give them the immense leverage entailed in the control of Asia's key hub. This has led to significant constriction of traffic through Tokyo. While transpacific service has been maintained at a level comparable to that over the Atlantic, intra-Asian load factors and fares are sky high. This constriction, and Japan's manipulation of the agreement, has led to clashes with U.S. carriers and difficult U.S.-Japan negotiations.

Comparison of Retail Air Fares
Between the United States and International Locations

(Lowest advertised fares, first calendar quarter)

		Round-Trip Fares		Nonstop	Fares per Mile		Fares per Mile Index: Tokyo City Pairs = 100	
		1987	1996	Miles	1987	1996	1987	1996
Chicago -	Tokyo	$525	$550	6,273	$0.0418	$0.0438	100	100
	Paris	449	509	4,152	0.0541	0.0613	129	140
	Frankfurt	430	519	4,343	0.0495	0.0598	118	137
	London	439	469	3,953	0.0555	0.0593	133	135
Los Angeles -	Tokyo	$529	$530	5,450	$0.0485	$0.0486	100	100
	Hong Kong	599	569	7,247	0.0413	0.0393	85	81
	Taipei	599	569	6,799	0.0441	0.0418	91	86
	Frankfurt	469	549	5,805	0.0404	0.0473	83	97
	Paris	459	549	5,668	0.0405	0.0484	84	100
	London	569	499	5,455	0.0522	0.0457	108	94
Seattle -	Tokyo	$549	$570	4,768	$0.0576	$0.0598	100	100
	Taipei	579	549	6,073	0.0477	0.0452	83	76
	Hong Kong	579	569	6,488	0.0446	0.0439	77	73
	London	469	499	4,799	0.0489	0.0520	85	87

Source: 1987 fares: American Airlines Exhibit AA-R-235-237, U.S. DOT Docket 44380, Seattle/Portland-Japan Service Review Case

1996 fares: Hayward Travel, Hayward, California

Comparison of Retail Air Fares Between Japan and the United States and Japan and Beyond Locations

(Lowest advertised fares, March 1996)

	Round-Trip Fare	Nonstop Miles	Fares Per Mile	Index: Tokyo-Seattle=100
Japan-U.S.				
Tokyo- Chicago	$550	6,273	$0.0438	73
Los Angeles	530	5,450	0.0486	81
Seattle	570	4,768	0.0598	100
Japan-Beyond				
Tokyo- Bangkok	$800	2,886	$0.1386	232
Hong Kong	700	1,826	0.1917	321

Source: Hayward Travel, Hayward California

Load Factor Comparison Atlantic versus Pacific Operations

	Atlantic	Pacific	Memo: Atlantic vs. Pacific
	(In Percent)		(Percentage Points)
Northwest	78%	72%	+6
United	77	74	+3
American	74	72	+2
Delta	73	67	+6
USAir	70	-	na
Continental	67	67	0
TWA	66	-	na
Industry	73%	72%	+1

Source: BACK Associates

Current operating authority in the U.S.-Japan market is governed by the U.S.-Japan Civil Air Services Agreement of 1952, and by numerous memorandums, consultations, minutes, and amendments negotiated since that time. These permit the designated, so-called "1952 carriers" to provide service from the United States to-and-from Tokyo, Osaka, Okinawa, and beyond, and permit the so-called "MOU carriers" to fly to-and-from Japan, but with more frequency, capacity and gateway limitations, and with no beyond rights. All traffic moves within this governing framework, which over the years has become increasingly ambiguous and subject to the whim of bureaucratic interpretation. Disputes have multiplied and risen in intensity.

IV. Scenarios

To assist U.S. negotiators, the Economic Strategy Institute projected total U.S. carrier revenues, as well as the impact of the Asia-Pacific operations of U.S. carriers on U.S. trade receipts, frequency and cost of aviation service, and total

spending and total employment in the United States, for several scenarios that, in one form or another, are being considered in the negotiating process. These scenarios are (a) completely open skies, in which all airlines are free to establish whatever frequencies, routes, and prices they wish, in response to market forces; (b) an extension of the 1952 Agreement; (c) a capped beyond rights scenario in which the 1952 Carriers continue to fly the same number of beyond flights as they do now, and MOU frequencies to and from Japan are increased; and (d) a capped beyond rights scenario in which substantial attrition of current beyond flights is assumed.

Summary Impact of the Scenarios: All U.S. Carriers
In 1995 Dollars

Scenarios	Impact in the United States: Revenue of U.S. Carriers ($ Bil)	Economic Activity ($ Bil)	Employment (Thous)	U.S. Trade Receipts ($ Bil)
TOTAL IMPACT				
Impact in 1995	$8.3	$29.3	647	$7.6
Impact in 2010				
Open Skies	$21.0	$97.8	2,150	$18.4
1952 Extension	19.8	68.3	1,502	17.4
Capped Beyonds	16.6	64.4	1,391	14.6
Capped Beyonds with Attrition	14.6	59.8	1,289	12.3
DIFFERENCE FROM 1952 EXTENSION				
Impact in 2010				
Open Skies	$1.2	$29.5	648	$1.0
Capped Beyonds	-3.2	-3.9	-111	-2.9
Capped Beyonds with Attrition	-5.4	-8.5	-213	-5.1

Summary Impact of the Scenarios: Passenger Carriers
In 1995 Dollars

Scenarios	Impact in the United States: Revenue of U.S. Carriers ($ Bil)	Economic Activity ($ Bil)	Employment (Thous)	U.S. Trade Receipts ($ Bil)
TOTAL IMPACT				
Impact in 1995	$7.4	$27.3	602	$6.8
Impact in 2010				
Open Skies	$17.7	$90.0	1,980	$15.5
1952 Extension	17.0	62.2	1,369	14.9
Capped Beyonds	14.9	59.8	1,291	13.0
Capped Beyonds with Attrition	13.1	55.8	1,201	11.2
DIFFERENCE FROM 1952 EXTENSION				
Impact in 2010				
Open Skies	$0.7	$27.8	611	$0.6
Capped Beyonds	-2.1	-2.4	-78	-1.9
Capped Beyonds with Attrition	-3.9	-6.4	-168	-3.7

Summary Impact of the Scenarios: All-Cargo Carriers
In 1995 Dollars

Scenarios	Impact in the United States: Revenue of U.S. Carriers ($ Bil)	Economic Activity ($ Bil)	Employment (Thous)	U.S. Trade Receipts ($ Bil)
TOTAL IMPACT				
Impact in 1995	$0.9	$2.0	45	$0.8
Impact in 2010				
Open Skies	$3.3	$7.8	170	$2.9
1952 Extension	2.8	6.1	133	2.5
Capped Beyonds	1.7	4.6	100	1.5
Capped Beyonds with Attrition	1.3	4.0	88	1.1
DIFFERENCE FROM 1952 EXTENSION				
Impact in 2010				
Open Skies	$0.5	$1.7	37	$0.4
Capped Beyonds	-1.1	-1.5	-33	-1.0
Capped Beyonds with Attrition	-1.5	-2.1	-45	-1.4

Summary Impact of the Scenarios: Flight Availability

	B747-400 Equivalents				Implied Actual			
		Japan-Beyond		U.S.-		Japan-Beyond		U.S.-
	U.S.-Japan	Direct	Code-Share	Other Asia	U.S.-Japan	Direct	Code-Share	Other Asia
1952 Carriers								
Available in 1995	169	80	-	62	217	102	-	62
Available in 2010								
Open Skies	473	312	-	298	609	398	-	298
1952 Extension	326	216	-	206	419	275	-	206
Capped Beyonds	228	80	-	206	299	102	-	206
Capped Beyonds with Attrition	212	8	-	206	279	10	-	206
MOU Carriers								
Available in 1995	78	-	-	14	126	-	-	27
Available in 2010								
Open Skies	224	-	-	67	363	-	-	129
1952 Extension	156	-	-	46	252	-	-	89
Capped Beyonds	211	-	136	46	333	-	173	89
Capped Beyonds with Attrition	172	-	104	46	290	-	132	89
Total: All U.S. Carriers								
Available in 1995	247	80	-	76	343	102	-	89
Available in 2010								
Open Skies	697	312	-	365	972	398	-	427
1952 Extension	482	216	-	252	671	275	-	295
Capped Beyonds	439	80	136	252	632	102	173	295
Capped Beyonds with Attrition	394	8	104	252	569	10	132	295

As the summary charts make clear, this analysis indicates that the open-skies scenario is by far the most favorable for the United States, on all measures of performance. Such a conclusion is not surprising, because an open-skies arrangement would enable U.S. carriers fully to exploit their competitive strength in both the U.S.-Japan market and the beyond-Japan market.

The analysis indicates that extension of the 1952 Agreement is the second-best scenario. By maintaining market share across the board, it allows all U.S. carriers to benefit from the rapid growth in Asia-Pacific air traffic while keeping a U.S. carrier presence in all segments of the market. Although it does not add additional U.S. gateways, this scenario actually provides more U.S.-Japan frequencies than all except the Open Skies Scenario.

Surprisingly, the best case of the Capped Beyonds Plus More MOU Frequencies Scenario, comes in only third best. This is striking because the assumptions are unrealistically favorable for the Capped Beyonds Case. For example, it is most unlikely that any U.S.-Japan agreement would result in eight new U.S. gateway cities. It is also extremely unlikely that the 1952 Carriers would be able to maintain current levels of beyond service in a market in which they were rapidly losing share. Nor is it probable that the Japanese will code-share as many of their own flights in the beyond markets as were lost by the 1952 Carriers under this scenario.

There are several reasons, however, why the best capped beyonds scenario would not result in a net gain for the United States.

- First, capping beyond-rights for the 1952 carriers not only would cause their loss of participation in the explosive growth of the intra-Asian market, but, because almost one-half of beyond passengers and cargo travel to and from the United States, would also cause a reduction in their U.S.-Japan service. Furthermore, by sacrificing fifth freedom rights, American carriers would be prevented from establishing networks in the Asia-Pacific market, while unimpeded carriers would be free to build strategic route structures.

- Second, future direct service to Japan from even eight new U.S. cities would generate 15 percent net new traffic from these cities, but this is a relatively small increment for the U.S. system as a whole after substitution is taken into account. This gain is not enough to offset the impact, on the U.S. airline industry and the U.S. economy, of the loss of beyond-Japan traffic.

- Third, while code sharing arrangements may prevent some leakage of beyond passengers from U.S. carriers on the U.S.-Japan leg of their journey, this, too, will offset only a small portion of the 1952 carriers' losses.

That Japan is attempting to constrain U.S. beyond flights is easily understandable. A cap on U.S. rights would transfer more than 200 weekly high-fare, intra-Asia flights from U.S. to Japanese airlines over the next several years and, at the same time, divert a large number of beyond passengers from U.S. to Japanese carriers in the U.S.-Japan leg of their flights. This would be good for the Japanese carriers, but it would not be good for the United States. Ironically, it would not be good for Japan either, because it leaves Japan with less service, higher fares, and lower economic growth.

Capping the current beyond rights for U.S. all-cargo and express-package carriers would also result in a sizable revenue loss, amounting to $1.1 to $1.5 billion, in 1995 prices, in the year 2010. This would translate into a $1.5 to $2.1 billion loss of total spending in the United States in 2010. Furthermore, it would jeopardize the very existence of the express-cargo business, an industry first developed in the United States and not existing anywhere else in its current form.

Recent U.S. aviation policy has been marked by some serious shortcomings. The United States has simply failed to put airline services in their appropriate global context, or to assign them sufficient priority. Over the last five decades the United States has been the primary moving force behind global efforts to expand trade and commerce, and the United States has lost hundreds of thousands of jobs in sectors where other countries had the comparative advantage, such as the textile-and-apparel industry. Yet, in airline services, a sector where the United States has a major competitive advantage, U.S. negotiators have pursued U.S. interests in a less than aggressive manner.

Above all else, the situation calls for a significant change in mindset and priorities. The United States should be aggressive about seeking free trade in airline services, even if that means ruffling the feathers of trading partners.

The Economic Strategy Institute therefore recommends the following strategy for U.S. negotiators:

Recommendation 1: Insist on open skies for both cargo and passenger carriers. A transitional arrangement like those with Canada and Germany should be possible.

As noted earlier, U.S. carriers now enjoy a strong comparative advantage in airline services as a result of having a large domestic airline-services market and having faced the competitive pressures created by airline deregulation.[1] Two other sectors where the United States enjoys a substantial comparative advantage -- agriculture and intellectual property -- have been made priorities of the U.S. government in international trade negotiations. It was sensible to do so. Similarly, it is also sensible to make open skies for the U.S. airline industry a top priority in U.S. trade negotiations. If necessary, the United States can make transitional arrangements, as it did in the case of Canada and Germany, but there should be an agreement on open skies by a time certain.

Recommendation 2: At a minimum, insist that the access and expansion of third, fourth, and fifth freedom rights for both cargo and passenger operations be guaranteed as set forth in the 1952 Agreement and that additional frequencies, gateways, and code-share opportunities be added for both 1952 and MOU Carriers, including All Nippon Airways and Nippon Cargo Airlines.

The United States must make it clear that current rights under the 1952 Agreement are not subject to negotiation. It is important that an agenda be established prior to any negotiations, making clear what is to be discussed and what is off the table. At the same time, it is entirely understandable that the MOU Carriers are anxious to play a larger role in the market and it is imperative that they do so. The United States cannot fully capitalize on its competitiveness in aviation without obtaining greater access for its airlines. Trading beyond rights to gain increased access for MOU Carriers is not in the interest of the United States, but there is no reason why additional access for MOU Carriers cannot be negotiated.

There is no good, economic rationale for the United States to agree with Japan's MOT and accept the position that the only way to add new services is to trade beyond-rights. When the United States seeks market access for semiconductors or auto parts in Japan, it does not do so by offering to give away its market access in grain. Why shouldn't the United States act in aviation precisely as it does in other areas and demand open markets without some *quid pro quo*?

Recommendation 3: U.S. officials should make it clear that Japan's sixth freedom operations to the United States will be restricted if the Japanese MOT attempts to restrict the fifth freedom rights of U.S. carriers.

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[1] See also Clyde V. Prestowitz, Jr., Scott C. Gibson, Paul Willen, and Saul Goldstein, *The Future of the Airline Industry* (Washington, D.C.: Economic Strategy Institute, 1993).

In the event of restrictions on U.S. beyond rights, the United States, of course, would also have to study the U.S.-bound operations of other Asian carriers who might cooperate with MOT's protectionist schemes.

Recommendation 4. The United States should seek clear reaffirmation of the APEC (Asia Pacific Economic Cooperation Forum) agreement with regard to achieving free trade in aviation services in Asia-Pacific skies and should add no new restrictions on aviation services.

Chairman CRANE. Thank you. I have a question I would like to direct it to Mr. Murphy and to you in this regard. Are there any carrier rights that the United States should be offering in exchange for expanded opportunities to fly cargo in and passengers in to Tokyo that could then go on to different Asian destinations?

Mr. Murphy, you might respond first.

Mr. MURPHY. Frankly, we think there are huge opportunities here for carriers of both sides. We have the fastest growing market in the world. By 2010, our international trade association predicts that the Asia-Pacific region will represent over 50 percent of the world's scheduled passengers flowing in this marketplace. The Japanese essentially have two carriers in this marketplace; the United States has two carriers that have network opportunities in the Pacific. There is plenty of traffic in this marketplace for everybody.

Our biggest challenge in the coming years is probably going to be supplying enough capacity to meet the demand. And yet, in spite of that, we have this continued resistance from the Japanese to opening up these markets, and that is primarily because the Japanese carriers, much like the French carriers, have failed to get their costs under control and are not competitive. If Japanese costs were under control, the opportunity for expansion of opportunities for both sides would be there, and we could do very well in this market.

Chairman CRANE. Dr. Hilty.

Mr. HILTY. Yes; I agree. Fares in the rest of the world and especially in Japan are running about 28 percent higher than the deregulated domestic fares in the United States. If we had open skies, we think the rates would drop about 28 percent; traffic would blossom. There is plenty of room for the growth of Japanese airlines and U.S. airlines.

Chairman CRANE. Very good.

Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Chairman, I would like to direct this question if I may, please, to Mr. Murphy.

Mr. Murphy, I have heard from a number of industry analysts that there is a group, an industry group, which in an effort to increase access to Japan is willing to surrender the rights of American companies to operate connecting hubs in Japan to serve United States-Asia passengers. To the best of your knowledge, is this accurate?

Mr. MURPHY. There is a group that has been formed by essentially two carriers, American and Delta, and they put together a coalition of a number of civic parties essentially from their hub cities, and they advocated initially surrendering U.S. rights to fly beyond Japan in return for getting more rights to Japan. In other words, in our terms, they advocated surrendering Asia to get access to Japan. And frankly, I think those proposals have met with such resistance that I think they have largely now moved away from those proposals. I think that the next step, though, that they have to do is to recognize that it is not the U.S. Government that is the problem in this area. The U.S. Government is the leading advocate of open skies and free trade in this area. If we need to lobby anybody or convince anybody, it is the Japanese bureaucracy, not the U.S. bureaucrats.

Mr. RAMSTAD. Just a followup question: What would be the effect of losing these rights for passengers to Asia or for U.S. exporters who rely on the Asian market and for U.S. carriers as well?

Mr. MURPHY. That is a very good question, because I think people tend to lose sight of the fact that when we talk about these things, we talk about them in terms of carrier rights. But a beyond right for a United Airlines is also a beyond right for the city from which we operate. And if we lose access beyond Japan to the rest of Asia, so do the cities from which we operate. So we had Booz, Allen & Hamilton last fall do an analysis of what it would cost the U.S. economy over the next 20 years if we were to lose beyond rights. The result was a $100 billion loss for the U.S. economy, most of which would transfer to the Japanese economy.

Mr. RAMSTAD. Just a final question, Mr. Murphy. In terms of the almost $5 billion trade surplus that air transportation currently generates with Japan, how deleterious would it be on that surplus?

Mr. MURPHY. We also looked at that issue. In 20 years, it would virtually eliminate that surplus. And this is, I think, the second-largest surplus area that we have in our trade with Japan.

Mr. RAMSTAD. It is indeed. Thank you very much. That is very helpful, Mr. Murphy.

Thank you, Mr. Chairman. I yield back.

Chairman CRANE. Let me again apologize to all of the panelists for the interruptions and the delays. This has been a long and trying day I am sure for you folks, too. And we appreciate your input profoundly, and all of your written statements will be made a part of the permanent record.

With that, the Subcommittee stands adjourned.

[Whereupon, at 6:48 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF ROBERT F. KELLEY AND CHARLES P. HEETER, JR. ANDERSEN WORLDWIDE

As partners of Andersen Worldwide, which is the coordinating entity for Arthur Andersen and Andersen Consulting member firms around the world, we appreciate very much the opportunity to submit a statement to the Subcommittee as it begins its oversight hearings on the World Trade Organization (WTO) and implementation of the Uruguay Round agreements. Our Firm believes that the Uruguay Round was a great success and that continued work on professional services in the WTO will provide even further benefits.

Andersen Worldwide

Andersen Worldwide is the world's largest professional services firm, employing 82,000 persons in more than 360 offices in 76 countries. The Arthur Andersen business unit provides accounting, audit, tax, business advisory, and specialty consulting services to clients. The Andersen Consulting business unit provides global management and technology consulting services.

Last year our revenue topped the $8.0 billion mark, a doubling in the last five years, and we expect similar strong results in the next five years. Our growth is in part attributable to our increased involvement in markets overseas, with roughly half of our revenue now coming from outside the United States. Continued liberalization of trade and investment in professional services is vitally important to our continued success, and an effective WTO is vital to that continued liberalization.

In fact, for a worldwide professional services firm such as ours there is no efficient alternative to an effective, rules-based global trading system. Our organization transfers capital, personnel, data, and technology not only between the U.S. and other countries, but also between many nations outside the U.S. Bilateral and multilateral free trade initiatives, while positive and useful, can never adequately replace a well-functioning multilateral system. In short, for our firm, the World Trade Organization has been and continues to be the best forum for securing further liberalization of trade and investment in the services we provide.

Our commitment to the multilateral process is nothing new. We have been involved since the launch of the Uruguay Round a decade ago. In 1985, we completed the first survey and analysis of government impediments affecting the operations of international accounting and consulting organizations. This information was updated in 1990.

Both the 1985 and 1990 results were shared with government negotiators. Based on this information, we provided detailed comments to U.S. and other countries' negotiators during their work on the draft services framework and initial commitments. Andersen Worldwide partners in over twenty of our largest markets contacted their governments to push for liberalization in our sectors.

We believe our active involvement had an important impact on the successful conclusion of the Uruguay Round. Also important to our effort was the openness and professionalism of the officials with which we worked in the U.S. Trade Representative's office. They are to be commended.

The Uruguay Round Agreements
Andersen Worldwide had two main goals that guided our work during the Uruguay Round:

1. to eliminate unnecessary government impediments to marshaling the financial resources, professional talent and technology of our global organization in order serve the needs of clients anywhere in the world; and

2. to advance the globalization of professional services - through the international recognition of qualifications and the use of International Accounting Standards – to better serve the modern global marketplace.

When we measure the Uruguay Round agreements against these criteria, we find great strides have been made, and a mechanism has been created to complete the job.

Removing Impediments to Our Worldwide Operations
There are three principle types of impediments to our international operations:

1. restrictions on payments and financial transfers affecting inter-firm arrangements, the collection of fees in cross-border transactions, and investments in new operations;

2. restrictions on the movement of professional, managerial and technical personnel for short- and long-term assignment in other countries; and

3. problems affecting our intellectual capital, including inadequate protection against piracy of software, training materials and publications, as well as restrictions on transborder data flows and telecommunications.

These issues are addressed in the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the two most significant new agreements to come out of the Uruguay Round.

The GATS sets out a series of rules to discipline government intervention in international trade and investment transactions affecting service industries and professions. The broad intent of these rules is twofold: to ensure that foreign service firms or firms with international affiliations enjoy the same privileges as domestic competitors with respect to government regulation (national treatment) and to remove obstacles to trade and investment in services (market access).

For the most part, these rules apply only if individual countries commit to apply them to specific service industries as indicated in schedules attached to the agreement. More than 62 countries, constituting more than 90 percent of Arthur Andersen's global market, have agreed to apply the rules to accounting, audit and tax services. More than 60 countries -- more than 95 percent of Andersen Consulting's global market -- have agreed to apply them to information systems, management consulting and software development. This scheduling is important even for countries where we do not face problems or where our practices are not heavily regulated because it prevents governments from imposing new restrictions.

The TRIPS agreement sets minimum standards of legal protection for intellectual property and provides for enforcement through domestic and international procedures. All 117 countries participating in the negotiations agreed to abide by the TRIPS rules, although some receive an extended grace period for implementing their obligations. In addition, any other nations seeking to join WTO must accept these rules.

Payments and Transfers: Article XI of the new services agreement prohibits countries from applying restrictions to payments and transfers in sectors covered by their schedules of commitments. This prohibition applies to all current transactions as defined by the International Monetary Fund (IMF), including virtually every type of payment made by our worldwide organization.

The one exception to this rule is in cases where a country is authorized by the IMF to impose restrictions to safeguard its balance of payments against serious difficulty. However, stricter rules and international surveillance now apply to balance-of-payments measures to prevent their abuse.

Movement of Personnel: The services agreement addresses the issue of restrictions on the transfer of managerial, professional and technical personnel, but not as clearly as it speaks to the problem of payments and transfers. Once again, the freedom to move personnel is related to the commitments a country makes in its schedule.

For the most part, these commitments permit the free movement of "intra-company transferees," marketing personnel or business visitors in sectors covered by the schedule. Governments may employ measures necessary to protect the integrity of their immigration laws and their borders, however, only if these measures do not negate the commitment they have made to national treatment and market access.

The agreement provided for negotiations to further liberalize movement of personnel, but these talks proved disappointing. This is an area of unfinished business left over from the Uruguay Round that must be addressed. The U.S. and other nations must recommit themselves to reaching agreement on additional liberalization, and need not wait for a new overarching "Round" of talks.

Protection of Intellectual Property: The TRIPS agreement requires all GATT member countries to recognize computer programs and software as literary works and databases as compilations protected by copyright. The agreement provides two levels of protection against infringement and piracy. First, countries must give full protection in domestic law as prescribed by the Berne Convention. They must put into place enforcement measures against infringement, deterrents to infringement, and criminal penalties for willful piracy.

Second, the agreement allows foreigners to challenge ineffective domestic protection through GATT dispute settlement procedures, and reforms the dispute settlement process to assure resolution of complaints in a 12 to 18-month period, including all appeals. Developing countries are permitted a five-year transition to full implementation of the rules. The recent

decision of Japan to lengthen its copyright protection for recorded music to the WTO standard is evidence that the TRIPS agreement is bearing early fruit.

In sum, the Uruguay Round agreements make substantial progress on each of the three types of impediments faced by our firm.

Advancing the Globalization of Professional Services

Although accountancy is probably the most international of the professions, true globalization has been impeded by the lack of accepted international standards and of cross-border recognition of national qualifications and credentials. Our Firm has been a leader in addressing these issues through the International Accounting Standards Committee (IASC) and work at the regional level through support for the European Union's (EU) mutual recognition directive and the North American Free Trade Agreement's (NAFTA) professional services provisions. We are pursuing further opportunities in the Asia Pacific Economic Cooperation (APEC) forum and the Free Trade Area of the Americas (FTAA) talks.

Consulting has not traveled the same road to internationalization as accounting, but some governments already set standards and qualifications for consultants and there are indications that other countries wish to follow that course.

The GATS agreement provides an opportunity to address the problem of regulation and the issue of international standards in a truly global initiative with the participation of all WTO member countries. First, Articles VI and VII establish certain standards in the areas of domestic regulation and recognition of qualifications and standards. And second, a separate ministerial-level "Decision on Professional Services" is designed to ensure that those principles will be applied specifically to the professions.

Domestic Regulation and Recognition: The services agreement contains important new principles on domestic regulation and recognition of qualifications. Article VI on domestic regulation contains three relevant features:

1. governments shall apply regulations to service industries in a reasonable, objective and impartial manner so that they do not act as arbitrary barriers to trade;

2. qualifications requirements and procedures, technical standards and licensing requirements in the professions shall be based on objective and transparent criteria and not be more burdensome than necessary to ensure the quality of the service; international standards shall be taken into account in determining compliance with these principles; and

3. all countries must have adequate procedures to verify the qualifications of professionals from other countries.

Likewise, Article VII on recognition of qualifications and standards has three relevant features:

1. countries may choose their own approach to recognizing qualifications and standards, through unilateral recognition, bilateral reciprocal arrangements or international harmonization;

2. whatever approach is chosen must be applied in a consistent, objective and fair manner to all other countries seeking recognition of their professionals; and

3. countries shall cooperate with intergovernmental and non-governmental international organizations towards the establishment and adoption of common international qualifications and standards of practice.

Decision on Professional Services: A separate decision establishes a Working Party on Professional Services (WPPS) to carry out Articles VI and VII with respect to the professions and assigns the first priority to accountancy. In conducting its program, the working party must involve the profession's international organizations and respect the role of self-regulation where this is the norm.

The decision identifies three specific objectives in accounting:

1. to encourage the use of international standards in the accounting profession through cooperation with international professional organizations such as the IASC and the International Federation of Accountants (IFAC);

2. to establish guidelines for the reciprocal recognition of accounting qualifications across borders; and

3. to make sure that domestic regulation of the accounting profession serves legitimate public policy objectives, while not acting as an unnecessary barrier to trade and investment.

The mandate of the WPPS, however, extends beyond accounting to other professions. It is anticipated that once concrete progress has been made on accountancy, the working party will begin work on another profession -- perhaps engineering, consultancy, architectural or legal services.

Continued Work in the WTO

While professional services fared quite well in the Uruguay Round, the work is not complete. The Working Party on Professional Services is the primary forum for the continue effort, but liberalization in accountancy, consultancy and other services should be advanced wherever possible.

Working Party on Professional Services

The WPPS meets next week for the fourth time. The chair is Ambassador Leonora Saurel of El Salvador, a dynamic and highly respected figure in Geneva. She has asked participating governments to make suggestions for priorities within the Working Party's mandate, and for proposals for achieving success in those priorities.

While the United States and some other parties have been active in pursuing the WPPS's goals, the participation of other nations has lagged. It is crucial to the credibility and effectiveness of the Working Party that its efforts on accountancy not fall by the wayside. For this reason, we are calling for significant steps to be taken on professional services in anticipation of the WTO Ministerial Meeting to take place in December 1996 in Singapore. This "Action Program" -- which we have shared with the U.S. Trade Representative's office -- contemplates movement on several fronts.

Continuing Liberalization of Trade in Accountancy Services

All WTO members that have not yet scheduled the accountancy sector (accounting, auditing, bookkeeping, at a minimum) under the GATS should agree to do so at Singapore. The content of the scheduling should be the *status quo* or better. This would be a significant sign of confidence in the WTO/GATS and of support for the liberalization of professional services.

All WTO members that require citizenship as a condition for an individual to obtain professional qualification or licensing within their jurisdictions should agree to eliminate this requirement at Singapore. This is a small but highly symbolic initiative in support of liberalization of professional services.

Initial Conclusions of the Working Party on Professional Services

With respect to arrangements for the mutual recognition of qualifications between WTO members, the Working Party on Professional Services should complete work on disciplines for uniform, open, transparent and objective procedures for the negotiation of such arrangements. These disciplines should be endorsed by Ministers at Singapore.

With respect to residency requirements for individual professionals and professional firms, the WPPS should complete work on disciplines to end such requirements that are more burdensome than necessary to achieve legitimate policy objectives. These disciplines also should be endorsed by Ministers at Singapore.

With respect to requirements that owners of professional firms must be locally licensed professionals, the WPPS should complete work on disciplines that would open ownership to foreigners in a way which would still protect professional objectivity and independence. Again, these disciplines should be endorsed by Ministers at Singapore.

With respect to encouraging the development and use of international standards, the WPPS should develop disciplines on appropriate procedures and due process in professional standards setting at the international level. These disciplines should be endorsed by Ministers at Singapore.

Finally, Ministers should agree at Singapore that the Working Party on Professional Services will complete work on accountancy, including recommendations on international standards, no later than December 1997. If concrete first steps on accountancy are made in Singapore, work on other professions should begin, using the progress made in accountancy as a model.

Any support that the Subcommittee could provide for our Action Program or that otherwise reinforces and spurs the efforts of the Working Party could be of great value in achieving a successful completion of the WPPS agenda.

Conclusion

We have been a consistent advocate of freer trade across the board, because expanded trade is in our enlightened self-interest. The Uruguay Round trade package will encourage world economic growth, which will be good for our clients and increase the demand for our services. And, as we have outlined, the agreements contain numerous provisions liberalizing trade and investment in professional services, creating new opportunities to provide our services. In addition to the services and intellectual property agreements, the package includes tariff cuts on thousands of industrial and agricultural products, a reduction of trade-distorting agricultural subsidies, liberalization of non-tariff barriers such as textile and apparel quotas, and significant institutional reforms to back up the new rules.

That having been said, much work remains to ensure that professional services may enjoy the full range of benefits promised by the Uruguay Round, and we urge your support for this work. Our firm will continue to be intimately involved in the process, and we stand ready to offer assistance to Congress, the Administration, and all other parties interested in promoting liberalization in trade and investment in professional services.

STATEMENT OF MR. RALPH J. GERSON
PRESIDENT AND CEO, GUARDIAN INTERNATIONAL CORP.
before the
Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
March 28, 1996

IMPLEMENTATION OF THE U.S.-JAPAN AGREEMENT ON FLAT GLASS

Introduction and Summary

I am Ralph J. Gerson, President and Chief Executive Officer of Guardian International Corp., of Auburn Hills, Michigan. Over the past three decades, Guardian International and its parent company, Guardian Industries Corp., have built a worldwide network for flat glass manufacturing, distribution, and sales. Today, we manufacture flat glass products in 14 plants in eight countries in North and South America (the United States, Canada, and Venezuela), Europe (Luxembourg, Spain and Hungary), and Asia (Thailand and India). Five additional production facilities are currently under construction, one each in the United States, Germany, Brazil, Saudi Arabia and Thailand. Operations in several other countries are planned over the next five years. Guardian also has built highly successful sales and distribution operations in more than 80 countries.

Guardian has strongly supported an active U.S. government role in opening Japan's market for flat glass. After years of effort, we had concluded that official help was required to change the closed, cartel-like structure of that market. For that reason, we were extremely pleased in December 1994 when Ambassador Kantor announced that agreement had been reached on steps to open the flat glass market. Based on experience during the first year of the agreement, conditions have begun to change, but much more progress must be made for Japan to enjoy an open and competitive glass market. Imports have increased significantly in percentage terms, but import levels remain unusually low in absolute terms. Moreover, there are indications that we are starting to reach the limits of the willingness of Japanese distributors to handle foreign glass products.

Officials of the U.S. and Japanese governments will meet in Tokyo on April 22nd and 23rd for the first annual review of the flat glass agreement. Prior to that meeting, President Clinton will be traveling to Tokyo. It is essential that President Clinton and other U.S. officials make it clear to their Japanese counterparts that continued efforts to implement the flat glass agreement are important to the bilateral trade relationship.

The remainder of my statement reviews the efforts that led to the agreement on flat glass, the principal terms of the agreement, implementation to date, and the efforts of the U.S. private sector.

Initial Efforts in Japan

During the late 1980's, Guardian concluded that, for two key reasons, it was vital to our global competitiveness to become a significant player in the Japanese market. First, the $4.5 billion Japanese market was the second largest country market in the world. Second, our Japanese competitors, whom we faced in virtually every market around the world, were financing their worldwide expansion with excess profits earned in the high-priced Japanese market.

Our initial market-entry strategy in Japan was one that had been successful throughout North America, Europe, and Asia. We set out to win customers by providing high-quality glass

products at very competitive prices. Throughout the world, Guardian has been able to offer competitive prices that are made possible in part through production efficiencies and in part through shortening and simplifying the distribution chain.

From the outset, Guardian met a stone wall in Japan. With very minor exceptions, neither glass distributors nor glass fabricators would handle our products, even though we were able to provide prices at least 30% to 50% below domestic prices. On the surface, two reasons were most frequently given for our lack of success: low quality and slow delivery time. Both reasons were demonstrably bogus. Our glass was the same product that competed successfully with Japanese glass in the U.S., Europe, and other markets around the world. Moreover, we kept our delivery time short by developing a network of warehouses in the major Japanese cities. We soon discovered the real problem: the Japanese flat glass market was a cartel, tightly controlled by the three domestic manufacturers -- Asahi Glass Company, Ltd., Nippon Sheet Glass, and Central Glass Company. Since the 1950's, these three companies had maintained fixed market shares in a 5/3/2 ratio. Each maintained an exclusive network of distributors and each had extensive ties throughout the construction sector due to keiretsu relationships. Any distributors tempted to purchase imported glass were threatened with the cutoff of supply from their domestic sources. In all other markets in developed countries, glass distributors are free to handle the products of any manufacturer. In Japan, not only are distributors blocked from the purchase of glass from foreign producers, but there is no competition between Japanese producers, as distributors are exclusive to each producer.

U.S. Government Support

Faced with enormous barriers to entry, Guardian turned to the U.S. Government for help. In the 1992 Bush-Miyazawa Action Plan, the Japanese government acknowledged the problem in the flat glass sector, and undertook to "substantially increase market access for competitive foreign firms." Unfortunately, there was little follow-up to the Action Plan, and the Japanese Government failed to implement key elements of the agreement.

In June 1993, the Japan Fair Trade Commission (JFTC) released a survey of the Japanese flat glass market. The survey is remarkable in two respects. First, it confirmed in great detail the anticompetitive practices prevalent in the flat glass sector. Second, in the face of substantial documentation of these practices, it concluded that there is no evidence of violation of law. It was clear that outside pressure was critical if attitudes in Japan were to change.

In July 1993, the Clinton Administration renewed pressure on the Japanese Government to open the flat glass market. At U.S. insistence, the flat glass sector was included in the so-called "compliance basket" in the Clinton-Hosokawa Agreement on Framework Negotiations. That triggered 18-months of negotiations that culminated in the U.S.-Japan Agreement on Flat Glass, which was signed on January 25, 1995.

The U.S.-Japan Agreement on Flat Glass

The U.S.-Japan Agreement on Flat Glass is unusual because it was negotiated during a period of confrontation in U.S.-Japanese trade relations. The most divisive issue at the time concerned autos and auto parts. Because of failures to implement past agreements, the Clinton Administration insisted on obtaining measurable indicators of success in new agreements. In turn, the Japanese Government accused the U.S. of favoring managed trade and vowed to resist any steps in that direction. In the flat glass agreement, both sides managed to preserve their core positions while incorporating terms strong enough to reassure the U.S. flat glass industry that genuine market-opening could result from the agreement.

Through the extraordinary efforts of Ambassador Mickey Kantor and his dedicated team, an agreement was reached in December 1994 setting out responsibilities for all involved. For their part, the Japanese glass manufacturers and distributors released voluntary public statements recognizing the need for open and non-discriminatory procurement in the flat glass sector, and acknowledging that distributors are free to purchase from any supplier, including foreign flat

glass manufacturers. In turn, the Government of Japan praised the industry statements and undertook to:

- Brief the domestic industry on the contents of the agreement and facilitate contacts between the U.S. and Japanese industries;
- Promote wider use of specialty glass for safety and energy conservation purposes;
- Promote increased competition in large-scale construction projects, both public and private;
- Support steps by Japanese glass distributors to diversify their sources of supply; and
- Conduct an annual survey of the industry to assess implementation of the measures.

Finally, the U.S. government agreed to ensure that U.S. manufacturers are appropriately working to take advantage of the openings created by the agreement.

The key to the agreement, in our view, is the Japanese government's commitment to conduct an annual survey to collect clearly defined sets of data. In addition to data on imports by country, the surveys will generate data on:

- The extent to which Japanese distributors and glaziers begin using market forces to determine their glass suppliers, which should lead to substantial quantities of imported glass;
- Perceived material differences between foreign and domestic glass;
- Sales activities by foreign-owned glass firms; and
- Participation by foreign-owned firms in publicly financed large-scale construction projects.

The agreement spells out the objective criteria -- both qualitative and quantitative -- to be used in assessing implementation of the agreement. The qualitative criteria are based on levels of effort by the two governments. The quantitative criteria are based on the survey results. In our view, the most significant quantitative criterion is "the change in the extent to which Japanese distributors and glaziers deal in or use imported flat glass..." This measures the extent of real opening in the distribution system. If distributors and glaziers source their glass from more than one Japanese or foreign supplier, they are much less vulnerable to pressure to maintain traditional sole-source buying patterns. While the Japanese were careful to include a statement in the agreement that the criteria do not constitute numerical targets, it is clear that success would be judged in large part by whether imports of flat glass increased substantially. The Japanese also understand that it is not sufficient that import increases only occur from Japanese-owned glass plants located abroad.

The agreement runs for five years, until the end of 1999, and consultations are to be held at least annually.

Implementation of the Agreement

The Clinton Administration made it clear from the outset that successful implementation is crucial, that it did not intend to forget about the flat glass issue now that agreement had been reached. Both Ambassador Kantor and Ambassador Mondale have been consistent on this point.

No doubt this clarity had an effect on the Japanese, because several early steps were taken. The Japanese government promptly briefed the industry on the contents of the agreement. The Japanese distributors and manufacturers promptly issued their voluntary statements endorsing

competition and openness. Japan's Ministry of Construction promptly staged a trade fair to promote the use of foreign building materials, including flat glass. Also, Japan's Ministry of Trade and Industry promptly began designing its survey questionnaire. Finally, there are signs that the JFTC is becoming more active in the fight against anticompetitive practices. In January of this year, the JFTC began studying the records of 18 large glazier on suspicion that prices were being fixed in the industry. The U.S. government should encourage this JFTC initiative.

However, other implementation steps have been taken more slowly or not at all. Some areas where actions have fallen short of commitments are indicated below.

- The government of Japan has been slow in compiling the results of the first annual survey. The survey was to have been completed in January, but was only finished in March.

- Japan's Ministry of Construction has been slow to provide access to publicly financed large-scale building projects, and only one foreign bid was accepted on any such project since the agreement was signed.

- In the private construction market, the MOC has not yet clearly designated "contact points" among local general contractors, glaziers, and architectural design firms, as it committed to do in the agreement.

- The Government of Japan has yet to adopt measures to promote increased use of safety and energy-saving glass, despite substantial technical support from both the U.S and Japanese glass industries.

- Plans are still in their infancy to build publicly funded "model projects" to showcase the benefits of advanced glass products -- most of which are commonplace in the U.S. and European markets, but are little known in Japan.

The status of implementation is to be reviewed by U.S. and Japanese government officials in a meeting later this month in Tokyo, on April 22nd and 23rd.

Private Sector Efforts

The U.S. and Japanese private sectors have worked together in an effort to make the flat glass agreement a success. Even before agreement was reached, the U.S.-Japan Business Council and its counterpart, the Japan-U.S. Business Council, created a Joint Subgroup on Flat Glass. The two Councils, which meet together annually, consist of top executives of some 150 leading U.S. and Japanese companies.

The members of the Flat Glass Subgroup include representatives of all companies involved in implementing the agreement: Asahi Glass, Nippon Sheet Glass, and Central Glass on the Japanese side; and Guardian, PPG Industries, Inc., and Monsanto Company for the U.S. side. A representative of Weyerhaeuser Japan also participates for the United States because experience gained in the flat glass issue may be helpful in opening the wood products market, which is also dominated by cartel-like keiretsu relationships. The Subgroup is co-chaired for the Japanese side by Yasuhiko Furukawa, Executive Vice President of Asahi Glass Company. I serve as co-chair for the U.S. side.

The Flat Glass Subgroup has served as a useful forum for communication on implementation of the agreement. Since the results of the MITI survey of the first year's implementation will soon be made available, I expect that the Subgroup will become even more valuable in identifying and helping to resolve problems that may emerge. The Subgroup has been especially active over the past year in pressing the government of Japan to act promptly to strengthen regulations on the use of insulating and safety glass. Japan is far behind North America and Europe in both areas.

Regarding energy conservation, in August 1995, Guardian and PPG sent a team of technical experts to Tokyo to present a series of briefings to Japanese government and private sector officials on the U.S. experience in using energy-saving glass products, and the implications if similar standards were adopted in Japan. I am attaching for the record a copy of the English version of the presentation made by that team.

With respect to safety glass, on March 21, my Japanese counterpart and I, along with representatives of all companies on the subgroup, called on and presented a joint letter to several key officials in MITI and the Ministry of Construction urging that safety glass regulations be strengthened quickly.

While U.S. companies continue to compete strongly with each other in the Japanese market as elsewhere, we have also worked together through the U.S.-Japan Business Council to encourage market-opening in Japan. PPG supports the conclusions and recommendations of this statement.

Conclusions and Recommendations

Guardian is cautiously optimistic that the flat glass agreement will produce some genuine and sustained opening of the Japanese market. We are informed that the MITI survey indicates that imports of flat glass increased 90 percent by volume in the first six months of 1995 compared with the same period in 1994. At the same time, there are three reasons why it is far too early to conclude that the agreement is a success.

- First, sales levels that generate impressive year-over-year growth statistics in percentage terms are still minuscule in absolute terms. Even if Guardian were to double its sales in 1995 over 1994, we still would account for at most only 2 percent of the Japanese market. Based on our performance in comparable markets around the world, we could reasonably expect a market share in the range of 10 to 15 percent.

- Second, strong keiretsu bonds still exist, making it extremely difficult for us to participate in privately-funded construction projects.

- Third, there are strong signs that distributors and glaziers have only set aside a small token portion of their business to be allocated to imported products. Once that portion has been filled, foreign suppliers may find it impossible to win increased market share, no matter how competitive we become.

It is essential, in my view, that the U.S. government continue to assign high priority to the implementation of the U.S.-Japan Agreement on Flat Glass. For reasons already given, it is far from clear that the agreement is producing meaningful results. Failure would have repercussions far beyond the flat glass sector by intensifying the sense of distrust that already exists between our two countries on trade issues. The only way to dissipate that distrust is to demonstrate one agreement at a time that each country is as good as its word.

The bilateral agreement on flat glass offers a tremendous opportunity to open a Japanese market that has been tightly closed to American manufacturers. It deserves praise, as do President Clinton and Ambassador Kantor for securing the agreement. Yet without effective implementation, the goal of fair access to Japan's flat glass market will continue to elude us. And if questions are raised about the U.S. commitment to implementation in one sector -- in this case, flat glass -- every other sector in the U.S -Japan trade relationship will suffer as well. The effort expended to achieve an agreement with strong terms warrants an equally strong effort to ensure Japanese compliance. Prompt disclosure of survey data, regularly scheduled government-to-government meetings, private sector involvement, and close monitoring of designated quantitative criteria all are necessary.

Attachment retained in Committee files.

COMMENTS IN LIEU OF PERSONAL APPEARANCE
BY STEVEN J. KEOUGH, INTELLECTUAL PROPERTY ATTORNEY
United States-Japan Trade Relations Hearing
Thursday, March 28, 1996

In lieu of a personal appearance, Steven J. Keough, intellectual property attorney, Patterson & Keough, P.A., 1100 Rand Tower, 527 Marquette Ave. S., Minneapolis, Minnesota 55402 respectfully submits the following written statement for the printed record of the United States-Japan Trade Relations hearing held on Thursday, March 28, 1996 at 2:30 p.m.

In a technology-driven worldwide marketplace, exclusive rights to its hard-earned breakthrough technology give a U.S. company a competitive advantage. The Japanese practice of patent application flooding essentially strips U.S. companies of this advantage, and deprives them of fair and equitable access to Japanese markets. This anti-competitive conduct, which is supported by the Japanese Government, results in damage to U.S. companies' markets worldwide, including in the United States. This conduct damages the United States economically, and reduces its competitiveness worldwide.

The practice of "patent flooding" in Japan, as detailed below, has injured the trade relationship between the U.S. and Japan and has significantly contributed to the trade deficit and the macro-economic imbalances that have caused deep friction between the two countries. The ongoing nature of this practice sheds serious doubt on the degree of good faith with which the Government of Japan has entered into recent negotiations and TRIPS Agreements with the United States. Critically, Japan's structural barriers to adequate and effective protection and enforcement of patent rights deprives U.S. companies of the worldwide competitive value merited by the breakthrough technology they invent.

The Commenter is a patent attorney who has practiced extensively in the area of international patent protection. This submission is based on the experience and knowledge the Commenter has acquired through his private practice, in which he has represented numerous United States and Japanese companies having worldwide intellectual property interests, including in Japan. These comments express the personal views and opinions of the Commenter.

I. The Government of Japan denies U.S. companies adequate and effective means to secure, exercise and enforce patent rights.

The Government of Japan has structured its patent system to deny U.S. companies adequate and effective means to secure, exercise, and enforce patent rights. 19 U.S.C. §2242(a)(1)(A). The Government of Japan has put in place a number of structural barriers to adequate and effective patent protection for U.S. companies in Japan. These structural barriers include: the lack of any duty of disclosure on the part of Japanese applicants; the lack of any speedy remedy for failure to correctly identify inventors; the ability of applicants to wait seven years before requesting examination of patent applications; toleration of patent application flooding; delays in completing examination once requested; severe under-staffing in the Japan Patent Office (JPO); the differences between the official fees charged for filing an application and for requesting examination; the differences between the fees that Japanese patent attorneys (Benrishi) charge their foreign and their domestic clients.

These structural barriers relate to pre-issuance conduct, and have not, apparently, been the focus of negotiations between the United States and Japan. The discussions and agreements between the United States and Japan have not addressed the root cause of the problems described herein — pre-issuance conduct, including patent application flooding, by which the Japanese companies, with the encouragement and assistance of the Government of Japan, deprive U.S. companies of rights to breakthrough technology. Prior negotiations have focused on increasing

the ability of U.S. companies to get patents issued in Japan, not on increasing the ability of U.S. companies to defend themselves from flooded patent applications. As part of the bilateral agreements, the ending of pre-grant oppositions in Japan has actually made it harder for U.S. companies to fight back against patent flooding. This likely effect was surely not lost on the Japanese negotiators to the talks. Now, a U.S. company seeking to challenge validity or inventorship must virtually wait until the flooded application matures into a patent — a delay of up to ten years or more; and all the while the U.S. company is subject to threats and harassment based on the flooded patent applications. It is well established that use of a U.S. company's patented technology is frequently deferred by potential customers in view of the existence of a flood of Kokai patent applications by a Japanese corporation. In the Commenter's view, the Government of Japan is not entering into good faith negotiations or making significant progress towards addressing the issues described in this comment or towards providing adequate and effective protection of intellectual property rights. See 19 U.S.C. §2242(b)(1)(C).

These structural barriers have a serious detrimental impact on U.S. companies seeking to protect their breakthrough technologies in Japan. However, when combined with Japan's publication of patent applications eighteen months after filing, and with the JPO's historic tendency to grant multiple, narrow patents rather than single, broad patents, the detrimental effect is compounded.

This pre-issuance conduct affects all U.S. companies but is more pronounced in its detrimental economic impact on small and medium sized U.S. companies. It is also these very companies which, in recent years, are the single most important source of job creation and breakthrough technologies in the United States.

These structural barriers have two general adverse effects on the patent protection process in Japan. First, they reduce the effectiveness and significance of the JPO as the grantor of enforceable patent rights and the initial arbiter of patentability. Due to deferred requests for examination, issues, such as patentability, which should, in the first instance, be decided by the JPO, are left unaddressed and unresolved for long periods of time. Without definitive, timely rulings from the JPO, companies are left to contest, debate and resolve these issues on their own. This marketplace horse trading is often conducted without the benefit of full information, and is often influenced by the superior bargaining power of large, well-funded Japanese companies.

The second effect of these barriers is to clearly encourage "patent application flooding." Patent application flooding is the practice by which a Japanese company files a flood of sham patent applications — or applications covering minor "improvements" in a U.S. company's breakthrough technology. Throughout most other jurisdictions such "improvements," or obvious uses of the technology, are not considered patentably distinct over the underlying innovation. A goal of a patent flooder is to target and surround the U.S. company's technology with a flood of trivial or frivolous patent applications, and then to use the Japanese applications as priority applications for entering foreign jurisdictions — including the United States. The Japanese company will then offer to license some of its "flood" of patent applications in return for a license to use the U.S. company's breakthrough technology or in return for another form of substantial business advantage.

As a result of these structural barriers, a U.S. company bringing or selling new technology to Japan cannot rely for patent protection on the workings of the JPO. Such practices are even employed by Japanese corporations when the U.S. company does not sell in Japan but the Japanese corporation intends to use the flooded patents as market entry tools in foreign jurisdictions — including the United States. A new U.S. corporate entrant to the Japanese market will quickly find its breakthrough technology surrounded by a flood of patent applications, from either Japanese customers or competitors. All too often, in view of the flooded patent applications, these U.S. companies are forced to surrender exclusive rights to their

new technology, or to indemnify the worldwide customers of the U.S. company, as the price of market access and a continued customer base.

A. Summary of Structural Barriers

1. No Duty of Disclosure and No Speedy Remedy for Failure to Disclose True Inventors

In filing an application with the JPO, the applicant has no duty to disclose prior art relating to the invention or to disclose any defect which could cause it to be invalidated. For this reason, even if the applicant knows that a technology he seeks to patent was previously invented by another, or is not patentably distinct from a prior technology disclosure, the applicant has no readily enforceable obligation to disclose this information to the JPO at the time of filing. As a result, important issues of prior inventorship or patentability might not even be eligible for presentation to the JPO until a post-grant opposition proceeding, nullity action, or trial of invalidity — years after the application was filed, and years after the conduct became known to other parties.

Addressing basic issues of inventorship and patentability so late in the process will be of little solace to a U.S. company that was forced to relinquish competitive advantages related to its breakthrough technology in response to one or more sham patent applications. The damage to the U.S. company is done long before the JPO is apprised, in a post-grant opposition, that there is an issue to be adjudicated. The damage to U.S. companies is done when the Japanese company extracts valuable business advantage on the basis of flooded patent applications, or even earlier when the Japanese company "advises" the U.S. company's customers of the existence of one or more patent applications by the Japanese company.

Moreover, under the Japanese system, there is no speedy remedy for an applicant's failure to name the true inventors of an invention. In the United States, a failure to name the true inventors on a patent application can result in the invalidation of any resulting patent, under 37 C.F.R. § 1.56. In addition, a practitioner who attempts to deceive the United States Patent and Trademark Office (PTO) with regard to inventorship or patentable subject matter could lose his or her license to practice before the PTO. In Japan, there is virtually no corresponding, swift, sure, and credible deterrent or punishment — notwithstanding this clear abuse of rights and principles of trust. For example, one can always file an application that fails to identify the true inventors; let it publish as a Kokai (unexamined) application and remain in that status for several years; and then never request examination. If examination is never requested, an application is never examined, a patent is never granted, and the false statement of inventorship or patentable distinctions on the application will never be addressed. The Japanese company is still able to "use" the published application as a coercive tool in the world marketplace without ever requesting examination. Moreover, by failing to request examination, the Japanese company can actually insulate its sham application from JPO scrutiny and from any challenge by third parties. Meanwhile, the market damage for a U.S. inventor or owner of the technology targeted for patent flooding accumulates. The damage occurs through loss of sales, requirements for indemnification, and the need to constantly persuade potential customers to ignore the flood of Kokai applications. Additional damage occurs when the market perceives that a U.S. company's market advantage has been diluted, or that the U.S. company lacks resolve by not expending the resources necessary to directly attack the sham patent applications. Overall cost is clearly increased in both tangible and intangible ways.

A further twist in the Japanese system is that abandoned patent applications are destroyed after only four years. This means that information regarding false claims of inventorship, and sham patent applications is regularly covered up by the Japanese system. A Japanese company can file a sham patent application; let the Kokai hang as a threat over the head of U.S. companies for a number of years; fail to

request examination; and then, in due course, the evidence of the Japanese company's misconduct will be destroyed.

2. Ability to Defer Examination for up to Seven Years

Under the Japanese system, a patent application is not examined until the applicant requests examination. The applicant has seven years from the date of filing to request examination. The applicant is not, however, required to request examination. If, after seven years, there has been no request for examination, the application will become abandoned.

Patent applications in Japan are automatically published as Kokai publications eighteen months after filing, whether or not the applicant requests examination. Under Japanese law, an applicant may recover damages for infringement of these Kokai applications. After the patent is granted, the applicant can seek to recover damages for this "infringement." This longer period for damages to accrue is one of the reasons that the mere presence of Kokai applications can be used to threaten and intimidate competitors. Because damages potentially begin accruing at the time of Kokai publication, a U.S. company targeted for patent flooding cannot wait to address the problem until its competitor's (or customer's) flood of applications mature into issued patents.

A wave of Kokai applications directed at a U.S. company's critical technology is like a wave of incoming torpedoes. The U.S. company does not know whether any of the torpedoes will find their mark, but it does know that even a single strike can be fatal to either the U.S. company or to any of its customers which may also be targeted.

The U.S. company has no way of knowing which, if any, of the flooded applications will be pursued through examination, which of those examined applications will mature into issued patents, or which of those patents will cover the U.S. company's technology. In the face of a wave of threatening Kokai applications, the U.S company can either buy a measure of peace by giving up valuable competitive advantages, or else cross its fingers, wait up to ten years or more to see what the issued patents look like, and hope the Kokai will not, in the interim, scare away all of its customers.

If the U.S company is lucky, none of the issued patents from that wave of Kokai applications will hit its mark, and the U.S. company can hope that it will fare as well when the next wave comes. If, by some chance, the Japanese company can obtain a patent covering the U.S company's critical technology, then the U.S. company knows that it has taken a direct hit below the water line — ten or more years of back damages are likely to be astronomical. To take a wait-and-see approach, a U.S. company must be extremely well-funded, and be run by people who have nerves of steel and who have a fondness for Russian roulette.

3. Delays in Examination and Understaffing in the JPO

Even after examination is requested, it may take three years or more for the JPO to complete examination. This delay is due, at least in part, to severe understaffing in the examiner ranks at the JPO. The JPO typically receives about twice as many applications as the U.S. Patent and Trademark Office receives. Yet the JPO has roughly half as many examiners as the PTO. See Intellectual Property Rights: U.S. Companies Patent Experiences in Japan, U.S. General Accounting Office (1993) ("GAO Report") at p. 45. Previous staffing increases by the JPO have not met agreed-upon outcomes. Moreover, these increases were, in effect, merely window dressing to cover the real issue of too many improperly filed patent applications. Once again, this is certainly a tactic that has been clearly understood by previous Japanese representatives to bi-lateral intellectual property talks with the United States.

4. Filing Fees and Benrishi Fees

The official fee for filing an application is about ¥21,000. Upon requesting examination, however, the applicant must pay an additional fee of at least ¥87,000, or more than four times the application fee. In addition to this, the applicant must pay Japanese patent counsel (Benrishi) fees for preparation of the patent application and for any subsequent examination or prosecution work. The GAO Report found that for prosecuting a twenty five page patent application, Japanese Benrishi charged about three times more than U.S. patent attorneys. Benrishi generally bill according to an industry standard fee schedule. Large Japanese companies can, however, negotiate special arrangements that exempt them from the standard fee schedule. See GAO Report at p. 34. For a U.S. company, Japan is one of the most expensive countries in the world in which to seek patent protection.

B. Structural Barriers Have Reduced the Importance of the Japanese Patent Office (JPO), and Have Permitted Patent Application Flooding.

Japanese patent statistics demonstrate that these structural barriers have reduced the importance of the JPO. The key to Japanese patent protection has become, not the issuance of patents by the JPO, but the accumulation of Kokai applications. The problem is that the JPO is not actively or properly policing pre-issuance patent rights in Japan. As a result of structural barriers, the JPO has been turned into a holding cell, into which legitimate and sham patent applications alike are dumped. Japanese companies use their sham applications to coerce business concessions from U.S. companies that have filed legitimate applications covering their critical technology. Patent flooding, delayed examination, coerced cross-licenses or other business concessions, and the creation of a Kokai application minefield greatly reduce the practical significance of JPO decisions.

In essence, the JPO has stopped policing the pre-issuance patent field, has stopped granting timely patent protection, and has abandoned the field to the Japanese corporate decision-makers. The Japanese companies are left to file whatever sham applications they want, and to use those sham applications to wring whatever concessions and cross-licenses they can coerce from U.S. companies.

Some major Japanese companies have filed 10,000 patent applications in one year! GAO Report at p. 48. In a high-activity year, a single Japanese company may file more than 20,000 patent applications. Id. Applicants in Japan often file applications without intending to request examination. GAO Report at p. 48. In 1989 and 1990 for example, about 40 percent of the applications filed at the JPO were abandoned (i.e., after the full 7-year deferral period had elapsed). Id.

Large Japanese companies demonstrate a very low ratio of requests for examinations to patent application filings. Indeed, leading Japanese companies experience patent grant-to-patent application ratios of roughly 25% to 32%. Thorson & Fortkort, An Analysis of Patent Protection, Journal of the Patent and Trademark Office Society, Vol. 77, No. 4, April, 1995, at pp. 314-315 (Figure 2). This means that two-thirds to three-quarters of these companies' patent applications do not mature into patents. Id. During the same time period, however, IBM had a 79% grant-to-application ratio in the JPO. Id.

Indeed, recent data indicate that by sheer numbers alone, Japanese companies inundate the JPO with patent applications. Over the past 10 years, the leading Japanese companies filed more than twenty-five applications for each application filed by comparable United States companies.

JAPANESE COMPANIES		UNITED STATES COMPANIES	
Firm name	**No. of patent applications to the JPO**	**Firm name**	**No. of patent applications to the JPO**
Matsushita Electric	195,808	IBM	8,684
N.E.C.	171,345	General Electric	5,124
Mitsubishi Electric	116,726	Texas Instruments	2,314
Sanyo Electric	36,408	Hewlett Packard	2,627
Yamaha	11,825	Intel	325
TOTAL	**532,112**	**TOTAL**	**19,074**

The high volume of patent applications by Japanese companies combined with the previously noted high number of Japanese applications that do not mature into patents are a clear indication of extensive "patent flooding." (The data in this chart were collected in an online database search by Questel-Orbit in the INPADOC database for the time period covering 1985-1996.)

II. The practice of patent flooding, which is encouraged and supported by the Government of Japan through its central economic planning and intellectual property policies and practices, constitutes a discriminatory nontariff trade barrier that denies fair and equitable market access to U.S. companies that rely on intellectual property protection.

Patent application flooding is a common practice in Japan in which a Japanese company surrounds a competitor's breakthrough technology with a flood of sham patent applications, or applications covering, at best, minor "improvements" to the breakthrough technology. These "improvements" are often in the nature of obvious uses of the technology, the actual technology itself, or improvements so trivial as to constitute clearly non-patentable, insubstantial differences in most other worldwide jurisdictions. See GAO Report at pp. 49-50. The patent flooder then uses these flooded applications to exact business or market concessions from the U.S. company. One technique is to offer to license these sham applications in exchange for a license to the flood victim's breakthrough technology. GAO Report at p. 49.

The net result of the improper structural barriers and processes in the Japanese system, and the patent flooding that the Japanese government and Japanese corporations encourage, is that U.S. companies trying to gain access to Japanese high technology markets, are forced, as the price of market access, to license their critical technology to their Japanese competitors. A coerced license or other form of business compensation due to patent flooding in a technology field is especially damaging to small U.S. companies, whose primary assets are their technology. When a small company trying to gain and maintain a foothold in the world market is forced to either license its breakthrough technology, or acquiesce to coercive business concessions, to larger, more established Japanese competitors, the small company's prospects are bleak. (As noted previously, prior negotiations by Japanese representatives have actually strengthened the position of the Japanese patent flooders. The existence of an agreement eliminating compulsory cross-licenses on basic patents, while having merit for other reasons, has no practical effect on this pre-issuance conduct, and is actually a convenient negotiating red-herring for the JPO to use relating to patent flooding conduct.)

The procedures at the JPO encourage patent application flooding and are discriminatory, nontariff barriers that deny fair and equitable market access to U.S. companies that rely on intellectual property protection. 19 U.S.C. §2242(a)(1)(B). Because the applicant can begin accruing infringement damages based on Kokai applications, these published patent applications are a valuable commodity in Japan.

As a result, there are instances in which infringement notices, patent disputes, and cross-license agreements in Japan revolve around published applications rather than issued patents. The deferral of examination permits the applicant to maintain its valuable Kokai for several years at virtually no cost, but to simultaneously receive disproportionate benefits from the chilling effect on other companies who may defer use of breakthrough technology due to the existence of this flood of published applications. In effect, those Japanese companies with the largest Kokai generating capacity (not necessarily the most technically innovative) exert extraordinary competitive distortions in the world technology marketplace.

Additionally, the large official fees and Benrishi fees associated with the examination phase actually discourage applicants from seeking examination. The official fee schedule set by the Government of Japan subsidizes patent flooding. The Government of Japan benefits from the direct revenues of the patent applications, and the indirect benefits to the Japanese economy due to market advantages obtained by Japanese corporations using these tactics.

The Japanese system is discriminatory in that it encourages Japanese companies to use patent application flooding tactics to deprive U.S. companies of their rights to breakthrough, or other targeted, technology. The Japanese system is also discriminatory in that if U.S. companies attempted to engage in patent application flooding they would incur a much higher cost than would a Japanese company. The cost of seeking patent protection in Japan is higher for a U.S. company than for a Japanese company. A U.S. company would need to retain a full-time Benrishi, in addition to its U.S. patent counsel; the Benrishi would likely charge the U.S. company more than he would charge a Japanese company; the U.S. company would need to pay for translations; and the U.S. company would need to pay higher filing fees if its applications were initially filed in English. These are some of the added costs that the U.S. company would face on a single patent application; given the number of patent applications that are filed in a campaign of patent flooding, the added costs incurred by the U.S. company would be quite substantial.

III. Summary and Recommendations

In a technology-driven worldwide marketplace, exclusive rights to its hard-earned breakthrough technology give a U.S. company a competitive advantage. The Japanese practice of patent application flooding essentially strips U.S. companies of this advantage, and deprives them of fair and equitable access to Japanese markets. This anti-competitive conduct, which is supported by the Japanese Government, results in damage to U.S. companies' markets worldwide, including in the United States. This conduct damages the United States economically, and reduces its competitiveness worldwide.

This conduct of patent application flooding is in violation of U.S. patent and anti-competitive laws. Recommended remedies should, at a minimum, include the following:

a) the Japanese Patent Office should establish a rule of practice having similar effect to that in the United States Patent and Trademark Office as described in 37 C.F.R. § 1.56;

b) the Japanese Patent Office should establish an administrative office which enforces a new requirement of good faith and candor in all matters before the Japanese Patent Office;

c) the Japanese Patent Office and Courts hearing patent cases should allow invalidity to be presented by a defendant as a defense to a charge of infringement, in the same proceeding;

d) the Japanese Patent Office should increase the period of time after abandonment or final rejection (including failure to request examination) from four years to ten (10) years before the files relating to the rejected/abandoned application are discarded;

e) the Japanese Fair Trade Commission should be directed and empowered to investigate corporations in Japan which engage in anti-competitive business practices defined by abusing the patent system, including by filing of patent applications having improper inventorship or non-patentable, insubstantial subject matter "improvements;"

f) the Japanese Government should actively discourage filing of sham patent applications having improper inventorship or non-patentable, insubstantial subject matter "improvements;"

g) the Subcommittee on Trade of the Committee on Ways and Means should encourage establishment of Japan as a Priority Country until the practices and procedures which allow patent application flooding are ceased, and objective evidence of a cessation of patent application flooding is well established, and procedures are in place in Japan to prevent resurgence of this practice;

h) the Subcommittee on Trade of the Committee on Ways and Means should establish patent application flooding as a priority interest agenda item on all future trade talks with the Japanese Government until the practices and procedures which allow patent application flooding are ceased, and objective evidence of a cessation of patent application flooding is well established, and procedures are in place in Japan to prevent resurgence of this practice;

i) President Clinton and the Subcommittee on Trade of the Committee on Ways and Means should request a review of prior agreements made with Japanese intellectual property negotiators to determine, in view of ongoing patent application flooding practices, whether the negotiations were conducted in good faith;

j) the Subcommittee on Trade of the Committee on Ways and Means should advise, and seek advice from, other Congressional Committees and agencies of the United States Government of the past and projected economic impact on U.S. companies and the loss of U.S. competitiveness in Science and Business due to patent application flooding by Japanese companies; and

k) the Subcommittee on Trade of the Committee on Ways and Means should request and/or lead an inter-agency investigation, in close cooperation with the Federal Trade Commission and the Department of Justice, into the ongoing violations of U.S. anti-competitive conduct and related consumer/business protection laws that the Japanese patent flooding practice constitutes.

Absent these actions, which might lead to adverse economic impact on a wide range of Japanese products and services, the trade distortions caused by abuse of the intellectual property system in Japan will continue unabated. Under such circumstances, the main loser is American inventors and consumers and, consequently, the United States economy.

Respectfully Submitted,

Dated: 11 APRIL 96

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DEPARTMENT OF COMMERCE PROPOSED ANTI-DUMPING REGULATIONS AND OTHER ANTI-DUMPING ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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DEPARTMENT OF COMMERCE PROPOSED ANTIDUMPING REGULATIONS AND OTHER ANTIDUMPING ISSUES

TUESDAY, APRIL 23, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:09 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
April 2, 1996
No. TR-21

CONTACT: (202) 225-1721

Crane Announces Hearing on the Department of Commerce Proposed Antidumping Regulations and Other Antidumping Issues

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the Commerce Department's proposed substantive antidumping regulations and other issues concerning the administration of the antidumping law. **The hearing will take place on Tuesday, April 23, 1996, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 11:00 a.m.**

BACKGROUND:

The Uruguay Round Agreements Act, legislation to implement the Uruguay Round Agreements, went into effect on January 1, 1995. One important part of this legislation was a series of provisions greatly revising the U.S. antidumping statute in order to comply with U.S. obligations under the Uruguay Round Agreements. Antidumping occurs if: (1) a foreign producer sells a product in the United States for less than fair value, generally the price at which it is sold in the home market; and (2) the dumping injures or threatens injury to the U.S. industry producing the like product. Commerce conducts the first prong of this analysis, and the International Trade Commission investigates the second. On February 27, 1996, Commerce published proposed substantive regulations to implement the Uruguay Round Agreements Act (61 Fed. Reg. 7308). Commerce is seeking public comment by April 29, 1996.

On December 21, 1995, Chairman Crane introduced H.R. 2822, the "Temporary Duty Suspension Act," to provide Commerce the discretion to suspend antidumping duties temporarily if it determines that prevailing market conditions related to availability of the product in the United States make imposition of the duty inappropriate. On January 31, 1996, the Subcommittee requested written public comments on the legislation, due March 1, 1996.

In announcing the hearing, Chairman Crane stated: "The hearing will provide us a good opportunity to determine whether Commerce's proposed substantive antidumping regulations and its practice are in keeping with Commerce's statutory mandate. In addition, I am concerned with the impact that antidumping orders may have on U.S. companies that manufacture downstream products. Current U.S. trade laws simply do not provide adequate redress for American firms that need certain raw material to stay in business but cannot obtain them from U.S. producers. I hope that we can find a way to maintain the competitiveness of these companies without undermining the effectiveness of the antidumping laws."

FOCUS OF THE HEARING:

The primary focus of the hearing is to examine the proposed substantive antidumping regulations published by Commerce in order to assure that they are in conformity with the statutory mandate of the Uruguay Round Agreements. Secondarily, the hearing will address H.R. 2822, the "Temporary Duty Suspension Act." H.R. 2822 will not be the primary focus of the hearing because the Subcommittee has already received written comments on the bill but will instead provide an opportunity to address the relationship between the antidumping law and U.S. downstream industrial users that may purchase merchandise that is subject to an antidumping order. Other antidumping issues will be addressed as time permits.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Friday, April 12, 1996. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than noon on Friday, April 19, 1996.** Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons or organizations wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by close of business, Tuesday, May 7, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

*****

Chairman CRANE. Folks, first of all, I have some opening remarks to make and our Ranking Minority Member, Mr. Rangel, is on his way. He got delayed because of a meeting in his office. But my opening statement is such that I want to make sure I get it all on the record, and I don't want to delay us any further. So welcome to this hearing of the Subcommittee on Trade concerning the proposed Commerce antidumping regulations and other antidumping issues.

The primary focus of this hearing is to address the proposed substantive antidumping regulations published by the Commerce Department in order to ensure they are in conformity with the statutory mandate of the Uruguay Round Agreements.

Second, this hearing will address H.R. 2822, the Temporary Duty Suspension Act legislation, that I introduced in December, which will provide an opportunity to address the relationship between the antidumping law and the U.S. downstream industrial users that may purchase merchandise that is subject to an order.

At the outset, I would like to congratulate the Commerce Department for its outstanding work in producing the proposed regulations we are examining today. I believe the regulations go a long way in increasing transparency in antidumping proceedings, which will benefit all parties involved in these disputes. These proposals provide considerable guidance concerning how Commerce intends to implement its statutory mandate given to it by Congress, which is necessary to ensure predictability and certainty for all businesses affected.

I believe it is important to focus our attention on these proposed regulations in order to make sure we do not undermine the effectiveness of the antidumping laws. We must continue to support U.S. industries that have been unfairly injured by dumping. At the same time, we must ensure the regulations do not go too far in the opposite direction. To do so would encourage our trading partners to adopt mirror legislation that would then be used against U.S. companies seeking to export.

In addition, unfairly or unjustifiably high dumping margins penalize U.S. companies and consumers that purchase products subject to dumping orders. Clearly, we need to enforce margins sufficient to offset the amount of dumping. However, we should not put in place mechanisms that will ensure dumping margins are excessive or unfair. That would be counterproductive. I have a few concerns regarding the proposed regulations, and I will address these issues as we question the witnesses. Let me say now, however, I am greatly concerned about the proposal to deduct from the export price any countervailing duties paid on behalf of the importer or reimbursed to the importer by the producer or exporter, resulting in the double counting of such duties and higher trade-inhibiting margins. The statute does not permit such a deduction, and there is no legislative history in which this Subcommittee agreed that such a drastic change in Commerce practice should be made. In fact, I am concerned this provision violates the WTO Agreement. I urge the Department to drop this provision and revert to its current practice.

I also urge Commerce to give as much guidance as possible in defining terms throughout the regulations. I realize a number of

these issues must be determined on a case-by-case basis but providing as much detail as possible in advance will lend predictability and transparency to the proceedings.

Finally, I congratulate the Department in establishing guidelines for the consideration of the views of downstream users and consumer organizations in its determinations. These parties often have very relevant information, and I am glad to see Commerce will address the points they make.

The mention of downstream users brings me to the issue of temporary duty suspension. As you know, I recently introduced legislation that would give authority to Commerce to suspend the imposition of antidumping or countervailing duties temporarily on a limited quantity of a particular product needed by the American industry when users are effectively unable to obtain that product from U.S. producers. Under current laws, antidumping and countervailing duties are imposed on all covered products, even when there is no domestic production. However, imposing such duties on products that cannot be obtained in the United States hurts U.S. manufacturers who must compete globally, but does not reduce injury to any U.S. industry.

Current U.S. trade laws simply do not provide adequate redress for American firms that need products subject to orders but cannot obtain them from U.S. producers. Present Commerce and ITC procedures are operative only in situations in which domestic producers have no intention of ever producing a particular product. I know a few of my colleagues do not support my bill. Let me assure them now I am more than willing to work with them to develop a better bill to solve the problem faced by our U.S. companies that source globally and manufacture here in the United States.

At the same time, I recognize we cannot undermine our antidumping laws. I would be delighted to put specific conditions in the language to address some of the concerns raised to assure the provision is as limited in effect as I intend. It is not my intent, for example, to permit the temporary suspension of duties in circumstances in which the respondent has been so successful at dumping that the U.S. industry has been driven out of business and can no longer supply the product in question. Nor do I intend to permit a temporary duty suspension if the product is available from U.S. producers that have prices that are merely higher than the price for the imported product, unless the price is so prohibitively high it is effectively unavailable.

In addition, I want to work with the Commerce Department to develop a way to solve this problem that is administratively workable. Let us be creative. We need to solve this problem. Dumping is no longer a domestic versus foreign issue. Instead, in the United States there are U.S. companies who need strong dumping laws, but, also, there are U.S. companies that may be adversely affected by these laws in certain situations. Let's work together to help all U.S. companies.

I now recognize my distinguished Ranking Member, Mr. Rangel, for any statement he would like to make.

[The opening statement follows:]

OPENING STATEMENT OF HON. PHIL CRANE

Good morning. Welcome to this hearing of the Subcommittee on Trade concerning the proposed Commerce antidumping regulations and other antidumping issues.

The primary focus of this hearing is to address the proposed substantive antidumping regulations published by the Commerce Department in order to assure that they are in conformity with the statutory mandate of the Uruguay Round Agreements. Secondarily, this hearing will address H.R. 2822, the Temporary Duty Suspension Act, legislation that I introduced in December, which will provide an opportunity to address the relationship between the antidumping law and U.S. downstream industrial users that may purchase merchandise that is subject to an order.

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I believe that it is important to focus our attention on these proposed regulations in order to make sure that we do not undermine the effectiveness of the antidumping laws. We must continue to support our U.S. industries that have been unfairly injured by dumping. At the same time, we must assure that the regulations do not go too far in the opposite direction. To do so would encourage our trading partners to adopt mirror legislation that would then be used against U.S. companies seeking to export. In addition, unfairly or unjustifiably high dumping margins penalize U.S. companies and consumers that purchase product subject to dumping orders. Clearly, we need to enforce margins sufficient to offset the amount of dumping. However, we should not put in place mechanisms that will assure that dumping margins are excessive or unfair. That would be counterproductive.

I have a few concerns regarding the proposed regulations, and I will address these issues as we question the witnesses. Let me say now, however, that I am greatly concerned about the proposal to deduct from export price any countervailing duties paid on behalf of the importer or reimbursed to the importer by the producer or exporter, resulting in the double-counting of such duties and higher, trade-inhibiting margins. The statute does not permit such a deduction, and there is no legislative history in which this Committee agreed that such a drastic change in Commerce practice should be made. In fact, I am concerned that this provision violates the WTO agreement. I urge the Department to drop this provision and revert to its current practice.

I also urge Commerce to give as much guidance as possible in defining terms throughout the regulations. I realize that a number of these issues must be determined on a case-by-case basis, but providing as much detail in advance will lend predictability and transparency to the proceedings.

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Under current laws, antidumping and countervailing duties are imposed on all covered products, even where there is no domestic production. However, imposing such duties on products that cannot be obtained in the United States hurts U.S. manufacturers who must compete globally, but does not reduce injury to any U.S. industry. Current U.S. trade laws simply do not provide adequate redress for American firms that need products subject to orders but cannot obtain them from U.S. producers. Present Commerce and ITC procedures are operative only in situations in which domestic producers have no intention of ever producing a particular product.

I know that a few of my colleagues do not support my bill. Let me assure them now that I am more than willing to work with them to develop a better bill to solve the problem faced by our U.S. companies that source globally and manufacture here in the United States. At the same time, I recognize that we cannot undermine our antidumping laws. I would be delighted to put specific conditions in the language to address some of the concerns that have been raised -- to assure that the provision is as limited in effect as I intend. It is not my intent, for example, to permit the temporary suspension of duties in circumstances in which the respondent has been so successful at dumping that the U.S. industry has been driven out of business and can no longer supply the product in question. Nor do I intend to permit a temporary duty suspension if the product is available from U.S. producers but at prices that are merely higher than the price for the imported product, unless the price is so prohibitively high that it is effectively unavailable.

In addition, I want to work with Commerce to develop a way to solve this problem that is administratively workable.
Let us be creative. We need to solve this problem. Dumping is no longer a domestic versus foreign issue. Instead, in the United States, there are U.S. companies who need strong dumping laws but also there are U.S. companies that may be adversely affected by these laws in certain situations. Let us work together to help all U.S. companies.

I now recognize our distinguished Ranking Member, Mr. Rangel, for any statement that he would like to make.

Today, we will hear from a number of distinguished witnesses. In the interest of time, I ask that you keep your oral testimony to five minutes. Of course, we would be happy to include longer, written statements in the record.

Mr. RANGEL. Thank you, Mr. Chairman.

Mr. Chairman, as you well know, no area of the U.S. trade law is more complex or contentious than antidumping. Congress has written and rewritten U.S. antidumping laws on various occasions since the original dumping statute was passed some 80 years ago. The process always proves to be controversial, as was the case when the Congress substantially rewrote the U.S. antidumping laws in 1995 in order to implement the results of the Uruguay round.

The legislative process in 1994 was long, difficult, and hard fought, and a positive outcome was only possible as a result of compromise on all sides. Therefore, I sincerely hope we can avoid reopening controversial issues that were settled in 1994 during the debate of the Uruguay round implementing legislation.

At the same time, I recognize this Trade Subcommittee has a legitimate oversight role in ensuring the Commerce Department, which administers the antidumping laws, is faithfully implementing the provisions of the new law.

I look forward to hearing from Sue Esserman, Assistant Secretary for Import Administration at Commerce, and our other witnesses concerning the Department's proposed regulation to implement the new law. Sue and her colleagues worked closely with this Subcommittee on implementing legislation in 1994 and will undoubtedly continue to listen to and work closely with all Members of the Subcommittee on the proposed regulations.

I would like to commend the Commerce Department for the approach it has taken in developing these proposed legislations. As I understand it, before Commerce drafted the proposed regulations, the public was given an opportunity not only to offer opinions on any topic, but, also, to respond to other parties' opinions. When the proposed regulations were issued in February of this year, they addressed every comment submitted, more than 1,500 in total. The public now has until May 15 to comment on the proposed regulations and Commerce will hold a public hearing in early June. I cannot imagine a more thorough, open, or fairer process.

I would also like to commend the recently announced organizational improvements at the Import Administration. Despite the increased responsibility engendered by the Uruguay round legislation, the Import Administration's budget has been reduced. This necessitated a hard look by the Import Administration at how it does business. The new restructure will make Import Administration a more efficient operation without detracting from its ability to enforce the law.

Mr. Chairman, American jobs and economic growth depend on fair trade at home as well as expanded markets abroad. In these times of tough global competition, we must ensure the United States maintains the necessary tools to ensure the U.S. companies and U.S. workers have a remedy against unfairly traded foreign imports. I know Members on both sides of the aisle agree that strong antidumping laws are our primary defense against unfair trading by foreign firms. Indeed, Chairman Archer reiterated this view in his November 15, 1995, letter to a number of Ways and Means Members, a letter in which he also stated his support for

a very limited expectation to the antidumping and countervailing duty laws to solve specific short supply problems.

This leads me to my final introductory comment regarding H.R. 2822, which is the secondary subject of this hearing. As you know, during the markup of the Uruguay round legislation in 1994, I and most of my colleagues on the Democratic side of the aisle voted against the provision that would have created a so-called short supply exception. We opposed this legislation because it would have rewarded foreign firms for dumping and driving U.S. competitors out of business. And we reiterated our position in a letter to you and to Chairman Archer last fall.

As I understand it, existing law and administrative procedures take into account the interest of users and customers to provide ways of dealing with legitimate short-term, short supply situations. I recognize there will be witnesses here today testifying in favor of H.R. 2822, but they face a considerable burden in persuading many Members of this Subcommittee and the administration why additional legislation is needed in this area and how it can be drafted to avoid undermining a strong, enforceable antidumping law in this country.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you. And I would like to yield now to Mr. Thomas for a brief opening remark.

Mr. THOMAS. Just very briefly I ask unanimous consent that my written statement be made a part of the record.

[The opening statement follows:]

STATEMENT OF THE HON. BILL THOMAS
Subcommittee on Trade
April 23, 1996

Mr. Chairman, I appreciate this opportunity to comment on "short supply" legislation. It has been an extremely controversial subject in my district.

We should consider developing a relief mechanism under the dumping law that prevents foreign industries from being able to kill two American industries at once by undermining domestic manufacturers of a fundamental input. That is why I supported a proposed amendment to the World Trade Organization implementing bill in 1994.

The difficulty I have with the proposal advanced by some advocating a "short supply" exception lies in its breadth. The language they prefer gives Commerce immense discretion in deciding when to suspend duties. The language would conceivably permit duties to be suspended in situations other than those in which domestic supplies are limited. Commerce could just as easily determine suspension is appropriate because prices change--more or less the whole point of a dumping order.

Experience teaches that the only way to solve any problem is to begin by properly defining what is needed. I hope the witnesses will take advantage of this opportunity to explain their cases on the record for the Subcommittee's benefit.

Mr. THOMAS. But, Mr. Chairman, I am pleased you clarified in your opening remarks that we are not focusing on developing a provision which would allow suspension for American firms who, as you said, need products subject to order, but cannot obtain them from the U.S. producers at the price they desire. It will not be for that reason.

And then, finally, if you are dealing with shortage manipulation, I would have to tell Members of the Subcommittee that, coming from an area that deals heavily in produce, and you are dealing with planting and harvesting, the timing of shortage is critical. What works for steel may not work for pistachios and garlic and other products that have growing seasons.

Thank you, Mr. Chairman.

Chairman CRANE. I know Mr. Matsui would like to make an opening remark.

Mr. Gibbons, do you?

Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

First of all, I would like to thank you for calling these hearings. I think they do serve a valuable purpose, and we all appreciate it very much and, of course, I would like to congratulate the Commerce Department, Sue Esserman in particular, for her deliberative approach in putting out these proposed regulations. I think all of the industry groups, all people that have an interest in the antidumping legislation, certainly have had an adequate opportunity to vent their concerns before the Commerce Department. As a result of that, I am reasonably satisfied the process has been expeditious and fair.

I would, also, like to reiterate what the Ranking Member, Mr. Rangel, has said. In 1993 and 1994, particularly, in 1994, when we began the implementing legislation on the Uruguay round, the issue of the antidumping legislation was probably the most contentious part of putting that legislation together. We had assistance, obviously, from the Commerce Department, USTR, the Council of Economic Advisors, and certainly, Members on both sides of the aisle, Democrats and Republicans. In fact, it was Mr. Houghton and Mr. Levin who led the effort on the antidumping legislation with respect to short supply, among other issues. And we were able to arrive at a very fragile compromise through the process of negotiations, and it is my belief that, had any provision in the legislation, particularly the antidumping part of the legislation, been changed, it might have upset that fragile compromise. And I believe after the November election, when we received over 300 votes in favor of the Uruguay round, it was because, partly, that fragile compromise stayed together and, as the Chair and other Members of this Subcommittee know, we did take a vote on the short supply issue. I believe the amendment to put the short supply in the legislation failed on a 23 to 15 vote. And many Members, when they discussed this issue publicly at markup, indicated the reason they were voting the way they did against putting short supply in the legislation was mainly to keep the compromise together. And it would be, in my opinion, at this moment premature to make changes in that legislation. I think sometime down the road, a few months, perhaps next year, we should look at the antidumping leg-

islation in total and, perhaps, at that time, the Subcommittee and others could come up with a comprehensive review and a comprehensive series of amendments on the antidumping legislation.

But to take out only one provision or to put in only one provision at this time, I think, would be somewhat of a breach of faith for those of us who worked on this legislation in 1994. And that is not to say changes ultimately should not be made because there probably should be some review and changes of the antidumping legislation. But, at this moment, before the regulations have become final and before we have been able to actually implement the regulations, in my opinion, it would be somewhat premature.

At this time, I would like to yield to Mr. Levin, who also has a comment to make.

Mr. LEVIN. Thank you, Mr. Chairman. I have an opening statement I would like to have inserted in the record.

Chairman CRANE. Without objection, so ordered.

[The opening statement follows:]

April 23, 1996

STATEMENT BY CONGRESSMAN SANDER M. LEVIN

AT WAYS AND MEANS TRADE SUBCOMMITTEE HEARING

ON ANTIDUMPING LAWS

The documents for this hearing indicate that "the primary focus is to examine the proposed substantive antidumping regulations published by the Commerce Department in order to assure that they are in conformity with the statutory mandate of the Uruguay Round Agreements" Act.

Clearly, it is appropriate to determine whether the regulations are in conformity with the Act. The implementing legislation for the Uruguay Round Agreements Act was a careful effort to ensure that U.S. trade laws remain strong. And it passed by wide bipartisan majorities in both Houses of Congress.

But it would be unwise to use an inquiry into the conformity of regulations with carefully worked-out legislation as a forum to try to undo that legislation.

Indeed, at a time when there is considerable downsizing within American industry, I would find it surprising and alarming that this hearing might be part of an effort to undermine laws that are critical to the retention of a strong industrial base.

Any effort to undermine our trade laws would clearly be opposed by the Clinton Administration and House Democrats. Indeed, I would be surprised if it were not also strongly opposed by the Majority Leader of the Senate.

Mr. LEVIN. Mr. Chairman, I would like to associate myself with the remarks of Mr. Rangel and Mr. Matsui. I think it is important to have a hearing on the regulation, and the documents you issued indicated that that was the primary purpose. I want to say I think it would be very unfortunate if an inquiry into the conformity of the regulations with the legislation were used as an opportunity to try to undo the legislation. As Mr. Matsui and Mr. Rangel indicated, we spent a lot of time—Mr. Houghton, and others, and myself—working on this issue, working out an agreement that would allow ratification of the Uruguay round on a broad bipartisan basis.

And I think, especially at this time of considerable downsizing within American industry, it would really be alarming if a hearing on regulations would be part of an effort to undermine laws that are critical to the retention of a strong industrial base in this country. I think such an effort would be, as indicated by my colleagues, opposed by House Democrats. I am sure it would be opposed by the Clinton administration, and I have a strong hunch it would also be opposed in the Senate, including by the Majority Leader of the Senate.

So I look forward to the hearing today. But I hope very much the focus will be: Are these regulations, that have been so carefully crafted, in conformity with the statutory mandate, which was also carefully worked out?

And thank you to my colleagues.

Mr. MATSUI. May I take my time back?

Mr. LEVIN. Yes.

Mr. MATSUI. I just have one further, very short comment to make.

I might also add that, in the negotiations that occurred, the short supply issue was the last issue to be resolved, and that indicated how critical that issue was to both sides. And that is why, to pull this issue out at this time and make changes on it, would really, in my opinion, break the agreement we had in 1994 because it was the most difficult issue to resolve. And, as a result of that, to make a change only in that provision now without reviewing the entire antidumping legislation before the regulations have been final would really, in my opinion, be inappropriate.

Thank you, Mr. Chairman.

Chairman CRANE. And, today, we are going to be hearing from a number of distinguished witnesses, and we have a long schedule. So, in the interest of time, I would ask that you try to keep your oral presentations to 5 minutes and, of course, we will be happy to include any longer written statements for the record.

Our first witnesses are two of our distinguished colleagues, Hon. Pete Visclosky from Indiana and Hon. Pete Peterson from Florida. Will the gentlemen please take the dais. You may proceed when ready.

STATEMENT OF HON. PETER J. VISCLOSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. VISCLOSKY. Chairman, thank you very much. I appreciate the opportunity to testify today.

Chairman, our trade laws are especially important to the American steel industry, which has historically been victimized by unfair foreign trade. In the last round of steel cases, Korea was found to have injured our steel industry by subsidizing its high value steel products. And, today, the American industry is threatened by unfair trade from Russia and other Eastern European countries with their legacy of inefficient State-owned and run mills, dumping steel in foreign markets.

In implementing the Uruguay round, we must ensure we will be able to fully utilize our rights under the World Trade Organization to neutralize injurious dumping in our market.

Before I begin to address some of the issues regarding the Commerce Department's proposed regulations, I would like to highlight an important provision of the Uruguay round implementing legislation that was a top priority of mine and the United Steelworkers of America.

Section 131 of the act directed the President to seek, within GATT and the WTO, the establishment of a working party to examine the relationship of internationally recognized worker rights to GATT and WTO articles and to report to Congress on the progress made in establishing the working party.

Last month, in his 1995 Annual Report on the Trade Agreements Program, the President reported that, despite continued U.S. efforts, as yet there has not been the needed consensus, especially among developing countries, to pursue formally this issue on the WTO's agenda. Relative to the regulations proposed by the Commerce Department, while the steel industry is still preparing their formal comments, I believe the consensus among the industry is that the Commerce Department has done a very good job in attempting to make the necessary conforming changes to our existing antidumping regulations to implement the Uruguay Round Agreements Act.

Commerce has tried to achieve an appropriate balance between its ability to vigorously enforce our trade laws in an era of very limited resources and the burdens placed on petitioners to initiate cases and participate meaningfully in the investigative process.

However, I would like to highlight specifically three areas. First, and you had mentioned it in your opening remarks, Mr. Chairman, is reimbursement of duties. Some segments of the U.S. steel industry have complained to me that under current law, dumping orders are only partially effective because of the absorption of antidumping duties by importers, particularly those related to foreign producers covered by orders.

The Commerce Department's proposed regulations for addressing reimbursement are an improvement over existing regulations from my point of view.

Second, on affiliated parties. The Commerce Department has gone a long way in implementing congressional intent by expanding the definition of so-called "affiliated parties." This proposed change, which is designed to target groups that exist in countries

such as Japan and Korea, with close supplier relationships, franchises, and joint ventures, does not go far enough.

And, finally, on timetables. Another concern that was raised to me, with respect to the Commerce Department's proposed regulations, pertains to the general timetables for making allegations. It has been suggested that the timetables be lengthened.

In conclusion, Mr. Chairman, I caution those who would like to use the regulatory process as an opportunity to go beyond what is required by the Uruguay round. Mr. Chairman, I urge you to reject those pleas. We must do everything within our power to protect and preserve the full force of our trade laws against a multitude of foreign interests who would like nothing better than to exploit the openness of our markets.

Mr. Chairman, again, I thank you very much for the opportunity to be able to testify.

[The prepared statement follows:]

STATEMENT OF HON. PETER J. VISCLOSKY
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Good morning, Mr. Chairman. I appreciate the opportunity to appear before you and the other Trade Subcommittee members as you hear testimony from a variety of groups regarding the Commerce Department's proposed regulations to conform our trade laws with the statutory mandate of the Uruguay Round Agreement and other issues concerning the administration of our trade laws. Without objection, Mr. Chairman, I would like to briefly summarize my remarks and have my entire written statement entered into the hearing record.

I firmly believe that the full force of our trade laws must remain available to all domestic industries and workers who stand to be injured by dumping. Administration of the trade laws should encourage compliance and deter circumvention and avoidance. It is essential that relief be available as soon as possible, since the timely granting of relief benefits domestic producers, workers, and communities. Even users of dumped products benefit from swift and vigorous enforcement of our trade laws when disruption of supply is minimized.

Our trade laws are especially important to steel, which has historically been victimized by unfair foreign trade. Steel production is very capital intensive, and many foreign governments own or heavily subsidize their industries. In the last round of steel cases, Korea was found to have injured our steel industry by subsidizing its high value steel products. Today, the American steel industry is threatened by unfair trade from Russia and other Eastern European countries, with their legacy of inefficient state-owned and -run mills dumping steel in foreign markets. Unfair foreign trade costs us jobs!

In implementing the Uruguay Round Agreement, we must ensure that we will be able to fully utilize our rights under the World Trade Organization (WTO) to neutralize injurious dumping in our market. Even though some might argue that the Uruguay Round represents a net weakening of our trade laws, our negotiators worked tirelessly to secure a reasonable antidumping agreement. It is incumbent upon us to vigorously enforce the agreement through our trade laws and resist efforts to weaken it through implementing regulations.

The success story of the American steel industry and its workers:

As the U.S. Representative of the largest steel-producing district in the country and an officer of the Congressional Steel Caucus, my comments today will be focused primarily on how the Commerce Department's proposed regulations would impact the American steel industry and its workers. I have seen first-hand how our antidumping (AD) and countervailing duty (CVD) statutes have been crucial tools in preventing unfair, foreign trade in steel. By leveling the playing field against dumped and subsidized imports, our trade laws have allowed our steel industry to compete and win in the global steel market.

Today's American steel industry is worldclass and highly competitive. Since 1980, our steel industry has invested over $35 billion in capital improvements, which has transformed the American steel industry into the high-quality, low-cost producer for the domestic market. U.S. Steel's Gary Works, the nation's largest steel mill, located on the southern shore of Lake Michigan in Northwest Indiana, has invested $1.5 billion in new plant and equipment over the past decade.

Since 1983, U.S. steelworkers' productivity has increased faster than any of our major competitors. Today, American integrated steelworkers are the most productive in the world, using an average of 4.42 hours of labor to produce a ton of steel. At U.S. Steel's Gary Works, it can take as few as 2 hours of labor to produce a ton of steel. Indeed, our steelworkers are more efficient than their counterparts in Japan or Germany. This remarkable performance is particularly impressive in light of increasingly stringent U.S. environmental regulations with which the American steel industry is complying.

However, these remarkable productivity gains did not come without enormous human costs. Since 1980, over 250,000 American steelworkers have permanently lost their jobs. An estimated 170,000 workers are currently employed in the steel industry. In 1975, U.S. Steel's Gary Works employed 24,000 workers; last year, employment had shrunk to 7,800 workers. But even with a two-thirds reduction in its workforce, Gary Works produced 7.16 million tons of steel -- an increase of over 22% compared to the 5.84 million tons produced in 1975.

Worker rights:

Before I begin to address some of the issues regarding the Commerce Department's proposed regulations, I would like to highlight an important provision in the Uruguay Round implementing legislation that was a top priority of mine and the United Steelworkers of America (USWA). Section 131 of the Uruguay Round Agreements Act directed the President to seek in the General Agreement on Tariffs and Trade (GATT) and the WTO the establishment of a working party to examine the relationship of internationally recognized worker rights to GATT and WTO articles and to report to Congress on the progress made in establishing the Working Party and on the four U.S. objectives for the Working Party.

The objectives are to: (1) explore the linkage between international trade and internationally-recognized worker rights, taking into account differences in the level of development among countries; (2) examine the effects on international trade of the systematic denial of such rights; (3) consider ways to address such effects; and (4) develop methods to coordinate the work program of the working party with the International Labor Organization.

Last month, in his 1995 Annual Report on the Trade Agreements Program, the President reported that despite continued U.S. efforts, there as yet has not been the needed consensus, especially among developing countries, to pursue formally this issue on the WTO's agenda. I have been assured by the U.S. Trade Representative that our trade negotiators have been working diligently to forge a consensus on this issue, and that the United States will continue its efforts to build the needed consensus to establish the Working Party mandated in the Uruguay Round Agreements Act (URAA).

Mr. Chairman, I urge you and the other subcommittee members to work with the Administration to ensure that this goal is achieved. We have an opportunity to press for a working party on worker rights at the WTO Ministerial Conference in Singapore, December 9-13, 1996. Since one of the goals in Singapore will be to agree upon additional, new work program issues for the WTO, it is my sincere hope that every effort will be made to reach a consensus on how to move forward with the implementation of a working party on worker rights. In addition, I am hopeful that progress on worker rights will be made in other arenas, including the Organization for Economic Cooperation and Development and the International Labor Organization, so that there will be some positive movement towards consensus heading up to the WTO Ministerial Conference in December.

Regulations proposed by the Commerce Department:

Now, I would like to highlight several, specific issues that have been brought to my attention by various segments of the U.S. steel industry regarding the complicated and extensive proposed regulations issued by the Commerce Department on February 27, 1996. First, I would like to commend Ms. Susan G. Esserman, Assistant Secretary for Import Administration, and her staff for bending over backwards to solicit private sector views before issuing the proposed regulations.

Over 1,500 preliminary comments from 80 different sources were received between January and June of last year. Last week, the formal comment period was extended until May 15, and it is my understanding that no final comments have been received to date. Given this situation, I canvassed representatives from various segments of the steel industry to develop the following composite of how the proposed regulations would impact steel.

Although they are still preparing their formal comments, the consensus in the steel industry is that the Commerce Department has done a very good job in attempting to make the necessary conforming changes to our existing AD regulations to implement the URAA. Commerce has strived to achieve an appropriate balance between its ability to vigorously enforce our trade laws in an era of very limited resources and the burdens placed on petitioners to initiate cases or participate meaningfully in the investigative process. However, the devil is in the details, and I would like to emphasize how absolutely essential the careful implementation of these changes is to the steel industry and other sectors of our economy.

Reimbursement of duties:

Some segments of the U.S. steel industry have complained that under current law dumping orders are only partially effective because of the absorption of antidumping duties by importers, particularly those related to foreign producers covered by orders. They allege that, over time, duty absorption is covered by reimbursement of the parent organization. However, over the years, there have been very few cases where reimbursement has been proved, even in cases where double digit dumping margins have been found over long periods of time.

The Commerce Department's proposed regulations for addressing reimbursement are an improvement over existing regulations. The Statement of Administrative Action regarding the deduction of reimbursed countervailing duties from the U.S. price in antidumping cases would greatly improve the ability of U.S. manufacturers to compete after the imposition of duties on unfairly traded products. In addition, this provision would not double count any duties or violate any trade obligations.

For example, assume a foreign steel producer receives a 10% export subsidy on a ton of steel and is subject to a 10% countervailing duty. It is also subject to a 10% antidumping duty because its home market selling price is $550 per ton and the U.S. -- now "export" -- price is $500 per ton.

Now assume the foreign steel company reimburses the importer for the $50 export subsidy. Under current practice -- without the proposed new regulation -- this is what happens. The Commerce Department increases the export price by the $50 export subsidy to avoid double counting. There are no dumping duties collected and the importer has paid no duties because they were reimbursed the CVD duty of $50.

Under the proposed new regulation, the Commerce Department would subtract from the U.S. price any CVD duties that have been reimbursed. Thus, the foreign exporter pays the $50 in countervailing duties that were reimbursed to the importer. The importer pays the dumping duties to reflect the $50 of dumping that occurred when the product had a total cost of only $500, since it paid no duties out of pocket and there was a foreign value of $550.

The proposed new regulation will be consistent with the current antidumping law and regulations on reimbursement of duties. We can take the same antidumping duty scenario, but this time assume there is no companion CVD order. If the foreign steel producer reimburses $50 in dumping duties to the importer, then the Commerce Department determines that a total of $100 in dumping duties is owed because the $50 reimbursed in dumping duties is added to the duties owed.

Foreign steel producers and importers may object to this provision. However, the proposed regulations will merely make clear that the statute does not permit them to evade payment of antidumping duties when foreign producers reimburse countervailing duties.

Affiliated Parties:

In a related matter, the Commerce Department has gone a long way in implementing congressional intent by expanding the definition of so-called "affiliated parties." This proposed change -- which is designed to target groups, like Japanese keiretsu and Korean chaebols, with close supplier relationships, franchises, and joint ventures -- does not go far enough. In fact, under the Commerce Department's proposed regulations, the Department does not sufficiently emphasize the ability to exercise control over affiliated parties. Moreover, Commerce has rejected the existence of temporary market power as sufficient to demonstrate the existence of control. I would hope that the Department will further expand the definition of affiliated parties in its final regulations.

Timetables:

Another concern that was raised with respect to the Commerce Department's proposed regulations pertains to the general timetables for making allegations. For example, in investigating countrywide sales below cost allegations, targeted dumping allegations, and duty absorption reviews, the timetables are compressed to such a degree that there will not be enough time to fully explore all of these issues. It has been suggested that the timetables be lengthened from the 20-30 days put forth by Commerce in its proposed regulations by at least another 30 days in the final regulations.

Conclusion:

The complexity of the Commerce Department's proposed regulations is truly mind boggling. There is an army of trade lawyers, representing both domestic and foreign interests, working feverishly to analyze and comment on the proposed regulations by the May 15 deadline. In conclusion, I would caution those who would like to use the regulatory process as an opportunity to go beyond what is required by the Uruguay Round Agreements Act. Indeed, I am sure you will hear from certain groups later today, that would propose to gut our trade laws by inserting proposals, including an overly-broad short supply provision, that were rejected by our trade negotiators during the arduous Uruguay Round negotiations.

Mr. Chairman, I would urge you to reject these salacious pleas. We must do everything within our power to protect and preserve the full force of our trade laws against the multitude of foreign interests who would like nothing better than to exploit the openness of our market. Thank you.

Chairman CRANE. Thank you.
Congressman Peterson.

STATEMENT OF HON. PETE PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PETERSON. Thank you, Mr. Chairman, for allowing me to appear before the Subcommittee today and discuss this important trade issue.

I understand its timeliness, and I know how sensitive it is. But let me begin clearly by stating I am an enthusiastic cosponsor of H.R. 2822 and strongly support its prompt enactment.

Because there has been some confusion about exactly what this legislation does and does not do, I would like to take a moment to explain the bill.

This bill gives the Secretary of Commerce the authority—the authority—but not the obligation to grant temporary—and I emphasize temporary—exclusion from antidumping and countervailing duties in appropriate cases. The bill ensures full due process for all participating parties before any action is taken and caps relief time at 1 year. The Department could also limit relief to certain specific product specifications, limit the time, the quantity of relief, and restrict relief for specific companies that have a clearly demonstrated need.

I do not believe the temporary—emphasize temporary—duty relief suspension provision would make the trade laws any more difficult to enforce. We want and need strong and effective trade laws. However, these laws should clearly protect our domestic industry. If American industry can supply products subject to specific limitations contained in this legislation, no exemption would be made temporary or otherwise from the requirement to pay applicable antidumping or countervailing duties. But if domestic industry cannot supply a particular product the American companies need, only our foreign competitors are helped by imposing antidumping and countervailing duties on those imports.

Why am I interested in this issue? Let me give the Subcommittee one example of the impact of current law on an American business. Berg Steel Pipe Corp. is based in my district in Panama City, Florida. As part of their basic production process, Berg Steel Pipe needs a high-quality steelplate to make large diameter line pipe. The steelplates they need come in sizes and specifications they simply cannot get from U.S. suppliers. Yet, when they import this product, they often must turn to suppliers that are subject to antidumping and countervailing duties. Passage of H.R. 2822 would provide an equitable solution to this problem.

Mr. Chairman, I understand and realize this is not a flawless bill. However, we cannot continue to ignore this issue under the guise of supporting American industry through enforcement of existing law. Existing law is unsatisfactory with regard to the problem I have described. H.R. 2822 is much narrower in scope than similar bills introduced in previous Congresses. This legislation applies to a very narrow segment of U.S. trade operations and corrects the problem for industries using specialized materials in their manufactured product. It simply makes sense to correct the problem.

Again, I thank you for allowing me to testify, and I would be happy to take any questions you might have.

[The prepared statement follows:]

STATEMENT OF HON. PETE PETERSON
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman, for allowing me to appear before the Subcommittee today to discuss this important issue.

Let me begin by clearly stating that I am a cosponsor of H.R. 2822, and strongly support its prompt enactment. Because there has been some confusion about what exactly this legislation does and does not do, I would like to take a moment to explain the bill.

This bill gives the Secretary of Commerce the authority, but not the *obligation*, to grant temporary exclusions from antidumping and countervailing duties in appropriates cases. The bill ensures full due process for all participating parties before any action is taken, and caps relief time at one year. The Department could limit relief to certain specific product specifications, limit the time and quantity for relief, and restrict relief to specific companies that have a clearly demonstrated need.

I do not believe a temporary duty relief suspension provision would make the trade laws more difficult to enforce. We want and need strong and effective trade laws. However, these laws should protect domestic industries that establish dumping or subsidies. If American industry can supply products subject to these determinations, there should be no exemption, temporary or otherwise, from the requirement to pay applicable antidumping or countervailing duties. But, if domestic industry does not make particular products American companies need, only our foreign competitors are helped by imposing antidumping and countervailing duties on imports.

Why am I interested in this issue? Let me give the subcommittee one example of the impact of current law on an American business. Berg Steel Pipe Corporation is based in my district in Panama City, Florida. As part of their basic production process, Berg Steel Pipe needs high quality steel plate to make large diameter line pipe. There are sizes and specifications they simply cannot get in the United States. Yet, when they import, they often must turn to suppliers that are subject to antidumping and countervailing duties. Passage of legislation similar to H.R. 2822 would provide an equitable solution to this problem.

Mr. Chairman, I realize this is not a flawless bill. However, we cannot continue to ignore this issue under the guise of supporting American industry through enforcement of existing law. Existing law is unsatisfactory with regard to the problem I have described. If the language of H.R. 2822 is broader than necessary to achieve the desired result, I am willing to discuss how the legislative language could be modified. However, I stand firm on my desire to see this problem decisively addressed.

Again, thank you for allowing me to testify. I would be happy to field any questions at this time.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. No questions.

Chairman CRANE. Mr. Thomas.

Mr. THOMAS. Just very briefly, I want to thank both of you for participating.

Pete, your written testimony outlines, I think, the problem some of us have with the legislation. If it followed your problem of the pipe company, and that is they simply cannot get the product, that is, if the legislation said it is unavailable, then I don't think you would find too much controversy in terms of making this kind of a provision available to any administration. The problem is it doesn't say that. The legislation would allow action if it were too long a wait for the product, and there is no ability to determine that within the year's time. The legislation would allow it if the product were too high priced versus the other product that you could get. The legislation doesn't deal with that.

In addition, I mentioned agricultural produce. Coming from Florida, there may be some folks in your delegation that might be somewhat concerned about what could be an attempt to blow out domestic producers in between harvest seasons, given the way in which you have complimentary seasonality around the world and a product could be delivered when it is in season in another area and not in season here. In fact, that cheap product was brought in, and it had some degree of durability on the marketplace, like garlic or other types of products—I mentioned pistachios—you could clearly affect, especially in a product like garlic, the planting season to follow shortly and, therefore, the subsequent harvest, which may or may not be based upon whether or not there was a price available in the marketplace at a certain time.

If your example was the universe of the problems we faced, there would be no controversy. If you can't get it, it is unavailable, it is not a problem. The problem comes in when it is too long a wait, it is too high a price, or the period at which you are complaining is not the appropriate one, and that is why I think it is fairly difficult for us to write legislation to fit the circumstances. That is my problem, and I think it is a problem of other Members on the Subcommittee. We aren't opposed to the solution of unavailable.

Mr. PETERSON. If I may, I understand where you are coming from, and I think it makes a lot of sense to be as specific as we can be. And I can't speak for the Chairman and the author of H.R. 2822, but I think in his opening remarks he did refer to willingness to address the specific language and to actually go back and perhaps narrow it even further, if necessary. But this is the kind of thing we have got to find a solution to. And, while I understand timeliness is a problem, I understand there are some other aspects of it that need to be looked at. We have industries out here who are, in fact, being placed in a position of noncompetitiveness because of our own procedures.

Mr. THOMAS. And I understand that, and the Chairman has been gracious. We are going forward in trying to search out language that will, in fact, do what we want it to do and no more, and that is part of the difficulty. It isn't that we are in disagreement. It is just that we haven't come to agreement.

I want to thank both of you. I appreciate your comments.

Mr. VISCLOSKY. Mr. Thomas, if I might, I did not address the issue in my oral testimony, but referred to it in writing as well, and would simply point out the reason that you have an order in place is because injury was found, and it is certainly my impression there is an existing regime and current law to provide for remedies in situations voiced by Mr. Peterson. With all due respect to the gentleman, my concern is that, in some of these very particular instances, there are no suppliers left because they have been run out of business because of unfair trade.

Mr. THOMAS. Thank you.

Chairman CRANE. Mr. Gibbons.

Ms. Dunn.

Mr. Matsui.

Mr. Levin.

I thank our panelists for their input and, hopefully, we can look forward to working cooperatively with you to reach accommodations for all of the concerns presented thus far.

Thank you, gentlemen.

Mr. VISCLOSKY. Thank you, Mr. Chairman.

Mr. PETERSON. Thank you, Mr. Chairman.

Chairman CRANE. Our next witness is Hon. Susan G. Esserman, Assistant Secretary for Import Administration at the Commerce Department.

Secretary Esserman, before you begin, I would like to express my heartfelt distress over the loss of Secretary Ron Brown, which I know is shared by all of our Subcommittee Members. I know they share that because he contributed a great deal in the trade policy arena, and he will be greatly missed. And I look forward to continuing to work with now Secretary Kantor as he assumes the helm of the Commerce Department.

Secretary Esserman, I want to congratulate you on a tremendous effort in drafting the proposed regulations. As you sift through the various comments you receive on the regulations, I ask that you keep me and my staff well informed of your intentions in developing final regulations. As you know, it is vital for the Subcommittee to be an integral part of the regulatory process. As you are making your final decisions as to the content of the final regulations, we will share our concerns about how the statute should be interpreted and address any issues as to our intent in formulating the statute last year.

Now, I am mindful of not inhibiting the regulatory process and have no desire to somehow influence inappropriately the Department's decisionmaking. However, we are tasked, through our oversight obligations, with assuring the statute which we passed is being appropriately interpreted and implemented. Our role does not end in passing a statute. After all, the regulations are the vehicle that give life to the statute and will form the basis of the agency's administration of that statute.

We look forward to continuing our work together, and we look forward to your testimony.

STATEMENT OF HON. SUSAN G. ESSERMAN, ASSISTANT SECRETARY OF COMMERCE FOR IMPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Ms. ESSERMAN. Thank you very much, Chairman Crane, for inviting me to testify today before the Subcommittee. I want to thank you very much for your comments about Secretary Brown. He was a great leader and Secretary and an extraordinary man. We will miss the Secretary and our fallen colleagues, but we do look forward to working with our new Secretary of Commerce, Secretary Kantor.

I would like to commend the Subcommittee for its interest in the unfair trade laws, which are so vital to America's well-being. The regulations are important to enforcement of the antidumping and countervailing duty laws. These laws safeguard our companies and workers from unfair and injurious pricing by foreign companies and from foreign government subsidies. These practices can undercut our firms, steal market share, drive our companies out of business, and throw people out of work.

In today's world, trade policy is a critical element of economic policy, and our unfair trade laws are an essential part of trade policy. As we liberalize trade to gain new markets abroad, we must maintain a level playingfield to ensure trade brings growth and an economy that generates jobs at home. Unfair trade is not genuinely free trade.

We have overhauled our regulations and practice to implement the Uruguay round legislative changes and to further President Clinton's and Vice President Gore's reinvention initiatives. The regulations on antidumping and countervailing duty procedures and antidumping methodology, which were made public on February 16, have been issued in proposed form.

After the public has had a full opportunity to comment, we will hold a public hearing at the Department of Commerce on June 7. Based on the written and oral comments we receive, we will then develop final rules.

I want to emphasize that, while these proposed regulations reflect extensive thought and reflection, we are very receptive to suggestions and new ideas, and we welcome any comments.

I would like to highlight the principles and objectives that guided us in drafting these rules. First, we have faithfully followed the spirit and the letter of the new law, the statement of administrative action that was so carefully worked out, and the Uruguay Round Agreements themselves.

Second, the proposed regulations are designed to promote vigorous enforcement and fair administration of the trade laws.

Third, we sought to promote the goals of openness, transparency, and predictability.

Finally, we have harmonized the rules for investigations and reviews. We have consolidated the procedures for the antidumping and countervailing duty laws and have adopted other changes to make the regulations more user friendly and accessible, especially for smaller size companies.

I appreciate the opportunity offered in the announcement of this hearing to address the relationship between the antidumping law and U.S. downstream industrial users. I believe industrial users

have an important role in antidumping proceedings, and we have recognized that in our proposed regulations. But Congress, in the existing antidumping law, has struck the proper balance recognizing that unfair, injurious trade practices affecting producers and workers in our own market must be addressed.

In a world of fierce competition, we have to be vigilant to avoid undermining that delicate balance. We should not reopen the legislative debate that led to this carefully worked-out balance.

Let me just take 1 minute to explain why it would be a great mistake to weaken the law with a short supply exception. It is important to focus on the reasons we continue to need dumping and subsidy laws. While we have made great progress in reducing trade barriers through the Uruguay round and the NAFTA, problems remain. The home markets of many of our trading partners remain partially protected and closed. Subsidies remain a fact of life in certain segments of our trading partners' economies. Much of our trade is with nonmarket economy countries. Some foreign governments continue to tolerate or encourage private anticompetitive behavior.

These practices allow firms to engage in differential pricing between markets or below-cost pricing. For example, government subsidies can allow firms to sell below cost. Other trade barriers, and cartels, and monopolistic behavior, can allow firms to reap high profits at home, which permits them to undercut their competitors in the United States.

The international marketplace is simply not governed by the competition rules that prevail in the United States. For this reason alone, the antidumping law is especially important. Abandoning or weakening the trade laws in a world of imperfect competition would amount to nothing less than unilateral disarmament.

With this background, I think this Subcommittee can understand why we have been so strongly opposed to proposals such as the short supply exception, which undermine the effectiveness of the laws. Such an exception would open a huge loophole. A foreign firm could dump to drive out U.S. competitors and then benefit from the short supply provision.

Suspending payment of duties could deter new investment by the injured U.S. industry, thereby retarding the recovery of the U.S. industry and undermining the effectiveness of the law.

Existing procedures are adequate to deal with legitimate concerns regarding supply without undermining the law.

With the fading of the cold war, international rivalry has turned more and more to economics. This is no time to dismantle our defenses in the face of unfair foreign competition. To the contrary, industries and workers across America have a right to expect us to use every means at our disposal to preserve jobs and business opportunities by defending against foreign unfair trade practices.

Thank you very much. I would be happy to answer any questions you might have. I want to say that with me here today is Ambassador Jennifer Hillman, who is General Counsel of the U.S. Trade Representative. As you know, the USTR was extensively involved in the Uruguay round legislative negotiations with us.

Chairman CRANE. We thank her for her presence.

[The prepared statement follows:]

Statement of Susan G. Esserman
Assistant Secretary of Commerce
for Import Administration
Before the Subcommittee on Trade
House Committee on Ways and Means
April 23, 1996

Thank you for inviting me to testify before this Committee today. I appreciate the opportunity to discuss the proposed antidumping and countervailing duty regulations.

As you know, the proposed regulations were published in the Federal Register on February 27. These regulations are necessary to implement the Uruguay Round legislative changes and also reflect our commitment to President Clinton's and Vice President Gore's Reinvention Initiatives.

The regulations are important to enforcement and administration of the antidumping and countervailing duty laws. The primary function of Import Administration (IA) is to enforce the antidumping (AD) and countervailing duty (CVD) laws enacted by Congress. These laws safeguard our companies and workers from unfair pricing by foreign companies that can undercut our firms and steal market share or drive our companies out of business. These laws also safeguard our industries from subsidies by foreign governments that can put our industries at an unfair disadvantage. Such basic industries as steel, semiconductors, glass, chemicals, and agriculture have all obtained relief through the unfair trade laws. In today's world, trade policy is a critical element of economic policy, and our unfair trade laws are a ciritcal element of trade policy. As we liberalize trade to gain new markets abroad, we must maintain a level playing field to ensure that trade brings growth and an economy that generates jobs at home. Unfair trade is not genuinely free trade.

BACKGROUND

The proposed regulations encompass substantive rules on antidumping methodology, as well as procedural rules that apply to both antidumping and countervailing duty investigations. When the sixty-day public comment period ends next week, we will begin the process of analyzing the comments in order to prepare the final rules.

Commerce early last year solicited public comment in advance of the proposed regulations to ensure input from interested members of the public at the earliest possible stage. We received over 1500 comments from a wide range of industries, governments, and trade organizations. In our preamble to the regulations, we have addressed the great majority of the comments and suggestions that we have received and have done an exhaustive analysis of the many procedural and substantive issues raised.

I encourage you to provide any comments you have to my office.

THEMES

I would like to highlight the principles and objectives that guided us in drafting these rules.

- First, we have faithfully followed the spirit and the letter of the new law and the Statement of Administrative Action.

- Second, the proposed regulations are designed to promote vigorous enforcement and fair administration of the trade laws.

- Third, we sought to promote the goals of transparency and predictability. The regulations contain as much guidance as our experience permits about the

procedures and methodologies the Department will use in its antidumping and countervailing duty investigations.

- Fourth, the proposed regulations are streamlined. They eliminate repetition and consolidate procedural rules. For example, unlike the Department's existing regulations, which contained separate antidumping and countervailing duty procedural regulations, the proposed regulations combine procedural rules for both antidumping and countervailing duty investigations. The proposed rules also harmonize procedures for investigations and administrative reviews.

- Fifth, we have rationalized our data and information requirements without compromising our ability to vigorously enforce the trade laws. This includes streamlining the rules governing the submission of information, combining data requests for more than one period, and reducing the number of copies required.

- Finally, the language and organization of the proposed regulations are more user friendly. We made every attempt to explain complex terms in clear language that will be understood by the businesses that use these laws, and we included narrative explanations that place major provisions in context and explain how they relate to the statute.

The proposed regulations are just one part of our larger goal to streamline the conduct of antidumping and countervailing duty investigations and reviews. We have made every attempt to promote enforcement in the most effective and efficient manner possible. For example, in addition to the proposed regulations, we have improved our verification procedures and issued a new questionnaire that is shorter and easier to follow. The streamlining of our procedures is an ongoing process, and we will continue to seek suggestions for improvement.

I appreciate the opportunity offered in the Advisory announcing this hearing to "address the relationship between the antidumping law and U.S. downstream industrial users." The Congress in the AD law has struck a reasonable balance, recognizing that fair competition at home depends upon a level playing field in international trade.

At the same time, I believe that industrial consumers have an important role in the enforcement of AD laws, a role that has been strengthened by the recent amendment to the law confirming their right to participate in antidumping proceedings [777(h)], and a role that we have relied upon many times in the past to ensure that orders are tailored to address only injurious unfair pricing practices.

In closing, let me just say that we are committed to vigorous enforcement of the trade laws and to ensuring that our laws are administered fairly and in a transparent manner. The more efficient and effective our rules and procedures, the better we serve the American public.

PHILIP M. CRANE, ILLINOIS, CHAIRMAN
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May 3, 1996

Ms. Susan G. Esserman
Acting General Counsel
Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Ms. Esserman:

I would like to extend my thanks for your testimony on April 23 on antidumping issues before the Ways and Means Subcommittee on Trade. Again, I congratulate you on your hard work in producing the Commerce Department proposed regulations on antidumping.

As I mentioned at the hearing, I have a number of additional questions concerning the proposed Commerce regulations as well as on H.R. 2822, the Temporary Duty Suspension Act. With respect to the Commerce regulations, I continue to be concerned over the proposal to deduct from export price any countervailing duties paid on behalf of the importer or reimbursed to the importer by the producer or exporter. I believe that this provision would result in the double-counting of such duties and higher, trade-inhibiting margins. The statute does not permit such a deduction, and there is no legislative history in which this Committee agreed that such a drastic change in Commerce practice should be made. In fact, I am concerned that this provision violates the WTO agreement. As the attached questions indicate, I would like more information as to the operation of the provision, its statutory authority, and its consistency with WTO obligations. I would appreciate the responses to these questions by May 10.

As to H.R. 2822, I have attached a number of questions concerning this legislation because I believe that the Commerce Department's objections to the bill are based on a misperception of how a temporary duty suspension bill can operate and the limitations of current authority. In fact, I continue to be disturbed that Commerce's position reflects a lack of concern about the global competitiveness of U.S. companies that must compete with imported finished products or that must export to survive. Failure to provide a mechanism for relief for these companies in limited circumstances, while maintaining the integrity of the dumping laws,

would amount to the "unilateral disarmament" you mentioned in your testimony. The fact is that current authority permits permanent relief only and allows the domestic industry that brought the antidumping petition to veto any relief. An industry would logically object to permanent relief in order to keep its options open to produce that product, even in the distant future. Current authority does not permit suspension of duties where the product is not available merely for a short period of time.

I would very much appreciate your response to the attached questions on temporary duty suspension by May 20, 1996.

With best personal regards,

Phil Crane

Philip M. Crane
Chairman

Chairman CRANE. Madam Secretary, I would like to pursue two lines of questioning; one on the concept of temporary duty suspension and one on the proposed regulations, especially the countervailing duty deduction that I mentioned earlier. And I will, also, have some questions to give you in writing.

First, let's address H.R. 2822. Can you say with confidence that all products and product specifications within the scope of a particular order are made in the United States?

Ms. ESSERMAN. I cannot say with confidence that all products within the scope of a particular order are made in the United States. But that does not mean that in appropriate situations where a U.S. industry is not producing a particular product, that that situation cannot be addressed under existing law.

Chairman CRANE. Well, given that the discretion would be so broad and the Department would not be obliged to provide relief, why would the provision increase the administrative burden on the Department, since the discretion is so broad? Wouldn't Commerce be able to dismiss easily any claim for relief that it believed was meritless?

Ms. ESSERMAN. Chairman Crane, if there were a provision such as the one that is proposed, I am absolutely confident we would receive requests for short supply exceptions in every case, and that would lead to a situation where our scarce resources at the Department of Commerce would be diverted from our real objective, which is trade law enforcement, which is so essential to our Nation's economy, to that of short supply administrators, and that would cause us great concern. It would totally undermine the law.

I am quite confident, if such a provision were in effect, we would receive those kinds of claims. And, in fact, you only need to look at the testimony that was provided by the Steel Service Center to get an indication of that.

They have indicated from a quick canvass of their members—a tentative canvass of their members—that a long list of products would be candidates for short supply application to the Department of Commerce. That is in only one industry. So that is why we are so terribly concerned about the resource implications, among many other things, of a short supply amendment.

Chairman CRANE. What is your position on whether and under what circumstances current law permits Commerce to alter the scope of an order, either temporarily or permanently?

Ms. ESSERMAN. There are a number of mechanisms under U.S. law to address valid situations of no supply. First, this issue may be addressed at the investigation phase when we are determining the scope of an order. In fact, we have made exclusions, during this initial investigation phase, in situations involving no supply.

Second, after an order is issued, we, at the Commerce Department, may address legitimate no supply issues, and we have done so in a couple of situations recently. That is, under the changed circumstances provision, parties may petition the Department for an exclusion and, under appropriate situations of no supply, we can make an adjustment.

Third, the issue of no supply may be dealt with by the International Trade Commission in addressing injury and, in some of the complaints that have been presented in the comments before

this Subcommittee, for example, in the wire rod situation, in fact, the situation was dealt with effectively. In that case, the International Trade Commission, taking into account, in part, the limited supply in the United States, reached a negative determination.

In addition, we may be able to address legitimate no supply issues in sunset reviews.

Chairman CRANE. Shifting momentarily to the proposed Commerce regulations, I have a couple more questions. Why is Commerce proposing a change in its practice by deducting countervailing duties from export price if the importer has been reimbursed? Given that Commerce has never made this deduction before, am I correct in assuming there must be a change in either the statute or the statement of administrative action that requires such a change and, if so, where?

Ms. ESSERMAN. Chairman Crane, we believe that that provision is totally appropriate and very consistent with our policies on rebates. If an exporter rebates an importer for a countervailing duty, it operates as a rebate to the importer and reduces the U.S. price. As with all rebates, it is deducted from the price to calculate dumping. So we believe this is totally in line with our general policy relating to rebates.

Chairman CRANE. And the final question. Why should Commerce change its practice and require the deduction of a subsidy margin in a countervailing duty case when the export price in an antidumping investigation of reimbursements occurred? The House has never voted for that kind of a change.

Ms. ESSERMAN. As I indicated, this is not a matter affecting our subsidy law. This is something that is directly related to our calculation of dumping. We are not putting a dumping duty on a subsidy. Now, in fact, what we are addressing is the action of the exporter to reimburse the importer and, when that occurs, it is appropriate to deduct that as a rebate, as we do with all other rebates. So this is not a matter of us double counting for the subsidy, the countervailing duty. This is an action to address the act of reimbursement.

Chairman CRANE. Well, wouldn't this rule amount to a double deduction of the countervailing duty margin?

Ms. ESSERMAN. Absolutely not. This is, again, something that is very different from deducting the duty. Rather, the action that is addressed is the action of an exporter reimbursing the importer for the subsidy and, in that situation, as with all other rebates, we would deduct that rebate from the U.S. price.

Chairman CRANE. Thank you, Madam Secretary.

Now, Mr. Rangel.

Mr. RANGEL. Madam Secretary, we appreciate the fine work you have been doing over the years, and we are fortunate to have you still with us to walk through this minefield. You might share with your colleagues at Commerce that I and other Members not only share their pain for the loss of the Secretary, but also the loss of so many other fine people that were on that team doing our country's work. We hope we can come over and express this personally without getting in the way of the work, the tremendous burden you now have to work under to continue to make progress in this area.

Now, you are proposing to streamline the antidumping procedure. You are going to have new regulations. You have certainly done all you could to have the public comment on it. What do you think is the biggest problem you have encountered in rewriting the regulations? Has it been controversial enough or is there any subject you received a lot of comments on? Because, if you have, we will. And how do you handle the hearings once you have a better idea of the comments coming in?

Maybe we ought to start first with the question of the type of comments you have had and the hearings you are going to have and, also, the most important thing is, What do you think you really remedied by streamlining the regulations?

Ms. ESSERMAN. Well, first, Congressman Rangel, let me thank you very much for your kind expression of condolences. I know you knew Secretary Brown very well from his very early days, and I very much appreciate your kind comments.

One of the biggest challenges we have had at Import Administration is to ensure we focus our scarce resources on the most important issues relating to enforcement, and that is why we have not only sought in our regulations to make changes to effectuate our Uruguay round changes, but we have taken every opportunity to focus on those issues most important to enforcement and to streamline our operations consistent with President Clinton's and Vice President Gore's reinvention initiatives.

So the biggest source of concern isn't so much regulations. It is how we can use our scarce resources to most effectively address the important issue of unfair trade practices.

We have not, at this point, received comments from the public on our regulations. I believe our comment period closes May 15 and, after that point, we are going to have a hearing at the Department of Commerce.

Mr. RANGEL. Streamlining, is it just doing the same thing with fewer people or was there something really accomplished rather than reduction in cost?

Ms. ESSERMAN. No. What we have done here is to target our resources more effectively to promote enforcement. We have done that a number of different ways. We are implementing an internal realignment within the Department. The purpose of that is to make sure we are focusing our attention, monitoring most closely the pricing practices of foreign producers immediately after an order is issued. So, we have restructured our operations to allow for that.

Second, we have focused very hard on how to make our verifications more effective. A verification is akin to an audit. That is when we really learn the most about the foreign exporters' pricing practices. We have been conducting training sessions to ensure our analysts are most knowledgeable and most effective in the way they are conducting their verifications.

We have, also, substantially revised our questionnaire. In past years, the questionnaire has been criticized by all parties. What we have done on this questionnaire is to provide a comprehensive approach so that we get the information as early as possible in the investigation so that our domestic industries have the greatest op-

portunity to comment on the information and the foreign exporters have a clear sense of the kind of informational needs that we have.

Mr. RANGEL. Could you send me a list of the type of witnesses or the names of witnesses you expect to call for your hearing?

Ms. ESSERMAN. I would expect, based on past history, we will have a wide range of domestic producers that are active users of the law, as well as foreign exporters—representatives of foreign exporters—and importers that bring in foreign products. I do hope we will have a good representation of small, medium, and large companies. It is very important to the Department to ensure our laws serve not only companies that are able to afford representation in Washington, but we are also able to assist the smaller companies that don't have resources for such representation.

Thank you very much.

Chairman CRANE. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman. Thank you, Secretary Esserman. I, too, share the statements of sympathy and concern. It is very difficult for people to assume that it is to be business as usual in the context of it simply is not business as usual.

I noticed in the preamble to your regulations, you state the Department is going to, to the best of its ability on conducting scope investigations, accomplish them within a 300-day window. How does that compare to what it takes currently? My assumption is 300 days is a significant shortening from what we do now.

Ms. ESSERMAN. Well, that is the outer limit. Many of our scope determinations are conducted in a much shorter timeframe. But we do have a couple of very complex scope determinations that take more time. But some scope determinations are accomplished in quite a short period of time.

Mr. THOMAS. And some a lifetime.

Ms. ESSERMAN. Well, I wouldn't agree with a lifetime.

Mr. THOMAS. Well, not yet, no.

Ms. ESSERMAN. Some take a bit more time, given the complexity of the issues.

Mr. THOMAS. And that has been one of my concerns from the very beginning and, obviously, from earlier statements in terms of procedures, and that is why through the eighties we have tried to create procedures that produce relief, but, as is the case many times, relief is only relief if it is done in a timely way. One of my concerns is, in terms of anticircumvention relief, my understanding is that relief in those instances will continue to be prospective only. Was there any consideration to a retrospective relief structure?

Ms. ESSERMAN. Mr. Thomas, that is an issue that is actively under consideration. As I had indicated, our regulations are in proposed form only. I anticipate there may be some comments from the private sector on that. I appreciate your concern in that area, and that is something we want to look at very carefully because circumvention is a very important issue to address.

Mr. THOMAS. Well, I understand the difficulty in, first of all, establishing the facts and circumstances and then going forward and that you are not supposed to be using it as punishment.

But it seems to me in certain instances—and there may have to be criteria established—for egregiousness of the activity or, if it does extend to a very significant period of time, turning to these

former industries who are now closed and saying the relief will be prospective isn't really a whole lot of help. So I would be very curious to see how you noodle through that situation because I believe there are examples in the law currently and, obviously, antidumping, especially in terms of egregiousness, but also on a timeliness basis because it then indicates that you are doing the best you can and that, if facts and circumstances so dictate, you may take an extreme position. And I think that helps the people who are looking for you doing the right thing based upon facts and circumstances. Sometimes timeliness is the only right thing and, if you can't deliver timeliness, there may be a way to go back and redress the grievance that clearly the facts and circumstances have established if you are going to take action.

So I will be focusing, among other areas, on that particular aspect.

Again, thank you very much for your testimony.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Gibbons.

Mr. Houghton.

Mr. HOUGHTON. Thank you.

Madam Secretary, good to see you here. Thanks for your testimony.

Let me just try to understand what this thing is all about so far. If I produce a widget and that widget needs a component part from another country, what this bill is going to do is to give temporary duty suspension. You are claiming, however, that not only in the reorganization of your Department, but also in the authority you have, you don't really need that because you already have the ability to handle my problem in making that widget. And, furthermore, if you have this bill, that it will open the floodgates to things which you can't control.

Now, I am putting words in your mouth, and you correct me where I am wrong.

Ms. ESSERMAN. Well, I totally agree with that characterization. We do believe we have existing authority to address legitimate situations of no supply. We are quite concerned if a provision is added to our trade laws, we will have a situation that is totally unmanageable and we will divert our very scarce resources away from the business of Import Administration which is active trade law enforcement.

Mr. HOUGHTON. Thanks, Mr. Chairman.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Like my colleagues, Madam Secretary, I want to express my sincere sympathy and respect for the loss of Secretary Brown and your other colleagues. My office was certainly impacted, like everybody in America was. Two of our staff members lost two of their best friends, and I certainly want to convey our sympathies as a staff.

Ms. ESSERMAN. Thank you very much.

Mr. RAMSTAD. Madam Secretary, there is a silicon metal shortage, a very serious one, facing a company in Minnesota, specifically, Spectro Allies Corp. of Rosemount, Minnesota. This company uses lower grades of silicon in its manufacturing and while higher

grades of silicon are produced in the United States, lower grades, which contain a maximum of 97½ percent silicon, are not. The company has been able to purchase lower grades from foreign sources in the past, but silicon is subject to substantial duties. In fact, prices have risen almost 50 cents a pound over the past few years. There just isn't enough silicon to operate past the second quarter of 1996 for this company in Rosemount, Minnesota.

Certainly, lifting duties, especially to China and Brazil, could help avoid a crisis.

Madam Secretary, like the company I just described in Minnesota, several of the witnesses have asserted they are unable to find products they need from domestic producers. It seems as though there is a real problem here. How would you suggest that that problem be addressed? And do you believe there are any circumstances under which a temporary duty suspension should be granted?

Ms. ESSERMAN. Mr. Ramstad, let me just say we have been recently alerted to a potential concern in the area you are raising, and we are in the process of meeting with parties to consider the issue.

As I have said, I do think there are mechanisms under existing law that address legitimate situations of no supply, and what you have to look at very carefully is what is the real issue and sometimes, when the issue gets presented as a problem from the dumping duty, the problem really isn't that. The problem is tight world supplies or other such factors.

However, what I would like you to know is that we have effectively addressed some of these issues. We have excluded a couple of products recently, even after an order was imposed. We have sought to exclude products from the order and have done that, even in the earliest stages of the investigation. So there are a number of ways in which we believe, under existing authority, we can address the problem.

We have, as I have indicated, a great deal of concern about the proposed temporary duty suspension bill.

Mr. RAMSTAD. I am not clear. Does that mean there are circumstances under which you would consider a temporary duty suspension?

Ms. ESSERMAN. No. We do not believe the current bill is appropriate because we believe, under existing authority under existing law, we can address the legitimate situations of no supply.

Mr. RAMSTAD. Let me ask you, just as a matter of followup in the remaining minute I have left, has the Department ever based a decision to revoke an order on lack of availability of that product?

Ms. ESSERMAN. Yes, we have, in two recent decisions, and we are, as I indicated in our preamble to our regulation, we have alerted the public that a new procedure we have been using is our changed circumstances provision and, under that authority, we are basing our determinations—one of the bases for changed circumstances exclusion is the lack of available supply, and we will, in the future, have no trouble providing, in appropriate circumstances, that that is a basis for an exclusion; that is, under appropriate circumstances.

Mr. RAMSTAD. So loss of interest by the petitioner is not the only basis for a changed circumstance review?

Ms. ESSERMAN. It is not the only basis for a changed circumstances review, but its lack of interest by the petitioner is a basis upon which we would grant an exclusion to an existing order.

Mr. RAMSTAD. Let me just ask you this, finally. My time is up, but Madam Secretary, I am really concerned about this company going under. It is that critical. They can't buy any more of this silicon, and the time is up for them. There are a lot of jobs at stake. You said you have been meeting with a number of people, I assume some from the private industry, who are so impacted. Would you or one of your designates be willing to meet with Greg Palen, who is chairman and chief executive officer of Spectro Allies of Rosemount, Minnesota?

Ms. ESSERMAN. Absolutely. We would be pleased to meet with him.

Mr. RAMSTAD. I would really appreciate that. He would be willing to fly out any time to sit down and talk to you about his specific situation.

Thank you very much, Madam Secretary.

Ms. ESSERMAN. Thank you.

Chairman CRANE. Mr. Levin.

Mr. LEVIN. Mr. Chairman, you very appropriately made reference to the grievous loss of Secretary Brown. I just wanted to take a couple of seconds to remind everybody of the role that Ron Brown and the Department played in the development of the antidumping provisions in the Uruguay round. We tend to go on to the next thing and not remember. And, if I might say so to the Secretary, I think if he were here today he would be proud of your testimony.

You know, we spent a lot of time on the antidumping laws in the Uruguay round, and I understand the differences of perspective. That is inevitable in matters as important and as complex as our antidumping laws. And when we went to Geneva those last few days, we confronted that complexity and the importance of the issue.

And reflecting the Secretary's interest, the Commerce Department played a very critical role. Indeed, I must say I think it was the indispensable role as we talked about these things within the American delegation, which had its own differences, and as we discussed these issues with the representatives of other nations.

And, essentially, a resolution was reached and, as Mr. Matsui said, a delicate balance was arrived at. And it would not have been possible without the longstanding personal interest of the Secretary and of his distinguished representatives who were there at that time. So I just want to say that the reason there are such deep feelings about the agreement that was reached and then the implementation language that was arrived at is that they both reflected a great deal of hard work and some real compromises. And I think we should all be wary of upsetting that apple cart at this moment.

But I mainly think your testimony reflects a continuity and the deep commitment of Ron Brown to the strength of American industry, the importance of a level playingfield, and he journeyed the globe to try to help American business take advantage of the level playingfield that he was so instrumental in helping to achieve.

So I just thought I would say that. And thank you for your testimony. I hope everybody knows the long, hard work you and USTR have put into these regulations. They don't come easily. They don't come automatically. They are a tribute to public service that Ron Brown was so proud of.

Thank you.

Ms. ESSERMAN. Thank you very much, Congressman Levin. I want to say we were very fortunate, I quite agree, to have someone like Secretary Brown, so dedicated to fairness around the world. I can only say that, if we had to have these very tragic circumstances, I am very happy we could have Secretary Kantor there to continue the mission because, as everyone knows, he has the same concern about fairness and addressing unfair trading practices.

Thank you.

Mr. LEVIN. Very much so. And thank you, Mr. Chairman.

Chairman CRANE. Madam Secretary, again, I want to thank you for your presentation and reassure you that we look forward to continuing our work together.

[The subsequent questions and answers follow:]

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington DC 20230
ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION

May 10, 1996

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Chairman Crane:

We are pleased to respond with the enclosed answers to the questions in your letter dated May 3, 1996, regarding the deduction of reimbursed countervailing duties.

Sincerely,

Paul L. Joffe
Acting Assistant Secretary
for Import Administration

Enclosure

QUESTIONS FROM THE COMMITTEE ON WAYS AND MEANS, SUBCOMMITTEE ON TRADE, U.S. HOUSE OF REPRESENTATIVES, ON THE DEPARTMENT OF COMMERCE'S PROPOSED ANTIDUMPING AND COUNTERVAILING DUTY REGULATIONS -- DEDUCTION FROM PRICES IN THE UNITED STATES OF REIMBURSED COUNTERVAILING DUTIES[1]

1. Why is Commerce proposing a change in its practice by deducting the subsidy margin in a countervailing duty case from the export price in an antidumping investigation if the importer has been reimbursed? Given that Commerce has never made this deduction before, am I correct in assuming that there must be a change in either the statute or the Statement of Administrative Action that require such a change? If so, where?

Answer Any payment made by a seller to a buyer in connection with a sale is an element of the price which must be reflected in an antidumping calculation. How the payment is designated is irrelevant, as long as it is associated with the sale in question. No new statutory authority is required because the authority to make this deduction is the same as the authority to deduct any other rebate or discount, and so applies equally to reimbursed antidumping or countervailing duties.

2. The House has never voted in support of this drastic change. Why should language in the Senate Finance Report, which is not included in the statute, the Statement of Administrative Action or the House Report, appropriately cause Commerce to change its practice and require this deduction?

Answer This deduction will result in fairer and more accurate dumping margins. As explained above, any payment made by a seller to a buyer in connection with a sale is an element of the price which must be reflected in an antidumping calculation.

3. Wouldn't this rule amount to a double payment of the countervailing duty margin -- once in the countervailing duty case and again in the antidumping case?

Answer There is no double payment. Countervailing duties are intended to offset the subsidy provided to the foreign producer. The treatment of the reimbursement of countervailing duties in antidumping cases is an entirely separate issue. We deduct the reimbursed amount because it is a reduction to U.S. price which clearly is relevant to the calculation of the dumping margin.

4. I can understand the rationale for deducting an antidumping duty if the importer has been reimbursed by the exporter. After all, we want to avoid frustrating the price impact in the United States under such circumstances. In addition, there is explicit statutory authority for doing so, and Commerce has been making this deduction. However, in a subsidy context, we merely want to remedy the subsidy granted in the home market, not how the product is priced in the U.S.

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[1] The proposed rule is of course subject to revision in light of public comments received.

market. It simply does not matter if the importer is reimbursed -- the subsidy would have been countervailed anyway. And I especially do not understand why you would crossover behavior under one statute into a penalty under another. Please comment.

Answer If a seller makes a payment to a buyer in connection with a sale, it amounts to a discount which must be accounted for in the dumping calculation, no matter how the discount is described or calculated. Permitting discounts for countervailing duties would allow exporters who happen to be subject to CVD orders to lower their prices by the amount of those duties without affecting the dumping calculation. Payment of countervailing duties is part of the terms of sale of doing business in the United States that has a direct effect on U.S. price. Reimbursement of countervailing duties, like any other term of sale that the seller assumes on behalf of the buyer, must be accounted for in the dumping calculation.

There is no explicit statutory authority to deduct reimbursed antidumping duties from prices in the United States. As stated above, the authority is the same as the authority to deduct any other rebate or discount, and so applies equally to reimbursed antidumping or countervailing duties.

Finally, countervailing duties are not intended simply as an increase in costs to exporters of subsidized merchandise. The remedy to which U.S. industries are entitled under the statute is the assessment of countervailing duties against imports of subsidized merchandise that are intended to offset the subsidy. Reimbursement of countervailing duties should not give rise to any special treatment under the antidumping law.

5. I am concerned that this proposal may violate the GATT 1994, the Subsidies Agreement, and the Antidumping Agreement because it requires that subsidies margins be deducted twice in certain circumstances. Please comment, especially to what extent the provision is consistent with Art. VI:5 of GATT 1994.

Answer Article VI(5) of the GATT prohibits the imposition of both antidumping and countervailing duties to offset the same situation of dumping and subsidization. The reimbursement of any cost or charge (including countervailing duties) in connection with a sale in the United States is a rebate which must be taken into account in calculating dumping margins. The motive of the exporter in giving the rebate, and the formula according to which the rebate was calculated, are irrelevant. The connection of the rebate or reimbursement to the sale renders it a "term of sale," for which Article 2.4 of the WTO Antidumping Agreement provides that an adjustment "shall" be made. The deduction for such discounts or rebates has nothing whatsoever to do with the situation of subsidization which gave rise to the countervailing duties.

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May 15, 1996

Mr. Paul L. Joffe
Acting Assistant Secretary for Import Administration
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Joffe:

Thank you for your letter of May 10, 1996, in which you respond to a number of questions I raised concerning the Commerce Department proposed antidumping regulations. The purpose of this letter, which I request that you incorporate as part of your official record on the regulations, is to comment further on five issues in the proposed regulations.

First, as I stated in my letter of May 3, 1996, I am still very concerned over the proposal to deduct from export price any countervailing duties paid on behalf of the importer or reimbursed to the importer by the producer or exporter. I believe that this provision would result in the double-counting of such duties and higher, trade-inhibiting margins. The statute does not permit such a deduction, and there is no legislative history in which this Committee agreed that such a drastic change in Commerce practice should be made. If Commerce were to implement this proposal, it would create dumping margins merely because the exporter reimbursed the importer for countervailing duties.

The simple fact is that the rationale for discouraging reimbursement of antidumping duties (as is permitted under current law) does not exist in the countervail context. With regard to antidumping, we want to avoid frustrating the corrective price impact of an antidumping duty in the United States through reimbursement. However, in a subsidy context, we merely want to remedy the subsidy granted in the home market, and it is irrelevant how the product is priced in the U.S. market. Accordingly, the statement in your May 10 letter that "any payment made by a buyer to a seller" in a countervailing duty case should be deducted in the antidumping case begs the question, in my view. In fact, I am concerned that this provision violates the Article VI:5 of GATT 1994, which prohibits the imposition of both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

I consider the proposed regulatory provision objectionable for the same reasons as was the "duty as a cost" provision which was rejected in the Uruguay Round legislative debate because it would amount to a GATT-illegal double-counting of duties. I do not understand how the rationale for the new deduction that you described in your letter is any different. In addition, I fail to see why a change must be made at this time, and I am not satisfied with the explanation in the May 10 letter in this regard. Making such a highly significant change, without being able to point to statutory language in the Uruguay Round implementing bill requiring such a sudden change, offends the so-called "balance" achieved in the Uruguay Round legislation that Secretary Esserman pointed to in our April 23 hearing. In short, I believe that if Commerce implements such a blatantly protectionist and ill-advised measure, the Subcommittee will be interested in pursuing other measures to restore the "balance" to our antidumping law and to minimize the opportunity for our trading partners to retaliate against U.S. exports.

As to the second issue of concern in the proposed regulations, I urge Commerce to give as much guidance as possible in defining terms throughout the regulations. I realize that a number of these issues must be determined on a case-by-case basis, but providing as much detail in advance will lend predictability and transparency to the proceedings. I refer especially to the lack of guidance on the subject of "affiliation" of parties for purposes of the dumping calculation. I realize that Commerce cannot at this time give precise guidance in the regulations, but without any guidance at all, parties cannot predict with any degree of reliability whether a sale at a given price actually constitutes dumping and will not know what a fair price would be. I believe that the lack of guidance hurts both petitioners and respondents. I suggest that the regulation state more clearly that the Department intends to focus on the ability to exercise restraint or direction over another party's pricing, cost, or production decisions -- issues that are the key elements of control relevant to antidumping issues.

Third, one of the fundamental concepts of the Uruguay Round legislation and the Uruguay Round agreement is that of fair comparison between export price and normal value. I am concerned that neither the proposed regulations nor the preamble states this fundamental premise. I encourage the Department, at the very least, to restate this principle in the preamble.

Fourth, as to the concept of short supply, I strenuously object to the language in the preamble stating that the regulations need not address short supply because current authority is adequate. I believe that current law is woefully inadequate in addressing the concept of availability, as was readily apparent at our April 23 hearing. At the outset, any existing authority provides permanent, and not temporary, relief. It does not permit suspension of duties where the product is not available merely for a short period of time. In addition, because the relief is permanent, the domestic industry would logically object to relief so that it may keep its options open to produce that product, even in the distant

future. This objection acts as a veto to any relief to the downstream users. In addition, I have been told that, despite a number of requests for scope exclusions based on short supply, Commerce has specifically stated that it does not have the authority to consider availability. Nor do I believe that "changed circumstances" reviews are adequate because there is no opportunity for relief until 24 months after the order, the process is long and drawn out, and there is no opportunity for temporary relief. Accordingly, because of such a strong difference in opinion concerning the reach and effectiveness of current law, I strongly encourage the Department to delete the reference to short supply in its preamble to avoid controversy.

Finally, I applaud the Department for establishing guidelines for the consideration of the views of downstream users and consumer organizations in its determinations. These parties often have very relevant information, and I am glad to see that Commerce will address in its determinations the points that they make.

Once again, I would like to congratulate the Commerce Department for its outstanding work in producing the proposed regulations. I believe that the proposals provide considerable guidance concerning how Commerce intends to implement its statutory mandate given to it by Congress, which is necessary to assure predictability and certainty for all businesses affected. However, I believe that the revisions I have outlined above would make the regulations consistent with the statutory mandate set forth in the Uruguay Round Agreements Act. In addition, these changes would maintain effective antidumping laws while, at the same time, they would assure that the regulations do not go so far in the opposite direction as to encourage our trading partners to adopt trade-restrictive provisions in response. Accordingly, I strongly urge the Department to adopt these revisions in its final regulations.

I look forward to working with you as the final regulations are developed.

With best personal regards,

Phil Crane

Philip M. Crane
Chairman

May 20, 1996

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Chairman Crane:

Thank you for your letter of May 15, 1996, in which you provided comments on five issues of interest to you in the Department's proposed antidumping regulations. We have placed your comments in the official record and will give them every consideration as we draft final regulations.

Sincerely,

Paul L. Joffe
Acting Assistant Secretary
for Import Administration

QUESTIONS SPECIFIC TO TEMPORARY DUTY SUSPENSION

1. In your testimony, you stated that Commerce has addressed "legitimate no supply issues." How do you define this term? Does it encompass: (a) a product that is not being produced in the United States, where domestic producers have no intention of making it; (b) a product that is not currently being made in the United States although some producers may do so in the future; or (c) a product that is made in the United States but in quantities and qualities that are not sufficient to satisfy demand?

A: Existing authority has in the past addressed and will continue to address a broad range of supply concerns, including in appropriate circumstances those you have listed. We will continue to administer this authority having clearly in mind the need to avoid undermining the effectiveness of the order.

2. Does current law permit Commerce to alter the scope of an order temporarily? Do you believe there are any circumstances under which a temporary duty suspension should be granted?

A: Under the new statute, antidumping and/or countervailing duty orders are themselves temporary. After five years an order must be revoked unless it is determined that dumping and injury will resume.

We do not believe there are any circumstances under which the proposal for a temporary duty suspension system can be established without undermining the dumping law. We find a temporary suspension objectionable for all of the same reasons we have opposed the various short supply proposals. A temporary suspension also is objectionable because it creates additional uncertainty, complexity and administrative burden. Existing authority more than suffices to address legitimate concerns over domestic availability.

3. Do U.S. purchasers of a product subject to an order or investigation have standing to alter scope or to revoke an order?

A: Commerce regulations have always permitted, consistent with the statute, initiation of a changed circumstances or scope review either at the request of an interested party or on the basis of other information available to the Secretary. Whether the purchaser is the importer, and thus an interested party, or not has not been a difficulty in addressing supply concerns, and will be even less so under the new law's explicit encouragement of comment by industrial users.

4. Has the Department ever based a decision to revoke an order based on lack of availability of that product? I understand that in recent cases, the Department has based the "changed circumstance" on the loss of interest by the petitioners. Is this the only basis for a changed

circumstances review? Isn't the threshold for showing interest very low -- in fact, a letter stating merely that "I am still interested," with no reason, is generally sufficient?

A: In recent cases we have responded to requests from foreign exporters and U.S. importers to remove a specific product from coverage of an order because it was not available domestically. In one of these cases, the importer attempted to and had no success purchasing the product domestically. Having been contacted by the purchaser, the petitioners in the original investigation notified the Department that neither they nor other domestic producers were interested in continued coverage of this product.

As Assistant Secretary Esserman noted in response to a question from Mr. Ramstad during the hearing, the lack of interest by petitioners is not the only basis for initiating a changed circumstance review.

5. A changed circumstances review may not be conducted until 24 months have lapsed from the determination, unless good cause is shown. Has Commerce ever found such good cause? If so, has this determination ever been made on the basis of availability of the product by U.S. producers?

A: In Flat Panel Displays from Japan, we revoked an order based on a request from petitioners who were responding to domestic availability concerns. The case established the principle that lack of interest by petitioners is good cause to conduct a changed circumstances review less than 24 months after an order is issued (in this case, 14 months after issuing the order on active-matrix liquid FPDs).

6. In the two instances mentioned in your testimony in which Commerce has recently made changed circumstances determinations, how long did it take for Commerce to make the determination from the time the changed circumstances petition was filed and from the time the original order was imposed?

A: In steel rail from Canada (100ARA-A new steel rail), we received a request for a changed circumstances review on October 20, 1995 (six years and one month from the issuance of the orders -- AD on September 15, 1989 and CVD on September 22, 1989). The notice of final results of review and revocation of the order in part was issued on March 21, 1996, five months from the date of the request and six years and six months from the issuance of the orders. The revocation was made retroactive to September 1, 1994 for the AD order and to January 1, 1995 for the CVD order.

In cut-to-length carbon steel plate from Canada (Cobalt-60 free steel), we received a request for a changed circumstances review on November 3, 1995 (two years and three months from the issuance of the order on August 19, 1993). The notice of final results of review and revocation of the order in part was issued on February 28, 1996, just over three months from the date of the

request and two years and six months from the issuance of the order. The revocation was made retroactive to August 1, 1995.

7. If a petitioner refuses to agree to a request for a changed circumstance review, is it possible for Commerce to grant the review and revoke an order anyway? Should a single producer have veto power if the domestic industry does not produce a particular product that is only a small part of the class or kind of merchandise subject to an order?

A: It is important to recognize that relief is granted only after petitioners have established a right under the law to a dumping duty -- after demonstrating both dumping and injury. The duty only requires that a fair price be paid. Given the purpose of the law, the high standard, and the considerable investment required to establish relief, we would be extremely wary of an approach involving granting an exclusion over the objection of petitioner.

We believe it is unlikely, in any event, that we will ever need to reach the issue of what effect a single producer's view would have on revocation, because our experience has been one of cooperation between industrial users and domestic producers. We expect this cooperation to continue.

8. With regard to your statement that the Department already has the authority to consider availability, hasn't the Department stated in numerous scope determinations that it does not have the authority to consider availability in making scope determinations? See, e.g., Certain Carbon and Alloy Steel Wire Rode from Brazil, 59 Fed. Reg. 5984 (Feb. 9, 1994) ("The Act and our regulations do not provide for consideration of domestic availability in determining whether a product should or should not fall within the scope of an investigation"); Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 Fed. Reg. 37,062 (July 9, 1993) ("[T]he statute does not require the President to consider the domestic availability of a particular product within the scope when considering a scope exclusion request"). Are there any instances in which the Department altered the scope of an investigation or order in which it did not determine that the product was of a different "class or kind" of merchandise, based on physical characteristics? Can an order be revoked on the basis of availability alone?

A: Reviews to clarify the scope of an order are an additional method to address supply concerns, because the products subject to supply concerns may not be directly identified by the order and may have physical characteristics or uses substantially different than those of other products covered by the order. These physical characteristics or uses are relevant factors in deciding whether a product is within the scope of the order. In fact, scope reviews have not yet been needed to deal with supply concerns, in light of other authority, including changed circumstances reviews.

9. Under current law, are petitioners required or encouraged to identify products included in a petition that are not available from U.S. producers -- I realize that they can, but the question is whether they are required or encouraged.

A: We believe it is better to resolve supply concerns at an early stage, and we will continue to work with petitioners to identify any of which they are aware. We are continuing to refine our procedures for early notice of the views of industrial consumers to avoid later supply difficulties.

10. Short supply is not a new concept. Doesn't current law outside of the Title VII context permit consideration of availability, especially concerning Buy American provisions? Why is Title VII any different?

A: Title VII of the Tariff Act of 1930 deals with antidumping and countervailing duties. These laws do not preclude the importation of foreign products, nor do they express a preference for domestically produced products. Foreign products subject to AD or CVD orders may still be imported, but at a fair price. The AD and CVD laws merely provide for the imposition of duties in an amount equivalent to the amount of dumping or subsidization.

11. How easy would it be for a court to overturn a decision made by Commerce under H.R. 2822, given the courts' great deference to broad grants of agency discretion such as the discretion provided here?

A: A court will only grant deference to an agency's decision if it is in accordance with law and supported by substantial evidence on the record. This means that the agency must take great care to ensure that each of its factual conclusions is solidly grounded in a full and complete record. This task will be formidable in the case of highly controversial fact patterns, such as those we can expect to encounter under H.R. 2822. The Supreme Court has interpreted the "substantial evidence" standard as demanding that the reviewing court canvass the agency's entire record, taking into account whatever detracts from the agency's conclusions. Despite the painstakingly compiled records and carefully crafted conclusions in our present AD/CVD proceedings, the Department often spends years, sometimes as much as a decade, in the courts defending its determinations through judicial challenges, remands, and appeals.

12. Was the steel "short supply" procedure of the steel VRAs unduly burdensome on the Department (i.e., was the burden out of proportion to the benefit to the steel users)? Can you cite specific examples of undue burden?

A: Several dozen people were involved in responding to the approximately 250 steel short supply requests received. This level of commitment of resources was required even though steel is an industry Commerce has studied in some depth for 15 years. The resource commitment needed to administer a short supply program for the scores of industries covered by orders would be staggering.

13. The European Union has a temporary duty suspension provision under its antidumping law. I understand that it has invoked the law only once, in an antidumping case involving semiconductors. What is different about the U.S. system that would indicate that a similar provision in U.S. law would result in a "flood" of requests for relief?

A: The short supply provision of the EU turns on the political decision by the Member States as to the "Community interest," an essentially non-justiciable determination. By contrast, AD/CVD provisions in this country are rule-driven, required to be made on the basis of an administrative record, and, as our experience in the steel short supply program confirms, proceed from a strong tradition of litigation before the agencies of every important issue.

Chairman CRANE. Both CBO and the ITC have offered very insightful studies concerning the effects of antidumping orders on the U.S. economy. These studies definitively established that antidumping orders, as necessary as they may be to assist the domestic industry injured by dumping, have very negative effects on other U.S. companies.

And, with that, I will ask that Mr. Acton make his presentation first followed by Dr. Rogowsky.

STATEMENT OF JAN PAUL ACTON, ASSISTANT DIRECTOR, NATURAL RESOURCES AND COMMERCE DIVISION, CONGRESSIONAL BUDGET OFFICE

Mr. ACTON. Thank you, Mr. Chairman and Members of the Subcommittee.

I am pleased to appear here today to discuss U.S. antidumping law and policy and the proposed regulations to put in place the latest round of negotiations of GATT, the General Agreement on Tariffs and Trade.

With me is Dr. Bruce Arnold, who prepared the CBO, Congressional Budget Office, Study entitled "How the GATT Affects U.S. Antidumping and Countervailing Duty Policy" for this Subcommittee in September 1994, as well as Elliot Schwartz, who supervised its presentation and preparation.

With your permission, I would like to summarize my prepared remarks and ask that the full statement be included in the record.

Chairman CRANE. Without objection, so ordered.

And all written statements by witnesses will be a part of the record.

Mr. ACTON. Thank you.

CBO's review of current U.S. policy and the proposed regulations led to the following findings: First, U.S. antidumping law applies a different standard for judging pricing policies for imported products than antitrust law does for judging domestic products. Antidumping law serves primarily to protect U.S. firms from foreign competition, regardless of the impact on U.S. consumers and the economy.

In contrast, our antitrust laws serve primarily to encourage competition and protect individual consumers and the economy from harmful pricing practices.

Second, when a foreign exporter sells in the United States at a price below cost or at a price below the price it charges elsewhere, it almost always benefits the U.S. economy as a whole, except in the rare cases in which predatory pricing can be shown.

Nevertheless, individual firms and their workers may be temporarily injured by such practices. Beyond predatory pricing, economists and other observers have long recognized a variety of specific circumstances, often noneconomic, that may justify special treatment for certain industries unrelated to the specific issue of unfair price competition. These circumstances include national security and security of supply, economies of scale and externalities in production, temporary relief and adjustment assistance, and strategic bargaining to liberalize trade.

My written statement discusses these considerations in greater detail.

Our third finding is that U.S. firms seeking protection from foreign competition have come to rely almost exclusively on antidumping law rather than on antitrust law because it is easier for them to obtain a favorable ruling. Thus, in reviewing antidumping cases brought before the Department of Commerce and ITC, the International Trade Commission, CBO found the plaintiffs have been successful in a high percentage of the cases, at least for the period up through 1992 for which data were available.

Historically, once protection has been granted, it has been extremely difficult for foreign exporters to get it rescinded. In effect, protection has been permanent for some U.S. firms, sometimes extending for more than 25 years. The Uruguay round introduced a 5-year sunset provision on antidumping restrictions. Consequently, such long-term protection may become less common.

Fifth, the main beneficiaries of U.S. antidumping law and policies are the firms and workers that are protected. The main economic losers are the owners of and workers in U.S. businesses that use imported goods, as well as U.S. consumers who pay higher prices for their goods and services.

In addition, antidumping policy harms U.S. exporters as a whole because it leads to an adjustment in foreign exchange rates and a resulting decline in the competitiveness of U.S. exports in world markets. Moreover, foreign countries are following the U.S. lead by imposing antidumping duties on U.S. exports.

Finally, the regulations proposed by the Department of Commerce carry forward existing U.S. antidumping policies, with minor variations, within the framework of the Uruguay round of GATT negotiations. Although CBO has not had sufficient time to review these proposed regulations in detail, they do not appear to take into account their harmful effects on consumers and unprotected industries.

This concludes my oral summary, and I would be pleased to answer any of the Subcommittee's questions.

[The prepared statement follows:]

STATEMENT OF JAN PAUL ACTON, ASSISTANT DIRECTOR NATURAL RESOURCES AND COMMERCE DIVISION CONGRESSIONAL BUDGET OFFICE

Mr. Chairman and Members of the Subcommittee, I am pleased to appear here today to discuss U.S. antidumping law and policy and the proposed regulations to put in place the latest round of negotiations of the General Agreement on Tariffs and Trade (GATT). With me is Dr. Bruce Arnold, who prepared the Congressional Budget Office (CBO) study *How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy* for this Committee in September 1994.

CBO's review of current U.S. policy and the proposed regulations led to the following findings:

- o U.S. antidumping law applies a different standard for judging pricing policies for imported products than antitrust law does for judging domestic products. Antidumping law serves primarily to protect U.S. firms from foreign competition, regardless of the impact on U.S. consumers and the economy. In contrast, our antitrust laws serve primarily to encourage competition and protect individual consumers and the economy from harmful pricing practices.

- o When a foreign exporter sells in the United States at a price below cost or at a price below the price it charges elsewhere, it almost always benefits the U.S. economy as a whole, except in the rare cases in which predatory pricing can be shown. Nevertheless, individual firms and their workers may be temporarily injured by such practices.

- o Over time, U.S. firms seeking protection from foreign competition have come to rely almost exclusively on antidumping law rather than on antitrust law because it is easier for them to receive a favorable ruling.

- o In reviewing antidumping cases brought before the Department of Commerce and the International Trade Commission (ITC), CBO found that plaintiffs have been successful in a high percentage of cases. Historically, once protection has been granted, it is extremely difficult to reverse. In effect, protection becomes permanent for the U.S. firm--sometimes extending more than 25 years. The Uruguay Round introduced a five-year sunset provision on antidumping restrictions. Consequently, such long-term protection may become less common.

- o The main beneficiaries of U.S. antidumping law and policies are the firms and workers that are provided protection. The main economic losers are the owners of and workers in U.S. businesses that use imported goods, as well as U.S. consumers who pay higher prices for their goods and services. In addition, antidumping policy harms U.S. exporters as a whole because it leads to an adjustment in foreign exchange rates and a decline in the competitiveness of U.S. exports in world markets. Moreover, foreign countries are following the U.S. lead by imposing antidumping duties on U.S. exports.

- o The regulations proposed by the Department of Commerce carry forward existing U.S. antidumping policies with minor variations within the framework of the Uruguay round of the GATT negotiations. Although CBO has not had sufficient time to review those proposed regulations in detail, they do not appear to take into account their harmful effects on consumers and unprotected industries.

WHAT IS DUMPING AND WHAT ARE ITS EFFECTS?

Economists widely agree that in the vast majority of instances free markets result in a higher level of economic efficiency and output than would be likely to arise from government intervention. That conclusion is true for both domestically produced goods and internationally traded goods.

One exception to that general conclusion is when a firm has substantial size and market power to raise its prices above competitive market levels. The antitrust and antidumping laws are concerned with possible pernicious results that can happen in those circumstances.

In addition, economists and other observers have long recognized a variety of specific circumstances--often noneconomic--that may justify special treatment for certain industries, unrelated to the specific issue of unfair price competition. Those circumstances include national security and security of supply, economies of scale and externalities in production, temporary relief and adjustment assistance, and strategic bargaining to liberalize trade. I will discuss those considerations later in my testimony.

What Are Dumping and Predatory Pricing?

Dumping refers to a foreign firm selling a product in the United States at a price below cost or at a price below that at which the firm sells the same product in its home market. The last is a particular example of what economists describe as "price discrimination," which is the practice of charging different prices to different groups of customers. U.S. antidumping law imposes antidumping duties on low-priced imports in order to deter dumping or at least offset its effects. However, antidumping law applies only to foreign firms selling in the U.S. market--a point I want to emphasize. When engaged in by domestic firms in the U.S. market, the same pricing practices are perfectly legal and not subject to special duties or any other punishment or offset.

Predatory pricing is the intentional selling of a product at a loss in order to drive competitors out of business. The seller thereby establishes increased market power that it can then use to raise its price above the competitive market level and increase profits. U.S. antitrust law is currently interpreted to prohibit predatory pricing by any and all firms, regardless of whether they are domestic or foreign.

Dumping and predatory pricing are not the same thing, and most dumping is not predatory pricing. Many people think that the sales below cost that antidumping laws prohibit must represent predatory pricing, since firms are in business to make money and would therefore never intentionally sell at a loss without some ulterior motive. In fact, however, sales below cost occur frequently in free markets for all kinds of nonpredatory reasons. For example, during recessions the profits of many firms drop into the red, which means that those firms are selling below cost. They continue to sell their products, however, because the sale price remains high enough to cover variable cost plus part of the fixed costs that they would continue to incur even if they quit selling.

Frequently, introducing a new product involves losses until the product becomes established in the marketplace and the firm works all of the bugs and

kinks out of its production and sales operations. Other reasons for below-cost pricing include loss leaders in sales, life-cycle pricing, legal constraints, and many others. Domestic firms engage in below-cost pricing and price discrimination in the U.S. market frequently with almost no legal constraint. Prohibiting foreign firms from doing so, as antidumping law does, puts them at a distinct disadvantage and deprives U.S. buyers of the benefits of lower prices.

Early in this century, when the first U.S. antidumping law was passed, pricing by domestic and foreign firms was treated similarly, if not identically. Antitrust law was interpreted to prohibit predatory pricing by domestic firms, and dumping was defined in a manner that approximated predatory pricing. Over time, however, antidumping law and policy have evolved along a path of ever-increasing protection for U.S. firms from imports and decreasing concern for consumers and the economy as a whole. Today, U.S. antidumping law and policy make no attempt to single out predatory pricing.

The Effects on the U.S. Economy of
Predatory Pricing, Below-Cost Sales, and Price Discrimination

Even when pursued by domestic firms in the U.S. market, predatory pricing impairs economic welfare because it leads to monopolies, which in turn cause economic inefficiency and raise concerns about social equity. When foreign firms engage in predatory pricing in the U.S. market, it is even worse because it eventually results in U.S. firms and consumers paying monopoly prices to foreign firms. However, domestic and foreign firms seldom employ predatory pricing because only rarely does it succeed in driving competitors out of business and even more rarely is it a profitable strategy. By contrast, nonpredatory price discrimination and sales below cost generally provide net benefits to the economy receiving the lower price, and both are relatively common.

Clearly, the U.S. economy benefits when it purchases a product for less than the cost to produce it. The alternatives are to produce the product domestically--and thereby incur the entire cost of production--or else to purchase it elsewhere for a price equal to or greater than the cost of production. Either way the cost to the economy is greater than the cost of purchasing the dumped product.

Similarly, the U.S. economy also benefits when it obtains a product at a lower price than other countries can obtain it. When such products are purchased by firms that produce other goods, the lower price gives U.S. firms a competitive advantage over foreign firms. For example, if the antidumping laws result in a substantial increase in the price of semiconductor chips or flat-panel displays in the United States, computer manufacturers have an incentive to take their production operations overseas in order to get their chips and displays at lower prices. Similarly, actions that increase the price of steel increase the problems that U.S. automobile manufacturers have competing with manufacturers in Japan.

In the case of products purchased by final consumers, U.S. consumers obviously benefit by being able to purchase products at lower prices than consumers in other countries must pay. If anyone is to complain about price discrimination, it should be the firms and consumers in countries forced to pay the higher price, not those in the United States getting a lower price.

A domestic analogy illustrates how U.S. antidumping law treats foreign price cutting differently from domestic price cutting. If a department store had a sale in which it sold some products for less than those products cost the store, no consumer would complain to the store that it was being unfair. Similarly, if the store gave a particular consumer a better price than it gave others, that consumer would not be likely to complain. Yet that is exactly what the United States does as a consumer of products of foreign firms. Through our antidumping laws, we prohibit foreign firms from giving us a good deal. We insist that they not sell to us at a price below cost, and we insist that they give us no better a deal than they give their own citizens.

One might argue that consumers would certainly object if the department store sold below cost or practiced price discrimination for the purpose of driving its competitors out of business so that it could then jack up its prices sky high. That practice, indeed, would be bad for the consumer and for the economy generally. Monopoly prices and lack of competition cause economic inefficiency and raise concerns of equity and fairness. That kind of behavior, however, is not mere selling below cost or price discrimination it is predatory pricing. However, U.S. antidumping law and policy make no attempt to restrict imposing antidumping duties to the few cases that could represent predatory pricing.

By contrast, in cases of predatory pricing under the antitrust laws, the Federal Trade Commission and the courts do attempt to zero in on predatory pricing. They tend to look for evidence of such factors as prices below average variable cost (not just below average total cost), large enough market share and sufficient barriers to other firms' entering the market to make a monopoly and subsequent price increases feasible, and local price cutting in particular markets rather than general price cutting in all markets. In short, mere price discrimination or selling below average total cost is not usually sufficient for demonstrating predatory pricing.

The difference between antidumping law and antitrust law as it relates to predatory pricing is aptly characterized by two observations: (1) antitrust law protects consumers and the efficiency and productivity of the economy, whereas antidumping law protects certain producers at the expense of consumers and the efficiency and productivity of the economy, and (2) antitrust law seeks to preserve competition, whereas antidumping law seeks to restrict it.

Who Benefits and Who Is Harmed by Laws Against Below-Cost Sales and Price Discrimination?

Imports sold below cost or below the price at which they are sold in the exporter's home market benefit the U.S. economy as a whole, but they can injure individual firms and their workers.

Workers who are potentially affected by dumping are worried about losing their jobs. Permanent loss of one's job can be quite costly. It may take months to find another job, and the new job might not be as good as the one lost. In a full- employment economy, however, both displaced workers and capital can be expected to find reemployment eventually. In that respect, as in other aspects of dumping, the economic effects of job loss are the same whether the causes are domestic or foreign. Thus, the main beneficiaries of

antidumping law are import-competing firms and their employees and to some extent the communities surrounding them.

However, antidumping law protects firms and workers at the expense of the rest of the economy. The sectors of the economy that are hurt by antidumping law include consumers and consuming industries that use imported goods as inputs for production. Firms in those industries are put at a competitive disadvantage in the international marketplace when antidumping laws force them to purchase inputs at higher prices than their competitors pay abroad. That disadvantage can create incentives for domestic firms to move their operations abroad to avoid antidumping duties on their imported inputs.

Another, less obvious but no less significant, U.S. group hurt by antidumping law is U.S. exporters. They are harmed in two ways. First, other countries are following the U.S. example in imposing antidumping laws. Moreover, some of them have aimed the enforcement of their laws especially at U.S. exporters in retaliation for the United States' use of its antidumping law.

The second way U.S. exporters are hurt is less visible. The primary effect of trade protection is to reduce U.S. imports. Since domestic savings and investment-- which determine the trade balance--are unlikely to change, reduced imports will lead to reduced exports. To put it another way, if the United States effectively refuses to buy imports by putting up trade barriers such as antidumping laws, foreign countries will have fewer dollars with which to buy U.S. exports.

When Protection from Imports May Be Appropriate

Despite the broad agreement that freer trade is almost always better for the economy as a whole than trade restrictions, trade protection can sometimes be appropriate in supporting national objectives. Those circumstances generally involve noneconomic considerations or periods of temporary disruption and transition rather than the pricing practices addressed by antidumping law. Some specific examples are worth noting.

First, national security considerations may lead the United States to try to preserve domestic capability to produce certain key products that would be difficult to create rapidly during a period of threat or conflict. Those products could include advanced technology applications, weapon systems, or critical materials that are inputs to defense capability. Existing U.S. policies--including stockpiling and procurement policies--seek to ensure such capability, and they may represent a more effective and efficient approach than antidumping policies.

Second, certain market conditions may justify a departure from total free trade. Those conditions include situations in which there are increasing returns to scale or positive benefits to the country from having a specific industry in the United States for which firms in that industry would not naturally be compensated by the normal workings of the market. In such cases, strategic trade theory has shown that carefully chosen market intervention by the government can offer certain benefits. However, empirical research to date has indicated that those benefits are quite small and that it is very difficult to determine which industries are likely to accrue such benefits. As a result, even

some of the early proponents of strategic trade theory have concluded that a general policy of free trade is preferable.

Third, proponents of trade restrictions also note that departures from completely free trade may be helpful in the long run by providing temporary relief to assist the recovery of an industry or the transition to a new economic reality. In the United States, there has long been support from many quarters for temporary restrictions to ease the adjustment to unexpected disruptions from imports. Specifically, the section 201 escape clause provides for temporary restrictions to ameliorate surges of imports that are injuring a domestic industry. The idea is to smooth the transition and adjustment, not to eliminate the need for adjustment.

Finally, the act of getting rid of its own protection will generally help a country's economy regardless of what its trading partners do with their trade barriers. In practice, however, trade negotiators may use bargaining chips to achieve the overall objective. In trade negotiations, countries usually try to get their partners to get rid of barriers in exchange for eliminating their own restrictions.

Although each of those considerations could provide a basis for restricting trade, the antidumping laws and regulations that the Commerce Department uses to restrict trade do not take into account any of those reasons for protection. Moreover, as will be discussed later, antidumping law is not a good substitute for the section 201 escape clause.

HOW DOES ANTIDUMPING LAW CURRENTLY FUNCTION?

Although modern antitrust law as it relates to predatory pricing applies to imports as well as domestically produced goods, it is virtually never used in the case of imports. Competing firms are almost always the ones to bring cases against aggressive pricing by foreign and domestic firms. In the case of imports, they can obtain protection much more easily under antidumping law than they can under antitrust law.

However, antidumping law has replaced more than just antitrust law. Antidumping law is now a fairly general source of protection from foreign competition with very little relation to the fairness of that competition. Over the years, the Commerce Department's procedures have evolved in the direction of making it more and more difficult for foreign firms to defend themselves successfully against charges of dumping. Indeed, the main hurdle to an industry seeking protection under antidumping law is to demonstrate that it has been injured by the imports, not that the imports are dumped.

The Department of Commerce found dumping in 93 percent of the 339 cases that came before it for final determination from 1980 through 1992, whereas the International Trade Commission found injury in only 66 percent of the 315 cases that subsequently went to final determination. From 1988 through 1992, the numbers were even more lopsided: the Commerce Department found dumping in 97 percent of the 126 cases that came before it for final determination, whereas the ITC found injury in only 59 percent of the 122 cases that subsequently went to final determination. Thus, although the Department of Commerce found dumping quite often in the cases it reviewed, according to the ITC, about 30 percent to 40 percent of those cases involved no economic harm to competing firms.

Those statistics suggest that the main hurdle in antidumping cases is establishing injury, not proving that the competition is unfair. The purpose and function of the section 201 escape clause is to protect domestic industries from injurious surges in import competition. The degree of injury that must be demonstrated in antidumping cases, however, is less than that required in section 201 cases. For that and other reasons, the section 201 escape clause is now seldom used. A domestic industry generally finds it much easier to obtain protection under antidumping law. However, using that law as a general source of protection from imports has several disadvantages.

First, in the past antidumping law did not have the restrictions that the section 201 escape clause had to ensure that protection is granted only temporarily for the purpose of aiding adjustment and only in cases in which the benefit to the protected industry outweighs the harm to the rest of the country in economic, foreign policy, and security matters. Further, to get an antidumping order revoked, a foreign firm usually had to get a determination from the Commerce Department that it had ceased dumping, and such a determination was difficult to obtain. Hence, for all practical purposes, protection under antidumping law tended to become permanent. Some outstanding antidumping cases have been in effect for more than 25 years.

Permanent protection of industries is almost always detrimental to the economy and is contrary to the basic thrust of U.S. trade policy since World War II, which has supported the philosophy that all countries should eliminate trade barriers. The Uruguay Round introduced a five-year sunset provision on antidumping restrictions. The restrictions may be extended if a review determines that dumping would be likely to continue or to recur. At this stage, it is too early to know if that sunset provision will terminate most dumping-related restrictions. But if it does, it will represent a pro-competitive change in U.S. trade law.

Second, other countries have begun to follow the U.S. lead. They are now using antidumping laws to protect their industries, and many of them are targeting U.S. exports in retaliation for U.S. use of antidumping laws against them. The new World Trade Organization (WTO) agreement puts the imprimatur of world approval on much of U.S. antidumping policy and as such may hasten that development. Therefore, not surprisingly, although support for U.S. antidumping law and procedures among import-competing firms remain strong, sentiment against them is rising in the growing community of U.S. exporting and importing firms.

Third, even in those cases in which protection is considered desirable, antidumping law sometimes provides inadequate protection. It applies only to imports of the product in question from particular countries or firms and not to all imports of the product from any source. Therefore, it can be--and sometimes is-- circumvented either by the firm on whose products the duties are imposed or by the impersonal workings of the international market. Consequently, the United States has had to devote considerable attention in recent years to modifying antidumping law to make it apply to upstream dumping, downstream dumping, dumping routed through third countries, and various other routes by which antidumping orders have been circumvented.

U.S. antidumping law constitutes protection of domestic industries from foreign competition without regard for the fairness of that competition or for the economic welfare of the country. As such, it is an anomaly in U.S. trade policy, which in most areas favors free trade and opposes protection. Similarly, the provisions in the General Agreement on Tariffs and Trade have also been an anomaly.

In the Uruguay Round of GATT negotiations, which created the new World Trade Organization, antidumping law and policy were major issues of discussion. A result of the negotiations was a new Antidumping Code for the WTO. By and large, that new code serves to ratify most of current U.S. antidumping policy.

Although the new code does not require major revisions to U.S. policy, it does require minor reforms of some of the more protectionist aspects of that policy. To carry out the Uruguay Round Agreement, the Congress passed the Uruguay Round Agreements Act, which went into effect on January 1, 1995. On February 27, 1996, the Department of Commerce proposed new regulations to carry out the antidumping provisions in the act.

CBO has not yet had a chance to study those new regulations in depth. We assume that they are generally consistent with the new Antidumping Code and as such that they do not change the basic character of U.S. antidumping policy. In some instances, the Commerce Department had some leeway in the extent or character of changes it could choose to make while remaining consistent with the new Antidumping Code and the Uruguay Round Agreements Act. In addition, proposed short-supply legislation would permit the department to suspend antidumping restrictions under certain economic conditions. If the department uses that leeway to reduce the protection U.S. antidumping law affords to domestic industries, the results should benefit the economy, increase the equality of treatment of domestic and foreign firms, and make antidumping policy less inconsistent with the rest of U.S. trade policy. If the department uses the leeway in the opposite direction, the reverse will be true.

Chairman CRANE. Thank you, Mr. Acton.
Dr. Rogowsky.

STATEMENT OF ROBERT ROGOWSKY, DIRECTOR OF OPERATIONS, U.S. INTERNATIONAL TRADE COMMISSION

Mr. ROGOWSKY. Thank you. I am pleased to be asked to discuss the findings of the U.S. International Trade Commission's comprehensive study "The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements" which was completed and published in June 1995.

The U.S. Trade Representative requested the ITC measure the economic effects of both unfair trade practices and the remedies imposed under U.S. antidumping and countervailing duty laws, specifically, the economy-wide net welfare effects and the analysis of conditions in the petitioning, the upstream and the downstream industries or consumers.

From 1980 through 1993, 682 antidumping and 358 countervailing duty cases were decided in the United States. Nearly 40 percent of the antidumping and just over 21 percent of the countervailing duty cases resulted in affirmative final determinations and remedies. It is important to note the amount of total imports covered by AD/CVD duties is relatively small, typically less than 0.4 percent of the total U.S. imports.

These cases have potentially large effects on subject imports, however, given that the weighted average yearly antidumping margins can reach as high as 70 percent. The value of imports subject to the affirmative dumping order has dropped, on average, almost 32 percent in the year following the final determination.

Nonsubject imports of the same products generally rose about 24 percent. It is noteworthy that in cases where antidumping petitions were filed, which received no affirmative final determination, the value of subject imports still fell, on average, about 24 percent. The average volume of nonsubject imports and these products increased nearly 20 percent.

The estimated overall net effect of the gain to the economy from removing all of the outstanding AD/CVD orders in place in 1991 would have been $1.59 billion. This represents the economic effect, in terms of lower prices, if the less-than-fair-value imports were permitted on remedy. This figure includes gains to downstream industries or consumers and loss to industries competing against the less-than-fair-value imports.

Eight case studies were conducted in which a detailed analysis of each industry was examined to get the dynamic effects at work in the marketplace. These case studies showed that AD/CVD cases can have quite different effects. Most accomplished the intended effects. Domestic prices rise and product increases while subject imports fall.

But other market forces, like shifts in demand and changes in competitive conditions, can govern their final effect on downstream industries and consumers. Frozen concentrated orange juice imports from Brazil were 75 percent lower after the dumping duty, while domestic consumption increased. Prices stabilized at a higher level as Brazil both turned to non-United States markets and es-

tablished a pricing formula tied to the United States spot market to avoid further United States antidumping duties.

Steel pipe and tube prices and domestic production increased after the antidumping order went into effect, and the import penetration rate declined. The long-term decline of prices of EPROMS only slowed after the antidumping case and implementation of the semiconductor agreement, of which EPROMS was a part.

Antidumping duties on foreign brass sheet and strip reduced subject imports an estimated 73 percent. But aggressive competition in the industry kept the prices down while the foreign competition spurred quality improvements. Subject ball bearing prices increased by 5 to 10 percent. Most notably, the rapid foreign investment in the United States and continued aggressive competition within the bearing industry considerably reduced the effect of the antidumping action.

Subject solid urea imports ceased completely following the imposition of the order, while nonsubject imports from Canada increased by about 38 percent. Urea prices rose about 9 percent.

Both analysis and interviews of producers in the color picture tube industry indicated the antidumping actions didn't have much affect on that industry at all. So, while AD and CVD cases typically increased prices, the effect will depend heavily on how sensitive consumers are to those prices. When the subject product is a small component of downstream firms overall demand for consumers' purchases, such as the case of ball bearings or brass sheet and strip, demand is not diminished by higher prices and higher costs by those firms are absorbed.

When downstream industries are competitive, those prices are generally passed on to consumers.

I thank you for the opportunity to come before you, and I am happy to answer any questions.

[The prepared statement and attachment follow:]

Statement of Robert Rogowsky
Director of Operations
U.S. International Trade Commission
Before the Subcommittee on Trade
House Committee on Ways and Means
April 23, 1996

I am pleased to be asked to discuss the findings of the U.S. International Trade Commission's comprehensive study, *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements* (Inv. No. 332-344), which was completed and published in June of 1995.

The United States Trade Representative requested that the USITC measure the economic effects of both unfair trade practices and the remedies imposed under U.S. antidumping (AD) and countervailing duty (CVD) laws, specifically: (1) economy-wide net welfare effects, and (2) analysis of conditions in the petitioning, the upstream and the downstream industries or consumers.

Overview of the Caseload

From 1980 through 1993, 682 antidumping and 358 countervailing duty cases were decided in the United States. Nearly 40 percent of the antidumping and just over 21 percent of the countervailing duty cases resulted in affirmative final determinations and remedies. It is important to note that the amount of total imports coverd by AD/CVD duties is small, typically less than 0.4 percent of total U.S. imports.[1]

These cases have potentially large effects on subject imports, however, given that weighted average yearly antidumping margins reach as high as 70 percent. The value of imports subject to affirmative antidumping orders dropped on average almost 32 percent in the year following the final determination. Nonsubject imports of the same products rose 24.0 percent. It is noteworthy that in cases where antidumping petitions were filed, but which received no affirmative final determinations, the value of subject imports still fell by 24.0 percent. The average volume of nonsubject imports of these products increased nearly 20 percent.

Economy-wide Analysis

The estimated overall net effect of the gain to the economy from removing all the outstanding AD/CVD orders in place in 1991 would have been $1.59 billion. This represents the economic effect in terms of lower prices if the less than fair value imports were permitted unremedied. This figure includes gains to downstream industries or consumers and loss to industries competing against the less than fair value unfairly imports.

Case-study Effects

Eight case studies were conducted, in which a detailed analysis of each industry examines the dynamic forces at work in the marketplace.

These case studies showed that AD/CVD cases can have quite different effects. Most accomplish the intended effect: domestic prices rise and production increases, while subject imports fall. But other market forces, like shifts in demand and changes in technology can govern the effect on downstream industries and consumers.

Frozen concentrated orange juice imports from Brazil were 75 percent lower after the dumping duty, while domestic consumption increased. Prices stabilized at a higher level as Brazil both turned to non-U.S. markets and established a pricing formula tied to the U.S. spot market to avoid further U.S. antidumping duties.

Steel pipe and tube prices and domestic production increased after the antidumping order went into effect and the import penetration rate declined.

The long-term decline of prices of EPROMS only slowed down after the antidumping case, and implementation of the Semiconductor Agreement, of which EPROMS was a part.

Antidumping duties on foreign brass sheet and strip reduced subject imports an estimated 73 percent. Aggressive competition in the industry, however, kept prices down while the foreign competition spurred quality improvements.

Subject ball bearing prices increased by 5-10 percent after duties were

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[1]The value of subject imports and weighted average margins need to be treated with some caution since data for 49 (or 18 percent) of the 270 AD cases and for 38 (or 50 percent) of the 76 CVD cases were not available and are not included.

imposed. Subject imports fell by 2 to 6 percent and nonsubject imports increased. Most notably, rapid foreign investment in the United States and continued aggressive competition within the bearings industry considerably reduced the effect of the antidumping action.

The countervailing duty imposed on New Zealand lamb gave rise to a 10 percent increase in US prices and a 92 percent increase in nonsubject Australian lamb.

Subject solid urea imports ceased completely following the imposition of the order, while nonsubject imports from Canada increased by about 38 percent. Urea prices rose by 19 percent and domestic shipments by 48 percent.

Both analysis and interviews with the U.S. Color Picture Tube producers indicate that the investigation process did not have a significant impact on the industry.

While AD/CVD cases typically increase prices, the effect will depend heavily on how sensitive consumers are to prices. When the subject product is a small component of upstream firms' demand or consumers' input, such as the case of ball bearings or brass sheet and strip, demand is not diminished by higher prices and higher costs are absorbed. When downstream industries are competitive, such as farmers purchasing fertilizer made from solid urea, increased prices are likely pushed directly through to consumers.

Again, I thank you for the opportunity to present the findings of the Commission's study and would be pleased to answer any questions.

PHILIP M. CRANE, ILLINOIS, CHAIRMAN
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May 17, 1996

The Honorable Peter Watson
Chairman
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Chairman Watson:

I want to extend my thanks to you for making Dr. Robert Rogowsky available to testify April 23 before the Subcommittee on Trade on antidumping issues. His testimony was very helpful in explaining the International Trade Commission's study on the economic effect of antidumping and countervailing duty orders.

As you know, one of the issues discussed at the hearing was H.R. 2822, the Temporary Duty Suspension Act. I would appreciate it if you would advise me as to whether the ITC has already developed a position concerning this bill and whether an antidumping or countervailing duty order should be suspended temporarily on a limited quantity of a particular product needed by the American industry when users are effectively unable to obtain that product or form of product from U.S. producers. If the ITC has not already adopted a position on this issue, I would appreciate your own view, including to what extent current ITC practice permits consideration of availability both during an investigation and after an order is in effect.

Sincerely,

Phil Crane

Philip M. Crane
Chairman

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

May 23, 1996

Dear Chairman Crane:

Thank you for your letter of May 17, 1996. I am pleased that Dr. Rogowsky's testimony was helpful in clarifying the International Trade Commission's (ITC) study on the economic effect of antidumping and countervailing duty orders at the April 23, 1996 Subcommittee hearing.

You have asked if the ITC has developed a position on H.R. 2822, the Temporary Duty Suspension Act, which provides that an antidumping order or countervailing duty order should be suspended temporarily on a particular product currently unavailable from domestic producers and needed by American industry (Short Supply Provision). In response, the Commission does not have a formal position on this Bill, and therefore, as requested, what follows are my own views as an individual Commissioner on those issues which pertain to the ITC's mandate.

Commenters have suggested that a Short Supply Provision is unnecessary because both the Department of Commerce (DOC) and the ITC have the ability to undertake "changed circumstances" reviews. The Commission's authority to conduct such a review and revoke all or part of an antidumping or countervailing duty order in place is provided pursuant to Section 751(b) of the Tariff Act of 1930. A Commission changed circumstances review investigation may not, however, be instituted "less than 24 months after the date of publication of the notice of suspension or determination" in the absence of "good cause." The existing interpretations of "good cause" apparently do not extend to cover short

supply situations.[1] Thus, a changed circumstances review investigation may, under existing statutory interpretations, not be normally available to interested parties for at least two years after the initial determination.[2]

A review of relevant law suggests that Commission changed circumstances reviews do not address the same needs that are addressed by a Short Supply Provision. One purpose of a Short Supply Provision would be to meet the 'temporary' need of downstream purchasers when the products under investigation are not currently available in sufficient quantity from domestic producers. This need may well exist at the time of the original AD or CVD determination, as well as two years after the investigation. An ITC changed circumstance review, however, focuses the Commission's review primarily on the issue of whether continued dumping of the subject imports would cause material injury or threat of material injury to the domestic industry. Section 751 was clearly not designed to be used at the time of, or immediately following, an affirmative AD/CVD determination. Moreover, a revocation of an order pursuant to a Section 751 review would be permanent, not temporary.

It has been asserted that the Commission may consider changing supply and production patterns when conducting "sunset reviews" which are required by the Uruguay Round Agreements Act, and therefore that sunset reviews might obviate the need for a Short Supply Provision. As a result of the Act, beginning in the year 1998, the Commission will indeed begin conducting injury reviews of all outstanding five year old AD/CVD orders. However, while the Commission may well consider changing supply and production patterns when conducting sunset reviews, it is not at all clear what weight the Commission will place on those factors. Moreover, reviews of this kind would not be conducted until five years after an order was put in place.

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[1]19 U.S.C. §1675(b)(4). The Commission has stated that "good cause will be found only in an unusual case." This may include: (1) fraud or misfeasance in the original investigation; (2) acts of God, as exemplified in the FCOJ case where a severe freeze sharply reduced the U.S. producers' shipments of FCOJ; (3) mistake of law or fact in the original proceeding which renders the original proceedings unfair. Turkish Review Determination at 6, citing Frozen Concentrated Orange Juice from Brazil, 49 Fed. Reg. 34312 (Aug. 29, 1984).

[2]Commerce regulations are similar. The Secretary will not initiate a changed circumstances review "before the end of the second annual anniversary month (the calendar month in which the anniversary of the date of publication of the order or suspension occurs) after the date of publication of the Secretary's affirmative preliminary determination or suspension of investigation," unless the Secretary finds that good cause exists. 19 CFR §353.22(f)(3)

At the ITC, there have been at least 29 requests for a changed circumstances review. Of these, only 14 reviews have been initiated[3] and only six have resulted in revocation of an order. In three of these review investigations, no domestic producer objected to the review or revocation of the order.[4] In another review, the Commission revoked the order after learning that there had been no dumping of subject imports for the previous two years, a rationale unrelated to the level of domestic supply.[5] There appears to be only one review investigation in which the Commission revoked an existing AD order based on lack of sufficient domestic supply in the face of domestic opposition.[6] In this case, the Commission reviewed (for the third time) an order which had been in place for some nine years and found that all three of the domestic producers had either ceased operations with no intent to resume or were no longer producing the product.

Of the eight review investigations which did not result in revocation of an AD order, short supply was an issue for six of these reviews.[7] For these six reviews, revocation was denied, even where domestic production or supply was lacking or nonexistent, if a domestic competitor either produced a comparable product, produced only some of the product needed to meet current demand, or was *preparing* to enter the market to produce a comparable product.

It has also been suggested that the ITC, in making an AD/CVD determination of whether the subject imports are a cause of injury to the domestic industry, already has the discretion to take into account the fact that sufficient quantities of the product under investigation may not be produced in the United States, and this factor will thus will be reflected in its injury determination. In investigations where Commerce's scope determination includes foreign

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[3]A summary of those cases are set out in the attached Appendix.

[4]See Potassium Chloride from Canada, Inv. No. 751-TA-3, Synthetic L-Methionine from Japan, Inv. No. 751-TA-4, and Bicycle Tires from Korea and Taiwan, Inv. Nos. 751-TA-12-13.

[5]See Electric Golf Carts from Poland, Inv. No. 751-TA-1.

[6]See Salmon Gill Fish Netting from Manmade Fiber from Japan, Inv. No. 751-TA-11.

[7]The six include: Television Receiving Sets from Japan, Inv. No. 751-TA-2, Salmon Gill Fish Netting from Manmade Fiber from Japan, Inv. No. 751-TA-5, 751-TA-7, Birch Three-Ply Door Skins from Japan, 751-TA-6, Frozen Concentrated Orange Juice from Brazil, 751-TA-10, and Liquid Crystal Display Television Receivers from Japan, Inv. 751-TA-14. The two review investigations for which short supply was not a major issue include Acrylic Sheet from Japan, Inv. 751-TA-8 and Dry-Cleaning Machinery from West Germany, Inv. 751-TA-9.

merchandise for which there is no equivalent domestic production, it is true that this factor, when present, may be considered by Commissioners in making their injury determination.[8] In the great majority of such investigations, however, the scope also includes foreign merchandise for which there is equivalent domestic production. In such investigations, a small percentage of all products covered under the scope typically fall into a category of having no equivalent domestic production, so the fact that there is no equivalent domestic production for such foreign products may be given little weight by the Commissioners. To my knowledge, there has never been a case in which the ITC has made a negative injury determination based primarily on the fact that there was insufficient or no equivalent domestic production.

It has also been suggested that if the petitioning industry is not producing a competing product, there likely will be no lost sales or adverse price impact with respect to the particular merchandise and this will be a factor taken into account by the ITC in making the overall injury determination. As noted above, it is very rare to see a case in which the scope does not include foreign merchandise for which there is comparable domestic production. In cases in which "short supply" may be an issue, the scope generally includes foreign merchandise for which there is no domestic like product as well as foreign merchandise for which there is comparable domestic like product.

Thus, in the great majority of investigations, there will be lost sales and price effects data even where the scope may include products for which there is no comparable domestic production or competition. In such investigations, unless Commerce amends the scope of an AD/CVD order, duties are imposed on *all* foreign merchandise covered under the scope, regardless of whether some of the

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[8] The fact that some of the products covered under the scope may have no equivalent domestic production is, however, only *one* factor among many which the Commissioners consider in making their overall injury determination.
In Silicon Carbide From the People's Republic of China, Investigation No. 731-TA-651, the Commission assessed the condition of the domestic industry and noted as one "relevant economic factor", that the industry was divided into two market segments. As a result, competition between the subject imports (mostly crude) and the domestic like product (mostly crystalline) was somewhat attenuated. Although the Commission noted in its discussion of the condition of the domestic industry that the domestic industry produced only an insignificant amount of crude silicon carbide, a careful reading of the Commission's determination (See, Section IV.) does not support a conclusion that this fact was considered material by the Commission.

products under the scope have no comparable domestic production or whether they actually compete with the domestic like product.[9]

Parties have also suggested that the ITC can find "niche" products and exclude them from an injury finding, and that any product not subject to an affirmative injury finding cannot be subject to duties. However, even if the scope of the investigation includes imported products which are not produced domestically, an affirmative ITC injury determination will result in duties on *all* products covered under the scope of the investigation, regardless of whether such imported products are found to constitute a "niche" product. The "niche" product determination is really only relevant for Commissioners in their assessment of substitutability and the degree of competition between the domestic product and the subject merchandise. Thus, the "niche" determination only has an impact on the injury determination itself and not on whether any such "niche" products are to be excluded from any AD/CVD order resulting from an affirmative determination. Once an affirmative injury determination is made, a "niche" finding by the ITC does not lead to exclusion of any such product from an AD/CVD order, unless, of course, Commerce amends the scope of its investigation to exclude such products.

I hope the above is responsive. Please advise me if you have any questions.

Very truly yours,

Peter S. Watson

cc: The Commission

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[9]Sebacic Acid from China, Inv. No. 731-TA-653 (Final) provides a good example of an investigation in which the scope includes foreign merchandise which compete with the domestic like product as well as foreign merchandise for which there was no competing domestic production. In this investigation, the 'domestic industry' could not commercially produce sebacic acid with sufficient purity to meet its downstream customer's requirement, and thus imported the required product from China to satisfy this demand which it could not satisfy. The scope of the investigation covered both the high-purity product (which the petitioners themselves could not produce and thus imported from the Chinese) as well as the lower purity product, which competed with the domestic like product. An affirmative threat determination by the ITC resulted in duties on all products covered under the scope, including the high-purity sebacic acid, even though such products had no comparable domestic production.

APPENDIX

A Summary of Changed Circumstances Reviews Initiated by the ITC

In Electric Golf Carts from Poland, Inv. No. 751-TA-1 (1980), the changed circumstances noted by the ITC included the improvement of the competitive condition of the industry as the result of greater concentrations of production since the imposition of relief. Further, new marketing strategies had been developed that led to greater financial success for domestic producers. Thus, the domestic industry was in a much better position than at the time relief was first imposed for reasons unrelated to the existence of the AD duty order. In addition, it appeared that the domestic industry was not price sensitive and that there had been no dumping of subject imports for the last two years. ITC determined that the AD order should be revoked. (conclusion: revocation had nothing to do with short supply)

In Television Receiving Sets from Japan, Inv. No. 751-TA-2 (1980), the changed circumstances noted by the ITC included the transformation of the domestic industry as a result of a fundamental relocation of certain production operations resulting in a new international division of labor and the adoption of technological improvement reducing total labor content. Notwithstanding these changes, after a full review, ITC determined that the domestic industry would be threatened with material injury if the AD order were revoked.

In Potassium Chloride from Canada, Inv. No. 751-TA-3 (1980), the changed circumstances included the revocation of the AD order as to all Canadian producers except one and the closing of a number of U.S. mines due to depleted reserves. Further, the request for review and revocation was not opposed by any domestic producer. Following the review, the order was revoked. (conclusion: order was revoked due to lack of any domestic competition and opposition)

In Synthetic L-Methionine from Japan, Inv. No. 751-TA-4 (1981), the ITC instituted this review because it appeared that no domestic producer produced the subject merchandise. This constituted the change in circumstances apparent to the ITC at the time the order was originally imposed. Further, no domestic producer opposed institution of the review or revocation of the order as to L-Methionine. Following the review, the order was revoked.

Salmon Gill Fish Netting from Manmade Fiber from Japan, Inv. No. 751-TA-5 (1981). The alleged changed circumstance was the lack of domestic production of salmon gill fish netting due to inferior domestic technology. A domestic producer opposed the petition but conceded the lack of domestic production. A review ensued with the ITC ultimately determining that there was a sufficient commitment to the establishment of a domestic industry and that the establishment of such an industry would be materially retarded should the AD order be revoked. An important factor in the ITC's determination was that the U.S. producer committed to establishing a salmon gill fish netting operation was dependent on the supply of necessary yarn from Firestone Fibers and that Firestone had the capacity to supply the necessary yarn.

In Birch Three-Ply Door Skins from Japan, Inv. No. 751-TA-6 (1982), the principal alleged changed circumstance in this review was the sale of a domestic producer who accounted for the majority of domestic production. Following the sale, the facilities were devoted to the production of other products. In addition, it was alleged that three other domestic producers had ceased operations and that the market share of the Japanese producers was lost, not to domestic producers, but to other foreign suppliers. Following the review, ITC determined not to revoke the order as there was substantial idle U.S. and Japanese capacity and the U.S. was the principal market for the subject merchandise.

In Salmon Gill Fish Netting from Manmade Fiber from Japan, Inv. No. 751-TA-7 (1982), a second review of this order was conducted on the ITC's own initiative following receipt of information suggesting that Firestone Fibers was ceasing production of nylon, a necessary raw material for the domestic production of the subject merchandise, and that the sole prospective domestic producer (Nylon Net) had no alternative source of raw materials. Following review, the Commission determined not to revoke the order as two other domestic producers had since commenced production of products that competed with subject imports and these producers would be injured should the order be revoked.

In Acrylic Sheet from Japan, Inv. No. 751-TA-8 (1983), the changed circumstance warranting review was the development of a new type of acrylic sheet that had been included in the scope of the order, had a specific end use, cost 6 to 8 times more than the domestic product, and had no domestic competition. The review was terminated as moot following a DOC ruling that the merchandise should not have been included in the scope of the order.

In Dry-cleaning Machinery from West Germany, Inv. No. 751-TA-9 (1984) a review was considered following a 1982 request for review alleging that domestic consumption had increased, larger machines had been developed, and imports had declined. The review was dismissed following the opposition of a number of domestic producers. In 1984, a review was instituted following a subsequent unopposed request. The request contained allegations similar to those in 1982 but also alleged that West German producers had developed new "flexible" machines that were priced substantially higher than domestic machines. Upon review, however, the ITC determined that the imports did compete with the domestic product and that price was an important factor in purchase decisions. ITC determined that revocation was not warranted.

In Frozen Concentrated Orange Juice from Brazil, Inv. No. 751-TA-10 (1984), the changed circumstance warranting a review of a suspension agreement included a severe freeze in Florida that sharply reduced domestic production and a surge in demand for the Brazilian product. Upon review, the ITC determined that the short-term effects of the freeze would dissipate and that the domestic industry remained vulnerable to the effects of imports from Brazil.

In Salmon Gill Fish Netting from Manmade Fiber from Japan, Inv. No. 751-TA-11 (1986), in this third review of the Salmon Gill Fish Netting order, the changed circumstances underlying the review included the fact that two of the domestic producers had ceased operations with no intent to resume, while a third was not producing specialty nets and no longer produced salmon gill nets. Following review, the order as to salmon gill fish netting was revoked.

In Bicycle Tires from Korea and Taiwan, Inv. No. 751-TA-12-13 (1987), the changed circumstances warranting the institution of these two reviews were the ceasing of production by the sole domestic producer and its expressed intent to import and not resume production. Following a review the order was revoked.

In Liquid Crystal Display Television Receivers from Japan, Inv. No. 751-TA-14, the alleged changed circumstance warranting review was the development of small screen liquid display television receivers since the imposition of the order and the lack of competition from any domestic product. Following review, the ITC determined not to modify the order to exclude the LCD TVS, finding that they were not limited to small screen TVS, they competed with domestic cathode ray TVS, and notwithstanding their different technology, they were part of the same like product - television receivers generally.

Chairman CRANE. Thank you, Dr. Rogowsky. I want to congratulate you both on these fine studies. As we all know, empirical analysis merely describes real-life effects. It doesn't address whether a particular practice is appropriate. That is a policy and value judgment, as I believe all of the ITC Commissioners would agree.

Congress has decided, despite the documented effects on downstream users and consumers, that certain domestic industries should obtain relief from certain pricing practices that injure them. That, I think, is unlikely to change and, in fact, shouldn't change. However, I believe there is room to explore escape valves for those downstream users where the petitioning industry would not be injured by those mechanisms. And that is the intent of my bill.

Dr. Rogowsky, to what extent does the ITC study address an interesting point made in the CBO study about the impact of antidumping orders on U.S. exporters, especially relating to the adjustment in the foreign exchange rates and the competitiveness of U.S. exports as well as the impact of mirror legislation?

Mr. ROGOWSKY. Our study did not directly look at the effect on U.S. exporters. We were strictly sticking to the request letter looking at the effect on U.S. petitioning industry and upstream and downstream consumers. So we did not directly look at that issue.

Chairman CRANE. But would you agree that that suggests the estimated effect on the economy is conservative?

Mr. ROGOWSKY. We feel our estimates are fairly conservative on the effects.

Chairman CRANE. Mr. Acton, can you explain why, in your view, restricting imports also leads to a restriction in the ability of U.S. companies to export?

Mr. ACTON. Yes, Mr. Chairman. Primarily, the effect is foreign customers need to have dollars in order to pay for U.S. exports, and they get those dollars by selling their own exports to the United States. So the erection of protectionist barriers by the United States really chokes off some of the supply of dollars that foreigners need to purchase U.S. exports.

Chairman CRANE. And, Dr. Rogowsky, can you please describe whether or not current ITC practice permits consideration of availability, both during an investigation and after an order is in effect? And, if you can, please give us an idea of the magnitude of cases in which the ITC made its decision based on availability and, if you have any examples you can use, please do so.

Mr. ROGOWSKY. Well, the Commission—I hate to comment on what the Commissioners consider. Commissioners have broad discretion over what to consider when they make their decision as to the imposition or the determination that there has been material injury in a case. I am afraid I do not have before me any numbers or calculations on how often that has happened.

Chairman CRANE. All right.

Mr. Rangel.

Mr. RANGEL. Thank you. Mr. Acton, Commerce had some reservations to make about the report, and I think they made them before your report was completed. Did that have any impact on the report? Were any changes made as a result of their comments?

Mr. ACTON. CBO received a number of very useful comments when our report was in draft form, Mr. Rangel, and those com-

ments, including those from the Department of Commerce, were very useful in helping us clarify the presentation at a number of points that had been obscure. They also caused us to shift the emphasis away from the early history of the development of U.S. trade law around 1900 to focus on today's circumstances. I think that was the especially useful contribution they made. They raised some questions that required us to document statements, and we were pleased we were able to substantiate the conclusions that were contained in that draft. I think it was a stronger study for their comments.

Mr. RANGEL. I am glad to hear that. Would these proposed regulation changes, had they been in effect, have had any impact on either of the two studies at all? I mean, were they taken into consideration or would it have any effect as to what your conclusions were in your report, Dr. Rogowsky?

Mr. ROGOWSKY. When we were doing our study, we knew of the proposed changes that were being negotiated, and we discussed those changes in our report. They did not really affect the analytical framework or the conclusions from that framework.

Mr. RANGEL. Well, that is really what I meant. Were the proposed changes discussed with the CBO? I know you are saying that you considered them. It would not change the report. Would you say the same thing?

Mr. ACTON. We did not consult the Department of Commerce while it was developing these proposed regulations, to my knowledge, and I will confirm that with others at CBO.

Mr. RANGEL. What I am saying is, based on what you know today, as it relates to proposed regulation changes, could that possibly have any effect on the conclusions you reached in your report?

Mr. ACTON. I think, as I indicated, the Uruguay round put a sunset provision on antidumping duties. I think that is a positive move, in terms of not making the protection that we called attention to permanent.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Houghton.

Mr. HOUGHTON. Thank you. Mr. Acton, I think you said something about in order to export, you must have the proper ingredients in your product, which then produces cash abroad and then keeps the whole cycle, something to that effect; is that right?

Mr. ACTON. Yes, sir.

Mr. HOUGHTON. So I can imagine a situation—and correct me if I am wrong here because I might be—I produce a piece of machinery, and I need product *x* for that machinery. Product *x* has been produced by a company who has driven three or four industries in this country out of business. So, therefore, I have a suspension of the duty. I buy that product. I export the product. I gain cash in the foreign market in order to continue to buy from the company that put three or four businesses out of business. Now, could that happen?

Mr. ACTON. I think it is important to ask about the mechanism by which a foreign firm came to dominate a particular market. If it was the worldwide low-cost producer——

Mr. HOUGHTON. The foreign firm would dominate the market by dumping and, therefore, the duties would be increased, which you now want to suspend.

Mr. ACTON. If the foreign firm was dumping for purposes of predatory pricing; that is, for the purposes of driving all of the competition out of existence and then turning around and getting greater than normal profits for the remainder of its economic life, economists would call attention to that as an area of worldwide economic loss and concern.

If the foreign firm had a natural cost advantage because of a low-cost supply of raw materials or some other reason, it may be part of the give and take in international trade, where comparative advantage leads us to the most efficient source of production for all goods and services. And, as you indicate in your example, that output is used in the United States, where we have a comparative advantage.

Mr. HOUGHTON. Have you ever worked in business?

Mr. ACTON. I worked at the Rand Corp., which is a think tank for the U.S. Government, and through college I worked in a furniture factory.

Mr. HOUGHTON. Right. You have never worked in a business which has been seriously affected by dumping from international products.

Mr. ACTON. The furniture firm, with which I worked throughout my college career, was always subject to strong competition from production abroad, but I was not an equity holder in that company.

Mr. HOUGHTON. No, I don't mean that. But I mean you did not work for a company or did not know people who were losing jobs in a company that were severely affected by somebody who was then convicted of dumping processes.

Mr. ACTON. I believe that is correct.

Mr. HOUGHTON. Now, let me ask Dr. Rogowsky, Dr. Rogowsky, on your second page, you say, on the third-from-the-last paragraph, "The analysis and interviews with the U.S. color picture tube producers indicate that investigative processes did not have a significant impact on the industry." My, whom did you talk to?

Mr. ROGOWSKY. We talked to a number of different firms in that industry, including some chief executive officers, but mostly production managers, people running plants. Part of the reason for that is the people who are producing color picture tubes are also producing color televisions, and they also produce the components going into the color picture tubes and other components going into the production of color tubes.

Mr. HOUGHTON. Well, as you know, in the color picture tube business, there are glass envelopes and then there are tubes, and then there are picture tubes, and then there are sets. So it is a segmented business. Some of it is brought together and some of it isn't.

Mr. ROGOWSKY. Right. Well, as I say, we spoke to people in the industry, and part of the reason you come up with that conclusion is that the industry, because of its integration, is both a winner from lower dumped prices and also a loser from lower dumped prices. And so the perception from the people we talked to in the industry was that the process from the antidumping action was not

a very significant factor in that industry, given all of the other changes going on. And keep in mind, there were quite a number of technological changes occurring as the industry was making adjustments, primarily to much larger television sets.

Mr. HOUGHTON. Could I just continue 1 minute longer, Mr. Chairman?

Chairman CRANE. Certainly.

Mr. HOUGHTON. I guess the thing that has bothered me, and I didn't really have a chance to go through this report. I did the executive summary. But, if I remember correctly, Ambassador Kantor asked you to look at two basic areas; the economic impact and the consequences of foreign subsidies, and so on and so forth, and the effectiveness and the economic impact of the remedies. And, it seems to me, you concentrated on the remedies rather than the first part to give what I would consider is not a particularly balanced picture. Maybe you would like to explain that or tell me where I am wrong.

Mr. ROGOWSKY. I appreciate the opportunity. We feel we did a very thorough analysis, based on the request made to us, and we feel it was balanced. Some of the things that are most easily read in the report can tend to lead you to the conclusions you are coming to. But, if you look at the case studies, which is where most of the effort went in the report, we made that effort with the idea we would be able to look indepth at the market forces at work in at least eight different industries, so we could understand the conditions for the petitioning industry, for the upstream industries and for the downstream industries, and bring those pieces of information and that analysis to bear to understand what was going on inside those industries. That process was lengthy, including hearings. We interviewed firms all over the country to try and make sure we got their input and incorporated it in the study.

In that, we, indeed, did try to look at what the effect of the dumping was on those industries, both the unfair practices and the effect of the remedies.

Mr. HOUGHTON. Well, I would like to read this thing in the full text to try to get an understanding of it, but I must say it appears to me your study was heavily weighted toward only one part of Ambassador Kantor's two questions. And, if the conclusion on the overall study is the same as you have said here in terms of the color picture tube business, I would have serious questions.

Thanks very much.

Chairman CRANE. Well, again, gentlemen, we appreciate your appearing here to testify before the Subcommittee, and we are grateful for your insightful studies and look forward to ongoing input from both of our valuable resources, ITC and CBO.

Thank you.

Mr. ACTON. Thank you.

Mr. ROGOWSKY. Thank you, sir.

Chairman CRANE. Our next witnesses are distinguished scholars, who have spent years studying the antidumping law. Dr. Michael Finger, lead economist for Trade Policy and International Trade Divisions of the World Bank, and Joe Cobb, John M. Olin Senior Fellow, the Heritage Foundation.

Gentlemen, if you will take your seats, and then we will open with Dr. Finger. All printed material will be made a part of the permanent record.

STATEMENT OF MICHAEL FINGER, PH.D., LEAD ECONOMIST FOR TRADE POLICY AND INTERNATIONAL TRADE DIVISIONS, WORLD BANK

Mr. FINGER. Thank you very much, sir. It is a privilege and a pleasure for me to appear before you. I would like to point out that, while I have worked at the World Bank for the last 15 years, I am on vacation today. So I am appearing as a private citizen.

While I have had the opportunity, while working at the World Bank, on many occasions to discuss economic policy with members of many governments, this is the first time I have had the honor and the privilege of appearing before Members of the U.S. Congress, and I must say it is a special privilege and honor for me to be here.

I would like to begin by bringing your attention to the fact that over the past decade and a half there has been a significant amount of liberalization, removal of import barriers, to put it simply, in developing countries.

In the paper I have provided you, there is a list of countries of which there are some 16 who have reduced their tariffs by more than one-third. These reductions were done unilaterally, not as a part of a negotiation, which considered one's import restrictions as a national asset to be bargained away only in exchange for someone else's import restrictions. These decisions were made because the governments involved reviewed their own import policies, decided their import restrictions, while helping some sectors of their economy, imposed additional costs or higher costs on other sectors of their economy. So these governments decided it was in the national economic interest to remove these import restrictions.

Unfortunately, these countries, while following the example of the United States and the other industrialized countries in removing import restrictions, are now following them in the process of finding ways to impose new import restrictions, particularly antidumping. A significant part of my work over the past few years has been to try to convince countries not to backslide on the liberalization they have undertaken, and I should like to provide you a couple of anecdotes about experiences I have had.

In a small country I won't identify, the Deputy Minister with whom I was speaking presented his case in this way. He said, "In our country, farmers raise chickens. If you want chicken for dinner, you go to the market, and you buy a chicken. But in the United States . . ." he explained ". . . farmers don't raise chickens. They raise chicken parts. And because customers in the United States are afraid of cholesterol, they buy the white meat, and so the white meat sells for a high price and the dark meat or the legs get sold in our country at a price lower than our farmers usually get for chickens."

His conclusion was, "That is dumping, isn't it? So shouldn't we take action?"

I didn't argue with him about whether or not it was dumping. I did suggest we talk about the question of whether it was in the

national economic interest of his country to take action. We reviewed what consumers were saving, where consumers were spending the money they would otherwise have spent on chickens, and it turned out they were spending it mostly in the local economy and, in this case, the Deputy Minister concluded they probably wouldn't take action against chicken legs.

I had the honor of hearing the executive director of the Taiwan International Trade Commission describe his situation. According to him, Taiwan has had 29 antidumping investigations over the past 5 years, most of these involving industrial inputs. The case he cited as an example, the petitioners filed a set of coordinated petitions against a list of products. The Commission examined the petitions, found them to be in order, found the information in them to be accurate, and imposed a preliminary antidumping order. Immediately after, users of the products came forward and asked them to remove the order because it was costing them more than it was benefiting the other guys.

The Commissioners investigated the allegations, determined that, yes, indeed, it was costing users more than it was benefiting producers and so they lifted the antidumping order.

To sum this up, since the red light is about to go on, there are now in the world a number of governments who are realizing that users of imports are a part of their national economies and, in the process of deciding when it is in the national interest to impose an import restriction, it is useful to examine the impact on users as well as the impact on petitioning producers.

The lesson I draw from this is that the short supply bill would introduce the opportunity of putting this element of economic sense in the deliberation process, which the U.S. Government goes through as it decides to restrict or not to restrict imports.

I might add, from my perspective, it would also be very useful for me if I had an example of a country as important as the United States whose process reflected this basic economic sense.

Thank you very much for your time. If you have questions, I would hope to answer them.

[The prepared statement and attachments follow:]

STATEMENT OF MICHAEL FINGER, PH.D.
LEAD ECONOMIST FOR TRADE POLICY AND INTERNATIONAL TRADE DIVISIONS
WORLD BANK

My name is Michael Finger, and I live in Arlington, Virginia. For the past fifteen years I have been employed by the World Bank, but today I am on leave from the Bank and am here in a personal capacity as a citizen of the United States. During my years at the World Bank I have had many opportunities to discuss economic policy with officials of many governments. This is, however, the first time I have been invited to share my experience with members of the United States Congress. It is a particular pleasure and honor for me to have an opportunity to contribute to policy making in my own country.

My comments will be directly at HR 2822, the "Temporary Duty Suspension Act." The good sense of the bill seems to me evident, appreciating its logic is hardly more complicated than understanding how foolish it would be to cut off ones nose to spite ones face.

Unilateral liberalization

To begin, I would like to call your attention to the far-reaching reductions of import barriers that developing countries have undertaken in the past two decades. In Chile, for example, tariffs have fallen from an average 35 percent to below 15 percent; in Malaysia from 22 percent to 14 percent. Table 1 in my written text list some sixteen countries whose tariffs have been reduced by at least one-third.

An important characteristic of these liberalizations is that they have been unilateral. The governments that made the decisions to liberalize realized that some domestic producers would suffer when exposed to import competition, but that the benefits to other domestic interests -- from access to goods at world prices, and from the competitive stimulus to domestic producers -- would be even larger.

These unilateral liberalizations have been extensive. World Bank programs have supported only a part of them, but just this part has been larger than the liberalizations agreed by developing countries at the Uruguay Round. (This is not a criticism of the Uruguay Round. Developing countries were more active bargainers there than any previous round. Bank supported reforms have affected imports of over 500 billion dollars, in 1993 values. At the Uruguay Round, developing countries agreed to tariff reductions that will affect 32 percent or $393 billion of their total merchandise imports (likewise in 1993 values).[1]

Antidumping by developing countries

Liberalization by developing countries is the good news. The bad news is that the countries that are following the lead of the industrialized countries to remove trade restrictions are also following their lead in putting in place new ones. As Figure 1 shows, the number of antidumping actions by developing countries has increased rapidly in the

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[1] From 1981, when the World Bank's policy-based lending began, through 1994, the Bank made 238 such loans that supported liberalization of trade policy or foreign exchange policy. These loans, made to 75 different countries, have specified over 2000 trade of foreign exchange policy reforms as conditions for borrowing, and about 80 percent of these reforms have been substantially implemented. These trade reforms were implemented in countries that bought about one-fourth of United States exports -- in dollar value, about $120 billion in 1993. United States exports to these countries have increased about three times faster to these countries than to countries that have not undertaken such reforms.

1990, until the developing countries' share of antidumping actions is not approximately the same as their share of world trade.

Through June 1994, seven developing countries[2] have notified antidumping actions to the GATT/WTO, but this figure likely understates the use of antidumping measures by developing countries. Until the WTO Agreement came into effect on January 1, 1995, only signatories of the Tokyo Round antidumping code were obligated to notify their antidumping actions to the GATT, and few developing countries were signatories. As of October 4, 1995, forty-one developing countries had notified the WTO of their antidumping regulations.[3]

Staving off such backsliding

Sustaining the liberalizations that developing coungtries have undertaken has been in recent years one of my principal concerns. The job, often, is to talk a government official out of the temptation to take antidumping action. I would like to say that I always succeed, but I do not. There have been instances in which antidumping actions have more or less undone the liberalization that the government had otherwise undertaken. There are however some lessons to be learned from developing countries' experiences and I would like to share a few of them with you.

Several years ago I met with a deputy minister of a small country who descried his situation as follows.

"In our country, farmers grow chickens. If you want chicken for dinner, you go to the market and you buy a chicken.

"In the United States, farmers do not grow chickens, they grow chicken parts. Because people in the United States are afraid of cholesterol, they prefer white meat, so it sells at a good price. The legs, the dark meat, they export to our country, at a price lower than what our farmers usually charge for a chicken.

"That's dumping, isn't it, so shouldn't we take action?"

I did not argue that this might be dumping, but suggested that before he took action we should think about the benefits and the costs that such action would bring to his economy. To begin, we split the deputy minister's problem into to, an economic problem -- to determine whether an import restriction was really in national economic interest -- and a political problem -- how to respond to the chicken growers.

Looking at the economic problem, we set out to identify the benefits and the costs to the local economy. The availability of cheaper imports had certainly cost local chicken growers money, but on the other hand, what they were out was approximately what consumers were saving. Those two impacts, at a first approximation, netted out. What consumers were saving by buying cheaper chicken, they were spending overwhelming on other locally produced goods.[4] Given that what consumers saved by buying cheaper chicken was approximately what the chicken growers were losing, the increased sales by other domestic producers were approximately the net effect of the opportunity to buy cheaper chicken legs.

The economic problem was thus solved -- restricting imports of chicken would hurt some local interests (in total) more than it would help the chicken growers. On the political problem, to avoid making enemies of the chicken growers, I could only wish the

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[2] Brazil, Colombia, India, Korea, Mexico, Poland and Turkey.

[3] The WTO agreement requires that all antidumping actions taken after January 1, 1995, be notified to the WTO, but the last time I sought out such information (fall 1995) the WTO Secretariat had not published information on such notifications. The only information I have been able to locate on antidumping actions not reported to GATT (by non-signatories to the Tokyo Round code) is an Argentine Government document reporting that the government of Argentina initiated fifty cases between 1988 and 1994. Over the same period, developing countries reported 229 antidumping initiations to the GATT, 110 of these by Mexico.

[4] Fortunately a recent consumer expenditure survey was available.

deputy minister good luck. There are other cases however in which the political problem solves itself.

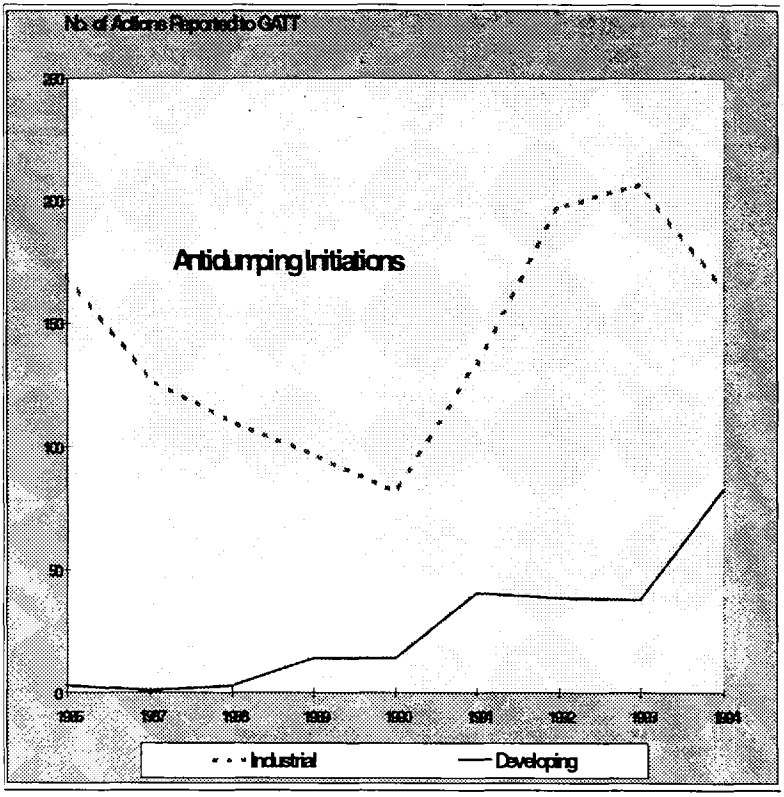
Consider, for example, a recent experience of the Trade Commission of Taiwan. Since 1990, Taiwan has conducted 29 antidumping investigations. Almost all of these investigations concerned imports of industrial inputs such as steel or chemicals. After receiving a set of coordinated petitions from one such industry, the Commission examined the petitions. found them to be complete and the information in them to be accurate. The Taiwan government then imposed a preliminary antidumping duty. User industries complained about the higher costs this imposed on them, and eventually convinced the government that the jobs and output that would be lost by user industries exceeded what would be saved in the industry that had sought protection. The government then lifted the antidumping duty and closed the case.

The sensible procedure that the Taiwan International Trade Commission chose to follow in mandatory for the Argentine International Trade Commission. This commission was created in December 1994 to advise the Minister of the Economy on issues of international trade policy. Among its functions is to conduct, in safeguards and in antidumping cases, an investigation of the impact of imports on the domestic economy -- in GATT language, the "injury" investigation.

In conducting these investigations, the Commission is charged to balance the interests of domestic users of imports against the interests of competing domestic producers. In its reports, the Commission has devoted as much space to the impact of the proposed restriction on domestic users as to "injury" that international competition brings to domestic producers who compete with imports. In some countries such commissions have the discretionary authority to examine how an import restriction would affect user industries, but the Argentine International Trade Commission is the only such agency that is charged to do so.

Lesson

The lesson I want to draw from the three examples I have cited is the obvious one. In countries where trade liberalization has been a process of evaluating the domestic costs and benefits of import restrictions, it is second nature to examine the impact on user industries before imposing a import restriction. Simply put, it makes economic sense to avoid cutting off ones nose to spite ones face. HR 2822 is a step toward such economic sense. If it were enacted, the Commerce department would be in a better position to eliminate antidumping restrictions that do not serve the United States national economic interest -- restrictions that impose costs on some United States industries in excess of the benefits they provide to other United States industries.


No. of Actions Reported to GATT
Antidumping Initiations
200
150
100
50
0
1986
1987
1988
1989
1990
1991
1992
1993
1994
Industrial
Developing

Examples of Unilateral Trade Reforms by Developing Countries

Developing Country	(1) Reform Year	(2) Tariff Rate (%)[5] Before Reform	(3) After Reform	(4) % Change (3)/(2)-1	(5) Tariff Bindings (%)[6] Pre-UR	(6) Post-UR	(7) Binding Increase (6)-5)
Brazil	1988	51	25	-50	16	100	84
Chile	1985	35	15	-57	100	100	-
Argentina	1984	23	12	-48	17	100	83
Colombia	1986	61	27	-55	4	100	96
El Salvador	1987	23	13	-43	98	98	-
Indonesia	1985	37	20	-46	30	93	64
Jamaica	1990	50	20	-60	-	100	100
Korea	1984	24	11	-54	21	83	62
Malaysia	1987	22	14	-36	2	77	76
Mexico	1982	23	13	-43	100	100	-
Peru[7]	1990	66	16	-75	17	100	83
Philippines	1981	41	25	-39	10	61	51
Turkey[7]	1983	40	22	-45	36	45	10
Uruguay	1988	29	17	-41	13	100	87
Venezuela	1989	33	16	-51	100	100	-
India	1991	79	53	-33	12	58	47
Sri Lanka	1992	27	26	-4	10	27	17
Thailand	1988	12	9	-25	8	64	57
Tunisia[7]	1987	33	29	-12	-	68	68
Czech Republic	1989	6	5	-16	96	100	4
Hungary	1990	15	13	-13	87	94	7

Sources: GATT, "Trade Policy Review: Country Report", various issues, 1990-95; GATT, "List of Liberalization Measures", Note by the Secretariat; MTN.GNG/MA/W/10/Rev.2, December 14, 1993; and Finger and Reincke, "Country Tables", World Bank IECIT draft, June 1995

[5] Simple average of MFN appplied tariff levels.

[6] Percentage of imports bound.

[7] Included other import duties or surcharges.

Chairman CRANE. Thank you, Dr. Finger.
Mr. Cobb.

STATEMENT OF JOE COBB, JOHN M. OLIN SENIOR FELLOW IN POLITICAL ECONOMY, HERITAGE FOUNDATION

Mr. COBB. Mr. Chairman, thank you for allowing me to appear here today to discuss with you some of the issues involved.

The main theme of my testimony today is that of fairness. This is a term that has come up several times already today, and I want to emphasize the U.S. Government has a primary duty to treat American citizens fairly.

I support the Temporary Duty Suspension Proposal because it will introduce a much larger element of fairness into U.S. trade laws. It will empower the Department of Commerce to treat many more domestic American industries fairly.

Today, the Department of Commerce cannot administer the law from the perspective of America's national economic interest, the economic interest of all Americans. Instead, it has to play the role of Cinderella's stepmother. In that story, you will remember, the lady had two daughters whom she favored and her stepdaughter, poor Cinderella, whom she abused and treated like a household servant.

Oftentimes, many downstream users of products that are in short supply or unavailable in the United States are treated like Cinderella, the abused child.

The problem today is only partly the fault of the Department. The fact is the U.S. trade laws are tilted entirely toward the petitioners who can come and ask the Department of Commerce for protection. Other American industries, which need to import products that may not be available at a specific time in the United States, have no direct basis to ask the Department to help them.

This unlevel playingfield strikes me as perverse. I can understand the argument by a domestic industry that it is facing hard competition from a foreign producer, that the U.S. Government should help American producers. But I cannot understand the argument that says there should not be relief for a domestic industry that is being hurt by an order of the Department of Commerce itself, as in cases where the products are not available from domestic sources.

The rule for helping anyone must start with the premise, "First, do no harm." The Temporary Duty Suspension idea is a way to correct some of the harm the Department occasionally imposes on American companies.

The hard dollars-and-cents issue in considering a Temporary Duty Suspension Act is whether or not the United States is going to remain globally competitive, as more and more of our manufacturing industries become dependent on suppliers from all around the world. If the antidumping laws continue to be the one-sided tool that a few industries can use to get targeted trade protection on demand, other American industries will suffer and will not be able to extend their competitive edge and expand their global market share.

The case of flat panel computer display screens is a recent example of one of America's most significant and competitive industries,

producing laptop computers, placed at a competitive disadvantage because of the Commerce Department's actions on behalf of an antidumping petitioner.

As I have been studying the proposed new regulations of the Department of Commerce, one of the main requirements of both the Uruguay Round Agreement and the Uruguay Round Agreements Act is for "a fair comparison of prices in the domestic and foreign markets."

I believe the proposed regulations of the Department of Commerce are not sufficiently clear and specific about the importance of fairness in the determination of these values and prices. The whole process of determining the prices should not be subject to narrow and often arbitrary factors in cost accounting, but should be looked at from a broad perspective of market conditions and business practices.

The Department's regulations should make the principle of a fair comparison of prices a primary and controlling factor in the Department's enforcement of the antidumping laws.

Another important problem I have noticed in the Department's regulations is the issue of affiliated parties. The statute and the regulations enumerate some specific affiliations, such as brothers and sisters, employers and employees, and so forth, but the proposed regulations are not as tightly drafted as the statute, and the whole issue of "control" as the way in which affiliation is determined is too loose.

Since the issue of affiliation introduces a very murky problem of transfer pricing between two affiliated entities and also the great difficulty of getting information from all of the so-called affiliated sources, it would greatly complicate the Department's enforcement of the laws.

I would strongly urge the definition of control be tightened up and focus on something like ownership.

Economists have a very analytically clear concept of costs and the accounting profession has a very different concept. The allocation of costs between different branches of an affiliated group of producers is potentially a very arbitrary judgment. If the Department leaves the door open for arguments that international corporations with some production outside the United States and some production inside this country are open to arbitrary cost allocation, then there will never be any defense against the claim that imported products are being dumped.

The future of world trade will, I think, turn on whether or not the United States itself adopts the principle of fairness and the fair comparison of prices as the central principle in enforcing our trade laws. Dr. Finger pointed out how the rest of the world is watching and copying the U.S. practices. We need to make our practices such that we will benefit if they are turned against ourselves.

The rest of the world is watching how this government follows the principles of open trade. If it becomes clear these laws are being used as weapons of competition and any petitioner can get the U.S. Government to award a dumping duty, the rest of the world will start to act the same way on behalf of their domestic industries, and American exporters and American workers will be hurt.

The only protection the United States can have against this dark prospect in the future of world trade is to embrace the issues of fairness and transparency here at home and demand every other country follow both the letter and spirit of the Uruguay Round Antidumping Agreement.

We must always remember the real national interest of the United States must satisfy the question, Is something in the national interest of all Americans or is it only in the more narrow interest of some Americans. If the answer is that only some Americans are made better off and that other Americans are made worse off, then the policy really cannot be a question of our national interest at all.

Thank you.

[The prepared statement follows:]

United States House of Representatives
Committee on Ways and Means
Subcommittee on Trade

April 23, 1996

Remarks
of
Joe Cobb
John M. Olin Senior Fellow in Political Economy
THE HERITAGE FOUNDATION
Washington, DC 20002

Mr. Chairman and members of the Subcommittee. Thank you for allowing me to appear here today to discuss with you some of the issues involved in the proposed Commerce Department regulations to implement the Uruguay Round Agreements Act, and to comment on your proposed legislation, the Temporary Duty Suspension Act, H.R. 2822.

I have participated in a number of meetings in the past year as the new rules of the International Trade Commission and the proposed regulations of the Department of Commerce have been discussed. In my remarks today, I am not going to proceed through a section by section analysis of the proposed regulations. I trust that other witnesses here today will address those issues. I will only touch on two very important issues in my remarks:

(1) the conspicuous absence in the Commerce Department regulations of a requirement that ***a fair comparison of prices*** be made the ***primary consideration*** when the investigations, and the reviews, of export prices and normal values are made by the Department. And –

(2) the vague way in which ***"affiliated parties" is not clearly defined.*** If the Department believes that antidumping investigations and reviews should be conducted more efficiently and with greater transparency (based on genuine market data, not allegations of price and cost data by petitioners), it should give a clear and meaningful definition to "affiliated" parties. The definition ought to be something strict, such as "legal control."

First, however, I want to make some general observations about the way United States trade laws are administered, and about some of the basic concepts on which those trade laws are based.

What Is In Our National Interest?

When we pose the question, "What is in the National Interest of the United States," we should always put the question in context. Is something in the national interest ***of all Americans,*** or is it only in the more narrow interest ***of some Americans?*** If the answer is that only some Americans are made better off, and that other Americans are made worse off, then the policy cannot really be a question of the national interest at all.

Unfortunately, in most of the debates about U.S. trade policy, the narrow interests of some Americans are the only criteria that policy makers point to. The costs of a policy to many more numerous other Americans is all too often overlooked. The unfortunate thing about the antidumping law, in particular, is that the interests of an affected domestic industry are all that the Department of Commerce is directed to examine. The interests of other Americans are not part of the process. This is a serious defect in the trade laws.

These other Americans, who have no legal standing in an antidumping case, may have to import products that are not available in the United States in order to meet production schedules or remain competitive in the U.S. export trade against foreign producers. Foreign competitors, outside the United States, will never have to pay antidumping duties, and U.S. companies that need to compete with them must send those jobs outside the United States if our own government imposes antidumping duties on necessary components or materials.

The Issue is Fundamental Fairness

The issue is one of fundamental fairness, by the United States government, to treat all of its citizens — all of its workers and factories — with a fair and equal protection of the laws. The laws should not favor one group of Americans over another group of Americans.

The Temporary Duty Suspension Act, H.R. 2822, introduced by the chairman of this subcommittee on December 21, 1995, is precisely the kind of reform in U.S. trade laws that I am addressing in my description of how the national interest ought to be understood.

The chairman's proposed legislation is tightly structured to give the Department of Commerce the ability to respond to petitions from American industry in cases where today the law does not really allow it to act. The proposal would bring more fairness and balance to the U.S. antidumping laws. Industries that want protection from unfair business practices by foreign producers can make their case, as today, but other American businesses that need to obtain products that are not available in the United States could also get their government to provide them more open access to the world market.

Too often an antidumping order affects a broad category of imports, and the sweeping inclusion of highly specialized imports within the larger category hurts

other American workers and factories. An antidumping order may encompass a product under a general description, when in fact the companies and workers who need to obtain that product to make their own goods have more specific requirements and tolerances than the general description entails. When the Department of Commerce has made such a determination, and the product that is needed is not available in the United States, the domestic industry that is harmed by such a problem should be given relief. Currently the Department does not have sufficient discretion under the law to treat the injured domestic industry fairly.

Some antidumping orders are for the protection of domestic producers that do not maintain continuous production or inventories of the protected items. In those cases, the U.S. government itself is imposing impossibly uneconomical delivery time schedules, or dramatically higher prices, on downstream producers. Again, if the law would only permit the Department of Commerce to entertain petitions from domestic industries that are injured by the Department's own determinations and actions, the U.S. trade laws would be more fair and more clearly directed at the national interest of all Americans.

What could be more logical and fair than to empower the Department of Commerce to grant temporary relief when a domestic industry demonstrates the need for that kind of help from the government? The antidumping laws, in the first place, are based on the premise that some domestic industry needs help from the government because it is being treated unfairly by some foreign producers. But if some domestic industry is being treated unfairly by the Department itself, in an overly broad effort to aid some other domestic producers, then the government should grant relief in those cases. ***The rule for helping anyone must start with the premise, "First, do no harm."*** The Temporary Duty Suspension proposal would give the Commerce Department to ability to minimize any harm in cases where the protected products really are not available in the United States.

The hard dollars-and-cents issue in considering a Temporary Duty Suspension Act is whether or not the United States is going to remain globally competitive, as more and more of our manufacturing industries become dependent on suppliers from all around the world. If the antidumping laws continue to be the one-sided tool that a few industries can use to get targeted trade protection on demand, other American industries will suffer and will not be able to extend their competitive edge and expand their global market share.

The case of flat panel computer display screens is a recent example of one of America's most significant and competitive industries, producing laptop computers, placed at a competitive disadvantage because of the Commerce Department's actions on behalf of an antidumping petitioner.

The risk is too great for Congress to ignore this dangerous trend affecting American industrial competitiveness.

The Fair Comparison of Prices

One of the most serious problems in the administration of the U.S. trade laws has been the way in which prices are compared between the home markets and the U.S. sales price, both in initial determinations and in reviews of antidumping orders. Since the entire antidumping case often revolves around these pricing and constructed cost determinations, and the size of the antidumping duties are based on these administrative determinations, the Uruguay Round specifically prescribed, in Article 2.4 of the Antidumping Agreement:

> A fair comparison shall be made between the export price and the normal value.

The same principle was reinforced, in identical words, by Congress in the Uruguay Round Agreements Act, 19 U.S.C. § 1677(b)(a):

> A fair comparison shall be made between the export price or constructed export price and normal value

I believe ***the proposed regulations of the Department of Commerce are not sufficiently clear and specific about the importance of fairness*** in the determination of these values and prices. The whole process of determining the prices should not be subject to narrow and often arbitrary factors in cost accounting, but should be looked at from a broad perspective of market conditions and business practices. Specifically, the enumeration of some factors in price and value determination in 19 U.S.C. § 1677(b)(a)(1)-(8) should not be construed to exclude other issues and considerations in making a fair comparison. The Commerce Department regulations should make this clear.

What, Exactly, is an "Affiliated Party"?

The proposed Department of Commerce regulations are not as specific in defining the concept of "affiliated persons; affiliated parties" as the statute itself, and this ambiguity should be fixed. The Uruguay Round Agreements Act defines affiliation of business entities in terms of "legal or operational" control of one business over another. The statute gives five different types of relationship that clearly meet the test, 19 U.S.C. § 771(33)(A)-(E), but the regulations do not provide any suggestion of how the Department would determine "affiliation" in cases that are not spelled out in the statute. The definition of "control" needs to be clarified as the legal right to exercise restraint or direction over the other party.

I strongly urge that the Commerce Department regulations specifically follow the intent of the statute, as well as the letter of its law in the five cases, by including a general rule based on the definition of "control" that is found in the statute itself: "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." [section 773(33)] The concept of affiliated parties and control

should be as specific as possible because the determination of prices depends on the drawing of these lines.

The murkiest and most arbitrary area of cost accounting is in transfer pricing — when goods (or services) are delivered from one part of a company to another, how does each part of the company put a "price" on the transfer? This is not a problem if two companies are independent and not under some common legal or operational control — if they are not "affiliated." The price is determined in a way that must be economically profitable to both sides, because it is voluntary. This is a market price, even if some accountant might think all of the "costs of production" are not covered.

Unfortunately, the rules of accounting cannot look at the concept of economic cost, because the accounting profession requires every value to be based on historical costs and on documentation of outlays, not on ***prospective market values*** as in economics. In economics, the definition of ***cost*** is "Whatever you have to give up to get what you want." You give up money at the grocery store to obtain meat, vegetables, and canned goods. But the real cost of your groceries is not the money itself, but all of the other possible uses of your money. In manufacturing, the cost of producing one kind of product is the market value (to the buyer) of the other kinds of products you might have produced instead.

"Affiliation" Can Destroy the Rule of Law

Whenever an antidumping case involves an "affiliated party," the transfer pricing issues and the cost accounting issues are going to determine the outcome of the case. Market prices will not play a significant role because the Department's investigation, and the allegations of the petitioners, will have to develop accounting records and arguments about shared costs and allocating overhead costs and dozens of other mind dulling calculations. ***The outcome of each case will become essentially arbitrary,*** and not based on economics or even on the real world at all. There will be no "rule of law."

Under the concept of "dumping," the accountant is asked to determine a whole range of issues about the "fair value" of a product in the market. But the science of economics does not recognize the concept of "fair value." The value of any product or service in the market is only what the buyer places on it. If someone produces something, regardless of the cost of production, and there is no buyer, no one can say it has a "value" that is equal to its cost of production. Indeed, even the producer starts to regret owning the thing and will try to find some way to liquidate his inventory and find some way to recover part of the costs.

Unfortunately, the procedures for constructing a value to determine whether "dumping" exists is essentially an accounting exercise. The antidumping laws cannot get away from the rules of the accountants, but the Department's regulations ought to be written and administered in a way to reduce the role of the accountants. Narrowing the legal definition of "affiliation" will help.

The Future of World Trade

The issues in both the Commerce Department's regulations to implement the Uruguay Round Agreements Act and the chairman's Temporary Duty Suspension Act are far more important than most Members of Congress may realize. How the United States government writes its regulations and conducts its investigations under the antidumping law will set the standard of behavior for every other country in the world. Back in 1980, only about 10 countries had antidumping laws like the United States, but today there are about 40 countries. In those countries, the primary target of antidumping cases have been U.S. exporters.

Most Members of Congress may think the antidumping laws are primarily for the benefit and protection of American domestic industries from unfair foreign competition. That is the stated purpose of the statutes. But most Members of Congress are also aware that the trade laws are even more technical and hard to understand than the Federal income tax code. Indeed, Congress is debating the popular proposal to repeal the Federal income tax code. But no one is thinking about repealing the far more arbitrary and obscure trade laws.

There is a disturbing tendency in the practice of antidumping law for the laws themselves to become weapons of competition, rather than a genuine attempt to search for and enforce fairness in business practices. A domestic producer can bring an antidumping case as a way to impose higher marketing costs on a potential competitor. Whether in the United States or in a foreign country where a U.S. producer might want to introduce his products, the filing of an antidumping case can make the entire business plan unprofitable to the new international trader.

My friends at the International Trade Commission have told me of a number of cases where an antidumping action was brought and the respondent company chose not the hire lawyers and fight the case but rather it simply stopped selling its products to Americans in the United States. U.S. companies that needed the products relocated their manufacturing operations to places outside the United States and kept right on producing for the world market. American consumers were denied the benefits of competition from the imported items.

The real losers in those cases are Americans. The products of those American companies that went overseas, to be able to get what they need to be competitive and avoid the antidumping problem, are not counted as U.S. exports, and not manufactured by U.S. workers. The products may have familiar U.S. labels and corporate identifications, but they are exports from some third country to some fourth country.

The same practice of using the antidumping laws as a weapon of competition is happening with increasing frequency in other countries. The recent case of steel pipes used in drilling oil wells, which was the subject of antidumping cases in both the United States and Mexico, each country's industry accusing the other of "dumping" the same product. If a foreign country's market represents a small part of an American exporter's world market and the domestic industry

competing in that country's market chooses to invoke "antidumping," the American company might decide not to bother with sales there.

Companies will choose to enter a country's market or to avoid it on the basis of costs and profit opportunities. If more and more foreign markets become closed to American exporters, not because of any formal trade barriers but only because the Americans decide there is no profit in a market when they have to add the costs of fighting antidumping cases — of hiring lawyers in each of those countries and litigating before whatever agency performs the kind of work for which we have the Commerce Department and International Trade Commission.

The bottom line is that antidumping is a game that everybody can play, and the more it is seen that the United States allows its trade laws to be used as a weapon of competition, or as a vehicle for protection, the rest of the world will retaliate against American exporters in a competitive "turn about is fair play."

The United States Trade Representative would have nothing to negotiate with the Trade Minister of such closed markets, because the market are "open" except for the threat of expensive litigation by those countries' domestic industries.

The only protection the United States can have against this dark prospect in the future of world trade is ***to embrace the issues of fairness and transparency here at home,*** and to demand that every other country follow both the letter and spirit of the Uruguay Round Antidumping Agreement.

And we must always remember that the real national interest of the United States must satisfy the question: Is something in the national interest ***of all Americans,*** or is it only in the more narrow interest ***of some Americans?*** If the answer is that only some Americans are made better off, and that other Americans are made worse off, then the policy cannot really be a question of our national interest at all.

Thank you, Mr. Chairman. I will be happy to answer any questions you may have.

Chairman CRANE. Thank you. I have a question I would like to direct to both of you, and that is, If we give the agencies authority to suspend duties temporarily, under what circumstances do you think it is appropriate to use that authority?

Mr. COBB. Mr. Chairman, in the first place, one thing I like very much about your bill is that the Department of Commerce would actually look at the facts of the petitioning industry, petitioning in this case for a temporary suspension. So the petitioner would have to make the arguments that, in fact, it faces a genuine short supply of genuine specialty products that are covered under too broad a dumping order and, if the facts are going to help the production and competitiveness of that industry, that should take care of some of the concerns the other gentleman raised earlier that it might be used as a weapon simply to undermine the dumping laws. I think it is a very well-drawn bill.

Chairman CRANE. Dr. Finger.

Mr. FINGER. Thank you. I would like to affirm Mr. Cobb's point that the advantages, from my perspective of the bill, is that it specifies, with some precision, circumstances under which an exception would be made. Part of the problem in the countries I worked with is that governments are used to operating with a considerable degree of discretionary authority, which has often led them into the problems they now have, having used it in the wrong direction. So the fact the bill is well drawn and lists specific circumstances in which reasonable people can judge are they or are they not met, is, again, an example of the procedural advantages of doing things the way things are typically done in the United States. Since I am not working for the World Bank today, I can praise the United States. [Laughter.]

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. Do either one of you think the United States would be better off without any of these antidumping provisions?

Mr. COBB. You are asking an abstract philosophical question?

Mr. RANGEL. Yes.

Mr. COBB. I think, if the World Trade Organization would adopt a competition policy that would apply to all WTO members, it would be preferable for all countries to go to a common standard of competition policy. In that case, I would recommend we repeal the antidumping laws. I can see cases in which they have been carried or executed or interpreted in a way that I think is wrong. There are other cases in which I can actually see the reasons why the domestic industry came and sought relief. I would prefer to see the safeguards of section 201 used more commonly because that is actually designed as part of the GATT as a way to allow an industry to adjust to sudden new competition.

I think antidumping is possibly too easy to trigger. But, in terms of the basic concept, remember, antidumping came from the original idea under the antitrust laws that you could have a predatory price attack on an industry driving it of business.

Economists who have looked at the history of industries have found such an incredibly rare occurrence of that kind of business tactic that it calls into question whether it ever really existed.

Mr. FINGER. Mr. Rangel, you have asked a question which I am asked quite often, usually with a different country's name in it, and I usually finesse the question.

What we try to emphasize isn't a matter of abolishing or not abolishing the dumping examination, but adding to it a sensible examination of the impact of the proposed restriction on the domestic economy. We try, at the World Bank, to guide countries toward doing a good job of evaluating how the national interest of their economy would be affected by the proposed restriction. We urge them to take into account users, how costs would be imposed on them if the restriction were imposed, at the same time to take into account the interest of producers who are asking for relief from import competition. On the basis of the net impact on the domestic economy, we hope they will quite frequently reach a decision which will sustain their liberalization movement. The dumping part of it we usually try not to speak to.

Chairman CRANE. Thank you.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman. Thank you, gentlemen. Good to listen to you.

Mr. Cobb, the last page of your testimony or maybe it is the second-to-the-last page, you say this: "We must always remember that the real interest of the United States must satisfy the question, 'Is something in the national interest of all Americans or is it only in the more narrow interest of some Americans?'"

Now, let me describe a situation. I am "some" American, and I am interested in preserving my job, feeding my family, and being a member of the community. And all of a sudden I find out over a series of years that not only my job, but my company and the whole industry is obliterated by dumping practices. It is only one industry. There may be only three or four companies in it, but that is "some" Americans. You know, some Americans are pretty important to me, and I would imagine they would be pretty important if you were one of that group. How do you answer that question?

Mr. COBB. We need to consider the concept of the national interest. Obviously, in a free market economy, in a competitive economy, you have industries that go down and other industries that prosper. Change occurs. Now you stipulated this was due to dumping, due, in particular, to selling below fair value in the U.S. market.

Mr. HOUGHTON. And unable to penetrate the other market.

Mr. COBB. Most declines in American industry occur because of competition within the United States. The vast bulk of all change that occurs in our economy occurs because of other industries inside the United States.

Mr. HOUGHTON. No. That is not right. That is not right because there are conditions—it is half the way—that sometimes it happens within the United States, but the U.S. companies, in any attempt to get back, cannot penetrate the other market of the company in which it exists in order to protect its own base.

Mr. COBB. I don't think that penetrating the other market is the way in which an industry that has a competitive disadvantage would get back. If we look at the most famous case during the Reagan administration of a company that was faced with this kind of challenge, Harley Davidson—and we need to remember that was

a section 201 case, not a dumping case—and it came back because it faced the challenge and corrected itself.

In the steel industry, I think it was very interesting to observe that, of course, the steel industry is very active in the use of antidumping cases. What is happening in the steel industry is domestic producers, Nucor and Chaparral, in particular, are taking huge amounts of market share away in the manufacturing of products that are otherwise protected by dumping orders sought by other larger, older steel companies.

This is a very interesting process. Once you raise the price above where the technology exists by some means, some artificial means, like an antidumping order, you open up for others domestically to come in behind you and catch up and make up that loss.

The dumping orders are not, in fact, doing a favor to the companies that petition for them. Too often, it is, in fact, simply giving them a stop gap, and they would be much wiser to go section 201.

Mr. HOUGHTON. Well, you know a lot about this, and you are much more versed in the whole economic structure of the United States and the world, I suppose, than I am, but I do know an industry or two, specifically, where they were driven out of business, every single last company, and one of the reasons is products were dumped in this country. They were unable to penetrate the other country and, if they had been, the products would not have been dumped because they would not have been able to uphold those lower prices because their own market was being attacked.

I think this is the thing I worry about, and maybe both you gentlemen understand this, that it is not that we are trying to be uncompetitive, but we are trying to protect the good companies, the good people, the good technologies who have no place to go if they are being attacked here and cannot attack the home base of the other company or industry that is putting them out of business. That is the problem, and maybe you have got a better solution for it.

Mr. COBB. Sir, I am not familiar with the facts of the industry you are referring to. First, you haven't named it, and I am not asking you to, but it seems to me we need to know the conditions of pricing and how fixed costs and variable costs are used by a marketing manager. In many cases, it is sensible, extremely smart, and not at all unfair for a manufacturer that needs to increase sales temporarily or needs to sustain a sales level temporarily to offer discounts. Every single time any one of the U.S. "Big Three" auto companies is reported on a quarterly basis as losing money, that is an example of a time in which they are not covering their fixed costs. And if they were trying to sell their cars during that period of time across an international border, the other country could say, "Ha, you are dumping." Every time you are offered a consumer rebate or a concessionary interest rate to finance the purchase of an automobile, the manufacturer, in theory, is not recovering his costs, his fixed costs. In theory, he is dumping on you, to your advantage at that moment.

The pricing and the marketing of products is an extremely versatile and nuanced thing that economists study. Regrettably, the way the antidumping laws require the Department of Commerce to investigate the issue of fair value versus export price is such that all

of these genuine business practices just get washed away and lost in a dark hole of cost accounting rules and cost accounting judgments. And, if you talk to any professional cost accountant who works for a large corporation with many branch facilities where products have to be transferred back and forth, you will realize how incredibly judgmental and arbitrary, often arbitrary, are the transfer prices inside a corporation.

When this now becomes a matter of law and the Department of Commerce is going to say a dumping margin exists because of one of those judgments, there is no rule of law there at all. It is just arbitrary.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Hancock.

Mr. HANCOCK. I don't have any questions, Mr. Chairman.

Chairman CRANE. If not, let me thank you, Dr. Finger, and also, Mr. Cobb, for your testimony this morning. We appreciate input always. So keep it coming.

Our next panel is made up of representatives from various U.S. industries engaged in exporting and who purchase inputs for use in U.S. manufacturing operations. William M. Hickey, Jr., president of Lapham-Hickey Steel Corp., and chairman of the board of the Steel Service Center Institute; Joseph Tasker, Jr., vice president and assistant general counsel at Compaq Computer Corp.; Charles K. Dorland, consultant to Enron Corp.; Jim Morton, vice president of Government Relations, Michelin North America; and Edward J. Black, chairman of the Pro Trade Group and president of the Computer and Communications Industry Association, who is accompanied by Bruce Aitken, of the law firm of Aitken, Irvin, Lewin, Berlin, Vrooman & Cohn, LLP; and by Peter Suchman, of the law firm of Powell, Goldstein, Frazer & Murphy.

And, after you gentlemen get seated, we will get started in the order I introduced you. And all statements, let me remind you, again, any printed statements will be made a part of the permanent record, so you can condense your presentations.

STATEMENT OF WILLIAM M. HICKEY, JR., PRESIDENT, LAPHAM-HICKEY STEEL CORP., CHICAGO, ILLINOIS; AND CHAIRMAN OF THE BOARD, STEEL SERVICE CENTER INSTITUTE

Mr. HICKEY. Good afternoon, Mr. Chairman and Members of the Subcommittee. I am Bill Hickey. I am president of Lapham-Hickey Steel Corp. in Chicago. I am currently the chairman of SSCI, the Steel Service Center Institute. The SSCI appreciates the opportunity to address the Subcommittee today, and I will summarize my statement and would appreciate the full text of it being included in the record.

Steel Service Centers perform a vital role in the economy by purchasing, processing, and delivering steel and other materials needed to keep the millions of American workers in the metal-working industry competitive. On behalf of our 350 U.S. members and their 300,000 customers, many of them small businesses, I would like to address a deficiency in America's trade law.

SSCI is a strong supporter of effective remedies against unfair trade practices. We must be, as our members immediately feel the

effects of unfairly imported steel on their balance sheets, since we carry a collective 7 million tons of steel on a given day, and all of this has been bought and paid for.

While ensuring industries get effective relief, this country also needs to avoid the unintentioned consequences of driving business from our borders. When a product cannot be supplied by a domestic producer, there is no logic, no necessity, and certainly no justification to impose prohibitive antidumping and countervailing duties. To remedy this problem, SSCI supports the thrust of H.R. 2822.

Let me make three points with respect to this legislation. First, contrary to assertions by some opponents of this bill, there is a real problem. Shortages do exist, and they can crop up suddenly and unexpectedly. In the steel sector, it is a matter of simple arithmetic. Apparent U.S. steel consumption is running at approximately 110 million tons. The domestic producers shipped nearly 97 million tons in 1995 with the industry operating at capacity. Seven million tons of this production were exported in 1995, which left 90 million tons of available domestically produced steel for domestic consumption. Therefore, there was a shortfall of almost 20 million tons of steel. This had to be made up by imports.

Without imports to fill the gap between demand in domestic supply, this country's manufacturing base, employment, and exports would fall.

SSCI is currently undertaking a system to inventory the products that our members have been unable to purchase in recent years. The final results will not be available for a few more weeks. However, we have attached to our full statement a preliminary list of specific products that the first tier of respondents have indicated they have been unable to secure from a domestic supplier. I think the Assistant Secretary mentioned these.

Second, our critics argue that remedies exist under current law. In practice, there is no doubt the Department of Commerce routinely includes products not made in the United States in their antidumping and countervailing duty investigations. Moreover, when shortages arise, there is no recognized way for a buyer to get prompt or adequate relief. In any event, the only steps the Department has been willing to take involve a permanent revocation of that particular product from the order, and that is only after the petitioning industry unanimously has endorsed such an action.

This would be the wrong remedy when a shortage is only temporary. Critics who insist on such a remedy argue against their own interests.

Third, while H.R. 2822 represents a giant step forward toward addressing this problem, as written, it lacks the degree of specificity that our members would prefer. In our prepared statement, SSCI outlines the five core principles that are necessary to ensure a temporary duty suspension mechanism works fairly for all parties. These five principles are: It must be temporary; it must be targeted on the unmet need documented by the petitioner; it must be transparent, so that all parties have an opportunity to comment before the decision is taken; it must be timely to prevent manufacturers from deciding to import further process goods instead of performing these functions here; and it should be a tested procedure,

such as that that was established under Public Law 101–221 for the steel voluntary restraint program between 1989 and 1992.

Mr. Chairman, this debate should not be about whether steel shortages exist. They do. Nor should the debate be about whether the current system provides a remedy to shortages. It does not. Rather, the debate should be about how to develop a system that provides relief to downstream manufacturers without detracting from the relief to the petitioning industries, a system that strengthens rather than weakens U.S. trade law, and a system that is user friendly to the affected industries, rather than only their lawyers.

I hope this hearing will serve as a catalyst for that debate because, once it begins, we believe a solution to this problem can be developed that is workable for all segments of the U.S. manufacturing community.

That concludes my remarks. I would be happy to take any questions. Thank you.

[The prepared statement and attachments follow:]

STATEMENT OF WILLIAM M. HICKEY, JR.,
CHAIRMAN OF THE BOARD OF DIRECTORS
THE STEEL SERVICE CENTER INSTITUTE
BEFORE THE TRADE SUBCOMMITTEE
COMMITTEE ON WAYS AND MEANS
U. S. HOUSE OF REPRESENTATIVES
APRIL 23, 1996

Good morning. My name is William Hickey. I am President of Lapham-Hickey Steel Corp. of Chicago, Illinois. These comments are submitted on behalf of the Steel Service Center Institute (SSCI), a trade association representing about 350 companies that process and distribute $25 billion of steel products through 975 plants across the United States. SSCI companies employ approximately 100,000 workers and supply the metal needs of 300,000 end users. Our members operate in 296 Congressional districts in 49 states.

Service centers are a vital link in the thin line of supply between steel mills and their ultimate customers. Many service centers, like the customers they supply, are small businesses. Among other functions, our members aggregate small orders that steel mills otherwise might refuse as uneconomical. Our members flatten, cut, shear, punch, burn and perform other preproduction processing so that the customer gets exactly the right steel for each particular end-use. They maintain about seven million tons of inventory and deliver, often on a just-in-time basis, to job sites and manufacturing plants all across our Nation. Without service centers, the American manufacturing economy would be less efficient and less capable to compete in the ever-expanding international marketplace.

However valuable the service provided by SSCI member companies, it is for naught when steel is not available on timely and competitive terms. That is why SSCI has worked since 1988 to ensure that America's steel trade policy had a workable short supply mechanism in place.
To that end, SSCI is a member of the Temporary Duty Suspension Group and supports the comments the Group submitted to the Ways and Means Committee on H.R. 2822 on March 1.

SSCI is grateful for this opportunity to testify on H.R. 2822. Before commenting on the bill itself, SSCI wishes to state for the record its support for effective trade laws. **SSCI in no way seeks to weaken the trade laws or the remedies available under them.** On the contrary, service centers are normally the first to feel the adverse effects of dumped and subsidized imports. Having already bought and paid for their inventories, any drop in the market price has an immediate and direct impact on SSCI members' balance sheets. Thus, for purely economic reasons, service centers want to see the integrity of our trade laws maintained. Like the domestic mills that supply us, we have always supported strong U.S. trade laws and will continue to do so.

As a general proposition, SSCI believes that antidumping authorities tend to underestimate the cost and complexity of the systems they administer. In the United States as elsewhere, the procedures favor petitioners over respondents and large companies over small ones. Service centers are rarely qualified as "interested parties" in Commerce Department proceedings. However, we do participate actively in the injury investigations conducted by the U.S. International Trade Commission. Those proceedings, while sometimes burdensome, usually succeed in developing a comprehensive factual basis for decision-making by the commissioners.

While our members have had little direct involvement in Commerce Department proceedings, they have from time-to-time been involved as respondents in complaints brought by other countries, most notably Canada. Our experience with Canadian antidumping proceedings should sound a cautionary note for the Subcommittee. Normally, service centers ship in small quantities. When an investigation covers a large quantity of small transactions, the legal and administrative costs of defending oneself become prohibitive. Typically, our members see no choice but to decline to respond to Canadian questionnaires. In such cases, the antidumping authorities resort to "best information available," producing extremely high duty rates that bear no relationship to commercial realities and can exclude service centers from the export trade.

We raise this point as a contribution to the discussion of what constitutes "simplification." The Department of Commerce is to be commended for its efforts to streamline the amazingly complex system we use in this country to determine the existence and size of dumping margins. Streamlined

regulations and questionnaires are helpful. Such simplification is a worthy objective, but it is not enough to ensure a fair system. More fundamentally, what we really should aim at -- in this country as well as in our trading partners -- is a system that offers all petitioners and all respondents, regardless of their size and legal resources, a fair chance to be judged on the merits of their true situation.

We urge the Subcommittee to make equitable access to the antidumping and countervailing duty process the central goal of American administration of the trade laws. In its continuing oversight of these statutes, we hope the Subcommittee will seek the views of all affected industries, without regard to their technical status as "interested parties."

Turning to the issue of H.R. 2822, we wish to commend the Chairman for introducing this legislation. The bill calls attention to a major deficiency in the trade laws and proposes a simple remedy that would ensure adequate supply downstream manufacturers (our customers) without reducing the effectiveness of the remedy that is due to injured domestic petitioners.

Due to our unique position within the steel distribution chain, we also recognize in an ever-expanding global economy, the legitimate needs of steel processors, fabricators, manufacturers and other end-users must also be safeguarded. If we fail to act accordingly, we should not be surprised to see one manufacturing operation after another shrink or close as foreign components replace American components in our manufacturing processes. The mission of service centers is to ensure their customers with competitive supply so that the U.S. manufacturing base can not only be maintained, but also can expand to meet future demand in the global economy. We consider this to be a commercial and moral obligation to our workers, our communities, and those of our customers who depend upon us.

For those of us in the steel sector, this is more than an academic issue. America has not been self-sufficient in steel for a long time. Despite the on-going additions to capacity, this is still true. In fact, in terms of overall tonnage, we consume substantially more than we produce. Using 1995 data, the shortfall can be estimated at approximately 19 million tons:

Total Domestic Shipments	=	97 million tons
Less: Exports	=	7 million tons
Equals: Domestic Shipments	=	90 million tons
Versus: Consumption	at	109 million tons

Of course, the real story is not in the gross tonnages but in the specific products that are needed for the precise application of the manufacturer or end-user. Steel simply is not fungible; you cannot build a bridge with automotive sheet, nor hoist an elevator with cable made welding quality wire rod. Every end-use has its own requirements. From the stand point of the steel mill, a ton of product is a ton of product; their limit is the production capacity they possess. From the point of view of the downstream manufacturer, only steel with the right specifications is acceptable; their limit is the availability of that product from domestic and foreign suppliers.

SSCI is in the process of polling its members to determine the extent to which domestic supply is inadequate to meet current demand. The results will not be complete for several weeks. Attachment One summarize the initial responses from only a few members. Even this partial response should be enough to demonstrate that the problem for downstream manufacturers is real.

Almost by definition, most situations of "no availability" or "no commercial availability" (we urge that these terms be used instead of the misleading "short supply") involve tonnages that from the mill perspective are *de minimis*. From the perspective of the downstream manufacturer, the lack of the precise material required, no matter how small the volume, is a matter of life and death. If the needed material is not available on commercially realistic terms, he must decide whether to shift some portion of his processing outside the U.S. border in order to continue to compete.

SSCI supports H.R. 2822 because it would provide a means to avoid having temporary shortages lead to permanent losses to our manufacturing base. While we consider the legislation to be a valuable starting point, several changes in the language are needed in order for H.R. 2822 to be workable and acceptable to service centers and their suppliers. We urge the Subcommittee to address the following five principles as it considers revisions to the wording of H.R. 2822.

For service centers (as for the mills that supply us), it is essential that any "short supply" solution not lead to excess supply in the marketplace since we both have the same commercial interests at heart. To be acceptable and workable, any short supply mechanism considered by the Subcommittee should rest on the five principles described below.

Temporary

Any short supply mechanism should be predicated on the temporary suspension of antidumping and countervailing duties. There are certainly some products and some particular forms of products that are not and never have been produced in the United States. They should be excluded from the scope of antidumping and countervailing proceedings but rarely are. There are many reasons for this, including: a lack of awareness by end-users (particularly by smaller companies) of the inclusion of particular products within broadly defined products under investigation; the prohibitively high cost of legal services relative to the small value of the products involved; and, a scarcity of positive precedents.

For these reasons, existing statutory authority rarely provides adequate and timely relief for products not manufactured in this country. Moreover, domestic supply is not fixed in a static way but responds to changes in the market. Normally, a petitioner is able to point to unused capacity in its industry as one indicator of injury. In such circumstances, mills tend to be more willing and able to accommodate the special needs of smaller customers. However, as supply tightens (as normally happens after the imposition of dumping and countervailing duties), the situation often changes dramatically and with little notice. Acting with full economic rationality, mills frequently concentrate on higher-value or higher profit items and shun lower-value or lower profit products.

Thus, a product that was in ample supply at the time dumping and countervailing duties were imposed may turn out to be unavailable in sufficient quantities in some future period. What, then, are downstream manufacturers to do? Wait for months or years until the supply/demand balance shifts and the mills are again willing and able to supply the needed input? In a competitive global economy like ours, that is often not an option. More likely, the
downstream manufacturer will consider importing a more elaborated component or even moving his operation across the U.S. border to be able to continue to meet previously negotiated contractual obligations and avoid ceding the market to other offshore competitors.

Surely, a temporary problem demands a temporary solution. A short supply escape valve should work two ways: it should be turned on when needed and turned off as soon as it is not. Currently, there is no way to do this under existing law.

Targeted

A second principle for short supply is that relief must be targeted on the unmet need documented by the petitioner. It should meet the needs that otherwise cannot be met <u>and no more</u>. Just as a deficient remedy leads to the flight of facilities and perhaps entire plants or their replacement by imports, an excessive remedy will lead to too much supply and an erosion of the domestic pricing structure. Both extremes are to be avoided.

How to do this? While not spelled out in the current text of H.R. 2822, the administering authority of the law should require each short supply petitioner to document his precise needs (whether it be in tons, pounds, or whatever appropriate unit). In addition, the petitioner should be required to show that all attempts to secure a domestic supply of the product in question have proved fruitless. Under the legislation, the administering authority would have the discretion to turn down requests that are unfounded and exaggerated. In addition, duty suspension on the product in need would be limited to precisely the quantity that has been shown by the petitioner to be unmet and no more. This will eliminate the potential for most abuses.

Transparent

A workable short supply system must be transparent. A mechanism cannot work well in the absence of complete and valid information. A simple way to ensure this is to publish notices regarding each request for a temporary duty suspension in the <u>Federal Register</u> and to invite comments on the petition from the public.

In this way, any potential producer (even if previously unknown to the petitioner) and any holder of inventory can step forward to meet the need of the petitioner. If that happens, there is no need for a temporary suspension of duties.

Timely

The essence of short supply is urgency. A procedure that is not available for years after the imposition of dumping and countervailing duties or that takes untold months to complete is the antithesis of a short supply remedy. If the aim is to ensure that American downstream manufacturers do not needlessly lose business to foreign competitors, timeliness is essential.

Tested

Judging from the protestations of some opponents of any short supply provision, it is surprising that Congress has provided the Federal Government similar relief, particularly when it relates to the procurement of domestic materials used in federally-funded construction or national security programs. Year-after-year, Congress considers numerous domestic preference proposals (particularly in appropriations legislation) designed to support and maintain the U.S. industrial base. However, in most instances, Congress is careful to protect the interests of the Federal Government when such materials become in short supply. Incorporated in many of these domestic preference proposals is a clause which, in part, waives the domestic preference requirement when domestic items to be procured are not produced in sufficient and reasonably available quantities of a satisfactory quality. (See Attachment Two for a partial list of domestic preference waivers relating to certain steel products).

Perhaps the most elaborate test of a short supply mechanism, however, was that mandated by the Congress in 1989 as part of the Steel Trade Liberalization Program Implementation Act (P.L. 101-221). (A copy of Section 4(b) of the Act is included as Attachment Three). This legislation passed the House of Representatives by a vote of 354 - 10, and later the Senate by voice vote. The experience under that program may be highly instructive for the designers of any temporary duty suspension program. From October 1989 until the Voluntary Restraint Agreement (VRA) program expired in March 1992, the U.S. Department of Commerce considered 60 claims of short supply, approving 51.

Following are some salient considerations regarding the VRA program:

- More than half of the extra licenses authorized on grounds of short supply were granted to the steel mills themselves.
- The average award for finished steel products was 7,707 tons. Interestingly, the tons per award average trended downward from year-to-year. By the third year it was only 292 tons per grant.
- Every one of these decisions was made within the 30 - 60 day time limit established by the statute.
- The Department of Commerce administered this provision of the law with only minimal staffing.

In other words, the VRA experience clearly demonstrates that a short supply mechanism is feasible and that it can be done in such a way as to avoid undermining the effectiveness of the remedy. The VRA program embodied the principles of **temporary, targeted, transparent, and timely**. That is why it worked so well. The Congress now should transport those same principles into the antidumping and countervailing duty laws.

Conclusion

Our customers, America's downstream manufacturers, are just one component away from disaster. If any single item becomes unavailable when needed in the right quantities and the right qualities, then the manufacturer cannot ship his automobile, locomotive, computer, airplane, or any other product. However mundane the missing piece, whether it be an ashtray in a car, a tiny metal part of a spark plug, or a small bearing, its unavailability can bring the manufacturing process to a sudden halt and cripple sales.

The threat of domestic product shortages is real. No one is more acutely aware of the impact non-availability of domestic materials can have production schedules than the U.S. Government. For years, Congress has safeguarded the interests of the Federal Government when adopting domestic preference legislation by including a series of short supply relief mechanisms. In almost every instance, domestic preference requirements legislated by the Congress can be waived when the product in question is not produced domestically *in sufficient and reasonably available quantities of satisfactory quality*.

For reasons stated above, SSCI commends the Chairman for his initiative in introducing H.R. 2822. We urge the Subcommittee to explore modifications to the bill to ensure that a temporary duty suspension mechanism could be used but not abused. SSCI looks forward to the

day when American steel fabricators and end-users will no longer have to sacrifice long-term production in this country because of temporary shortages of their raw materials.

Recognizing the fact that periods of product non-availability do occur, Congress should act now to protect the interests of, and job opportunities afforded by, downstream manufacturers by crafting a tested fix to this flaw in U.S. trade law.

**SELECTED STEEL PRODUCTS
EITHER NOT PRODUCED DOMESTICALLY
OR IN LIMITED QUANTITIES
WHICH HAVE RESULTED IN PERIODIC SHORTAGES**

10ga, 84 Wide Hot Rolled Sheet

14ga, 72 Wide Hot Rolled Sheet

7 @ 15.3 I Beams

7 @ 20 I Beams

S15 - S24 I Beams

5" 19# Wide Flange Beams

5" 16# Wide Flange Beams

MC6 & MC8

14 ga Floor Plate

1/8 x 1/2 Hot Rolled Strip

1/8 x 3/4 Hot Rolled Strip

3/16 x 3/4 Hot Rolled Strip

3/16 x 1/2 Hot Rolled Strip

1 x 1/2 x 1/8 Bar Channel

1-1/4 x 1/2 x 1/8 Bar Channel

1-1/4 x 9/16 x 3/16 Bar Channel

1/4 x 1/2 Hot Rolled Flat

1/2 x 3/4 x 1/8 x 20' Hot Rolled Angle

3/4 x 3/4 x 1/8 x 20" Hot Rolled Angle

1/4 x 3/8 Flats

20 x 4 x 1/2 Rectangular Tube

Galvanealed A40 CQ .097 x 72 x Coil

Galvanealed G90 .176 x 48 x Coil

Galvanized G60 & G90 .016 x 52 Coil Paintline Quality for Continuous Coil Coating

Hot Rolled Coil 100,000 p.s.i. minimum yield strength in a width range of 36" through 60", thickness of .118 through .312

Hot Rolled CQ or A607 Grade 50 (Floor Plate Coils)

Sound Dampening Material - *Sol Comfort*
(2 pieces galvanized steel w/ spongy resin center for soundproofing)

SELECTED EXAMPLES OF CURRENT UNITED STATES LAW CONTAINING A WAIVER OF DOMESTIC PREFERENCE RELATING TO THE ACQUISITION OF STEEL

Surface Transportation Assistance Act of 1982 (P.L. 97-424) - Section 165 (a) of the Act provides that "the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act . . . unless steel, cement, and manufactured products used in such products are produced in the United States." Subsection (b) of Section 165 provides that "[T]he provisions of subsection (a) of this section shall not apply where the Secretary finds . . . (2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;" [Emphasis added].

Department of Defense Appropriations Act for Fiscal Year 1996 (P.L. 104-61)

- Section 8022 of the Act provides that "[N]one of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States . . . *Provided further*, That when adequate domestic supplies are not available to meet the Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis....." [Emphasis added].

- Section 8047 of the Act provides that "[N]one of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying . . . that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis . . . ." [Emphasis added].

- Section 8099 of the Act provides that "[N]one of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing . . . that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis . . . ." [Emphasis added].

PUBLIC LAW 101-221 [H.R. 3275]; December 12, 1989

STEEL TRADE LIBERALIZATION PROGRAM IMPLEMENTATION ACT

at 103 STAT. 1886

An Act to implement the steel trade liberalization program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

SECTION 1. SHORT TITLE.

This Act may be cited as the "Steel Trade Liberalization Program Implementation Act".

* * * * *

SEC. 1. ENFORCEMENT AUTHORITY.

* * * * *

19 USC 2253 note

(b) SHORT SUPPLY SITUATIONS.—Section 805(b) of the Steel Import Stabilization Act is amended to read as follows:

"(b)(1) If—

"(A) a bilateral arrangement includes a provision relating to short supply situations; and

"(B) the Secretary of Commerce (hereinafter in this subsection referred to as the 'Secretary') determines, in accordance with this subsection, that a short supply situation exists in the United States with respect to a steel product that is subject to a quantitative limitation under such arrangement;

the Secretary shall authorize the importation of additional quantities of that product without regard to any aggregate quantitative import limitation in effect under such arrangement.

"(2) In determining under this subsection whether a short supply situation exists in the United States with respect to a steel product, the Secretary shall take into account all relevant factors, including—

"(A) (to the extent information is available) the recent levels of capacity utilization for domestic facilities producing the product;

"(B) the quantity of the steel product requested in a short supply petition and the ability of domestic producers to supply the product in such quantity;

"(C) the willingness of a domestic producer to supply the steel product at a price which is not an aberration from prevailing domestic market prices;

"(D) reasonable specifications requested by the purchaser or any end user; and

"(E) delivery times to the purchaser and any end user of the steel product.

"(3)(A) A petition requesting a determination under this subsection may be filed with the Secretary. The petition must be in such form and contain such relevant information as the Secretary requires.

Federal Register publication

"(B) If the Secretary considers that a petition filed under subparagraph (A) is adequate, the Secretary shall promptly cause to be published in the Federal Register a notice that a determination under this subsection with respect to the steel product concerned is under consideration.

"(C) The Secretary shall provide opportunity for comment by interested persons regarding the issues raised in a petition.

"(D)(i) The petitioner shall certify that the factual information contained in the petition and any additional submission is accurate and complete to the best of the petitioner's knowledge.

"(ii) An interested person shall certify that the factual information submitted by that person to the Secretary is accurate and complete to the best of the person's knowledge.

"(4)(A) If an adequate petition is filed under paragraph (3)(A), the Secretary shall determine, not later than the day specified in subparagraph (B)—

"(i) whether a short supply situation exists in the United States with respect to the steel product; and

"(ii) if the determination under clause (i) is affirmative, the quantity of the steel product that the Secretary will authorize for importation.

"(B) The Secretary must make a determination with respect to a petition not later than—

"(i) the 15th day after the day on which the petition is filed if—

"(I) the raw steel making capacity utilization in the United States equals or exceeds 90 percent,

"(II) the importation of additional quantities of the steel product was authorized by the Secretary during each of the 2 immediately preceding years, or

"(III) the Secretary finds, on the basis of available information (and whether or not in the context of a determination under this subsection), that the steel product is not produced in the United States; or

"(ii) the 30th day after the day on which the petition was filed if neither subclause (I), (II), or (III) of clause (i) applies.

"(C) In making a determination with respect to which subparagraph (B)(i) applies, the Secretary shall apply a rebuttable presumption that the short supply situation alleged in the petition exists.

"(D) The Secretary shall cause to be published in the Federal Register notice of each determination made under this subsection setting forth the reasons for the determination. Federal Register publication

"(5) If under this subsection the Secretary authorizes the importation of a specified quantity of a steel product, the Secretary shall notify a representative of the appropriate foreign government and issue to the petitioner the necessary documentation to permit the importation of that quantity.

"(6) The Secretary shall prescribe regulations to carry out this subsection. The interim text of such regulations shall be issued on or before the 30th day after the date of the enactment of the Steel Trade Liberalization Program Implementation Act. The regulations shall provide for transparency and fairness in the process of making short supply determinations, and shall be consistent with the President's announcement on July 25, 1989, establishing the steel trade liberalization program." Regulations.

(c) CONFORMING AMENDMENTS.—Section 805 is further amended—

(1) by amending subsection (c) by striking out "may provide" and inserting ", in consultation with the Secretary of Commerce, shall provide"; and

(2) by striking out "President's Steel Policy," in subsection (d)(3) and inserting "steel trade liberalization program".

Chairman CRANE. Thank you, Mr. Hickey.
Mr. Morton.

STATEMENT OF JAMES C. MORTON, VICE PRESIDENT, GOVERNMENT RELATIONS, MICHELIN NORTH AMERICA, GREENVILLE, SOUTH CAROLINA

Mr. MORTON. Thank you for this opportunity to appear before you today. I am Jim Morton, vice president, Government Relations of Michelin North America.

I am testifying here today in support of the Temporary Duty Suspension bill. This bill would enhance the competitiveness of U.S. companies that rely on imported components. It would not, in any way, undermine the effectiveness of U.S. trade law. With me today is Michelin's trade counsel, Louis Lebowitz.

Michelin is one of the largest tire manufacturers in the United States with tire manufacturing plants in South Carolina, North Carolina, Alabama, Indiana, and Oklahoma. We make tires of all descriptions from passenger car tires to airplane tires. We employ approximately 16,000 workers in our U.S. plants.

Michelin has experienced firsthand the need for a temporary duty suspension provision in the trade laws. Two years ago our competitive position was very narrowly undermined by exposure to antidumping duties for steel wire rod that we could not get from domestic sources. While, fortunately, the antidumping investigation on steel wire rod was eventually terminated, our involvement in that case made it very clear that U.S. domestic manufacturers can be needlessly harmed by broad antidumping cases that cover merchandise not available domestically.

The case also made clear to us there were really no effective mechanisms under current law to address such circumstances.

One of the chief components in our tires is steel to make tire cord. We purchase steel in wire rod form and draw the rod into wire for weaving tire cord. Our costs and competitive position depend on our being able to utilize wire rod effectively and efficiently.

A critical element in our use of wire rod is to ensure it does not break during the process of making wire and tire cord. At the time of the investigation, we had worked for more than 20 years to develop domestic suppliers for the particular wire rod we needed, but were unsuccessful. Therefore, we were left with no option but to import rod that met our specifications.

If antidumping duties had been imposed on our imports, our operation would have been placed in a very difficult situation. As we could not obtain the wire rod we needed from domestic sources, we would have had to import wire rod that was subject to antidumping duties, which would have increased our costs and made us uncompetitive with other U.S. manufacturers of tires because our largest competitor had negotiated an exclusion from the petition for the wire rod it needed, while the wire rod Michelin needed was not excluded.

A temporary duty suspension provision would give us a chance in a future trade case to approach the Commerce Department for a temporary exclusion of our product from duties, so long as we could show the products we need are unavailable domestically.

The trade laws do not now provide for temporary suspension of duties, meaning if a domestic producer ever intends to make a product, it would oppose a permanent exclusion.

Permanent exclusion of the wire rod we needed would not have been a viable option in our case because domestic producers have plans to attempt to manufacture this wire rod in the future and, in fact, have recently had success in doing so.

Permanent exclusion of a product from an order means petitioners will not be protected in the future from unfair trade with respect to that product, even if they start to manufacture it.

By contrast, temporary relief would encourage the domestic industry to develop new products because the domestic industry will receive the protections of the antidumping countervailing duty order once it begins to manufacture the particular product. Furthermore, downstream customers will remain in the United States, so that, when the U.S. industry begins to manufacture the needed input product, the industry will have a U.S. customer base.

Temporary suspension, thus, benefits both the domestic producers and the U.S. industrial users. We think that H.R. 2822 is a modest, but effective provision. The Temporary Duty Suspension bill simply provides temporary relief to downstream U.S. users when an upstream producer cannot supply the needed merchandise.

H.R. 2822 is an important priority for us. We are counting on the Subcommittee's report.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF JAMES C. MORTON

VICE PRESIDENT, GOVERNMENT RELATIONS

MICHELIN NORTH AMERICA

ON H.R. 2822

PRESENTED TO THE SUBCOMMITTEE ON TRADE OF THE WAYS AND MEANS COMMITTEE

April 23, 1996

Thank you for this opportunity to appear before you today. I am Jim Morton, Vice President, Government Relations, of Michelin North America. I am testifying here today in support of the temporary duty suspension bill (HR 2822). This bill would enhance the competitiveness of U.S. companies that rely on imported components. It would not, in anyway, undermine the effectiveness of U.S. trade laws.

Michelin is one of the largest tire manufacturers in the United States, with tire manufacturing plants in South Carolina, Alabama, Indiana, and Oklahoma. We make tires of all descriptions, from passenger car tires to airplane tires. We employ approximately 16,000 workers in our U.S. plants.

Michelin has experienced, first-hand, the need for a temporary duty suspension provision in the trade laws. Two years ago, our competitive position was very nearly undermined by exposure to antidumping duties for steel wire rod that we could not get from domestic producers. While, fortunately, the antidumping investigation on steel wire rod was eventually terminated, our involvement in that case made it clear to us that U.S. domestic manufacturers can be needlessly harmed by broad antidumping cases that cover merchandise not available domestically. The case also made clear to us that there were really no effective mechanisms under current law to address such circumstances.

One of the chief components in our tires is steel to make tire cord. We purchase steel in wire rod form, and draw the rod into wire for weaving tire cord. Our costs and competitive position depend on our being able to utilize wire rod effectively and efficiently. A critical element in our use of wire rod is to ensure that it does not break during the process of making wire and tire cord. At the time of the investigation, we had worked for more than twenty years to develop a domestic supplier for the particular wire rod we needed, but were unsuccessful. Therefore, we were left with no option but to import rod that met our specifications.

If antidumping duties had been imposed on our imports, our operation would have been placed in a very difficult situation. If we could not obtain the wire rod we needed from domestic sources, we would have had to import wire rod that was subject to antidumping duties, which would have increased our costs and made us uncompetitive vis-à-vis foreign tire producers. Nor would we have been able to compete with other U.S. manufacturers of tires because our largest competitor negotiated an exclusion from the petition for the wire rod it needed, while the wire rod Michelin needed was not excluded.

A temporary duty suspension provision would give us a chance in a future trade case to approach the Commerce Department for a temporary exclusion of our product from duties, so long as we could show that the products we need are unavailable domestically. The trade laws do not now provide for *temporary*

suspension of duties, meaning that if a domestic producer *ever* intends to make a product, it would oppose a permanent exclusion.

Permanent exclusion of the wire rod we needed would not have been a viable option in our case because domestic producers had plans to manufacture this wire rod in the future (and, in fact, have recently had success in doing so). Permanent exclusion of a product from an order means that petitioners will not be protected in the future from unfair trade with respect to that product, even if they start to manufacture it. By contrast, temporary relief would encourage the domestic industry to develop new products, because the domestic industry will receive the protections of the antidumping/countervailing duty order once it begins to manufacture the particular product. Furthermore, downstream customers will remain in the U.S. so that when the U.S. industry begins to manufacture the needed input product, the industry will have a U.S. customer base. Temporary suspension thus benefits both the domestic producers and the U.S. industrial users.

We think that H.R. 2822 is a modest, but effective provision. All the temporary duty suspension bill does is to provide temporary relief to downstream U.S. users in situations where an antidumping or countervailing duty order provides no benefit to upstream producers because they cannot supply the needed merchandise.

H.R. 2822 is an important priority for us. We are counting on the Subcommittee's support.

Mr. HANCOCK [presiding]. Thank you, Mr. Morton.
Mr. Dorland.

STATEMENT OF KEN DORLAND, CONSULTANT, ON BEHALF OF ENRON CORP., HOUSTON, TEXAS; AND FORMER VICE PRESIDENT, MATERIALS MANAGEMENT, ENRON CORP.

Mr. DORLAND. Mr. Chairman and Members of the Subcommittee, thank you very much for this opportunity to speak to you on the subject of fair treatment for all U.S. industry segments through the administration of our country's antidumping and countervailing duty laws.

I am Ken Dorland, representing Enron Corp., as part of the energy industry group. I will abbreviate my remarks to save time for your questions, since my objective here is to help each of you reach an accurate understanding of our point of view in this very important matter.

First, we support the application of the AD and CVD laws in specific situations where U.S. industry is faced with unfair foreign competition and injury is shown. But we insist products not available from the domestic sources should not bear penalties. These unwanted penalties can easily be avoided by having the Commerce Department wave the effects on a temporary case-by-case basis. The process language included in the VRA extension rules that were passed a few years ago worked very well in these circumstances. We would recommend you review them again.

Let me give you an example from my experience in the gas pipeline industry. Ours is one of the safest segments of the national transportation system. To keep it that way, we must obtain the best available quality in materials that we use. In certain sensitive cases, we want pipe that is made from plate that is tested and inspected, that is absolutely free of any structural flaw. The process exists in several foreign plate mills that can ultrasonically inspect each piece of plate while it is being produced. No domestic manufacturer can do this today. Shouldn't I, as a purchaser, be able to get pipe made by a U.S. pipe mill, with U.S. employees, but using ultrasonically inspected imported plate, without paying some extra financial penalty?

Please keep in mind that, number one, this product is not available from any U.S. source, but is included within the broad definition of plate under the AD and CVD orders; number two, since no U.S. company makes this product, no one can be injured by its importation; number three, the penalties paid would be borne by consumers of natural gas, while no one would benefit from the levy; and, number four, the relief we seek should be timely, temporary, and granted on a case-by-case basis. Similar examples exist for drill pipe, alloy production tubing, and other products.

It is the position of the energy industry group that, when it is necessary for the government to protect U.S. industry from unfair competition, it is also necessary that the government have the flexibility and sensitivity to see that domestic competition is maintained and that downstream industry and consumers are not unduly injured in the process.

Just as an aside, let me suggest a parallel here. When we build a pipeline, we place a relief valve in that pipeline ever so often so

that if one of our major customers suddenly shuts off his gas, the resulting pressure spike doesn't cause a catastrophic failure somewhere else in the system.

Here, when we are seeking to build a level playingfield, we may be inadvertently building a dam, and a dam without a spillway is extremely dangerous to everyone who lives downstream.

Thank you very much. I will answer any questions you may have.

[The prepared statement follows:]

TESTIMONY OF KEN DORLAND ON BEHALF OF ENRON CORP.
ON H.R. 2822
SUBMITTED TO THE HOUSE SUBCOMMITTEE ON TRADE
HOUSE WAYS AND MEANS COMMITTEE

April 23, 1996

I am Ken Dorland, representing Enron Corp., here as part of the Energy Industry Group supporting H.R. 2822 in the effort to provide for fair treatment of all U.S. industry segments through the administration of our country's antidumping and countervailing duty laws. We fully support the application of these laws in specific situations where U.S. made products face unfair competition from foreign made goods that are "dumped" priced below production cost or subsidized and where injury is shown. We do insist, however, that when a product not available from U.S. sources is needed, the supply of that product should not be impeded or penalized economically through inclusion in a generally applied categorical definition. When duties are impose without injury, many U.S. industry segments are harmed without any compensating benefit to any other industry segment. This is harmful to domestic competition as well as detrimental to U.S. competitiveness in world trade. The additional cost of duties paid must ultimately be absorbed by the consumer. This injury is manifested in unnecessarily higher prices of goods and services or more innocuously in projects not undertaken or wells not drilled, thus the U.S. economy loses.

For example, the interstate pipeline systems must be able to depend on a consistent reliable supply of large diameter high grade pipe in order to maintain and expand the availability of energy to American industry and consumers. The government should not countenance situations that would disrupt the supply of pipe, and ultimately energy delivery. During the next several years pipeline companies plan to make significant expansions and upgrades to the current pipeline systems, providing jobs for many Americans. Materials for these projects must be available when and where needed and at a cost that make these projects economically viable.

The gas pipeline industry is one of the safest segments of our nation's transportation system. To keep it that way we must be able to obtain the best available quality in the materials we use. Some of these quality breakthroughs occur first in other countries and may not be available for a time in the United States. For example, full body ultrasonic inspection of steel plate is not now available from domestic mills but can be supplied routinely from some foreign sources (and at higher prices I might add). Why should the purchaser of this higher grade material be penalized with even higher import duties?

Domestic production of large diameter pipe is concentrated in only four manufacturers, two of which produce their own steel plate (the raw material for the production of pipe). The other two pipe producers must obtain plate from the two integrated producers or from foreign sources, a situation that puts the nonintegrated producers at a severe disadvantage when plate supplies are tight.

Moreover, some sizes and grades of plate are not produced in the United States and must be obtained abroad. When plate is covered generally by antidumping and countervailing duties orders, even supplies of specific kinds of plate not made in the U.S. are penalized by government unless relief can be provided in these special circumstances. This penalty is passed to consumers without benefit to any industry segment.

There are similar examples of potential shortages involving drill pipe and production tubing, as well as similar situations affecting other industry groups.

From the gas pipeline point of view, temporary duty suspension is a matter of timely supply rather than price. When a major pipeline expansion development is underway there is a relatively short time interval starting from the point that design criteria make possible the actual specification of the pipe (size and weight), and the quantity required, to the actual date this material is needed at the place of construction. This interval is effectively shortened further by the need for obtaining regulatory approvals before committing funds for the project. Thus the period between regulatory approval and start of construction is at best only a few months long. Hence it is economically imperative that the pipe purchases be divided among as many producers as necessary to manufacture the full quantity of pipe in time for the start of construction. There have been several times in recent years when combined project requirements have exceeded domestic capacity.

As indicated earlier, there are some specific material requirements that are not available at all from U.S. sources, yet they are covered by a generally defined antidumping order. These special materials often command higher prices than even the closest domestic offering. Without the kind of temporary, limited relief we are seeking we must pay even higher duties on this material while protecting no one from any conceivable injury.

It is the position of the Energy Industry Group that when it is necessary for the government to protect U.S. industry from unfair foreign competition, it is also necessary that the government have the flexibility and sensitivity to see that domestic competition is maintained and that downstream industries and consumers are not unduly injured by the process.

THE ENERGY INDUSTRY GROUP

American Gas Association

Amoco Corporation

Coastal Corp.

Columbia Gas Association Inc.

El Paso Natural Gas Company

Enron Corp.

Exxon Corp.

International Association of Drilling Contractors

Interstate Natural Gas Association of America

Koch Industries, Inc.

MidCon Corp.

Mobil

Natural Gas Supply Association

NorAm Gas Transmission Company

PanEnergy Corporation

Sonat Inc.

Texaco

The Williams Companies

Mr. HOUGHTON [presiding]. Thank you, Mr. Dorland.
Mr. Tasker.

STATEMENT OF JOSEPH TASKER, JR., VICE PRESIDENT AND ASSISTANT GENERAL COUNSEL, FEDERAL GOVERNMENT AFFAIRS, COMPAQ COMPUTER CORP., HOUSTON, TEXAS

Mr. TASKER. Thank you, Mr. Chairman. It is a pleasure to appear on behalf of Compaq Computer Corp. to tell you about our experiences with antidumping cases involving products that are not made in the United States. We appreciate the opportunity to appear today.

Compaq is the world's largest supplier of personal computers offering desktop and portable computers, as well as powerful servers to a wide range of customers. We have manufacturing facilities in Erskine, Scotland, and China, but our corporate headquarters and our main manufacturing facility is in Houston, Texas, where we have more than 10,000 people involved in the manufacturing, design, and sales and marketing of computers.

As a leader in the market, we have had some early experience with notebook computers, the kind we are now all familiar with, but have only recently come into the market.

In the late eighties and early nineties, flat panel displays, in most cases, the so-called liquid crystal display or LCD, was becoming available for use, and they were not made in the United States, but that did not stop an antidumping case from being filed alleging that all flat panel display imports from Japan were being dumped causing injury to a small group of United States companies involved in the development of flat panel display technologies.

None of these companies made LCDs working in other technologies. There was one company that made a few LCDs of a special kind, known as an active matrix LCD, but they made them on a customized basis for military applications at extremely high cost per display, and they made about 12 of them per year, which is not as many as we need in a day.

Compaq, along with Apple and IBM, participated, as best we could, in the Commerce Department's antidumping investigation and, although we strenuously argued that active matrix LCDs were not available in the United States, we nevertheless saw the imposition of 63 percent antidumping duties at the end of the day.

At this time, which was in September of around 1991, we were in the process of introducing our first active matrix LCD computer. We moved our operations from Houston to build those computers, took them outside of the United States, and built that computer in Scotland, much against our business plans and better judgment. Why did we move? Because 63 percent antidumping duties were prohibitive. They added over $1,000 to the cost of building the computer in the United States. We had Japanese competitors who were building similar computers in Japan or other countries. They could import the computers without cost and that would put us at a tremendous cost disadvantage if we tried to build them in the United States. It was impossible.

Why else did we move? Because there were no active matrix LCDs made in the United States. Even though antidumping was imposed, that didn't mean there was commercial production. And

if there had been $500 million lying around to build an active matrix LCD plant, that is what it would have taken to get the United States up into commercial production over the course of 1 to 1½ years, we would have had no supply.

The duties remained in place, and we remained in Scotland, although we are, today, back able to make our computers in the United States. What happened? Is this a situation in which the Commerce Department's authority has shown itself to be adequate to solve a problem? I don't think so.

What happened was the one company making LCDs had a change of management, figured out that it was not a good idea to send their customer base offshore, asked to have the petition withdrawn and, after a couple of years at the Commerce Department, it was.

We are now working with that company and others in the United States to build active matrix LCD manufacturing capacity, but, to date, there still isn't any. We are strong supporters of the Chairman's bill to provide for temporary duty suspension because we think the current authority of the Commerce Department is lacking, current procedures are not adequate.

In closing, Mr. Chairman, I would only like to add that we believe this is not an unusual or strange provision, H.R. 2822. It is consistent with sound administration of the antidumping law from the perspective of American interests, and it, also, is modeled on the antidumping laws of other countries, including especially the European community, which is not known for its lax enforcement of antidumping procedures. If they can do it, which they have, without feeling they are interfering with the strong antidumping law, we should be able to do it as well.

Thank you, Mr. Chairman. I would be happy to answer any questions.

[The prepared statement follows:]

STATEMENT OF JOSEPH TASKER, JR.
VICE PRESIDENT AND ASSISTANT GENERAL COUNSEL
FEDERAL GOVERNMENT AFFAIRS
COMPAQ COMPUTER CORP., HOUSTON, TX

Mr. Chairman, I am Joe Tasker, Vice President of Compaq Computer Corporation for Federal Government Affairs, and I very much appreciate the opportunity to appear before your subcommittee today, on behalf of Compaq, to discuss the Commerce Department's proposed regulations implementing the antidumping and countervailing duty provisions of the Uruguay Round Agreements Act, and how those proposed regulations relate to problems that many United States manufacturers, including Compaq, have had with obtaining products that are subject to U.S. antidumping orders but are not available in the United States. To summarize:

- The Department's regulations recognize that industrial users have a valuable perspective to add to antidumping proceedings and, in that, they represent a step in the right direction. But it is a small step, and not nearly enough.

- The Department's claim that current law and procedure are sufficient to deal with product availability questions is simply wrong. I know. Compaq and the rest of the American computer industry has been through this problem in a real case, and we have experience with the inability of current law to address the problem adequately.

- Our experience leads Compaq to join with other United States manufacturing industries as strong proponents of HR 2822, Mr. Chairman, which offers the prospect of providing real relief to American industry inadvertently injured by the antidumping duty procedure.

Compaq is the world's largest supplier of personal computers, offering desktop and portable PC's as well as powerful servers that provide midrange computer functionality for applications throughout the business, government, industrial or educational enterprise. We sell and support our products in more than 100 countries, and are recognized as one of the 20 largest US exporters of any product. Annual sales in 1995 amounted to $14.8 billion, making Compaq the 5th largest computer company in the world. We manufacture products in Erskine, Scotland; Singapore, Brazil, China, and at Compaq's Corporate Headquarters in Houston, Texas, where we employ more than 10,000 people in product design, manufacturing, sales and marketing.

As a leader in the market, we have long been involved in the design and manufacturing of laptop and notebook portable computers. In the late 1980's and early 1990's flat panel displays, in most cases so-called "liquid crystal displays" or LCD's, were becoming available for use in computers making possible the common modern "clamshell" computer design with which we are now all fairly familiar. LCD's were not made in the United States, but that did not stop an antidumping case from being filed alleging that all flat panel display imports from Japan were being dumped, causing injury to a group of small US companies involved in the development of flat panel display technologies. None of these companies made LCD's, working primarily on alternative technologies such as electroluminescent or gas plasma displays. One company made a few LCD's of a special kind, known as "active matrix LCD", on a customized basis for military applications at an extremely high cost per display, but this firm lacked the capability of making any displays on the basis of mass production methods.

Compaq, along with Apple and IBM, participated as best we could in the antidumping investigation. We appeared as "importers", since that was the only way we could claim standing to participate at that time, and argued strenuously that Active Matrix LCD's were not available in the United States on a commercial basis and that there was no injury caused by commercial imports of Japanese

products. Our efforts were ultimately to no avail: antidumping duties of 63% were imposed on imports of Active Matrix LCD's from Japan.

At this time, September of 1990, we were in the process of just introducing our first computer with an Active Matrix LCD (AMLCD) screen. As a result of the imposition of these duties, we had no choice but to move production of this computer from Houston to our facility in Erskine, Scotland, at a substantial cost of materials and Houston manufacturing jobs. Scotland produced this computer for the worldwide market, including the United States.

Why did we move? For one thing, the 63% duty on the AMLCD ruled out importing them into the United States. At the time, each AMLCD cost us more than $ 1,000, so the duty added over $600 to the manufacturing cost of a $3,000 computer. This was an intolerable cost burden we could not bear. This is especially so in the highly competitive computer industry. We have many Japanese and other global competitors who remained free to build computers with AMLCD's outside the US, where the antidumping duties on screens did not apply, and import the finished computers. We had to do no less to remain cost competitive in the US market.

For another thing, we simply could not obtain any AMLCD's in the United States. Antidumping duties may have been imposed on imports, but there was no commercial production in the U.S. Even if we had had $ 500 million to spend on developing a commercial AMLCD production facility -- this was the amount that reliable testimony at the ITC estimated would be required -- it would have taken as much as a year to get such a facility operational. And it was not at all clear that the US company building customized AMLCD's had the process technological know-how to build a successful factory. It was just impossible.

Still the duties remained in place, and we remained producing AMLCD computers offshore, as a competitive necessity.

Today, there are no more duties on AMLCD screens and we are once again able to produce computers with such screens in Houston. What happened? Was this an example of the way that current Commerce Department procedures are adequate to meet the needs of US industry when product covered by an antidumping order is unavailable?

In a word, no.

What happened was this: the one US company making customized AMLCD's had a change of ownership. The new owners, a larger firm attracted by the technology and the market opportunities, found that the antidumping duties had driven their customer base out of the country. When production leaves the United States as a result of one of these problems, R&D and other ancillary functions may not be far behind, and this concerned the new owners. They petitioned the Commerce Department to withdraw the petition as to AMLCD's.

We joined in that petition. After a rather lengthy proceeding during which Commerce made sure there were no other companies who might complain about the AMLCD petition being withdrawn, Commerce finally acted, almost 3 years after the original case was filed.

Today, the company that asked to have the petition withdrawn is working hard on the continuing development of AMLCD's in the United States and Compaq, along with other companies, is lending technical and related support. Full scale commercial production levels have not yet been achieved. But it was the foresight of new management, which had to overcome the provisions of current law with a forceful claim to withdraw the petition three years after the fact, which led to this good result.

Let me briefly fit this story into today's discussion of draft Commerce Department regulations and the proposed Temporary Duty Suspension Act.

The draft regulations, at section 351.312, provide consumer organizations and industrial users the opportunity to submit information and argument on "matters relevant to a particular Commerce Department determination." But the draft also narrowly circumscribes the "relevant matters" and emphasizes that users are not "parties to the investigation" with full access to business proprietary information through responsible outside counsel.

This is a step in the right direction. It would have been better if Compaq in the 1990 flat panel case could have been recognized as an industrial user of LCD's in the proceeding, rather than as an "importer." There is an undeniable prejudice against importers in the law, no matter how hard everyone has tried over the years to eliminate it, and it would be helpful for domestic interests like Compaq to be recognized as such.

But this is a pretty small step, since industrial users are limited in the issues they can pursue and are not able to access confidential information even through their responsible outside counsel. Industrial users should have the right to participate fully in the investigation if they so choose, since as the Department points out they may have valuable information to convey. And it is frankly insulting to say that a foreign company through its outside counsel can have access to confidential information collected in the investigation, while a United States firm cast as an industrial user (rather than as an "importer"), may not.

Beyond this, the Department's draft regulations note in the preamble (61 F.R. at 7323) that

> Some commentators have expressed the view that industrial users of products under antidumping or countervailing duty orders should have an opportunity to demonstrate that certain products are not available domestically, that continued inclusion of such products within an order does not serve the purpose of the law, and that, if the petitioners fail to show that the material is available domestically the order should be narrowed with respect to those certain products.

The Department then states in no uncertain terms that

> We are not proposing changes to the rules in this area because the existing practices have been adequate to address valid concerns.

Mr. Chairman, I am here today to emphasize that, having gone through the "existing practices", they are not in any way "adequate."

I think that one of the concerns the Department has, and it is legitimate, is that the current procedures for excluding products from the scope of antidumping or countervailing duty investigations and orders create permanent rather than temporary solutions. What if there is no production today, but there might be at some future time? Better be cautious and leave the product in the order. Future production might arise, and should be protected from injury by dumping.

That is why, Mr. Chairman, that current procedures are not adequate, and why there is such a need for enactment of your bill, HR 2822. It creates in the Department some new authority but gives ample discretion to review all the issues and reach reasoned decisions that try to balance all the legitimate American interests. The temporary nature of the duty suspension provided by the bill means that changes can be made later, if appropriate, and without a long delay. But by the same token, duties can be suspended, more readily than today and without the long delays of changed circumstances proceedings. Indeed, information I have seen indicates that the only "changed circumstance" that has

mattered to date is a change of mind by the petitioners, as happened in our case. There ought to be a more objective standard.

Compaq commends you for introducing HR 2822, Mr. Chairman. I would note that it is not a novel or a dangerous concept, nor does it in any way signal a weakening of the antidumping law. Canada has a provision -- not exactly like this, but similar in principle -- for sorting out the different domestic interests after antidumping or countervailing duties are imposed. The Canadian version of the ITC holds a hearing -- which only Canadian interests can participate in -- which can lead to exempting some imports from duties in appropriate cases when such products are unavailable in Canada. And, as others have mentioned, the European Union has introduced a temporary duty suspension provision as part of its new antidumping regulation implementing the Uruguay Round. This is the European provision on which H.R. 2822 is modeled.

That makes the European experience especially interesting. In response to those who say that a temporary duty suspension provision would overwhelm the Commerce Department with requests, I would note that the European Commission has acted on only one case in the year that the provision has been in effect, and it does not seem overwhelmed by requests. To those who say that such a provision indicates a weakening of the antidumping law, I would challenge them to say that the antidumping law of the European Union -- long known as a strong and powerful weapon of domestic industries, just as it is in the US -- has in any way been diminished. It has not been; nor would the US law be impaired.

All we are talking about is a better way to deal with competing, legitimate domestic interests of United States industry, all of whom are involved in American manufacturing, all of whom support a strong, carefully targeted antidumping and countervailing duty law, and all of whom want to contribute to the economic growth and prosperity of the United States.

Thank you again for the opportunity to present these comments, Mr. Chairman. I will be happy to answer any questions from the Subcommittee.

Chairman CRANE. Thank you, Mr. Tasker.

Mr. Black.

STATEMENT OF EDWARD J. BLACK, CHAIRMAN, PRO TRADE GROUP, INC., WASHINGTON, DC; AND PRESIDENT, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION; ACCOMPANIED BY BRUCE AITKEN, AITKEN, IRVIN, LEWIN, BERLIN, VROOMAN & COHN, LLP; AND PETER SUCHMAN, PARTNER, POWELL, GOLDSTEIN, FRAZER & MURPHY, WASHINGTON, DC

Mr. BLACK. Mr. Chairman and Members of the Subcommittee, thanks for the opportunity to appear before you today to discuss these issues, both with regard to the antidumping regulations and with regard to H.R. 2822, the Temporary Duty Suspension Act.

I am accompanied today by our counsel, Bruce Aitken of the firm of Aitken, Irvin, Lewin, Berlin, Vrooman, & Cohn, LLP; and Peter Suchman of Powell, Goldstein, Frazer & Murphy.

CCIA, its member companies, and members of the Pro Trade Group, and an increasing number of highly competitive companies, understand that their ability to compete globally is essential to their survival. At the national level, there is little debate that exports are a growing and vital sector of our economy. The administration of the antidumping laws, both here and abroad, can affect the competitiveness of U.S. firms. Accordingly, we suggest that the Subcommittee, the Congress, the U.S. Department of Commerce, and the U.S. International Trade Commission need to take into account the ways in which antidumping laws impact on U.S. exports as well as imports.

We, generally, support the department's approach in the development of new regulations with, however, certain qualifications, which have been laid out in detail in the statement submitted for the record.

We, also, strongly support the Chairman's bill, H.R. 2822, Temporary Duty Suspension legislation. Even as the world economy has become more integrated in many ways, the number of countries with antidumping laws has jumped from only 10 in 1980 to over 40 today. This proliferation of antidumping laws can act as a disincentive to U.S. exporters from participating in markets, especially when those procedures are arbitrary and biased.

The determination as to whether dumping has occurred requires complex and extremely fact-intensive analysis. Furthermore, normal commercial practices may, under certain circumstances, be considered to constitute dumping and, thus, be deemed unfair under the antidumping laws of various countries, including the United States. Thus, businessmen may inadvertently find themselves liable for dumping duties merely because some individual sales in the export market are below the average prices charged at home or because, at the bottom of the business cycle, goods are sold below the fully allocated cost of production, although above the variable costs.

In addition, the ways costs and adjustments to price may be calculated by the Department and foreign agencies administering similar laws can be far removed from the way businesses keep their accounts for normal business purposes. Further, it should be

recognized that a foreign exporter to the U.S. market may have a greater incentive to respond to U.S. antidumping or countervailing duty investigations than U.S. exporters facing foreign antidumping cases because the market in that country may be too small to justify the time and expense of responding.

We believe that, quite literally, the world is watching what U.S. authorities do in implementing these aspects of the GATT accords. To the extent the Department develops regulations which reopen old debates or distort the intent of the agreement, it is reasonable to expect our trading partners to do the same. We strongly oppose any regulatory proposals which create this risk and call on the Department to strictly construe the intent of the agreement in attempting to develop regulations pursuant to U.S. implementing legislation.

There is insufficient time here to discuss the technical aspects of these regulations, although we would be happy to attempt to respond to questions. One key element of concern to mention, however, is a desire for fair comparisons. It is self-evident that, unless the Department is guided above all by the objective of making fair apples-to-apples comparisons, the legitimacy of U.S. procedures will be subject to questions and, indeed, to challenge in the U.S. courts and the WTO. Too often, in the past, the Department's comparisons have raised questions of fundamental fairness. We, therefore, strongly believe this requirement for a fair comparison should be carried forward into the regulations, it should be clearly stated therein that this principle will be applied in deciding which prices to compare, which adjustments to make to those prices, how those adjustments should be calculated, and in all other aspects of ascertaining whether dumping margins exist.

As indicated, PTG, the Pro Trade Group, strongly supports H.R. 2822, the Chairman's bill, which, under conditions of short supply, would permit the Department to temporarily suspend the antidumping and countervailing duties. We do not believe this legislation would interfere with the effectiveness of U.S. trade laws. Rather, we feel it would enhance U.S. competitiveness.

We believe that availability of supply is a legitimate concern of U.S. producers. Temporary duty suspension preserves the customer base, while there is no U.S. production available and reinstates relief when the domestic industry makes supply available.

Thank you, Mr. Chairman.

[The prepared statement follows:]

**STATEMENT OF EDWARD J. BLACK, CHAIRMAN
PRO TRADE GROUP, INC., WASHINGTON, DC; AND PRESIDENT
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
ACCOMPANIED BY BRUCE AITKEN, AITKEN, IRVIN, LEWIN,
BERLIN,, VROOMAN & COHN, LLP; AND
PETER SUCHMAN, PARTNER, POWELL, GOLDSTEIN, FRAZER & MURPHY
WASHINGTON, DC**

INTRODUCTION

We commend the Subcommittee for considering the efficiency and effectiveness of the U.S. Department Commerce (Department) antidumping investigation procedures, as well as possible changes to our antidumping and countervailing duty laws. Generally, we wish to offer our general support for the Department's approach to the development of new regulations, with certain qualifications. We intend to file detailed comments next month with the Department. We also wish to express our strong support for H.R. 2822, temporary duty suspension legislation and include here, as well, comments on U.S. International Trade Commission (Commission) procedures related to these investigations.

As to our views, generally we believe that the Committee should assure that in the development of implementing regulations, the administering agencies propose procedures which faithfully implement the Uruguay Round (UR) Agreement and resist efforts to transform these laws and procedures into punitive, trade restricting barriers. During the pendency of Congressional consideration of UR legislation, over 100 companies and trade associations signed a letter to Amb. Kantor which sets forth our goals and concerns regarding UR implementation. We have the same goals and concerns regarding the possible changes now being considered. A number of our concerns were reflected in comments, referenced specifically below, which we filed with the Department and Commission last year, and in our recent submission to the full Committee. As to USITC procedures, a number of our concerns were reflected in these submissions.

The PTG is a broad coalition of U.S. companies and organizations that represents U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting polices which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

AMENDMENTS TO DEPARTMENT PROCEDURES

In implementing changes to antidumping investigation procedures, we believe that both the Department and the Commission should recognize the implications for U.S. exporters. In short, we suggest that the Subcommittee, the Department and the Commission take into account the impact of U.S. laws, regulations and practices on U.S. exports as well as U.S. imports.

The world economy has become more integrated. Among the competitive challenges facing U.S. industry, and industrial consumers, are not only the possible harm caused by unfairly traded imports into the United States, but also the fact that U.S. exports increasingly are accused of unfair trade practices overseas. As one PTG participant noted in a submission to the Department last year, the number of countries with antidumping laws has jumped from only 10 in 1980 to over 40 today. As it noted in its submission, this proliferation of antidumping laws, and of antidumping investigations, in our export markets, can act as a disincentive to U.S. exporters from participating in that market, especially when those procedures are arbitrary and biased so as to favor the "domestic" petitioner, irrespective of the country in which the investigation is taking place.

The determination as to whether dumping has occurred requires complex and extremely fact-intensive analysis. Furthermore, normal commercial practices may, under certain circumstances, be considered to constitute "dumping" and thus be deemed "unfair" under the antidumping laws of various countries, including the United States. Thus, businessmen may inadvertently find themselves liable for dumping duties merely because some individual sales in the export market are below the average prices charged at home, or because at the bottom of the

business cycle goods are sold below the fully allocated costs of production -- although above variable cost. In addition, the ways that costs and adjustments to price may be calculated by the Department (and foreign agencies administering these laws) can be far removed from the way businesses keep their accounts for normal business purposes. Thus, while an automobile manufactured in Detroit and sold below its fully allocated cost in Miami, because of a factory rebate scheme, is deemed a boon to the customer, if that same automobile, with the same rebate, is sold in Germany, the product may be deemed to be sold at an "unfair" price.

Further, it should be recognized that a foreign exporter to the U.S. market may have a greater incentive to respond to U.S. antidumping or countervailing duty investigations than U.S. exporters facing foreign antidumping cases, because the market in that country is too small to justify the time and expense of responding. The submission referenced above, e.g., noted that such cases can "act as a virtual, instantaneous barrier to U.S. goods," and that they are a major concern to both big and small businesses, especially in low-margin, highly competitive trade.

We believe that, quite literally, the "world is watching" what U.S. authorities do in implementing these aspects of the UR. To the extent that the Department develops regulations which reopen old debates, or distort the intent of the Agreement, it is reasonable to expect our trading partners to do the same. We strongly oppose any regulatory proposals which create this risk and call on the Department to strictly construe the intent of the agreement in attempting to develop regulations pursuant to the U.S. implementing legislation. As will be evident in our forthcoming comments on the Department's proposed regulations, while we do not agree with all that the Department has proposed, we believe that the Department has attempted a fairly even-handed interpretation of the statute and the international obligations of the United States. Some improvements, however, need to be made.

Particular Issues of Concern

The Department's effort to develop implementing regulations related to changes in U.S. antidumping law is, obviously, an extraordinarily complex exercise. We make no effort here to comment on all the issues of concern to our members. However, we intend to address these issues more comprehensively in responding to the Department's notice of rulemaking. Even to adjudge which issues are more important than others is difficult, because individual participants' interests vary. Nonetheless, given the foregoing points, and the PTG's and, certainly, the high-tech industry's, overall commitment to expanding trade, we take particular note of certain issues. These are where proposals have been made which may work against our goals of more open markets and fairer trade as the criteria of overriding importance in developing implementing regulations. These include comments on the following topics:

(a) making a fair comparison;
(b) use of "facts available";
(c) treatment of affiliated parties;
(d) reimbursement of countervailing duties;
(e) the "market-oriented industry" test, and
(f) temporary duty suspension for short supply.

Making Fair Comparisons

The UR Antidumping Agreement, and our implementing legislation, explicitly provides that "a fair comparison must be made between the export price and the benchmark home market price" when the Department is making its calculations to determine whether dumping has occurred. Strangely, this overarching requirement of fairness is reflected nowhere in the draft regulations.

It is self-evident that, unless the Department is guided above-all by the objective of making a fair "apples to apples" comparison, the legitimacy of U.S. procedures will be subject to question, and indeed to challenge, in the U.S. courts and the WTO. Too often in the past, the Department's comparisons have raised questions of fundamental fairness. We therefore believe

strongly that this requirement for a fair comparison should be carried forward into the regulations, and that it should be clearly stated therein that this principle will be applied in deciding which prices to compare, which adjustments to make to those prices, how those adjustments should be calculated, and in all other aspects of ascertaining whether dumping margins exist.

Use of "Facts Available"

U.S. legislation, the "URAA", reflecting changes to the Antidumping Agreement, necessitates a departure from prior Department practice in wielding "best information available" (or BIA) as a proverbial club over the heads of parties who were unable to respond to the Department's voluminous requests for information. Perhaps no aspect of the Department's administration of the law has been so criticized by our trading partners as "BIA."

The Agreement contains an entire annex devoted to how and when facts available may be used. It requires that authorities accept information which may not be ideal in all respects, provided the party acted to the best of its ability. Furthermore, if findings are based on secondary sources, authorities are to "do so with special circumspection" and should, where practicable, verify the information from independent sources.

In other words, the Department is not supposed to arbitrarily reject respondents submissions because they are not perfect and instead use self-serving data contained in the petition. In order to carry forward these requirements of procedural fairness, the regulations should clearly state that the Department will take into account all information submitted by respondents; that in determining whether respondent has acted to the best of its ability to supply requested data, that the Department will take into account whether such data is normally maintained in the ordinary course of business; that failure to produce data from "affiliated parties" over which respondents have no real leverage will not justify an adverse inference; and that, generally, the adverse application of "facts available" will be a measure of last resort and will take into account the magnitude of the deficiency and the likely effect on any margins.

Reimbursement of Countervailing Duties

The regulations provide for the deduction from U.S. price in the dumping margin calculation of countervailing duties reimbursed to the importer. There is no authority in the statute for this proposal which is based on a conceptual confusion of countervailing duties -- which are unrelated to export price -- and antidumping duties, which are. The Department's sole basis for this proposal is a statement in the Senate Finance Committee Report on our URAA. Since there is no support in the relevant international agreements, House Report, Statement of Administrative Action or in the U.S. law itself, and since this proposal marks a radical departure from past practice, we believe this issue should be reserved for consideration when this law is next before the full Congress.

Market-Oriented Industries

The proposed regulations codify many of the practices which have evolved within the Department for making antidumping calculations for products produced in non-market economy (NME) countries. We compliment the Department for this effort, especially given the growing importance of trade with countries NME's such as China, Russia and Ukraine.

We are disappointed, however, that the Department has failed to propose a realistic method for insuring fairness in cases involving economies in transition, where some industry sectors operate in a market environment. We believe that the Department should modify its current practice concerning Market Oriented Industries (MOIs) and NME's by promulgating regulations which provide encouragement for the evolutionary development of market economies.

Specifically, where with regard to the industry under investigation there is no government involvement in setting the prices or production quantities of the product, and where the industry

is characterized by private or collective ownership, a presumption should be created that a MOI exists, and that a normal dumping analysis (as opposed to a NME analysis) will be conducted. This presumption can be overcome by a demonstration that prices determined by central government authority are paid for inputs constituting a substantial proportion of value of the final product.

Affiliated Parties

There has been a clear evolution in the Department's practice concerning how related party transactions are treated in antidumping analyses. Increasingly, the Department has expanded the amount of information it seeks regarding sales to and purchases from such parties. Because of changes in the law and Agreement, the concept of "related" has now been expanded to "affiliated" -- no longer will the Department look only to ownership relationships. Now, apparently commercial relationships may also create special circumstances which will lead to the disregard of transaction prices.

Nothing has done more to increase the data demands, and consequently the burden, on respondents than this expansion of the related party -- now affiliated party -- exception. The Department needs to provide very clear guidance to the parties as to how it intends to implement these changes, and to put realistic limits on its interpretation of the law.

Specifically, the regulations should establish an objective, transparent arm's-length test for determining when a home market sale to an affiliated person will be disregarded in calculating normal value. Secondly, in calculating cost of production, the Department should allow use of transfer prices rather than costs from affiliated suppliers for all but major inputs and then require supplier costs only in exceptional circumstances and where the respondent can realistically obtain such information. Finally, and most importantly, the definition of affiliated persons and parties should give more meaningful guidance, especially with regard to what the Department believes constitutes "control." We suggest that the definition of control contained in Section 773 of the statute be repeated in the regulations, and that the regulations clearly state that normal commercial relationships, such as long-term requirement contracts, debt-financing consistent with commercial terms, and suppliers that have participated in "design-in" pre-production phase, do not constitute "control" or an affiliated party relationship.

Temporary Duty Suspension For Short Supply

Finally, we wholeheartedly endorse the views filed with the Department last year of another PTG participant, the American Association of Exporters and Importers (AAEI), regarding the need for temporary duty suspension authority for short supply situations in antidumping and countervailing investigations. While we prefer to obtain materials and components from domestic sources, sometimes we must import inputs because needed supplies cannot be sourced domestically. The imposition of antidumping and countervailing duties on imported inputs that are not available domestically places a substantial burden on industrial users, without providing any benefit to domestic companies. Failure to consider domestic availability in the administration of the AD/CVD laws undercuts the ability of U.S. producers to compete in the U.S. and in export markets.

In the context of the debate over the UR implementing legislation, the Department acknowledged that short supply considerations are relevant to the administration of the antidumping and countervailing duty statutes. The Department also took the position that it has the authority to address short supply considerations in the context of its current procedures. Despite this asserted authority, however, we are unaware of any instance in which the Department has, in fact, considered lack of domestic availability in an antidumping/countervailing duty proceeding to the point of suspending antidumping or countervailing duties in a case; nor has the Department temporarily revoked an order due to non-availability of a product until after Chairman Crane's legislation was introduced.

Our views regarding this legislation, which we support, are discussed below.

TEMPORARY DUTY SUSPENSION LEGISLATION

The PTG strongly supports H.R. 2822, a bill introduced by Chairman Crane which would permit the U.S. Department of Commerce, under conditions of short supply, to temporarily suspend antidumping and countervailing duties. This could occur with respect to specific products needed by American firms when these products are unavailable from U.S. producers. We do not believe that this legislation would interfere with the effectiveness of U.S. trade laws. Rather, we feel it would enhance U.S. competitiveness.

Generally, we believe that availability of supply is a legitimate concern of U.S. producers. If product is not available from domestic suppliers, simply paying extra duties on imported product may not be a viable commercial option. Further, H.R. 2822 encourages investment. Current law doesn't. If an antidumping or countervailing duty order is in place and the domestic industry does not supply the product, then clearly more encouragement is needed. Temporary duty suspension preserves the customer base while there is no U.S. production available and reinstates relief when the domestic industry makes supply available.

This issue is addressed in greater detail in that submissions filed last month with the Committee by the PTG's Fair Trade Forum and the Temporary Duty Suspension Group, both of which the PTG concurs in and aligns with.

AMENDMENTS TO USITC PROCEDURES

We note that the Subcommittee's hearing notice not only addressed specific proposed changes to the Department's procedures related to the administration of the antidumping laws, but of the also invited comments on related issues. Accordingly, we offer here two other possible reforms. The first two include: (a) changes to the Commission's composition and voting structure; and (b) possible application of the Government in Sunshine Act to certain Commission meetings. In addition, we also invite the Subcommittee's attention to certain reforms to the Commission procedures which we proposed in our 12/21/95 submission to the Commission.

Commission Composition and Voting Structure

As noted, we concur with, and incorporate by reference, the detailed comments on this subject filed with the Committee last month by the PTG's Fair Trade Forum. In essence, we believe that a legitimate goal of this Subcommittee is to seek ways to facilitate a more collaborative and deliberative process by the Commission in reaching injury determinations. We believe that this could, and would, be facilitated by several reforms, including:

(a) provision for an odd, as opposed to even, number of commissioners; and

(b) elimination of the current procedure wherein the USITC votes are deemed to constitute affirmative injury determinations.

Possible Application to the USITC of the Sunshine Act

Furthermore, we support the application of the Sunshine Act to meetings of USITC Commissioners for the purpose of discussing USITC determinations in antidumping and countervailing duty cases. As indicated, we concur with, and incorporate by reference here, the more detailed discussion of this issue in the comments filed last month with the Committee by the PTG and its Fair Trade Forum. Essentially, we believe that collective or collaborative Commission determinations would result in more fully reasoned decisions which better protect the public interest.

Possible Changes in USITC Regulations

In addition, as noted in our 12/21/95 submission to the Commission, we recommend a

number of other changes to Commission procedures. These include possible changes related to the following topics:

(a) filing of petitions (service, content and completeness requirements);
(b) determination of petitioner's standing;
(c) procedural rights of consumers and industrial users;
(d) disclosure of business proprietary information under APO;
(e) producer questionnaires;
(f) verifications;
(g) use of "facts otherwise available";
(h) possible investigative activity between preliminary and final determinations;
(i) prehearing briefs;
(j) institution of final investigations; and
(k) final comment procedures.

These concerns relate to the Commission's ongoing effort to develop implementing regulations related to changes in U.S. antidumping and subsidy law. Obviously, this is a complex exercise. We believe that our trading partners are watching this exercise closely and urge the Subcommittee, in its oversight of these issues, to help ensure that both the Department and the Commission develop regulations that do not reopen old debates, or distort the intent of the UR Agreement.

This comment is designed to address a number of issues of special concern to the PTG and its participants. It is intended, in part, to serve as a supplement to our 4/3/96 submission to the Department and our 12/21/95 submission to the Commission on possible changes to their procedures. It also is designed to complement our 3/1/96 submission to the Ways & Means Committee and the simultaneous, technical comments of the Fair Trade Forum, a project and subdivision of the PTG, as well as those of the Temporary Duty Suspension Group, whose comments we endorse and incorporate by reference here. Through the PTG's Fair Trade Forum, we intend to file detailed technical comments with the Department on 5/15/96 in response to its current request for comments on revisions to its regulations. These will form the basis for a post-hearing submission we intend to file with the Subcommittee by its 5/7/96 deadline.

Respectfully submitted,

Edward J. Black

Edward J. Black
President, Computer & Communications
Industry Association
Chairman, Pro Trade Group

Chairman CRANE. Thank you, Mr. Black. I have a few questions I want to throw out to all of you. So anyone jump in with a response.

In your experience, how often has either the Commerce Department or the ITC excluded a product from the scope of an order based on the availability of that product from U.S. producers?

Mr. HICKEY. Well, Congressman, the Assistant Secretary this morning mentioned that they have just done two, and one of those, I think, she was referring—both of those were in the steel area—and one of them was a 14-month window and the other one, I think, was 8 months after the petitioners had petitioned that the products were not made in the United States.

So how does the system work when it takes you 14 months to get somebody to say, "Yeah, nobody here makes it"?

Chairman CRANE. Does anyone else want to comment?

Mr. SUCHMAN. Mr. Chairman, if I might, I think it is critical to have listened carefully to Assistant Secretary Esserman because she very carefully conditioned her response. There is no authority to do what the Department of Commerce does. What they do is they get the petitioners to go along in a process to exclude products under an authority which exists for revoking an order, and the only way it works is if the petitioners go along with it. That is not a short supply provision, and it is not an adequate way of dealing with the problems that these gentlemen have in conditions of short supply.

Mr. DORLAND. In the VRA expansion or reauthorization in 1989, we put in some short supply language that worked very well for 2½ years. It was used by my company on two occasions. It was direct. It was clear what was needed. I, personally, came to Washington and delivered the documents myself, started the 30-day clock running. It worked. We could run a project and have a reasonable feeling that we had low risk in proceeding.

With the present system, it is so uncertain I am not sure we would bother to try.

Mr. HICKEY. Mr. Chairman, one other point I would like to make is there are 300,000-plus metal users out there. We have very large companies represented. I represent a trade association. Most of the people who buy steel from us don't have the ability to have somebody hop on a plane and come to Washington and talk to somebody because they don't understand the process. And, if they have to go hire a trade lawyer, the reality is nothing will get done.

Chairman CRANE. Do any of you contemplate the short supply provision should include inquiry into price?

Mr. HICKEY. Congressman, have you looked at modeling them after the "Buy America" Program?

Mr. TASKER. Well, Mr. Chairman, the question of price is often thrown up as an argument by the opponents of the short supply provision who say that all we really want to do is buy dumped imports.

With a couple of exceptions, I would say that I think price is not the consideration. If you looked in our own case that we had a problem with, you could buy 12 displays a year from this company for $50,000 apiece, and that was not an economically viable thing to do, and we needed more than 12 a day. So you can convolute

those facts into saying that what we wanted to do was buy cheap. I don't think that is at all appropriate because, if you bought the 12 at $50,000, you still needed hundreds and hundreds more, and it wouldn't have done them any good to buy those 12 displays.

So price, I think, in our judgment, is really not the issue here, and we, with understanding some of those caveats to make sure we have the kind of flexibility I just described, I don't think we would object to having it made clear that what we are not talking about here, when we say availability, we are not talking about simply being able to buy it more cheaply offshore, when there is ample supply at a higher price in the United States.

Chairman CRANE. Does anyone else want to comment on that?

Mr. BLACK. Let me echo support for what Joe Tasker said, but let me put it in a slightly broader context as well. We are dealing with global industries and companies that need to compete around the world. The thing they need is predictability and reliability. We need to know what is going to be available. In many cases, we have imported products and components which take a great deal of special fitting into much larger products. To have supply cut off and all of a sudden find out it is unavailable can ruin a product line worldwide. So it is, clearly, as Joe said, that we are not talking about domestic price differential as the key. It is reliability, it is availability of product. It is being able to predict, as a businessman, where your product will go.

Mr. DORLAND. In the case of drill pipe, in the petroleum exploration business in drilling, it is not a matter of price so much as just absolute availability. There is only one manufacturer left in the United States, after quite a shock in the eighties, that still makes the complete piece of drill pipe with the end connections and all. They are offering a 6-month delivery right now. The drilling contractors are out there straightening out old, derelict, bent drill pipes to try to make do and aren't succeeding very well.

There are a few people out there that bought up all of the distress stocks back in 1985 and 1986, and they have got it back in the barn, and they are still out there plugging and saying, "See, I told you so." No one thought they were smart when they did that.

But it is having an effect. There are going to be drillers out there in our own country—I mean, we are talking about domestic drilling companies—that will simply have to close their doors because they don't have a drill stream.

Mr. SUCHMAN. Mr. Chairman, if I might add, the way this legislation is drafted, the Commerce Department has almost complete discretion, and the answer to your question is, they don't have to take price into consideration if they don't want to. So it is really a red herring.

Chairman CRANE. In your view, should a temporary duty suspension occur if the respondent has been so successful in dumping that it has driven a petitioner out of business, and that fact explains the lack of availability and, if not, how would you draw the line?

Mr. TASKER. Well, Mr. Chairman, it makes it sound as though the punishment for driving the company out of business is to force me out of business, too, and I think there has got to be a better way to deal with it than that. We went through that sort of a problem with semiconductors in the eighties. We had a relatively small

United States market share in DRAMs and a very large Japanese market share, and there was a great deal of concern on the part of some that the dumping that was found to exist in 1985 had, in fact, driven a large number of companies out of business.

Now the remedy for that was to make the Japanese producers charge much higher prices. It did stabilize what was left of investment in the United States, but the U.S. market share, and the U.S. industry did not raise its market share in semiconductors. Meanwhile, all of the computer companies were paying three, four, and five times what they had before for DRAMs. So, since that time, we have learned from that experience and worked with our colleagues in the semiconductor industry to come up with remedies to prevent dumping in the future in that industry that try to take more interests into account and are more sophisticated than was originally the case.

But I think you have to approach an issue like that with great caution because it is really a separate issue. Those were allegations that were made in the flat panels case, too, was that the Japanese dumping was keeping the AMLCD company from being able to secure financing to invest in a plant.

Those allegations were floating around, and some of them were stated in the final investigation report by the ITC. The point was, however, that whatever the case, you had another industry, another United States industry, that needed to compete, and that was the computer industry competing desperately with Japanese companies building computers in competition with us who had those screens. And to tell us we could not get those screens and compete because that one company had been put out of business, would have been a double victory, if you want, if you want to put it in those kinds of terms, for the aggressor, and that doesn't make any sense either.

So the producer interest and our interest, as manufacturers of downstream products, are both domestic interests that have to be taken into account, we think, and should be, and can be under a procedure like the one that your bill proposes. It is a balancing.

Mr. BLACK. I think the key point, if I could chime in, is that this is the interests of the U.S. industry, who is the consumer, is a legitimate interest. We are not saying interest should control or win all of the time. We simply feel it needs to be part of the equation. We want it to be a legitimate element to be considered.

With regard to the issue of driving somebody out of business, and we hear these arguments, and the truth is, if you have a case of predatory dumping, you are in another world, and we will oppose that as vigorously as anybody. That is totally improper, but I think it is important to keep in mind, as we have said in testimony, that people can be violating dumping laws or take action which will trigger dumping duties for behavior which is simple, normal business practices, not in an abstract sense, if it was in a domestic setting, as truly inherently unfair, and that is what makes it different. When you move into a situation where you have identified and can demonstrate that somebody is targeting somebody to put them out of business, you have got some other statutes that come into play, and we would support their vigorous use more than they have been historically.

Mr. SUCHMAN. Mr. Chairman, actually, if it is true the industry is no longer in business, there is already a statute which would grant a revocation of the order. You go to the International Trade Commission, and you plead changed circumstances, and one of the changed circumstances they have taken into account in revoking orders is that the industry no longer exists in the United States. So this, in effect, would not add any loophole to the law that doesn't, if you consider it a loophole, already exist.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. No questions, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Mr. Chairman, I just have one question. I came in a little late, and I didn't get the full thrust of what you gentlemen were talking about. But, Mr. Tasker, if I understand it correctly, Compaq does not want to be penalized in its production, and sale, and export of a product because of somebody else's action. If I understand correctly, that if somebody came in and put your company out of business, and then that same company who put you out of business was selling to systems manufacturers, that that would be all right?

Mr. TASKER. Mr. Houghton, I really don't understand your question. Can you try to——

Mr. HOUGHTON. Well, you will just have to figure it out. [Laughter.]

Mr. TASKER. You are suggesting that if a company came in and put me out of business that I would not complain. Well, of course, I would complain. What I am talking about is reaching a balance of interests between the company that is put out of business and another industry that is involved in the United States and needs to continue on as a competitor, and what is it going to do? Is it also going to suffer or can we make some other arrangements?

Mr. HOUGHTON. Well, I don't understand your answer. So that puts us on even ground. [Laughter.]

Mr. TASKER. There you go.

Mr. HOUGHTON. I guess what I am saying is that you are put out of business by a company from another country, and you resent it, but the systems people, to whom you have been selling your product still need that product, and they need it from the person that put you out of business. So, therefore, that is OK.

Mr. TASKER. Well, Mr. Houghton, the antidumping law is not a private right of action, and it is against countries, not companies, and it doesn't involve punitive actions like that. I mean, it is a compensatory statute under the GATT for redress of trade imbalances caused by what is an internationally recognized unfair trade practice, and that is the only relief for that. So it is not a question of whether it is OK or not. That is why, I guess, it is hard for me to respond very well to what you are saying.

Mr. HOUGHTON. Well, I guess it is OK if you are still in business. But if you are out of business because of the dumping procedures, then that is a different story.

Mr. TASKER. Well, it sounds to me, sir, as though we have a disagreement, and I hope we can work together to try to find a way to balance all of the interests of American industries in terms of coming up with remedies——

Mr. HOUGHTON. No, but you have a job, and your company is successful, and I have a job because I am here. However, there are other people who depend upon the laws of this land and the things we do to preserve their job. And so you must think about this, not only in terms of your company, but also the companies that are being violated by laws and by procedures from other countries they have no control over. That is the thing we are worried about.

Mr. TASKER. Absolutely, and we do.

Chairman CRANE. I have one final question for the panel, and this is on proposed Commerce regulations. Do you believe that Commerce's proposed regulation to deduct countervailing duties from the export price, if the importer has been reimbursed, may violate the subsidies agreement and antidumping agreement?

Mr. HICKEY. Congressman, I think a reimbursement would be a violation of it.

Chairman CRANE. Does anyone else have a comment?

Mr. SUCHMAN. Well, in the very least, it is a major change in practice, and I heard Secretary Esserman this morning describe it as a rebate. That is the first time I have heard anybody characterize the reimbursement of a duty as a rebate. It would seem to me, in the very least, before such a major change in practice is put into effect, it ought to be fully aired and not done by regulation. As I understand it, this is all based upon a statement in the Senate Finance Committee report on the Uruguay Round Act. It was certainly not anything this Subcommittee ever took a position on. It is not specifically dealt with in the statute, and it certainly could be argued that it is contrary to the international agreements concerned.

Chairman CRANE. Gentlemen, I want to thank you for your patience and your testimony today.

With that, we shall turn to our final panel, which is composed of representatives from U.S. industries who made use of the dumping laws. Robert J. Grow, chairman of the American Iron and Steel Institute and president and chief operating officer of Geneva Steel; John Boidock, vice president of Texas Instruments on behalf of the Semiconductor Industry Association; David Gridley, director of Sales and Government Affairs at the Torrington Co.; Terence P. Stewart, managing partner of the law firm of Stewart and Stewart; and two witnesses appearing on behalf of the Committee To Preserve American Color Television, who are Lawrence E. Liles, international representative of the International Brotherhood of Electrical Workers, and Timothy Regan, vice president of Corning-Asahi Video Products.

All right, Mr. Liles, we will commence with you as the first witness.

STATEMENT OF LAWRENCE E. LILES, INTERNATIONAL REPRESENTATIVE, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO; ON BEHALF OF COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION

Mr. LILES. Thank you. My name is Larry Liles, and I am with the International Brotherhood of Electrical Workers. I am here representing over 15,000 union members of COMPACT, the Committee To Preserve American Color Television.

COMPACT is unique. It is one of the few union/management coalitions active in the international trade arena, and it is more unique in that we have shared voting and decisionmaking between labor and management, and all of our decisions and activities are by consensus.

I appreciate the Subcommittee being considerate in allowing both Tim and I to speak today. I will get to the point.

A strong workable antidumping law is critical to the American work force of the future. The television industry is a prime example of the need for antidumping protection. Color television was invented here in the sixties and seventies. It was seen as a high-tech industry, which would create the jobs for the future for American workers. Unfortunately, the governments of Japan and Korea had similar ambitions. They adopted policies for keeping their markets shut to U.S.-made goods, while they dumped products into our market.

Repeatedly, COMPACT has made the case against dumping at the ITC. Since 1976, the ITC has ruled five times that the American industry has been injured by unfair trade. All the while, we have witnessed the jobs in the industry destroyed by the thousands, and the number of U.S.-owned producers of color television picture tubes fall from 24 to none today.

The battle to save our industry has taken a lot of time, effort, and money. But, in the process, we have learned some valuable lessons. First, the Pacific-run suppliers of television tubes and sets persistently dump into export markets to gain market share, and the second is that a strong dumping statute is the only line of defense against such predatory practices.

My colleague, Tim Regan, will expand on these lessons.

STATEMENT OF TIMOTHY J. REGAN, VICE PRESIDENT, CORNING INC.; ON BEHALF OF CORNING-ASAHI VIDEO PRODUCTS CO., CORNING, NEW YORK

Mr. REGAN. Mr. Chairman, thank you for the opportunity to appear before you today. My colleague, Larry, has talked a little bit about the history. I am going to talk about the future of our industry.

Mr. Chairman, if you ask the average guy on the street where his television was made, he would probably tell you Japan or some Asian country, and he is probably wrong. Thanks to the dumping law, the television industry remains viable today, and I say viable. It is not thriving. Today, about 75 percent of the color picture tubes that are consumed in televisions are made in this country. Although a lot of television set production has moved off to Mexico, still, about one-half of it is made here. Only about 20 percent is imported from Asia.

Now, while the content today—U.S. content today—in televisions is still too low, we have made some progress. But the progress we have made in regaining share has been due, in large part, to enforcement of the dumping law, which has moderated, not eliminated, but moderated unfair trade.

Our future now depends, to a large part, on the existence of the dumping law and on enforcement of the dumping law. We are posed into a new era, the era of digital television. It has incredible

promise. Eventually, all 200 million television sets in the United States will be replaced. Whether those sets are going to be made here or in some foreign land, is going to depend, in large part, on what you do here on this Subcommittee and what the Commerce Department does on enforcement.

If the statute is weakened, more weakened than it has already been in the Uruguay round, firms are going to be reluctant to make the hundreds of millions of dollars of investments that have to be made, perhaps even billions of dollars, to make the United States a player in this industry. Without the defense of the dumping law, an investment in this sector of the company would be dangerous, at best.

One more point, Mr. Chairman. One of the weakening features we are concerned about is S. 2822. We would argue that that weakens the statute in a way which would make investment in this industry impossible, and we hope you will consider that as you move forward.

Thank you.

[The joint statement of Mr. Liles and Mr. Regan follows:]

STATEMENT OF LAWRENCE E. LILES
INTERNATIONAL REPRESENTATIVE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO
ON BEHALF OF COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION
AND TIMOTHY J. REGAN, VICE PRESIDENT, CORNING, INC.
ON BEHALF OF CORNING–ASAHI VIDEO PRODUCTS CO, CORNING, NY

INTRODUCTION & SUMMARY

This statement presents the views of the Committee to Preserve American Color Television ("COMPACT") regarding: 1) the Department of Commerce proposed regulations to implement the Uruguay Round; and 2) H.R.2822, the Temporary Duty Suspension Act.

COMPACT is a coalition of labor organizations and firms in the U.S. color television industry, representing over 15,000 workers. COMPACT is represented at today's hearing by Lawrence E. Liles, International Representative, International Brotherhood of Electrical Workers, AFL-CIO and Timothy J. Regan, participating on behalf of Corning Asahi Video Products Co., Vice President and Director of Public Policy, Corning Incorporated.

Maintaining a strong anti-dumping law is a critical component of an effective trade statute and of vital importance to U.S. workers and companies. Effective unfair trade remedies are key to maintaining a base of support in the U.S. for an open world trading system. Moreover, effective unfair trade remedies provide the means to respond to injurious dumped imports, and thus constitute an integral component of a free-market trading system.

The U.S. color television industry is a leading example of the importance of trade policy to U.S. jobs. Because certain foreign markets were effectively closed to U.S. products, injurious dumping into our market from closed markets caused the loss of thousands of jobs and an entire segment of the domestic industry. As a result, there are few domestic suppliers to the television industry left today. However, these remaining firms are healthy – and on the threshold of a new era brought on by the advent of advanced television ("ATV"), high-definition television ("HDTV") and other formats of digital television. These producers of television glass, picture tubes, and sets must invest hundreds of millions of dollars in new production capacity in order to produce these larger sets. Without a strong, workable, anti-dumping law, no firm would put these sums at risk while its base business (conventional television) remains exposed to injurious dumping. Any future ATV or HDTV product is threatened by injurious dumping as well.

Therefore, in summary:

1) COMPACT believes that the Commerce Department regulations implementing the Uruguay Round Act should be carefully crafted to implement the compromises of the Act without undermining the effectiveness of the anti-dumping disciplines. Weakening the anti-dumping laws were a major objective of foreign dumpers during the Uruguay Round negotiations and subsequent Congressional implementation. These dumpers can again be expected to try to weaken U.S. anti-dumping law during the rulemaking process, and COMPACT will oppose these efforts. With respect to specific proposed regulations, COMPACT has included in this testimony several suggestions for improving the regulations on anticircumvention. These include comments on why investigations must be initiated promptly, should include verification, and should avoid inflexible definitions of class or kind of merchandise.

2) COMPACT opposes The Temporary Duty Suspension Act (H.R.2822) because it will undermine U.S. trade law. By suspending the anti-dumping and countervailing duties imposed against unfairly traded imports, this bill will put in jeopardy the relief from unfair trade that domestic industries have fought for years to obtain, and would reward those foreign companies that have used dumping tactics to drive U.S. producers out of business.

BACKGROUND ON COMPACT:

COMPACT was formed in 1976 to support a petition for import relief submitted to the U.S. International Trade Commission pursuant to Section 201 of the Trade Act of 1974. Since its founding, COMPACT and its members have participated in trade policy activities of interest to the domestic color television industry and its workers, including antidumping proceedings covering color television receivers from Japan, Korea and Taiwan and color television picture tubes from Japan, Korea, Singapore and Canada. COMPACT's Board of Directors include representatives of:

Industrial Union Department, AFL-CIO
International Brotherhood of Electrical Workers, AFL-CIO
International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO
United Electrical Workers of America, Independent
Techneglas, Inc.
Corning-Asahi Video Products

The labor members of COMPACT represent approximately 15,000 U.S. production workers engaged in the manufacture of color picture tubes and finished color television receivers for the principal manufacturers of televisions in this country, including, among others, Philips Consumer Electronics Company, a division of Philips Electronics North America Corp., Thomson Consumer Electronics, Inc. and Zenith Electronics Corp. These unions also represent production workers who produce articles for incorporation into finished color television receivers, including cabinets, electronic components and subassemblies and glass parts for color picture tubes.

The products of concern to COMPACT are: (1) color television receivers ("CTVs"), currently classified under subheading 8528.10 of the Harmonized Tariff Schedule of the United States ("HTSUS"); (2) color television picture tubes ("CPTs"), classified under subheading 8540.11, HTSUS; and (3) glass used in the production of CPTs, classified under subheading 7011.20, HTSUS.

HISTORY OF THE INDUSTRY:

COMPACT's members have had lengthy experience in seeking relief from unfairly traded goods under the antidumping law. Over the past twenty years, we've witnessed the constant erosion of production base, from 26 U.S.-wholly-owned firms to none. And, over the course of two decades of decline, the U.S. International Trade Commission ("USITC") has found five times that the industry has been injured by unfair trade.

The history is startling. In the 1960's and 70's, the production of color television receivers was seen as a high technology industry to which many Americans looked to provide the jobs of the future. U.S. companies created the television – the basic technological process for manufacturing the glass envelope was invented by Corning; and the picture tube was invented by RCA. Given that the tube is the most technically complex part of a television, the U.S.

industry believed that this world-class product would do very well domestically and overseas.

Although the U.S. industry grew rapidly, it was soon subject to dumping from Japanese firms. In fact, the history of this industry tells a devastating story of powerful multinational electronic giants from the Far East who were determined to dominate the U.S. market -- the largest and most open market in the world for color televisions and display devices. Because the Japanese market was effectively closed to foreign goods and investment, U.S. producers could not export to Japan, but were forced to license their technology to Japanese companies if they wanted to participate in the Japanese market. With the benefit of hindsight, it is clear that Japan's systematic plan was to promote its consumer electronics industry abroad through dumping, while protecting its industry at home through closed markets.

The inability of U.S. trade policy to deal effectively with this Japanese strategy undoubtedly emboldened producers from Korea and Taiwan to emulate Japan's tactics. A Japanese television antidumping order was entered in 1971, while orders against dumped color televisions from Korea and Taiwan were entered in 1984. Antidumping orders covering CPTs from Japan, Korea, Singapore and Canada (Mitsubishi) were entered in 1988. U.S. industry sought and won relief against unfair trade practices several times throughout that period, but thousands of U.S. manufacturing jobs were lost in the process, as U.S-owned factories were closed.

1) THE COMMERCE DEPARTMENT REGULATIONS IMPLEMENTING THE URUGUAY ROUND ACT:

The Commerce Department must implement the international obligations of the United States as enacted by Congress. These regulations, however, should be constructed in a fashion so as to accomplish the intended purpose of the antidumping law -- the elimination of injurious sales made at less than fair value -- swiftly and decisively.

To that end, it is critical that the regulations do not weaken the discipline of the existing dumping statute. Weakening the U.S. antidumping law was a major objective of foreign suppliers during the Uruguay Round negotiations and subsequent legislative implementing process. Entities related to foreign suppliers can be expected to try again to weaken U.S. antidumping law during the rulemaking process. COMPACT will oppose any attempts to manipulate the rulemaking process in an effort to compromise the decisions that Congress made in the Act.

It is rare that any group is ever completed satisfied with a piece of legislation. Such is the case with the Act. Certainly, COMPACT recognizes ways in which the Act could have been improved. For example, we believe that the DOC should take specific measures to ensure that the cost of duties are passed on to the ultimate purchaser in situations where the importer is related to the exporter. With respect to the issue of "standing", an affirmative statement of support by either labor or management should constitute support for the petition by a particular company. With respect to "sunset", we believe that the statute should indicate that dumping and injury is likely to continue or recur if certain evidence is presented in the review proceeding. In addition, the termination of a dumping order should be conditioned upon the signing of an agreement by the foreign producers subject to the order in which they certify that dumping will not recur, subject to the automatic reimposition of increased duties should dumping recur.

Even though we continue to believe that these issues are critical, we will not attempt to re-open them in the context of what should be a straight-forward rule-making process. We will simply ask that throughout the rulemaking process, the intent of Congress is strictly implemented.

While we are still in the process of a comprehensive review of the proposed regulations, we can comment now on at least a few of the proposed rules. For example, one of the more troublesome shortcomings of the antidumping law and its administration concerns the ability of Commerce to implement the law's anticircumvention provision. This problem has been particularly acute for the domestic television industry and its workers. There are several important ways in which the proposed regulations could be improved.

- ANTICIRCUMVENTION INVESTIGATIONS MUST BE INITIATED PROMPTLY

The regulations should specify that the Department will normally decide whether to initiate a circumvention inquiry within 45 days after a circumvention application has been filed. In addition, the regulations should provide that the normal period for a circumvention inquiry will cover the four most recently completed fiscal quarters as of the month preceding the month in which the circumvention application was filed. These two provisions will ensure that a respondent is not permitted to alter its operations after a circumvention application has been filed simply to avoid a finding of circumvention.

The requirement for prompt initiation of an anticircumvention investigation has its roots in present regulations. To ensure that original antidumping duty investigations are conducted expeditiously and to minimize any injury to the domestic industry, the statute provides that the Department must decide whether to initiate an antidumping duty investigation within 20 days of the filing of a petition. Pursuant to its proposed regulations, Commerce has also proposed that the period of investigation in antidumping investigations will normally be the four most recently completed fiscal quarters as of the month preceding the month in which the petition was filed. See 19 C.F.R. § 353.204(b). Requiring the prompt initiation of antidumping duty investigation and using a time period that precedes the filing of the petition helps to ensure that a foreign producer does not temporarily alter its prices to avoid a finding of dumping in an original investigation.

Comparable procedures should be adopted for circumvention inquiries. First, to ensure that domestic industry receives prompt relief from circumvention tactics, the Department's regulations should provide that the Department will normally initiate a circumvention inquiry within 45 days after the application is filed. While the statute does not provide a mandatory time period for initiating these inquiries, the statute does express an interest in ensuring that these inquiries are promptly completed. 19 U.S.C. § 1677j(f).

Second, paralleling the regulatory provisions relating to the period of investigation in original investigations, the regulations should provide that the normal period for a circumvention inquiry will cover the four most recently completed fiscal quarters as of the month preceding the month in which the circumvention application was filed. If the period of inquiry includes a time period after the application is filed, the respondents may be permitted to alter temporarily certain assembly or manufacturing operations to avoid the appearance of circumvention. Accordingly, the period of inquiry should cover a period of time preceding the application. If a respondent then permanently alters its operations so that it is no longer circumventing an antidumping or countervailing duty order, it will be able to demonstrate this during an administrative review, just as a respondent is permitted to demonstrate that it is no longer dumping during an administrative review.

- ANTICIRCUMVENTION INVESTIGATIONS SHOULD INCLUDE VERIFICATION

The regulations should provide that the Department will normally conduct verification in a circumvention inquiry. Verification is critical to these inquiries because the information submitted is typically not reviewed or analyzed by the Department in any other phase of the proceeding.

In all original antidumping and countervailing duty investigations, the Department is required to conduct verification. Verification is critical because the Department has never had the opportunity to review and analyze the respondent's data and so cannot determine whether the data is accurate and complete without verification. In circumvention inquiries, a respondent is required to submit data that is necessarily distinct from the data that is gathered in an original investigation or in administrative reviews. For example, while a respondent will submit home market prices, U.S. prices, and related selling expense in original investigations and administrative reviews, the information submitted in a circumvention inquiry generally pertains to the level of investment, employment levels, a description of the production process performed in different markets, and the amount of value added in either a third country or the U.S. Accordingly, the Department's regulations should provide that verification will normally be undertaken in circumvention inquiries to ensure that the data submitted is complete and accurate.

- PRESUMPTIONS SHOULD BE ESTABLISHED CONCERNING THE INHERENTLY LIMITED NATURE OF ASSEMBLY OPERATIONS.

A key Commerce Department determination is whether the process of assembly or completion is minor or insignificant. The regulations should establish a presumption that simple assembly is minor or insignificant, and a corresponding presumption that production (or completion as used in the statute) is not minor or insignificant. Either presumption could be overcome by the respondent by providing evidence to the contrary.

While application of the above-stated statutory factors to a simple assembly operation in the U.S. or third country should lead to a conclusion that the assembly process is minor or insignificant under the statute without a presumption, establishing these presumptions would be consistent with the statute, appropriate in light of Congressional intent, logical in theory and practice, efficient for Commerce to administer, and would lend a beneficial level of predictability to investigations for respondents.

Both presumptions would be fully consistent with the five statutory factors Commerce must consider as these factors largely focus on the level of activity performed in the U.S. or a third country. Moreover, these presumptions are especially appropriate in light of Congress' intent in adopting the new statutory requirements to include within the scope of antidumping duty orders products in which only minor assembly occurs in the U.S. or a third country (S. Rep. No. 412 at 81).

Given the fundamental difference between assembly and production, these presumptions are logical. Assembly consists of simply joining parts together. By contrast, production (or completion as used in the statute) consists of a process whereby the chemical composition, mechanical properties, and/or physical appearance of materials are transformed in a substantial manner. None of these changes occur in simple assembly. For example, attaching the wheels, frame, derailleurs, and other components together to create a bicycle is simple assembly. By contrast, transforming carbon steel into pipe through heating, rotary piercing, stretching, straightening, and cutting is production. Given the vast difference in the nature of assembly versus production activities, it is logical to establish a presumption of minor or insignificant processing where only assembly occurs, and

also establish a presumption of not minor or insignificant processing where production occurs.

The establishment of these presumptions would allow Commerce to avoid wrestling with amorphous, difficult to measure statutory factors in every case. The presumptions would also put respondents on notice that setting up a simple assembly operation in the U.S. or a third country is not a viable means of circumventing the order. By establishing a level of predictability as to how Commerce will view assembly operations, fewer attempts at circumvention would likely occur.

- COMMERCE'S REGULATION SHOULD AVOID INFLEXIBLE DEFINITIONS OF CLASS OR KIND OF MERCHANDISE

Commerce is required to promulgate regulations in furtherance of the statutory requirement that the merchandise circumventing an order be of the same "class or kind" as the merchandise subject to the order. This statutory requirement should be broadly construed to include within the same class or kind or merchandise a component and a finished product. This construction is necessary to effectuate Congress' intent, and is fully consistent with the terms of the statute, Commerce's past practice and judicial precedent.

Under the new statutory provision on circumvention through a third country, an affirmative circumvention finding is dependent on a finding by Commerce that the "merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject" of an antidumping or countervailing duty order. In the typical third-country circumvention case, where components are exported from the country subject to the order to a third country where they are assembled into the product subject to the order and exported to the U.S., a narrow definition of "class or kind" is adequate since the product entering the U.S. from the third country is by definition the same product subject to the order.

A narrow definition of class or kind, however, would deny relief in the less common, though equally problematic situation of "diversionary circumvention" in which the product subject to the order is exported from the country subject to the order to a third country where it undergoes further processing and is then shipped to the United States. In such a case, the "class or kind" definition must be construed as including components and the finished product in the same "class or kind' or merchandise in order for Commerce to make an affirmative circumvention determination. If "class or kind" is not defined to include a component and a finished product, a remedy will be denied in every instance of diversionary circumvention other than where the activity in the third country is trivial.

A broad interpretation of "class or kind" was intended by Congress. The prior circumvention statute did cover diversionary circumvention and the new statute does not indicate any intent to depart from the prior statute on this point. That diversionary circumvention was covered under the prior provision is indisputable. In the Conference Report to the Omnibus Trade and Competitiveness Act of 1988, Congress emphasized that the circumvention provision includes the common form of circumvention and diversionary circumvention. The Report states,

> it is made explicit that the provision applies both in cases where the order is on the merchandise shipped to the third country for completion or assembly (diversion) and where the order is on a final product, parts and components of which are sent from the country subject to the order to the third country for assembly or completion (circumvention).

H.R. Rep. No. 576, Cong., 2d Sess. 600 (1988) (emphasis added). Since neither the Uruguay Round Agreements Act nor its legislative history indicate an intent to

not cover diversionary circumvention, Congress expressed no intent to alter the law in this regard.

Commerce should specify in its regulations that in cases of diversionary circumvention, components and a finished product may be considered to be of the same class or kind of merchandise. The other statutory requirements – that the processing not be minor or insignificant and that the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the U.S. – will ensure that the statute will provide a remedy only for instances of genuine circumvention.

2) COMPACT OPPOSES THE TEMPORARY DUTY SUSPENSION ACT, "HR2822"

Although there are only a few domestic suppliers to the television industry left, these firms are healthy – and on the threshold of a new era brought on by the advent of advanced television ("ATV"), high definition television ("HDTV"), and other forms of digital television. The migration to larger and higher resolution screen sizes for HDTV is placing huge pressures on producers of glass parts for CPTs, CPT producers, and set manufacturers. If demand for HDTV develops, hundreds of millions of dollars in new capacity will need to be added over the next few years. In fact, money is already being spent for expansion in glass and tube production to meet industry needs. Thousands of new jobs could be created and protected. This investment could be delayed or stopped, however, if foreign companies are allowed to dump into the U.S. market with impunity.

Glass and tube production is now the anchor that holds CTV production in North America. The assembly of CTV sets is not capital-intensive and can easily migrate to other locations in pursuit of cheap labor or components. Unless new investments in tube and glass facilities are made here, the long-term viability of the American color television industry and the jobs it creates remain in doubt. Fair trade is critical to the decision of these producers to make the necessary commitment of capital to continue this industry.

Given the enormous commercial stakes associated with ATV, there is no reason to expect that any foreign government-business team now involved in the development of ATV will not resume their dumping tactics. The history of dumping in the television industry combined with the threat of H.R.2822, give little comfort to producers who are considering investing hundreds of millions of dollars in the next generation of color picture tubes, sets and associated glassware nor for American workers whose jobs are vulnerable to unfairly priced imports.

To allow market signals to drive the industry, the antidumping orders must be maintained. The apparent effect of H.R.2822 would be just the opposite – foreign dumpers will be encouraged to resume dumping. At this critical juncture in the history of our domestic industry, we need to discourage injurious pricing and to encourage continued investment in the U.S.

Specifically, the Temporary Duty Suspension Act would be disastrous to the domestic television industry for following reasons:

- H.R.2822 would subject the domestic CTV industry to dumping again at a time when the domestic industry is beginning to finance the development of advanced television equipment technologies, specifically ATV. ATV requires a long-term vision and investment. It will only be a relatively small high-end segment of the existing color television market for the next several years, while conventional color televisions will continue to dominate the market. The competitive position of the conventional color television industry and their

suppliers in the U.S. will, therefore, be one of the largest determinants of the prospects for meaningful participation in ATV. For this reason, the maintenance of existing duties on CTVs and CPTs becomes critical. Unless domestic producers are permitted to earn a fair return on present sales, they will be unable to generate the financial resources required for long-term participation in the evolving industry.

- The notion that shortages of products under an antidumping order will arise to the detriment of U.S. consumers is a basic misconception. Even in the unlikely event that U.S. domestic industry might temporarily be unable to supply a given product to a customer, imports covered by an anti-dumping order are free to enter the U.S market, while foreign producers continue to pay any antidumping duties necessary to offset injurious pricing. The antidumping law does not limit the volume of imports that may enter the U.S., as a quota, or voluntary restraint agreement does.

- A temporary duty suspension mechanism cannot be effectively administered, as the Commerce Department has clearly stated. Proponents of a temporary duty suspension provision argue that it would be used only where U.S. entities require products they can't obtain in the U.S.. But what is "short supply" in the context of COMPACT-initiated orders? For example, if phosphor, a critical element in the manufacture of CPTs were in short supply, thus constraining the capacity to produce CPTs, would the duties on CPTs be suspended? What if there were a shortage of glass for CPTs, thus constraining the capacity to produce CTVs, would the duties on CTVs be suspended? High-tech industries experience "shortages" from time to time which have nothing to do with current orders on a product or any relevant up-stream product. Also, foreign suppliers could manipulate our market, withholding products now supplied under antidumping orders and thereby inducing "shortages". H.R. 2822 establishes no objective standards by which to identify when a short-supply situation arises, or subsequently is corrected. Under these circumstances, administration of a short-supply provision would be unavoidably arbitrary and a bureaucratic nightmare, diverting precious resources from enforcement of the antidumping law.

- It is <u>not</u> possible to "temporarily" remove or reduce duties without <u>encouraging</u> foreign producers to continue dumping. Simply put, the purpose of foreign dumping is to drive U.S-owned domestic firms out of business. Any resulting "shortage" in supply is a **direct** result of U.S.-owned factories closing as a result of foreign dumping. In fact, we would predict that some of the companies found guilty of dumping and thus subject to an anti-dumping order, would be the very companies helping to petition for duty suspension if this bill is enacted. The perverse effect of H.R. 2822 would be to reward those foreign dumpers that have driven U.S. producers out of business.

Chairman CRANE. Mr. Boidock.

STATEMENT OF JOHN BOIDOCK, VICE PRESIDENT, TEXAS INSTRUMENTS; ON BEHALF OF SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. BOIDOCK. Thank you, Mr. Chairman. I am John Boidock, vice president, Government Relations, with TI, Texas Instruments. Thank you for this opportunity to appear before you and present the views of SIA, the Semiconductor Industry Association.

Before addressing the antidumping laws, however, I would like to briefly describe the semiconductor industry; in part, to give you a better idea why these laws are so important to us.

U.S. semiconductor makers employ 260,000 highly trained, well-compensated people nationwide. Our products are the enabling technology behind nearly a $400 billion U.S. electronics industry, employing 2.5 million Americans. The semiconductor industry devotes an average of 20 percent of our revenues to capital spending and another 11 percent to R&D, among the highest of any industry, and the semiconductor industry is truly a global industry, with roughly one-half of our revenues derived from overseas.

Clearly, it has been in our interests and in the interests of this country to promote free trade and open world markets. SIA works very closely, and has worked very closely in the past with this Subcommittee and the administration to fashion antidumping provisions that are appropriate in response to the Uruguay round changes. We have been in the forefront pushing for zero tariffs on our products worldwide. Unfortunately, market access barriers continue to exist in wrong countries, and one of the most severe cases is Japan. Such barriers have historically led to dumping. In the mideighties, 9 of 11 U.S. dynamic random access memory producers, DRAMs, were driven out of the business by Japanese dumping. There is no question in my mind that without strong antidumping laws, this could happen again. It would be a disaster for our industry and our customers.

The world semiconductor industry is growing explosively with the expectation of a doubling in size of the industry before the year 2000 to $300 billion. To achieve this, the world industry must build at least 100 new production facilities. We call them wafer fabs. Each one of them costs between $1 and $2 billion and 70 percent of these fabs will be obsolete within 3 years because of the short product life cycles of our industry. Indeed, we may build to overcapacity in response to this demand. It is very hard to find the right equilibrium, but in this intensely competitive environment, dumping is a real danger. In just the last 6 months, prices on four megabyte DRAMs have dropped from approximately $12.50 each to $6.50 each, creating a boon for consumers and, in turn, greater demand for our products.

So what have we learned since the eighties? We have learned that antidumping duties have worked. To suspend them even temporarily, as proposed in H.R. 2822, would reward dumpers who have driven domestic producers from the market. It happened to DRAM producers in the eighties and it can happen again. And, if it does, it can happen very quickly.

In general, we support the Commerce Department's proposed antidumping regulations. They are consistent with the requirements of the law as written by this Subcommittee and consistent with the World Trade Organization's Antidumping Agreement.

SIA also believes the antidumping provisions of the 1991 United States-Japan Semiconductor Agreement should be maintained in a new agreement. These provisions serve as an insurance policy against renewed dumping.

Last, Mr. Chairman, Texas Instruments has been a strong supporter for open markets throughout the globe. As a leader of the Alliance for GATT now, TI led the business community's coalition to gain passage of the Uruguay round legislation. That legislation achieved a masterful balance for U.S. antidumping laws, and we are concerned the changes contemplated by this bill will destroy that balance.

Thank you, Mr. Chairman, for this opportunity, and I would be pleased to answer any questions.

[The prepared statement follows:]

STATEMENT OF JOHN BOIDOCK
VICE PRESIDENT, TEXAS INSTRUMENTS

ON BEHALF OF
THE SEMICONDUCTOR INDUSTRY ASSOCIATION

HEARING ON DEPARTMENT OF COMMERCE
PROPOSED ANTIDUMPING REGULATIONS
AND OTHER ANTIDUMPING ISSUES

APRIL 23, 1996

I appreciate this opportunity to appear before the Subcommittee on Trade of the Committee on Ways and Means to present the views of the Semiconductor Industry Association ("SIA") on the operation of the U.S. antidumping law.

Before going into greater detail on SIA's position on the antidumping law, I would like to take a minute to give the Subcommittee a sense of the U.S. semiconductor industry.

The U.S. Semiconductor Industry

Semiconductors are an increasingly pervasive aspect of everyday life, enabling the creation of the information superhighway and the functioning of everything from automobiles to advanced medical equipment. Semiconductors are also the linchpin underlying this nation's advanced military weapons systems. A growing proportion of the value of these systems is dependent upon electronics products -- up to 40 percent in some cases. The current design of the F-16 Fighter, for example, includes 17,000 electronics components. They are also intrinsically important in radars, weapons guidance and control systems.

U.S. semiconductor makers employ 260,000 people nationwide. Their products are the enabling technology behind the nearly $400 billion U.S. electronics industry, which provides employment for 2.5 million Americans.

The U.S. semiconductor industry is currently the world market share leader, with 1995 world sales reaching $59 billion, representing almost 41 percent of the $144 billion world market. Moreover, the world semiconductor market is expected to double by the year 2000, with projected sales of over $300 billion.

U.S. semiconductor producers are highly committed to maintaining their lead in both semiconductor manufacturing and technology. The U.S. semiconductor industry devotes on average 20 percent of its revenues to capital spending and another 11 percent to research and development -- among the highest of any U.S. industry.

While investing heavily in the industry's future competitiveness and technological capabilities, SIA members also have always actively sought to secure foreign market access for U.S. products. Because the semiconductor industry is so global in nature -- roughly half of the U.S. industry's revenues are derived from overseas sales -- SIA has been dedicated since its inception to promoting free trade and opening world markets.

For example, the U.S. industry has been in the forefront of efforts to eliminate tariffs on semiconductors and related products worldwide. At SIA's urging, both the United States and Japan eliminated their semiconductor tariffs in the mid-1980s. During the Uruguay Round, the U.S. industry succeeded in convincing Korea to eliminate its chip tariffs. Today, SIA is pushing for semiconductor tariff elimination as part of the proposed Information Technology Agreement.

However, the elimination of tariffs and other traditional trade barriers has proven to be insufficient to ensure full market access in key markets, particularly Japan, the second largest semiconductor market in the world. Japanese Government protection of its home market and toleration of anticompetitive practices have permitted Japanese firms during periods of market downturns to dump excess semiconductor production in open markets like the United States. In the 1980s, nine of eleven U.S. producers of commodity memory semiconductors (DRAMs) were driven out of the DRAM business as the result of Japanese dumping.

Why Dumping Occurs

Dumping frequently makes excellent commercial sense even if no profits are earned on export sales. It is a mechanism through which companies may achieve full (and thus most efficient) utilization of their plants. Particularly in capital-intensive industries like semiconductors, unit costs of production drop dramatically as output volume increases, and all producers are under economic pressure to run their plants at as close to full utilization as possible. Dumping enables producers to maximize utilization rates by increasing output, but without causing domestic prices to fall, since the surpluses are disposed of outside the home market. This cannot occur in an open market -- market barriers must also exist to prevent the dumped product from being re-exported to the home market. While other factors may also give rise to dumping, especially between countries with significantly different economic structures, the existence of distortions in the home market of a dumping industry often explains why dumping occurs.

The Role of Antidumping Measures in the World Trading System

The General Agreement on Tariffs and Trade (GATT), the system of rules that governs the world trading system, provides that dumping "is to be condemned if it causes or threatens to cause material injury to an established industry" or "materially retards the establishment of a domestic industry." The WTO Antidumping Agreement (recently renegotiated in the Uruguay Round) permits signatories to take remedial action against dumped imports, and prescribes international rules for the conduct of antidumping actions.

Antidumping rules play a vital role in maintaining the delicate balance that the WTO system must strike between the goal of trade liberalization and its members' national political and economic interests. They reduce the friction arising out of competition between economies with fundamentally different structures. In the absence of effective remedies against dumping, political support for the progressive dismantling of trade barriers that is the WTO's fundamental mission would erode. The alternative to internationally-agreed antidumping rules is an uncontrolled, ad hoc regime of tariffs, quotas, and non-tariff barriers.

The Role of the Antidumping Law in U.S. Trade Policy

The antidumping law and the related countervailing duty law provide a limited mechanism for relief to industries injured by dumping and subsidies. The relief provided is prospective in nature and does not compensate for damage done before the duties are imposed. Moreover, the trade remedy laws only address the effect of dumping and subsidies in the U.S. market. They do not address the harm done to U.S. exporters in third country markets where they also compete against dumped and subsidized exports. However, until such time as all subsidies and other trade-distorting practices are eliminated world-wide, these laws are the only effective mechanism for relief for U.S. industries facing unfair international competition.

History of Japanese Dumping of Semiconductors

As outlined in a recent study by the Economic Strategy Institute, Japanese efforts to develop its semiconductor industry led to trade friction and dumping in the early to mid-1980s:

> *Trade friction between the United States and Japan was a natural outgrowth of the Japanese system that generated excess domestic capacity and restricted imports. Knowing full well that higher volume was the key to lower costs, Japanese firms expanded production capacity as fast as possible, outspending their U.S. counterparts in absolute terms beginning in 1981. The fixed costs resulting from this capacity buildup could only be covered by selling excess production in the U.S. market, but to gain market share in the United States, Japanese firms were forced to drop prices below the cost of production. The Japanese firms dumped chips into the United States and maintained artificially high prices at home, a combination that undermined the competitive position of American firms and drove all but two U.S. DRAM makers out of [that] business.*

ESI, Prospects for U.S.-Japanese Semiconductor Trade in the 21st Century at 9 (April 1996).

Dumping was also encouraged by the nature of the semiconductor business cycle, which encourages massive capital spending during periods of growing demand, which quickly can result in the creation of overcapacity during cyclical downturns, leading in turn to dumping of excess production. Because it takes on average 18 months to build a new fabrication plant, industry capacity is often far below demand during the early phase of boom periods. Moreover, since the end of any period of high demand cannot be predicted, capital spending plans may well outlive the boom period, as happened in the mid-1980s. Thus, high levels of production may continue during periods of slumping demand, due in part to high fixed production costs and the need to continue plant operations to realize amortization benefits. This cyclical problem of building up capacity in booms, and dumping during busts, came to a head in the early to mid-1980s.

In 1983-84, world demand for semiconductors (including EPROM and DRAM memory devices) soared, encouraging dramatic investment in production facilities in Europe, Japan and the United States. Capital spending led to significant overcapacity in 1984-85, just as demand began to slump. Despite falling computer shipments, chip makers maintained production at full capacity. In Japan, a protected home market enabled chip manufacturers to maintain domestic prices; excess production was dumped on world markets at heavily discounted prices, often well below the cost of production. Huge losses were experienced by both the Japanese and U.S. industries, with estimated Japanese losses as high as $4 billion in 1984-85 alone. Meanwhile, nine of eleven U.S. chip producers were driven out of the DRAM business. One U.S. producer, Mostek, was driven out of business altogether.

At the semiconductor industry's request, the U.S. Department of Commerce initiated antidumping investigations into 64K DRAMs and EPROMs. Later that year, the U.S. Government self-initiated an investigation into 256K and future generation DRAMs. The 64K DRAM case resulted in antidumping duties of up to 35 percent. While the 64K EPROM and 256K DRAM cases were settled by suspension agreements which included provisions to prevent Japanese dumping in both the U.S. and third country markets, the Department of Commerce issued determinations in these cases finding dumping margins as high as 188 percent (in the case of EPROMs). These suspension agreements were incorporated by reference in the 1986 U.S.-Japan Semiconductor Agreement.

The 1986 Semiconductor Agreement consisted of three main provisions: (1) improved access to the Japanese market for foreign-produced semiconductors (2) the prevention of dumping in the United States; and (3) the prevention of dumping in third country markets. In addition, separate suspension agreements were signed for DRAMs and EPROMs. Unlike past U.S.-Japan agreements, the Agreement and the related suspension agreements did not impose quantitative restraints on imports of Japanese semiconductors, nor did it impose a price floor on imported chips. Rather, its objective was to induce Japanese producers to sell at prices which were cost-based, where the lowest prices would be offered by the firm with the lowest costs. The Agreement also established a monitoring system to provide early warning of renewed dumping.

The 1987-89 Chip Shortage -- The Impact of Successful Dumping on Industrial Users

In the aftermath of the abrupt market exit of most non-Japanese producers of DRAMs in 1985, U.S. and other foreign electronics systems producers who were large consumers of DRAMs began to encounter a variety of major problems in obtaining DRAMs from Japanese suppliers. A shortage of DRAMs materialized in 1987-89 as Japanese DRAM producers, with control of 90 percent of world DRAM production, began jointly regulating their output in order to raise the price of DRAMs.

In April 1986, MITI disclosed that it would implement a new system of regulating Japanese semiconductor production and pricing. The most important feature of this system was the institution of the so-called "guidepost" system utilized by MITI to maintain price and output stability in other capital-intensive industries. Under this system, a committee established within MITI would meet regularly with semiconductor producers to discuss their production plans for the coming quarter and compile production "guideposts" -- indicative production levels whose purpose was to curb overproduction and to stabilize prices. In February 1987, MITI issued administrative guidance to Japanese producers to curtail production by 10 percent. Administrative guidance to make further production cutbacks was issued later that year.

SIA publicly opposed the Japanese Government's production controls and efforts to impose a price-floor on semiconductor prices, declaring them to be inconsistent with the market-oriented terms of the 1986 Agreement. In 1987, the SIA Board of Directors passed a resolution calling for existing sanctions imposed earlier that year against Japan to be maintained until the increased market access provided for under the Agreement was achieved and the Japanese Government-imposed floor prices and production controls had been eliminated. SIA had earlier opposed a Japanese Government proposal to impose quantitative restrictions on exports of Japanese semiconductors. Finally, in November 1987, the Reagan Administration, with the public support of SIA, lifted sanctions earlier imposed on Japan for third country dumping, in part on assurances from MITI that there would be no further production controls or floor prices on Japanese semiconductors.

In March 1988, a GATT panel formed in response to a complaint brought by the European Community upheld the market access and third country dumping provisions of the 1986 Agreement. However, the panel did find that the Japanese Government's "coherent system" of export restrictions of semiconductors, including the production controls and other features of the MITI guidepost system, violated GATT rules against quantitative restrictions.

Once Japanese dumping was halted, the U.S. industry began the road to recovery. U.S. producers were able to reestablish significant DRAM production and save tens of thousands of domestic jobs. As non-Japanese production rebounded, the supply and demand relationship stabilized, permitting a return to full competition in the DRAM industry. Several U.S. companies were able to re-enter the market and expand their production. DRAMs continued their normal price decline of 30 percent per year related to performance. Korean and Taiwanese producers entered the market. World DRAM prices today are lower than ever and international competition among producers remains intense. The result was pro-consumer.

Similarly, in the case of EPROMs, once Japanese dumping was halted, the U.S. industry was able to rebound. Substantial world market share was regained with the advent of FLASH EPROM chips, a technological development made possible only because U.S. producers were provided relief from the injury caused by unfairly traded imports.

If the relief provided for under the U.S. antidumping law had been suspended -- even temporarily -- during the mid to late 1980s, U.S. DRAM production would never have recovered, Japanese producers would still be able to manipulate the price and availability of DRAMs, and U.S. producers would not have developed new products such as FLASH EPROMS. This would have damaged not just the U.S. semiconductor industry, but U.S. industrial users of semiconductors as well.

The "chip shortage" of the late 1980s demonstrates how world electronics markets will behave in the future if dumping is left unchecked. Japanese producers were able to manipulate the price and availability of DRAMs, with damaging effects on many non-Japanese electronics systems producers, precisely because they had destroyed or marginalized all of their competitors. In product sectors where this did not happen, and where a significant non-Japanese supply base remained -- notably EPROMs -- normal competitive market conditions continued to prevail. The DRAM shortage of 1987-89 was simply another manifestation of the market distortions possible when dominance by a cartel had been achieved.

Antidumping deterrence measures, by ensuring the survival of significant non-Japanese production potential constitute an important form of insurance against future chip shortages. While current market conditions make renewed dumping unlikely in the near term, the history of Japanese dumping of semiconductors and the resulting anticompetitive behavior in DRAM production and pricing demonstrate the importance of maintaining a strong and effective U.S. antidumping law, as well as maintaining the deterrence against dumping provided by the antidumping provisions of the 1991 U.S.-Japan Semiconductor Agreement.

The Threat of Renewed Dumping

Although there has been no allegation of Japanese dumping under the 1991 U.S.-Japan Semiconductor Agreement, this is most likely due to tight world market conditions which have existed through late 1995. The antidumping provisions of the Agreement will not be tested unless and until there is a very sharp decline in prices for a particular semiconductor product.

The semiconductor market is very cyclical in nature, as recent sharp downturns in the prices of DRAMs clearly shows. Moreover, it is an industry where products have very short life cycles and one in which change can be very rapid. All of this makes renewed dumping a possibility.

The world semiconductor industry is currently experiencing a period of explosive growth. The global chip industry is expected to more than double in size to approximately $300 billion by the turn of the century. Meeting the demand generated in the next five years will require the construction of over 100 new production facilities or "fabs," each of which will cost anywhere from $1 billion to $2 billion -- and 70 percent of which will be obsolete within three years of their construction due to the short product life cycles of this dynamic industry. Capital expenditures deemed necessary to boost competitiveness may lead in fact to overcapacity and dumping. Several factors contribute to these capacity swings. Most notably, forecasting demand beyond a few months is highly uncertain, and periods of demand start and end abruptly. As a result, periods of overcapacity closely follow periods of undercapacity in the semiconductor industry.

The emergence of Korea and Taiwan as major producers of semiconductors is adding significantly more capacity, which in turn further increases the risks of dumping should a downturn take place in any product segment of the world semiconductor market. However, while Korean and Taiwanese production could help tip the market into overcapacity, the market leaders in DRAMs remain Japanese producers, who have 39 percent of the world market for semiconductors overall and 49 percent of the world DRAM market.

Comments on Proposed Department of Commerce Antidumping Regulations

Given the semiconductor industry's experience with dumping in the 1980s, the industry remains very concerned that an effective antidumping remedy remain available. SIA worked closely with USTR and the Department of Commerce during the Uruguay Round negotiations to ensure that our trade laws were not adversely affected. We also worked closely with the Ways and Means and Finance Committees during the drafting of the implementing legislation to see that U.S. law was not unnecessarily weakened. SIA was a strong supporter of the final implementing legislation because this Committee did an excellent job in ensuring that our laws against unfair trade remained strong and effective.

Now that the Department of Commerce has issued proposed antidumping regulations, SIA believes it is essential to again ensure that the effectiveness of the antidumping law be fully maintained. In our view, the draft regulations recently proposed by the Department of Commerce to implement the statutory changes to the antidumping law made by the Uruguay Round implementing legislation are, with a few exceptions, consistent with the requirements of the new law and the WTO Antidumping Agreement. Overall, they balance the need for rigorous investigations with the costs to the parties of participating in the process. They also improve the transparency of the administration of the antidumping law. Of course, the Uruguay Round agreements did add several additional requirements which have increased significantly the costs to domestic industries of bringing antidumping cases.

With these general comments in mind, SIA would like to comment briefly on a few areas where further refinement of the draft regulations would be in order.

1. Start-Up Costs

The WTO Antidumping Agreement included a new requirement that cost calculations in antidumping cases (for both constructed value and cost of production purposes) be adjusted appropriately for start-up operations. To implement this requirement, the new law provides that, in calculating cost of production and constructed value, an adjustment may be made to take into account that a firm may experience unusually high costs when it is "starting up" a new product or new production facilities. Under the new law, the start-up adjustment is to reflect the lower costs at the end of the start-up period.

These provisions are of particular concern to the semiconductor industry because semiconductor production costs decline rapidly throughout the life of the product. It is therefore essential that the regulations clearly provide that only costs directly associated with manufacturing

the product be considered start-up costs subject to adjustment. Pre-production research and development costs in particular should be excluded from the definition of start-up costs.

2. **Identifying Level of Trade**

In the Uruguay Round implementing legislation, the antidumping law was modified to significantly enhance the importance of any difference in "levels of trade" when comparing sales prices in the exporter's home market and in the U.S. market. For instance, a foreign producer may sell directly to retail end users in the home market, while relying on wholesale distributors to sell to end users in the U.S. market. Where a producer performs different functions in selling to different classes of customers, such as wholesalers and retailers, the Department of Commerce may find different "levels of trade" to exist. The new statute provides detailed instructions for determining whether an adjustment for differences in levels of trade is warranted, and for calculating the proper amount of the adjustment.

The proposed regulations, however, could produce troublesome results in cases where a foreign exporter sells to a related-party importer in the United States -- often a U.S. subsidiary of the same company. In such cases, the Department of Commerce normally must produce a "constructed export price" as the U.S. sales price, because there is no arms-length sale based on market prices. Under the proposed regulations, the level of trade is to be identified on an unadjusted basis in the foreign market, but the level of trade in the U.S. market is to be determined only after deducting all costs and profits that are normally deducted from the constructed export price. The result is that the level of trade for the U.S. sale will usually be deemed closer to the factory than the foreign market level, thereby entitling the foreign producer to either a level of trade adjustment in its favor or a deduction of foreign market indirect selling expenses. The effect is to reduce the calculated dumping margin, sometimes significantly. In short, by "constructing" the level of trade, the foreign producer will receive a level of trade adjustment when none is warranted or authorized by the statute.

3. **Anticircumvention**

In the Uruguay Round implementing legislation, the existing statutory provisions to prevent the circumvention of antidumping orders through establishment of a new final assembly plant in the United States or a third country where only minor assembly of the final product from its parts would be completed was amended. Under the new provision, the final assembled product would be within the scope of the antidumping order if (1) minor or insignificant assembly is done in the United States or a third country, and (2) the value of the parts imported into the United States or the third country from the country subject to the order is a significant proportion of the total value of the finished product.

In its proposed regulations, the Department of Commerce provides for determining the value of the parts imported by an affiliate of the exporter based on the production cost of the inputs. However, the use of production costs fails to capture the element of profit required to determine the value of the parts, thereby skewing comparison with market-based values for the finished products. Further, the proposed regulations are inconsistent in that while the use of production costs is discretionary when analyzing assembly in the United States, it is mandatory when analyzing assembly in a third country. When no market-based value for the imported parts is available, the Department of Commerce's regulations should require that the value of the imported parts be determined by constructed value -- which would ensure that profit is included in the calculation -- for both U.S. and third country assembly.

The Temporary Duty Suspension Act

The efforts over the last several years of the SIA, other interested private parties, USTR, the Department of Commerce and the Congress to maintain an effective antidumping law would be seriously undermined, however, if the Congress were to enact H.R. 2822, the Temporary Duty Suspension Act. This legislation would permit the Department of Commerce to temporarily suspend antidumping or countervailing duties for up to one year (with additional extensions available) if the Department of Commerce finds that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." This finding is left entirely to the Department's discretion, with no statutorily defined factors for the Department to consider in its deliberations. While the bill does provide for an "opportunity

to comment," no other due process procedures are provided. Moreover, the bill does not provide for judicial review of any suspension decision.

While there has not been dumping by Japanese semiconductor producers since the mid-1980s, dumping in particular product segments could again recur. Permitting the Department of Commerce to suspend those duties, even temporarily, would only reward those who dumped while waiting for market conditions to improve, and compound the harm already done to the domestic industry. As explained below, the proposed suspension provision is unnecessary. There are existing mechanisms which may be used to limit or amend the scope of duty orders. Moreover, the proposed bill would undermine the remedial purpose of the law.

Temporary duty suspension would reward dumpers who have driven domestic producers from the market: As explained above, suspension of antidumping duties can indeed reward dumpers, particularly those who have succeeded in driving U.S. producers out of a particular market segment. Duty suspension may also prevent domestic industries from ever being able to produce the product which is alleged to be in short supply, by denying those industries the relief needed to invest in new plant and equipment in order to continue to compete. As the semiconductor industry's experience with FLASH chips demonstrate, relief from unfairly traded imports may be necessary for nascent domestic industries to grow or for new products to be developed. While proponents of the legislation argue that a temporary suspension would end as soon as domestic production begins, the very suspension could in fact prevent domestic production from ever developing.

Existing mechanisms are adequate: Mechanisms already exist under which the Department of Commerce can, and does, consider requests to adjust existing antidumping and countervailing duty orders based on allegations that a particular product is not available domestically. For example, the Department of Commerce recently approved a changed circumstances request based on the fact that the domestic industry did not produce the product at issue. *See Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 Fed. Reg. 7471, 7472 (Dept. of Commerce 1996) (Final Notice and Partial Revocation of Antidumping Duty Order).

There are several such mechanisms currently available. First, the Department of Commerce can adjust the scope of an order during the course of an investigation; this often occurs when a previously-defined like product is not produced in the United States. Second, an existing order can be adjusted during a scope determination. Third, an interested party may petition for review of an order based on changed circumstances. Fourth, the International Trade Commission can exclude "niche" products as part of its injury determination. Unlike the proposed temporary duty suspension provision which would rely solely on the Department of Commerce's discretion, these procedures provide standards by which the decisions of the Department of Commerce or the International Trade Commission may be judged.

The bill would politicize the operation of U.S. trade laws: Under U.S. trade laws, antidumping and countervailing duties are imposed on unfairly traded imports in an amount equal to the level ("margin") of dumping or subsidy determined to exist by the Department of Commerce after a lengthy and thorough investigation, as well as a determination of material injury by the International Trade Commission. This system is designed to ensure that the trade laws act only as a remedy to offset the precise amount of unfair advantage provided to the unfairly traded imports. The discretion provided to the Department of Commerce and the International Trade Commission in making these determinations has been carefully circumscribed by the Congress over time to ensure that these determinations are made on the basis of the facts presented, consistent with the detailed statutory standards established by the Congress, rather than on political pressures. Both U.S. petitioning industries and foreign respondents also have extensive rights to appeal these determinations for review by a specialized federal court, the Court of International Trade.

H.R. 2822 would fundamentally alter the trade laws by granting broad discretion to the Department of Commerce regarding when antidumping and countervailing duties would be applied. The legislation establishes no standard regarding when prevailing market conditions make imposition of antidumping or countervailing duties inappropriate. At best, this makes the Department of Commerce the sole judge as to when market conditions justify providing relief to

a particular industry, with no system of checks and balances for ensuring that decisions are made on the basis of legitimate policy considerations.

Providing the Department of Commerce with discretionary authority to suspend duties interferes with the proper role of the International Trade Commission: Every antidumping or countervailing duty order is preceded by a determination by the International Trade Commission that unfairly traded imports are causing injury to the petitioning industry. In order to find injury, the Commission must first determine that subject imports compete with the domestic like product; where imports and domestic products do not compete, no injury is found. By permitting the Department of Commerce to suspend duties, the bill in effect permits the Department to overrule the Commission.

The bill's suspension mechanism would be subject to abuse: The suspension mechanism provides a readily available loophole for purchasers of unfairly traded imports which are actually substitutable for domestic products. Under the bill, all such a purchaser would have to do is narrowly tailor its specifications so as to exclude all products -- even those which are fungible -- but the unfairly traded import.

The bill is inconsistent with the purpose of the unfair trade laws: The purpose of the unfair trade laws is not to exclude imports. Rather, trade remedies are meant to curb unfair practices; the countervailing duty law, for example, is meant to offset foreign government subsidization. Similarly, and as reflected in the semiconductor industry's experience, the antidumping law provides a remedy to unfair pricing which often results from closed home markets or private anticompetitive practices. Granting even temporary exemptions for unfairly traded products undermines those goals.

Renewal of the U.S.-Japan Semiconductor Agreement

SIA also believes that the protection against dumping afforded by the antidumping provisions of the 1991 U.S.-Japan Semiconductor Agreement should be maintained in any new agreement negotiated with Japan as an insurance policy against renewed dumping.

These provisions simply require Japanese firms to monitor their own cost and price data internally, which encourages self-policing. If an antidumping investigation is launched, the Agreement also provides for a 14-day fast-track response by the Japanese producers in providing the necessary cost and price data previously collected. These two requirements have deterred dumping of semiconductors and will ensure that timely relief would be available to the U.S. industry if dumping were again to occur. This is critical in an industry such as semiconductors with short product life-cycles, where even a temporary halt in a production of a product can force a firm to exit that product sector permanently, as was the case for many U.S. firms engaged in the DRAM business in the mid-1980s.

Maintenance of this system seems particularly prudent when one compares the very small costs of maintaining a system of internal data collection and self-policing by Japanese firms with the potential costs to U.S. semiconductor producers and, potentially, semiconductor consumers, should the severe dumping of the 1980s recur in the near future.

Conclusion

The SIA welcomes this opportunity to present our views on the preceding issues relating to the U.S. antidumping law. This is a very important subject for the semiconductor industry, as the relief provided by this law was instrumental to maintaining the competitiveness of the U.S. industry during a very difficult period. The continued effectiveness of the law is critical from our perspective. Mr. Chairman, I would be pleased to answer any questions.

Chairman CRANE. Thank you, Mr. Boidock.
Mr. Grow.

STATEMENT OF ROBERT J. GROW, CHAIRMAN, AMERICAN IRON AND STEEL INSTITUTE; AND PRESIDENT AND CHIEF OPERATING OFFICER, GENEVA STEEL, VINEYARD, UTAH; ON BEHALF OF AMERICAN IRON AND STEEL INSTITUTE'S U.S. MEMBER COMPANIES

Mr. GROW. Thank you, Mr. Chairman. My name is Robert Grow. I am the president and chief operating officer at Geneva Steel, which is located in Utah. I am also the chairman of AISI, the American Iron and Steel Institute. AISI has approximately 50 companies today in Mexico, Canada, and the United States, producing about 70 percent of all of the steel made in North America. Today, however, I am representing only our U.S. members.

I came to this industry from another prior life in 1986, when I helped a group of Utahans purchase a steel plant that was being closed. In the early eighties, steel imports into the United States surged to over 30 percent. There were a number of major integrated steel plants in the West. Only one of those survived, and that is the one we purchased.

There were 48 large integrated plants in the United States and only 22 of those have survived to today, as a result of the predatory pricing and dumping that occurred during that period.

I would like to quickly reflect on some of the things I have learned, as I entered into a new industry. First, government ownership and control is alive and well in our industry. More than one-half of the world's industry is still government owned or controlled, although there is an effort toward privatization.

Second, government subsidies continue. EU, the European Union, subsidies alone over the last 12 years have been more than $50 billion, which is enough to rebuild one-half of the American steel industry with brandnew plants.

Third, government involvement is alive and well in other ways. For example, the EU has put a quota on steelplates coming from all of Russia and the Ukraine of 100,000 tons a year. We are absorbing 100,000 tons a month being delivered here by trading companies out of Europe to divert it from their own market with the help of their government.

I was intrigued to listen to the preceding discussion because Micron recently announced a new plant in Utah. I am vice chairman of the State Economic Development Board. It was a $1.5 billion plant that would have supplied 3,000 jobs, many of them high-paying jobs. That project, now half built, has stopped, and the day it stopped in Utah, the Malaysian Government offered to build the plant for free and provide it to Micron if they would move the facility to Malaysia. Government involvement in steel and other industries is alive and well.

Now, in 1992, we in the steel industry began to learn something else that is affecting international trade. The international steel cartels all of a sudden became apparent from investigations that were occurring. I have seen minutes of the meetings where the international steel companies have divided up the world market over the last 20 years. For example, the Japanese and Europeans

have agreed not to ship into each other's markets. The Koreans have likewise agreed not to ship into the European market. The Japanese have agreed with many other countries to limit their exports to their country in exchange for export limits into Japan. The result of that has been, whenever any major market in the world is weak, the excess capacity from those who have entered into the cartel agreements flows into the major open markets of the world, particularly the U.S. market. This has resulted in endemic dumping in our market for decades. I have seen the minutes of these meetings, which were quarterly, where the prices were fixed and world markets were allocated. If you want to hold a hearing on issues that affect open markets around the world, I would be glad to come back and talk about those issues.

We have been asking for 5 years in the Multilateral Steel Agreement talks for one simple provision which says governments will not tolerate the kinds of anticompetitive practices like price fixing and allocation of markets that close other markets and distort trade in both international and domestic markets.

What impact has this had on us? We have had the lowest steel prices in the world consistently for decades, while in areas like Japan, with protected markets, they have had huge subsidies, private subsidies flowing in of more than $100 billion, which could have rebuilt their industry in a 10-year period.

I would be glad to answer questions later, but we are also particularly concerned about duty suspension. Duty suspension is exactly that. It affects the price; it doesn't affect the ability of products to come into this market. Any steel product made in the world can be sold here freely. What we are talking about is whether or not we reward those who have been involved in these kind of activities worldwide by giving them lower pricing in this market so they can continue to take market share, as they have in the past, rewarding their predatory pricing and activities in the past.

Thank you.

[The prepared statement follows:]

Statement of
Robert J. Grow
President and Chief Operating Officer, Geneva Steel
and
Chairman, American Iron and Steel Institute

on behalf of
The American Iron and Steel Institute's
U.S. Member Companies

Regarding the U.S Department of Commerce's Proposed
Antidumping Regulations
and the
Temporary Duty Suspension Act
April 23, 1996

We appreciate the opportunity to testify on the proposed Department of Commerce (DOC) regulations implementing the antidumping provisions of the Uruguay Round Agreements Act (URAA) and H.R. 2822, the Temporary Duty Suspension Act. This statement sets out the views of U.S. members of the American Iron and Steel Institute (AISI).

Summary

H.R. 2822, the Temporary Duty Suspension Act, would give the DOC discretionary authority to suspend or reduce antidumping or countervailing duties on a specified product if the DOC determines that "prevailing market conditions related to availability of the product in the United States make imposition of such duties inappropriate." This legislation would reduce the effectiveness of U.S. trade laws, politicize their application and vest the DOC with inappropriate and unprecedented power to make arbitrary decisions undermining these laws. The DOC itself opposes the granting of this authority. While antidumping and countervailing duties may result in some consumer price increases in the short run, they produce more competitive markets that in the long term benefit all consumers. Availability issues can be addressed adequately under mechanisms provided for under current law. U.S. antidumping and countervailing duty laws exert pressure on foreign nations to open their markets and rely less on private cartels, subsidies and dumping to support uneconomic producers. H.R. 2822 would effectively eliminate the positive effects these laws have on creating more open world markets. We therefore urge the Subcommittee to reject the proposed legislation.

The U.S. members of AISI supported the Uruguay Round despite the fact that elements of the implementing legislation weakened the effectiveness of U.S. trade laws. The proposed DOC regulations implementing the URAA, while generally acceptable, contain certain provisions that could result in the further weakening of the effectiveness of U.S. antidumping law. We believe aspects of the proposed regulations should be revised to ensure that they do not add to the weakening of antidumping law that resulted from the URAA.

Background

The Domestic Steel Industry

Successful competition in today's global marketplace requires a vigorous manufacturing base. Steel is fundamental to that base. It is essential to manufacturing, infrastructure and defense -- the mainstays of every advanced economy.

In the United States, steel is a $45 billion annual business, providing quality, high paying jobs for its 170,000 employees and supporting 500,000 retirees and their dependents. These jobs are vital to the economic health of America's heartland. In addition, steel-generated demand for key raw materials, such as coal, iron ore, and limestone, provides employment in a number of regions where other jobs are scarce. The steel industry is also a major consumer of computers and other high-tech equipment and makes extensive use of the nation's rail, trucking and shipping industries. As a result, steel is a

major contributor to the economy and to the tax base -- particularly that of states and local communities.

Today, the United States has a world class steel industry. The U.S. steel industry in the 1980s undertook a painful restructuring, investing $35 billion in modernization -- more than the industry's total cash flow. The work force was cut by 57 percent from 1980 to 1992, and 450 facilities were closed. Reflecting this massive overhaul:

- The U.S. steel industry is now among the world's low cost producers for the U.S. market.
- U.S. labor productivity (man hours/ton) in the steel sector has attained world-leading levels.
- U.S. steel quality is second to none.
- The United States is emerging as a center of innovative steelmaking technology.

Foreign Unfair Steel Trade Practices

Because of the strategic importance of steel, governments around the world have sought to establish, nurture and protect their own steel production capacity. As a result, world trade in steel has been more distorted by government intervention than in any other manufacturing sector. These distortions, which have seriously damaged a highly competitive and strategically important U.S. industry, generally take two forms.

- Dumping. Private cartels and comprehensive import protection have restrained competition and diminished market pressure on foreign producers to cut back excess capacity -- giving rise to injurious dumping. Dumping occurs when producers practice price discrimination between markets, selling products at a higher price in their home market than in export markets or selling in export markets at below the cost of production. This is possible when imports into their own market and internal competition are restricted through private cartel arrangements (formally or informally sanctioned by government) and through direct government action.
- Subsidies. Foreign governments subsidize their steel producers directly and indirectly. Typical subsidies include equity infusions, soft loans, "restructuring" aid, debt relief, grants and below-market interest rates. Subsidization of foreign steelmakers is staggering, amounting to over $100 billion between 1980 and 1992.

After exhaustive investigation and analysis, the U.S. Government has confirmed the enormity of unfair trade in the steel industry. In its 1993 investigation of foreign trade practices, the DOC and the U.S. International Trade Commission (ITC) found massive subsidies and pervasive dumping, and imposed weighted-average countervailing and antidumping duties of 37 percent on foreign steel products from 20 countries.

Despite these actions, trade-distorting practices continue. For example, in 1994 Spain announced a plan to give more than $3.1 billion in debt relief and new equity capital to the parent company of two major Spanish steel producers. In 1995, the DOC, in its annual administrative reviews of antidumping orders, found that many foreign steel producers continued to dump their products in the U.S. market.

In many respects the continued phenomenon of dumping is a function of private cartels that are designed to stabilize prices by maintaining a constant state of slight shortage in their respective domestic markets. This is achieved by frequent meetings at which production and sales data are pooled and forecasts developed that function as production ceilings for a given time frame. The success of such arrangements depends, of course, on strict import restrictions -- otherwise, even a small unplanned increase in imports can cause prices to fall.

These collusive private agreements keep steel trade between European, Japanese and Korean mills to a minimum; impede highly competitive U.S. steel exports; and lead inevitably to pervasive dumping of foreign steel in the U.S. market. While foreign producers enjoy high prices and restrained competition at home, the U.S. market is subjected to price cutting that is not cost and efficiency-based. It simply reflects the ability of foreign producers to dump from behind a protected wall.

The Uruguay Round Agreements, while positive in some respects, do not eliminate dumping and the cartels that make it possible. They also do not prohibit harmful subsidies.

Our goals are to eliminate foreign government subsidies to steel, to open world steel markets, and to end foreign steel cartel practices such as price fixing and allocated markets. We hope to achieve these goals in a Multilateral Steel Agreement. If we do, and the Agreement works as intended, there may be less need to use trade laws in the future. But we have no illusions. We will need to maintain effective U.S. antidumping and countervailing duty laws.

U.S. Antidumping and Countervailing Duty Laws

Under U.S. trade laws, antidumping and countervailing duties may be imposed on unfairly traded imports in an amount equal to the level ("margin") of dumping or subsidy determined to exist by the DOC after a lengthy and thorough investigation. This process includes extensive opportunities for foreign producers to submit detailed information in response to complaints and findings. Duties are only imposed, however, if the ITC also determines -- after an independent investigation which provides further opportunities for foreign producers to present their arguments -- that material injury has occurred. This system is designed to ensure that the trade laws offset only the precise amount of unfair advantage provided to dumped or subsidized imports.

The discretion provided to the DOC and the ITC in making these determinations has been carefully circumscribed by Congress over time. This limited discretion helps ensure that decisions are insulated from political pressures and are made on the basis of the facts, consistent with the detailed statutory standards established by the Congress. Both petitioning U.S. industries and foreign respondents also have the right to appeal DOC and ITC determinations to the U.S. Court of International Trade.

The fair and consistent application of these laws against unfair trade is critical to U.S. steel producers who must compete in a market characterized by pervasive foreign subsidies and dumping.

The Temporary Duty Suspension Act

H.R. 2822 would result in a serious weakening of U.S. trade laws by granting the DOC broad authority to reduce or remove at its discretion antidumping and countervailing duties previously imposed on imported products. Specifically:

- The DOC would have the authority to suspend or reduce antidumping or countervailing duties any time the DOC finds that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." There are no criteria in the bill that define the market conditions that would warrant such a conclusion. Moreover, no provision is made for judicial review.

- Because the legislation would allow the DOC to reduce as well as suspend duties, the DOC could set a duty at a level less than the margin of dumping or subsidy previously established through statutory methodologies.

- The bill allows for an initial duty suspension of one year, but the suspension may be extended indefinitely through successive one-year periods.

- Duties, once suspended, may be reimposed only if the DOC finds there is "insufficient basis for continuing the suspension."

Similar proposals were rejected when the Uruguay Round implementing legislation was considered in the last Congress. The House Committee on Ways and Means and the Senate Committee on Finance rejected in bipartisan votes these short supply proposals, which were also opposed by the Administration.

H.R. 2822 would give the DOC broad license -- but little guidance -- to overrule its own and ITC rulings on unfair trade practices. A temporary duty suspension provision should be rejected for five major reasons: (1) It would conflict with the purpose and intent of U.S. trade laws and reduce their effectiveness. (2) It would hurt consumers in the long run. (3) It would create significant political and administrative problems. (4) It is modeled on irrelevant precedents. (5) It is unnecessary.

1. A temporary duty suspension provision would reduce the effectiveness of U.S. trade laws.

The ostensible purpose of H.R. 2822 and other duty suspension proposals is to alleviate so-called "short supply" situations -- i.e., situations in which a product is not currently available from a U.S. producer. The argument for such measures, however, is based on a fundamental misunderstanding of how antidumping and countervailing duty orders work.

A key purpose of the trade laws is to help achieve open and fair competition in the U.S. market. As a remedy against foreign unfair trade practices, the amount of the dumping or subsidy provided to the subject imports is offset at the time of importation by an equivalent duty. This imposition of a duty ensures that an affected import is priced fairly. An antidumping or countervailing duty order, however, does not render a product unavailable in the domestic market. It is not a quota or voluntary restraint arrangement (VRA) which limits the amount of a product that can enter this country. Rather, an antidumping or countervailing duty order only requires that the imported merchandise be sold at a fair price.

The practical effect of a duty suspension mechanism would be to create a right to obtain imported goods at prices that are less than fair value. Such prices result from dumping and subsidies, not competitive market forces. The fact that the bill provides for reducing duties as a means to increase availability shows that price, not supply, is the issue that concerns supporters of the legislation.

When unfair trade practices are permitted to keep prices artificially low, U.S. industry is unable to raise the capital to re-invest and again manufacture the products involved. A suspension of duties even on a temporary basis would simply perpetuate a situation in which potential U.S. producers would be unable to earn a sufficient return on capital to re-enter the market.

Thus, H.R. 2822 would reward those foreign companies that have driven U.S. products out of the market through dumping or subsidies by denying U.S. companies the ability to invest in new plant and equipment. This would be particularly harmful to U.S. steel companies and workers and is at odds with the very purpose of our trade laws.

2. Consumers will lose in the long run.

- **Reduced Competition and Job Loss**

When foreign dumping and subsidies drive U.S. producers from the market and reduce competition, consumers, including downstream manufacturers, lose in the long run. In the words of Jeffrey E. Garten, former Under Secretary of Commerce for International Trade:

> In the short run, the consumer may have to pay higher prices for individual goods. . . . However, without antidumping enforcement, in the long run the consumer will ultimately be the one to pay as reduced competition enables foreign producers to raise prices. Moreover, the consumers as citizens will also pay in terms of high unemployment as well. In the long run, the consumer will ultimately benefit as increased supply by domestic producers ensures a stable and competitive market place, in which industrial users are not forced to rely only on off-shore sources for components which may very well be controlled by their direct competitors.

Proponents of a temporary duty suspension provision argue that it is only intended to help users of products subject to duties to remain competitive in the world market. There is no way, however, to remove or reduce duties without encouraging foreign producers to continue the same practices that led to the original imposition of duties.

- **Duties Do Not Affect Economic Growth**

Supporters of duty suspension legislation have also argued that the imposition of antidumping and/or countervailing duties on unfairly traded imports has somehow materially decreased or slowed supply and threatened U.S. economic growth. With respect to steel in particular, such allegations are without foundation. First, these arguments ignore the fact that imposition of duties does not establish an import quota or embargo or otherwise restrict importation. Imports found to be unfairly traded may continue to enter the country in unlimited volumes. The additional duty they bear merely offsets the degree of dumping or subsidization.

Second, steel is relatively price inelastic. This means that modest price increases have little effect on the volume of steel consumed. Demand for goods containing steel -- autos, appliances, building materials -- is determined by overall income growth in the economy and not by modest price changes for steel products. The suggestion by some that price increases in 1994, returning steel companies to profitability after two years of losses, threatened to choke off the U.S. economic expansion is inconsistent with economic reality.

Third, supporters also contend that lead times for obtaining steel lengthened and that customers were put on allocation in 1994 as a result of the antidumping and countervailing duties imposed in 1993. In fact, there is no evidence that duties had a significant role. In 1994, the U.S. economy was growing rapidly, increasing demand for all goods, and market conditions tightened. To assure their steel supplies, some customers placed orders with more than one producer which, in turn, led producers to allocate their output. At the same time, international steel markets were also tight and world steel prices rose -- much more, in fact, than prices in the United States. If U.S. duties had been the culprit, we should have seen U.S. prices rise faster.

3. **A temporary duty suspension provision would create significant political and administrative problems in the application of U.S. trade laws.**

- **Politicizing U.S. Trade Laws**

The proposed legislation provides no standards, guidelines or criteria for determining when prevailing market conditions make imposition of antidumping or countervailing duties "inappropriate." Moreover, the legislation does not provide for judicial review. The burden of making such decisions would fall solely on the DOC with no recourse to the judicial process to ensure that decisions are fair and equitable. In addition, the lack of clear statutory standards would encourage the intrusion of politics into a process designed to be open and facts-driven. The DOC, as well as other agencies, would be the object of political pleadings by foreign and domestic producers.

The U.S. trade laws provide objective standards for determining the presence of dumping or subsidies; any effects these practices have had on prices; and, whether such practices have resulted in injury to a U.S. industry. The process by which these determinations are made is open and transparent to all parties involved. A temporary duty suspension provision with no statutory criteria for its use would cloud this process and lead to the arbitrary application of U.S. trade laws.

The uncertainties created by a temporary duty suspension provision could act as a trade law barrier to U.S. producers who have suffered injury by unfair trade practices. It could discourage them from seeking relief under trade laws. Seeking relief requires a significant commitment of time and resources with no assurance that the DOC or the ITC will issue a determination favorable to the petitioner. By introducing the possibility that a decision could be reversed on political grounds -- after unfair trade practices had been proven -- a temporary duty suspension provision would act as a deterrent to smaller, emerging industries which otherwise might pursue the remedies provided by trade laws.

In addition, the discretionary authority provided under a temporary duty suspension provision would allow the DOC to pursue a national industrial policy by granting duty suspensions to industries that an Administration regards as important to the economy. The Congress should not give the executive branch the option of using the trade laws to create "winners" and "losers" according to its vision of industrial policy.

- **Conflict with the Role of the ITC**

Under U.S. trade laws, the ITC must find whether dumped or subsidized imports are causing or threatening to cause injury to a petitioning industry. To find injury, the ITC must determine that U.S. industries compete or will compete with the imported products. The injury analysis is rigorous and it is not uncommon for U.S. producers to be denied relief by the ITC even after they have received high antidumping and countervailing duty margins from the DOC. A temporary duty suspension provision would give the DOC authority to override the ITC and suspend duties on products found by the ITC to compete with domestic goods. A temporary duty suspension provision would also result in the DOC's wasteful duplication of the ITC's analysis of U.S. market conditions.

- **Potential for Abuse**

Proponents of a temporary duty suspension provision maintain that the provision would be used only in situations where U.S. companies require products with unique specifications that no U.S. products meet. It is important to note that no such limitation is set forth in the legislation. Congress should be aware that there have been steel cases of alleged "no domestic supply" where U.S. producers are in fact able to supply the product. Our concern is that this provision would create an incentive for purchasers and producers of dumped or subsidized goods to develop specifications so narrow that only the dumped or subsidized goods could meet them. As a result, the DOC bureaucracy would be required to determine such questions as whether adequate substitutes exist for the products at issue in terms of their performance, price and quality. This would involve the DOC in business decisions best left to the private sector.

4. Other provisions in U.S. and European law are not relevant models for a temporary duty suspension.

- **Comparison to VRA Short Supply Not Appropriate**

Proponents of temporary duty suspension frequently point to the short supply mechanism under the now defunct steel VRAs to suggest that product-specific suspension of antidumping or countervailing duties is appropriate and administratively feasible. In fact, comparisons to the VRA model are misleading. First, under the VRAs, the volume of imports of particular steel products was limited. As noted above, the imposition of antidumping or countervailing duties does not limit the quantity of imports. Second, the VRA short supply mechanism applied only to a relatively narrow and quite homogeneous group of products. Because the steel products involved in the VRAs were so similar, the analysis of product characteristics, producers, market conditions, and the like was relatively straightforward. The proposed temporary duty suspension provision, however, would apply to any product affected by antidumping or countervailing duties, products ranging from agricultural commodities to chemicals to industrial machinery to consumer electronics. Developing and maintaining the expertise to analyze properly the relevant factors for such a breadth of industries, products and markets would be a costly, perhaps impossible task. A large volume of such requests could inundate and overwhelm the DOC, creating gridlock for both duty suspension requests as well as antidumping and countervailing duty investigations.

- **Comparison to European Union Temporary Duty Suspension Provision Not Appropriate**

Proponents of H.R. 2822 also point to the fact that the European Union (EU) adopted a temporary duty suspension provision in December 1994 and that only one suspension request has been granted since the provision took effect. However, there is no valid basis for comparison with H.R. 2822 because of the vast fundamental differences in the nature of the European and U.S. trade law systems. First, EU antidumping law has, for several years, included a provision that allows the EU Commission either to

revoke or not impose antidumping or countervailing duties if it can "clearly conclude that it is not in the Community interest to apply such measures." The EU temporary duty suspension provision is merely an extension of this provision, providing for temporary as opposed to permanent duty suspension. Nowhere in either EU provision is the issue of availability identified as a consideration for duty suspension. Since the EU is a union of sovereign states, ample discretion, as provided for in the "Community interest" provision, is necessary to determine if the imposition of duties would benefit all member states. Moreover, in the one instance in which the Commission actually granted a temporary duty suspension, availability was not an issue.

Second, the EU provision specifies that duties may be suspended where market conditions have temporarily changed "to an extent where injury would be unlikely to resume as a result of the suspension." H.R. 2822 does not provide for an injury test, and grants the DOC unilateral discretion to determine when prevailing market conditions related to the availability of the product make duties inappropriate. The ITC, which has responsibility for determining injury under U.S. trade law, would have no role.

Third, under the EU system, once antidumping duties have been assessed, it is extremely difficult to adjust them upward or downward. In the United States, the administrative review process adjusts duties to take into consideration changing market conditions or the fact that the foreign exporter has ceased dumping. The EU, on the other hand, seldom grants annual review requests and, thus, duties are rarely adjusted.

Finally, the EU system is much more informal and provides far less administrative and judicial review. In the United States, the DOC and ITC are required to follow detailed statutory and regulatory guidelines in an open, transparent process that is designed to be insulated from political pressures. The EU Commission, however, is given broad discretion to impose duties that are equal to or less than the amount of dumping or subsidy found and deemed to be in the best interest of the EU member states. As a result, the EU process is less transparent and more vulnerable to political influence than the process under U.S. law. Therefore, a purely discretionary measure, such as H.R. 2822, is entirely inconsistent with the U.S. system which is open and rules-based.

5. Adequate procedures exist for addressing availability issues.

Existing law provides four mechanisms to deal with any real instances of no domestic supply:

- First, the DOC can define and clarify the scope of an antidumping or countervailing duty proceeding during the investigation phase. This enables the DOC to exclude from coverage of any order products that are not relevant to the purpose of the petition.

- Second, the ITC can find "niche" products and exclude them from an injury finding. Any product not subject to an affirmative injury finding cannot be subject to duties.

- Third, once an antidumping or countervailing duty order is in effect, the DOC has the authority to clarify the scope of the order to exclude imported products that are not addressed or intended to be addressed in the order.

- Fourth, the DOC and ITC both have the ability to undertake a "changed circumstances" review and revoke all or part of an order.

The most frequently used mechanism is clarifying the scope of an order. Where there is no U.S. production of a product that can compete with the imported good subject to an antidumping or countervailing duty order, or no industry interest in producing the product, the order may be amended to exclude that product. From October 1993 to December 1995, the DOC investigated requests to exclude 135 products from the scope of antidumping or countervailing duty orders. Of these, the DOC found that 106 were not subject to duties. (These figures do not include exclusions from scope made in the course of the original investigation.)

The steel industry supported such adjustments willingly both in the 1993 investigations and after the determinations were made. For example, the DOC recently exercised its authority to exclude products

from the scope of antidumping duty cases. Canadian producers requested that the DOC conduct a "changed circumstances" review to determine that a particular kind of cobalt-free plate be exempt from antidumping duties. The domestic industry did not oppose excluding the product from antidumping duties and no such duties will be imposed on this product.

Finally, it should be noted that any availability problems related to the imposition of duties can be cured automatically through the administrative review process. Under this process, if the dumping or subsidy that prompted the original duty is found to have stopped, then the duty is removed.

If there is concern that these mechanisms are insufficiently responsive or work too slowly, then consideration should be given to ways of streamlining the administrative process. AISI's U.S. member companies support expediting the DOC's scope and "changed circumstances" rulings. If the process could be further streamlined -- without harming U.S. trade law enforcement -- this, too, would have our support.

There is no reason, however, to add another bureaucratic process to the existing ones. Although a duty suspension would be called "temporary," as opposed to the current processes that result in permanent changes in scope, this would not alter its effect on the injured industry. So long as dumped or subsidized products can be imported at artificially low prices, domestic producers will have no incentive to enter or remain in the market. In fact, as drafted the proposed legislation gives preference to continuing a "temporary" suspension, once granted. The only basis for reimposing duties would be a finding by the DOC that there is "insufficient basis for continuing the suspension."

Conclusion

The United States' trade laws have been carefully structured to promote free and open markets linked by vigorous and fair trade. The process by which these laws are administered is among the most objective and transparent in the world. All parties are afforded access and the opportunity to present their views, and the resulting determinations are based on clear, impartial standards. H.R. 2822 would amount to a "Trade Law Suspension Act" and should be rejected. It would undermine the principles and processes of current trade laws by introducing political pressure, subjectivity and unpredictability and would reduce our capacity to foster open markets. It would discourage new capital investment; limit the ability of U.S. producers to restructure to meet the changing demands of the marketplace; and reward foreign producers who have been proven to engage in continuing unfair trade practices that are injuring U.S. industry. Any legitimate availability issues can be addressed through existing mechanisms under current law.

The Department of Commerce Proposed Antidumping Regulations

In order to conform with our revised international obligations under the WTO Antidumping Agreement, the URAA made extensive changes to U.S. trade laws, including those which have increased significantly the costs to petitioning domestic industries to participate in antidumping proceedings. The regulations proposed by the DOC to implement the URAA antidumping provisions represent a constructive first step in the regulatory process. They are faithful to the WTO Antidumping Agreement and consistent with the URAA. They seek to achieve an appropriate balance between investigative rigor and the costs of participation on the parties. The DOC has maintained, and in some instances enhanced, the overall transparency of the process. The proposed regulations contain improvements to certain administrative procedures. For example, the proposed regulations would permit business proprietary data to be discussed at hearings, making them a more useful forum for examining information and issues. The DOC also is to be commended for proposing to permit counsel for domestic interested parties to retain, and discuss in successive administrative reviews, a respondent's business proprietary information obtained under administrative protective order. This latter change would redress a long-standing imbalance in access to information that has favored foreign respondents and would, for the first time, permit counsel for domestic interested parties to monitor the consistency of a respondent's submitted information from year to year.

However, certain provisions have the potential for excessive, self-imposed restraints on the DOC's investigative reach and fail to distinguish properly between foreign respondents that are forthcoming with information as opposed to those that selectively withhold information. The DOC's role is to assess accurately and fairly whether dumping is occurring and, if so, the amount of the dumping. These regulations should not weaken the DOC's ability to ensure that it obtains the information it needs to carry out the intent of U.S. trade laws.

Among the most important issues of concern is that of "level of trade." This phrase encompasses a number of elements critical to the DOC's calculations: identification of proper comparisons, the adjustment for differences in levels of trade, and whether the so-called "level of trade offset" adjustment will be made. The proposed regulations substantially change the DOC's practice with respect to level of trade issues, often in ways unduly favorable to respondents and clearly not contemplated by Congress. Unless the DOC obtains all necessary information from the foreign respondent companies and unless the DOC takes measures to prevent manipulation, this complex area of the law could be used to evade the imposition of antidumping duties. Some additional areas of priority concern are described below.

- **Date of Sale**

Identification of the proper date of sale is critical to the integrity of the antidumping analysis because that date determines which U.S. and home market sales are compared and, therefore, the margin of dumping. The DOC's longstanding practice has been to use the date on which the material terms of sale are agreed as the date of sale, a practice consistent with the WTO Antidumping Agreement.

In its proposed regulations, however, the DOC has stated that it intends to abandon its practice for a "bright line" rule and will "ordinarily" use invoice date as the date of sale. The DOC's use of the term "ordinarily" will, in practical effect, be administered as "except in the most rare of circumstances." This strong presumption and foreign respondents' complete control over when invoices are issued offers respondents an effective and low-risk means of skewing or masking dumping margins. A difference of a matter of days may significantly alter the sales compared and the margins calculated.

Accordingly, the DOC should not change its current, longstanding practice regarding identification of the date of sale in the face of this potential for manipulation. If the DOC believes that it must create a different general rule, date of shipment is far preferable to date of invoice because respondent has much less ability to manipulate when products are shipped to the customer. Date of shipment would be readily verifiable while avoiding the potential for manipulation inherent in date of invoice.

- **Market Viability Determination**

In the process of determining whether dumping has occurred, the DOC must decide whether to compare a foreign producer's U.S. sales to the producer's home market sales or to the producer's sales in a third country market. Under prior law, this decision was based solely on whether the home market had a sufficient number of sales of the merchandise to assure that the prices were representative of the foreign company's sales practices. The new law provides for using a producer's third country sales as the comparison market when the producer's home market, although sufficiently large, may "not permit a proper comparison" because of a "particular market situation." Examples of such "particular market situations" that may prevent an accurate measurement of the amount of dumping include government control of prices and substantial seasonal variations in demand. In these cases, the U.S. industry is permitted to provide evidence that the foreign producer's home market should not be used for price comparisons.

In the preamble to the proposed regulations, however, the DOC indicates that it will establish an extraordinarily high burden of proof for U.S. industries that propose using a third country market for comparisons. The proposed regulations would also establish a deadline for presenting evidence so early in the process that the foreign producer may not even have submitted to the DOC a response to the original dumping allegations. The twin burdens of proof and deadline would effectively preclude such allegations from being made or accepted. The DOC should establish a burden of proof similar to that used to evaluate other types of allegations during the course of antidumping proceedings and the

deadline should be revised to permit both a realistic appraisal of the data and preparation of a well-documented allegation.

- **Disclosure of Information and Sufficiency of Information**

The DOC and the courts have long recognized that the respondents cannot be permitted to control the antidumping inquiry simply by virtue of the information they choose to withhold or disclose. However, the proposed regulations do not adequately define the obligations of respondents to disclose relevant information in antidumping proceedings. Therefore, the regulations should be revised to:

-- specify that the DOC will, as permitted by the statute, normally use an adverse inference whenever an interested party fails to cooperate by not acting "to the best of its ability";

-- clarify that the "best of its ability" standard is strict and does not permit a respondent to maintain less accurate records during later periods of the review process than it did during the original investigation; and

-- establish that respondents, as the party controlling access to the relevant information, have the burden of demonstrating that they are entitled to any beneficial price adjustments or other decisions that are favorable to them.

Issues Raised by Steel Importers

Steel importers have raised certain objections to the proposed regulations. For example, they object to the failure to include a short supply provision in the proposed regulations. There is no statutory authority, however, for the DOC to authorize by regulation the suspension of duties on the basis of product availability. This issue was thoroughly examined and rejected by this Committee during the consideration of the URAA. Accordingly, contrary to the suggestion of steel importers, the DOC cannot circumvent the legislative process through promulgation of regulations. Steel importers also contend that the proposed regulations improperly permit the DOC to deduct absorbed or reimbursed countervailing duties from the price in the United States. Contrary to this contention, the WTO Antidumping Agreement and the URAA provide for deduction of import duties. In addition, countervailing duties absorbed or reimbursed by the seller are a direct sales expense that must be accounted for if an "apples-to-apples" price comparison is to be made. We concur with steel importers' concerns that the proposed regulations should clarify rules for automatic duty assessment and codify the current arm's-length test as a prerequisite to using prices of sales to affiliated parties in the home market to measure normal value. At the same time, however, the DOC should be receptive to evidence indicating that sales to unaffiliated parties have been manipulated by foreign respondents to achieve their desired results.

Conclusion

The drafting of the regulations to implement the URAA is the final phase in a process which began with the opening of the Uruguay Round in 1986. How these regulations are written can be dispositive of whether and to what extent antidumping and countervailing duties are applied to dumped and subsidized imports. The DOC should take this opportunity to preserve the strength of U.S. trade law and ensure that domestic producers are afforded adequate access to trade law remedies.

Chairman CRANE. Thank you, Mr. Grow. Let me again throw some questions out to the entire panel. Let's first deal with H.R. 2822. You folks paint a convincing picture that antidumping relief has helped your industries, and I am not seeking to take that relief away, but to explore relief for other U.S. companies if it doesn't injure your industry. If your customer cannot obtain a product domestically and is forced to pay high duties for the imported product and then either goes out of business or moves overseas, haven't you lost a customer? If that producer is able to obtain the product in the United States and if the customer stays in the United States, wouldn't that send you a signal you should produce the product and guarantee you will have a customer here if you decide to produce that product?

Does anyone care to respond?

Yes, Mr. Grow.

Mr. GROW. I would like to first. I appreciated Bill Hickey's list of products the SSCI is gathering from its survey. The American Iron and Steel Institute sent the head of the SSCI a request that they perform this survey so we could look at the list of products that they were uncertain could be produced in the United States or were being produced. In the 2 hours since we have had this list today, we have found producers for 6 of the 25 products listed here, and I think, given a little more time, we could provide producers for most of these products.

So the answer to your question is, We want healthy customers. The people that Bill Hickey represents happen to be 80 percent of my customer base at Geneva Steel, the service centers, and what we need is better information in advance, and that is why we requested them to perform the survey so we could demonstrate that products are, in fact, being made in the United States with a newly renovated and stronger steel industry, which has been growing here in the United States.

To repeat, we want healthy customers. We do not want to keep our customers from producing and providing the goods and services they want to. But we, also, believe there are some—politely—some games being played as to what products are available in the United States or can be produced in the United States, and we would like the opportunity to continue to respond to these lists as they are put forth.

Three of the ones listed here came forward in a prior hearing and LTV within 1 week announced they could produce those products, and two-thirds more of them have been checked on the phone today while we have been waiting to testify.

Chairman CRANE. Very good.

Mr. Boidock.

Mr. BOIDOCK. Mr. Chairman, we, too, want healthy customers and, to that end, we have been working for years with our customers to try to fashion some effective supply provision for this law to no avail. We cannot do it. I submit that, if the semiconductor producers were permitted to go out of business or went out of business in the eighties or went out of business today, that would be worse for our customers than having the situation that exists today.

We have worked very hard to find a resolution, but we have been unsuccessful.

Mr. REGAN. Mr. Chairman, we have never faced a situation where a customer has not been able to get a product because of a dumping duty. They can get it. They might have to pay a little bit more for it, but they can always get it. So we have never really faced a situation where we would lose a customer. It has never been a problem.

Mr. GROW. We have had a couple instances in the steel industry where there are products that are not produced in the United States and producers do not want to produce them. For example, cobalt free steel, nuclear free steel and cobalt plate, where we have consented in the procedure for changed circumstances. I believe that procedure needs to be streamlined. Give our industry 30 days to find out if we can produce it or want to produce it, 30 days for a decision to be made, and I think that would solve most of the problems. I talked with Bill Hickey about that as a potential solution, which would expedite our customers getting what they need and, at the same time, give us the opportunity to produce it if we can.

Chairman CRANE. In what ways could we amend H.R. 2822 to assure the authority is not abused and covers only situations in which the product is truly not available from U.S. producers?

Mr. REGAN. Mr. Chairman, I think the better focus might be to try to work with the Commerce Department on this whole question of changed circumstances and work with the ITC. We have been through situations where allegations have been made, and it is a fairly intensive process to try to go out there and really ferret out the facts because the government, ultimately, has the burden of doing that. There are lots of allegations made on both sides, and we found the changed circumstances prove to be a fair and reasonable process for determining whether, in fact, a product is truly available in the United States, whether a product that someone wants to import does, in fact, compete against a product which is covered by a dumping order.

So I think, perhaps, the approach I would recommend you take is to work with the Assistant Secretary, who I think indicated this morning, that she is willing to work with you to try to make that changed circumstances process work better for you in terms of timeliness.

Chairman CRANE. Well, ideally, I would like to get some of you folks in business that have more hands-on experience in this area on both sides of that debate to sit down in a congenial environment and listen to the expertise coming from the business community, rather than depending primarily on government analysis and input. So, hopefully, we might be able to set something like that up a little later. We do appreciate your input.

One final question on that bill. Can you say with confidence all products and product specifications within the scope of a particular order are made in the United States?

Mr. REGAN. Well, I can say because we faced it, situations where people have challenged that, and we have had to go back and take a hard look at it, and we have had the process of going through the procedures to make sure that that is the case. So I would say,

in our particular area, I can't speak for the other gentlemen, but in our particular area, we feel very confident the scope of the determination does include products made in the United States or products that compete directly with a product which is covered by a dumping order.

Mr. BOIDOCK. That was certainly true in the case of DRAMs in the eighties. We made all of the products that were the scope of the dumping order. And I might add that, as a result of the antidumping law and a lot of other things like intellectual property protection and investment in R&D, our industry has bounced back to the point where now we are the largest—the United States has the largest semiconductor industry in the world.

My company, for instance, is investing $2.6 billion in Dallas, Texas, not overseas, right now.

Mr. GROW. Over the last few years, I have had a chance to visit steel plants in more than 20 countries. Steel making is not unique around the world. We all have very similar processes. The American steel industry has plants that can produce the full range of products. In addition, it has about 20 million tons of new capacity coming back online as it has been recovering from the events of the eighties and early nineties. And, as a result, I believe almost anything that is steel can be produced in the United States with the kind of quality that would match steel produced anywhere else.

And so I think one thing this hearing is doing, and this question that you have raised is doing, is it is causing customers, companies, and producers to talk to each other about the products they are currently buying overseas. In other words, this list, which the SSCI just provided us, is a list of the products they are buying overseas today, and what it is doing is giving us an opportunity to look at that list and say, "Gee, we can make that, too." In fact, I think I can roll one of these myself. The first one on the list, 10 gauge 84 wide, because I have a unique rolling mill that is that wide. And so I would be very surprised if there are hardly any products we can't make and wouldn't want to make if we can get a reasonable return on them. There are 5 million tons of steel capacity in the United States this year not being used that was used last year because the market is weaker. Every additional ton we make adds to our bottom line. We are in business to make and sell steel. Name the product, we will try.

Chairman CRANE. Turning to Commerce's proposed regulations, as to their proposal to deduct certain countervailing duties in a dumping case, is the rationale for deducting reimbursed duties different in a dumping case from a subsidies case and why or why not?

Mr. REGAN. That issue of duty absorption is an issue we all had plenty of time to debate back in 1994. I am not intimately familiar with the specific portion of the regulations you speak to. I just had a quick chance to take a look at them when they were mentioned earlier. But it appears to me the Commerce Department in these regulations has limited the deduction to countervailing duty situations.

Chairman CRANE. Does anybody else have a view on it?

Mr. GROW. The question you raise is an interesting one. I hadn't thought about the distinction between the two. I think the concept

of dumping, as I understand it, is that we are looking at a foreign producer and saying they make a certain profit in their own market. Are they willing to trash our market and make a lower profit and drive our pricing down predatorially? And, therefore, you are really looking at the return at the plant overseas, and that requires deducting all of the costs of taking it from that plant to our market, and that includes the duty, and so I see the logic of deducting it perhaps in both cases, as opposed to just the countervailing duty case.

Chairman CRANE. I am concerned the proposal may violate the subsidies agreement in the antidumping agreement because it requires the subsidies margins be paid twice in certain circumstances. Any views?

Mr. GROW. I don't think it requires it to be paid twice. I think it is being used in determining the pricing, the pricing for the dumping and subsidy of the dumping test. Maybe I am not understanding that correctly.

Mr. REGAN. Mr. Chairman, during the debate in 1994, this issue was discussed at great length, and I think the prevailing view was that this notion of making adjustments for duty absorption was, in fact, being done in other countries and is, in fact, authorized under the agreement.

Chairman CRANE. Before I yield, Mr. Regan, let me ask you a question. I notice you are in Corning, New York. Do you use Corning Glass in any of your products?

Mr. REGAN. I own some Corning Glass in my cupboard I must admit.

Chairman CRANE. Well, then, before I yield to Mr. Houghton, there may be a conflict of interest if he asks you any questions.

Mr. Houghton.

Mr. HOUGHTON. I will not ask Mr. Regan any questions, but the question is, Do you have any Crane products in your house? [Laughter.]

Seriously, Mr. Chairman, thank you very much. I will only ask one question. You know we have been talking about this bill, H.R. 2822, and there are differing opinions on this thing, but let me ask you gentlemen a question. Suppose H.R. 2822 had been in effect for the past 10 years, what impact would that have had on your business?

Mr. REGAN. Well, in our case, I think we would have spent a lot more money on lawyers. As you know, this industry has gone through a very difficult 25 years. We have fought back against the competition, have spent millions and millions of dollars on these cases. Our first case goes back to 1971. The numbers of reviews we are going through at any one point in time count in the tens. That is how many. So we are constantly paying lawyers.

To be honest with you, to open up the floodgates to another set of charges of short supply is something that frightens the daylights out of us.

It should be remembered that the dumping law was significantly changed in 1994. So we face the prospect by the year 2000 of having our cases, essentially, sunset. So there was a significant change, which weakened the statute. Our perception at the time was that that change would mitigate some of the circumstances

that some of these other industries face downstream. But, like I said, it hasn't been a problem for our industry. So it is hard for us to really offer some specific advice on it.

Mr. GROW. I think we would have spent a lot more time paying lawyers and a lot more time involved with the Department of Commerce. This question of what is a product is really important to us because at a plant like Geneva we can make thousands of chemistries of steel in an infinite number of shapes and sizes and so can the others.

If you went out today to 10 bakeries and bought a chocolate cake, the recipe in every one would be different, I suspect, but it would still taste like a chocolate cake to you. To many of our customers, there is a game we call the specs game. You can design specifications that the producer doesn't currently make. The only way you make money in the steel industry is if you can batch the specifications from one customer with the specifications from another so you can make full-size batches. We make 250-ton batches at Geneva. Anything less than that, we throw the rest away. And so I think we would have spent a lot of time chasing this issue of what is a product.

Now, one interesting piece of testimony, to me, earlier today was the Enron testimony because we are a plate producer, and they raised the question in their specification—they ultrasonically test the plate. The answer, from my perspective, is that is not done in the United States because what we do in the United States is we ultrasonically test the pipe product. So is it appropriate that he can put in a specification that says you must test the plate and then test the pipe ultrasonically?

And so this game of what is a product would have involved a tremendous amount of time and energy. Now, in the antidumping and countervailing duty cases, people are already experienced with those products. Lots of questions are raised about how do you categorize products? which ones are correctly put together? which ones do we exclude? And so the same people who dealt with those issues there also deal with the changed circumstances, and that gives us a more appropriate forum to deal with the problem. But it would have been expensive and time consuming, and I would just point out the steel industry has only made money, net profits, in like 2 or 3 of the last 10 years. We don't have money to waste or time to spend doing things that aren't essential.

Mr. BOIDOCK. Congressman Houghton, unequivocally, if we did not have antidumping laws, we would not have a DRAM industry in this country now. When you start to hack away or however small it may appear, and it isn't small in this case, on the effectiveness of those laws, you put at risk industries like ours or at least permit circumstances to develop like those that existed in the mideighties. I am not blessed with wonderful 100 percent hindsight, but I don't think there is any doubt about it. We would not have a DRAM business in this country if we didn't have antidumping laws.

Mr. HOUGHTON. Mr. Liles, have you any comment?

Mr. LILES. Well, Tim has spoken on the issue. I think without the dumping laws, what we really see in a lot of the industries is lost opportunities of future products. Also, if we can't protect the

existing market now, the future markets will also be lost. And that is something that, in a static analysis that you get from the ITC, you don't see. Also, the other effectiveness of our dumping laws is not really seen. In that television production being moved to other countries by the very same multinationals that the dumping laws were impacting, by moving to another country, they have essentially circumvented the dumping duties that we have, and it still places our industry at a disadvantage, and therefore the cost of receivers is still pretty cheap here in this country.

Mr. HOUGHTON. Mr. Hancock.

Mr. HANCOCK. Mr. Grow, you evidently have been looking the world over on the supply of steel. Do you have any idea how much of the world steel production capacity is actually owned by governments that we are competing with?

Mr. GROW. Yes. First of all, if you count the CIS and Eastern Europe, that is about 200 million tons of steel capacity out of about 700 million tons worldwide. Now, take the rest of the world. When we bought Geneva about 10 years ago, roughly 45 to 50 percent of the rest of the world steel capacity was government owned or indirectly government owned through government-owned banks and other facilities. I think our industry is unique in that when people became a country they bought airplanes, started an airline, and they built a steel plant. Now some of that has been privatized and some of it, for example, the second largest steel company in the world is the French, Usinor Sacilor, and it was privatized last year. British Steel, which was owned by the British government, was privatized about 3 or 4 years ago. Pohang or POSCO, which is the Korean steel company, is in the process of being partially privatized. We are seeing privatization in Brazil. So we are seeing a change in government ownership in this industry, but we are only about halfway home in terms of privatizing what of the free-world capacity was government owned 10 years ago. But it is still 25 percent, I would say, of the free-world capacity that I compete with in the world market is government owned or government controlled today.

Mr. HANCOCK. Even though it isn't government owned, though, there is still a tendency to protect those industries by the government.

Mr. GROW. Absolutely. And the worst thing that happened in the eighties to the U.S. steel industry was our capacity was beaten down so far we had no export capacity left, and that allowed the cartels, those who control their markets, it allowed them to manage for slight shortage, which allowed them to maintain prices during those periods. So, while they were making money, the U.S. steel industry was getting clobbered, and we, essentially, got behind the curve on modernization and other things, and we have been pulling ourselves up by our bootstraps over the last decade to get out of that, and we have done a very good job. But we still have about the lowest return on investment of any industry in the world, and there are very few steel companies in the United States that are investment grade. So we all pay very high costs for our capital. And, until we fix both this government involvement and the private anticompetitive practices, the privatization of protection, which has gone on so skillfully in Japan and now in other parts of the world,

we are not going to have free and open trade, and we have 20 million new tons in the United States coming online, 20 percent new capacity, which needs to go somewhere. As long as our market is truly open and free, and we are getting 15 to 20 million tons of imports, we need to have the right to export. We are not trying to protect our market. We are trying to get the world markets open so we can do on their 10-yard line what they do on our 10-yard line. That is what keeps a free market open and true competition working.

Mr. HANCOCK. Thank you.

Chairman CRANE. And we welcome Mr. Gridley and Mr. Stewart. We have essentially completed our questions of the panel, but if you folks could condense your presentations, we would like to hear from you with the assurance that all printed material will be a part of the record as well.

Mr. Gridley.

STATEMENT OF DAVID D. GRIDLEY, DIRECTOR, SALES AND GOVERNMENT AFFAIRS, TORRINGTON CO., TORRINGTON, CONNECTICUT

Mr. GRIDLEY. Thank you, Mr. Chairman. We would like to issue a modified version of my prepared text before it is accepted in the next day or so.

Chairman CRANE. Without exception, so ordered.

Mr. GRIDLEY. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the Commerce Department's proposed antidumping regulations as well as other current issues with regard to antidumping law.

I offer the following comments on behalf of the Torrington Co. The Torrington Co. is the world's leading producer of needle roller bearings and is the largest full-line producer of antifriction bearings in the United States.

Torrington has been a petitioner and an active participant in the proceedings involving antidumping and countervailing duty laws. The bearing industry has experienced a prolonged period of excess capacity and targeted dumping by many foreign bearing companies. The domestic bearing industry has been seriously harmed in the past by extraordinary levels of dumping that forced many U.S. producers to reduce capacity, lay off workers, fall behind competitively and, in too many cases, go out of business or sell assets at seriously depressed levels.

The enforcement of U.S. trade laws in the last 8 years has been helpful to U.S. producers of bearings by reducing the magnitude of the unfair trade practices.

At the same time, Torrington's experience with antidumping law demonstrates some of the current problems with the law and its enforcement. Most importantly, many of our foreign competitors continue to dump at significant margins of dumping year after year. While the existence of the orders means importers will pay antidumping duties, the importers are generally related to the foreign producers. The effect has been, in many situations, no positive impact in the marketplace as related party importers absorb the dumping duties and are presumably reimbursed by one means or another by the foreign parent organization.

The lack of a meaningful reimbursement regulation to date and the failure of Congress to implement our international right to treat the absorption of duty as a cost to be deducted from determining the levels of dumping are two of the reasons we have received only partial relief to date.

Similarly, Torrington's effort to prevent the evasion of these orders had been partially unsuccessful. For example, Torrington brought a second dumping case against 14 additional countries in 1991 in an effort to limit foreign producers from shifting production from country to country while continuing the severe dumping practices. The ITC's negative preliminary injury determination ended these cases, basically, ignoring the evasion that was occurring and penalizing domestic producers for engaging in the very activity contemplated in the first set of dumping orders—reinvesting in America.

The result of the negative determination by the ITC was that reinvestment was put in jeopardy; that further reinvestment was postponed and eliminated because of the frustration of the price correction in the marketplace.

It is particularly troubling to have issues such as H.R. 2822 considered when there is no apparent consideration being given to make relief effective and available earlier, actions which would make more domestic product available from domestic producers now.

U.S. antidumping law must be structured and administered in such a way that foreign companies, which are dumping product into the U.S. market, have little or no incentive to evade the law. Torrington has observed numerous methods by the foreign producers to create loopholes in the antidumping orders.

The proposed regulations begin to address two issues of primary importance to domestic companies. First, scope rulings and circumvention of antidumping duties. Unfortunately, the proposed regulations do not go far enough in preventing foreign producers from evading the antidumping orders.

The purpose of the scope ruling is simply to clarify which products have been covered by the existing antidumping orders. The duty reimbursement is another method by which foreign producers frequently attempt to avoid compliance with U.S. antidumping laws.

In order to reduce my comments, one last point is our concern about H.R. 2822. Torrington has previously expressed its opposition to H.R. 2822, the Temporary Duty Suspension Act. Rather than reiterate the entire argument, allow me to stress two points. First and most importantly, careful attention to any of the problems outlined above will help to address the concerns of those industries seeking temporary duty suspension rather than passing of new legislation and, second, temporary duty suspension will discourage reinvestment by domestic producers, as they will be deprived of the market signals to know that reinvestment would be justified.

Thank you.

[The prepared statement follows:]

STATEMENT OF DAVID D. GRIDLEY
DIRECTOR, SALES AND GOVERNMENT AFFAIRS
TORRINGTON CO., TORRINGTON, CT

BEFORE THE SUBCOMMITTEE ON TRADE
OF
THE COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES

Department of Commerce Proposed Antidumping Regulations
and Other Antidumping Issues

APRIL 23, 1996

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the Commerce Department's proposed antidumping regulations, as well as other current issues with regard to antidumping law. I offer the following comments on behalf of the Torrington Company, a subsidiary of Ingersoll-Rand Company.

Torrington is the world's leading producer of needle roller bearings and is the largest domestic full-line producer of antifriction bearings in the United States. Torrington began as a producer of needle bearings, which are used in a variety of products from outboard motors to spacecraft. In the 1980s, Torrington acquired the Fafnir bearing company, which was the leading U.S. producer of ball bearings. The company operates state-of-the-art facilities in Connecticut, producing precision bearings for aerospace and other critical applications. Torrington produces commodity bearings of all types in its plants nationwide, as well as in Torrington's subsidiaries around the world. We welcome the opportunity to offer our perspective on the Commerce Department's proposed antidumping regulations and on other important aspects of antidumping law.

I. Torrington's Experience With U.S. Antidumping Law

The Torrington Company has been a petitioner and active participant in proceedings involving the antidumping and countervailing duty laws. The bearing industry has experienced a prolonged period of excess capacity and targetted dumping by many foreign bearing companies. The domestic bearing industry has been seriously harmed in the past by extraordinary levels of dumping that forced many U.S. producers to reduce capacity, lay off workers, fall behind competitively and in too many cases, go out of business or sell assets at seriously depressed levels. The enforcement of the U.S. trade laws in the last eight years have been helpful to U.S. producers by reducing the magnitude of the unfair trade practices.

At the same time, Torrington's experience with antidumping law demonstrates some of the current problems with the law or its enforcement. Most importantly, many of our foreign competitors continue to dump at significant margins of dumping year after year. While the existence of the orders means that importers will pay antidumping duties, the importers are generally related to the foreign producers. The effect has been in many situations no positive impact in the marketplace as related party importers absorb the dumping duties and are, presumably, reimbursed in one way or another by the foreign parent organization. The lack of a meaningful reimbursement

regulation to date and the failure of Congress to implement our international right to treat the absorption of duty as a cost to be deducted in determining the level of dumping are two of the reasons for the partial relief received to date.

Similarly, Torrington's efforts to prevent evasion of these orders have been partially unsuccessful. For example, Torrington brought a second dumping case against 14 additional countries in 1991, in an effort to limit foreign producers from shifting production from country to country while continuing the severe dumping practices. The International Trade Commission's negative preliminary injury determination ended these cases, basically ignoring the evasion that was occurring and penalizing domestic producers for engaging in the very activity contemplated by the first set of antidumping orders -- reinvesting in America. The result of the negative determination by the ITC was that much reinvestment was put in jeopardy, and further reinvestment was postponed or eliminated because of the frustration of the price correction in the market.

With this experience in mind, allow me to offer a brief perspective on some of the Department's proposed regulations.

II. Department of Commerce Proposed Antidumping Regulations

At the outset, Torrington wishes to commend the extensive effort of the Department of Commerce in preparing these proposed regulations. Both before and subsequent to the promulgation of these regulations, the Department has sought significant input from the public. The comments which follow, like Torrington's critiques throughout this process, are intended to facilitate the development of regulations that will make the administration of the law transparent, predictable and effective.

U.S. antidumping law must be structured and administered in such a way that foreign companies which are dumping product into U.S. markets have little or no incentive to evade the law. Torrington has observed numerous methods by which foreign producers create loopholes in antidumping orders.

The proposed regulations begin to address two issues of primary importance to domestic companies: **scope rulings and circumvention** of antidumping duties. See Proposed Regulation 351.225. Unfortunately, the proposed regulations do not go far enough in preventing foreign producers from evading antidumping orders as potential liability is dependent upon whether product has been suspended from liquidation. Proposed Regulation 351.225(1).

The purpose of a scope ruling is simply to clarify which products have been covered by an existing antidumping order. Accordingly, such a ruling should be made as rapidly as possible and product found to be covered by an order should be covered from the first importation - not from the date of a preliminary scope decision. If changes are needed to U.S. customs laws to permit reliquidation, such changes should be made. Otherwise, U.S. law creates an incentive to evade antidumping duty orders. Such evasion pays handsomely for foreign producers and importers and makes relief illusory. The same principle should be applied in circumvention situations, at least to the extent arguably consistent with WTO obligations.

In addition, in Torrington's experience, circumvention often occurs through distribution channels. For example, Commerce often treats home market sales to unrelated exporters

as though these sales are to "resellers." These "resellers" are then able to obtain their own antidumping margins, which are based in part on the acquisition cost of the good. Under this "reseller rule," dumping margins can "disappear" when the product comes to the United States even though any reasonable analysis would confirm that a significant part of the purchases by the company are intended for export. Commerce regulations do not address this problem.

A potentially related issue involves the "Roller Chain" rule. Under this prior agency practice, Commerce would disregard the imports if they represented less than one percent of the value of the product eventually produced. The rule in effect insulated certain purchasers from antidumping duty liability even if such purchasers constituted the largest share of imports and an important potential market for U.S. producers. When combined with the "reseller" issue reviewed above, the two potential evasion problems presented the potential to drastically reduce the value of dumping orders for many domestic producers. The Uruguay Round Agreements Act changed the "Roller Chain" practice. 19 U.S.C. 1677a(e). This statutory change provides Commerce with great flexibility to assure that the law is not evaded by foreign producers. Proposed regulation 351.402(c)(3) does not contain the same flexibility, which could present practical problems in particular cases. Any final regulation should reflect the great flexibility built into the statute on this issue.

Duty reimbursement is another method by which foreign producers frequently attempt to avoid compliance with U.S. antidumping law. When producers cover the cost of the antidumping duty paid by the importer, the unfair trade practice continues unabated. How a foreign producer chooses to reimburse will vary on the creativity of the foreign producer and the breadth of product line. For example, a major Commerce study showed that U.S. subsidiaries of foreign bearing companies received large extensions of credits from foreign parents following the antidumping orders. See U.S. Dep't of Commerce, Bureau of Export Administration, National Security Assessment of the Antifriction Bearings Industry 36-42 (Feb. 1993). Similarly, concerns were raised during one or more administrative reviews that transfer prices should be examined to determine whether transfer prices were below cost, effectively permitting funds to be transferred from parent to importing subsidiary and also resulting in the undercollection of cash deposits. These and many other options exist and have undoubtedly been used by companies covered by dumping orders to support continued dumping in the U.S. marketplace.

On several occasions, Torrington has asked the Department to investigate reimbursement, and has attempted to give the Department relevant factual information. However, domestic companies simply do not have the data or the resources to fully investigate whether (and to what extent) reimbursement is occurring. Only the Department can make such an undertaking. While the proposed regulation marks a movement from past agency practice on the issue of reimbursement, the movement does not go anywhere near far enough in seeing that reimbursement does not occur or, if it occurs, is negated. Proposed Regulation 351.402(f). Specifically, in its proposed regulation, the Department expands its definition of duty reimbursement to capture reimbursement through related importers and reimbursement of countervailing duties. 60 Fed. Reg. at 7,332. However, there is no indication that Commerce will adopt a more realistic approach to determining when reimbursement occurs. Without a more expansive construction, the reimbursement regulation will remain largely an empty promise of effective relief.

One of the most crucial aspects of an antidumping investigation for domestic parties is the Department's accumulation of complete information from foreign producers. Because U.S. producers do not have discovery rights or other investigatory powers, the Department's data collection process is the only means of gathering the sales, financial and production data crucial to showing evidence of dumping.

Not surprisingly, Torrington's experience suggests that antidumping decisions (of the Department and the International Trade Commission) improve when these agencies have complete - rather than selected - data on foreign producers. Torrington is more than willing to assist the Department in its efforts to reduce the cost of investigations. However, reductions in data collection often result in placing critical issues in jeopardy, and the agencies risk losing their ability to administer the law properly.

III. Other Antidumping Provisions of Particular Importance

Torrington's own experience makes clear that U.S. antidumping law must promote the granting of early relief. The ITC should be encouraged to more aggressively use threat of material injury provisions and to take into account evasion/ circumvention issues in considering follow-on cases. Let me provide some history of our cases and the problems facing the bearing industry.

In the 1970s and 1980s, the worldwide bearings market was characterized by significant excess production capacity. A number of large foreign bearing companies pursued aggressive market share expansion programs, operating from home markets where foreign competition was relatively limited or non-existent. Companies like Torrington that were dependent for most of their volume from the U.S. market were caught in a cross-fire as these companies were aggressively dumping into the United States in a battle for increased market share. Torrington and other U.S. producers bore the brunt of this battle.

The result was near-catastrophe for the U.S. industry: many U.S. producers suffered plant closures, lay-offs, R&D cuts, and reduced compensation to workers. Between the late 1970s and mid-1980s, the industry closed 30 plants, laid off 13,000 employees, and lost $1 billion in capacity.

In response to this extraordinary problem, antidumping and countervailing duty cases were filed against nine countries. After its initial investigations, the Commerce Department established dumping margins of more than 100 percent on many bearing products. As a result of the issuance of orders on a significant part of the imports, domestic producers experienced some price relief in the marketplace. Companies like Torrington took action that was consistent with the perceived restoration of fair prices in the market -- they reinvested as cash flow permitted. Foreign producers also expanded capacity in the U.S. However, the price relief was only partial. While imports dropped from the nine countries, imports surged from a number of other countries, almost all of which had subsidiaries of one or more of the companies found to have been dumping in the original cases.

Facing a deterioration in market prices because of the shifting situs of dumping and the resulting threat to reinvestment commitments made and planned, Torrington was forced to file a second set of antidumping cases cases in 1991 against 14 additional countries. Despite the obviousness of the evasion that was taking place and the potential for destroying the reinvestment that had been made following the

issuance of the orders, the second case was dismissed by the International Trade Commission at the preliminary injury stage. The fact that domestic companies had started to reinvest and add back employees was held against them by the Commission even though the circumvention or evasion of the orders put in jeopardy the very reinvestment the law is intended to promote. While the Commission's decision was upheld by the Court of International Trade as within its authority to make, such decisions by the ITC frustrate the ability of domestic industries to obtain effective relief and reduce the ability or willingness of domestic producers to reinvest. Considering the interest of some members of the Committee in H.R. 2822, an outcome where relief is delayed (and reinvestment is discouraged) is counterproductive as it retards the ability of domestic producers to supply product in the United States.

Stated differently, U.S. antidumping law should safeguard that relief is available to domestic industries early. Threat determinations should be more readily available so industries need not wait until they are competitively behind to bring cases. Such an approach will minimize economic dislocations both for manufacturers of products and for their customers.

Similarly, U.S. antidumping law should provide incentives for foreign producers to abide by U.S. law. Currently, because of the problems of duty absorption, reimbursement of duties and inability to deduct duties not passed through as a cost in determining dumping liability, as well as the generally prospective nature of scope and circumvention findings, the system encourages minimal compliance by foreign producers. Minimal compliance can drastically reduce the effectiveness of orders and frustrate the ability of companies to reinvest. Some of the problems can be addressed through regulations. Others may require Congressional action.

One suggestion would be to distribute dumping and countervailing duties actually collected to the petitioners to cover investments in plant, equipment, technology, R&D and people during the life of an order. Providing compensation (i.e., disbursement of duties actually collected) should create a powerful incentive for foreign producers to price fairly. Failure to price fairly would result in partial coverage of harm through the disbursement of duties collected. Similarly, a compensation provision would reduce the risk of reinvesting where foreign producers refuse to stop dumping.

Torrington encourages both the Department of Commerce and the Congress to consider establishing clear and meaningful standards with regard to duty absorption. As permitted under the WTO, U.S. law should treat dumping duties that are absorbed by a related party importer (rather than passed on to its customers) to be treated as a cost and deducted from constructed export price in determining dumping duties owed. Importers that absorb the cost of antidumping orders have in effect frustrated the intent of the orders. Treatment of such duty absorption as a cost is consistent with our international obligations under the WTO. Indeed, Article 9.3.3 of the GATT 1994 Antidumping Code permits all WTO signatories to treat antidumping duties as a cost in determining dumping liability when the duties are not passed on to customers in the importing country. Such a provision is part of current European Union antidumping law and applies to U.S. exports to the European Union covered by antidumping orders. U.S. producers are entitled to the full measure of relief envisioned by our international rights.

IV . H.R. 2822 - Temporary Duty Suspension Act

Torrington has previously expressed its opposition to H.R. 2822, the Temporary Duty Suspension Act. See Letter from Robert T. Boyd and David D. Gridley to the House Committee on Ways and Means re Miscellaneous Trade Proposals (March 1, 1996). Rather than reiterate this entire argument, allow me to stress several crucial issues:

First, and most importantly, careful attention to many of the problems outlined above will help to address the concerns of those industries seeking "temporary duty suspension" as provided in H.R. 2822. Users of dumped products under existing law enjoy the false market signals of dumped imports for too long before corrected market signals emerge. Such false market signals can result in users of dumped merchandise making erroneous investment and other decisions with resulting multiple levels of misallocation of resources. Early and effective relief will both reduce the erroneous contraction of capacity and supply and prevent erroneous expansion by users in situations where competitiveness is premised upon dumped pricing of inputs.

Second, temporary duty suspension would discourage reinvestment by domestic producers, as Torrington and other producers would be deprived of the market signals to know that reinvestment would be justified.

Third, an antidumping duty order never creates a shortage of product. An order does not regulate quantity; it merely requires foreign producers to sell and U.S. importers to pay a fair price for foreign merchandise. Hence, H.R. 2822 is a solution for a non-existing problem.

V. Conclusion

The Torrington Company commends the Department of Commerce on the major efforts made to date to solicit views and consider concerns of the public with the regulatory scheme for antidumping and countervailing duty laws. Torrington will be submitting views to Commerce as part of its notice and comment process. While much of what has been proposed appears acceptable and satisfies various criteria important to Torrington (i.e., making relief effective, predictable and available to industries regardless of size), there are areas where the proposed regulations need modifications.

At the same time, there are a host of issues not addressed by the regulations or existing law that hamper the ability of injured domestic industries to obtain relief early and to safeguard against the construction of U.S. law encouraging evasion of any antidumping orders. These issues should be addressed promptly. Addressing the problems which make relief partial and late would address some of the underlying concerns of users. There is no need for H.R. 2822, which does not address the underlying problem of misallocation of resources caused by dumping.

Again, thank you for the opportunity to testify.

Chairman CRANE. Thank you.
Mr. Stewart.

STATEMENT OF TERENCE P. STEWART, MANAGING PARTNER, STEWART AND STEWART, WASHINGTON, DC

Mr. STEWART. First, Mr. Chairman, thank you for the courtesy of letting us testify at the end. I apologize for being late.

In my prepared remarks, we take a systemic approach to an examination of the proposed regulations. Obviously, they are simply proposed, and we believe many of the concerns of all parties will be addressed in the final regulations.

Let me just touch on a couple of points vis-a-vis the regulations from a policy point of view that are of concern to me.

First, there are a number of proposed regulations which call into question whether the regulations, if adopted as proposed, would make the relief provided effective. Mr. Gridley has talked about reimbursement. He has also talked about scope rulings and circumvention. I concur in those issues. Those are very important issues to domestic users of the law if the law is to be effective.

Second, some of the proposed regulations call into question whether the regulations provide equal access to the laws for both large and small countries and industries alike. Let me give one example of that because we have had the privilege, over time, to represent both large and small companies and industries, and there is a deep concern about the ability of small industries to be able to access these laws.

One of the changes made in U.S. law was to add an averaging provision during investigations, with the exception that averaging would not need to be done where there was targeted dumping. Unfortunately, in the proposed regulation, targeted dumping requires an affirmative submission by the petitioning industry, regardless of how clear the justification for using the exemption might be on the face of the questionnaire responses from the foreign producers. This places a large burden on small industries to actively participate, whether or not they have the means to do so, and will discourage small industries, in my opinion, from being able to use these laws.

Third, some of the proposed regulations call into question whether the regulations will promote predictability. All parties, whether you are a domestic producer who brings cases or whether you are a foreign producer who gets caught up in a case, whether you are an importer or user in the United States, has a vested interest in having these laws be predictable.

Level of trade, as currently formulated in the proposed regulations and currently being administered, creates enormous uncertainty on both sides. From a respondent's point of view, at the moment, there is no certainty as to how level of trade will be determined. From a petitioner's point of view, there is great uncertainty as to whether level of trade will be capable of manipulation where you could have the same sale to the same customer from the same party in three different time periods treated as three different levels of trade simply by control of functions by the foreign producer.

We believe all of those types of issues need to be addressed by the Commerce Department in rendering its final regulations.

With regard to other antidumping issues, we believe Congress should be examining the law, as it has in the past, with three principles in mind. First, to have the least disruption in the market, relief should be available early. When relief is available early, there are few instances of no or short supply alleged. It is also the case that domestic producers are not behind.

Second, relief, when it is made available, should be effective.

Third, there should be an effort to minimize the costs for all parties participating, but certainly for the domestic industries that need to invoke it. I previously submitted views on short supply. I would be happy to answer questions, but won't address those.

I would like to address, just briefly, some of the studies that have been done, including the ITC study of 1 year ago. There was a great deal more information put onto the record in that investigation, and there was a great deal of controversy over which model should be used in evaluating the economic effects. Unfortunately, the report that came out picked a single methodology without showing the results that might have occurred under different models that had been proposed by the parties. They picked a model that the Commission staff had itself in earlier investigations indicated was not the most appropriate to measure the effect on the economy of particular product segments and did not address a range of issues raised by domestic parties which called into question some of the conclusions.

Obviously, the cost benefits of the trade laws are an important issue. The ITC is an important, independent body. We believe it would be appropriate for this Subcommittee to request further clarification and expansion upon what is already in the record so that, in fact, all variables are known by this Subcommittee and other interested parties and so that there are not concerns about a bias existing in the data base or the presentation.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF
TERENCE P. STEWART
MANAGING PARTNER, STEWART AND STEWART

BEFORE THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

"Department of Commerce Proposed Antidumping Regulations and Other Antidumping Issues" (TR-21)

April 23, 1996

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on a subject I believe is critical to economic growth in the country and to the ability of communities, businesses and workers to support further trade liberalization -- maintenance of strong trade laws to assure that trade flows reflect underlying comparative advantage and not artificial advantages flowing from closed markets or the deep pockets of foreign competitors. As a practitioner here in Washington with a heavy concentration of activity in international trade law issues, I actively followed negotiations in Geneva during the Uruguay Round of the antidumping and subsidy agreements and worked closely with the Administration and Congress during the consideration of the Uruguay Round Agreements Act. My firm has provided extensive comments to the Commerce Department on issues that should be addressed in its proposed regulations and will be submitting extensive comments on the February proposed regulations. I offer the following testimony in my individual capacity. The views presented do not necessarily reflect the views of our firm's clients or of other members of the firm.

I. The proposed Commerce regulations

Because of the extensive modifications to our international obligations on a range of procedural and substantive issues, Congress and the Administration have focused considerable attention on implementation of our rights and obligations both in the statute and Statement of Administrative Action. The proposed regulations are another step in implementing our rights and obligations.

From a practitioner's perspective, the proposed regulations should be measured on a number of grounds: (a) consistency with U.S. statute, (b) consistency with the Statement of Administrative Action, (c) whether the regulations will promote conditions of fair trade once an order is entered (stated differently, whether the regulations make relief when granted effective), (d) whether the regulations promote early relief, (e) whether the regulations promote transparency and provide meaningful due process rights for all parties, (f) whether the regulations provide equal access to the laws to large and small companies and industries alike and (g) whether the regulations promote predictability.

While the above seven measures drive the following comments, I start by making some preliminary observations. First, the proposed regulations are obviously just that. Commerce does not yet have the benefit of comments from the public on how its proposed regulations conform to the above or other criteria. Therefore, the following comments are not intended as a criticism of Commerce's efforts but rather highlight my perspective on some of the open questions that remain about the drafting exercise.

Second, I wish to commend the people at the Commerce for the efforts that they have made to reach out to all elements of the public for views and for making those views easily accessible (e.g., via internet) for review and comment by others. The proposed regulations reflect a great deal of hard work by many very dedicated and talented people. Much of what is included in the proposed regulations conform to the seven measurement criteria previously described. I am sure that by the time the comment process is completed and final regulations are released that the end product will indeed conform to the above objectives. Indeed, it is my understanding that Commerce will go to the unusual step of holding a public hearing on the proposed regulations once comments have been submitted.

Third, it is important that Commerce avoid the temptation to regulate prematurely on issues on which the agency has limited current experience so that the metes and bounds of issues can be explored before regulations are adopted.

Finally, the comments here are not intended as a substitute for the detailed comments that Commerce has requested from the public.

With these preliminary comments, I offer just a few observations on several draft regulations where there appear to be concerns from a petitioner's perspective.

1. There are a number of proposed regulations which call into question whether the regulations, if adopted, would make the relief provided effective

Domestic industries that are injured by dumped imports are looking first and foremost for effective relief. If dumping orders can be frustrated or easily circumvented or if administration of the laws indirectly encourages less than complete cooperation or correction of injurious pricing practices, effective relief is not provided.

Unfortunately, a number of the proposed regulations will not or may not promote effective relief. Let me review just a few examples.

(a) Reimbursement

One way to frustrate the remedial purpose of the law is for the foreign producer to cover the cost of the antidumping duty that an importer must pay. When this happens, the unfair trade practice continues and is not offset by the imposition of dumping duties. Prices remain depressed in the market and domestic producers lose the opportunity to sell to importers who continue to receive dumped prices in fact. Because of this reality, Commerce has long indicated that reimbursement will be handled by treating the reimbursement as an additional expense to be deducted in determining dumping margins. However, the provision has historically been very narrowly construed by Commerce permitting foreign producers to create a wide variety of mechanisms to reimburse in fact without ever being caught by the law.

Duty reimbursement can take many forms, only some of which are direct. While it is, of course, welcome that Commerce will treat the direct payment of antidumping duties by the foreign producer or the tendering of a check for the identified purpose of reimbursement as constituting reimbursement, obviously most foreign producers and importers are more sophisticated and can mask the reimbursement effort. For example, where foreign producers are related to the importer, transfer prices can be manipulated to permit

reimbursement of duties paid. In these and other situations, foreign producers can rearrange prices on other merchandise to cover dumping duty liability, can change prices for goods or services from the purchaser, can extend payment terms, make loans or cash infusions (e.g., related party importers), or take any number of other steps to reimburse duties. These more subtle means of reimbursing antidumping duties have to date been unactionable not by statute but by agency inaction.

It is true that Commerce's proposed regulation for addressing reimbursement (351.402(f)) constitutes an improvement over the existing regulation and reflects some of the case law advances that have occurred in recent years. For example, coverage of reimbursement is defined to cover related party importer situations and not just unrelated importers as was the situation for many years. Similarly, coverage of the payment of countervailing duties as a form of reimbursement is long overdue. While the proposed regulation is thus an improvement over prior regulations, Commerce has not expressed an intention to adopt a more realistic construction of reimbursement. Commerce should provide broader latitude to this important provision.

(b) Scope rulings and Circumvention

When U.S. law is construed to permit "creative" entry procedures or claims that avoid liability for antidumping duties until caught and adjudicated, the remedial purpose of the antidumping law is deeply frustrated. Instead, dumpers are rewarded for bending the truth or finding a customs port where merchandise can enter without being identified as covered by an order. Domestic producers, who do not have discovery rights and cannot access importer records at Customs, will be denied relief unless and until they trip upon the avoidance/evasion scheme, expose it and have Commerce investigate (up to 300 days for a circumvention inquiry under the proposed regulations).

Unfortunately, the proposed regulation (351.225) on circumvention and scope rulings suggest that just such an incentive to frustrate effective relief will continue. Scope rulings -- which merely clarify what has been covered by the order all along -- must be retroactive, yet often are not. For example, in a case my firm has handled, a foreign producer classified merchandise that should have covered by the order under an HTS number that did not alert Customs that suspension of liquidation should occur. It took my client several years to discover what was happening. While Customs and Commerce took corrective action once alerted to the problem, the corrective action was prospective only. Based on public census data, tens of millions of dollars of merchandise that should have been covered by the antidumping order has escaped any liability. Such a result is simply unacceptable. If liquidated entries cannot be reliquidated, then the Administration should propose to Congress amendments to U.S. law to permit the reliquidation of such entries to assure all dumping liability has been paid.

Similarly, Commerce's proposed regulations reject a proposal to order suspension of liquidation as soon as a circumvention inquiry is initiated (or is legally permitted under the WTO) and impose cash deposits retroactively if a final decision is affirmative. Commerce cites the business uncertainty that would be created by such a system. Commerce ignores the business uncertainty created for injured domestic producers faced with a flouting of the laws that will go uncorrected for as much as 300 days after the filing of a circumvention petition. I would urge Commerce to reconsider the proper balance in such situations.

2. **Some of the proposed regulations call into question whether the regulations provide equal access to the laws to large and small companies and industries alike.**

An important change to U.S. antidumping law contained in the Uruguay Round Agreements Act was the adoption of the requirement that in investigations, price comparisons be made on an average-to-average or transaction-to-transaction basis. An important exception to this new requirement was insisted on by U.S. negotiators in Geneva and was incorporated into U.S. law -- averaging will not be used where masking of dumping margins would be the result. 19 U.S.C. 1677f-1(d). This targeted dumping exception is greatly reduced in importance by the proposed regulations. No matter how obvious the targeting is from the questionnaire responses of foreign producers, Commerce has proposed ignoring the targeting unless domestic producers make specific allegations within narrow time lines. Such an approach of necessity increases the costs for domestic producers who must participate actively for every company investigated or be prejudiced by Commerce not conducting a proper investigation. For many smaller industries, domestic producers are simply unable to actively participate at Commerce because of their injured status and the costs of participation. These industries rely on Commerce's ability to investigate all relevant issues. Failure of Commerce to examine targetted dumping could be highly prejudicial to such industries. Such an approach is also inconsistent with treatment given to respondents who are currently able to raise claims of "clerical error" to reduce dumping margins at any time.

3. **Some of the proposed regulations call into question whether the regulations promote predictability.**

One of the important changes to U.S. law was conformance with the long-standing international rights to construct an export price through, inter alia, the deduction of a reasonable profit on resale. One of the items examined in light of the change in U.S. law was the potential need for more frequent resort to a level of trade adjustment. 19 U.S.C. 1677b(a)(7)(A) was added to U.S. law to address the issue. The statute on its face provides a fairly straightforward and common sense approach to the question:

(1) if there is a level of trade difference,

(2) the level of trade difference involves the performance of different selling activities and

(3) the level of trade is demonstrated to affect price comparability,

then an adjustment will be granted.

In many of the outstanding orders, parties have been in agreement for years as to what are the proper levels of trade (e.g., original equipment manufacturers; mass merchandisers; distributors, etc.).

Despite the clarity of past practice and the potentially straightforward construction of the new statutory language, the proposed regulation of Commerce (351.412(c)(2)) and early case law suggest that level of trade issue will be extraordinarily complicated, potentially subject to manipulation by foreign producers and will drastically reduce the predictability on the correct standard that could have been achieved by a different approach. Early case law suggests that a sale to the same customer by the same producer in different

review periods could be viewed as being at a different level of trade in each review simply by the change of selling functions provided each year. Such an outcome can't possibly be correct.

Hopefully Commerce will be able to address the above comments and comments on other proposed regulatory provisions in the months ahead as it receives comments from the public and goes through its hearing process. I join the many other practitioners preparing comments in wishing them success in their complex undertaking.

II. Some Other Antidumping Issues

My firm has had the privilege over the years to work with a wide variety of industries facing trade problems in the United States and abroad: metals, chemicals, industrial products, autos and auto parts, consumer goods, electronic components, construction materials, and agricultural and horticultural products. At some point in time, almost every sector of our agricultural and industrial base has had an important trade problem that has clouded its future viability. For many industries, for millions of workers and for tens of thousands of communities across our country, the antidumping law has been a critical resource to prevent the loss of companies and jobs to false market signals. The law's effectiveness can mean the difference between survival and death for industries and communities. Article VI of the GATT 1994 states that injurious dumping is to be condemned, the harshest language used in the entire WTO. Many of our trading partners have antidumping laws and increasing numbers are using them, consistent with their WTO rights, to see that their industries compete against fairly traded foreign goods.

Yet, despite the potential for good and our international rights under the WTO to secure conditions of fair trade where injurious dumping is occurring, too many industries have not survived despite their international competitiveness. U.S. law has often been ineffective in part or in toto. Trade cases have occasionally been overly politicized. And far too often relief has been too long delayed or simply denied.

Within our international rights and obligations, relief could be:

-- effective;

-- short-term;

-- minimally disruptive;

-- available to all industries regardless of size or means.

Let me briefly explain. More than half of all antidumping cases filed result in a negative injury determination by the International Trade Commission. Very few cases are decided affirmatively on a threat basis. Such statistics mean that domestic industries are generally seriously harmed before a case can be brought that will get past the current construction of material injury in U.S. law. Yet, of necessity, if relief is delayed until plants have closed, research and development has been slashed, capital expenditures have been curtailed, workers are laid off and those remaining receive lower income, the domestic industry will likely be behind its foreign competitors. If true, relief will need to be in place longer to restore conditions of competitiveness.

Secondly, to the extent that relief provided is ineffective to some extent, relief will be needed longer if the domestic industry is to recover the strength it would have had

but for the unfair trade practices. Yet, current law and practice create some significant loopholes or incentives to reduce the effectiveness of the remedy being provided.

Third, if relief is available early, U.S. purchasers of dumped merchandise do not have long-term purchasing patterns that may lead to a misallocation of resources by purchasers based upon false advantages flowing from dumped prices. Early relief will thus reduce the concerns that are often raised today from a perception of lost "bargain" by users. Both suppliers and purchasers should have a mutually reinforced interest in conditions of fair trade. Yet, when purchasers have structured their own product pricing over time on the basis of dumped prices for inputs, the reaction to fair prices has tended to be extreme. In some situations, long-term dumping may result in misallocation of resources by users based on the false market signals being sent. Restoring conditions of fair trade may result in correction of allocation of resources at both supplier and user levels. Early relief would eliminate the yo-yo effect of misallocation of resources and eventual correction.

Fourth, reducing the cost of bringing a case and making relief available earlier would enable domestic industries to file narrower cases as circumvention problems could be readily addressed with reasonable certainty.

Finally, despite a range of efforts by Commerce and the International Trade Commission, access to the legal process for domestic industries is not equal. Costs for getting a case initiated are very significant; there is no organized pro bono assistance to small industries. Pro se litigants have a fairly poor record before the agencies.

Yet, all of these issues can be addressed. Some can be addressed by the agencies involved without legislation. Others may require legislative changes. Let me just outline quickly some of the changes that could be made:

1. Make relief available early

While the current construction of the "material injury" and "threat of material injury" standards have been often upheld by the federal courts, U.S. law need not be construed to make threat findings so difficult to obtain nor does U.S. law require such a large percentage of cases to be determined negatively. Congressional oversight, a review by the ITC of its past decisions and what impediments it perceives exist that prevent it from making relief available earlier and/or statutory changes are options that should be considered. Statutory changes should be considered to make it a factor of material injury or threat that another order on the same product was entered in the last three years. Expedited time schedules for such situations might also be considered.

2. Make relief effective when granted

The administration of the law should encourage compliance by foreign producers with the underlying objective -- elimination of unfair trade practices:

(1) Scope decisions should have retroactive effect to the issuance of the order; circumvention decisions should have retroactive effect to the earliest date permitted under anticipated WTO disciplines.

(2) The law should be changed if necessary to permit liquidated entries to be reliquidated where merchandise has been entered without posting of

dumping duties or otherwise been erroneously liquidated without payment of duties that should have been paid.

(3) Commerce should broadly construe the term, "reimbursement" to minimize the practice in fact.

(4) Congress should modify U.S. law, consistent with our WTO rights, to permit dumping duties that are absorbed by a related party importer and not passed on to its customers to be treated as a cost.

(5) Congress should modify U.S. law to have antidumping duties that are actually collected distributed to petitioners to cover investments in plant, equipment, technology, and people (including training). Such a system would not only speed the ability to reinvest but would probably be the greatest incentive to foreign producers to price fairly.

(6) Congress should modify U.S. law to permit access to importer's records at Customs by counsel for domestic parties under administrative protective order.

(7) Congress should modify the definition of customs fraud to include importations by importers without the posting of antidumping duties where a product is found subject to an order and the importer did not obtain a scope ruling from Commerce.

3. Minimize the costs of domestic participation

Just as U.S. law and Commerce practice provides some special treatment of smaller foreign producers covered by investigations, so too Commerce and the ITC should minimize the cost of participation by both minimizing the procedural requirements and supporting documentation needs and by reviewing its draft regulations to see that minimal participation at Commerce is needed to have all legal and factual issues explored in fact.

Similarly, the Administration, the U.S. International Trade Commission and the national and local bar associations should work together to provide meaningful pro bono assistance for companies wishing to participate but unable to afford legal assistance. Such assistance should be available to domestic producers, foreign producers and importers. Past efforts to move in this direction have not been fruitful.

III. Short Supply (Temporary Duty Suspension)

I submitted written views on H.R. 2822 on March 1st. I refer the Committee to my full views submitted at that time. Let me just summarize now what I have previously stated.

H.R. 2822 would provide the Department of Commerce with the discretion to suspend antidumping and countervailing duties for up to one year, if Commerce determined that "prevailing market conditions" related to the availability of the product in the United States make imposition of such duties inappropriate.

This proposal is neither necessary, justified nor appropriate. Indeed, the proposal would continue or exacerbate the problem (injurious price discrimination) while ignoring the reasons behind reduced domestic product availability -- relief is available late, is only prospective and is often only partially effective because of evasion, circumvention and duty absorption by importers related to the foreign producers engaged in dumping. Congress should address the causes of

domestic industry problems -- specifically, those that I have identified above -- and not pursue an approach which would complicate the ability of injured industries to regain competitiveness and market share.

Our unfair trade laws do not impose penalties upon foreign producers who dump or receive subsidies on their products. Foreign producers and their importers are simply required to sell or buy product at a fair price or have the importer pay the difference to the U.S. government. Domestic producers are not compensated for past harm. Treble damages are not assessed. Yet, the continuation of dumping in such situations can significantly restrict the ability of U.S. companies to reinvest, reopen facilities, increase R&D or add personnel or upgrade training. Thus, Congress should consider ways to speed relief and make it time effective. Such actions would make more domestically-produced product available earlier.

Users of imported items are often concerned about the logic of paying fair value (i.e., non-dumped prices) for imported merchandise if such products are in fact not produced in the U.S. The logic presumably is that bargains that do not hurt domestic producers should not be eliminated. There is no logic to any claim of "shortage" of product by reason of antidumping or countervailing duty orders, as the orders do not restrict supply; rather foreign producers and importers are encouraged to charge and pay a fair value.

Domestic producers would agree that items which are truly not produced in the U.S. and for which U.S. producers have no intention of producing under conditions of fair trade should be excluded from the order. Indeed, Commerce and the International Trade Commission during investigations and Commerce after orders are issued routinely exclude merchandise or "clarify" the scope of an outstanding order to eliminate items where there is no interest. See, e.g., Certain Flat-Rolled Carbon Steel Products from Argentina, et al, Inv. Nos. 701-TA-319-332, 334, 336-342, 347-353 (Final) and Inv. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), Vol. II at I-3 - I-5, n. 1, Publ. 2664 (August 1993). Similarly, even after an order is issued, if there are products covered by an order that are not of interest to the domestic industry, the order can be modified. See, e.g., Certain Cut-to-Length Carbon Steel Plate from Canada, 60 Fed. Reg. 61,536 (Dept. Comm. 1995).

In short, there has been no showing that the existing system does not adequately address the alleged problem. However, false price signals in the market due to dumping or subsidization can and do result in companies abandoning products or not commencing production. Without the corrective influence of a dumping order, such domestic producers will never receive the price signals in the marketplace needed to determine whether it is rational for them to resume or commence production.

Indeed, orders are the only means for restoring a reasonable market price signal; if domestic producers have been pushed out or reduced their presence in a product, only restoration of fair prices will provide the market signals to encourage companies to reexpand or reenter markets. H.R. 2822 would eliminate the ability to reenter the market for many producers.

IV. While past studies constitute a start to understanding the costs/benefits of trade laws, much work remains to be done to evaluate all benefits or to properly evaluate the true costs

The U.S. International Trade Commission conducted a study during 1993-1995 of selected industries on which

antidumping duty orders were outstanding. Its report was released in June 1995 and resulted in sharply divided views by sitting Commissioners on its utility. The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, Inv. No. 332-344, USITC Pub. 2900 (June 1995). Having participated actively in the investigation on behalf of several clients, I am thoroughly familiar with the record before the Commission and the Commission report. While the report was an important undertaking, I was personally disappointed that the Commission report did not systematically review the range of issues raised by domestic parties and did not undertake at least alternative modeling efforts or better document the underlying assumptions and variables used in the model that was used. Nonetheless, the Commission staff expended a great deal of effort in compiling an initial report. The investigation resulted in a great deal of information being gathered by the Commission staff. That data should be further analyzed by the Commission staff to present certain supplemental information to the public including the following:

(a) a list of arguments and facts raised by domestic parties who had used the trade laws and how such arguments and facts were addressed in the Commission report;

(b) a list of all assumptions and variables used in the CGE model and what the results would have been had a partial equilibrium model been used to assess changes in production, employment, imports and exports at the sector level, such as was done in the USITC investigation on Potential Impact on the U.S. Economy and Industries of the GATT Uruguay Round Agreements, Inv. No. 332-353, USITC Pub. 2790 (June 1994);

(c) a quantification of the positive effects of trade relief identified by the various parties to the investigation and in the Commissioner views.

The model that was used by the Commission staff has been acknowledged by the Commission staff in other investigations to be less well suited to evaluate sector-specific effects. Yet, the antidumping and countervailing duty laws address specific products. Using a model that may be reasonable at measuring macroeconomic effects under certain circumstances, but not using a model recognized in the past by the Commission staff to provide a more accurate reading on micro-trade issues, should raise concerns about the accuracy of the findings made.

No study on a subject of such importance to so many industries should be released without a full listing of underlying assumptions, variables used and sources so that the reasonableness of the results can be evaluated.

The Commission staff is highly professional and should be commended for its initial effort. Yet, many unanswered questions remain. For informed comment to occur and for the study to be the basis for factual (as opposed to merely political) analysis, the Commission should amplify on its prior report so that all arguments and facts and all assumptions are clearly understood.

I would be pleased to respond to any questions. Thank you.

Chairman CRANE. Well, we thank you. Mr. Houghton, do you have any remaining questions?

Mr. HOUGHTON. No, I don't.

Chairman CRANE. If not, that concludes our testimony on antidumping issues. Many thanks to all of you for sharing your views and expertise with us. The hearing is adjourned.

[Whereupon, at 2:32 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF

HORST E. BUELTE

ON BEHALF OF

THE AMERICAN INSTITUTE FOR INTERNATIONAL STEEL ("AIIS")

INTRODUCTION

The American Institute for International Steel, Inc. ("AIIS") welcomes this opportunity to comment on the Commerce Department's proposed antidumping regulations and H.R. 2822, the "Temporary Duty Suspension Act." AIIS is comprised of steel importers, exporters and related enterprises in North America who serve the needs of steel users throughout the world and are committed to economic growth through competition in steel trade.

AIIS has been working closely with the Commerce Department on the preparation of regulations implementing the commitments set forth in the World Trade Organization (WTO) agreement on Antidumping. These rules are of tremendous importance for the international trading system, because antidumping has become the protectionist weapon of choice, both here and overseas. Fifty-six countries, including all major trading nations except China, have passed new or revised antidumping laws in the past two years. China is expected to issue its new law later this year. The way the U.S. applies antidumping rules to imports is therefore likely to be applied by other countries to U.S. exports.

Our goal is to help Commerce to issue regulations implementing the WTO rules in a way that is fair, fully consistent with the WTO rules, and sensible from a business person's perspective. In this connection, we are pleased that the draft regulations recently proposed by Commerce demonstrate an increased awareness of the desirability of designing measures that reduce costs and streamline procedures.

Some of the proposed Commerce regulations, however, openly violate the WTO rules, which the U.S. and 120 countries signed, such as the proposal to deduct reimbursed countervailing duties from the U.S. price in the dumping margin calculation. On most major issues, Commerce has opted for ambiguity and a lack of guidance rather than clear rules. Commerce claims that, for many of the key issues, it needs to gain more experience administering the new law before it can develop regulations. This will result in a lack of predictability for foreign producers and exporters, and U.S. importers, and is likely to lead to more decisions by Commerce based on adverse "facts available" (previously known as "best information available" -- "BIA").

In addition, Commerce states in the preamble to the proposed regulations, that its existing practices are adequate to address situations in which products covered by an antidumping order are not available from domestic sources. Contrary to the Commerce Department's assertion, the existing practices are wholly inadequate to address situations of no domestic supply. For this reason, AIIS supports H.R. 2822, the Temporary Duty Suspension Act.

AIIS looks forward to working with the Congress and the Commerce Department on the final regulations.

1. Temporary Duty Suspension

The proposed regulations do not include any provision for the temporary suspension of antidumping or countervailing duties (a provision which AIIS has consistently advocated) when a product covered by an order is not available from domestic sources. There is language in the preamble to the proposed regulations in which the Department claims that its existing practices are adequate to address valid concerns of lack of domestic production either through changed circumstances reviews or through clarification of the scope of an investigation during the early stages of the proceeding.[1] In fact, changed circumstances reviews are rarely conducted by the Department, and petitioners must agree to exclude a product from the scope before Commerce will actually do so. Thus, these avenues do not address U.S. manufacturers' short supply concerns.

2. Deduction of Reimbursed Countervailing Duties from Dumping Margin Calculation

The proposed regulations provide that in calculating dumping margins, any countervailing duties paid on behalf of the importer or reimbursed to the importer by the producer or exporter are to be deducted from the export price or the constructed export price. This would mean that any importer subject to payment of countervailing duties would be found dumping as well by the amount of the countervailing duty, even if its prices were identical in both markets.

This is a new provision for which there is no basis in the U.S. law on the WTO Agreements. Commerce claims that it is required to make this deduction because of a statement contained in the Senate Finance Committee Report on the URAA legislation, despite contrary language on the House and Senate floors. This proposed rule would result in the double-counting of the duty by charging the full amount of the duty twice -- once as a countervailing duty and once as part of the dumping duty. This violates the WTO Agreements which the U.S. signed in 1994.

3. Pre-Initiation Comments

The Department rejected the proposal supported by AIIS that the Department should retain the authority and discretion to request information from potential interested parties prior to initiation of an investigation, when it is deemed appropriate. The proposed regulations stipulate that only comments pertaining to industry support for the petition may be submitted prior to the initiation of an investigation. The 1994 legislation permits the Department to seek other information. In eliminating its own authority to seek information it deems appropriate, Commerce is contravening Congress's intent of avoiding unwarranted investigations. (See United States v. Roses, Inc., 706 F. 2d 1563, 1569 (Fed. Cir. 1983).

4. Automatic Duty Assessment

A significant change in the proposed regulations from current practice involves automatic duty assessment in situations when no review is requested. Under the current regulations, if no review is requested, duties are assessed at the cash deposit or bonding rate applicable to the specific entries in question. Under the proposed regulations, if no review is requested, duties will be assessed at the rate determined in the most recently completed segment of the proceeding.[2]

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[1] Antidumping Duties; Countervailing Duties; Proposed Rules, 61 Fed. Reg. 7308, 7323, Feb. 27, 1996 (Dep't Comm.) ("Proposed Rules").

[2] It should be noted that there may be a contradiction in the proposed regulations. The preamble to the regulation on automatic duty assessment indicates that there is no change from the existing regulations. The actual proposed regulation, however, states

(continued...)

This change presents a huge problem for importers and exporters because of the lack of predictability (for all parties -- the domestic industry, foreign producers and exporters and importers) as to what the assessment rate will be if no review is requested. Under the current rules, all parties can determine whether it is in their interest to request a review, because they know at the time they must request the review that the assessment rate will be the cash deposit rate if no review is requested. Under the proposed rules, however, parties have virtually no way of predicting what the ultimate assessment rate will be if there is another review pending. This will result in an increase in the number of administrative reviews that will be requested, and a period of 1 to 3 years in which importers and customers will not know what the ultimate duty liability is.

5. Affiliated Parties[3]

Under the new statute, parties may be deemed "affiliated" if one party is in a position to exercise restraint or control over another. The proposed regulations fail to provide any guidance on how the Department will determine when one party is in such a position to exercise such restraint or control another, and rejected outright proposals requiring actual evidence of control before parties could be considered affiliated. The preamble to the Proposed Regulations states:

> "Affiliated persons" is a new statutory term embodying new concepts, and the complexity of the relationships potentially covered by this term mitigate against the issuance of detailed regulations at this time. [...] Therefore, the Department intends to apply this new definition on a case-by-case basis...[4]

As a result of the lack of guidance in the regulations on this issue, it will be very difficult, if not impossible, for companies involved in an antidumping or countervailing

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[2](...continued)
that automatic duty assessment will be based on the rate determined in the most recently completed segment of the proceeding.

[3] Under the new statute, affiliated parties are defined as follows:

> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
>
> (B) Any officer or director of an organization and such organization.
>
> (C) Partners.
>
> (D) Employer and employee.
>
> (E) Any person directly or indirectly, owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
>
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
>
> (G) Any person who controls any other person and such other person.

... a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

19 U.S.C. § 1677(33) (1994).

[4] Proposed Rules, 7310.

duty investigation to determine whether they should treat another entity as an affiliate, which would therefore require the reporting of sales or costs by that other entity. The lack of clarity and predictability in this area is likely to result in more findings based on adverse "facts available."

6. Arm's Length Test[5]

In public comments on the proposed regulations, several commentators suggested that Commerce set forth some clear rules on how to determine when home market prices to an affiliated purchaser are comparable to prices charged to unaffiliated purchasers (i.e., the arm's length test). If Commerce determines that sales to an affiliated party are not at arm's length prices, Commerce requires that the prices and expenses of the affiliate to an unaffiliated party must be reported. This requirement resulted in the extensive use of "best information available" in the 1992 flat-rolled steel cases. The proposed regulations fail to provide any guidance on the arm's length determination "because of the complexity of this issue, and because the Department's practice in this area is still evolving."[6] The effect of the lack of clear rules in this area will be a likely increase in decisions based on adverse "facts available.

[5] Under current practice, Commerce will only consider sales to an affiliated party to be arm's length if the weighted average prices of each product charged to each affiliated party are at least 99.5 percent of the weighted average prices charged to all unaffiliated parties combined.

[6] Proposed Rules at 7333.

STATEMENT OF AMERICAN WIRE PRODUCERS ASSOCIATION

OVERVIEW

The AWPA represents a significant and dynamic part of the American steel industry. AWPA active members are located in the United States and manufacture all types of steel wire and wire products. These products include barbed wire, wire strand, tire cord, mesh and fencing products, nails, springs and wire garment hangers. AWPA members purchase carbon, stainless and other alloy steel wire rod from domestic and foreign sources, and they process or "draw" the wire rod into wire which may then be further processed into wire products. Major consumers of wire and wire products include the automotive, agricultural and construction industries.

The AWPA also includes virtually all of the US and Canadian manufacturers of steel wire rod – the wire industry's basic raw material – as well as producers of wire and wire products in Canada and Mexico.

The 93 member companies of the AWPA operate 220 plants in 35 states, and they employ over 60,000 dedicated and productive American workers. These companies represent 70 to 80 percent of all US manufacturers of wire and wire products. It is estimated that the total annual shipments by AWPA members exceed $15 billion. The average number of employees for AWPA's wire drawing companies is approximately 230. While this average includes the large companies that employ significantly more workers, they usually operate several small plants with less than 100 workers, each in different states, supporting a different local economy.

The member companies of the AWPA are part of a diverse and dynamic US steel industry. With the companies in our sister associations of steel mini-mills, pipe producers, cold finished bar manufacturers, and others, we have changed the face of the American steel industry. The steel industry long ago ceased to be a monolithic group of a handful of integrated steel producers. Instead, the steel industry today is a vibrant, diverse and innovative contributor to economic growth and prosperity in the United States. The old image of "Big Steel" has been superseded by a mosaic of efficient, energetic and state-of-the-art companies which can successfully meet the challenge of global competition.

SUPPORT OF THE TEMPORARY DUTY SUSPENSION ACT (HR 2822)

The AWPA endorses the Temporary Duty Suspension Act (HR 2822) and respectfully urges the members of this Committee to support its passage. The Act will remedy the unintended effect of the antidumping and countervailing duty laws that prevents the import of products that are not available from domestic sources. Under the present law, there is no procedure that permits the temporary suspension of antidumping or countervailing duties for narrowly defined products that cannot be supplied by the domestic industry.

The AWPA is a very active participant in the Temporary Duty Suspension Group, which is a coalition of many industries that support the need for this important legislation. Comments submitted by the Temporary Duty Suspension Group to the Ways and Means Committee thoroughly describe the intentions of HR 2822 and address the misunderstandings and concerns expressed by opponents of this legislation. We have not reiterated those points in these comments, but rather have focused on direct wire industry experiences that effectively illustrate the need for HR 2822 and have provided examples for the illustration of the ability to administer this provision, should it become part of US trade law. The AWPA fully supports and endorses the comments of the Temporary Duty Suspension Group.

Antidumping and Countervailing Duty Laws

HR 2822 is not an attempt to weaken the antidumping and countervailing duty laws. On the contrary, the AWPA has long supported the rigorous enforcement of US trade laws. Its members have used these laws in order to respond to unfairly traded or subsidized imports which have caused serious economic harm to the wire and wire products industry. Moreover, AWPA members source raw material primarily from US manufacturers of steel wire rod. The AWPA active members have worked closely with the domestic rod industry – now composed entirely of world-class and efficient mini-mills – to develop and expand the availability of American-made wire rod.

Further, the Temporary Duty Suspension Act will not obstruct the effective and rigorous administration of the current antidumping and countervailing duty laws. The Act can be invoked only if the specific product is not available from US producers. There is no injury to these domestic suppliers if they cannot provide the needed product to their customers in the US market. Therefore, the Temporary Duty Suspension Act does not weaken or undermine the remedies which are available under current antidumping and countervailing duty laws.

US Wire Industry Experience Illustrating the Necessity for Temporary Duty Suspension Procedure

The member companies of the AWPA which manufacture wire and wire products have had considerable experience with the unintended effect of antidumping and countervailing duty proceedings on the availability of certain types of wire rod. AWPA members also have experience with both the unintended effect of dumping petitions on wire rod supply, and with the administration of the short supply proced¹ure during the "VRA" program.

During the antidumping investigations of carbon steel wire rod in 1993–94, the imposition of preliminary dumping duties prevented US manufacturers of steel wire and wire products from obtaining certain types of wire rod that were not available from domestic producers. In addition, the US market experienced severe shortages of even basic types of wire rod. Rod producers put their customers on allocation, canceled orders and postponed deliveries. The unavailability of wire rod threatened severe economic harm to a vigorous and profitable US wire industry, and it encouraged foreign competitors to target the US market for steel wire and wire products. Although the US International Trade Commission eventually made findings of no injury and terminated most of these investigations, this experience demonstrates the necessity for a mechanism to provide temporary relief when domestic consuming industries cannot obtain essential raw materials from sources in the United States.

Further, the petitioners in these carbon steel rod investigations amended the scope of their complaints to exclude some types of wire rod which were not available from producers in the United States. However, they did so only while pressuring those wire manufacturers, whose future depended upon the availability of such wire rod, to agree not to oppose the antidumping cases in general. This underscores the need for the Temporary Duty Suspension Act, which would give an independent and impartial governmental agency – in this case, the US Department of Commerce – the authority to make such decisions. The future of the domestic industry should not be held hostage to the tactical objectives of petitioners in antidumping and countervailing duty cases. Surely, it is in the commercial interest of all parties – including petitioners – that decisions relating to the domestic availability of needed products be made on

the basis of the facts and in accordance with established administrative procedures. In fact, the largest US rod producer, who was a petitioner in this case, has expressed support for an amendment to the antidumping and countervailing duty laws which "would provide authority for the Department of Commerce to grant 'short supply' authorization when a product is not produced domestically."

There are currently antidumping duties imposed on stainless wire rod from Brazil, India and France, and, there are only three domestic producers of stainless rod. These three mills are unable to supply the needs of all of the US stainless redrawers. Additionally, two of these three mills also make wire and compete in the wire market against other independent redrawers. This market structure has a unique impact on the supply of rod. Under certain market conditions, rod mills may choose to manufacture more wire, consuming their own rod production. This further limits the amount of rod available to the US redrawers. When the rod industry chooses wire production over rod sales, US wire manufacturers must have the ability to source on the global market.

When US mills make a profitable business decision to consume rather than sell rod, they cannot be harmed by the imports of rod. The US government should have the ability to waive duties for US wire producers who must have these raw materials to continue production, sales and the employment of our US workers and our customers' workers. Continued duties only provide importers of wire and wire products with an unfair trade advantage. The future of our industry should not be left to the tactical objectives of petitioners.

Precedent for and Administrability of a Temporary Duty Suspension Procedure

The members of the AWPA have also had experience with the administration of a program which successfully dealt with the non-availability of certain types of steel products from domestic producers. During the steel Voluntary Restraint Agreement program, stainless steel wire drawers were able to obtain special licenses from the US Department of Commerce for rod products which were not available from domestic mills. For six consecutive calendar quarters, AWPA members requested and obtained special licenses to import specific grades of stainless steel wire rod which were not available from domestic producers. In fact, domestic producers of stainless steel wire rod certified to the US Department of Commerce that such rod was not available in the US market, in sufficient quantities to meet domestic demand.

Further, it was the experience of the AWPA that the US Department of Commerce was able to make these determinations, in each instance, in a prompt and fair manner without placing an undue burden on its resources.

CONCLUSION

The AWPA respectfully requests the members of this Committee to support the Temporary Duty Suspension Act. This Act will remedy an unintended but harmful effect of the antidumping and countervailing duty laws which prevents the importation of products which are not otherwise available from domestic producers. The Act will not weaken the antidumping and countervailing duty laws or cause harm to the US industries that seek relief from unfairly traded and subsidized imports. Rather, the Act provides a limited procedure which can be invoked only in those exceptional circumstances when a specific product is not available from domestic producers. In this way, the Act enables downstream manufacturers to obtain needed raw materials so that they can maintain their

operations and compete successfully with foreign suppliers of the downstream product.

The member companies of the AWPA are concerned that the Congress and the House Ways and Means Committee get the full picture of the US Steel Industry, today, as you address the trade policy initiatives that affect this industry. There are many voices to consider. The decisions you make regarding trade policy should be made in light of the health and well-being of all the companies and employees that make-up today's steel industry.

BERG STEEL PIPE CORP.
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May 7, 1996

Mr. Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Follow-up Comments on April 23, 1996 Hearing

Dear Mr. Moseley:

Berg Steel Pipe Corp. ("Berg") transmits this letter in order to clarify Berg's position on ultrasonic testing of steel plate discussed at the Trade Subcommittee hearing on April 23, 1996 on antidumping regulations. Berg's comments on the interim regulations of the Treasury Department are also included.

At the April 23rd hearing, the point was raised that certain products that are not available from domestic sources are subject to antidumping and countervailing duties and that this harms downstream U.S. industries unnecessarily. As an example of a product that is not available domestically, Ken Dorland of Enron Corporation cited the fact that full-body ultrasonic testing of steel plate is not available from domestic plate mills. Later in the hearing, Mr. Grow of Geneva Steel (and Chairman of the AISI) made a statement confirming that no U.S. plate mill has this capability, but suggesting that pipe manufacturers such as Berg could practically test pipes ultrasonically. Berg Steel wants to ensure that the Subcommittee is fully informed on this issue.

When a pipeline company orders pipe, its requirements can and often do include full-body ultrasonic testing of each plate that will be installed in the project. This requirement is usually indicated by referring to a testing standard developed by the American Society for Testing and Materials ("ASTM"). ASTM A 435/A 435M-90 and A 578/A 578M-92 contain the usual standards referenced for testing in this area; in each instance, the requirement is for the testing of plates.

In addition, it is totally impractical to wait to test plate until after it is made into pipe. As Berg has no plate mill, it must purchase all its plate from an outside supplier. If plate is not tested until it has been made into pipe, there is a

considerable risk that unusable pipe will be made, and the considerable expense of transporting plate and producing it into pipe would have been needlessly undertaken.

Berg's largest plate supplier understands that they, not Berg, must make provision for ultrasonic testing of plates as a commercial necessity. To suggest that Berg could somehow use domestic plate by investing several million dollars in ultrasonic testing equipment at the pipe mill completely ignores the practical nature of the problem.

While no U.S. supplier has installed "in-line" ultrasonic testing equipment ("in-line" refers to the testing of every plate during the production process), this is the superior method of conducting these tests. At least one mill in Canada, plus the mills in Europe and Japan that manufacture plate for line pipe have in-line ultrasonic testing. The U.S. producers are, quite simply, behind in this area, and use of the ultrasonic testing requirement will increase in the future. Until the U.S. industry is able to provide this product, temporary suspension of antidumping and countervailing duties for plate that is ultrasonically tested for use in pipelines will be a necessity.

Berg is concerned that, even if the industry should agree to revoke the antidumping and countervailing duty orders on ultrasonically tested plate, this will put Berg at a long-term disadvantage because it will weaken the pressure on the domestic industry to install ultrasonic testing equipment at U.S. plate mills. This points out the urgent need for authority for the Commerce Department to permit temporary suspension of duties.

Berg also wishes to point out that there are other plate properties that are not available from domestic producers. Wide plate (for pipe 48" or over in outside diameter), reduced chemistry for better on-site weldability, special chemistry to protect against hydrogen-induced cracking of the pipe (a problem in "sour" gas) and some mechanical properties for Arctic applications (such as Alaska), are further examples.

Berg also wishes to bring to the Committee's attention another issue concerning administration of the antidumping laws. The U.S. Treasury Department recently issued interim regulations to implement certain duty-deferral provisions in the North American Free Trade Agreement Implementation Act. These regulations, published at 61 Fed. Reg. 2908 (January 30, 1996), assess antidumping (and countervailing) duties on goods made from merchandise subject to NAFTA drawback, at the time such goods are exported to Canada (beginning January 1, 1996), or to Mexico (beginning January 1, 2001) under a "duty deferral" program such as the foreign-trade zones program. Berg submits there is no legal authority for the assessment of antidumping and countervailing duties on this exported merchandise. Moreover, the interim regulations also exceed the Treasury

Department's statutory authority by subjecting the exported merchandise to the merchandise processing fee established by 19 U.S.C. § 58c(a)(9). Berg further notes that these regulations were issued retroactively and without opportunity for affected parties, such as Berg, to comment prior to the time the regulations went into effect. For the Committee's reference, Berg is submitting as Attachment A, a copy of the comments it submitted to the U.S. Customs Service on the interim regulations in question. That submission discusses the reasons why the interim regulations are contrary to existing law and urges that the Customs Service make appropriate corrections.

Berg Steel Pipe Corp. appreciates the opportunity to provide these views to the Trade Subcommittee.

Very truly yours,

Carl G. Seigler
Vice President

ATTACHMENT A

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April 1, 1996

BY HAND DELIVERY

Mr. Harold Singer
Chief, Regulations Branch
U.S. Customs Service
Franklin Court
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Re: Comments on Interim Regulations Implementing the Duty-Deferral Program Provisions of the North American Free Trade Agreement ("NAFTA")--61 Fed. Reg. 2908 (Jan. 30, 1996)

Dear Mr. Singer:

This submission on behalf of Berg Steel Pipe Corp. ("Berg"), of Panama City, Florida, responds to publication of interim regulations of the Department of the Treasury ("Treasury Department," or "Treasury") pertaining to NAFTA duty deferral programs. *North American Free Trade Agreement (NAFTA)--Implementation of Duty Deferral Program Provisions*, 61 Fed. Reg. 2908 (Jan. 30, 1996) ("interim regulations"). On behalf of Berg, we appreciate the opportunity to provide its views on the interim regulations.

Berg is one of three major domestic producers of large diameter steel pipe for oil and gas pipelines and offshore platforms. Berg employs more than 200 people in its manufacturing facility in Panama City, Florida, and its sales office in Houston, Texas. Berg's manufacturing operations are conducted within Foreign Trade Zone No. 65, located in Panama City, Florida, using foreign-trade zone procedures. The capacity of the Berg manufacturing facility is approximately 250,000 tons of pipe per year.

As an exporter of its steel pipe products to NAFTA countries and a user of foreign-trade zone procedures, Berg has serious concerns regarding certain provisions of the interim regulations that negatively affect Berg and similarly-situated U.S. exporters. Specifically, the interim regulations are legally deficient in two critical respects:

1. The interim regulations provide for assessment and collection of antidumping and countervailing duties on merchandise made from goods subject to NAFTA drawback under a duty deferral program (including the foreign-trade zones program) that is exported to a NAFTA party, even though Congress neither directed nor authorized Treasury to assess or collect these duties.

2. The interim regulations provide for collection of the Merchandise Processing Fee on such merchandise; here also, Congress has provided no direction or authority for this collection.

The interim regulations not only are contrary to law, but also are harmful to the interests of U.S. exporters such as Berg. Foreign producers of goods competing with U.S. exporters for the Canadian market are now receiving a significant competitive advantage over Berg and other U.S. exporters as a result of Treasury's collection of the antidumping and countervailing duties at issue. These foreign producers are now able to market their competing goods in Canada without incurring liability for U.S. antidumping and countervailing duties on the materials and components they use in production. The same competitive disadvantage would adversely affect U.S. companies exporting to Mexico beginning January 1, 2001. As now formulated, the interim regulations encourage U.S. businesses to move offshore--a result clearly not intended by the NAFTA or the U.S.

Congress. We believe Treasury should act at once to correct this legal deficiency and thereby avoid the commercial harm that is now being imposed on affected U.S. exporters.

The interim regulations benefit Canadian and Mexican manufacturers at the expense of U.S. manufacturers with respect to the collection of the Merchandise Processing Fee. Products of Canada exported to the United States, if satisfying the NAFTA preferential rules of origin, are exempt from this Fee. 1/ Similarly, imports of NAFTA-originating goods of Mexico receive preferential treatment with respect to the Fee--such goods may not be charged a fee in excess of that in effect on December 31, 1993 (*i.e.*, 0.19 percent *ad valorem* as opposed to the current 0.21 percent) and will be totally exempt from the Fee on and after June 29, 1999. 2/ Thus, in unlawfully collecting the Fee on exports of goods made by U.S. manufacturers, the Treasury Department has treated U.S. exporters less favorably than Canadian exporters and Mexican exporters are treated under the NAFTA as implemented in U.S. law.

In view of the disadvantages to U.S. manufacturers that result, Treasury's decision to collect the antidumping/countervailing duties and Merchandise Processing Fee in the situations described would require a compelling legal justification. However, no justification of any kind is presented in the preamble to the interim regulations, and we believe no such legal justification is possible.

Berg also objects to the manner in which the two measures at issue were imposed. Treasury imposed these measures *retroactively*, a full month *after* the effective date, affording affected exporters such as Berg no notice or opportunity to object through public comment procedures prior to imposition. The Federal Register notice attempts to justify dispensing with the notice and comment and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. § 553) by citing the "foreign affairs" exception of 5 U.S.C. 553(a) as it applies to the NAFTA. 3/

Treasury's reliance on the foreign affairs exception is misplaced. Section 553(a)(1) of Title 5 provides an exception from the notice and comment and delayed effective date requirements of the Administrative Procedure Act only "*to the extent* there is involved a foreign affairs function of the United States." 4/ Even assuming, *arguendo*, that the statutory exception has some applicability to the interim regulations, it does not apply, under the plain meaning of 5 U.S.C. § 553(a)(1), to the provisions in the interim regulations that assess antidumping and countervailing duties and the Merchandise Processing Fee. Neither the NAFTA nor the NAFTA Implementation Act directs Treasury to effectuate these assessments. Even had Congress granted Treasury discretionary authority to make these collections (which it has not), the notice of January 30, 1996, in having effects independent of the statute it seeks to implement, still would constitute a "legislative rule" to which the rulemaking requirements of the Administrative Procedure Act apply. *See American Frozen Food Institute, Inc. v. United States*, 855 F. Supp. 388, 395-396 (Ct. Int'l Trade 1994) and cases cited therein.

Finally, retroactivity is strongly disfavored in the law, for reasons of fundamental fairness, including the interests of parties who must rely on existing law in arranging their transactions and conduct. 5/ Retroactivity, which can alter the legal consequences of past decisions made under existing law, is all the more harmful where, as here, Treasury gave no indication that it would collect the antidumping/countervailing

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1/ 19 U.S.C. § 58c(b)(10).

2/ *Id.* Congress effected the increase in the statutory maximum for the merchandise processing fee from 0.19 percent *ad* valorem to 0.21 percent ad valorem in 1994 when it enacted Section 612 of the Uruguay Round Agreements Act, Pub. L. 103-465.

3/ 61 Fed. Reg. at 2910.

4/ 5 U.S.C. § 553(a)(1) (emphasis added).

5/ *See Bowen v. Georgetown University Hospital*, 488 U.S. 204, 219, 109 S.Ct. 468, 102 L.Ed. 2d 493 (1988).

duties and processing fees during the period of more than three years that occurred between passage of the NAFTA Implementation Act (enacted December 8, 1993) and issuance of the interim regulations last January 30, and even announced, on September 29, 1995, that it *would not* collect these very same duties and fees. 6/

In summary, the interim regulations were issued under procedures contrary to law and contain unlawful substantive provisions that prejudice U.S. manufacturers such as Berg relative to producers in other countries. Berg urges immediate correction of these serious flaws. The legal deficiencies pertaining to the antidumping/countervailing duty and Merchandise Processing Fee collections, respectively, are discussed below.

A. U.S. Law Provides No Authority for Collection of Antidumping and Countervailing Duties on Exports to Canada and Mexico of Merchandise Made from Goods Subject to NAFTA Drawback

Under § 181.53(a)(2) of the interim regulations, merchandise made in a foreign trade zone from goods subject to NAFTA drawback and exported to Canada, (or, beginning in 2001, to Mexico) is treated as if it were an entry for consumption and is assessed antidumping and countervailing duties under § 181.53(a)(2)(i)(C). This provision is directly contrary to the antidumping and countervailing duty laws as enacted by Congress and interpreted by the courts. 7/

Under U.S. law, antidumping and countervailing duties are assessed and collected *only* on merchandise that is entered for consumption *in the Customs Territory of the United States*. 8/ The Court of International Trade 9/ and the Commerce Department 10/ consistently have held that merchandise admitted into a foreign-trade zone is not subject to antidumping and countervailing duties unless and until it is entered for consumption in the U.S. Customs Territory. Because merchandise admitted into a foreign-trade zone and then exported to a NAFTA party never enters the U.S. Customs

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6/ U.S. Customs Service, *NAFTA Duty Deferral* (electronic bulletin board notice) (Sept. 29, 1995) at 4.

7/ Although this letter analyzes this issue with respect to exports from foreign-trade zones, the principles discussed also are applicable to exports from the United States under the other duty deferral programs.

8/ *See, e.g.*, the following sections of the antidumping and countervailing duty laws: 19 U.S.C. § 1671b(d)(2) and 19 U.S.C. § 1673b(d)(2) (liquidation of entries for consumption are suspended under countervailing and antidumping duty law, respectively); 19 U.S.C. § 1671e(a) and § 1673e(a) (deposit of estimated countervailing and antidumping duties, respectively, pending liquidation of entries of merchandise, to occur at the same time as normal customs duties on that merchandise are deposited); 19 U.S.C. § 1671e(b) and § 1673e(b) (imposing countervailing and antidumping duties on merchandise entered, or withdrawn from warehouse, for consumption).

9/ *Torrington Co. v. United States*, 881 F. Supp. 622, 646 (Ct. Int'l Trade 1995); *Timken Co. v. United States*, 865 F. Supp. 881, 888 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 865 F. Supp. 850, 856 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 862 F. Supp. 413, 420 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 858 F. Supp. 206, 214 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 852 F. Supp. 1122, 1132 (Ct. Int'l Trade 1994); *Torrington Co. v. United States*, 826 F. Supp. 492, 494 (Ct. Int'l Trade 1993); *Torrington Co. v. United States*, 823 F. Supp. 945, 948 (Ct. Int'l Trade 1993); *Torrington Co. v. United States*, 818 F. Supp. 1563, 1573 (Ct. Int'l Trade 1993), *appeal pending* Nos. 95-1210 and 95-1211 (Fed. Cir. Dec. 7, 1994) (. . . "there is no reason to believe that the use of the term entry in the antidumping duty statute refers to anything other than formal entry of merchandise *into the U.S. Customs territory*" (emphasis added)).

10/ *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 Fed. Reg. 65,228 (Dec. 16, 1991) ("[O]ur understanding of the term 'entry' in the antidumping law is that it unambiguously refers to release of merchandise into the customs territory of the United States"); *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan: Final Results of Antidumping Duty Administrative Review*, 56 Fed. Reg. 41,506 (Aug. 21, 1991); *Antifriction Bearings from the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 Fed. Reg. 31,703 (July 11, 1991).

Territory for consumption in the United States, antidumping and countervailing duties lawfully may be neither assessed nor collected.

The NAFTA Implementation Act does not create an exception to this statutory principle. Pursuant to NAFTA Article 303(3) as implemented by Section 203(b)(5) of the NAFTA Implementation Act, "a duty" is to be assessed on foreign-trade zone exports to Canada and Mexico of merchandise made from goods subject to NAFTA drawback, but the statutory provision makes no mention of antidumping and countervailing duties. Moreover, nothing in the legislative history (including specifically, the Statement of Administrative Action accompanying the NAFTA Implementation Act as submitted to the Congress) states or even suggests that antidumping duties and countervailing duties are to be assessed in addition to ordinary customs duties under this special procedure. Congress cannot be presumed to have intended to create an exception to a statutory principle where, as here, the draft legislation and supporting materials submitted to it for "fast track" consideration fail to even mention any such exception. Had Congress intended the result effected by the interim regulations, it would have amended the antidumping and countervailing duty laws to accomplish it.

It is also noteworthy that the Treasury Department does not have authority over the imposition of antidumping and countervailing duty. The interim regulations are not valid because they were not issued by the U.S. Department of Commerce, which has full authority in this area. Here also, had Congress intended to delegate to the Treasury Department regulatory responsibility in this area, it would have provided so explicitly.

Treasury apparently presumes that antidumping and countervailing duties should be added to the special duty collected on exports from foreign-trade zones under Section 203(b)(5) of the NAFTA Implementation Act to effectuate some intent it attributes to the NAFTA. However, the NAFTA does not require the assessment or collection of antidumping/countervailing duties on the merchandise at issue. To the contrary, the NAFTA explicitly excludes antidumping and countervailing duties from the ordinary customs duties assessed on exports from foreign-trade zones under the special duty collection procedure. 11/

B. The Treasury Department Has No Authority to Assess the Merchandise Processing Fee on the Merchandise at Issue

The Merchandise Processing Fee (the "MPF," or the "Fee") is imposed, with certain exceptions, on merchandise formally entered or released from warehouse for consumption in the Customs Territory of the United States. The interim regulations are *ultra vires* in assessing and collecting the Fee on merchandise withdrawn from a foreign-trade zone for export to Canada and (beginning 2001) to Mexico.

Specifically, Congress imposed the Fee (now fixed by statute at a maximum of 0.21 percent *ad valorem*) on "merchandise that is formally entered or released during any fiscal year." 12/ The term "entered or released" is defined by statute to apply only to three specific situations pertaining to merchandise formally entered for consumption, or withdrawn from warehouse for consumption, in the U.S. Customs Territory. 13/ Therefore,

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11/ NAFTA Article 318 expressly excludes antidumping and countervailing duties from the definition of "customs duties" as that term is used in Article 303(3). Article 303(2)(a) also refers to antidumping and countervailing duties but pertains only to waiver or reduction of duties "applied pursuant to a Party's domestic law." Nothing in NAFTA Article 303 requires the United States to amend its antidumping and countervailing duty laws to initiate the collection of antidumping and countervailing duties on the subject NAFTA exports from foreign-trade zones.

12/ 19 U.S.C. § 58c(a)(9)(A). The Fee was imposed by Congress in section 8101 of the Omnibus Budget Reconciliation Act of 1986, P.L. 99-509 ("OBRA"), which amended the general Customs user fee provisions imposed by Section 13031 of the Consolidated Omnibus Reconciliation Act of 1985, P.L. 99-272.

13/ Merchandise "entered or released" is defined by statute as merchandise that is "permitted or released under section 1448(b) of this title" [referring to perishable goods imported into the United States and released into the Customs Territory from Customs custody under permit for immediate

by statute, merchandise admitted to a foreign-trade zone and withdrawn in foreign status from the zone for export is not subject to the MPF.

Pertinent legislative history confirms that the Fee does not apply to "merchandise which does not formally *enter U.S. commerce for consumption*." 14/ Congress clearly did *not* intend to assess the Fee on exported merchandise, intending instead that in return for paying the fee the "*importing community* has a right to expect the Customs Service to be adequately staffed and to provide its services in an expeditious fashion." 15/

Additionally, nothing in the NAFTA Implementation Act (which the interim regulations are intended to effectuate) provides any authority for the collection of the MPF on exports of merchandise made from goods subject to NAFTA drawback that is exported under foreign-trade zone procedures (or other duty deferral procedures). Were it to so provide, it would be inconsistent with the NAFTA, under which the special duty collected under Article 303(3) is expressly defined to exclude "any . . . fee or other charge in connection with importation commensurate with the cost of services rendered."

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For the aforementioned reasons, the Treasury Department's assessment and collection of antidumping and countervailing duties and the MPF under the interim regulations are unlawful and highly prejudicial to U.S. exporters such as Berg. Berg respectfully requests that the Treasury Department act promptly to correct these legal deficiencies, which are causing injury to affected U.S. manufacturers.

If we can be of any further assistance, please do not hesitate to contact the undersigned.

Respectfully submitted,

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Counsel for
Berg Steel Pipe Corp.

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delivery], "entered or released from customs custody under section 1484(A)(1)(A) of this title" [referring to imported merchandise formally entered for consumption in the Customs Territory by an importer of record] or "withdrawn from warehouse for consumption." 19 U.S.C. § 58c(b)(8)(E).

14/ H.R. Conf. Rep. 99-1012, 99th Cong. 2d Sess. 388 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3607, 4033. (emphasis added).

15/ *Id.* at 4034.

COMMENTS OF THE COMMITTEE ON PIPE AND TUBE IMPORTS (CPTI)
AND WEIRTON STEEL CORPORATION
ON THE PROPOSED REGULATIONS OF THE DEPARTMENT OF COMMERCE

In response to the Committee's request for written comment on the proposed regulations issued by the Department of Commerce, Schagrin Associates submit these comments on behalf of the Committee on Pipe and Tube Imports (CPTI) and on behalf of Weirton Steel Corporation.

1. Deduction from export price for reimbursement of countervailing duties.

Current Commerce regulations provide for a deduction from the U.S. price (now export price) for the amount of any antidumping duty which the producer or reseller pays directly on behalf of the importer or reimburses to the importer. 19 C.F.R. §353.26. In the new legislation, Congress specifically approved this regulation and stated that it "expects that Commerce will continue to make this deduction." Sen. Rep. No. 412, 103d Cong. 2d Sess. 64 (1994) (hereinafter "SR"). Congress went on to note that "there is no reason to differentiate between reimbursement of antidumping duties and the reimbursement of countervailing duties in calculating export or constructed export price in antidumping proceedings." SR 64. Thus, the legislative history directs Commerce to "amend its regulations to require a reduction to export or constructed export price for countervailing duties directly paid or reimbursed to importers." *Id.*

The new regulatory language prevents importers from evading payment of duties designed to remedy unfair pricing. Rejection of this regulatory change would open a huge loophole in the law and deny relief to the domestic industry where the subject merchandise is covered by both antidumping and countervailing duty orders.

Under section 772(c)(1)(C), the Department increases the price used to calculate export price (or constructed export price) by the amount of any countervailing duty imposed to offset an export subsidy. This adjustment prevents double counting of compensating duties. If the countervailing duty is reimbursed, the importer evades payment of both the countervailing duty and the antidumping duty (by reason of the section 772(c)(1)(C) adjustment). Consequently the domestic industry receives no relief either for the illegal subsidation or for the less-than-fair-value pricing. U.S. law cannot be interpreted to provide greater relief where an antidumping duty order is in place than if both antidumping and countervailing duty orders cover the same merchandise.

2. Establishment of level of trade prior to investigation of qualification for a level of trade adjustment.

New section 773(a)(1)(B)(i) requires that Commerce establish normal value "to the extent practicable, at the same level of trade as the export price or constructed export price." The statute does not specifically define the criteria for determining whether differing levels of trade exist, but focuses on whether an adjustment is appropriate for situations involving comparisons at different levels of trade.

In the Uruguay Round implementing legislation, Congress did nothing to reject Commerce's current methodology of analyzing levels of trade in the context of the distribution chain for the subject merchandise. See Import Administration Policy Bulletin, Number 92/1 (July 29, 1992); *Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 Fed. Reg. 18791, 18794 (1994). The House Committee report explained the "statutory scheme." First, Commerce is "to the extent practicable, establish normal value based on . . . sales at the same level of trade" and may not make level of trade adjustments if such comparisons are available. H. Rep. No. 826, 103d Cong., 2d Sess. 85-86 (1994) (hereinafter "HR"). "Second, when sales in the United States and foreign markets cannot be compared at the same level of trade, an adjustment to normal value may be appropriate." HR 86. An adjustment for differences in level of trade is permissible only if it involves the performance of different selling activities and is demonstrated to affect price comparability (based on a pattern of consistent price differences between sales at different levels

of trade in the country in which normal value is determined.) Section 773(a)(7)(A)(i) & (ii).

Similarly, the Senate report notes the expectation that different levels of trade could exist yet the distinctions in selling practices and price comparability might not be sufficient to warrant a level of trade adjustment. The report states: "In order to qualify for such a level of trade adjustment, the differences in level of trade must (1) involve the performance of different selling activities and (2) be demonstrated to affect price comparability. . . ." SR 71.

In stark contrast to the statutory scheme and its past practice, the Department states "the only test identified in the statute for the legitimacy of the claimed levels of trade is the activity of the seller." 61 Fed. Reg. 7348. The Department's sole reliance on an adjustment provision criterion to define level of trade directly conflicts with the legislative history and leads Commerce into an administrative and interpretative morass. Indeed, the Department's explanation of its proposal acknowledges the problems of defining level of trade in a way which ignores the distribution chain. The Department states "that prices within a single level of trade, defined by seller function, can be affected by the class of customers, and the Department will make every effort to compare sales at the same level of trade and to the same class of customer." 61 Fed. Reg. 7348. But the statute does not embody this concept in the adjustment provision. Rather, where a company exists in the distribution chain is inherent in the determination of existence of different levels of trade prior to consideration of whether an adjustment is warranted.

The fallacy of the Department's approach was recently made apparent when the Department ignored all identified customer classes and channels of distribution and focused exclusively on four groups of selling functions to identify levels of trade. *Pasta from Italy*, 61 Fed. Reg. 1344, 1347 (1996) (preliminary). The Department coded each sale to reflect the four selling functions, thereby creating the potential for 16 different levels of trade. Such a result does not reflect commercial reality and was not contemplated by Congress.

The Department's approach in the proposed regulations is inappropriately result driven. The Department justifies its failure to require establishment of different levels of trade before considering a LOT adjustment by arguing "that the effect of adopting such a criterion would be to curtail severely the possibility of adjusting for significant differences in seller functions, either with a level of trade adjustment or the CEP offset." 61 Fed. Reg. 7348. The Department may not redraft the statute so that the Department can "grant claims for level of trade adjustments more frequently that it did in the past." 61 Fed. Reg. 7346. The Department's policy bias in favor of more LOT adjustments is not consistent with the warning from Congress that level of trade adjustments were "susceptible to manipulation (HR 86) and must be "investigated carefully" (SR 71).

The Department's unlawful bias toward grant of level of trade adjustments is also revealed in the explanatory statement that "the regulations specify that the Department will in all instances analyze the level of trade of the sales in the United States and the comparison market, and where appropriate, will increase or decrease normal value to effect a fair comparison." To the contrary, a level of trade adjustment must be justified by comprehensive documentation from the respondent whether or not the Department believes the comparison of sales at differing levels of trade is fair. Congress emphasized that the burden is on respondent to establish an adjustment to decrease normal value. HR 86. Moreover, new section 773(a)(7)(A) permits allowances for differences in levels of trade only after all other appropriate adjustments have been made. HR 86, SR 70-71. The Department's favoritism of level of trade adjustments leads it to the exact opposite position when it notes that "where the Department makes a level of trade adjustment, the Department will not make an adjustment for differences in quantities unless the effect on price comparability of the quantity differences can be isolated from the effect of the level of trade difference." 61 Fed. Reg. 7346.

The Department should revise its regulations to indicate that the existence of differing levels of trade will be analyzed in the context of the distribution chain for the merchandise. The regulations should also make clear that, while the existence of differences in selling activities is a prerequisite to establishing a different levels of trade, such differences must be significant and will be evaluated in terms of commercial reality.

3. **Examination of level of trade for constructed export price (CEP) sales based on a constructed CEP level of trade.**

The proposed regulations provide that "in the case of export price and normal value, the Secretary will identify the level of trade based on the starting price" but that "in the case of constructed export price, the Secretary will identify the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act." Proposed §351.412(b)(1) & (2). Thus, as the Department's explanation specifically states, for CEP sales, level of trade will be analyzed at "the constructed level of trade of the price after the deduction of U.S. selling expenses and profit." 61 Fed. Reg. at 7347. The Department justifies its proposed approach by stating that:

> If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP and a CEP sale adjusted to a price that reflected the same selling functions.

61 Fed. Reg. at 7347. Creation of a constructed CEP level of trade is both unjustified and contrary to law.

The Department position is unjustified because it fails to establish that, if Commerce does not deduct U.S. selling expenses from the CEP price, then the EP and CEP sales would be found to be at different levels of trade. If sales to an unaffiliated U.S. purchaser are made by both the foreign producer directly and by the foreign producer's U.S. affiliate, the services and functions performed may be the same in both instances. Moreover, whether sales are made directly or through an affiliate may have no material effect on the chain of distribution. In such situations, the EP and CEP starting price would be at the same level of trade. Only in situations where the CEP sales reflect additional functions undertaken by the U.S. affiliate (such as warehousing, advertising, or technical service), that are not undertaken by the foreign manufacturer for EP sales, might the CEP sales be considered as a separate level of trade.

The Department's proposed constructed CEP level of trade establishes a framework whereby sales that are made involving the same sale functions and occurring at the same commercial level of trade in both the U.S. and home market will not be regarded as the same level of trade. For example, in a recent investigation, the selling functions involved in EP and CEP sales were largely the same, regardless of whether they were undertaken by the manufacturer or by the U.S. affiliate. But when Commerce adjusted the CEP to eliminate all U.S. selling expenses, it found that the CEP was at a different and less advanced level than either the EP or normal value sale. As a result, a CEP offset was granted with respect to normal value sales even though no difference in level of trade existed in commercial reality and selling functions did not differ. *Stainless Steel Wire Rods from France*, 61 Fed. Reg. 8915 (March 6, 1996) (preliminary).

The same anomalous situation was also created in a recent administrative review where the respondent reported the same selling functions to customers in the U.S and home markets. The Department stated that:

> The level of trade of the U.S. sales is determined by the adjusted CEP rather than the starting price. The adjusted CEP sales do not reflect the selling function of end users/converters, such as customer sales contacts, technical service, and inventory maintenance. The home market sales reflect these additional selling functions performed for direct sales to end users/converters. Therefore, the selling function performed for CEP sales are sufficiently different than for home market sales to consider CEP sales and home market sales to be at different levels of trade.

Aramid Fiber Formed of Ply Para-Phenylene Terephthalamide from The Netherlands, 61 Fed. Reg. 15766, 15768 (April 9, 1996) (preliminary).

In both cases, if the Department had used the starting price of the CEP sales for comparison, it would have found that sales were at the same level of trade as the home market sale and made a proper comparison without a level of trade adjustment or a CEP offset. It is only because the agency adjusted CEP by deducting selling expenses that the sales were no longer at the same level of trade. Rather than placing CEP sales on a par with EP or similar normal value sales, the Department's proposal ensures that the CEP price will be at a different and less advanced level of trade from EP or normal value.

These recent determinations demonstrate that the Department's approach is contrary to the statute. First, the statute requires that Commerce establish normal value "to the extent practicable, at the same level of trade as the export price or constructed export price." Section 773(a)(1)(B)(i); see SR 71. The statute does not state that normal value is to be established at the same level of trade as a constructed CEP level of trade. Second, a constructed CEP level of trade necessitates a level of trade adjustment to permit a proper comparison with normal value. Commerce may not make level of trade adjustments if comparisons at the same level of trade are available. HR 85-86. Similarly, in situations where a level of trade adjustment cannot be justified, the proposed constructed CEP level of trade makes application of the CEP offset a routine matter. The Statement of Administrative Action states that the law was amended so the CEP offset would not be automatic but would be used in only unusual situations where different levels of trade exist but the data of record do not permit an adjustment. SAA 830-831; see also SR 71 ("Neither the level of trade adjustment nor the constructed export price offset should be made where Commerce is able to compare sales at the same level of trade.").

Finally, the Department may not redraft the statute merely so it can grant level of trade adjustments more readily than it did in the past. Rather, if CEP sales involve substantial, additional selling functions and expenses as compared with EP sales or with normal value sale, these disparate functions should be taken into account in comparing the prices of the sales for level of trade purposes and not netted out even before the comparison is attempted.

4. Suspension of liquidation at time of initiation of anticircumvention investigations.

The unfair trade laws of the United States are designed to give relief to U.S. producers suffering the injurious effects of unfair competition. *Brother Industries (USA) Inc. v. United States*, 16 CIT 1109, 1110 (1992). "Commerce, as the administrative agency, is entrusted to safeguard domestic industries from unfair trading practices by foreign manufacturers." *NTN Bearing Corp. of America v. United States*, 14 CIT 623, 627, 747 F. Supp. 726, 731 (1990). The anticircumvention provisions play an essential role in the statutory antidumping scheme. In directly addressing circumvention with new legislation in 1988, Congress was "concerned about the increasing instances in numerous product sectors of circumvention, diversion, and evasion of antidumping and countervailing duty orders." S. Rep. No. 71, 100th Cong., 1st Sess. 101 (1987). Companies were able to "evade an order by making slight changes to production or shipment of the merchandise destined for consumption in the United States." *Id.* Congress recognized that these "loopholes" had "undermined the effectiveness of remedies . . . and frustrated the purposes for which the laws were enacted." *Id.* Congress therefore developed a number of statutory remedies to combat circumvention. The Senate committee expressed its belief that "aggressive implementation of [the statutory provisions] by the Commerce Department [could] foreclose these practices." *Id.* Thus, the Court of International Trade has found that "Congress has attempted to thwart importers' circumvention strategies by enacting legislation intended to 'send a clear message to foreign producers and trading partners that we will actively seek to prevent circumvention of our trade laws . . . .'" *NTN Bearing*, 14 CIT at 627.

Unfortunately, Commerce did not implement the circumvention statute in a fashion which reflected the strong Congressional concerns. Thus, in the context of amendments made by the Uruguay Round implementing legislation, Congress stated that the earlier circumvention provisions had "not proved effective in curbing circumvention of antidumping and countervailing duty orders." S. Rep. No. 412, 103d Cong., 2d Sess. 81 (1994). As the Statement of Administrative Action recognizes, the governing philosophy of Congressional action in 1994 was "improving [U.S.] ability to prevent circumvention." SAA 894.

Despite the clear messages from Congress to attack circumvention, Commerce continues to ignore Congressional intent. In its explanation of the proposed anticircumvention regulations, the Department rejected the argument that liquidation should be suspended at the time of initiation of an anticircumvention investigation. Commerce reasoned that such action "would punish unfairly parties who unknowingly circumvent an order." 61 Fed. Reg.7322. Yet, in the next sentence of its explanation, the Department correctly states that "the statute does not require a finding of intent in order to make an affirmative circumvention determination." *Id.* Thus, the Department contradicts its own rationale for not suspending liquidation at the time of initiation of a circumvention investigation. Whether or not foreign producers are "knowingly" circumventing an order is of no moment. The primary statutory objective is prevention of circumvention, not protection of exporters who are circumventing an order but may not be knowingly doing so.

Commerce's further justification that suspension of liquidation of circumventing entries "would create tremendous business uncertainty and impose a heavy burden on the Department and on Customs" is similarly unavailing. 61 Fed. Reg. 7322. Permitting evasion of the law and denial of relief cannot be justified based on vague concerns of "business uncertainty." That the Department may find enforcement of the law burdensome is neither established or relevant.

Failure to suspend liquidation of merchandise under investigation at the time of initiation is most egregious with respect to section 781(c) investigations. Section 781(c) addresses situations where the merchandise being investigated originates in the subject country but has been altered in minor ways to ostensibly take it outside an order's description of subject merchandise. In the "minor alterations" provision, Congress created a "presumption" that such merchandise was within the scope of the order regardless of its tariff classification. S. Rep. No. 71 at 100. Commerce's proposed regulations and explanatory comments contravene the presumption of circumvention embodied in section 781(c). To implement section 781(c), Commerce must suspend liquidation of merchandise covered by a circumvention investigation effective the date of initiation.

5. Criteria for evaluation of circumvention under section 781(c).

To determine whether the merchandise is within the scope of an order based on section 781(c), the "minor alterations" anticircumvention provision, the Department must examine: (1) the overall characteristics of the merchandise; (2) the expectations of the ultimate users; (3) the use of the merchandise; (4) the channels of marketing; and (5) the cost of any modification relative to the total value of the imported product. S. Rep. No. 71, at 100; *see Electrical Conductor Aluminum Redraw Rod from Venezuela*, 55 Fed. Reg. 3434 (February 1, 1990) (preliminary determination). Commerce's proposed regulations do not, but should, incorporate these evaluative criteria. The regulations should also state that the evaluative criteria will be applied in a "practical" manner and that circumvention relief will be afforded even where "the alterations to an article technically transform it into a differently designated article." S. Rep. No. 71, 100th Cong. 1st Sess. 101 (1987).

6. Weighing of evidence contain in a petition in pre-initiation stage of an antidumping or countervailing duty proceeding.

New sections 702(c)(1)(A)(i) and 732(c)(1)(A)(i) reflect prior requirements for an examination, based on readily available sources, of the accuracy and adequacy of evidence presented in a petition and largely codify existing Commerce practice. SR 34-35; SAA 861 citing S. Rep. 249, 96th Cong. 1st Sess. 47, 63 (1979); H.R. Rep. 317, 96th Cong. 1st Sess. 51, 59-60 (1979). The Department properly notes that the new standard is not a significant departure from past Department practice, yet states that it will reach conclusions respecting whether data is "aberrational" or "weak," even though the submitted data is supported by documentation. 61 Fed. Reg. 7313. This interpretation violates the statute.

If data is supported in a petition, such data should be adequate proof of the reasonableness of its accuracy sufficient that the Department should conclude the petition is not "clearly frivolous." H.R. Rep. 317, 96th Cong. 1st Sess. 51 (1979). Weighing of conflicting evidence

gathered by Commerce violates the statutory initiation standard. Rather, Commerce may consider readily available information on matters for which the petition must rely as conjecture or for which petition information is absent. However, even unsupported petition statements should be accepted at their face in the absence of readily available conflicting information.

The statute and legislative history do not envision an adversarial pre-initiation proceeding. Rather, Commerce should "advise and assist, to the degree practicable, the petitioner in formulating the [allegation] so that it meets statutory and regulatory requirements." H.R. Rep. 317, 96th Cong. 1st Sess. 51 (1979). The statutory and regulatory requirements are met by a supported petition allegation.

7. Existence of control sufficient for a finding that persons are affiliated.

The statutory definition of affiliated persons includes "any person who controls any other person and such other person." Section 771(33)(G). Moreover, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Section 771(33). A firm may be in a position to exercise restraint or direction, in the absence of any equity relationship, "through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other." SAA 838.

The Department's proposed regulation provides for examination of the indicia of control such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships. Section 351.102(b). But the Department states that in analyzing control "business and economic reality suggest that these relationships must be significant and not easily replaced" and that it will "examine these indicia . . . to determine whether they are, in fact, evidence of control." 61 Fed. Reg. 7310. This formulation violates the statute, as soon thereafter acknowledged by the Department. The statute defines control "in terms of the **ability** to exercise restraint and direction." Id. at 7311 (emphasis in original). Thus, the existence of any of these conditions -- corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships -- constitutes an ability to exercise control. These relationships are by their nature significant and not easily replaced. If a company being investigated cannot establish a mechanism which would prevent the exercise of the ability to control, the Department must find that statutory control exists. The Department's explanatory language in the final regulations should reflect this understanding.

The Department states that, with respect to control factor of the affiliated parties definition, it has rejected "presumptions" in the proposed regulations. Yet the Department also states that "temporary market power, created by variations in supply and demand conditions, would not suffice." 61 Fed. Reg. 7310. The Department's conclusion conflicts with the statute and is an unwarranted restriction on the reach of the control factor in the affiliated parties definition which. Disruptions in supply and demand could create an ability to control another company's market actions during an historically short but meaningfully long period in relation to the Department's investigation. Thus, temporary market power can be even more significant and the relationship less easily replaced during the relevant period than could longer-term market power.

The validity of addressing the impact of temporary, but significant control is particularly evident in the importance of defining affiliated parties in the context of the major input rule. (The legislative history specifically notes that the combination of new section 773(f)(3) and the expanded affiliated parties definition is intended to better address diversionary input dumping.) After noting that "affiliation is relevant to a number of price and cost issues in an antidumping investigation or review," the House Committee did not limit Commerce's ability to investigate "when a purchaser of the major input is in a position to exercise restraint or direction over the input supplier (or vice versa)" to instances of long duration. SAA 838, HR 78. Rather, if this ability exists during any relevant period for which input costs are being calculated, affiliation through control can be present.

8. Reporting of sales made by an affiliated party.

The Department states that it will not always require that downstream sales of affiliated parties be reported because "factors other than value, such as the comparability of sales, affect this decision. 61 Fed. Reg. 7333. The Department admits that this is an important issue with implications for accuracy of its calculations. Id. Certainly, when sales are demonstrably not comparable Commerce may not require that they be reported. But the statute requires reporting of all foreign like products (formerly known as such or similar merchandise). Section 771(16). Thus, the Department must require reporting of affiliated company data on all merchandise determined to be within the scope of the investigation.

9. Calculation of actual profit in constructed value situations.

The new law requires that the "actual" amount of profit "in connection with the production and sale of a foreign like product" be used for a determination of profit in the context of constructed value. Section 773(e)(2)(A); SR at 74. By referring to a profit calculation tied "a foreign like product" the statute specifically relates the profit determination to the basis for product matching in making price comparisons. Thus, a foreign like product is, in the first instance, the one "identical in physical characteristics" with subject merchandise. Section 771(16).

The proposed regulation language provides no guidance on the methodology the Department will follow to calculate actual profit. Rather, this guidance is contained in the explanatory material accompanying the proposed regulations. The Department has announced it will "use net profit figures to devise a per unit amount for profit." 61 Fed. Reg. 7335. The Department intends to calculate profit on aggregate rather than model-specific basis. Id. By broadening the calculation of profit beyond the product eligible for matching with the subject merchandise, the Department directly violates the statute.

The Department admits that the statute "arguably provides for a narrower basis for the calculation of profit and SG&A than did the prior statute." Id. But the Department believes the statutory language requiring calculation of actual amounts incurred for profit "in connection with the production and sale of a foreign like product" cannot be read literally. Otherwise, the Department "would have the discretion to pick and choose the sale of the foreign like product from which profit and SG&A would be taken. This clearly would undermine the predictability of the statute." Id. The Department's answer to its own strawman argument does not undercut the reasonableness of interpreting the statute to require calculation of profit on a product code (model-specific) basis. The statute does not require that one profit figure be developed for use in constructed value situations. Rather, the statute merely requires that profit calculations be made on the same basis as product matching.

Calculating profit on a product code basis is also wholly consistent with existing Department policy. In comparing prices, the Department properly intends to work within product code (model-specific) categories. §351.414(d)(2); 61 Fed. Reg. 7349. Similarly, cost of product calculations are done on a model-specific basis. The Department's proposal to "calculate profit and SG&A based on an average of the profits of foreign like products sold in the ordinary course of trade" reflects no narrowing of the basis for calculation of profit and SG&A required by the statute. Rather, the Department should change its policy on the calculation of profit and SG&A to bring it in line with its other calculation methodologies.

Calculating profit on a model specific basis imposes no additional burden on the Department or respondent. The Department intends to determine actual profit by "subtracting the cost (derived from COP data) from the home market sales price (derived from the home market sales data) to arrive at a net profit for each transaction examined." Id. Any aggregation of this data merely reduces its specificity and mitigates its reflection of market impact. Since price comparisons are normally made on a product code (model specific) basis, there is no theoretical justification for aggregating the collected data beyond the product code level.

The Department's methodology for calculating profit should not be relegated to explanatory material. The means of implementing the preferred method of calculating profit will

not vary from case-to-case and should be reflected in the regulations. Consistency in Department policy demands that regulation provide for calculation of profit on a product-code basis.

Finally, the regulations should also reflect that all costs will be calculated on producer and exporter records only if such "records are in accordance with generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sales of the product in question." Article 2.2.1.1. of the Antidumping Agreement; SR 74.

10. Enforcement of certification requirement.

Section 782(b), 19 U.S.C. §1677m(b), provides that any person providing factual information to Commerce must certify that such information is accurate and complete to the best of that person's knowledge. As the Senate committee has noted, in unfair trade investigations, "the incentive to provide accurate and complete submissions may be absent." S. Rep. No. 71, 100th Cong. 1st Sess. 114 (1987). Thus, beyond the correctness of submitted data, the provision was intended to avoid determinations "based on arguments that omit important facts known or reasonably available to the party making the submission of fact." *Id.* In practice, the certification requirement has been lightly regarded and the Department has not taken effective action to make certification meaningful.

Current Commerce regulations provide for certifications which are specific to each submission. 19 C.F.R. § 353.31(i). In the past, many parties clearly did not file submission specific certifications. Thus, Commerce states that the proposed regulation "clarifies" that each submission containing factual information must be accompanied by the appropriate certification regarding accuracy of the information." 61 Fed. Reg. 7326. Nevertheless, the proposed regulations are not adequate to achieve the goal of compliance with the statutory certification requirement.

Company certifications too often are merely photocopies of a certification signed early in the investigation. Such certifications do not establish that the official putatively making the certification has even read the document. At a minimum, the Department should require an original dated certification for each submission sworn before an authorized official equivalent to a notary public to authenticate the date of the certification.

Commerce's regulatory explanation should state that the company official certification is meant to require that the official be responsible for the accuracy and completeness of the data. Cursory review should not be acceptable. Thus, Commerce should indicate it will require a detailed explanation where significant errors or omissions are found in the submitted data. Commerce regulations should authorize sanctions where such explanations do not dispel the presumption that the certification was falsely provided. Sanctions should include rejection of the specific data submission and substitution of facts available findings. Where the conduct involves an egregious violation of the certification requirement, the most adverse facts available finding should be made. Where more than one certification violation is found, the Department should reject all data submitted and base its determination entirely on adverse facts available.

We recommend that the Department adopt the following specific regulation language at the end of subsection (g): "Certifications must be specific to the document being filed and must be dated. Certification made in the United States must be made before a Notary Public. Certification in foreign countries must be made before comparable officials." A new subsection (h) should be added which provides: "(h) *Omitted or false certifications.* Whenever a factual submission is not filed with the appropriate certifications or is file with a false certification, that submission will be rejected by the Secretary. The Secretary shall use facts available or adverse facts available for the data contained in the rejected submission dependent upon the Secretary's findings as the nature of the certification violation. If the Secretary finds more than one certification violation, the regulations should provide that the Department will disregard all data submitted and make a determination based solely on adverse facts available."

11. Initiation of new shipper reviews.

A new shipper review, like all administrative reviews under section 751 of the Tariff Act of 1930, is necessarily a retrospective process. The new shipper provisions are subject to 19 U.S.C. § 1675(a) and respondents must meet the requirements for conduct of a review, i.e. have sales to unaffiliated parties and entries for consumption. The proposed regulations properly set out the documentation necessary for a review in section 351.214(b)(4), which essentially mirror the requirements of 19 U.S.C. § 1675.

The proposed regulations also provide that:

> (2) No Shipments. The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:
>
> (i) There have been no entries, exports, or sales, as appropriate, during the normal period of review. . .; and
>
> (ii) An expansion of the normal period of review to include entries, exports, or sales would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this subsection.

Section 351.214(f)(2); 61 Fed. Reg. at 7367. Thus, the Department might extend a period of review where the exporter properly qualified for a review at the time it was requested, but where the information available for the period of review would make it difficult or impossible to complete a review.

The proposed regulation might apply where a shipper has an export price sale to an unaffiliated purchaser in the United States during the period of review but the shipment or entry for consumption is subsequent to the end of the period. As noted by the Department, the regulation might also apply "where a new shipper exports merchandise to an affiliated U.S. importer, but the importer does not resell the merchandise to an unaffiliated U.S. purchaser within the standard period of review." 61 Fed. Reg. 7308, 7318. But it is important to note the underlying assumption of the Department's example, to wit: the sale to the affiliated buyer involved an entry for consumption during the period of review.

Initiation of a new shipper review is not justified on the basis of mere shipments where neither a sale to an unaffiliated party or an entry was made in the review period. Thus, the SAA states that "Article 9.5 of the Antidumping Agreement [provides] new shippers with an expedited review that will establish individual dumping margins for such firms on the basis of their own **sales** . . . . Commerce will issue instructions to Customs for the final **assessment of duties on all entries covered by the review.**" H. Doc. 103-316, 103rd Cong. 2nd Sess. 875 (1994) (emphasis added).

The new shipper provision, as enacted, was designed only to provide new shippers with the opportunity to have a margin determined expeditiously on the basis of their own sales. There is no mention in the statute, the Antidumping Agreement, or the legislative history of any prospective relief for new shippers that would entitle them to initiation of a review without either a sale or entry for consumption during the period of review. Due to the potential for misreading the Department's proposed regulation and example, the explanatory comments made with publication of the final regulations should clearly state that either a sale to an unaffiliated party or an entry must occur to justify initiation of a new shipper review.

12. Deferral of administrative reviews.

The proposed regulations establish "a new procedure by which the Secretary, upon request, may defer the initiation of an administrative review for one year." 61 Fed. Reg. 7317. The purpose of the provision is to "reduce the burden on all concerned by allowing the Department, in effect, to cover two review periods in a single review." Id. The proposed regulation provides that if a relevant party objects, the Department will not defer the review. §351.213(c)(1)(ii).

Whether or not the proposal to defer conduct of a review reduces the burden on the Department or parties, deferral is not consistent with the statutory scheme for reviews. The Department has traditionally maintained a significant backlog of uncompleted administrative reviews. Congress sought to avoid such backlogs in the future by tightening the statutory provisions governing reviews and requiring their timely completion. Once a review has been properly requested, the Department must initiate the review and complete the proceedings within the specified time frame. The Department's proposed regulation vitiates the statutory scheme by again permitting development of review backlogs. Moreover, consolidation of reviews carries the potential to deny the domestic industry relief provided by the statute. A respondent which anticipates an increased margin in a review period will obviously seek to defer the review so that its cash deposit rate does not increase for the next review period. The respondent might hope that the subsequent review with which the deferred review is consolidated will result in a more advantageous deposit rate thereby entirely avoiding application of the lawful deposit rate which would have been established as a result of the deferred review.

That the proposed regulation provides that deferral will not be invoked if a relevant party objects is not an adequate safeguard against abuse. In 1979, when Congress was concerned about the lengthy time being taken to conduct antidumping investigations, it established time frames for completion of investigations. Congress also permitted the time for completion of an investigation to be extended in "extraordinarily complicated" cases. But the Senate Committee stated that "in light of the importance of expeditious investigations, the authority's discretion to extend the time period under section 733(c)(1)(B) is narrowly circumscribed. The committee intends that few extensions be made under provision." S. Rep. 249, 96th Cong. 1st Sess. (1979). Yet, extensions of investigations are the rule rather than the exception. Likewise with the proposed regulation, a procedure whereby a party could object to deferral presents an illusory check on actual practice.

Finally, it is not clear that deferral of an administrative review will reduce the burden on the parties or the Department. The greater the distance in time between the entries being reviewed and conduct of review, the more stale and less available are the respondent's primary records and any non-respondent specific information which might be necessary to conduct of the review. Development of information relevant to a deferred review may in fact become more difficult than if the review had been conducted in a timely manner.

13. Exclusion of trading firms based on exclusion of producers selling to particular trading firms.

Treatment of trading companies appears in several contexts in the proposed regulations and the Department has specifically requested advice on how to treat such entities. With respect to the calculation of "rates" the Department states that it "is considering whether to promulgate special rules regarding the rates that should be applied to exporters that are not also producers, such as trading companies. In this situation, one alternative would be to calculate a separate rate for each exporter/producer combination, so that the rate to bee applied to an exporter would depend upon the producer of the particular merchandise in question." 61 Fed. Reg. 7311. This is the best approach to trading companies and should be universally adopted by the Department.

Nevertheless, in the context of exclusion from coverage under an order, the Department has stated that "one alternative would be to limit the exclusion of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter during the period of investigation." 61 Fed. Reg. at 7315. Similarly, the Department would limit the revocation of a non-producing exporter to subject merchandise produced by those producers that supplied the exporter prior to revocation." 61 Fed. Reg. at 7319.

Strict limitations on exclusion of trading firms from coverage under orders is necessary to avoid circumvention of relief. Trading companies which benefit from exclusion or revocation could begin selling subject merchandise from producers that had never stopped dumping. The best approach is the one identified by the Department in the context of applying rates. Limiting exclusion and revocation to specific trading company/producer combinations provides complete relief to both the foreign producers and exporters as well as the domestic industry. Moreover, this approach is consistent with assessment, which must be done on a producer specific basis. 61 Fed. Reg. at 7317.

STATEMENT
ON BEHALF OF THE COPPER AND BRASS FABRICATORS COUNCIL, INC.

BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON THE DEPARTMENT OF COMMERCE PROPOSED ANTIDUMPING REGULATIONS AND OTHER ANTIDUMPING ISSUES

April 23, 1996

This statement is submitted on behalf of the Copper and Brass Fabricators Council, Inc. ("Council") and its 23 member companies (see Appendix A for a list of the Council's members). The Council is a trade association which represents the principal copper and brass mills in the United States. These mills together account for the fabrication of more than 90 percent of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries.

Since early 1985, the Council and its member companies have brought a series of antidumping and countervailing duty cases before the Department of Commerce and International Trade Commission (ITC). These proceedings have resulted in the issuance of eleven antidumping duty orders and three countervailing duty orders against imports of brass sheet and strip and of low-fuming brazing rod from a total of eleven countries.

In taking these measures, the Council was reacting to a steady influx of dumped and subsidized imports that began in the late 1970's and carried forward into the 1980's. The United States is the most attractive market in the world for copper and brass mill products, and foreign firms have aggressively set their sights on penetrating it. Confronted by unfair competition from abroad, the Council has come to recognize that the continued existence of the U.S. copper and brass mill industry depends not only upon maintaining the high quality of its products but also upon strong U.S. laws against foreign unfair trade practices.

While the Committee is properly focusing on the proposed changes to Department of Commerce antidumping regulations, the Council strongly urges that equal attention be addressed to recent troubling developments at the U.S. International Trade Commission ("ITC") which seriously undermine the administration of the antidumping laws under the jurisdiction of the Committee.

In June of 1995, the Commission released a publication entitled "The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements." Since its release, this report has engendered tremendous controversy. While the ITC is responsible for administration of a crucial element of U.S. unfair trade law - the determination of material injury to the domestic industry in antidumping and countervailing duty ("AD/CVD") actions - it nonetheless released this document, which concludes that U.S. AD/CVD actions represent a net cost to our economy of roughly $1.5 billion annually.

The members of the Council have relied upon the AD/CVD laws in the past to counter surges of unfairly priced, injurious imports and consequently participated in the ITC's case study on brass sheet and strip. While certain information contained in the brass sheet and strip case study is reasonably reflective of the experience of the members of the industry, the Council takes issue with the ITC's broader characterizations within that case study and emphatically objects to the overall conclusion of the ITC's report that these unfair trade laws are a net drain on the U.S. economy.

The Council's disagreement with the ITC's study centers upon three major areas. First, the ITC's analysis does not fulfill the mandate of the U.S. Trade Representative ("USTR"), who

made the original request for the study. Specifically, the study does not explore adequately one of the fundamental elements of Ambassador Kantor's request, to investigate "the economic effects of the dumping and subsidy practices, as transmitted through unfair imports to the United States, which the orders and agreements address." Instead, the study focuses on a cost-benefit analysis of the removal of existing AD/CVD orders, which was only one aspect of the request of the USTR.

Second, the ITC's methodology in analyzing the economy-wide impact of unfair trade practices and AD/CVD orders does not capture longer-term costs to the U.S. economy of their termination. The ITC's report fails to consider the costs incurred as individual producers fail and entire industries fade into non-existence, the human costs to workers, and the long-range economy-wide and national-security implications of losing basic, critical industries.

Finally, the ITC's report focuses almost exclusively on domestic producers and industries and makes no real effort to consider the broader context of the worldwide industries in which domestic producers compete. The report reflects no consideration of the competitive postures of the foreign firms that engage in unfair pricing and their relative efficiency or inefficiency vis-a-vis U.S. companies, or their reasons for targeting the U.S. market.

In light of these major shortcomings, the report does not stand as a balanced assessment of the costs and benefits of unfair trade practices and U.S. remedies for such practices, but as a severely flawed exercise in economic modeling with extremely limited usefulness. Despite its incomplete nature, the ITC's report has been cited by foreign and domestic critics as an indictment of U.S. unfair trade laws, written by the very agency charged with their impartial administration. To counter such arguments, the Copper and Brass Fabricators Council believes that it is important to go on the record as a vocal supporter of strong, meaningful unfair trade laws, and in opposition to those who would use this simplistic and skewed analysis to justify the destruction of the existing laws, and, along with them, the U.S. industrial base.

A. The Study Did Not Fulfill the Request of the USTR

As requested by Ambassador Kantor, the ITC's study was to be designed to "enhance our understanding of the economic consequences of foreign subsidies and dumping as transmitted through unfair imports to the United States, and the effectiveness and economic impact of the remedies provided." In reviewing the ITC's study, it appears that the Commission staff only read the last part of this sentence, as it focused inordinately on the economic impact of AD and CVD orders, rather than dumped and subsidized imports, on the economy.

In its own words, the Commission's study "estimates the economy-wide effects of a simultaneous removal of outstanding AD/CVD orders in 1991." This focus is not the same as estimating the impact of foreign dumping and subsidization on the U.S. economy. The Commission's methodology assumes that the only manufacturers affected by unfair trade practices are those that have actually brought and won AD/CVD actions. This is not a valid assumption, because not every industry that is affected by unfair imports brings an AD/CVD action, and not every case that is brought is successful. It is unrealistic for the Commission to assume that in a country with a huge internal market, which is philosophically and as a matter of policy opposed to trade barriers, the only effects of unfair imports are felt by those industries that bring and win unfair trade cases. It is naive for the Commission to assume that in the U.S. which annually consumes over $600 billion in imports, the only ill effects on U.S. industry are those presented in the minuscule number of unfair trade cases brought before the ITC each year.

An inability or unwillingness to bring an AD/CVD action may occur for several reasons: 1) affected producers may not be aware that remedies exist or may be in such dire financial straits that they cannot afford to bring such an action; 2) individual producers or regions may be differently impacted by dumped/subsidized imports, or so competitive with each other that marshalling the necessary industry support for a potential case may not be possible; and 3) the injury experienced may not be sufficiently dramatic to ensure the success of a case. Furthermore, it is clear from the Commission's own data that most unfair trade actions are not successful through the final injury determination: the report shows that between the years 1980 and 1993, just 33 percent of all AD/CVD investigations resulted in affirmative final determinations. In conclusion, the study's assumption that the only industries which have been

affected by unfair imports are those that have actually brought successful AD/CVD investigations is totally unwarranted.

The study made no effort to examine industries that have failed to address unfair imports, including the industries in the 67 percent of the cases in which AD/CVD duty orders were not put into place, not to mention the countless firms who, through ignorance or severe financial straits, could not avail themselves of the statutory remedies. An interesting counterfactual example could have been provided by examining the history of a domestic industry that faced competition from dumped or subsidized imports (margins found by the Department of Commerce), but that was denied relief because of a negative final injury determination at the ITC.

Such a contrast could have provided a very interesting basis for comparison with the highly-selective case studies that were presented. How have industries that have been denied relief fared? Have consumers benefitted in the long term? Have the domestic participants in these industries been able to turn around their operations without relief? If not, how much of the domestic industry is left? How many workers have unjustly lost their jobs, and what has been the economic and social cost to individuals, their families, communities, and local governments, of their job losses, plant closures, and attendant economic dislocations? What is the state of the geographic regions in which such operations have failed? Such questions are directly relevant to USTR's charge, but were not even addressed by the ITC report.

If the Commission found such concerns to be beyond the capabilities of its economic model, it should have informed the USTR that the exercise as requested was simply not feasible, or stated that the results of its limited number of case studies should be qualified and balanced by this much larger universe. Instead, the Commission interpreted the request as it saw fit, with the result that it was only able to provide an estimate of the partial effects of removing existing AD/CVD orders and a very few case studies. This represents just the tip of the iceberg of the overall deleterious impact of dumped and subsidized imports on domestic producers and the U.S. economy.

B. The Study Did Not Capture the Long-Term Economic Effects of Dumped and Subsidized Imports

The ITC's economy-wide analysis was based on the assumption that by allowing dumped and subsidized products to enter the U.S. economy at lower prices, user industries and consumers would realize a net savings that would more than compensate for the negative impact on petitioning industries and suppliers of their raw materials. The study found that the total cost to the petitioning and upstream industries of removing existing AD/CVD orders would have been $658 million and job losses of 4,075 full-time workers, but that in the light of lower prices to consumers and increased efficiencies in other industries, the net benefit to the U.S. economy would be $1.59 billion dollars annually.

The calculations and assumptions embodied in the Commission's economic model tell only part of the story of the impact of unfair trade practices, however. The most egregious shortcoming of the Commission's analysis is that it does not take account of the longer-term economic effects of unfair trade practices. For practical purposes, the Commission staff confined the study to events within a single year (1991), because an exercise incorporating more than a one-year period is beyond the capabilities of existing economic models. By the Commission's own admission, the model it used in its study is static and "cannot take into account the cumulative or dynamic effects of existing orders, which may have been in place for many years."

This limitation constitutes such a significant shortcoming as to bring the utility and purpose of the entire study into question. This point was not lost on a majority of the ITC commissioners, four of whom either refused to sign off on the release of the study or expressed serious reservations about the study's findings. This lack of unity and refusal to stand behind the Commission's study, on the part of not one, but of 4 of 6 Commissioners, is an extraordinary, if not unique development in the history of the Commission's work under Section

332. Vice Chairman Nuzum and Commissioner Rohr, for example, stated that "The short term focus of the Commission's CGE modeling exercise also overlooks the long-term competitiveness implications of injury from unfair trade practices," and that "we have not been able to provide the full picture of the impact of unfair trade practices on the domestic economy."

Simply put, the study could not take account of business failures and the collapse of domestic companies beset by unfair imports. In the Commission's model, the damage to domestic producers in the wake of the removal of outstanding AD/CVD orders would be limited to lowered volumes of product shipped (in the face of increased import volumes) and lowered prices (as imports would be allowed to enter and compete in the U.S. market at prices lower than those under the AD/CVD orders), and the related impact these market factors would have on production indices (reduced employment and hours worked, for example).

It is true that in the short-run, the impact of the unfair imports could be limited to such effects. In the longer term, however, declines in shipments and prices can result in a chain of deeper, even more severe consequences: cash flows become depressed and production efficiencies decline as economies of scale are reversed; depressed cash flows lead to constricted budgets for capital investment and research and development; constricted capital investment and R&D budgets result in losses in efficiency relative to foreign competitors; losses in efficiency result in greater price disparities between domestically produced and imported products; greater price discrepancies result in further lost sales and declines in shipment volumes, and the entire cycle begins again. Several rounds of such a cycle of injury result in the complete loss of competitiveness of the domestic producer, ultimately resulting in failure. If the foreign competition is on a large enough scale, entire domestic industries can be wiped out -- and have been wiped out.

The failure of a producer has an impact well beyond the removal of its output from U.S. GDP. First and foremost, employees lose their jobs. The immediate costs of unemployment compensation are paid by state and federal governments, but it is individual workers and their families that pay the most severe costs. In many cases, the skills that these workers have developed over the course of their professional careers become meaningless, as other employers in the industry may not be proximate and are unlikely to be hiring, given that they too would be facing unfair import competition. The devaluation of an individual American's "human capital" cannot be captured in any economic model, but that does not mean that our economy does not suffer a loss.

The failure of a manufacturer means that the capital which has been invested in productive capacity and distribution systems becomes worth little or nothing. The funds of investors are lost, and the idling of plant and equipment represents a cost to the U.S. economy that is unlikely to be reversed. Upstream suppliers of failed firms may, in turn, face insolvency themselves, depending on the degree of dependence. Through a chain-reaction of failure, in smaller communities with non-diversified economies the loss of a major employer can decimate the economic health and tax base of the entire community.

These long-term, "real world" consequences of unfair foreign competition are not captured or even acknowledged in the ITC's economic model. Nor has the ITC's study made any effort to determine if the assumed "benefits" of unfair competition (lower U.S. prices) remain available in the longer term: once a domestic producer and/or industry has been driven out of existence, do import prices remain at dumped levels? Or do foreign producers use predatory pricing as a means of driving out competitors, eventually increasing prices and maximizing longer-term profitability? A reduction in competition based on unfair trade practices cannot provide a long-term benefit to the consumer.

Any attempt to assess the impact of unfair trade practices and AD/CVD orders that is limited to the short term cannot take account of concerns such as these. No one reasonably defines economic success in terms of single-year periods, and businesses do not analyze capital investment projects within a one-year horizon. How then can any study assessing the economic effects of AD/CVD practices and orders consider the impact within just a single year?

The "full picture" of the impact of unfair trade practices is quite different from that demonstrated in the assumptions and boundaries of a static academic modeling exercise and must include long-term business failure and the very real potential for the destruction of entire domestic industries. Without taking the full picture into account, any cost/benefit analysis of unfair trade practices and remedies, however technically elegant, cannot be considered useful in a discussion of U.S. international economic policy. For this reason, decision makers should not be misled by the "bottom line" guess provided by the ITC's report of the net short-term benefits of removing antidumping and countervailing duty orders.

C. The Study Did Not Analyze Domestic Industries in the Context of the Worldwide Industries in Which They Compete

In his request to the ITC, Ambassador Kantor stated that he envisioned the study as a means of assessing U.S. competitiveness, specifically mentioning the need to consider "effects in country markets other than the United States" including the "country of origin of the product subject to the order." Rather than analyzing unfair trade practices and U.S. remedies in the broader context of the global market in which U.S. manufacturers compete, however, the ITC's analysis limited its focus strictly to trends within the domestic market. The report reflects no consideration of the competitive postures of the foreign firms that engage in unfair pricing and their relative efficiency vis-a-vis U.S. companies or their reasons for targeting the U.S. market. This represents a significant shortcoming and is indicative of the fragmentary and unintentionally biased nature of the ITC study.

Any analysis of the impact of dumping and subsidization on the U.S. economy should bear in mind who is committing the illegal act. While the domestic industry must demonstrate injury by reason of the dumped or subsidized imports in an AD/CVD action, it is the foreign producers who are the root of the problem. A balanced assessment must not lose sight of the fact that an AD/CVD order cannot be put in place unless and until it is determined that a foreign producer has committed an act which is unlawful under the laws of the United States and condemned under the Antidumping and Subsidies Agreements of the World Trade Organization.

The ITC's study fails to put this point into perspective. The study incorporates no information concerning foreign producers and markets, apparently reflecting the Commission's position as the agency responsible for determining whether or not the domestic industry is injured in AD/CVD actions, rather than that which examines the specific actions of the foreign producers (the AD/CVD margins are determined by Department of Commerce under U.S. law). In light of the Commission's perspective, the study wrongly concentrates exclusively on the actions and trends within the U.S. industry, and does not consider a whole host of issues which could have been illuminated, such as why foreign producers dump, why national governments subsidize industries, the long-term benefits of dumping and subsidization to foreign companies, trends in global production capacity for relevant industries, whether dumping occurs disproportionately in the U.S. market, and trends in the home markets of producers whose products have been assessed U.S. antidumping and countervailing duties.

Most importantly, the study should have attempted to answer two very important questions in assessing the impact of unfair trade practices and the relative position of U.S. producers in their global industries. First, if foreign producers subject to countervailing duties are efficient relative to their U.S. counterparts, why do they need equity infusions and other countervailable subsidies from the state? Second, if foreign manufacturers subject to antidumping duties are truly the world's low-cost producers, why must they be sheltered from competition through protected home markets that enable them to charge higher prices there than in the United States? Any assessment of unfair trade practices must acknowledge that when foreign firms and governments attempt to "create" comparative advantage and drive legitimate competitors out of the marketplace, the effects on international trade are unacceptably costly.

The fact of the matter is that the U.S. market is the largest and most attractive in the world, and relatively low in tariff and non-tariff barriers to imports. Many foreign producers are willing to "buy" market share in our country at dumped and/or subsidized prices knowing that the large volume of sales to the huge and open U.S. market will allow for longer production

runs, full employment for their own workers, and optimum utilization of capacity, among other benefits.

Dumped and subsidized imports only achieve success in the U.S. market through artificially low prices that cannot last in the longer term. This is demonstrated in the ITC's case study on the U.S. market for brass sheet and strip. The imposition of antidumping and countervailing duties had a significant impact on subject imports of C20000 series sheet and strip, which declined from 128,462,000 pounds in 1985 (the year before the first petition on the product was filed) to 75,153,000 pounds in 1987 (the year the first order was issued), and had fallen to 19,249,000 pounds by 1991, an overall decline of 85 percent. Given that AD/CVD duties are designed to be offsetting, rather than punitive, in nature (that is, they are designed only to equalize prices in the U.S. and home country markets), this significant decline in import volume after the imposition of the AD/CVD duties indicates that the subject imports could not compete on a "level playing field," and that their previous success was only made possible by unrealistic and artificially low prices to the United States. Also, the magnitude of some of the less-than-fair-value margins determined by the Department of Commerce (for example, 57.98 percent for certain Japanese brass sheet and strip and 42.24 percent for French) indicate that the dumping occurring by these foreign producers could not have been transitory, or a result of currency exchange shifts. Such disparities between home market and export prices clearly imply a conscious, premeditated strategy of price discrimination between markets, with the intention of buying and retaining market share, no matter where the true comparative advantage lay.

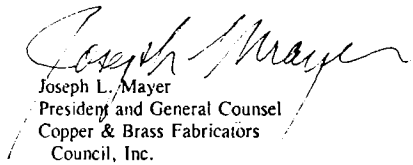
International trade theory is predicated upon the assumption that all markets are open to trade, that all economies are freely competitive, and that economic participants take actions that are rational. In reality, none of these conditions holds true consistently. Instead, U.S. producers face foreign markets that restrain imports, whether by policy or practice; foreign producers that hold monopolies in their home markets, but still require equity infusions and preferential policies from their governments in order to survive; and foreign competitors and governments that take actions that are not economically rational (however politically and socially expedient), such as pricing below variable cost and making new capital investment in industries already characterized by global overcapacity. In a world which rarely reflects the assumptions of the economic theorist, the policy maker must be extremely wary of any modeling exercise that uses such assumptions as a foundation.

D. Conclusion

The unfair trade laws were designed to protect U.S. producers and workers from the capricious and malevolent effects of dumped and subsidized imports, and they have been reasonably effective in achieving this goal. As U.S. tariff levels decline toward insignificance and international agreements limiting imports such as the Multifiber Arrangement are abandoned, U.S. industry becomes exposed to increasing levels of import competition. The antidumping and countervailing duty laws remain one of the last means of defense for domestic industries attempting to compete in a global economy in which many participants still are not exposed to market forces and do not have to "play by the rules." As such, these laws should be encouraged and facilitated. Instead, the U.S. International Trade Commission, one of the two U.S. government agencies charged to impartially administer such laws, has produced a methodologically flawed and biased Section 332 study, a study which four of the Commissioners themselves have questioned, and in which misleading conclusions have been used to attempt to discredit the very laws the agency administers. The Copper and Brass Fabricators Council, which participated in and gave the Commission its full cooperation during the study, feels strongly that it must register its opposition to the conclusions of the study with this Committee, while acknowledging and complimenting the four Commissioners who had the courage to oppose its publication.

We also urge the Committee to pursue this matter specifically in a future oversight hearing devoted to examining the performance of the Commission.

Respectfully submitted,



Joseph L. Mayer
President and General Counsel
Copper & Brass Fabricators
Council, Inc.

Date: April 23, 1996

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STATEMENT OF EUROPEAN CONFEDERATION OF IRON AND STEEL INDUSTRIES

HOUSE OF REPRESENTATIVES

COMMENTS OF EUROFER ON PROPOSED ANTIDUMPING REGULATIONS SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE MAY 7, 1996

This statement is submitted on behalf of the European Confederation of Iron and Steel Industries ("EUROFER") in response to the Subcommittee on Trade's (the "Subcommittee") invitation for comments in conjunction with the Subcommittee's hearing on the proposed antidumping regulations. EUROFER greatly appreciates the opportunity to participate in the Subcommittee's consideration of new rules and procedures to implement U.S. antidumping ("AD") procedures. We have noted with particular interest the Department of Commerce's (the "Department") stated objectives to create a set of specific and predictable rules, to simplify and streamline administration of the law, and to remove inconsistencies in the Department's administrative practice. We commend this effort and hope that our comments, submitted below, will help you further those objectives.

EUROFER is a trade association whose members include national steel federations and steel companies in 13 of the member states of the European Union ("EU"). Collectively, EUROFER members are the largest steel producers in the world with an annual output of approximately 150 million metric tons. The objectives of EUROFER are cooperation among the national federations and companies in all matters which contribute to the development of the European steel industry and the representation of the common interests of its members vis-a-vis third parties. In this capacity, EUROFER acts as petitioner for antidumping remedies in proceedings in the EU. In proceedings in other countries, EUROFER members act as respondents on an individual basis. In addition, a number of EUROFER member companies have manufacturing, processing and distribution subsidiaries in the United States that have been involved in or affected by U.S. antidumping proceedings. While EUROFER itself plays no role in such proceedings, it is in a position to speak on behalf of the membership on a number of shared concerns and objectives. The comments that follow thus combine EUROFER's experience as a petitioner with its members' experience as respondents.

At the outset, we want to be perfectly clear about the role we see for antidumping. For us, it is a valuable -- often an indispensable -- tool for ensuring that international trade in steel and other products remains as fair as possible. As a matter of philosophy, we believe in effective antidumping laws. As a matter of practice, we use those laws to ensure the fairness of import competition in our own market.

While EUROFER supports antidumping in principle as well as in practice, it regards the current American system as needlessly and harmfully unfair, complex and costly. Drawing on our experience as petitioners and respondents, we address three basic questions: How can U.S. antidumping procedures be made simpler, fairer, and more cost effective? How can the system produce more realistic antidumping margins so that trade flows can be corrected rather than further distorted by the application of remedies? How can the system be made more predictable for all parties?

In the interest of brevity, we have taken a selective approach. In presenting the issues this way, we wish to emphasize the cumulative and interactive effects of various features of the U.S. antidumping system. The effects of many issues, perhaps in themselves small, are magnified by others.

For example, the problem of impossibly short deadlines is exacerbated by excessive data demands and compounded by the punitive use of "best information available." This implies that correcting the imbalance in the current system will require not one but a series of steps. There is no "silver bullet."

How to make the system fairer, simpler, and more cost effective?

A fair antidumping system is one that produces fair results. This does not mean that there never would be margins, nor that injury would not be found. On the contrary, a fair antidumping system would enable injured producers -- regardless of their size and financial resources -- to get the remedy they deserve when imports truly cause injury, to do so as expeditiously as possible, and at a reasonable cost. Similarly, a fair antidumping system would enable respondents -- regardless of their size and financial resources -- to receive antidumping margins that reflect actual commercial realities and underlying competitiveness, to do so as expeditiously as possible and at a reasonable cost.

Our thesis is: the simpler and more cost effective the system, the better it is for respondents, petitioners and antidumping authorities alike. There is no reason why lawyers and professional experts must be retained at great cost to produce volumes of data that are bound to be ignored. There is no reason why every proceeding has to run the full statutory timetable -- and in some cases beyond. There is no reason why even large corporations should have to decide that the cost of defending oneself outweighed the chances of getting a fair result.

It is difficult to exaggerate the financial and administrative burden placed on respondents by the complexity and cost of the current American system. Based on an informal survey of a few of our members, we have preliminarily concluded that:

--The cost of outside attorneys and other experts typically runs to $1 million for the investigation phase of an antidumping proceeding.

--Antidumping proceedings impose large internal costs on the companies involved. Each case takes up hundreds of hours of management time. Staff time must be calculated in terms of thousands of hours per case. This increases the cost of defending oneself in an American proceeding by at least 15-20 percent.

--The Department's extensive data requirements disrupt the normal work of many parts of each company. One respondent noted that a recent verification required the involvement of 50 different people from different offices within the company.

--The high cost of American proceedings tends to perpetuate itself over time. Each set of yearly administrative reviews frequently requires out of pocket expenditures of $1 million or more.

Judging from anecdotal evidence, it seems that the European experience is not unique. The Japan Iron and Steel Exporters' Association informs us that its members spent approximately $4.5 million for the injury phase of the 1992 investigations on flat-rolled steel and a roughly equal amount on the Department of Commerce phase.

The Subcommittee should not underestimate the degree to which such exorbitant costs can constitute a non-tariff barrier. Even the largest exporters have to weigh carefully the costs of defending an AD complaint against the likely stream of revenues from the exports in question. In the past several years, several foreign producers have decided not to participate in the Commerce Department phase of their cases.

We would note that smaller American companies struggle with the same inflated cost structure when they contemplate using the antidumping law to remedy the impact of unfair trade practices. No system that works this way can be considered as truly fair.

Many useful ideas have already been proposed that would make the system work more fairly, simply and without unnecessary cost. The Department proposes to make a number of helpful changes, but they are not extensive nor systematic enough to move the system definitively in the direction of the goals the Department has established for itself. We would highlight a few major issues:

--**Keep the questionnaire simple.** The questionnaire used to gather the essential data for determining the existence and size of dumping margins is the essence of the antidumping process. The Department has attempted to revise it in ways that we hope will prove useful in practice. We are also appreciative that the Department has offered to conduct a questionnaire presentation to explain the requirements to the respondent. At the same time, the Department needs to be ever vigilant that unnecessary questions do not creep into the questionnaire. The data that are requested have to be generated by employees of the respondent companies. These people have other jobs. As noted above, it is hugely costly and disruptive to the on-going work of manufacturing and marketing to have to deploy key personnel literally for months at a time to respond to the data demands of the Department.

--**Reduce the scope for supplemental questionnaires.** Some American petitioners have learned to "game" the process. They dribble out new data demands and raise new issues throughout the process of investigation and review, knowing that this approach maximizes the burden on respondents, increases the chances that honest mistakes will be made or questions left unanswered, and depletes the respondents' budget available for the case. To the extent practicable, the Department should put an end to this abuse. Unfortunately, the proposed regulations do not seem to limited the potential for such abuses. Indeed, we are concerned that additional room for harassment has been created by such provisions as the proposed regulation on sales below cost on a country-wide basis [Section 351.301(d)(2)(i)(A)].

Petitioners should be expected to put their best case forward in the petition and the preliminary injury hearing. It is only fair that they should have opportunities subsequently to raise legitimate issues that sometimes arise in the course of the investigation. However, it is grossly unfair to allow petitioners to dictate how, when and in what form the issues must be addressed. It is particularly objectionable that petitioners should be able to place respondents in the position of having to answer a massive supplemental questionnaire with as little as one week to provide complete answers, as happened in the 1992 flat-rolled steel cases.

One approach would be to establish a deadline for the introduction of such issues to permit the respondents to have adequate time to research, draft and (often) translate a complete response. We note that in the EU system the petitioner does not have the power to dictate the pace and scope of the investigation. Once the petition is filed, the Commission authorities take full control. While such a procedure would not necessarily work in the U.S., the Department should study the EU practice and put itself in a position to "just say no" to manipulative petitioners.

--**Accept standard accounting reports.** The Department's practice of demanding financial data in its own *sui generis* format injects excessive and needless cost to the system. It is unfair to require respondents to reformat all their data for the convenience of the Department. We welcome the

Department's proposal to modify the questionnaire to collect documentation that would link the reported sales data to the respondent's general ledger. We are not certain that in practice this will go far enough. The respondent should be required to provide the data in a form that conforms with the generally accepted accounting principles of its own country. With the increasing globalization of business, there is less and less justification for requiring the extra effort, time and expense against an already tight deadline to reformat financial data solely for the Department's use.

--**Delimit the scope of investigations to products made in the U.S.** An industry cannot be injured by the importation of goods it does not produce, unless they truly are close substitutes. Sometimes the "class or kind" of merchandise defined by the Department includes products, usually imported in small volumes for specialized manufacturing, that are not made by domestic producers. This defies good sense and imposes additional, unnecessary costs on American manufacturers. To avoid this, the Department should devise a transparent system for making scope determinations at the earliest possible point in the investigation. It makes no sense to clutter the investigation with data about products not made in the U.S. Instead, the Department should establish clear standards on the basis of which it will exclude such products from the investigation.

--**Use the "targeted dumping" provision carefully.** The Department should acknowledge that certain commercial pricing decisions and trends, such as different pricing for smaller or larger orders, do not constitute targeted dumping. The Department should define more clearly how it will determine whether targeted dumping exists, to which sales the average-to-transaction methodology will be applied, and the evidentiary threshold that must be crossed for a targeted dumping investigation to be initiated. When targeted dumping is found, the Department should emphasize its preference for use of the average-to-average methodology. It would particularly inappropriate to use the average-to-transaction methodology in the absence of the same pattern of sales in the comparison market.

--**Scrap the system of retrospective duty assessment.** Alone among major uses of antidumping, the United States assesses AD duties on a retrospective basis. This requires a costly and cumbersome system of collecting cash deposits, developing detailed information on prices and costs for periods after the original investigation (in effect, a new AD investigation for each year the order remains in effect), rehashing arguments over methodology, assessing the duty payable years after the date of importation, and returning excess deposits with interest. This process consumes the resources of the Department, the Customs Service, petitioners and respondents alike. For the benefit of all parties, it should be scrapped and replaced with a system of normal values.

As these examples demonstrate, there is ample room for the Department to simplify the AD process. Other countries do it more simply without a loss of effectiveness.

How can dumping margins be calculated more realistically?

The purpose of the U.S. antidumping statute and all similar statutes based on the same international agreements is to offset the injury caused by dumping. It is remedial, not punitive, in its intent and should serve that purpose in practice. Not surprisingly, some petitioners, with huge financial and intellectual resources at their command, have undertaken to use every device to inflate dumping margins, with little or no regard to the underlying competitiveness of the exporters or the commercial realities that underlie the trade. Yet realistic margins, grounded in real data, are essential to the antidumping law's remedial purpose. The overriding objective of antidumping

administrators should be to ensure that the margins will remedy the injury to producers without causing new, unnecessary and unjustified injury to downstream producers and consumers. Inaccurate, artificially high margins are inherently distortive of fair trade and should be avoided.

To that end, the Department should consider the following steps, among others:

--**Minimize the use of "facts available."** In the past, the Department has used "facts available" (formerly known as "best information available" or "BIA") liberally. We readily acknowledge the need to use alternative sources of information when respondents fail to provide adequate information or to substantiate it in a verification. However, it is a fact of life that many respondents make a rational decision about the economic costs and benefits of "cooperating" with the Department. Just as they should not be rewarded for their non-cooperation, otherwise cooperative respondents should not be punished for minor mistakes, omissions and failures to produce all requested documents, particularly when such documents are not in their control.

Whenever this happens, the specific result bears no relationship to the commercial reality of the situation. That produces a "remedy" that is excessive in relation to the commercial realities. In the immediate case, the interests of the producer, importer and consumers are harmed. In a larger sense, the very legitimacy of antidumping is called into question.

We commend the Department for making it clear that the presumptive adverse inference associated with the use of "BIA" is no longer to be employed. However, the proposed regulations retain a punitive use of facts available when a company decides not to incur the extraordinary cost of the proceeding. It is not fair to penalize a company for making an economically rational calculation about the cost of participating in the proceeding. The Department should reserve punitive use of facts available for cases of deliberate misrepresentation of the facts. Moreover, all respondents, regardless of the degree to which they are deemed to have cooperated, should be permitted to submit comments on what facts available should appropriately be used.

--**Make reasonable allowances for the level of trade.** We are concerned that the Department may have taken an overly theoretical approach to this issue in the proposed regulations. We welcome the Department's recognition that "prices within a single level of trade, defined by seller function, can be affected by the class of customer" and its intention to make every effort to compare sales at the same level of trade and the same class of customer. However, the new regulations would still permit level of trade allowances based solely on patterns of price differences to different classes of customers.

--**Use a reasonable calculation of profit in constructed value cases.** Under the new law, the Department is required to determine profit for constructed value on the basis of sales "in the ordinary course of trade." Petitioner interests are using this language to argue that the Department should exclude all below-cost sales from any calculation of profit. Obviously, that would artificially inflate the constructed value and thus the dumping margins. We support the Department's view that only those below-cost sales disregarded under section 773(b)(1) of the Act should automatically be considered to be outside the ordinary course of trade.

--**Deduct profit from normal value to make a fair comparison.** The URAA requires a deduction from constructed value for profit. This will add to margins where merchandise is sold in the U.S. by a domestic subsidiary of the exporter. The new profit calculation methodology will also be applicable to sales for which there is value added in the U.S. Although the concept of making a

deduction for profits is similar to current EU practice, the methodology which the Department will use is quite different. The profit deduction will be based on profit earned in both the U.S. and the home market. Moreover, the statute does not require a comparable deduction from normal value, although it does seem to permit one. The Department should make a deduction for profit from normal value so that a "fair comparison" is possible between export and home market prices.

--**Affiliated parties.** The URAA expands the class of entities that are considered to be "affiliated." In the past, ownership relationships were required for entities to be considered "related." Now it appears that contractual relationships can create "affiliated parties." Once parties are considered to be affiliated, the Department may ignore the prices of goods purchased from the affiliate as inputs, or sales made to the affiliate. This generally increases dumping margins. The Department is authorized to punish parties for not supplying sales and cost information from any affiliated party.

The Department should require substantial evidence of genuine control before the parties can be compelled to produce information from their affiliates. If it does not, there is a real potential for abuse if petitioners demand information relating to the nature of the relationship between slightly related parties and the prices they charge to one another. Such "fishing expeditions" would place unjustified legal and informational requirement on the respondent and open up unwarranted possibilities for the use of facts available.

--**Reject the proposal to adjust dumping margins for reimbursement of CVDs.** The Department has proposed to adjust dumping margins in cases in which exporters reimburse importers for the payment of countervailing duties. This is wrongheaded for several reasons. First, it reverses longstanding practice even though neither the World Trade Organization rules nor the URAA require it. Second, it mixes the antidumping and countervailing duty statutes in a confusing way. Antidumping is designed to offset a price advantage in the export market; countervailing duties offset revenue advantages to the exporter. When an exporter reimburses an importer for the CVD paid, his revenue advantage is nullified just as surely as if his government had collected an export tax of an equal amount. Indeed, the reimbursement option should be more attractive to Americans as the revenue ends up in the U.S.

How to make the system more predictable for all parties?

Predictability is another key to fairness. It can also help simplify the system, reduce the scope for unintentional dumping and avoid squandering the scarce administrative resources of the Department on cases of little merit. An unpredictable system works to the detriment of all parties: exporters and importers have no reliable guide to pricing or to the structuring of transactions, related parties have no clear understanding of the rules for their investment in the United States, and American petitioners themselves no way of evaluating their chances of success. By contrast, a more predictable system would help reduce and eliminate dumping situations because importers and exporters could more readily and accurately judge their exposure to antidumping action. Investors in distribution systems and processing facilities could make more rational decisions about the projected return on investment. A more predictable system would also help petitioners avoid the huge expense of preparing and pursuing complaints when their chances of success were minimal.

The predictability of the antidumping system would be greatly enhanced by the changes we suggested under the rubric of making dumping margins more realistic and simpler. Antidumping practitioners (i.e. attorneys) love to debate and discuss the nuances, paradoxes and inconsistencies of the law and regulation. The true practitioners of international trade (i.e. producers, importers

and exporters) find these issues maddening. The uncertainty that is so beneficial to the legal profession can discourage even fairly priced trade. Beyond the steps outlined above, antidumping duty proceedings could be made more predictable by adoption of the following measures:

--**Use reasonable rules for exchange rate fluctuations.** Recent events have underscored once again how volatile and unpredictable exchange rates can be. Normally, it is impossible to determine *ex ante* that a sustained exchange rate shift is occurring. The Department's unwillingness to deal in detail with this issue because of a lack of experience merely underscores the difficulties that exporters might have in deciding when and how much to adjust their prices in such circumstances. The absence of experience is no excuse not to establish guidelines for those who have to make decisions in the real world of international trade.

--**Date of sale.** The date of sale regulations should clarify that the invoice date should not be used for indirect export price sales such that these sales would be reclassified as CEP sales. The regulations should explicitly provide that the use of the date of invoice as the date of sale may not be appropriate in some circumstances such as long-term contracts.

--**Establish a binding ruling procedure.** The Department should institute a system for issuing binding ruling letters whereby parties can obtain advance rulings on the interpretation of regulations. Questions of scope, the countervailability of certain subsidies, and price comparison methodology are obvious examples. By knowing in advance what the consequences of certain actions would be, importers and exporters can act to avoid creating situations in which dumping and countervailing duty complaints are likely. Similarly, potential petitioners would have an alternative to investing heavily in a complaint and having to wait a year or more to get basic issues of interpretation resolved.

While we understand and to some extent sympathize with the Department's reluctance to create "bright line" rules on a wide range of issues that arise in antidumping cases, we urge that trade practitioners be able to avail themselves of a system similar to that employed by the Customs Service.

--**Ensure consistency throughout the proceedings.** Consistency has at least two dimensions. First, the Department's rulings from one investigation to another should be consistent. The same essential facts -- e.g. regarding the existence and functioning of a subsidy program -- should produce the same results from one case to another. Second, the Department should ensure that the treatment of facts and issues is consistent -- and consistently fair -- from the investigation phase through the review stage of each proceeding. To do otherwise would be similar to staging a football match and, after it is over, deciding that for the second and third quarter of this match a touchdown was worth 5.5, a field goal 3.75 and an extra point two points.

Conclusion

In a global economy it is folly to punish those who have invested in your country. Related party transactions have been singled out for particularly harsh treatment in the URAA. Yet these are the same companies that have invested in America, creating jobs and adding value in your country. We would have thought that America's national interest would require that such companies be treated fairly and that they and their customers be provided as much predictability and clear guidance as possible. The aim should be to enable such companies to plan rationally, to make informed decisions about sourcing and pricing, to enable them to be the good corporate citizens they strive to be, and to act in such a way that their exposure to antidumping remedies are minimized, not maximized.

This sampling of the issues involved in the Department's rulemaking is broad enough to underscore the range of the review now underway. The Department is to be commended for taking a comprehensive review of the regulations. The world has changed fundamentally since they were last reviewed in the 1970s.

We believe it is possible for the U.S. to achieve an antidumping system fit for the next century, and we consider it essential to do so for the sake of exporters, importers, consumers, industrial users -- and ultimately for American producers themselves. America stands above all for procedural fairness. Its moral authority as a leader in the trading system stems from its longstanding championing of the cause of the rule of law. As international trade grows in volume, complexity and importance, as production becomes increasingly global, as interdependence becomes a fact rather than a textbook concept, all trading countries need to modernize their laws and institutions to take account of the new realities.

Perhaps it would be good for all antidumping authorities in the world to take a pledge similar to the Hippocratic oath: First, do no harm. Antidumping is supposed to remedy injury, not to generate new injury. Such a judicious result will require carefully drawn regulations that are balanced, fair and transparent; they will further require a judicious application from case to case. New policies should be entered into carefully, after full discussion and debate. That is our hope for this rulemaking. We hope that our comments will be helpful to the Subcommittee in its continuing oversight of the antidumping system.

STATEMENT OF INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

The International Association of Drilling Contractors (IADC) is the sole organization representing virtually the entire global oil and gas contract drilling industry, the most substantial percentage of which is comprised of U.S. companies. These companies are engaged by the oil and gas producing companies in the search for new sources of hydrocarbons.

Absent a "short supply" or temporary duty suspension procedure, the economic effects of antidumping and countervailing duty laws on drilling contractors harms many companies considered to be in the family of small businesses. The smaller drilling companies--like their counterparts in communities across the nation--are those that suffer the most when these laws operate to create shortages in goods and equipment essential to their operations.

It is not widely understood that oil and gas companies almost never own the equipment used in the exploration for new sources of hydrocarbons. That specialized task is provided by drilling contractors who conduct the exploratory work on land and offshore at the direction of their customers, the oil companies. If reservoirs of hydrocarbons are discovered, the drilling contractor most typically has no ownership interest in the found reserves. Rather, the drilling contractor furnishing services to an oil company is more akin to a building contractor, who on completion of the client's assigned task of erecting a building to a specific design, moves on with his equipment to (hopefully) another job. Drilling contractors build boreholes, simply put.

The machinery involved in a drilling rig is diverse and--with larger land and offshore rigs--exceedingly expensive. And, above all, it is subject to the most extraordinary wear and tear as it employs vast amounts of power to chew through rock into deep zones of intense pressure and heat to seek out geological traps holding oil and/or natural gas. As the drilling rig placed on a potential well site operates, it drives a bit at the end of an ever-lengthening string of pipe into the earth's crust. That pipe must have tensile characteristics to twist, bend and support a great column of weight, in addition to withstanding the intense pressure and heat associated with drilling depths.

Drill pipe is included within the class of oil country tubular goods (OCTG) which was targeted by seven U.S. steelmakers in a petition filed at the International Trade Commission on June 30, 1994. Drill pipe accounts for less than one percent of the total tonnage for OCTG. Until the year 1995, drill pipe was available both domestically and internationally. In early 1995, the International Trade Administration published proposed penalty tariffs on OCTG produced in several countries. The effect of that publication was to immediately impose price increases of nearly 50% on most foreign drill pipe. Several of the countries ultimately included in the "dumping" order have chosen simply to leave the U.S. market rather than deal with the myriad U.S. reporting, recording and other burdens added to these penalties. Predictably, that has created severe shortages, and the one domestic manufacturer of finished drill pipe, Grant Prideco, continues to indefinitely extend delivery dates.

The drilling industry consumes great quantities of drill pipe, and must replace that pipe on a routine basis. Because of the financial crisis among drilling contractors, most pipe inventories have not been replaced adequately and now that inventories even of used pipe sold by bankrupt companies are exhausted, companies are struggling to buy new pipe. Given the relatively insignificant component of OCTG that drill pipe represents, it is inconceivable to IADC that the federal government has created artificial shortages with no avenue to seek temporary relief until those shortages subside. The result is a windfall for a select group of steel companies at the expense of an entire industry sector, one that has shrunk to one-fourth its size under the relentless battering or market events, and which was only just beginning to recover.

Under the Voluntary Restraint Agreements (VRA) for steel which expired in 1992, a short supply mechanism existed which provided relief in similar circumstances and with no adverse consequences to the steel industry. When domestic supplies of OCTG were inadequate, petition for the temporary importation of foreign supplies could be made under the short supply procedure permitted by the VRA. H.R. 2822 would restore what had been available to drilling contractors in times of, effectively, no supply.

We urge Congress to pass H.R. 2822.

UNITED STATES HOUSE OF REPRESENTATIVES

Committee on Ways & Means

Statement of Motorola, Inc. in Opposition to H.R. 2822

Motorola is a leading manufacturer in three industries that have been the target of devastating dumping of imported products in the past -- pagers, cellular phones, and semiconductors. In each case, this unfair activity has been accompanied by hurdles that prevented Motorola from competing fully in the home market of the companies engaged in dumping activities, precluding correction through operation of normal market forces. In each instance, the antidumping law has been activated to correct such behavior, fair market conditions have been restored, and Motorola has been able to maintain a competitive position in these important industry segments. Because H.R. 2822, the Temporary Duty Suspension Act, would undermine the effectiveness, objectivity, due process, and the discipline that have characterized the antidumping law, Motorola strongly opposes the provision.

Motorola opposes H.R. 2822 first because it would undermine the objective character of the antidumping law and inject politics and policy vagaries into the process. The proposed Temporary Duty Suspension Act gives the Commerce Secretary the power to let certain companies ignore an antidumping order whenever he or she decides that "prevailing market conditions" make this a good idea. The legislation establishes no standards for the Secretary, thus opening the possibility that some companies may enjoy more favorable status for an indefinite period of time. There is no right to appeal such a decision to the courts. Thus, America's antidumping statue would be changed from a fair-minded law based on the application of specific legal criteria and procedural requirements designed to ensure due process, into a subjective tool able to be manipulated for political purposes or to carry

out the administration's policy objectives. Arguably, in a political battle to have the Secretary exercise this power, the U.S. industries that have been subject to the most devastating dumping would have the least chance of preventing the dumping that is destroying them, because they will be less robust and influential, and thus less able to mount the political support necessary to resist duty suspensions.

A second, related problem with the Temporary Duty Suspension Act is that it could reward dumpers, particularly those who have succeeded in driving U.S. producers out of a particular market segment, because this would create apparent shortages in U.S. supply of a product, at least in the short-term. Thus, it would be the most egregious dumpers who could most easily argue that the Commerce Secretary should step in to lift the application of an antidumping order to address this "market condition". Moreover, the regulating duty suspension could prevent domestic industries from ever being able to produce the product which is alleged to be in short supply, by allowing dumping to continue, and thereby denying those industries the relief needed to invest in necessary plants and equipment. While proponents of H.R. 2822 argue that a temporary suspension would end as soon as domestic production begins, the very suspension could in fact prevent domestic production from ever developing.

Third, H.R. 2822 is unnecessary. Mechanisms already exist under which the government considers requests to adjust, limit, or eliminate existing antidumping and countervailing duty orders based on allegations that a particular product is not available domestically. The Department of Commerce can adjust the scope of an order during the course of an investigation; this often occurs when a previously-defined like product is not produced in the United States. Alternatively, an existing order can be adjusted during a scope determination. Furthermore, an interested party can petition for review of an order based on changed circumstances. The

International Trade Commission can also exclude "niche" products as part of its injury determination. Unlike the proposed temporary duty suspension provision which has no meaningful standards for decision-making and would rely solely on the Commerce Secretary's discretion, these statutes and regulations provide standards by which the decisions of the Department of Commerce or the International Trade Commission may be judged.

Fourth, H.R. 2822 would create a strong incentive to abuse the law and would require a time-consuming process at the Commerce Department to analyze. A company seeking to purchase low-priced dumped goods would have every incentive to write its supply specifications so that they do not match the U.S. products available and then to seek a duty suspension on the ground that there is no such product on the market from U.S. suppliers. Each time a purchaser sought to narrowly tailor its specifications so as to exclude U.S. products and seek relief under H.R. 2822, the Department would be faced with the complex and difficult task of trying to decide whether or not existing U.S. products were substitutable. The Department simply does not have the resources to do this.

Finally, the whole precept behind H.R. 2822 misconstrues the purpose of the antidumping laws. The purpose of the antidumping laws is not to exclude imports. Rather, it is a temporary remedy meant to correct unfair practices that harm U.S. industry. Antidumping laws provide a remedy to unfair pricing which is often linked to closed foreign markets. The goal of the statute is to keep the imported products coming into the U.S. at fair competitive prices. Together with consistent efforts to break down foreign market access barriers, the antidumping statute helps to ensure that U.S. companies can compete both here and abroad.

This is the formula that has helped Motorola to become one of the orld's leading manufacturers in three key industries that have been plagued

by unfair foreign competition in past years. Granting even temporary exemptions for unfairly traded products undermines the effectiveness of an extremely important statute. For all of the above reasons, Motorola urges the Committee to reject H.R. 2822.

BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

STATEMENT OF THE
NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES
FOR THE RECORD IN THE HEARING OF APRIL 23, 1996 ON THE
ADMINISTRATION OF THE ANTIDUMPING LAW

May 7, 1996

The National Association of Foreign-Trade Zones ("NAFTZ," or the "Association") is pleased to submit this statement to the Committee for the record in the subject hearing concerning administration of the antidumping law.

The Association is submitting this statement to express to the Committee our concerns regarding a recent regulatory action taken by the Department of the Treasury ("Treasury Department," or "Treasury"): The issuance of interim regulations pertaining to NAFTA duty deferral programs. *North American Free Trade Agreement (NAFTA)--Implementation of Duty Deferral Program Provisions*, 61 Fed. Reg. 2908 (Jan. 30, 1996) (hereinafter, "Duty Deferral Regulations"). This regulatory action affects the administration of the antidumping law and the operation of U.S. foreign-trade zones.

The NAFTZ is a non-profit organization representing grantees, operators, and users of U.S. foreign-trade zones. Our membership includes state and municipal agencies that sponsor our nation's 211 general-purpose foreign-trade zones in addition to the companies that contribute to local economic activity in their communities through the utilization of foreign-trade zones. The public and private interests represented by the NAFTZ provide our Association with the unique ability to provide a public sector and industry perspective on the Duty Deferral Regulations.

Specifically, the Duty Deferral Regulations are deficient in three important respects:

1. They provide for assessment and collection of antidumping (and countervailing) duties on merchandise made from goods subject to NAFTA drawback under a duty deferral program (including the foreign-trade zones program) that is exported to a NAFTA party, even though Congress neither directed nor authorized Treasury to assess or collect these duties.

2. They provide for collection of the Merchandise Processing Fee on such exported merchandise, even though Congress has provided no authority for this collection and in fact has clarified in legislative history that the Merchandise Processing Fee does not apply in situations such as this one.

3. They were issued retroactively and without adequate opportunity for affected parties, including this Association, to provide comment prior to the time that the Duty Deferral Regulations went into effect.

The NAFTZ is concerned that the Treasury Department, in issuing the Duty Deferral Regulations, has exceeded its authority in taking actions on subjects that are reserved to the Congress, not the Executive Branch. Each of the specific points is addressed below.

I. There Is No Authority for Collection of Antidumping and Countervailing Duties on Exports to Canada and Mexico of Merchandise Made from Goods Subject to NAFTA Drawback

In § 181.53(a)(2) of the Duty Deferral Regulations, merchandise that is manufactured or processed in a foreign-trade zone from goods subject to NAFTA drawback and exported to Canada, (or, beginning in 2001, to Mexico) is treated as if it were an entry for consumption and is assessed antidumping and countervailing duties under § 181.53(a)(2)(i)(C). We are unable to find any statutory authority for this assessment and conclude that this provision is contrary to law.

Under the antidumping and countervailing duty laws, duties are assessed and collected only on merchandise that is entered for consumption in the Customs Territory of the United States. 1/ The Court of International Trade 2/ and the Commerce Department 3/ consistently have held that

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1/ *See, e.g.*, the following sections of the antidumping and countervailing duty laws: 19 U.S.C. § 1671b(d)(2) and 19 U.S.C. § 1673b(d)(2) (liquidation of entries for consumption are suspended under countervailing and antidumping duty law, respectively); 19 U.S.C. § 1671e(a) and § 1673e(a) (deposit of estimated countervailing and antidumping duties, respectively, pending liquidation of entries of merchandise, to occur at the same time as normal customs duties on that merchandise are deposited); 19 U.S.C. § 1671e(b) and § 1673e(b) (imposing countervailing and antidumping duties on merchandise entered, or withdrawn from warehouse, for consumption).

2/ *Torrington Co. v. United States*, 881 F. Supp. 622, 646 (Ct. Int'l Trade 1995); *Timken Co. v. United States*, 865 F. Supp. 881, 888 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 865 F. Supp. 850, 856 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 862 F. Supp. 413, 420 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 858 F. Supp. 206, 214 (Ct. Int'l Trade 1994); *Timken Co. v. United States*, 852 F. Supp. 1122, 1132 (Ct. Int'l Trade 1994); *Torrington Co. v. United States*, 826 F. Supp. 492, 494 (Ct. Int'l Trade 1993); *Torrington Co. v. United States*, 823 F. Supp. 945, 948 (Ct. Int'l Trade 1993); *Torrington Co. v. United States*, 818 F. Supp. 1563, 1573 (Ct. Int'l Trade 1993), *appeal pending* Nos. 95-1210 and 95-1211 (Fed. Cir. Dec. 7, 1994) (. . . "there is no reason to believe that the use of the term entry in the antidumping duty statute refers to anything other than formal entry of merchandise *into the U.S. Customs territory*" (emphasis added)).

3/ *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 56 Fed. Reg. 65,228 (Dec. 16, 1991) ("[O]ur understanding of the term 'entry' in the antidumping law is that it unambiguously refers to release of merchandise into the customs territory of the United States"); *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof from Japan; Final Results of Antidumping Duty Administrative*

merchandise admitted into a foreign-trade zone is not subject to antidumping and countervailing duties unless and until it is entered for consumption in the U.S. Customs Territory. Because merchandise admitted into a foreign-trade zone and then exported to a NAFTA party never enters the U.S. Customs Territory for consumption in the United States, antidumping and countervailing duties lawfully may be neither assessed nor collected.

In enacting the NAFTA Implementation Act, Congress did not create an exception to the above-stated limitation. Pursuant to NAFTA Article 303(3) as implemented by Section 203(b)(5) of the NAFTA Implementation Act, "a duty" is to be assessed on foreign-trade zone exports to Canada and Mexico of merchandise made from goods subject to NAFTA drawback, but the statutory provision makes no mention of antidumping and countervailing duties. We are aware of nothing in the legislative history of the NAFTA Implementation Act (including specifically, the Statement of Administrative Action accompanying the NAFTA Implementation Act as submitted to the Congress) that states or even suggests that antidumping duties and countervailing duties are to be assessed in addition to ordinary customs duties under this special procedure.

The NAFTA itself lends further support to the conclusion that the duty assessed under Section 203(b)(5) is intended to be an ordinary customs duty, not an antidumping or countervailing duty. NAFTA Article 303(3), upon which this statutory provision is based, is expressly confined by NAFTA Article 318 to ordinary customs duties. 4/

The NAFTA Implementation Act includes a reference to antidumping and countervailing duties in Section 203(e); however, this provision does not itself impose antidumping and countervailing duties on the exported merchandise addressed by Section 203(b). Section 203(e) provides as follows:

> INAPPLICABILITY TO COUNTERVAILING AND ANTIDUMPING DUTIES.--Nothing in this section [*i.e.*, Section 203 of the NAFTA Implementation Act] or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

Review, 56 Fed. Reg. 41,506 (Aug. 21, 1991); *Antifriction Bearings from the Federal Republic of Germany, et al.*; *Final Results of Antidumping Duty Administrative Review*, 56 Fed. Reg. 31,703 (July 11, 1991).

4/ In defining "customs duty," NAFTA Article 318 provides as follows: "**customs duty** includes any customs or import duty and a charge of any kind imposed in connection with an imported good, including any form of surtax or surcharge in connection with importation, but does not include any: . . . antidumping or countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters)."

19 U.S.C. § 3333(e). According to its plain meaning, this provision does not impose antidumping and countervailing duties on goods not already subject to antidumping and countervailing duties under other provisions of law. Instead, it provides that where antidumping and countervailing duties are imposed on an imported good pursuant to other authority, nothing in Section 203 is to be construed to provide authority for the refund, waiver, or reduction of those duties. The clear intent of this provision as a preservation of antidumping and countervailing duties provided for by other authority is also evident from an examination of the NAFTA provision it implements, Article 303(2), which provides in relevant part as follows:

> No Party may, on condition of export, refund, waive or reduce:
>
> (a) an antidumping or countervailing duty that is *applied pursuant to a Party's domestic law* and that is not applied inconsistently with Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters)[.]

NAFTA Article 303(2) (emphasis added). Neither Article 303, nor any other NAFTA provision of which we are aware, imposes an obligation on the United States to amend its law to assess or collect antidumping and countervailing duties on goods that are not subject to them, including goods exported from foreign-trade zones.

Had Congress intended to grant the Secretary of the Treasury authority to assess and collect antidumping and countervailing duties on the merchandise in question, it would have provided that authority directly and unambiguously, as an exception to the general principle that these duties are assessed and collected *only* where merchandise is entered for consumption in the U.S. Customs Territory. Additionally, we note that regulatory authority over antidumping and countervailing duty matters is exercised by the U.S. Department of Commerce, not the Treasury Department, and the Duty Deferral Regulations are further deficient for this reason.

For all the reasons stated above, the Association concludes that the Duty Deferral Regulations are contrary to law and the intent of the Congress in providing for the assessment and collection of antidumping and countervailing duties on NAFTA exports of goods made from merchandise subject to NAFTA drawback.

II. The Duty Deferral Regulations Improperly Collect the Merchandise Processing Fee on Exports to Canada and Mexico of Merchandise Made from Goods Subject to NAFTA Drawback

Under 19 U.S.C. § 58c(a)(9), the Merchandise Processing Fee (the "MPF" or the "Fee") is imposed on merchandise formally entered or released from warehouse for consumption in the Customs Territory of the United States. The Duty Deferral Regulations exceed the statutory authority of § 58c(a)(9) in assessing and collecting the Fee on merchandise withdrawn from a foreign-trade zone for export to Canada and (beginning 2001) to Mexico.

In Section 8101 of the Omnibus Budget Reconciliation Act of 1986, Pub.L. 99-509 ("OBRA"), Congress amended Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub.L. 99-272, to provide for the assessment of a processing fee on "merchandise that is formally

entered or released." 19 U.S.C. § 58c(a)(9)(A). 5/ The statute defines merchandise "entered or released" as merchandise that is:

> (i) permitted or released under section 1448(b) of this title [referring to immediate delivery to the U.S. Customs Territory of perishable goods imported into the United States and released under special permit],
>
> (ii) entered or released from customs custody under section 1484(a)(1)(A) of this title [referring to merchandise imported into the United States and formally entered for consumption in the Customs Territory by an importer of record] or
>
> (iii) withdrawn from warehouse for consumption.

19 U.S.C. § 58c(b)(8)(E). Each of these three categories pertains to merchandise entered, or withdrawn from warehouse, for consumption in the U.S. Customs Territory. By these express limitations, OBRA disallows collection of the MPF on merchandise withdrawn for export under foreign-trade zone (or other duty-deferral) procedures that does not involve an entry or withdrawal for consumption in the U.S. Customs Territory. Moreover, Congress resolved any doubt as to the scope of the MPF by stating in the Conference Report to the OBRA that the MPF does not apply to "merchandise which does not formally enter U.S. commerce for consumption." 6/

Despite the clear limitation placed by Congress on the MPF, the Duty Deferral Regulations provide, in § 181.53(a)(2)(i) that documents filed with Customs, when the merchandise at issue is withdrawn from a foreign-trade zone, "constitute an entry or withdrawal for consumption," and in § 181.53(a)(2)(i)(C) that the Merchandise Processing Fee will be assessed. As applied to the MPF, this regulation is contrary to the OBRA, which does not permit collection of the MPF on exported merchandise that has not been entered for consumption in the U.S. Customs Territory.

Furthermore, nothing in the NAFTA Implementation Act modifies the statutory requirement that an entry or release of merchandise to the U.S. Customs Territory must occur before the MPF is assessed. Any such modification would be inconsistent with the NAFTA itself, which excludes from the definition of the term "customs duty" in Article 318 "any . . . fee or other charge in connection with importation commensurate with the cost of services rendered." As a result, neither the NAFTA nor the NAFTA Implementation Act provides a basis for the assessment of a fee such as the MPF on merchandise exported to a NAFTA party under Article 303(3) and U.S. implementing provisions thereunder.

5/ Under current law, the MPF is set at a statutory maximum of 0.21 percent *ad valorem* and is subject to downward adjustment by the Secretary of the Treasury in accordance with the statute. 19 U.S.C. § 58c(a)(9)(A). On any one consumption entry, the MPF may not be less than $25 nor higher than $485. *Id.* at § 58c(b)(8)(A)(i).

6/ H.R. Conf. Rep. 99-1012, 99th Cong., 2d Sess. 388 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3607, 4033.

Finally, the NAFTZ wishes to point out to the Committee that the application of the MPF in the Duty Deferral Regulations is not only unlawful but also harmful to U.S. manufacturers, including U.S. manufacturers operating in foreign-trade zones. By imposing the MPF on U.S. exporters of products to Canada (and, subsequently, Mexico), Customs is treating these U.S. exporters less favorably than Canadian and Mexican exporters of products to the United States are treated under the NAFTA as effectuated in U.S. law. Under OBRA as amended by the NAFTA Implementation Act, imports into the United States of NAFTA-originating goods of Canada are now exempt from the MPF; NAFTA-originating goods from Mexico may not be charged the Fee in excess of the level in effect on December 31, 1993 (*i.e.*, 0.19 percent *ad valorem* as opposed to the current 0.21 percent) and will become totally exempt from the Fee on June 29, 1999. 7/

III. The Duty Deferral Regulations Were Issued Contrary to the Administrative Procedure Act and Principles of Fundamental Fairness

The Association requests that the Committee take notice that the Treasury Department issued the Duty Deferral Regulations retroactively and contrary to the notice and comment and delayed effective date provisions of the Administrative Procedure Act ("APA"). The regulations were issued in "interim" form, a full month *after* the effective date. The NAFTZ and its members were not provided an adequate opportunity to object to the Duty Deferral Regulations prior to implementation. In the Federal Register notice, the Treasury Department contends that dispensing with the notice and comment and delayed effective date provisions is justified by the "foreign affairs" exception of 5 U.S.C. § 553(a) as it pertains to the NAFTA. 8/

The foreign affairs exception to the notice and comment and the delayed effective date provisions of the APA is not applicable in these circumstances, and as a result the Duty Deferral Regulations were issued contrary to law. This exception, provided for at 5 U.S.C. 553(a)(1), applies only "to the extent there is involved a foreign affairs function of the United States." Neither the NAFTA nor the NAFTA Implementation Act directs the Treasury Department to impose antidumping and countervailing duties, or the MPF, on the exports at issue. Even had Congress granted Treasury discretionary authority to collect these duties and fees (which it did not), Treasury's attempt to accomplish this collection by a "legislative rule," such as the Duty Deferral Regulations, still would be subject to the delayed effective date and notice and comment provisions of the APA. 9/

By their retroactive application, the Duty Deferral Regulations are also violative of established principles of fundamental fairness. Retroactivity is strongly disfavored in the law because it alters the legal consequences of past decisions. 10/ Retroactivity is particularly harmful where parties were not placed on notice of a change in position that affects them adversely. Notably, during the three years between enactment of the NAFTA Implementation Act in December 1993 and the issuance of the interim Duty Deferral Regulations on January 30, 1996, Treasury gave no indication it

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7/ 19 U.S.C. § 58c(b)(10).

8/ 61 Fed. Reg. at 2910.

9/ *See American Frozen Food Institute, Inc. v. United States,* 855 F. Supp. 388, 395-396 (Ct. Int'l Trade 1994).

10/ *See Bowen v. Georgetown University Hospital*, 488 U.S. 204, 219; 109 S.Ct. 468, 102 L.Ed. 2d 493 (1988).

would collect the duties and fees at issue. In fact, Treasury issued a notice on September 29, 1995 announcing that it would *not* collect these duties and fees. 11/

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For the aforementioned reasons, the NAFTZ believes that the Treasury Department does not have authority for the assessment and collection of antidumping and countervailing duties and the MPF as set forth in the Duty Deferral Regulations, and that these regulations were issued contrary to law. The Association urges the Treasury Department to take corrective action and appreciates the opportunity to provide these views to the Committee.

11/ U.S. Customs Service, *NAFTA Duty Deferral* (electronic bulletin board notice) (Sept. 29, 1995) at 4.

4/19/96

STATEMENT OF THE SOUTHERN TIER CEMENT COMMITTEE TO THE TRADE SUBCOMMITTEE OF THE HOUSE COMMITTEE ON WAYS AND MEANS CONCERNING THE TEMPORARY DUTY SUSPENSION ACT (H.R. 2822)

INTRODUCTION

This statement is presented on behalf of the Southern Tier Cement Committee (the "Committee"). The Committee is a coalition of the 25 U.S. cement producers listed on Exhibit 1. Together, these producers represent 65% of total U.S. production capacity and 75% of the capacity in the southern tier states extending from California to Florida.

Consistent with the Trade Subcommittee's Advisory, I will focus my remarks on the relationship between the antidumping law and U.S. downstream industrial users of gray portland cement. Before doing so, however, I would urge the Trade Subcommittee to consider the very positive impact that antidumping orders have on upstream suppliers. Dumping hurts not only the firms and workers of the affected U.S. industry, it also hurts the firms and workers of the upstream industries that supply raw materials and equipment and build new plants for the affected industry. Under current law, the impact of dumping on upstream suppliers is totally ignored.

My thesis is that the unchecked dumping of cement in this country is contrary to the long-term interests of U.S. consumers. If H.R. 2822 became law, an ad hoc political process would replace the existing non-partisan, impartial administrative process. Foreign producers, foreign governments, their U.S. customers, and their Congressional supporters would vigorously lobby the White House, the State Department and the Commerce Department ("Commerce") to suspend antidumping duties for whatever reasons seem plausible to the uninformed. If the political pressure succeeded, the suspension of antidumping duties would stifle much needed capital investment to maintain and expand production capacity and would allow foreign interests to capture our markets, to the long-term detriment of U.S. cement consumers.

Our industry has had a very disturbing preview of the effects that distorted short supply claims can have on the process. CEMEX, the Mexican cement monopoly, has been attempting to fashion a political end-run of the antidumping order on cement for five years. Its most recent tactic involved false and wildly exaggerated charges that the antidumping order was causing a cement shortage. CEMEX lobbied Commerce and the Administration to revoke the order, even without the encouragement of H.R. 2822. The cement industry's experience should provide the Trade Subcommittee a real world perspective for assessing the concept of temporary duty suspensions.

THE ANTIDUMPING ORDER ON MEXICAN CEMENT

The experience of the U.S. cement industry since the early 1980's vividly demonstrates how the dumping of unfairly priced imports decimated a basic U.S. industry, and how that industry is now on the path to recovery as a direct result of the effective enforcement of our existing trade laws. Before turning to the industry's actual experience, however, let me describe gray portland cement and its market characteristics.

Cement is the binding agent in concrete, which is used in virtually all construction projects. It is quite literally the foundation upon which our country has been built. Cement is a fungible commodity that sells on the basis of price. It is produced in a capital intensive manufacturing process characterized by high fixed costs. Capital intensive industries, like cement, are under significant pressure to operate at high levels of capacity utilization in order to absorb fixed manufacturing costs. In addition, the demand for cement is highly cyclical, tracking regional construction cycles across the country. These industry fundamentals cause significant swings in supply/demand conditions and the industry's profits and losses over the course of the construction cycle.

Historically, the U.S. cement industry has made money at the peak of the cycle and lost money at the bottom of the cycle. Rising capacity utilization rates during cyclical expansions push cement prices and operating earnings upward, providing the cash flow for capital investments to maintain and expand capacity. During the contraction phase of the cycle, prices decline and capacity utilization rates fall. Depressed profits and cash flows at the bottom of the cycle will not support the capital investment needed to maintain and expand the domestic industry to meet U.S. demand.

As an example, during the 1980/1982 recession, cement demand dropped by 24% and the industry's capacity utilization rate fell to 68%. This downturn was followed by a strong economic recovery from 1983 to 1989 in which cement consumption increased 40%. Unlike previous expansions, however, the U.S. cement industry did not benefit from this recovery. The industry lost money throughout this expansion because unfairly priced cement imports displaced domestic production and prevented the natural recovery of prices and profits which were desperately needed by domestic cement companies in order to offset the losses incurred during the 1980/1982 recession.

Foreign cement producers had substantial excess capacity in their home markets during the 1980's. They exported cement to the U.S. market at prices well below their home market prices and, in some cases, below their costs. As shown on Table A in Exhibit 2, from 1981 to 1988, landed import prices fell 24%, from approximately $45 per ton in 1981 to a low of only $34 per ton in 1988. In effect, foreign producers used the profits generated in their protected home markets to subsidize low priced exports to the U.S. This predatory pricing enabled them to gain a substantial share of the U.S. cement market at the expense of U.S. producers. As shown on Table B in Exhibit 2, the penetration of cement imports steadily increased from less than 5% of the U.S. market in 1982 to almost 20% by 1987.

This massive intrusion of dumped imports drove down cement prices in the U.S. and severely weakened the financial condition of the industry. As a result, the industry was forced to shut down 10% of its productive capacity, as depicted on Table A in Exhibit 3. Cement companies also reduced their employment base by over 20%. In addition, many U.S.-owned firms were forced to sell cement plants to cash rich foreign producers at substantially discounted prices. From 1975 to 1990, foreign ownership of the U.S. cement industry increased from 5% to 65%.

Southdown's survival and the economic viability of the industry depended on gaining some relief from dumping. At great cost, Southdown organized cement producers in the southern tier states from California to Florida to file antidumping petitions against Mexico, Japan and Venezuela. Fortunately, these actions were successful and resulted in a significant decline in unfairly priced imports after the imposition of duties in 1990 and 1991.

With unfairly traded imports in check, the industry is now beginning to realize the benefits which normally take place during cyclical expansions. The recovery in cement demand since the 1991 recession has resulted in a steady increase in the industry's capacity utilization rate from 81% in 1991 to approximately 90% currently. The resulting improvement in supply/demand conditions has paved the way for a recovery in cement prices from the depressed levels of the 1980's.

The improvement in the industry's profitability and returns has led to a resurgence in capital spending and job creation. At present, numerous capital projects are underway to build new capacity, expand existing capacity and upgrade present facilities. A few examples are listed on Exhibit 4. For the first time in almost 10 years, the industry has announced the construction of new cement plants to replace aging capacity and to meet increased demand.

The temporary suspension of antidumping duties could re-open the floodgates for unfairly priced cement imports at the peak of the cement cycle during periods of high capacity utilization. The cement industry must achieve price and profit gains at the top of the cycle to drive capital investment and job creation. The passage of H.R. 2822 would have a disastrous impact on the industry's willingness to invest. If the industry can't count on the enforcement of our trade laws to prevent dumping at the peak of the business cycle, it would simply be too risky to undertake significant capital investments. If our industry doesn't earn profits at the peak of the cycle, it doesn't earn any profits at all.

A healthy domestic cement industry is in the long-run best interest of producers, downstream consumers and upstream suppliers. The downstream consumer of cement arguably would receive a short-term benefit from the price depression caused by unfairly priced imports. That price depression, however, would not only suppress new investment to expand and modernize U.S. production capacity, but would also cause further disinvestment as experienced during the 1980's. This loss of new and existing investment would hurt cement producers, their workers and upstream suppliers. The short-term pricing benefit to cement consumers would be more than offset by the long-term pricing detriment resulting from lower domestic production capacity and less cost-efficient plants.

It also would be contrary to cement consumers' long-term interests to become dependent on dumped imports. A finding of dumping means the foreign dumper has higher profits at home than on its exports to the U.S. It only exports to utilize excess capacity it cannot absorb on home market sales. During periods of peak demand at home, the foreign dumper will have no incentive to export to the U.S. It simply is not beneficial for U.S. consumers to become reliant on dumped foreign cement since these imports will only be readily available when the cement cannot be sold in the more profitable home markets of the foreign producers.

Thus, temporary suspension of duties could have a long-term adverse impact on both U.S. cement producers as well as the downstream consumers that depend on a readily available supply of the product from modern and cost efficient plants.

PROVIDING FOR DISCRETIONARY SUSPENSION OF ANTIDUMPING ORDERS WOULD POLITICIZE THE PROCESS

Unlike previous short supply amendments, H.R. 2822 would provide Commerce with exceptionally broad discretionary authority to suspend antidumping duties without any statutory criteria or judicial review. Commerce would have the authority to suspend duties in any period in which Commerce determines that "prevailing market conditions" make the imposition of duties "inappropriate". Such a vague standard is an invitation for political intervention.

If enacted, H.R. 2822 would necessarily politicize the process by opening the door for extensive lobbying activities by respondents, foreign governments or any other parties that would benefit from the suspension of duties. Lacking the objective underpinnings of statutory guidelines and judicial review, Commerce's decisions would be tainted with political influence, whether actual or perceived. H.R. 2822 would also undermine the credibility of the United States with its international trading partners because countries exhibiting the gravest foreign policy concern at a particular moment in time would be rewarded with suspended duties.[1]

Congress has labored over the years to ensure that agency decisions in antidumping cases are based on the facts presented and the application of detailed statutory standards. H.R. 2822 is contrary to this longstanding policy and would inevitably politicize Commerce's decision making process. In fact, Commerce strongly opposes H.R. 2822, both because of the extreme cost and difficulty in administering such a provision and because the enormous grant of discretion will encourage virtually every importer to seek exemptions from antidumping orders and pursue extensive lobbying campaigns in an effort to influence Commerce's decisions.

---

[1]In commenting on the intent to isolate antidumping decisions from political influence, the U.S. Court of Appeals for the Federal Circuit recently stated:

> Antidumping duties are not simply tools to be deployed or withheld in the conduct of domestic or foreign policy. In particular, the independent status of the International Trade Commission was intended to insulate the Government's decision to impose antidumping duties from narrowly political concerns.

Federal Mogul Corp. v. U.S., 63 F.3d 1572, 1581 (Fed. Cir. 1995).

Our industry has experienced firsthand how foreign producers will expend substantial sums of money in an attempt to engineer a political fix to a legally valid antidumping order. CEMEX, the Mexican cement monopoly, has been pursuing a massive lobbying campaign over the past five years to remove the antidumping order through political means. CEMEX has gained the support of many members of Congress and some governors by making false claims of a cement shortage. CEMEX used statistics showing that cement demand in the U.S. exceeds domestic productive capacity together with references to increasing cement prices to make the argument that the antidumping order against Mexico was creating cement shortages throughout the country. In fact, however, U.S. cement producers were operating with excess production capacity (approximately seven percent in 1994 and 10 percent in 1995) and imports from other countries[2] entered the U.S. in sufficient quantities to fill the gap between domestic production and demand in 1994 and to create a substantial surplus in 1995. CEMEX cited a handful of supply problems in a few local markets during the seasonal peak of construction activity in the summer of 1994 and proclaimed a crisis for the U.S. construction industry. CEMEX's self-serving cynicism is underscored by the fact that it told Congress that the antidumping order caused exorbitant price increases, but it certified to the U.S. International Trade Commission that the order has had absolutely no impact on U.S. cement prices.

What CEMEX has consistently failed to mention is that any capacity shortfalls in 1994 were largely the result of a decade of dumping which forced the industry to close approximately 10 percent of its capacity. Suspending duties against CEMEX under the auspices of a perceived short supply situation as envisioned by H.R. 2822 would threaten ongoing expansion projects, would cause domestic cement capacity to contract, and would exacerbate the very capacity shortfall upon which CEMEX's rhetoric is based.

CONCLUSION

The existing dumping laws have been a very effective deterrent to unfairly priced cement imports. Their effective administration has allowed the reemergence of free market conditions to balance supply and demand. The adoption of the temporary duty suspension act would upset this balance in the favor of foreign producers that would dump cement into U.S. markets without fear of retaliation in their protected home markets. The short-term advantage gained by the consumer in the form of lower prices would be more than outweighed by the adverse long-range effects on product availability caused by disinvestment in U.S. productive capacity. Both the industry and the downstream cement users would lose over the long-term.

The U.S. industry has suffered significant injury at the hands of dumped imports. The effective enforcement of our trade laws has allowed the industry to recover and again supply the needs of the American construction industry. This is not the time to weaken remedies against unfairly traded imports by creating loopholes for the worst foreign offenders -- those that dump with impunity and thereby destroy the domestic industry's ability to invest in new plants and equipment needed to produce a

---

[2]Cement is a fungible commodity made in virtually every civilized nation. World cement supplies are increasing, as shown on Table B in Exhibit 3.

competitive product. Enacting H.R. 2822 and similar proposals to dilute U.S. antidumping law would go a long way toward destroying the fragile consensus for free trade that exists in the United States today.

For all of these reasons, we respectfully request that the Trade Subcommittee reject this legislation.

THE SOUTHERN TIER CEMENT COMMITTEE

Company/Headquarters	Plant Locations	
Alamo Cement Company San Antonio, TX	San Antonio, TX	
Arizona Portland Cement Co. Glendora, CA	Rillito, AZ	
Ash Grove Cement Company Overland Park, KS	Chanute, KS Durkee, OR Foreman, AR Inkom, ID	Nephi, UT Louisville, NE Clancy, MT Seattle, WA
Blue Circle Marietta, GA	Atlanta, GA Harleyville, SC Sparrows Point, MD	Calera, AL Ravena, NY Tulsa, OK
Calaveras Cement Co. Walnut Creek, CA	Redding, CA Monolith, CA	
California Portland Cement Co. Glendora, CA	Colton, CA	Mojave, CA
Florida Crushed Stone Co. Leesburg, FL	Brooksville, FL	
Florida Rock Industries, Inc. Jacksonville, FL	Gainesville, FL	
Giant Cement Company Harleyville, SC	Harleyville, SC	
Kaiser Cement Corp. Pleasanton, CA	Cupertino, CA	
Lafarge Corporation Reston, VA	Alpena, MI Davenport, IA Fredonia, KS Grand Chain, IL Independence, MO	Paulding, OH Tampa, FL Whitehall, PA
Lehigh Portland Cement Company Allentown, PA	Gary, IN Leeds, AL Mason City, IA Mitchell, IN	Union Bridge, MD Waco, TX York, PA
Lone Star Industries Stamford, CT	Cape Girardeau, MO Greencastle, IN Sweetwater, TX	Oglesby, IL Pryor, OK
Medusa Corporation Cleveland, OH	Charlevoix, MI Clinchfield, GA	Demopolis, AL Wampum, PA
National Cement Co. of Alabama, Inc. Birmingham, AL	Ragland, AL	
National Cement Co. of California, Inc. Encino, CA	Lebec, CA	
North Texas Cement Company Dallas, TX	Midlothian, TX	
Phoenix Cement Company Phoenix, AZ	Clarkdale, AZ	
Riverside Cement Company Diamond Bar, CA	Riverside, CA	Oro Grande, CA
RC Cement Co., Inc. Bethlehem, PA	Stockertown, PA Chattanooga, TN	Festus, MO Independence, KS
RMC Pleasanton, CA	Davenport, CA	
Southdown, Inc. Houston, TX	Louisville, KY Pittsburgh, PA Fairborn, OH Brooksville, FL	Knoxville, TN Lyons, CO Odessa, TX Victorville, CA
Tarmac America, Inc. Medley, FL	Medley, FL	
Texas Industries, Inc. Dallas, TX	New Braunfels, TX Midlothian, TX	
Texas-Lehigh Cement Company Buda, TX	Buda, TX	

Exhibit 1

Table A. Delivered Import Prices

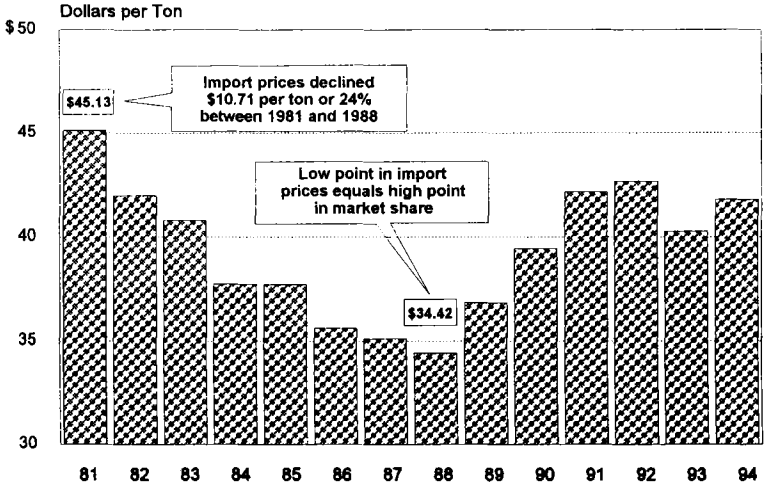
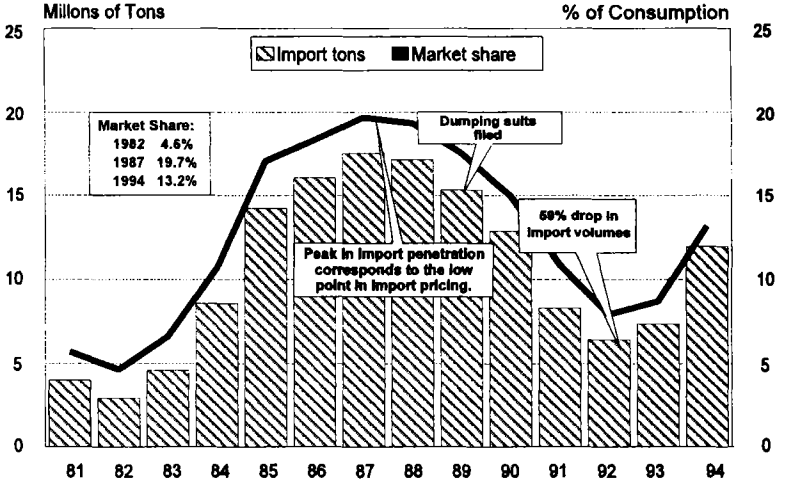


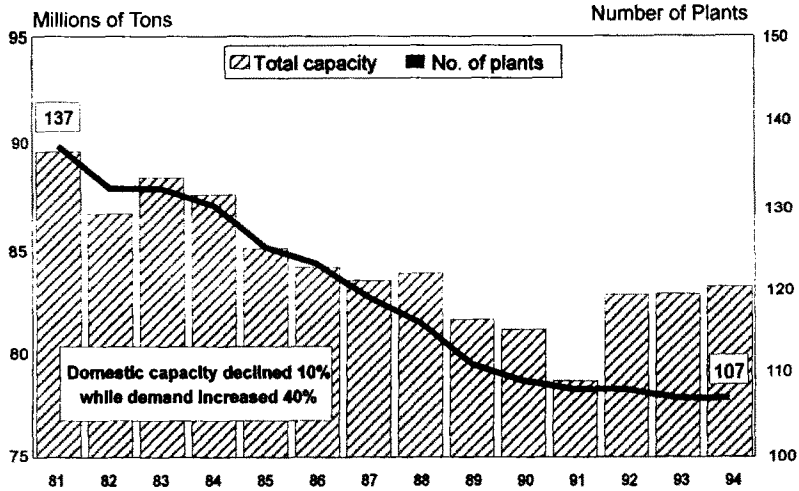
Table B. Import Volumes & Market Share



Source: Bureau of Mines Mineral Yearbooks and Department of Commerce Official Import Statistics.

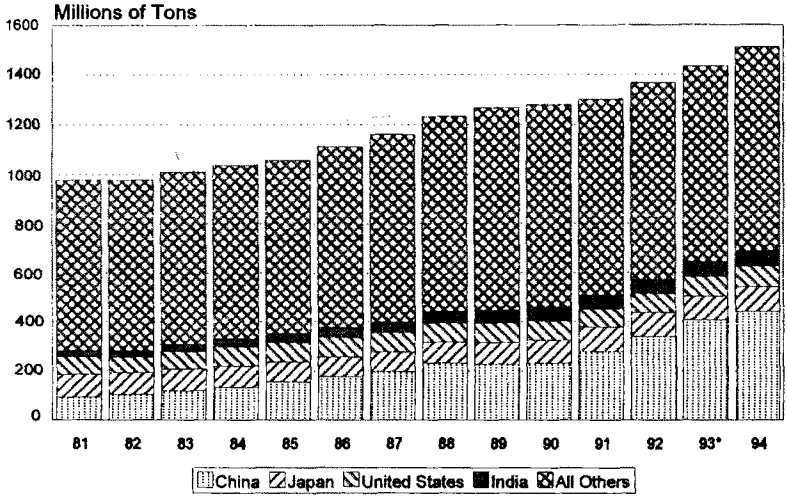
Exhibit 2

Table C. U. S. Clinker Capacity



Source: PCA Plant Information Summary, 1994.

Table D. World Cement Production



* According to the International Cement Review's "Global Cement Report," world cement capacity was 1,491.1 million short tons in 1993. As shown above, world cement production in 1993 was 1,432.6 million short tons. This leaves an excess cement capacity of 58.5 million short tons for that year.

Source: Bureau of Mines, Cement Annual Report.

Recent Capacity Expansion Investments In The U.S. Cement Industry

Company	Investment Project
Ash Grove	Increasing capacity of Leamington, UT plant from 650,000 to 825,000 tons. Increasing capacity of Durkee, OR plant from 500,000 to 900,000 tons (est. $85 million).
Blue Circle America	Installing new finish mill to increase cement grinding capacity at Roberta, AL plant ($22.5 million)
Capitol Aggregates	Installing new finish mill to increase cement grinding capacity at San Antonio, TX plant.
Florida Crushed Stone	Building second kiln at its Brooksville, FL plant to double clinker capacity (est. $60 million).
Florida Rock Industries	Building 750,000 ton plant near Gainesville, FL (est. $100 million).
Holnam	Doubling capacity of its Devil's Slide, Utah plant to 700,000 tons by replacing the existing wet kiln with a dry kiln (est. $75 million). Modernizing and upgrading clinker coolers in Midlothian, TX, Theodore, AL, and Santee, S.C. plants. Replacing raw mill separator with high-efficiency separator at Theodore, AL plant. Modernizing heating and cooling processes in Davenport, IA and Fredonia, KS plants to increase production and reduce fuel consumption. Investing $9.7 million in modernization of Paulding, OH plant.
Lafarge	Investing $135 million in a new facility at an existing cement plant site near Kansas City, MO, increasing capacity by 400,000 tons annually.
Lehigh Portland Cement	Modernizing and expanding project at the Union Bridge, Maryland cement plant, increasing capacity from 1.0 to 1.5 million tons. ($180 million) Upgrading kiln preheater and clinker cooling systems at Leeds, AL plant. Upgrading Macon City, IA plant to increase capacity.
Lone Star Industries	Investing $15.5 million in a new finish mill and storage facilities at Greencastle, IN plant, increasing cement capacity by 11 percent.
Medusa	Modifying preheater kiln system at Clinchfield, GA plant, increasing cement capacity by 6 percent.
National Cement	Installing a 2,100-tons per day clinker cooler in Lebec, CA cement plant.
Riverside Cement	Centralizing control rooms for gray and white cement plants.
Roanoke Cement	Investing $37 million to modernize Roanoke, VA cement plant and expand capacity from 1.0 to 1.2 million tons.
Southdown	Investing $48 million in expansion and modernization of Fairborn, OH cement plant, increasing cement capacity by 120,000 tons per year.
Texas Industries, Inc.	Buying more than 3,400 acres with limestone deposits adjoining Midlothian, TX cement plant.

Exhibit 4

SPECTRO
ALLOYS CORP

13220 Doyle Path
Rosemount, MN 55068 U.S.A.
FAX: 612/438-3714
Phone: 612/437-2815

April 22, 1996

Attn: Ways & Means Committee on Trade

Thank you for allowing me to state my concerns about a serious matter facing the aluminum industry. My concerns surround a shortage problem which threatens our business, as well as the economy.

Spectro Alloys is a manufacturer of recycled aluminum ingot, which is sold to the automotive, lawn, garden, engine and industrial industries. The total U.S. market is about 3 billion pounds.

For our manufacturing process, we purchase silicon metal. We do not require a higher purity silicon metal, but rather prefer KR1 or KR2 grades of silicon, which contains a maximum of 97.5% silicon.

During the past year 95% of the silicon we purchased came from foreign sources. While there are several U.S. producers of the higher grade silicon, the KR1 or KR2 grades can only be acquired from foreign sources. In addition, most of the production of the higher grade materials is sold to the higher purity price chemical grade silicon market.

Several years ago, the U.S. government enforced substantial duties on foreign silicon, namely from China and Brazil, for dumping all grades of silicon. In the past few years, prices for the lower grade silicon has risen from the low $.60 to about $1.00 per pound today.

In addition to prices being high, we cannot buy enough silicon to operate past the second quarter 1996. It is essential that the Chinese & Brazilian duties be dropped in order to avoid a crisis.

Sincerely,

G. Palen

Gregory R. Palen
Chairman/CEO
Spectro Alloys Corp.

STATEMENT OF STEEL MANUFACTURERS ASSOCIATION

The Uruguay Round Agreements Act ("URAA"), which became effective on January 1, 1995, significantly altered and, in many ways, restructured US antidumping law. The URAA changed methodologies and redefined fundamental tenets. No one knows whether a "short supply" problem will develop under the new regime.

Since enactment of the URAA, ten antidumping actions have been filed and only one, which was dismissed on a negative pre-liminary vote at the International Trade Commission ("ITC"), has reached conclusion. The first full investigation is not scheduled to conclude until May 6, 1996.

Only recently has the Department of Commerce published its Notice of Proposed Rulemaking providing both domestic manufacturers and importers with information on potential interpretations of the law by the Commerce Department. It would be premature to alter the structure of the antidumping law until all comments are received, the proposed rules become final, and members of the domestic and importing communities have the opportunity to see how these rules work in practice.

A similar short supply measure was addressed and rejected by both the Ways & Means Committee and the Senate Finance Committee during consideration of the URAA.

After a careful review of the Temporary Duty Suspension Act, H.R. 2822, (otherwise known as the "short supply" proposal) being considered by the Committee on Ways and Means, the SMA and its member companies urge the Committee not to approve this legislation. We have adopted this position for five principal reasons:

- major amendments to the antidumping law were made only one year ago and more experience with the new law is needed before any major structural changes should be considered;

- formal statutory authority for so-called short supply is unnecessary because mechanisms already exist to exempt products that are unavailable in the United States;

- a short supply provision would undermine much of the intellectual justification for the antidumping law;

- in an era of budget restraint, a short supply provision would create an additional bureaucracy;

- finally, there is no limit on the available supply of a product as a result of an antidumping order.The sixteen months since enactment of the new law and the dearth of final decisions simply have not provided enough information to evaluate the impact of the new law before proposing significant changes in it.

The SMA believes that a short supply provision is completely unnecessary. Adequate mech-anisms already exist in the law for importers of merchandise to avoid antidumping duties if merchandise is truly unavailable in the United States. Such determinations by the Department of Commerce are possible, either during an investigation or once an order is in place.

During the recent series of wire rod cases, several SMA member companies voluntarily removed two separate products from the scope of their antidumping petition when questions were raised about the industry's ability to provide these products. Had an order been issued in that case, it would not have covered these two products. And this example is not an isolated instance; in other cases, SMA member companies have excluded from their petitions products they do not currently manufacture.

Under existing law, purchasers who believe they cannot obtain needed products from domestic producers have a forum at the ITC during the injury phase of the investigation. If purchasers can show that US producers do not make certain types of products, the ITC has discretion to find that there is no injury as to that specific product or as to all merchandise under investigation.

In one recent case, an SMA member company successfully convinced the ITC that semifinished steel billets imported into the US were not made by the petitioners and, therefore could not be a cause of injury.

Once an order is in effect, purchasers who are unable to obtain products from domestic sources can seek changed circumstances reviews in order to have products excluded from the application of the antidumping order. This authority has been exercised by the Department of Commerce in at least two recent instances. Mechanisms already in the law can ensure that products in short supply are not subject to an antidumping order.

Accordingly, we strongly disagree with the assertion that US antidumping and countervailing duty laws do not consider domestic availability of products subject to these proceedings.

Creating a short supply mechanism could dangerously undercut the intellectual underpinning of the dumping law and would reward unfair traders.

Under the current system, once an order is in place, it has the practical effect of reducing the supply of a given product and thereby increasing its price. With these price increases, the companies in the industry are able to overcome the injury caused by the dumped products. As prices rise, other domestic manufacturers also begin to supply the product.

A short supply provision would undercut this effect by increasing the supply of merchandise at lower, dumped prices. This would place downward pressure on prices, thereby precluding industry recovery and discouraging further investment in the industry by other domestic producers.

For fiscal years 1993 and 1994, the United States Treasury collected over $537 million in antidumping duties. If H.R. 2822 were enacted and a hypothetical 10 percent reduction in dumping duty collections occurred, the revenue shortfall would be more than $53 million.

Most importantly, the Congress should remember that anti-dumping duties are applied only to *unfairly priced* imports. Antidumping orders do not impose any limits on supply.

Therefore, there is never truly a "short supply;" there is only a short supply of unfairly priced imports. Importers and domestic users are always free to purchase whatever goods and equipment they wish.

We believe Ways and Means Committee consideration of any short supply provision

is unwarranted.

The problem either does not exist, or may so rarely exist at a de minimis level, a major legislative amendment is totally out of context. If enacted, it would shortly become known as the "trade lawyers employment statute." An antidumping or CVD case requires the retention of lawyers for the complainant and respondent. Under the proposed amendment, affirmative dumping or CVD determinations would routinely trigger short supply relief petitions, again requiring the retention of legal counsel on both sides.

Does the Congress wish to create a continuous legal battle following affirmative findings in CVD or dumping cases?

We strongly recommend against it!

○

H.R. 2795, SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

APRIL 25, 1996

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H.R. 2795, SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

THURSDAY, APRIL 25, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room B–318, Rayburn House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
April 9, 1996
No. TR-22

CONTACT: (202) 225-1721

Crane Announces Hearing on H.R. 2795, a Bill Regarding Safeguard Investigations of Perishable Agricultural Products

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on H.R. 2795, legislation amending the definitions of "domestic industry" and "like or directly competitive article" in safeguard investigations involving perishable agricultural products. **The hearing will take place on Thursday, April 25, 1996, in room B-318 of the Rayburn House Office Building, beginning at 2:00 p.m.**

BACKGROUND:

Trade agreements such as the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements contain "escape clauses," which are safeguard mechanisms that permit signatories to grant domestic industries temporary import relief in certain circumstances. Sections 201-204 of the Trade Act of 1974, as amended, which implements these provisions, sets forth the authority and procedures for the President to withdraw or modify concessions and impose duties or other restrictions for a limited period of time on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive product, following an investigation and determination by the U.S. International Trade Commission (ITC). The purpose of this authority is to facilitate efforts by the domestic industry to make a positive adjustment to import competition.

On December 15, 1995, Congressman Shaw (R-FL), for himself, Congressman Canady (R-FL), Congressman McCollum (R-FL), and Congresswoman Thurman (D-FL) introduced H.R. 2795, legislation that would change the definitions of "domestic industry" and "like or directly competitive article" in certain cases involving perishable agricultural products. Specifically, the bill would permit the ITC to assess the impact of imports during a particular growing season on a domestic industry limited to producers of a like or directly competitive perishable agricultural product during that same growing season. The ITC, in the past, has traditionally examined the impact of imports on the domestic industry on a yearly, not seasonal, basis.

On January 31, 1996, the Subcommittee requested written public comments on the legislation, due March 1, 1996.

In announcing the hearing, Chairman Crane stated: "The hearing will provide us a good opportunity to assess the impact of this legislation on the U.S. industry seeking safeguard relief, as well as any consequences to U.S. agricultural exports and U.S. efforts to open markets abroad. I also intend to address whether the bill is consistent with our obligations under the NAFTA and the World Trade Organization (WTO)."

FOCUS OF THE HEARING:

The focus of the hearing is to examine the impact of H.R. 2795 on the U.S. industries producing perishable agricultural products, the effect on U.S. industries that export such products, and the extent to which the bill is consistent with U.S. NAFTA and WTO obligations.

(MORE)

WAYS AND MEANS SUBCOMMITTEE ON TRADE
PAGE TWO

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Monday, April 15, 1996. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than noon on Tuesday, April 23, 1996.** Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons or organizations wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by close of business, Thursday, May 9, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available over the Internet at GOPHER.HOUSE.GOV, under 'HOUSE COMMITTEE INFORMATION'.

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Chairman CRANE. Welcome to this hearing of the Subcommittee on Trade concerning H.R. 2795, legislation affecting safeguard investigations concerning perishable agricultural products. This hearing will give us an opportunity to address whether it is necessary to amend section 201 of the Trade Act of 1974 to explicitly permit the International Trade Commission to consider seasonality in determining whether a domestic industry is seriously injured by a surge of imports by changing the definition of domestic industry and like product.

Specifically, the legislation which was introduced by our colleague, Mr. Shaw of Florida, would permit the ITC to assess the impact of imports during a particular growing season on a domestic industry limited to producers of a like or directly competitive perishable agricultural product during that same growing season. The ITC in the past has traditionally examined the impact of imports on the domestic industry on a yearly, not seasonal basis. The legislation would apply to any perishable agricultural industry.

I hope that this hearing will permit us to assess the impact of this legislation on the U.S. industry seeking safeguard relief as well as any consequences to U.S. agricultural exports and U.S. efforts to open markets abroad. I also hope that we will address whether the bill is consistent with our obligations under the NAFTA and the WTO.

I now recognize our distinguished Junior Member on this Committee, Mr. Thomas, for any comments he may have to make.

Mr. THOMAS. Do you want me to sub for the Minority?

Chairman CRANE. Yes.

Mr. THOMAS. The Minority thinks this is an excellent piece of legislation. [Laughter.]

I will defer any opening comments, Mr. Chairman, and would prefer to address the Members.

Chairman CRANE. Very good. I would like to yield to Mr. Shaw since he is the author of the legislation.

Mr. SHAW. Thank you, Mr. Chairman. Before we begin I would like to express my thanks to the distinguished witnesses that are here today, our Florida witnesses, Senator Graham, Congressman Miller, Congressman Canady, Congressman Goss, and Congressman Pastor, who I am sure I am going to express disagreement with later. However, we certainly appreciate his joining in on the process.

And also Martha Roberts who will be here on behalf of the Florida Commissioner of Agriculture, Bob Crawford, who is unavoidably detained in Tallahassee. They are trying to finish up on their conference reports on the budget and I understand that his neck is on the line. We all know how that is, so he has to stay and protect the homefront. But he will be well represented by Ms. Roberts.

Hon. Jennifer Hillman, the representatives from the U.S. Trade Representative, and all the other distinguished panelists who will be joining us today on both sides of the issue, but particularly our guests from my own home State of Florida.

I would also like to express my appreciation to you, Mr. Chairman, for having this hearing on H.R. 2795, a bill that will change our trade laws so seasonal perishable agricultural industries can

qualify as an industry and, therefore, gain protection from import surges as other industries do.

Florida's fresh tomato industry, which provides 95 percent of the fresh market tomatoes during the winter months has been devastated during the past two growing seasons by Mexican tomato imports. Mexican tomato imports comprise 95 percent of all tomato imports and Mexico is the primary competition to Florida during the winter season. This import surge by Mexico has resulted in Florida tomato producers receiving prices that are below the cost of production, losses by Florida farmers in the amount of $209 million, and the loss of over 10,000 jobs.

Many Florida tomato farmers have had to watch their tomatoes rot in the fields because the cost of harvesting them is more than the price that they can receive if the tomatoes were sold. I would like to repeat that. The cost of harvesting them is more than they can receive for these tomatoes at the market.

With these types of losses sustained by one industry in just 2 years it is clear that the Florida tomato farmers will not survive if they are not able to access the transitional relief available to other agricultural industries. The Trade Act of 1974 already authorizes the President to provide trade remedies if the ITC determines that the domestic industry has been seriously injured by import surges.

A problem arises, however, when the producers of perishable agricultural commodities such as fruits and vegetables apply for relief under section 201. The statute does not allow the ITC to examine the impact of imports on the domestic industry on a seasonal basis, but rather only on a yearly basis.

In April 1995, the ITC denied relief to the domestic winter tomato industry even though the ITC recognized that the perishable nature of the tomatoes precludes the interchangeability of tomatoes harvested and marketed at different times of the year. The ITC was unable to consider seasonality without statutory authority providing for a seasonal industry, and that is what we are here for today.

Our bill would simply correct this problem by changing the definition of the domestic industry to permit but not require the ITC to consider the impact of perishable agricultural imports on a seasonal basis as opposed to only a yearly basis. This definitional change would ensure that transitional trade relief is also available to domestic seasonal industries which compete directly and often unfairly with international producers during the same growing season.

I believe the bill will be of significant assistance to those portions of the domestic agriculture industry which are currently bearing the full brunt of low-cost international competition such as the Florida tomato industry. Let me emphasize, however, this is not just a Florida bill. Other States such as California have exclusive seasonal industries. California is the only U.S. producer of avocados from May to June and the sole winter producer of asparagus. Current law, however, does not recognize these exclusive seasonal industries, and thus limits their access to section 201 trade remedies.

This bill is not about trade protectionism. It is about allowing all industries access to existing trade remedies when they are injured as a result of import surges.

I would like to also, Mr. Chairman, put into the record a letter that I have from Senator Dole expressing his support for H.R. 2795.

Chairman CRANE. Without objection, so ordered.

[The information follows:]

BOB DOLE
KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7010

April 24, 1996

Honorable Philip M. Crane
Chairman
Committee on Ways and Means
Subcommittee on Trade
1104 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I would like to express my support for H.R. 2795, which is virtually identical to S. 1463 passed by the Senate earlier this year. I understand a hearing will be held on H.R. 2795 in the near future.

H.R. 2795 will allow the International Trade Commission to consider the seasonal nature of perishable agricultural commodities when making determinations of trade relief. This relief already exists in current trade law to assist domestic industries that are harmed by price-based import surges.

H.R. 2795 will ensure that this relief is made available to our nation's perishable commodities producers. Without this relief, jobs in the perishable commodities industry will continue to be seriously at risk.

I appreciate your consideration and support for this important legislation.

Sincerely,

BOB DOLE

Mr. SHAW. And I would yield at this time to the gentleman from California.

Mr. THOMAS. Thank you very much for yielding. I said I was not going to make an opening statement but the mention of the California problem, I think needs a bit of explanation because it appears as though this is just a tomato problem and a Florida problem. And the gentleman from Florida is absolutely correct; it is not. There will be a subsequent panel with representatives from California.

Our problem is somewhat different but the same. California is 900 miles long and we have a series of growing seasons and they move north. One of the products directly affected by this are grapes. The point that I want to make is that if you analyze all of the grapes grown during a year as a like product you are going to run into problems, because just as the tomato growing season from the beginning of the year to April is 95 percent exclusive in Florida, the grape growing season in California is literally from April until almost September. But in any particular geographic area, especially in the early months, it is virtually 100 percent of the product grown.

If you, as some of the detractors want us to do, try to judge like products 6 months apart, this is what happens. These are grapes. If we try to compare a like product 6 months from now, these are raisins, and they are not like products. Time does make a difference with perishable commodities.

I thank the gentleman for yielding.

Mr. SHAW. I thank you. I do not have a like example to show, this is a tomato and this is a tomato 6 months later, and I am not sure you would want to see it anyway.

[The opening statement of Mr. Ramstad follows:]

STATEMENT OF REPRESENTATIVE JIM RAMSTAD
WAYS AND MEANS SUBCOMMITTEE ON TRADE
HEARING ON H.R. 2795, A BILL REGARDING SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS
APRIL 25, 1996

Mr. Chairman, thank you for calling this hearing today to explore the effects H.R. 2795 would have on the U.S. industries producing perishable agricultural products.

Certainly, it is important to utilize safeguard mechanisms and grant our domestic industries temporary relief in appropriate circumstances.

At the same time, considering the importance of free trade and foreign markets that are open to American products, it is imperative we also discuss the potential consequences of this bill on all U.S. exports and trade relationships.

Mr. Chairman, thanks again for calling this hearing. I look forward to listening to the testimony of today's witnesses and exploring in greater depth these important issues.

Mr. SHAW. I would also like to recognize Congresswoman Ileana Ros-Lehtinen who has also joined us. Mr. Chairman, this particular bill is cosponsored by the entire Florida delegation with the exception of one of its members. So it has a very strong backing. We recognize the need for this and I would certainly hope that the Committee would look favorably on what we are trying to do.

I yield back.

Chairman CRANE. Ileana, do you have a statement you would like to make?

STATEMENT OF HON. ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. ROS-LEHTINEN. I have a statement, Mr. Chairman, that I would make part of the record. There are a few of us from south Florida who represent a great deal of this industry. All of us have a little corner of south Dade and this industry is very important to us. Not just in terms of jobs and livelihood, but also in terms of the future growth for south Florida. We see this industry not as a dying industry but as one that could really produce even better jobs and a brighter future for our children. We do not want to see this industry pack up and go away.

As Clay pointed out, it is far more beneficial now financially for them not to even pick the crop because—it has just been a very difficult situation for us. After Hurricane Andrew devastated a great number of these farms, now we have devastation that may be even far wider in scope and more damaging in its effect.

[The prepared statement follows:]

STATEMENT OF CONGRESSWOMAN ILEANA ROS-LEHTINEN BEFORE THE HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE AT ITS HEARING ON H.R. 2795, SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

I am pleased to join with the other members of the Florida Congressional Delegation in supporting the immediate approval of H.R. 2795 which will greatly assist winter tomato producers (from seven states including Florida) in their petition before the International Trade Commission (ITC) asking for relief from the recent surge of imported vegetables from Mexico. As the Senate has already passed this bill, its timely passage by the House of Representatives is extremely important.

This bill will allow the ITC to consider the seasonal nature of agricultural produce when making a determination of harm or injury to a domestic industry. It will eliminate a flaw in the Trade Act of 1974 which prevents the ITC from considering this important factor when determining the damage to seasonal agricultural producers throughout the nation, including Florida's tomato and bell pepper growers.

I am greatly concerned that domestic vegetable producers are given fair access to the trade remedy process before the ITC. The Florida Agriculture Commissioner reported recently that Florida alone could lose $1 billion this year due to Mexican produce being dumped below the cost-of-production price on the U.S. market. According to The Miami Herald, the number of Florida tomato growers has dropped from 200 two years ago to about 100 today due to this unfair increase in competition.

Florida's tomato and bell pepper growers are an important part of our nation's agricultural industry. Florida has almost half of the 136,000 acres which are planted with tomatoes each year throughout the U.S. It also provides over 40 per cent of our domestic bell pepper industry.

I appreciate the consideration of the subcommittee for this important legislation which will ensure fairness in the trade remedy process for all domestic producers, including seasonal industries.

Chairman CRANE. Thank you.

Mr. SHAW. Mr. Chairman, we had a number of our delegation members, in fact, probably over half of them who were going to testify and I suggested to them, to save time that they put their statement into the record. So without objection, I would hope that the Committee Chairman would allow that.

Chairman CRANE. That will be done.

[The information follows:]

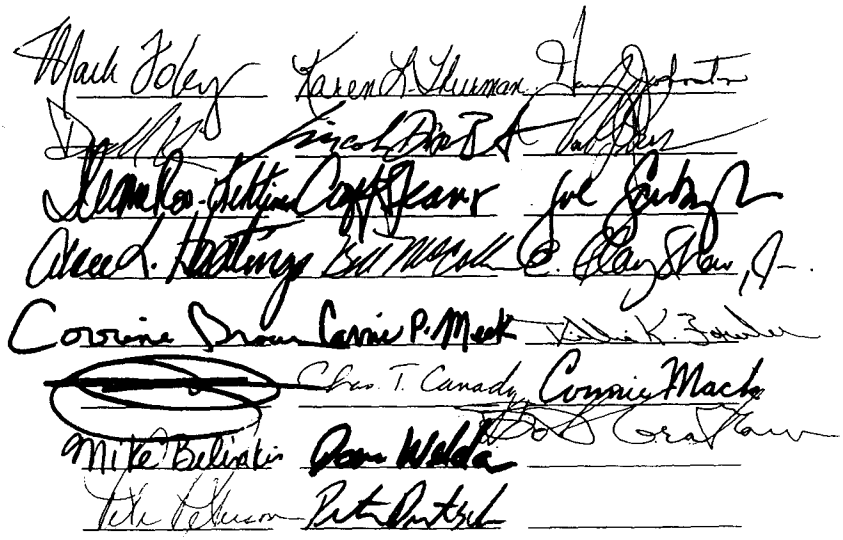
Statement of Members of the Florida Congressional Delegation

H.R. 2795
Before the House Trade Subcommittee
April 25, 1996

We, the undersigned members of the Florida Congressional Delegation, support the immediate enactment of H.R. 2795, a bill to clarify the definition of domestic industry for the purpose of trade investigations in perishable agricultural commodities. As the Senate has already passed this legislation, its timely passage in the House of Representatives is vital.

We are extremely concerned over the impact of the high volume of tomato imports from Mexico and the devastating impact they have had on the Florida tomato industry. As the Florida tomato industry is clearly its own distinct industry, we are extremely supportive of changes in current law to delineate this difference. Outside of Florida, this legislation will have a positive impact on producers of all seasonal agricultural commodities produced nationwide. Finally, according to the United States Trade Representative, this legislation is consistent with all of our current trade obligations.

We appreciate the Subcommittee's attention to this most serious matter and look forward to the speedy enactment of this bill into law.



Signatories to Florida Congressional Delegation Statement on H.R. 2795

Senator Connie Mack
Senator Bob Graham

Rep. Charles Canady
Rep. Karen Thurman
Rep. Mark Foley
Rep. Porter Goss
Rep. Dan Miller
Rep. Ileana Ros-Lehtinen
Rep. Alcee Hastings
Rep. Harry Johnston
Rep. Lincoln Diaz-Balart
Rep. Cliff Stearns
Rep. Joe Scarborough
Rep. Bill McCollum
Rep. Clay Shaw
Rep. Corrine Brown
Rep. Carrie Meek
Rep. Tillie Fowler
Rep. John Mica
Rep. Mike Bilirakis
Rep. Dave Weldon
Rep. Pete Peterson
Rep. Peter Deutsch

Chairman CRANE. Today we are going to hear from a number of distinguished witnesses. And because of time constraints, and I know there are witnesses that have plane deadlines and I know Members do, although ours are flexible obviously, I would ask that all of the witnesses try and compress your presentation to 5 minutes or less. But all written statements will become a part of the permanent record.

So with that our first witnesses are several of our distinguished colleagues, Senator Bob Graham from Florida, Hon. Porter Goss from Florida, Hon. Ed Pastor from Arizona, Hon. Charles Canady from Florida, and Hon. Dan Miller from Florida. So we will proceed in the order I just recited, and please move those mikes around to accommodate everyone.

Senator GRAHAM. Mr. Chairman, if it would be permissible, I understand that Congressman Canady has a serious time constraint and I would defer to Congressman Canady as the first speaker, with your permission.

Chairman CRANE. Very good; absolutely.

STATEMENT OF HON. CHARLES T. CANADY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CANADY. Thank you, Mr. Chairman. Thank you, Senator, I appreciate that. I am in the midst of a markup in the Judiciary Committee now and an amendment is pending.

I want to thank you, Mr. Chairman, for calling this hearing. I appreciate very much the opportunity to appear before you and Members of the Trade Subcommittee today to offer my support for H.R. 2795. This legislation, as has been discussed, is designed to clarify the definition under section 202 of the Trade Act of 1974 of a domestic industry with regard to trade investigations on perishable agricultural commodities. This is an issue of great importance to domestic growers and producers not only in my district in Florida but all over the United States.

The domestic winter tomato industry initially sought relief from Mexican import surges during the early part of 1995. However, the International Trade Commission determined in April 1995 that the growers were not able to justify an investigation into import surges under the existing law. Under current law, the domestic industry definition regards products like perishable agricultural commodities as a whole industry and does not take account for the fact that seasonal growers of a particular perishable agricultural commodity, such as tomatoes, face drastically different market conditions at different times during the year. The current law simply ignores the realities of the market for perishable agricultural commodities.

This unrealistic whole industry approach to perishable agricultural commodities makes it very difficult for growers who have suffered from seasonal import surges to obtain any relief. This inadequacy in the current law demands the urgent attention of this Congress. And until the Congress acts, American growers will continue to face devastatingly unfair competition with no effective remedies available to them from their own government.

H.R. 2795 corrects this inequity by providing that the market for fresh produce and perishable commodities be defined on a seasonal

basis. This does nothing more than require that the economic realities of the market for perishable agricultural commodities be taken into account.

Furthermore, H.R. 2795 will not abrogate any of our obligations under GATT or NAFTA. The U.S. Trade Representative's office has carefully reviewed this bill and found it to be consistent with these two trade agreements.

In conclusion, Mr. Chairman, H.R. 2795 is not anti-free trade. It simply expands the investigative powers of the U.S. Government to ensure that fair trade occurs. Imports of Mexican vegetables are up dramatically compared to last year. Mexican growers have boosted shipments of virtually every major Florida winter crop. Earlier in this season, shipments of some commodities were up by more than 600 percent over the same period last year.

The impact on Florida vegetable producers has been devastating. Due to the drastic collapse in prices, many Florida producers cannot recover the cost of production. Hundreds of producers in Florida have already gone out of business and many more have indicated that they cannot survive another season under similar conditions. If this legislative initiative is not passed, the domestic producers will face future growing seasons of continued unfair trade practices by foreign producers while the Government of the United States sits idly by.

Mr. Chairman, the measure before you today ensures that this critical American industry has the opportunity to gain access to already existing trade relief. I urge you to expeditiously consider and support this important measure.

I thank you, Mr. Chairman. I also want to thank my colleague from Florida, Mr. Shaw, for his outstanding leadership on this issue. I appreciate the opportunity to be with the Committee today and I apologize for having to exit and to return to the Judiciary Committee.

[The prepared statement follows:]

THE TESTIMONY OF REPRESENTATIVE CHARLES T. CANADY

BEFORE THE HOUSE WAYS & MEANS' SUBCOMMITTEE ON TRADE

HONORABLE PHILIP M. CRANE CHAIRMAN

H.R. 2795

APRIL 25, 1996 2:00PM RAYBURN B318

Good afternoon Mr. Chairman. I appreciate very much the opportunity to appear before you and members of the Trade Subcommittee today to offer my support for H.R. 2795. This legislation is designed to clarify the definition under Section 202 of the Trade Act of 1974 of a "domestic industry" with regard to trade investigations on perishable agricultural commodities.

This is an issue of great importance to domestic growers and producers not only in my district in Florida but all over the United States.

The domestic winter tomato industry initially sought relief from Mexican import surges during the early part of 1995. However, the International Trade Commission determined in April of 1995 that the growers were not able to justify an investigation into import surges under the existing law. Under current law, the "domestic industry" definition regards products like perishable agricultural commodities as a whole industry and does not take account of the fact that seasonal growers of a particular perishable agricultural commodity, such as tomatoes, face drastically different market conditions at different times during the year. The current law simply ignores the realities of the market for perishable agricultural commodities.

This unrealistic whole industry approach to perishable agricultural commodities makes it very difficult or impossible for growers who have suffered from seasonal import surges to obtain any relief. This inadequacy in the law demands the urgent attention of the Congress. And until the Congress acts, American growers will continue to face devastatingly unfair competition with no effective remedies available to them from their government.

H.R. 2795 corrects this inequity by providing that the market for fresh produce and perishable commodities be defined on a seasonal basis. This does nothing more than require that the economic realities of the market for perishable agricultural commodities be taken into account.

Furthermore, H.R. 2795 will not abrogate any of our obligations under GATT or NAFTA. The United States Trade Representative's office has

carefully reviewed this bill and found it to be consistent with these two trade agreements.

In conclusion Mr. Chairman, H.R. 2795 is not an anti-free trade measure. It simply expands the investigative powers of the U.S. government to ensure that *fair* trade occurs. Imports of Mexican vegetables are up dramatically compared to last year. Mexican growers have boosted shipments of virtually every major Florida winter crop. Earlier in this season, shipments of some commodities were up by more that six-hundred percent over the same period last year. The impact on Florida vegetable producers has been devastating. Due to the drastic collapse in prices, many Florida producers cannot recover the costs of production. Hundreds of producers in Florida have already gone out of business and many more have indicated that they cannot survive another season under similar conditions. If this legislative initiative is not passed, the domestic producers will face future growing seasons of continued unfair trade practices by foreign producers -- while the government of the United States sits idly by.

Mr. Chairman, the measure before you today ensures that this critical American industry can gain access to already existing trade relief. I urge you to expeditiously consider and support this important measure.

Thank you Mr. Chairman and members of the subcommittee.

Mr. SHAW. Mr. Chairman, before Mr. Canady leaves I would like to point out that he originally brought this bill to my attention and together we filed it. So he has certainly been the No. 1 player here in the House.

Chairman CRANE. Very good. You are excused for understandable reasons, but we also thank Senator Graham for having yielded. With that, we will yield to Senator Graham.

STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you very much, Mr. Chairman. I want to thank you also for holding this hearing and commend you for your long years of leadership on behalf of full fair trade for the United States. I think that is the essence of the issue that is before us this afternoon.

Mr. Chairman, with your permission I would like to file for the record my full statement and confine my remarks to a few extemporaneous points.

Chairman CRANE. Without objection, so ordered.

Senator GRAHAM. The issue before us today is not a surprise. During the consideration of the North American Free Trade Agreement it was anticipated that there would be this issue between perishable agricultural products of a variety of forms and product coming from Mexico. For that reason, in the implementing legislation of NAFTA there was a special directive to the ITC to monitor the perishable agricultural industry in order to assess the impact. So what we are debating today is by no means unexpected.

Second, a fundamental principle of fair trade is that it be ruled by a set of laws. Fair trade is not a jungle. It is a regulated set of relationships to benefit the citizens of all of the nations who are involved in that trade.

A fundamental principle of the law is that a right for which there is no remedy is no right. And that essentially is what agricultural producers of perishable products have found to be the case with our relationship with Mexico. There is a stated right to be protected against activities which result in the sale of a product below the cost of production, which therefore damages a significant American industry. But the fact is, without the ability to recognize seasonal aspects of a perishable agricultural industry, whether they are the seasonality of grapes in California or peppers and tomatoes in Florida, it is a right without an effective remedy. The purpose of this legislation is to provide that effective remedy.

Third, this is a very bipartisan issue. As we all know, the passage of NAFTA was extremely contentious. It depended upon votes on both sides of the aisle in both Chambers for its success. The leadership of the Republican Party supported NAFTA, as did a Democratic President supported a NAFTA Agreement which had largely been negotiated under a Republican President. So from its beginning, NAFTA has had strong, bipartisan support.

The same is true of the matter before you today, Mr. Chairman. Congressman Shaw read from a letter dated April 24 from Senator Bob Dole in support of this legislation. If I could just read another two sentences from that same letter in which Senator Dole says, "H.R. 2795 will ensure that this relief is made available to our Na-

tion's perishable commodities producers. Without this relief, jobs in the perishable commodities industry will continue to be seriously at risk." Congressman Shaw has previously placed this letter in the record so I will not be redundant.

But this proposal has the strong support of Senator Dole. He supported it when it unanimously passed the Senate on January 26, 1996. He supports it in this letter of April 24. You will hear shortly from representatives of the administration supporting this proposal. So the strong bipartisan base which led in NAFTA continues in its recognition of the importance of this legislation.

The consequences of failure to act are serious. Not only will they be serious to this specific industry, but in my judgment they will undercut a fundamental basis for future free trade agreements. If American citizens do not believe that the rules established in NAFTA can be meaningfully enforced, what confidence are they going to have in future free trade agreements? I believe this issue is fundamental to building and continuing the base of American support for the principles of expanded trade.

Mr. Chairman, I see my time is up but I want to just make one final point. That is that there is a sense of urgency with this legislation. The winter vegetable industry in Florida begins planting in the early fall in order to meet production schedules that commence in October and November. So, unless this industry has some assurance that it will not be bludgeoned as it was in the last two winter seasons, you are going to see a lot of fallow fields in our State, and I suspect in other States, as a result of the unwillingness to make the heavy commitments that are required to grow the winter vegetables for Americans at the risk that they will again be subjected to the kind of predatory practices that have so damaged the industry in the last two winters.

So I would urge, Mr. Chairman, expedited attention to this matter by this Subcommittee, by the Full Committee, and by the House. And I can assure you, and with the support of Senator Dole, that it will get similar urgent attention in the Senate. Thank you, Mr. Chairman.

[The prepared statement follows:]

House Ways and Means
Subcommittee on Trade
U.S. Senator Bob Graham's Written Statement for the Record
Hearing on H.R. 2795
April 25, 1996

When Congress approved the North American Free Trade Agreement (NAFTA) in 1993, its proponents heralded the agreement as the start of a new, open trade relationship that would reap huge economic benefits for the countries of North America.

A majority of national legislators, including myself, supported NAFTA then, and many of us continue to believe that free trade is vital to America's competitive future in the global marketplace of the 21st century.

Free trade, however, must go hand in hand with fair trade. The confidence in one depends on the integrity of the other.

My support for NAFTA was contingent upon the agreement providing rules that help ensure fairness in our trading system. These rules permit serious and damaging import surges to be addressed in a manner consistent with the overall objectives of sustainable trade growth.

During the NAFTA negotiations, many of us raised concerns about the potential for tomato and pepper import surges from Mexico. Section 316 of the NAFTA implementing legislation acknowledges that unfair competition was likely to occur in the case of tomatoes and peppers. Congress directed the International Trade Commission (ITC) to closely monitor imports of tomatoes and peppers from Mexico so that they could act quickly if a safeguard action was warranted. At the time, Congress believed that is was not necessary to change Sections 201 and 202 of the Trade Act of 1974 to account for seasonal industries.

Last year, the ITC found that the Florida tomato industry did not constitute a domestic industry as defined in Sections 201 and 202 of the Trade Act of 1974. This leads us to where we are today, seeking a legislative change that will allow seasonal agricultural industries to seek relief from unfair trade.

Without prompt legislative reform, the domestic winter vegetable industry will soon end another post-NAFTA growing season with unfair rules and hampered ability to redress harm. In human terms, too many farm families have bankrupted, stopped production, and lost confidence in their Government to assure fairness.

U.S. fresh vegetable growers have united in an effort to level the playing field with their Mexican counterparts. They are seeking relief from Mexican import surges under Section 201 of the Trade Act of 1974. Mr. Chairman, I would like to enter for the record a letter from Senator Dole supporting this bill. Senator Dole states "without this relief, jobs in the perishable commodities industry will continue to be seriously at risk.

Since the implementation of NAFTA, for example, the value of Florida's tomato production has consistently decreased: $607 million in 1993, $465 million in 1994, and $387 million in 1995. These numbers clearly show the deleterious impact on the U.S. vegetable industry, but perhaps the best evidence comes from the many small growers whose livelihoods are under siege.

Teena Borek is one of those growers. A widow with two children, she has dedicated the past sixteen years to working her tomato farm. Already in 1996, she has lost thousands of dollars in a market depressed by dumped Mexican tomatoes. She's not alone. Many other farmers have suffered as a result of Mexican vegetables flooding the market.

Allowing unfair Mexican trade practices to go unchallenged could cost vegetable growers millions of dollars and thousands of jobs. It could uproot proud families that have worked the land for years. Worst of all, it could undermine the United States' ability to negotiate and implement future agreements.

In December, I sponsored S. 1463 -- which was later enacted by the Senate -- to make sure that the safeguard provisions were enforced for seasonal fruit and vegetable growers. Later in the House, a bipartisan group of Members from the State of Florida (Representatives Shaw, Canady, McCollum, Thurman) introduced H.R. 2795, a similar bill to the one I sponsored.

This legislation pertains only to perishable agricultural products which have a history in GATT, NAFTA, and our own safeguard laws. We consulted the Senate Legislative Counsel, USTR, the ITC and the staff of the Ways and Means committee in an effort to make sure the legislation is consistent with our GATT and NAFTA obligations. Furthermore, I want to highlight the fact that these trade agreements and laws all recognize the uniqueness of

agricultural products.

In the case of perishable agricultural products, direct competition among growers is limited based upon the shelf life of the product. Thus, growers in Virginia do not compete with winter growers in Florida. It is the perishable characteristics of fresh vegetables that justifies the seasonal industry definition. If fresh vegetables harvested in the winter months could be stored into the summer months that might be a different matter. I believe this legislation closely follows the intent that our safeguard laws apply to situations where products compete directly.

The bill simply provides producers of perishable agricultural products a fair opportunity to have their claims investigated by the ITC. They will still be required to show that increased imports are a "substantial cause" or threat thereof of "serious injury" to the industry. This legislative change does not reduce the standards of sections 201 and 202 or eliminate any parts of the ITC's investigation.

This legislation, H.R. 2795 is now before this committee for consideration. Mr. Chairman, I urge the immediate adoption of H.R. 2795, a bill that advances fair trading rules for American farmers in crisis. This bill is a step towards making NAFTA work as it was intended.

Chairman CRANE. Thank you, Senator Graham. We thank you also for inconveniencing yourself by coming over to the House side to testify before the Committee.

With that, I would like to yield to Porter Goss.

STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. Mr. Chairman, thank you. In the interest of time, and because of the fact that I cannot say it any better, I would like to associate my remarks with Senator Graham and Representative Canady. I would like to congratulate you for what you are doing. I think basically what we have done is identify a real problem and you have provided a real solution and I think now it is just a question of getting on with it.

I have also been advised while I am sitting here, Mr. Chairman, that there is a rule on the floor that I have been asked to come immediately to assist with in order that we can all get out of here this evening. If you would allow me to be dismissed, and that quid pro quo, I will be quickly gone.

[The prepared statement follows:]

TESTIMONY ON H.R. 2795
BEFORE THE TRADE SUBCOMMITTEE OF
THE WAYS AND MEANS COMMITTEE
PORTER GOSS (FL-14)
25 APRIL 1996

MR. CHAIRMAN:

THANK YOU FOR HOLDING THIS HEARING. MOST OF THE PEOPLE YOU WILL HEAR FROM TODAY ARE HERE BECAUSE THE FLORIDA DELEGATION, THE ADMINISTRATION, AND THE GOVERNOR'S OFFICE HAVE ALL AGREED THAT THE PASSAGE OF CONGRESSMAN SHAW'S LEGISLATION, H.R. 2795, IS A PRIORITY.

AS A SUPPORTER OF NAFTA, I HAVE BEEN PLEASED TO SEE MY STATE GENERALLY BENEFIT FROM THE IMPLEMENTATION PROCESS. HOWEVER, AS THE REPRESENTATIVE OF TWO OF THE MOST PROLIFIC WINTER VEGETABLE PRODUCING COUNTIES IN THE STATE -- AND THE NUMBER ONE COUNTY IN WINTER TOMATO PRODUCTION -- I ALSO KNOW THAT WE HAVE SOME PROBLEMS THAT NEED TO BE ADDRESSED.

SINCE THE IMPLEMENTATION OF NAFTA BEGAN, OUR WINTER TOMATO GROWERS HAVE SUFFERED THROUGH TWO FULL SEASONS OF STEADILY DECLINING PRODUCT VALUE. FROM 1994 TO 1995, TOMATO IMPORTS FROM MEXICO WERE UP 57%. BY NOVEMBER OF LAST YEAR, MONTHLY SURGES OF IMPORTS WERE UP 214% OVER THE SAME MONTH IN 1994. PEPPER PRODUCERS ARE FARING LITTLE BETTER. AND PRODUCERS OF SQUASH, EGGPLANT, SWEET CORN, AND BEANS ARE ALSO FEELING THE PINCH.

IN HUMAN TERMS, THIS MEANS LOST JOBS, LOST REVENUE, AND RISING DEBT FOR THE PEOPLE INVOLVED IN THE PRODUCTION, PACKING, OR TRANSPORTATION OF WINTER FRUITS AND VEGETABLES. REVENUES ARE DOWN 40% FROM LAST YEAR IN BOTH PEPPERS AND TOMATOES, WITH DOLLAR LOSSES IN 1995 ESTIMATED TO BE $125 MILLION AND $30 MILLION RESPECTIVELY. THIS TRANSLATES INTO A 13% DECLINE IN EMPLOYMENT IN THESE INDUSTRIES.

ON 16 NOVEMBER 1993, THE PRESIDENT WROTE A LETTER TO THE MEMBERS OF THE FLORIDA DELEGATION, ASSURING US THAT HE WAS COMMITTED TO TAKING THE NECESSARY STEPS TO ENSURE APPROPRIATE ACTION WOULD BE TAKEN TO PROTECT THE U.S. WINTER FRUIT AND VEGETABLE INDUSTRY SHOULD IT BE REQUIRED. CONGRESS ALSO PREDICTED THE POSSIBLE NEED FOR ASSISTANCE BY INCLUDING SECTION 316 IN THE IMPLEMENTING LEGISLATION. THIS PROVISION SPECIFICALLY DIRECTS THE ITC TO CLOSELY MONITOR TOMATO AND BELL PEPPER IMPORTS AND IS DESIGNED TO ALLOW PRODUCERS OF THESE PRODUCTS TO SEEK RELIEF UNDER THE GLOBAL SAFEGUARD REMEDY (SECTION 201-202).

UNFORTUNATELY, IT SEEMS THAT THE SAFEGUARDS IN NAFTA AND THE IMPLEMENTING LANGUAGE HAVE NOT LIVED UP TO OUR HOPES. IN PART, THESE SHORTCOMINGS CAN BE SOLVED WITH BETTER ENFORCEMENT OF EXISTING LAWS AND REGULATIONS. HOWEVER, IN TERMS OF RELIEF PROVISIONS, WE FIND THAT WE NEED CONGRESSIONAL ACTION TO ALLOW SEASONAL INDUSTRIES TO ACCESS THEM. THAT IS WHAT CONGRESSMAN SHAW'S LEGISLATION IS ABOUT.

TODAY, FLORIDA'S WINTER GROWERS ARE SIMPLY ASKING THAT U.S. TRADE LAWS -- WHICH EXIST FOR PRECISELY THIS TYPE OF CASE -- BE FULLY ENFORCED. THE INTENTION OF THE SECTION 201 PROCESS IS NOT TO STOP TRADE, BUT TO FACILITATE THE TRANSITION OF SPECIFIC INDUSTRIES TO A NEW TRADE REGIME. THE TEMPORARY RELIEF ALLOWED FOR UNDER SECTION 201, IF OUR WINTER GROWERS COULD ACCESS IT, WOULD ALLOW THEM THE BREATHING SPACE THEY REQUIRE TO MEET THE COMPETITION. BEYOND FLORIDA, WE KNOW THAT THERE ARE PRODUCERS OF PERISHABLE AGRICULTURAL PRODUCTS IN STATES LIKE SOUTH CAROLINA, OHIO, VIRGINIA, AND CALIFORNIA WATCHING THIS ISSUE CLOSELY.

THERE ARE A NUMBER OF POINTS THAT MERIT EMPHASIS. FIRST IS THE FACT THAT SIMILAR LEGISLATION, INTRODUCED BY SENATOR GRAHAM OF FLORIDA, HAS ALREADY BEEN PASSED UNANIMOUSLY IN THE SENATE. IT SHOULD ALSO BE NOTED THAT THERE ARE PRECEDENTS IN U.S. CASE LAW, IN PREVIOUSLY PASSED LEGISLATION, AND UNDER OTHER STANDING U.S. LAWS FOR RECOGNITION OF A UNIQUE SEASONAL INDUSTRY. THE EXPERT PANELS TO FOLLOW WILL NO DOUBT TOUCH ON THE FINER POINTS OF THESE PRECEDENTS. LET ME ALSO ADD, FOR THOSE WHO ARGUE THAT THIS IS AN AFFRONT TO OUR INTERNATIONAL OBLIGATIONS, THAT CONSULTATIONS WITH THE COMMITTEE STAFF, THE USTR, AND THE ITC HAVE REVEALED THAT H.R. 2795 IS NOT INCONSISTENT WITH OUR GATT AND NAFTA OBLIGATIONS.

I WOULD ALSO LIKE TO CLARIFY A POINT THAT HAS BEEN DISTORTED BY

THOSE WHO OPPOSE H.R. 2795. THIS LEGISLATION IS NOT PRESCRIPTIVE -- IT DOES NOT LEGISLATE A RESULT, NOR DOES IT CREATE A NEW CATEGORY OF REMEDY. WITH THE CHANGES MADE BY H.R. 2795, OUR WINTER GROWERS WILL STILL HAVE TO MEET THE TEST FOR BEING CONSIDERED A TRULY SEASONAL INDUSTRY; THEY WILL STILL HAVE TO RECEIVE A FAVORABLE FINDING FROM THE ITC; AND THEY WILL STILL BE AT THE PRESIDENT'S MERCY FOR THE DECISION ABOUT WHAT RELIEF THEY MIGHT RECEIVE. THEY ARE NOT ASKING FOR SPECIAL TREATMENT, ONLY THAT THEY BE ALLOWED TO ACCESS THE RELIEF AVAILABLE TO OTHER INDUSTRIES UNDER CURRENT U.S. LAW.

THERE WILL BE SOME WHO MAY ASK WHY THE CHANGES ARE NEEDED IF OUR PEPPER AND TOMATO GROWERS ARE CURRENTLY PURSUING A SECTION 201 ESCAPE CLAUSE CASE. THE FACT IS THAT THE NUMBERS HAVE BECOME SO BAD FOR TOMATOES AND PEPPERS THAT THE SEASONAL ISSUE IS LESS OF AN IMMEDIATE PROBLEM FOR THEM. HOWEVER, THERE ARE OTHER WINTER INDUSTRIES, LIKE ZUCCHINI, SQUASH, AND EGGPLANT THAT ARE UNABLE TO MEET THE YEAR-ROUND NUMBER THRESHOLDS BUT ARE STILL IN GENUINE JEOPARDY. IT BEARS NOTING THAT, HAD THESE CHANGES BEEN IN PLACE, OUR TOMATO AND PEPPER GROWERS WOULD HAVE HAD AN OPPORTUNITY TO SEEK RELIEF BEFORE ENDURING A SECOND SEASON OF LOSSES. EVEN SO, PASSAGE OF H.R. 2795 TODAY WILL CERTAINLY BOLSTER THEIR CURRENT SECTION 201 CASE IF THERE SHOULD BE AN APPEAL.

FLORIDA'S WINTER FRUIT AND VEGETABLE GROWERS PERFORM A UNIQUE FUNCTION FOR THIS COUNTRY. THEY COMPETE HEAD-TO-HEAD -- NOT WITH OTHER AMERICAN PRODUCERS, BUT WITH FOREIGN PRODUCERS -- TO PROVIDE WINTER FRUITS AND VEGETABLES FOR AMERICANS. PRIOR TO THE PASSAGE OF THE NAFTA IMPLEMENTATION LANGUAGE, THEY RECEIVED ASSURANCES THAT THERE WOULD BE SAFEGUARDS AND RELIEF MEASURES IF, AS SOME OF THEM SUSPECTED MIGHT HAPPEN, THINGS WENT BADLY. WHILE H.R. 2795 WON'T FIX THE WHOLE PROBLEM, IT WILL BE A STEP TOWARD FULFILLING THE COMMITMENTS THAT WERE MADE TO THESE HARDWORKING FLORIDIANS WHO TODAY ARE STRUGGLING TO STAY IN BUSINESS, FEED THEIR FAMILIES, AND CONTRIBUTE TO THE U.S. ECONOMY.

Chairman CRANE. I will happily do that if you guarantee me I can catch a 6 o'clock flight.

Senator GRAHAM. I do not do guarantees, but it is better if I leave. [Laughter.]

Chairman CRANE. Thank you, Porter.

Next, Ed Pastor.

STATEMENT OF HON. ED PASTOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. PASTOR. Thank you, Mr. Chairman, for allowing me to testify before the Committee. As you know, there is a saying that "reasonable people will differ," and I hope to give you the other side of the story.

The reason I am here is that I represent the part of Arizona, Nogales, Arizona, through which many of the Mexican tomatoes enter the United States. It is of great interest to American businesspeople, at least in the area I represent, that we do not pass this legislation. This is a bipartisan issue. I believe that you have before you a letter from Governor Symington, who is a Republican, as well as my Republican colleagues from Arizona, expressing their opposition to this legislation.

Mr. Chairman, in the winter when you and your significant other go shopping and you come to the vegetable counter you probably will see red vine-ripened tomatoes. These tomatoes are luscious, beautiful in color, and equal in price to others you see that are greenish or light pink in color and hard. You probably buy the red tomato which appeals to you, and it's very likely that this tomato has been grown in Sonora, Mexico. It is being grown there because American businessmen have invested in that product. They have sold seed. They have sold greenhouses. They have sold fertilizer to Mexican farmers. So there is an American interest in this product.

Very recently I hosted Senator Graham, Congresswoman Thurman, Congressman Foley, and Congressman Ewing in Arizona. We made a trip into Nogales and into Sonora, Mexico, so they could see the process. I have to tell you that the reason the Florida growers are finding themselves in difficult straits is they cannot compete—basically, because of how the tomato is grown, packaged, and delivered to the marketplace and the final choices the American consumers make. Because of the products and the price they are buying and consuming tomatoes that are grown in Mexico.

So, those that lose if this piece of legislation is passed will be your constituents, your consumers who, in the winter, are looking for a product that they can buy that is affordable and yet has the quality they expect. Others who lose if this legislation is passed will be the American businessman or businesswoman who has invested in the production of this product. I stated before that American businesses sell the seeds and the fertilizer to Mexico and hire the people who transport these products. They have an investment in the Mexican tomato and will be negatively impacted if this legislation is implemented.

I spent 1½ years on the Agriculture Committee talking about the freedom to farm. The philosophy that I heard from its Chairman, Mr. Roberts, to its many Members was that the American farmer now would have to compete in a free market, and in order to com-

pete we had to pass new farm legislation which allows farming decisions based on market demands. That was the spirit of freedom to farm.

This piece of legislation, H.R. 2795, detracts from the freedom to farm philosophy because basically you are dealing with the problem legislatively so that farmers in the Southeast do not need to compete with the product that is being brought. This legislative fix, Mr. Chairman, goes against the philosophy of the freedom to farm. We now need to compete on a global basis and let the marketplace determine what products are consumed and produced.

I also think H.R. 2795 negatively impacts the spirit of free trade, and I would argue that it is against the spirit of NAFTA and WTO. In fact it reduces competition and may cause other countries who send their products to this country to retaliate if we build this wall to protect one particular item, the winter tomato.

Thank you, Mr. Chairman, for allowing me to testify.

Chairman CRANE. Thank you.

Mr. PASTOR. I would ask that I can submit my written testimony for the record.

Chairman CRANE. Without objection, so ordered.

[The prepared statement follows:]

STATEMENT OF THE HONORABLE ED PASTOR
Arizona - Second District

before the

SUBCOMMITTEE ON TRADE
House Ways and Means Committee

APRIL 25, 1996

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee regarding H.R. 2795 which proposes to include "seasonality" as a factor in defining an industry for the purposes of granting import relief. I am here today because this bill drastically affects the Mexican winter tomato industry which is very important to the Arizona economy. I would like to explain why H.R. 2795 is a dangerous piece of anti-competitive legislation that may lead to the misuse of import relief and dismantle the strides the U.S. has made toward open and free trade.

Mr. Chairman, the majority of Mexican fresh winter tomatoes come through Nogales, Arizona, in my district. Due to their excellent quality and flavor, these tomatoes are in high demand and this demand has created numerous employment opportunities for shippers, retailers, truckers and others in Arizona. Export businesses have also benefitted from this constructive trade relationship. Many Arizonan businesses export agricultural supplies, seeds, tractor parts, cardboard cartons, wooden palettes and other supplies to Mexico. These exports help Mexico ship back fresh winter produce. This two-way trade alliance has created jobs, wealth and stability on both sides of the border. To the people along the border, trade is not an abstract concept, it is very much a tangible reality. Open and free trade with our partners in Mexico has had a positive impact on Arizona's economy. However, these trade policies have increased competition for domestic winter tomato growers. H.R. 2795 is a legislative "fix" to reduce competition from foreign markets and protect domestic agricultural markets.

If H.R. 2795 is passed, it would allow domestic winter tomato growers to obtain import relief from Mexican winter tomatoes by adding a new "seasonality" factor to the definition of a "domestic industry." Presently, in accordance with the World Trade Organization (WTO) agreement, import relief is granted if import injury affects the industry as a whole. If a "seasonal" industry is permitted, domestic winter tomato growers would suddenly be eligible for protection from Mexican tomato imports even though they represent a fraction of the U.S. tomato industry. It seems to me that these actions undermine the very spirit of open and free trade by restricting foreign competition rather than allowing the marketplace to determine the outcome.

The anti-competitive effects of this legislation will reach far beyond the agricultural industry. Once seasonal relief is provided for the agricultural industry, other seasonal industries, such as the Christmas products industry and the clothing industry, will follow suit. Making import relief easy to obtain for seasonal agricultural products sets a precedent for other seasonal industries to seek protectionist favors as well.

H.R. 2795 will have a negative affect on U.S. exports when our trading partners respond by imposing their own trade barriers. Nogales, Arizona, in my congressional district, is a key U.S./Mexico crossing point and as such, we communicate often with our friends across the border. Numerous countries, including our Mexican neighbors, have expressed tremendous concern over the possibility that the U.S. might impose protectionist trade barriers such as those contained in H.R. 2795. If this legislation is passed, I feel it is inevitable that Mexico will retaliate with their own trade restrictions on U.S. agricultural

products. After all, political pressure is not unique to the U.S. We certainly cannot expect our friends overseas to extend free trade policies to us when the U.S. practices protectionism.

Mr. Chairman, the U.S. has worked hard to achieve free and open access to foreign markets and thus far, these efforts have been successful. United States agricultural exports are at an all time high. But, we should not lose sight of the fact that the U.S. is not the only source for agricultural products. In a free market, our trading partners can just as easily buy from other countries if the U.S. does not extend favorable terms. We simply cannot afford to alienate our trading partners by closing access to our markets and trade doors. I hope that we do not risk the gains we have made toward free trade by adopting a protectionist bill like H.R. 2795.

Thank you, Mr. Chairman, for the opportunity to address this issue.

Chairman CRANE. I would like to yield now to our colleague from Florida, Dan Miller.

Senator GRAHAM. Mr. Chairman?

Chairman CRANE. Yes, Senator Graham?

Senator GRAHAM. If I could ask your permission, I am afraid that I am going to have to leave. Again, thank you for holding this hearing.

Chairman CRANE. We thank you for giving us the time. Thank you so much, Senator.

Our colleague from Florida, Dan Miller.

STATEMENT OF HON. DAN MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MILLER. Thank you, Mr. Chairman. I would like to submit my written testimony for the record and I also have a statement from the members of the Florida congressional delegation, including both of our U.S. Senators, with all the Florida members, Democrats and Republicans, with the exception of one, supporting this particular legislation.

[The statement of the members of the Florida congressional delegation can be found on page 13.]

While I disagree with my colleague from Arizona, the question is not an issue of fairness versus free trade. I supported NAFTA and GATT and the Florida delegation was the swing vote on NAFTA and GATT. We were basically given a lot of assurances that what is happening was not going to happen.

I realize the problem we are having is not a NAFTA issue, it is related to the peso problem and such. But the problem we are having is serious, because I have farmers in my district that have been there fourth and fifth generation, which is really old in Florida. We have two tomato seasons, for example, in my district, one in the fall and one in the spring. Our tomatoes do not compete with New York tomatoes or Michigan tomatoes or Illinois tomatoes. Our tomatoes compete with Mexican tomatoes and there has to be a fairness and that is part of the problem here.

That is what this bill does. It gives us the opportunity to say, is it really going to be fair trade? When you get down to the issue of NAFTA and GATT and future trade agreements, we need to make sure that they always remain fair.

I think my colleagues have stated very well the position of the Florida delegation, and I hope you will give serious consideration to this as one potential remedy to some of the problems. We feel it is unfair. Thank you.

[The prepared statement follows:]

TESTIMONY OF CONGRESSMAN DAN MILLER
BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE
APRIL 25, 1996

Mr. Chairman, I come before the Trade Subcommittee in support of H.R. 2795, sponsored by my Florida colleague Clay Shaw, Jr. I appreciate the opportunity to testify before you today, and I hope the Committee sees the merit in H.R. 2795.

I represent the Palmetto-Ruskin area of Florida, where citrus, tomatoes, and other crops thrive in the balmy temperatures and bright sunshine. The mild temperatures permit two growing seasons, and most of the produce enjoyed by Americans in the winter comes from either Florida or Mexico. My district is the second largest tomato producing region in Florida. The tomato industry is a key component of our local economy, worth about $100 million last year.

Our farms are independent, family owned enterprises. Many have been in operation for over a hundred years. There are few institutions in Florida that go back one hundred years!

Although our growers have been fiercely competing with Mexican farmers for the past decade or so, a year ago the market crashed. In an election year, the Mexican government had been secretly inflating its currency to get a short-term economic boost. When the bills came due and the Mexicans could not meet their foreign debt obligations, the peso absolutely collapsed. We all remember the rancorous debate over the Administration's Mexican bailout plan.

The crash of the peso destroyed the Mexican market for tomatoes, and last year they turned their eyes north to the U.S. market. The Mexicans desperately want dollars, and they are literally dumping tomatoes in the United States at distress prices. The perishable nature of fresh tomatoes means that the market is especially sensitive to supply-- you can't store the tomatoes and wait out the flood until the price rises. The peso remains in the gutter, and this season things were even worse-- in December Mexican shipments were 80% higher than the previous year.

Our trade agreements permit the ITC to take action when extraordinary surges of imports injure American industries. A Section 201 petition our growers filed last year for dumping relief was denied by the ITC. That's because, by law, the ITC looked at the tomato industry as a whole, including other states and different growing seasons. Unfortunately, Mexican winter tomatoes compete almost exclusively with Florida's crop, so our state has borne the brunt of the peso-led surge. The legislation before the House today will make a technical change in the law to allow the ITC to consider damage to seasonal industries. It does not require sanctions. It simply allows the ITC to look at the Florida winter market for what it is: a specific industry.

I support free trade. I voted for both NAFTA and GATT. America's economic future lies in access to world markets. This is especially true for agriculture. As the rest of the world develops and grows in wealth and population, America's farmers will provide their sustenance.

However, our tomato growers need the same protection under our trade laws as other products. The peso crash has destroyed the orderly transition to a free market envisioned in the NAFTA agreement. When Florida citizens see crops left in the fields to rot because it costs more to pick the tomatoes than the farmers would receive from selling them, that undermines support for free trade in general. Selling below the cost of production-- dumping-- is illegal under existing U.S. trade laws if the dumping causes injury. We know that Mexico is dumping its tomatoes, and it is readily apparent that Florida tomato growers are being injured in this dumping. I urge my colleagues to support this bill.

Chairman CRANE. Thank you, Dan.

Now, Peter Deutsch, who was not introduced earlier, who is testifying as a Congressman from Florida, as well.

STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DEUTSCH. Thank you very much, Mr. Chairman. I will be very brief.

I just want to point out again, which we have done, that this is a bipartisan issue in Florida. This letter, I think, really expresses our views very well.

I would, though, like very briefly to try to respond to what our colleague from Arizona said. I am ready for this issue to be decided on the equity and on the merits, because the reality is that I think the Florida farmers are only looking for what is fair. They can compete in a fair environment. What they are really only saying is exactly what this bill does. Let us question a seasonal issue, because the crops really are seasonal crops. But when you go out to the whole year, it just becomes a problem to prove the case.

It truly is a seasonal crop. It is a seasonal crop in Florida and different parts of the State. That is all we are asking for. You have to decide, but when you look at the merits, I think you will, I hope, and I am convinced, really will decide with us, so thank you very much.

Chairman CRANE. Thank you, Peter.

Mr. Thomas, do you have any questions for our remaining witnesses?

Mr. THOMAS. I do not necessarily have a question, but I do also want to respond to Mr. Pastor in absentia, that he had to leave and he was not able to stay. We are not talking about stopping fair competition. We are talking about the dumping of a product. The argument that freedom to farm means you ought to be able to carry out unfair trade practices simply is not the case.

The other part of his testimony, I guess, that bothered me was the idea that somehow people who are small farmers and who only possess the dirt and therefore cannot leave should be disadvantaged to the big business guy who can spend millions of dollars to set up an operation, in this particular instance in Mexico, but otherwise, all around the world, and that we had better wake up to the fact that there is a growing season for every perishable commodity in the United States somewhere in the world. If we are not going to look at it the way this bill wants to look at it, then we will sectorially or segmentally be wiped out by every other region of the world as the product comes in.

The other thing that was mentioned but needs to be underscored, Mr. Chairman, is that we have almost a case history of what you can do if you have 100 percent of the product in one location, and that is the U.S. garlic industry, which is virtually 100 percent in California. There is virtually one growing season. We had enormous competition from the Chinese dumping their product on the market. Had we not sought and gotten relief in a timely fashion, the next year's plantings would have been significantly reduced because they could not have competed and you would have had a sig-

nificant swing, totally dependent on what the Chinese do with their product coming to the marketplace.

So, as we discuss this issue, frankly, from a Trade Subcommittee Member point of view, I am going to be far more interested in the testimony of people who have to defend what we do in this country internationally, and I want to find out whether or not this conforms with the General Agreement on Tariffs and Trade. If it does, I cannot imagine why anyone would be opposed to this unless they wanted to perpetuate an unfair advantage.

Chairman CRANE. Thank you.

Mr. Shaw.

Mr. SHAW. Just very briefly, I would like to respond to what Mr. Pastor said about the quality of the Florida tomato. I can have within one-half hour a Florida-grown tomato which I know was grown in Florida because it was grown in my yard in Florida and is sitting here on the Chairman's desk to show the quality is excellent. It is a question of when you pick the tomato, and that is what makes the difference. I am sure that by the time they get to Arizona, that probably the tomato was probably picked a little on the green side in Florida and sent to Arizona, whereas the Mexican tomato may have been picked as ripened.

There is an old saying in the South. There are two things that money cannot buy, true love and homegrown, vine-ripened tomatoes.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. I do not know whether you know the details of this. I do not, but I have heard that the Florida tomatogrowers have filed a section 201 case with the ITC and they did not find any abuse here. What was the background of that?

Mr. MILLER. The problem is that they took it as a total tomato season for 12 months. They include New York tomatoes, they include the Michigan tomato season, and so it is a 12-month season. So you just compare the seasonal Mexican season to the total U.S. market, you are not going to find any dumping issues.

What we want to say is, let us compare apples to apples, tomatoes to tomatoes and see if there is dumping. If there is no dumping, then there would not be any action. We are just saying there should be a way to be able to compare the Mexican season with our season, which is a winter season. There is no way Mexican tomatoes are going to hurt you in——

Mr. HOUGHTON. So they have cut the season in half, right?

Mr. MILLER. Right.

Mr. HOUGHTON. But have you refiled?

Mr. MILLER. No. That is what we are asking, to have the right to be able to just have the season defined more as 3 months, if we are going to talk about the winter season.

Mr. HOUGHTON. But have you refiled this case with the ITC?

Mr. MILLER. The State was talking about refiling, but we cannot refile it on a seasonal basis. Maybe someone else can testify to that. I think it may have been refiled by the State this year.

Mr. HOUGHTON. I can ask it later.

Mr. MILLER. If we pass this legislation, then we can file comparing our season with their season.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Mr. Neal.

Mr. NEAL. I have no questions at this time, Mr. Chairman.

Chairman CRANE. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

I have some concerns about this approach, particularly the possibility that other nations may retaliate against U.S. exports of perishable products as a result of this. So I just wanted to set that out there for the record and I wondered if either of you had any comment on that.

Mr. DEUTSCH. I guess I keep going back to the facts being the facts. And to Mr. Houghton, you would still have to prove dumping. You would still have to make a determination. Do you really believe that there exists a concept of a distinct product of winter vegetable? The farmers tell us there really is. The facts show that there really is.

So I think that if, in fact, we were dumping, someone could, in fact, do that against us, if there were a distinct product. But I think that is the whole purpose of free trade, that it should be free, competitive trade, but if a country wants to dump products below cost, they should not be allowed to because that destroys the whole concept of a free international market.

Mr. CAMP. I thought it was a seasonal issue, not a dumping issue. It is both?

Mr. DEUTSCH. It is a seasonal issue, and the legislation will allow you to argue that there is a distinct season. That is what the legislation does.

Mr. CAMP. Dan, do you have any comments?

Mr. MILLER. That is the issue of dumping. You cannot dump Mexican tomatoes in August because they do not have Mexican tomatoes, I do not think, much in August. So the question is, we want to have that defined as a separate product category as such. But as far as retaliation, I do not know the answer to that.

Mr. CAMP. Thank you.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. I have no questions. Thank you.

Chairman CRANE. With that, I want to thank our panelists for their presentations.

Our next witness is Hon. Jennifer Hillman, General Counsel of the USTR. And again, if you can compress your presentation to 5 minutes or less, all printed material will be a matter of the permanent record.

STATEMENT OF HON. JENNIFER HILLMAN, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ms. HILLMAN. Thank you, Mr. Chairman. I appreciate the opportunity to present the administration's views on this bill, H.R. 2795, a bill which would amend the Trade Act of 1974 to clarify certain definitions of domestic industry and like articles in certain investigations involving perishable agricultural products.

The administration supports this legislation. Unfortunately, safeguard mechanisms available under existing legislation often are unable to address the unique circumstances of perishable agricul-

tural products. The clarifications incorporated in H.R. 2795 would help correct this deficiency.

Clearly, this bill has its origin in the difficult situation faced by Florida producers of tomatoes and other winter vegetables. The administration has been working very closely with Florida growers and their representatives to cushion the impact of relatively high levels of imports of competing Mexican produce entering the U.S. markets during Florida's prime harvesting season. The administration has initiated a number of actions specifically designed to assist Florida growers of winter vegetables.

Frankly, this is a tough problem that has existed for many, many years. There is no single answer to addressing it. Our approach has been to pursue a package of initiatives designed to deal with what is a very difficult situation.

We have done a number of things, including improving the collection and dissemination of pricing, production, and trade data; efforts to ensure the effectiveness of the existing tariff rate quota on tomatoes; a push to increase domestic and foreign outlets for Florida tomatoes and other winter produce; and an effort to foster a greater dialog between Mexican and Florida producers on problems of mutual concern. We also support legislation which would apply to Mexican tomatoes the same packaging requirements that prevail in Florida.

Another important element of this package is the administration's support of this bill here before you today. Last year, the Florida Tomato Exchange and its constituent members sought relief under U.S. safeguard law. The WTO and the NAFTA both allow for safeguard procedures. Indeed, most of our trading partners have safeguard laws on their books.

I would only note there in response to a question that Mr. Houghton asked regarding the 201 action that was filed, the answer is yes, another 201 petition has been filed on tomatoes and bell peppers, as well as an antidumping investigation. The ITC has initiated its second 201 investigation involving tomatoes and the antidumping petition was also initiated by the Commerce Department. Those are both very recent developments in just the past few weeks.

In commenting on this, we note that Congress passed the safeguard law to provide a remedy, under certain circumstances, for U.S. industries that are hurt by imports. Unfortunately, the existing statute has not worked for the Florida tomato industry. The 1995 petition failed, in part, because of the interpretation of the current law definition of what is a domestic industry producing a like or directly competitive product. The law was interpreted so that all U.S. growers of fresh tomatoes were considered one industry.

In fact, tomatoes are produced on a seasonal basis. Different parts of the country produce the product at different times. Florida produces virtually all of the tomatoes grown in the United States for the market during the winter months. It competes directly with Mexican imports during that season.

Lumping the Florida industry together with the rest of the country does not reflect the reality of the fresh tomato market. This in-

terpretation made it more difficult for the Florida growers to demonstrate injury.

H.R. 2795 is a narrow and focused attempt to respond to the particular commercial circumstances of perishable agricultural products. The bill does not expressly override the current law for determining domestic industry under determinations under U.S. law. Rather, it permits the ITC to consider whether it is appropriate to define the domestic industry in a manner that takes into account the seasonal nature of perishable agricultural products. It is worth emphasizing that the bill does not require the ITC to reach a particular result but permits it to do so.

I would like to comment, then, just very quickly on the role of NAFTA in this matter. Understanding the problem of how we have gotten to this, I think, is somewhat important to sorting out how best to seek a solution. Some have attributed the recent imports of Mexican winter vegetables to the effects of NAFTA. I would note that in the past, there have been comparable surges in Mexican tomatoes at times over a period of almost 20 years. While the most recent surges have coincided with NAFTA, given the 20-year history, it is clear that this is not a NAFTA problem.

Indeed, the tariffs that exist under current law for non-NAFTA product is in the order of 4.4 cents per kilogram. The current tariff under NAFTA for Mexican tomatoes is 3.2 cents per kilogram, a difference of barely half a penny per pound. So clearly, this tariff differential between NAFTA and non-NAFTA products is not what is causing the surge in imports.

With that, seeing that the light is on, Mr. Chairman, I will thank the Committee for this opportunity to present USTR's views on the legislation and I would be happy to answer any questions that you might have.

[The prepared statement follows:]

TESTIMONY OF
JENNIFER HILLMAN
GENERAL COUNSEL
OFFICE OF THE U.S. TRADE REPRESENTATIVE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
April 25, 1996

Mr. Chairman, I appreciate the opportunity to present the Administration's views on H.R. 2795 -- a bill which would amend the Trade Act of 1974 to clarify the definitions of domestic industry and like articles in certain investigations involving perishable agricultural products.

The Administration supports this proposed legislation. Unfortunately, safeguard mechanisms available under existing legislation often are unable to address the unique circumstances of producers of perishable agricultural products. The clarifications incorporated in H.R. 2795 will help correct this deficiency.

Clearly, this bill has its origin in the difficult situation faced by Florida producers of tomatoes and other winter vegetables. The Administration has worked closely with Florida growers and their representatives to cushion the impact of relatively high levels of imports of competing Mexican produce entering the U.S. markets during Florida's prime harvesting season. The Administration has initiated a number of actions specifically designed to assist Florida growers of winter vegetables.

Frankly, this is a tough problem that has existed for at least twenty years. There is no silver bullet to solve it. Our approach has been to pursue a package of initiatives to deal with a difficult situation. These actions include efforts to

improve collection and dissemination of price, production, and trade data; efforts to ensure the effectiveness of the existing tariff-rate quota; a push to increase domestic and foreign outlets for Florida tomatoes and other winter produce; and an effort to foster greater dialogue between Mexican and Florida producers on problems of mutual concern. We also support legislation which would apply to Mexican tomatoes the same packaging requirements that prevail in Florida..

Another important element of this package is the Administration's support for H.R. 2795. Last year, the Florida Tomato Exchange and its constituent members sought relief under U.S. safeguard law. The WTO and NAFTA both allow for safeguard procedures. Indeed, most of our major trading partners have safeguard laws on the books.

Congress passed the safeguard law to provide a remedy, under certain circumstances, for U.S. industries that are hurt by imports. Unfortunately, the existing statute has not worked for the Florida tomato industry. The 1995 petition failed, in part, because of the interpretation of the current law's definition of a "domestic industry." The law was interpreted so that *all* U.S. growers of fresh tomatoes were considered *one* industry. In fact, tomatoes are a seasonal product. Different parts of the country produce at different times of the year. Florida produces virtually all of the tomatoes grown in the United States for the fresh market during the winter months. It competes directly with Mexican imports during that season. Lumping the Florida industry together with the rest of the country does not reflect the reality of the fresh tomato market. This interpretation made it more difficult for Florida growers to demonstrate injury.

H.R. 2795 is a narrow and focused attempt to respond to the particular commercial circumstances of perishable agricultural products. The bill does not expressly override the current standard for determining domestic industry under U.S. law. Rather, within the existing law, the bill does permit the International Trade Commission (ITC) to consider whether it is appropriate to define the domestic industry in a manner that takes into account the seasonal nature of perishable agricultural products. It is worth emphasizing that the bill does not require the ITC to reach a particular result.

I would like to comment briefly on the role of the North American Free Trade Agreement (NAFTA) in this matter. Understanding the problem is an important step in seeking a solution. Some have attributed the recent surge in imports of Mexican winter vegetables to the effects of NAFTA. In fact, there have been comparable surges in Mexican tomatoes at various times during the past twenty years. While the most recent surges have coincided with the early stages of NAFTA phase-in, NAFTA is not the problem.

In fact, tariffs on tomatoes and other winter vegetables were relatively low before the NAFTA was passed. Other than phytosanitary requirements, our only barrier to imported tomatoes has been a tariff. The current Most Favored Nation tariff rate for tomatoes is 4.4 cents per kilogram (March 1- July 14, 1996). Under NAFTA, the current tariff on Mexican tomatoes is 3.2 cents per kilogram (for the same period). The difference between these two rates -- about half a penny per pound -- is not sufficient to cause the surge in imports we have experienced. We have a problem in Florida with Mexican tomatoes -- but it's not caused by NAFTA.

I thank the Committee for the opportunity to offer USTR's views on this legislation, and I'm happy to try to answer any questions you might have.

Chairman CRANE. Thank you very much, Ms. Hillman.

Let me open with a question. Does H.R. 2795, in your estimation, violate the principle that the domestic industry examined must be the domestic industry as a whole, so that as long as a product that is grown in one season is like a product grown in another season, there is no basis for a distinction based on seasonality?

Ms. HILLMAN. Mr. Chairman, our view would be that what you are looking at in the statute is whether the product produced as a whole of a like or directly competitive product is what you are looking at, and the issue here goes to what is directly competitive or like, if you will, a January-grown tomato. I think what you are getting at is the issue of whether or not a January-grown tomato is directly competitive with a June-grown tomato.

Given that it is a seasonal product, the concept that you are getting at with this bill is whether or not products grown in one particular season that are a seasonal product are like or directly competitive with products grown in a different season. What you are saying is you are giving the ITC the discretion to make the determination that they are not directly competitive with products grown in a different season.

Chairman CRANE. My understanding is that a number of countries have alleged already in the WTO that the bill would be WTO illegal, including 14 members of the Cairns group, which represents one-third of the world's agricultural trade. How many countries have made this allegation and does this put us in an untenable position?

Ms. HILLMAN. In our judgment, it does not. We do not believe that the legislation would be inconsistent with the WTO. Indeed, current U.S. safeguard laws mirror exactly the WTO's definition of what is a domestic industry, meaning the definition that producers as a whole of the like or directly competitive product.

As we read the bill, the new provisions would not replace the current WTO-consistent definition, even for perishable agricultural products. The bill would simply permit the ITC to consider the unique circumstances of perishable agricultural products under the existing definition. Therefore, we do not believe that the bill can be read as inconsistent with our WTO obligations.

I would add that given that the NAFTA sort of relates to the same definition under the WTO, we would make the same argument, that the bill is not inconsistent with our NAFTA obligations, either.

Chairman CRANE. Thank you.

Mr. Thomas.

Mr. THOMAS. Thank you. Thank you very much for your testimony. What I get out of it is that in looking at the current U.S. law defining domestic industry and the WTO Agreement on safeguards, all we are in essence doing is giving the option of adding at the end of each of those definitions a phrase like "marketable at that time," because when you deal with perishable commodities, what it is, is a product that is marketable at that time. I think it is a long overdue approach.

The other thing I want to ask you is, do you not believe we increase the ability to find it appropriate under WTO if we increase

the percentage that an area represents when we try to determine whether or not that is the industry for that particular time?

Ms. HILLMAN. I think what you are getting at is——

Mr. THOMAS. For example, if you were to determine that a 60-percent penetration in the area was sufficient to have standing versus a 90-percent, your 60-percent position would be weaker than the 90-percent?

Ms. HILLMAN. I think the way the bill reads is that it states that the definition would be if the producers sell all or almost all of their production of the article in that growing season and the demand for the article is not supplied to any substantial degree by other domestic producers of the article who produce the article in a different growing season.

Mr. THOMAS. And if we were the Europeans or the Mexicans or someone else, we would define "nearly all" or "substantially" or "most" to be probably 51 percent, which would make it a fairly pernicious law, in my opinion, and a very flexible tool to deny people entrance into the market.

How do you think—and I know this is unfair, because you have not made the determination because this is not law—what do you think would be the ballpark percentage that would fulfill those somewhat subjective words?

Ms. HILLMAN. I think, Mr. Thomas, I am a little reluctant to stand in the shoes of the ITC. One of the reasons why we believe this provision is both appropriate and not inconsistent with our WTO obligations is that it leaves it up to the ITC to make the determination on a case-by-case basis, looking at the facts presented before them in a particular case.

Mr. THOMAS. And my guess is that—and I am able to go into that thicket—that they are probably going to use something like a 90-percent standard so that they can have a very high comfort level that this is, in fact, the market at that time. I think that underscores the problem that we have, because given the timeframe for growing virtually 90 to 100 percent of the marketable product at that time, if you do not get your product to market in that timeframe, you are completely devastated. That is the point that we are trying to make.

I do not think people realize how much perishable agricultural commodities have become a niche product to a very great extent, looking for a window in time to maximize their marketability. I have talked to Israelis who are growing tomatoes and I met one fellow who made his entire yearly money supply off a 2-week window in Toronto between Christmas and New Year's because nobody else was—he fooled them in, and, of course, he got exorbitant prices for beautiful large tomatoes, but he found his niche.

When particular farmers live in a particular area in which the niche is given to them by the season, to argue that they then should be determined to be damaged with people 1,000 miles away in an entirely different growing season, I think is the reason we finally moved to this position, and I applaud the administration for supporting this position.

Just let me finally say, Mr. Chairman, the idea that we are going to be retaliated against by Mexico if we do something like this, and I do not know if the General Counsel is aware of what is already

going on with Mexico, we have stone fruit that cannot cross the border because of phony phytosanitary arguments by the Mexicans because we are unwilling to allow weevil-infested avocados to come across and they honestly believe that we are dealing with this as a political decision rather than a scientific one.

It seems to me that this kind of action by this Committee would probably go a long way toward beginning to get some of the folks who share borders with us and who are in free trade agreements with us, to realize that we are going to base it upon science and we are not going to base it upon politics. I believe this is based on science representing growing seasons, not on politics. Do you think that is a fair statement? [Laughter.]

You can say "yes" and I will give up my time.

Ms. HILLMAN. What I will directly comment on is we obviously are going to take the position if we are acting within our WTO and our NAFTA obligations, there is no justification for retaliation.

Mr. THOMAS. That is what I was looking for. Thank you very much.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

I will be very brief, in that I think you agreed with what he said, whatever that was. I would like to express the appreciation of the Florida farmers for the amount of attention that the Trade Representative has given to this very real problem, recognizing that it is a very real problem and for being very supportive.

I just wanted to repeat one thing I said in my opening statement, which I believe deserves being repeated, that our Florida farmers cannot afford the labor to pick the crops for the price that the Mexicans are bringing these tomatoes into this country. It is clearly out of our hands and it is in the hands of the Congress and I would hope that we move forward.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Mr. Chairman, I wonder if it would be possible, and if the gentleman would accept, if I could ask Mr. Shaw a question here.

Chairman CRANE. Certainly.

Mr. HOUGHTON. If the 201 case has been resubmitted and injury is proven and therefore remedies are given, would this legislation be necessary?

Mr. SHAW. I would like to defer to the Trade Representative on that. I think that it desperately needs clarification, and I would like to also point out that for these farmers down in Florida, there is very little that you can grow during the summer months. So they are totally dependent upon the winter months because in the summer the sun gets so intense during that period of time and the bug problem becomes very acute. So they strictly are confined to a single window here. But if Ms. Hillman has an answer to that, I would defer to her.

Ms. HILLMAN. I guess I would answer your question in two ways, Mr. Houghton. One is this bill is obviously not directed solely at this issue of Mexican tomatoes. It is a more generic problem with respect to perishable products. So the administration would take the view that because the bill is directed at a broad category of perishable agricultural products and not solely at the Florida tomato

situation, the ITC granting relief in the tomato situation may not address the more generic problem of perishable agricultural products.

Mr. HOUGHTON. Maybe I could just reclaim my time, then. I understand that, but the point is, it has been brought up because there is a tomato issue, not because there is a cabbage issue or something like that.

But I just wonder, in the overall scheme of things, and maybe I could ask your——

Mr. THOMAS. I think I can answer your question. The first 201 was argued on seasonality and was turned down because the law did not provide that. That is the basis of this legislation.

Their second 201 petition is based upon the industry as a whole, in which it is going to be far harder for them to show injury as that portion of the U.S. tomato industry, which is the front of the entire U.S. industry.

So my guess is, not wanting to anticipate a decision, it will be very, very difficult to show injury on a 201 case when the Florida tomato industry is looked at as a portion of the entire domestic tomato market. So I do not think they are going to win their second 201, in my opinion.

Mr. HOUGHTON. You may be right, and I do not want to prolong this thing, but I am assuming, for the sake of argument, that that is not the case and that there will be some correction made. I may be wrong, but that is the assumption.

I guess what I am getting at is that from a practical standpoint in terms of NAFTA and retaliation and all sorts of things like that, if there were a chance for you to get some sort of relief, would not the relief be better through the 201 process, which is a sort of a worldwide approach, rather than having a specific piece of legislation where people just are infuriated at the United States?

Mr. SHAW. Better to go through NAFTA?

Mr. HOUGHTON. Better to follow through the 201 process rather than having this particular piece of legislation.

Mr. SHAW. I think, as Mr. Thomas pointed out, that you need that extra piece of the puzzle to recognize the seasonality of the industry. The Florida industry closes down, basically, and if you spread it out over an entire year when Florida is not even producing tomatoes and Mexico, likewise, is not producing tomatoes, it becomes, as Mr. Thomas says, very, very difficult, if not impossible, to even make the case.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman, and welcome, Ambassador Hillman.

Ms. HILLMAN. Thank you.

Mr. PAYNE. Thank you very much for your testimony. I am trying to understand this issue, and certainly, I am very interested in getting it resolved and it seems this amendment is probably the very best way to approach that. It is a broader amendment than one simply to address the issue that is going on in Florida at the present time.

There are those who say, though, that there are concerns and there are reasons that we should expect that this would not withstand the scrutiny of a WTO panel. Apparently, their concerns

have to do with article 4 of the safeguards agreement which says, as it defines the domestic industry, that they are producers as a whole of the like or directly competitive products operating within the territory of a member of those whose collective output of the like or directly competitive products constitute a major proportion of the total domestic production of those products.

In other words, it sounds as if it is problematic in terms of trying to separate either by producer or by season an industry like this in the context of what is in the WTO Agreement. Could you comment on that, because I am trying to understand this and trying to understand how it relates to the WTO Agreement.

Ms. HILLMAN. Sure. What you are getting at is the issue of how broadly you can define this industry as a whole, producers as a whole. What we would argue is that our actions if this amendment were to pass would be consistent with our WTO obligations because they have that same definition of those that are affected, producers as a whole of a like or directly competitive product.

The argument goes to what is going to be viewed as a directly competitive product, whether or not you are going to view a January-grown tomato as directly competitive with a June-grown tomato. Clearly, what the ITC would be asked to determine on a case-by-case basis, based on the facts of the particular situation, is whether or not those items are, in fact, directly competitive, given that they are grown and sold and marketed in a different season when, theoretically, prices and other factors in the market are different for the product, that it has a seasonality to it, it has a limited time that it can be sold.

It would be a case-by-case determination on the facts by the ITC, where the ITC would be given the liberty of making a determination that products grown in this seasonal basis is not directly competitive with products or not like—I mean, they would make a determination of whether they are like or directly competitive with products grown in a different season. What they would be then deciding is whether or not they want to grant relief based on competition between imports coming in at the same time as that group of directly competitive products from a given season.

So what you are really getting at is giving the ITC discretion to determine on a case-by-case basis what is a like or directly competitive product to the imports coming in. You would be then choosing the producers as a whole of the product that is, again, like or directly competitive with that season of product coming in.

Mr. PAYNE. So again, then, your position and the position of the administration is that this amendment clearly falls within the——

Ms. HILLMAN. We take the view that this would be consistent with our WTO obligations and consistent with our NAFTA obligations, given that they are based on the same definition of who is eligible for relief.

Mr. PAYNE. You mentioned this has been going on for a very long time and is not directly related to NAFTA. Have there been other attempts such as this in the past to try to deal with this, or are you familiar with them?

Ms. HILLMAN. The issue of the seasonality and whether there should be changes, my understanding is, yes, the Congress at various points has considered a number of different pieces of legisla-

tion. In fact, if my memory is correct, Mr. Thomas has also in the past been an author of various kinds of provisions to look at this issue of seasonality of product in terms of various kinds of relief efforts under our trade laws.

Mr. THOMAS. Would the gentleman yield?

Mr. PAYNE. Yes.

Mr. THOMAS. We were very successful in the early and mideighties in getting the U.S. Trade Representative to understand that when you find relief favorable of a perishable commodity and that relief occurs 9 months, 12 months after the fact, it does not bring a whole lot of relief. We passed a series of bills which produced a 27-day perishable commodity fast track procedure, including review by the President, and I believe it has been very successful in meeting the needs of unique products under unique circumstances.

I thank the gentleman for yielding.

Mr. PAYNE. Thank you very much, and thank you, Madam Ambassador, and thank you very much for the good job that you are doing at USTR.

Ms. HILLMAN. Thank you very much.

Chairman CRANE. Mr. Portman.

Mr. PORTMAN. No questions.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. No, I have no questions. Thank you.

Chairman CRANE. We want to thank you, Ms. Hillman, for your testimony and appreciate your appearance today.

With that, I would like to invite our next panel, made up of two State Departments of Agriculture. We have Becky Doyle, director of the Department of Agriculture in my home State of Illinois, and Dr. Martha Roberts, deputy director for food safety from the Florida Department of Agriculture and Consumer Services. Dr. Roberts will read the Florida Commissioner, Robert Crawford's, testimony. He was not able to be with us today.

With that, I would again ask you if you could try and keep your presentations to 5 minutes or under. Any additional printed material will be a matter of the permanent record and I would like to yield to Ms. Doyle.

STATEMENT OF BECKY DOYLE, DIRECTOR, ILLINOIS DEPARTMENT OF AGRICULTURE

Ms. DOYLE. Thank you, Mr. Chairman. It is good to see you. I do not get to see you often enough in Illinois.

I hope you can be a part of this, because this is based on Illinois agriculture. I am here representing today not only Illinois agriculture but the State of Illinois. Our agency serves more than 75,000 farmers and all of the consumers in the State of Illinois. Like others in our economy, our farmers depend on export markets for a growing share of their incomes. I have long believed in and worked for free trade and I represent a Governor, Jim Edgar, who also worked with Congress and recent administrations to promote more open world markets.

We are even stronger supporters of free trade today as we see the benefits that are accruing to Illinois farmers from NAFTA and WTO. For example, agriculture exports represent approximately 23

percent of all Illinois exports to Mexico and 7 percent of all of our exports to Canada.

We are disturbed, therefore, by the sudden reemergence of protectionist arguments in this Nation, both in electoral politics and in legislative and regulatory affairs. I am particularly troubled by this Nation's willingness so soon after years of professional solid negotiations to open global markets to consider breaking its word and unilaterally changing the rules. We feel that if we open this door, it will be an open invitation to other nations to do the same, creating a downward spiral which can only have disastrous effects.

Trade agreements are, after all, a realignment toward comparative advantages which create the efficiencies which benefit consumers and, in the long run, also protect and benefit producers.

The seemingly small issue at the root of the legislation before this Committee today is being supported by what we see as a protectionist trend and, at the same time, is serving as protectionism's poster child. That is why 15 other nations have already objected to this measure and why the 14-member Cairns group has expressed its concerns. A vote by this Committee against H.R. 2795 would not only be of great importance in and of itself, it would also send a message to our trading partners and to leaders in the U.S. Government that we must protect the sanctity of our trade agreements.

I am not the only State Agriculture Director opposed to H.R. 2795. My views are shared by directors and commissioners from other large agricultural States. Most of the 50 States, especially the large agricultural States, can identify a sector of their agricultural economy which has been hurt, at least apparently hurt, by recent trade agreements. But rather than ask Congress for a special preferential treatment, we are working within our States to try to help those sectors that have been harmed, help them identify different options. I would respectfully suggest that the proponents of this bill might want to work with the producers in their States, also, to do the same.

In a letter to your Committee, several State directors or commissioners of agriculture stated that this bill could significantly reduce the gains the agricultural sector has made in the international marketplace. We would like to present a copy of that letter for the record.

Chairman CRANE. Without objection, so ordered.

[The information follows:]

February 28, 1996

The Honorable Bill Archer, Chairman
Ways and Means Committee
U.S. House of Representatives
1102 Longworth HOB
Washington, D.C. 20515

Dear Chairman Archer:

As leaders of agriculture in the states we represent, we would like to express our opposition to S.1462 and S.1463, and companions H.R. 2921 and H.R. 2795, respectively. If enacted, these bills could significantly reduce the gains the agriculture sector has made in the international marketplace. We believe the gains we have made in the last few years are just the tip of the iceberg for U.S. agriculture.

Just last year, U.S. agricultural exports totaled $54.1 billion. The projection for 1996 is a whopping $60 billion. These gains are due in part to the enactment of the North America Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), despite the economic crisis in Mexico. Because our states' commitment to free trade is solidly for the long-term, we are concerned with the potential consequences these bills would have on our industry's profitability.

S. 1462/H.R. 2921 would provide protection for Florida tomato growers from competition. During both trade agreements' negotiations, legal protection was agreed to in the form of tariff-rate quotas (TRQs) and lengthy phase-out periods. The Florida tomato industry has a 10-year phase-out period for its TRQ. S.1462/H.R.2921 would provide additional protection by requiring Mexican growers to pack their variety of tomato in the same manner that the Florida industry packs their tomatoes, while not regulating other varieties grown in the U.S. By erecting national standards for imported foreign produce while not requiring all domestic produce to follow suit, these bills create a non-tariff barrier and fall short of meeting "national treatment" standards under the NAFTA and GATT. Daily, we work to remove similar barriers and fight national treatment violations to improve opportunities for U.S. agricultural exports. A change like this would affect our nation's ability to fight for export opportunities.

Secondly, the Congress has authorized marketing order quality standards that both domestic and foreign produce must meet, regardless of how they are packaged. These standards protect U.S. consumers from sub-quality produce and are industry-initiated. Without the changes to national packing standards, U.S. consumers will still receive quality produce.

S.1463 and H.R.2795 are perhaps even more egregious than the former bills. These two bills would provide protection for the Florida tomato industry by changing the definition of an "industry." The "seasonal industry" definition would provide additional protections over and above those negotiated under the NAFTA and GATT. These two trade agreements were originally negotiated with specific windows of time to address seasonality concerns about competitive imports by applying additional tariffs during sensitive production periods. S.1463 and H.R.2795 would create a precedent from foreign competition. It would undermine everything we have worked for during the last 10 years to open world markets.

Changes like these go against everything our trade negotiators agreed to under the NAFTA and GATT. They also jeopardize our standing as the leader of the free market. We urge you to evaluate the impact that reduced foreign trade would have on the agriculture industry. The answer is clearly one that we cannot afford, especially when federal policy is directing U.S. agriculture producers to be more responsive to the marketplace.

We would like to submit these comments for the committee's record when hearings are held, and urge you to join us in opposing this legislation.

Sincerely,

Rick Perry
Texas

Ted Daley
Oklahoma

Gary Locke
Washington

Bobby Joyce, Illinois

Pete Coleman Boyer

Arne Carlson, Minnesota

Ms. DOYLE. I hope that you will keep in mind how amazing these gains have been since enactment of NAFTA and the WTO accords and what H.R. 2795 would be imperiling. In just the past 2 years, U.S. agricultural exports have jumped by one-third to $60 billion. Protecting American agriculture's ability to make such gains is obviously much more important than unfairly protecting a single sector of our vast agriculture industry from fair competition.

We feel there is little doubt that H.R. 2795 would imperil those gains. If passed, the bill would require the United States to make trade concessions that could harm other U.S. exporters, encourage other countries to employ the seasonality principle to restrict U.S. exports, and disrupt imports from other U.S. trading partners.

Perhaps most troubling, however, is how this proposed action could undermine the progress toward stability and order in the global economy which we have worked so hard to achieve. The United States has long been pressing other nations not only to accept more open markets but to enforce these new rules, to live up to their obligations, and we should, too.

[The prepared statement follows:]

STATEMENT OF BECKY DOYLE
DIRECTOR, AGRICULTURE DEPARTMENT
STATE OF ILLINOIS

Good afternoon. My name is Becky Doyle. I am the Director of the Illinois Department of Agriculture, and I very much appreciate the opportunity, Mr. Chairman, to appear before this Committee today.

My agency serves more than 75,000 farmers in our state. Like others in the Illinois economy, these farmers depend upon export markets for a growing share of their incomes. I have long been a believer in free trade, and I represent a Governor who has worked with Congress and recent administrations to promote more open world markets. We are even greater believers in free trade today as we see the benefits that are accruing to Illinois farmers from the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) accord. For example, agricultural exports represent approximately 23 percent of all Illinois exports to Mexico and 7 percent to Canada.

I am disturbed, therefore, by the sudden re-emergence of protectionist arguments in this nation, both in electoral politics and in legislative and regulatory affairs. I am particularly troubled by this nation's willingness, so soon after years of solid negotiations to open global markets, to consider breaking its word and unilaterally changing the rules. If we open this door, it will be an open invitation to other nations to do the same, creating a downward spiral which can only have disastrous effects.

The seemingly small issue at the root of the legislation before this committee today is being supported by this protectionist trend and, at the same time, serving as protectionism's

posterchild. That is why 15 other nations have already objected to this measure in Geneva and why the 14-member Cairns group has written to this Committee about its concerns.

A vote by this committee against H.R. 2795 would not only be of great importance in and of itself. It would also send vital signals to other nations and to others in the U.S. government to protect the sanctity of our trade agreements.

I am not the only state agricultural commissioner opposed to H.R. 2795. My views are shared by commissioners from other large agricultural states. In a letter to your committee, we stated that this bill "could significantly reduce the gains the agricultural sector has made in the international marketplace."

I hope that you will keep in mind how large those gains have been since enactment of the NAFTA and the WTO accords and what H.R. 2795 would be imperiling. In just the past two years, U.S. agricultural exports have jumped by a third—to $60 billion. Protecting American agriculture's ability to make such gains is obviously much more important than unfairly protecting a single sector of our vast agriculture industry from fair competition.

There is little doubt that H.R. 2795 would imperil those gains.

If successful, this bill would:

1. **Require the U.S. to make trade concessions that could harm other U.S. exporters.**

Both the NAFTA and WTO require countries imposing safeguards measures to compensate the affected exporting countries by making "concessions having substantially equivalent trade effects." If the countries involved cannot agree on appropriate compensation, then the exporting countries may decide to unilaterally suspend "equivalent" benefits owed the United States, perhaps by raising tariffs or reducing quotas on some U.S. products.

2. **Encourage other countries to employ the "seasonality" principle to restrict U.S. exports.**

This proposal sets a dangerous example for other countries wishing to enact similar changes in their own laws. Major American exporters — of goods ranging from pork and peaches to corn and wheat — could find themselves being denied the opportunity to compete fairly in their current export markets. As the world's largest exporter, the United States has the most to lose from introducing new forms of protectionism.

3. **Diminish the ability of the U.S. to hold other countries to their trade commitments.**

The Clinton Administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements only undermines this "enforcement" initiative. U.S. industries hurt by the failure of foreign governments to comply with their trade obligations could find it harder to obtain adequate remedies.

4. **Disrupt imports from other U.S. trading partners.**

Although the "seasonality" legislation was proposed to protect Florida growers from imports of Mexican tomatoes during the winter months, it could disrupt imports of numerous "seasonal" products from Europe, Canada, Israel, Chile and elsewhere that are consumed or processed through out the United States. Imports could face new barriers whenever any group of "seasonal" U.S. producers is found to be injured by import competition.

Perhaps most troubling to me, however, is how this proposed action could undermine the progress toward stability and order in the global economy which we have worked too hard to achieve. The United States has long been pressing other nations not only to accept more open markets but to enforce these new rules, to live up to their obligations. For us to now be the one considering going back on its word, as H.R. 2795 would do, suggests the beginning of the breakdown of the system. We cannot afford to let this happen. We cannot afford to play fast and loose with the framework of the international trading system. We cannot afford to pass H.R. 2795.

Chairman CRANE. Thank you, Becky.
Dr. Roberts.

STATEMENT OF BOB CRAWFORD, COMMISSIONER OF AGRICULTURE, STATE OF FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; AS PRESENTED BY MARTHA ROBERTS, PH.D., DEPUTY COMMISSIONER

Ms. ROBERTS. Mr. Chairman, Members of the Subcommittee, I am Martha Roberts, Deputy Commissioner of Agriculture for the State of Florida, representing Commissioner Bob Crawford, who regrettably could not be here due to conferencing on our budget today by the Florida legislature.

The legislation before you today clearly and positively affects both Florida agriculture's perishable fruit and vegetables industry and agriculture nationwide. Mr. Chairman, it is my distinct privilege to present to you strong support from agriculture for the passage of H.R. 2795. This legislation, we believe, is a natural step forward in recognizing the unique characteristics of the ever-changing landscape of agriculture. We want to express to the bill's sponsor, Congressman Clay Shaw, the gratitude of the people of Florida for the leadership demonstrated by his efforts to pass this needed legislation.

I am pleased that the legislation recognizes a distinct and critical difference that we must not forget. Perishable fruits and vegetables cannot be stored like corn, wheat, and other grains, nor can they be stored indefinitely either frozen or refrigerated, like meat and poultry, and held off the market until prices change. So the trade laws that affect perishable products grown in short, concentrated growing seasons must be relevant trade laws.

Congress has labored long and hard to write laws that promote trade and provide remedies for those adversely affected by trade. At the core is a recognition by Congress that as we move to expand trade, domestic producers may be impacted by new conditions of trade.

Mr. Chairman, the Subcommittee has been the originating point of the laws that seek to ease this tension. The safeguard provisions written into the law by this Committee may one day have critical importance to any producer facing newly global competition. For these measures to truly be safeguards, they must work effectively.

The creation of safeguards for winter-produced fruits and vegetables was one agreement made by Congress at the end of the NAFTA debate. In relation to this, in June 1994, the International Trade Commission published report 2771 regarding "The Monitoring of U.S. Imports of Tomatoes." Section 316 of the NAFTA Implementation Act required the commission to monitor U.S. imports of fresh or chilled tomatoes and peppers. And in an opening letter to Congressman Sam Gibbons, then ITC Chairman Don Newquist explained the difficulties of monitoring and reported that recognition of seasonal production would not be possible without statutory change.

Florida producers and delegation members had been told that section 316 was included in the NAFTA Implementation Act in an attempt to monitor the volatile fresh seasonal market for winter fruits and vegetables produced October through May. The ITC let-

ter from then ITC Chairman Don Newquist further stated that, "limiting the scope to the winter marketing season would focus on the time period when imports are of greatest concern to competing domestic growers."

Since the NAFTA Implementation Act requires ITC monitoring until January 1, 2009, for the purposes of expediting relief either under section 302 of the Implementation Act or section 202 of the Trade Act of 1974, then it is critical that we have a workable definition that recognizes commercial reality.

Mr. Chairman, in the dead of winter, when the rest of our Nation sleeps under a blanket of cold and snow, Florida is producing the fresh fruits and vegetables for our Nation. This absence of other winter-producing areas in the United States was also recognized very clearly by the 1991 GAO Report on United States-Mexico trade where they very distinctly showed the seasonality of our production and other States' productions of fruit and vegetables for the Nation's food supply.

H.R. 2795 corrects or clarifies the law and recognizes that perishable agricultural products and producers may exist in the marketplace during distinct periods of time. For the trade laws of our Nation to work, for the international trade agreements we have signed to work as Congress envisioned them, the special safeguard provisions must be effective for all agricultural products, not just for those products stable in long storage conditions and not just in those areas that produce throughout the year. H.R. 2795 is an effective measure. We should not fear retaliation from measures consistent with international trade agreements.

I urge your support of this legislation and we would very much like to provide you copies of resolutions from the Governor and cabinet of the State of Florida, from the Florida House of Representatives, and from the Florida Senate regarding enforcement of trade laws. Thank you, Mr. Chairman.

[The prepared statement and attachments follow:]

Testimony of
Commissioner Bob Crawford
State of Florida

Before the
Subcommittee on Trade , Committee on Ways & Means Considering
H.R. 2795

April 25, 1996

Mr. Chairman, Members of the Subcommittee, I am Bob Crawford, Commissioner of Agriculture for the State of Florida. It is my duty to protect the health, vitality and competitiveness of Florida agriculture. The legislation before you today, clearly and positively affects both Florida agriculture's perishable fruit and vegetable industry, and agriculture nationwide. Mr. Chairman, it is my distinct privilege to present to you strong support from agriculture for passage of H.R. 2795. This legislation is, I believe, a natural step forward in recognizing the unique characteristics of the ever changing landscape of agriculture. I want to express to the bill's sponsor, Congressman Clay Shaw, the gratitude of the people of Florida for the leadership demonstrated by his efforts to pass this needed legislation.

I am pleased that this legislation recognizes a distinct and critical difference that we must not forget. Perishable fruits and vegetables can not be stored like corn, wheat or other grains, they can not be stored indefinitely frozen or refrigerated like meats and poultry or held off the market until prices change. So the trade laws that affect perishable products, grown in short concentrated growing seasons, must be relevant trade laws.

Congress has labored long and hard to write laws which promote trade and provide remedies for those adversely affected by trade. At the core is the recognition by Congress that as we move to expand trade, domestic producers may be impacted by new conditions of trade.

Mr. Chairman, this subcommittee has been at the originating point of the laws which seek to ease this tension. The "safeguards" provisions written into law by this committee may one day have critical importance to any producer facing newly global competition. For these measures to be "safeguards", they must work effectively.

Safeguards for winter-produced fruits and vegetables was one agreement made by Congress at the end of the NAFTA debate. In relation to this, in June, 1994, the International Trade Commission published Report 2771 regarding the Monitoring of U.S. Imports of Tomatoes. Section 316 of the NAFTA Implementation Act required the Commission to monitor U.S. imports of "fresh or chilled tomatoes" and peppers. In an opening letter to Congressman Sam Gibbons, then ITC Chairman Don Newquist explained the difficulties of monitoring and reported that recognition of seasonal production would not be possible without statutory change.

Florida producers and delegation members had been told that Section 316 was included in the NAFTA Implementation Act in an attempt to monitor the volatile fresh seasonal market for winter fruits and vegetables produced October through May. The ITC letter further stated that "limiting the scope to the winter marketing season would focus on the time period when imports are of greatest concern to competing domestic growers." Since the NAFTA Implementation Act requires ITC monitoring until January 1, 2009, for purposes of expediting relief under section 302 of the Act or section 202 of the Trade Act of 1974, it is critical that we have a workable definition that recognizes commercial reality.

Mr. Chairman, in the dead of winter when the rest of our nation sleeps under a blanket of cold and snow, Florida is producing the fresh fruits and vegetables for our nation. This absence of other winter producing areas in the U.S. was recognized by the 1991 Government Accounting Office Report on U.S.-Mexico Trade and showed the seasonality of our production for our nation's health and food supply.

H.R. 2795 corrects or clarifies the law and recognizes that perishable agricultural products and producers may exist in the marketplace during distinct periods of time. For the trade laws of our nation to work, for the international trade agreements we have signed to work as Congress envisioned them, the special safeguards provisions must be effective for all agricultural products, not just for those products stable in long storage and not just for those areas that produce throughout the year. H.R. 2795 is an effective measure, and we should not fear retaliation from measures consistent with international agreements.

Mr. Chairman, The Governor and Cabinet of the State of Florida, the Florida House of Representatives, and the Florida Senate, have in three separate resolutions this month recognized the unparalleled effects of imports on Florida agriculture and have resolved that they urge Congress to take prompt action to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement and to quickly take appropriate administrative action to prevent further adverse effects on Florida's agricultural industry. Mr. Chairman, H.R.2795 will provide positive action to prevent further adverse effects and will do so in a manner consistent with the international trade agreements of our nation. I urge your passage of this measure.

State of Florida

HOUSE OF REPRESENTATIVES

House Resolution No. 9195

By Representatives Harris, Boyd, Greene, K. Pruitt, Mackenzie, Mackey, Rojas, Diaz de la Portilla, Flanagan, Fuller, Ziebarth, Sembler, Minton, D. Saunders, Smith, Bronson, Barreiro, Lacasa, B. Saunders, Webster, Carlton, Cosgrove, Kelly and Laurent

A resolution for the protection
of Florida agriculture.

WHEREAS, the United States is the world's greatest agricultural nation and every American, together with people throughout the world, enjoy the benefits of our nation's agricultural efforts, and

WHEREAS, Florida agriculture is a major contributor to the health and well-being of the citizens of the state, the nation, and the world with annual sales of raw farm products of nearly $6 billion, which provides $45 billion of economic benefit to those who grow, process, transport, insure, finance, and provide goods and services necessary for agricultural production, and

WHEREAS, Florida has produced the majority of the nation's supply of winter fruits, vegetables, citrus and citrus products, and is the sole domestic supplier of many of these commodities for several months each year, and

WHEREAS, eating fresh fruits and vegetables each day provides good nutrition and reduces the risk of heart, cancer, and chronic diseases, and

WHEREAS, as a result of unparalleled escalation of shipments and import surges of tomatoes and other vegetables from Mexico at below the cost of production, over the past three years, Florida's percentage share of the United States market has continued to decline each year, and

WHEREAS, the dramatic devaluation of the Mexican peso has accentuated very negative effects on Florida agriculture, crippling this industry and placing a major threat on its continued existence, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida:

That the House of Representatives of the State of Florida does hereby urge the Chairman of the International Trade Commission Peter Watson, the President of the United States, the United States Trade Representative Mickey Kantor, and Congress to take prompt action to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement, and to quickly take whatever administrative actions are within their power to prevent further adverse effects on Florida production of tomatoes, peppers, and other crops.

BE IT FURTHER RESOLVED that the Florida House of Representatives affirms the need to take immediate action against unfair trade practices and supports immediate legal pursuit in the courts of the remedies provided by current United States trade law.

This is to certify the foregoing was adopted on April 12, 1996.

Peter R. Wallace
Speaker

Clerk of the House

Florida Senate Resolution

By Senator Williams

* * * * * * * * * * * * * *

A resolution urging the United States to take action to stop further adverse effects on Florida's agricultural producers caused by Mexican imports.

WHEREAS, the United States is the world's greatest agricultural nation and the entire world enjoys the benefits of our nation's agricultural efforts, and

WHEREAS, Florida agriculture is a major contributor to the health and well-being of the citizens of this state, the nation, and the world, with annual sales of raw farm products of nearly $6 billion which provides $45 billion of economic benefit to those who grow, process, transport, insure, finance, and provide goods and services necessary for agricultural production, and

WHEREAS, this state has produced the majority of the nation's supply of winter fruits, vegetables, citrus, and citrus products and is the sole domestic supplier of many of these commodities for several months each year, and

WHEREAS, as a result of the unparalleled escalation of shipments and import surges of tomatoes and other vegetables from Mexico at below the cost of production, over the past 3 years, this state's percentage share of the domestic market has declined each year, and

WHEREAS, the dramatic devaluation of the Mexican peso has accentuated very negative effects on agriculture in this state, crippling this industry and placing a major threat on its continued existence, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That the Chairman of the International Trade Commission Peter Watson, the President of the United States, the United States Trade Representative Mickey Kantor, and the Congress of the United States are urged to take prompt action, including legal remedies, to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement, and to quickly take whatever administrative actions are within their power to prevent further adverse effects on this state's production of tomatoes, peppers, and other crops.

BE IT FURTHER RESOLVED that copies of this resolution be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, to the United States Trade Representative, and to the Chairman of the International Trade Commission.

* * * * * * * * * * * * * *

This is a true and correct copy of Senate Resolution No. 3030, adopted by the Florida Senate on April 18, 1996.

James A. Scott
President of the Senate

ATTEST:

Joe Brown
Secretary of the Senate

RESOLUTION

WHEREAS, the United States is the world's greatest agricultural nation and every American, together with people throughout the world, enjoys the benefits of our nation's agricultural efforts; and

WHEREAS, Florida agriculture is a major contributor to the health and well-being of the citizens of the State of Florida, the nation and the world with annual sales of raw farm products of nearly six billion dollars, which provide 45 billion dollars of economic benefit to those who grow, process, transport, insure, finance, and provide goods and services necessary for agricultural production; and

WHEREAS, Florida produces the majority of the nation's supply of winter fruits, vegetables, citrus and citrus products and is the sole domestic supplier of many of these commodities for several months each year; and

WHEREAS, eating fresh fruits and vegetables each day provides good nutrition and reduces the risk of heart disease, cancer and other chronic diseases; and

WHEREAS, as a result of the unparalleled escalation of shipments and import surges of tomatoes and other vegetables from Mexico at below the cost of production over the past three years, Florida's percentage share of the U. S. market has continued to decline each year; and

WHEREAS, Mexico, in contravention of the trade laws of this nation, has shipped agricultural products at below the cost of production over the past three years resulting in the decline of Florida's percentage share of the U. S. market during this time; and

WHEREAS, the dramatic devaluation of the Mexican peso has accentuated very negative effects on Florida agriculture, crippling this industry and placing a major threat on its continued existence.

NOW, THEREFORE, BE IT RESOLVED that the Governor and Cabinet of the State of Florida do hereby urge the President of the United States, the Congress, United States Trade Representative Mickey Kantor, and Chairman of the International Trade Commission Peter Watson to take prompt action to enforce all provisions of the trade laws of this nation, to enforce all provisions of the North American Free Trade Agreement, and to quickly take appropriate administrative action to prevent further adverse effects on Florida's agricultural industry.

BE IT FURTHER RESOLVED that the Governor and Cabinet urge the Florida Legislature to take immediate action against unfair trade practices by supporting budget requests to allow full and immediate legal pursuit in the courts of remedies provided by current U. S. trade law.

IN TESTIMONY WHEREOF, the Governor and Cabinet of the State of Florida have hereunto subscribed their names and have caused the Official Seal of the State of Florida to be hereunt affixed in the City of Tallahassee on this 28th day of March, 1996.

LAWTON CHILES
GOVERNOR

SANDRA MORTHAM
SECRETARY OF STATE

BOB BUTTERWORTH
ATTORNEY GENERAL

ROBERT F. MILLIGAN
COMPTROLLER

BILL NELSON
TREASURER

BOB CRAWFORD
COMMISSIONER OF AGRICULTURE

FRANK T. BROGAN
COMMISSIONER OF EDUCATION

Chairman CRANE. Thank you, Dr. Roberts.

Ms. Doyle, I would like to ask a parochial question, as a fellow Illinoisan. What is the magnitude of our agricultural exports on a yearly basis, I mean the total, not to a targeted area but totally?

Ms. DOYLE. We always have trouble identifying that, because most of our exports are our corn and soybeans, which are blended with Iowa and Missouri corn and soybeans. But we are a $9 billion industry in the State of Illinois and it is primarily corn, soybeans, pork, and beef, and about one-third of that is exported.

Chairman CRANE. Of that total number of exports, have you any idea what percentage goes to Mexico and what to Canada?

Ms. DOYLE. No. I know the figures of what goes to Mexico from Illinois, 23 percent of it is agricultural, and Mexico is our third largest trading partner, so it is a pretty significant number.

Chairman CRANE. Yes, that is. I want to thank you both for your testimony and yield to Mr. Thomas.

Mr. THOMAS. Thank you. I represent an agricultural district, one of 52 congressional districts in California, and my value-added is almost $3 billion, two-thirds of which is exported.

In looking at your testimony, I guess it was written before you heard the USTR representative because your third point on page 4 would seem to argue against what the USTR said, where you say, "The Clinton administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative . . . for the United States to breach its own obligations under those same agreements"—I believe she indicated they did not believe they were breaching the obligations. They thought they were consistent with GATT and WTO.

Ms. DOYLE. That is not what that says. That does not indicate that they do believe that they are breaching it. That indicates that I believe they are breaching it.

Mr. THOMAS. So, there is a disagreement between the U.S. Trade Representative and the Secretary of Agriculture of Illinois?

Ms. DOYLE. Not the first time.

Mr. THOMAS. When there is a contest over whether or not the Europeans have violated agreements on corn gluten or on other products that may be important to Illinois, I assume you are going to be looking to other regions of the country to strongly support your claims about unfairness, because all this bill does—there are no guarantees, there are no preferential treatments, there are no preconceived conclusions. All it does is create an opportunity to be heard to determine whether or not in seeking relief you can have it. That is all this does.

Ms. DOYLE. I understand that, but while it is doing that, it also changes the NAFTA Agreement.

Mr. THOMAS. Obviously, we have a disagreement about that, because frankly, the Mexicans have changed the NAFTA Agreement by fiat at the border on a number of agricultural products. So I guess if we are going to get into a contest of whether or not we are inside the law or outside the law, what these folks have done is come to seek redress inside the law. We will always have a disagreement over whether or not it affects an international trading agreement unless and until it is tested at the international level.

Ms. DOYLE. I understand.

Mr. THOMAS. My belief is it does not violate GATT and the WTO. Your concern is, notwithstanding it not violating it, it may put you somewhat at jeopardy.

Ms. DOYLE. No, I have both concerns, and not that it would put me in jeopardy.

Mr. THOMAS. Let us assume that it is GATT enforceable. It is within the GATT Agreement. Then you are still concerned about it, I understand from your testimony, because there may be safeguard action taken in retaliation, is that correct?

Ms. DOYLE. Of course, yes. I probably——

Mr. THOMAS. And that it may affect your products?

Ms. DOYLE. Yes.

Mr. THOMAS. Thank you very much.

Ms. DOYLE. Thank you.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

That type of attitude really worries me, Ms. Doyle. We, during the NAFTA discussions, we were very much concerned about this.

Ms. DOYLE. I remember.

Mr. SHAW. And we talked to other people in other parts of the country as to what the total effect of NAFTA would be. It is not that I agree that this has anything to do with NAFTA but it has a lot to do, I think, with the trading attitude in this country.

For somebody to look at a bill and say, well, it may be the right thing to do but somebody is liable to retaliate against something that I am doing and therefore we develop our trade policy around that——

Ms. DOYLE. I did not say that it was the right thing to do.

Mr. SHAW. All right. Let me ask you a question. You fear retaliation. Do you know of any other perishable, or can you make an example of a perishable seasonal crop grown in the United States in a similar situation in which there will be retaliation?

Ms. DOYLE. I am afraid I do not understand the question.

Mr. SHAW. Then I will repeat it. Can you name or perhaps you can enlighten me, other perishable crops that are exported from the United States to other countries in which you would anticipate retaliation?

Ms. DOYLE. It is not the crop that I am fearing will cause the retaliation, it is the passage of this bill.

Mr. SHAW. I guess you do not want to answer the question.

Ms. DOYLE. If I understood it, but I do not understand the question.

Mr. SHAW. I have expressed it clearly twice. Tell me, is there any other crop, a perishable crop that is seasonal in this country that we export to another country that you expect that country to retaliate against us by in some way restricting its importation into their country?

Ms. DOYLE. Not if the trade agreement sanctity is protected. I guess maybe we are on two different wavelengths here, but I am not understanding the point that you are trying to make.

Mr. SHAW. I think that is very clear, that we are on two different wavelengths.

Ms. DOYLE. I do not want you to——

Mr. SHAW. I disagree, we are on two different planets. You fear retaliation against crops grown in the State of Illinois, which are not readily perishable. These are crops that can be stored. These are crops that if you do not sell them in one month, they are good in another month. The tomatoes are not that way. For tomatoes, and particularly in the State of Florida, you just have your winter seasons, and that is exactly it.

What we are simply asking for is to give the Trade Representative the ability to look at the tomato industry or the fresh fruit and vegetable perishable industries as a single industry.

Ms. DOYLE. In the first place, I am not here just in concern over retaliation against Illinois crops. And in the second place, Illinois does grow perishable crops. I think beyond growing perishable crops, we also produce a lot of meat, which is perishable.

Mr. SHAW. It is not perishable like tomatoes.

Ms. DOYLE. That is probably true, but it is very important——

Mr. SHAW. I can bring in a steak that was purchased a couple months ago and it is still in fine shape, there is no question about that, but with tomatoes, you just cannot do that.

Ms. DOYLE. I understand that.

Mr. SHAW. So we are really in here trying to get the cooperation of the full Congress to look at this as we looked at NAFTA, and that is a nationwide basis. We are not just individual pockets of production here, there, and yonder. We are just simply asking that the right thing be done, and the right thing to be done is to not put us in a situation where we are going to lose tens of thousands of jobs, we are going to put farmers out of business, and being from Illinois and your particular position, you understand how that works, and that we are going to destroy a whole industry of my State because of fear of retaliation.

We are not asking for anything to be strictly imposed. We are simply asking for the ability of the Trade Representative to view a seasonal crop as a separate industry, rather than looking at that particular crop on a 12-month basis, because without some type of relief, the Florida tomato industry will not survive. I mean, they are selling the stuff cheaper than we can pick it, and that is wrong. You put the Florida producers out of business and we are going to be totally dependent upon the foreign producers of these tomatoes.

I think it is extremely shortsighted not to make that type of relief available to be given by the Trade Representative to the farmers of the State of Florida.

Ms. DOYLE. Thank you.

Mr. SHAW. Thank you, Mr. Chairman.

Chairman CRANE. I have a generic question based upon this last exchange. Peaches are perishable, are they not, and apples? Do we export them?

Mr. SHAW. No, they freeze them. You can freeze them. You can can them. You can can tomatoes, but you cannot freeze them, I do not think.

Chairman CRANE. Do we export apples or peaches or pineapples or——

Ms. DUNN. If the gentleman will yield, we have a couple in Washington State, apples, pears, cherries. We are very concerned

about retaliation. These are perishable crops. It is a big problem for us.

Chairman CRANE. But you are into the export market with those products?

Ms. DUNN. Yes.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. I would just make a quick comment. I would like to ask Dr. Roberts, let us just assume H.R. 2795 passes. Are you not always going to have two problems, short term and long term? Are you not always going to have the weather and the currency value problem in the short term, and are you not always going to have, particularly in your State, the increasing appreciation of land and the difficulty of farmers to compete not only with Mexico and other places but also inside the United States? Are not those going to be constant pressures?

Ms. ROBERTS. Yes, Mr. Houghton, you are absolutely correct, but farmers are used to dealing with the pressures of weather. This last year, we had a freeze event. But again, we were able to move product. Regrettably, oftentimes when there is damage in one area, a farmer in another area can have product to sell.

What we are asking for is a change in a definition that would have it permissible for the ITC to look at those crops on a seasonal basis. The farmers deal with weather. That will always be with us. We can be competitive. We are competitive now with agriculture anywhere around the world. We can produce and sell crops competitive with anyone. What we cannot deal with are unfair practices that are not in conformity with the laws we have today. This change in definition would recognize a fact of life. In the commerce of today, we have seasonal commodities.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Another question just came to my mind, and I will direct it to you first, Clay, and that is, do we export tomato juice?

Ms. ROBERTS. Mr. Chairman, we do not produce tomato juice in Florida. The types of tomatoes that are grown for the process operations in California are an entirely different species and grown in different types of culture and there is a whole area of processed products of which the State of California is the greatest producer in that category.

Chairman CRANE. So only California can make tomato juice?

Ms. ROBERTS. No, sir, I did not say that. I said that the species grown for processed tomato products are entirely different species. They are grown under a different culture with mechanical harvest.

Chairman CRANE. But I mean they are not grown in Florida? You are saying that kind of tomato is not grown in Florida?

Ms. ROBERTS. That different kind of tomato is not currently grown in Florida in large quantities, sir.

Chairman CRANE. Thank you.

Ms. Dunn.

Ms. DUNN. I do not have a question, Mr. Chairman. I would just like to thank the panel for coming before us today and giving us a good objective view from two different sides of the aisle.

Chairman CRANE. Mr. Portman.

Mr. PORTMAN. No questions.

Chairman CRANE. I want to thank you both for your appearances here today and appreciate the input in helping us to resolve this situation. Any printed matter, as I indicated before, will be made a part of the permanent record.

With that, our next panel is comprised of witnesses who are in opposition to H.R. 2795, Keith Heard, the senior vice president of the National Corn Growers Association, on behalf of Ad Hoc Coalition of Commodity Groups on Trade Issues; Ambassador Philip Hughes, managing director for Washington operations of the Council of the Americas; Charles E. Roh, Jr., a partner at the law firm of Weil, Gotshal and Manges; Humberto Monteverde, president of the Fresh Produce Association of the Americas; and Albert C. Zapanta, executive vice president of the United States-Mexico Chamber of Commerce.

If you gentlemen will get comfortable, I will remind all of you again, try and summarize your statements in 5 minutes or less, but any printed matter beyond that will be made a part of the permanent record.

With that, we will start with Mr. Heard.

STATEMENT OF B. KEITH HEARD, SENIOR VICE PRESIDENT, NATIONAL CORN GROWERS ASSOCIATION, ON BEHALF OF AD HOC COALITION OF COMMODITY AND FOOD GROUPS ON TRADE ISSUES

Mr. HEARD. Good afternoon. My name is Keith Heard. I am senior vice president of the National Corn Growers Association, representing the country's hardworking corn farmers who depend for one-quarter of their livelihood from the export markets. I am also appearing on behalf of the Ad Hoc Coalition of Commodity and Food Groups on Trade Issues, a broad array of organizations representing a large share of the Nation's agricultural products.

Mr. Chairman, I will summarize my remarks and ask that the full text be submitted for the record. I also have a letter the Coalition sent to Chairman Archer I would appreciate being added to the record, as well.

Chairman CRANE. The full statement of each of the witnesses will be placed into the record.

Mr. HEARD. Thank you. Like my organization, all the members of this coalition are deeply committed to the U.S. trade policies that foster the continued expansion of American agricultural exports. We are opposed to any trade policy that may jeopardize these exports.

While H.R. 2795 is designed to protect tomatogrowers, it also threatens the rest of American agriculture, our Nation's largest industry. Our coalition has nothing against any particular group of farmers. As a matter of fact, many of us represent farmers. We encourage the administration to work with these Florida growers and the others here today to address their concerns within the guidelines of NAFTA and the WTO. However, we object to this seemingly obscure measure because it seriously imperils our larger agricultural export sector.

Agricultural exports are one of the dramatic success stories of our economy. Our exports are expected to reach a striking $60 billion this year, representing a one-third increase in just 2 years.

This surge is benefiting virtually all sectors of our farm and rural economy. NAFTA and WTO are working for agriculture. Let us not jeopardize this success.

Many benefit from agricultural trade—manufacturers and distributors of farm equipment, seed, fertilizer, and other supplies; shippers, ports, and the financial world, just to name a few. Not the least among the gainers is the American consumer because our ability to more fully utilize our farm resources tend to keep food prices at affordable levels.

Because of our successful export policies and projected growth, American agriculture has embarked in a new direction in the 1996 farm bill. Congress has unshackled the American farmer from years of production controls so that we can better supply our consumer needs.

At the same time, the government's safety net is being reduced every year. We strongly supported all of these actions with the understanding that our export markets would continue to grow.

We are disturbed, however, by the measure before the Committee today. Against a background of this striking growth in agricultural exports, we are faced today with a bill that could put many agricultural jobs and investments at risk.

This measure would change the definition of a domestic industry to include the concept of a seasonal industry for the purposes of obtaining safeguard relief. It grows out of a case at the International Trade Commission which had ruled against the Florida growers. We are now faced with this effort to create a seasonal industry in U.S. law, even though the United States has already agreed in the WTO and NAFTA to the definition of an industry. In other words, this is an effort to unilaterally rewrite America's international obligations—no discussions with other nations, no negotiations, no new agreement, just changing our word given in accords that were painstakingly negotiated over many years.

We also strongly oppose this effort because the United States has launched high-profile initiatives to ensure that all nations abide by their rules. U.S. farm groups have worked long and hard to open markets around the world and it would be ironic if the U.S. Congress would now adopt a bill that would, in fact, have the potential to start an agricultural war, disrupting all of our recent gains.

That violation of America's word and contradiction of our goals are just two of the serious problems that would arise from the enactment of this bill. There are others. Passage of this bill would surely encourage other countries to afford their seasonal industries special safeguards. Passage of the bill would encourage other groups within our own country to ask for special safeguards, as we have heard today. And passage of this bill would invite immediate trade retaliation from Mexico, because under the rules of international law, trade compensation is required.

But most significantly, this bill is not simply about Mexico but our entire trading system. I can assure you that retaliation and/or compensation claims would be initiated by other countries protecting their special crops with strong constituents.

Mr. Chairman, America is a very strong agricultural country and we will be negatively affected by this legislation. The message I want to leave here today is that all of agriculture, with $60 billion of exports, is concerned about this legislation. I appreciate the opportunity to present that side of the story, as well.

Thank you, Mr. Shaw.

[The prepared statement and attachment follow:]

Statement by B. Keith Heard
Senior Vice President, Public Policy
National Corn Growers Association
Before the
Subcommittee on Trade
House Committee on Ways and Means
Concerning H.R. 2795
April 25, 1996

Good afternoon. My name is Keith Heard. I am Senior Vice President of the National Corn Growers Association, representing the country's hard-working corn farmers, who rely on export markets for one-quarter of their livelihoods.

I am also appearing today on behalf of the Ad Hoc Coalition of Commodity and Food Groups on Trade Issues, a broad array of organizations representing a large share of the nation's agriculture products. The Coalition includes:

Northwest Horticultural Council
North American Export Grain Association, Inc.
National Association of Perishable Agricultural Receivers
American Meat Institute
Food Marketing Institute
National Pork Producers Council
National Turkey Federation
National Grain and Feed Association
USA Poultry and Egg Council
Fresh Produce Association of the Americas
National Corn Growers Association
United Egg Association
International Apple Institute
National Broiler Council

Like my organization, these groups are deeply committed to U.S. trade policies that foster the continued expansion of America's agricultural exports, thereby creating jobs and improving our balance of trade.

We are opposed to any trade policy that might jeopardize those exports.

H.R. 2795 is designed to protect fewer than 80 U.S. growers of winter tomatoes in one state. Unfortunately, it also threatens the rest of American agriculture, our nation's largest industry. We oppose H.R.2795 because it is anti-farmer, anti-rancher, anti-grower and anti-consumer.

Our coalition has nothing against any particular group of farmers. Most of us represent farmers. In fact, we encourage the Administration to work with these Florida growers to address their concerns within the guidelines of the NAFTA and the WTO. We object to this seemingly obscure measure because it seriously imperils our larger agricultural export sector. We simply cannot support a solution that violates carefully negotiated trade agreements with the misguided protectionist sentiments driving this bill.

Agricultural exports are one of the dramatic success stories of our economy. America's agricultural exports are expected to reach a striking $60 billion this year. That represents a one-third increase in just two years. This export surge is benefitting virtually all sectors of our farm and rural economy. NAFTA and the WTO are working for agriculture. Let's not jeopardize this success.

It is interesting to note that $60 billion of agricultural exports is twice the combined value of America's exports of aircraft and automobiles in 1995. In my own area, the dollar value of corn exports is expected to grow by over 20% this crop year. Wheat exports could well climb nearly 30%, meat and poultry 25%, dairy products 12%, oil seeds and products 10 % and horticultural products 10%.

Not just farmers, but many others benefit — manufacturers, distributors and retailers of farm equipment, seed, fertilizer and other supplies, shippers, ports, and the financial world to name a few. Not least among the gainers is the American consumer; because our ability to more fully utilize our farm resources tends to keep food prices at affordable levels.

Because of our successful export policies and projected growth, American agriculture has embarked in a new direction in the Federal Agriculture Improvement and Reform Act of 1996. Congress unshackled American farmers from years of production controls so that we will be better able to satisfy consumer demand abroad as well as at home. At the same time, the government safety net becomes smaller each year. We strongly supported these actions with the understanding that our export markets would continue to grow.

We are disturbed, however, by the measure before this committee today, H.R. 2795. Against the background of striking growth in agricultural exports, we are faced today with a bill that could put many agricultural jobs and investments at risk.

This measure would change the definition of a "domestic industry" to include the concept of a "seasonal industry" for the purpose of obtaining safeguard relief under Section 201. It grows out of a case at the U.S. International Trade Commission, which found, among other things, that the complaining Florida growers were not large enough to be an "industry" and therefore could not seek safeguard relief.

Out of the ITC decision has grown an effort to create a "seasonal industry" in U.S. law—even though this nation has already agreed, in the WTO and the NAFTA, to the definition of an "industry." In other words, this is an effort to unilaterally rewrite America's international obligations. No discussions with other nations. No negotiations. No new agreement. Just violating America's word, given in accords that were painstakingly negotiated over many years. Already 15 other countries have objected in Geneva and the 14-nation Cairns group has written to this Committee with their concerns.

We strongly oppose this effort, especially since the United States has launched high-profile initiatives to ensure that *other* countries abide by *their* trade agreements. It would be sheer hypocrisy to adopt this measure, and it certainly would not help the many American industries that have been fighting for years to ensure other countries live up to international agreements. U.S. farm groups have fought to open markets around the world. We have led the way in free and fair trade. It would be ironic if the U.S. Congress were now to adopt a bill that would, in fact, start an agricultural trade war, disrupting all of our recent gains.

Winter tomato imports are no serious threat to the American agricultural community. H.R. 2795 is the threat.

That violation of America's word and contradiction of our goals are just two of the serious problems that would arise from enactment of HR. 2795. There clearly are others:

- Passage of this bill would surely encourage other countries to afford their "seasonal industries" special safeguards. This is a danger for

many commodities — not just fruits and vegetables. Mr. Chairman, the definition of "seasonal industry" is not the same in all countries and regions. Because of climatic, technological, cultural or other differences, products not considered seasonal in the United States may be seasonal elsewhere. For example, my pork industry colleagues tell me that in Mexico, pork is considered a seasonal product.

- Passage of this bill would encourage other groups within our own country to ask for special safeguards. This no doubt could well result in trade disputes, and in the end, reduced trade and higher prices to U.S. consumers.

- Passage of this bill would invite immediate trade retaliation from Mexico. Under the rules of international trade, it would require the United States to provide trade compensation should we take safeguard actions. But more significantly, it sets the stage for other countries to call for special safeguards based on the very arguments in this bill.

H.R. 2795 is not simply about Mexico but our entire trading system. I can assure you that retaliation and/or compensation claims would not be directed at just our "seasonal" exports. Rather, other countries would likely target our export products that most trouble their own constituent farmers, ranchers, or growers.

Mr. Chairman, America's leading agricultural export states are California, Illinois, Texas, Nebraska, Iowa, Kansas, Indiana, Washington, Minnesota and Arkansas. Eight of those states are represented on the Ways and Means Committee.

This, Mr. Chairman, is perhaps the most important reason I am here today — to remind Committee members that H.R 2795 is a threat to the livelihood of their constituents and to our nation's farmers in general.

I therefore urge this committee to reject a bill that is specifically designed to assist a very few, but that could be detrimental to many.

AD HOC COALITION
OF COMMODITY AND OTHER GROUPS ON TRADE ISSUES
c/o Suite 304, 1000 Connecticut Avenue NW, Washington, DC 20036 (202) 296-4484

April 22, 1996

The Honorable Bill Archer
Chairman, Committee on Ways and Means
US House of Representatives
Washington, DC 20515

Dear Chairman Archer,

We are concerned about a bill pending before your committee that jeopardizes US exports of many agricultural goods as well as other American products and services.

The measure, HR 2795, was created to protect a handful of Florida growers against competition from Mexican winter tomatoes. It would do this by violating global trade agreements, inviting other nations to retaliate against American products, and undermining the critical US drive to hold other countries to their trade commitments. The result clearly would be to imperil many more American jobs than the handful that might be protected by this measure.

Specifically, the bill would change the definition of a "domestic industry" to include the concept of a "seasonal industry" for the purpose of obtaining safeguard relief under Section 201. In other words, Florida growers of winter tomatoes would suddenly be eligible for protection, even though they represent a fraction of the US tomato industry.

The United States has already agreed to how an "industry" is defined for safeguard purposes, both in the World Trade Organization (WTO) accord and the North American Free Trade Agreement (NAFTA). The violation of these agreements, therefore, will have serious consequences. For example:

1. The legislation would make affirmative Section 201 decisions more likely, thereby requiring the US to compensate affected exporting nations by making "concessions having substantially equivalent trade effects." This instantly makes HR 2795 a no-win measure for American exporters.

2. The bill would encourage other countries to employ the "seasonality" principle to restrict US exports. Major American exporters--of goods ranging from apples

and peaches to corn and wheat, and perhaps even toys and seasonal clothing--would find themselves being denied the opportunity to compete fairly in their current export markets.

3. The bill virtually invites immediate retaliation against US agricultural exports, including meat and poultry products to Mexico, because they are always visible, easy to target, and inevitably opposed by a vocal constituency.

4. The legislation would diminish the ability of the US to hold other countries to their trade commitments. The United States, recognizing the fundamental importance of ensuring that trade promises are kept, recently has launched a high-profile initiative to "enforce" existing trade agreements. For the United States to now breach its own obligations under those same agreements would only make a mockery of this "enforcement" initiative designed to assist exports of many US goods and services.

5. The bill could disrupt imports of numerous "seasonal" products from other US trading partners in Europe, Canada, Israel, Chile and elsewhere to the detriment of consumers throughout the United States. Imports could face new barriers whenever a group of "seasonal" US producers (no matter how small or limited in scope) is found to be injured by import competition.

For all these reasons, we strongly oppose this legislation. It is not about fair trade or "leveling the playing field," let alone about free trade. Rather, it is a misguided attempt to unilaterally change the rules of international trade, and it promises to do serious damage to US interests.

Sincerely,

Ad Hoc Coalition of Commodity and Other Groups on Trade Issues

Northwest Horticultural Council, PO Box 570, Yakima, WA 98907
North American Export Grain Association, Inc., 1300 L St. NW, Washington, DC 20005
National Association of Perishable Agricultural Receivers, 5906 Wilmary Lane, Baltimore, MD 21210
American Meat Institute, 1700 North Moore Street, Arlington, VA 22209
Food Marketing Institute, 800 Connecticut Avenue NW, Washington, DC 20006
National Pork Producers Council, 122 C Street NW, Washington, DC 20001
National Turkey Federation, 1225 NewYork Avenue NW, Washington, DC 20005
National Grain and Feed Association, 1400 K Street NW, Washington, DC 20005
USA Poultry and Egg Council, 2300 West Park Place Blvd., Stone Mountain, GA 30087
Fresh Produce Association of the Americas, P. O. Box 848, Nogales, AZ 85628
National Corn Growers Association, 201 Mass. Ave. NW, Washington, DC 20002
United Egg Association, 1303 Hightower Trail, Atlanta, GA 30350
International Apple Institute, 6707 Old Dominion Drive, McLean, VA 22101
National Broiler Council, 1155 Fifteenth Street NW, Washington, DC 20005

Mr. SHAW [presiding]. Thank you, Mr. Heard.

Ambassador Hughes.

STATEMENT OF HON. G. PHILIP HUGHES, MANAGING DIRECTOR, COUNCIL OF THE AMERICAS; EXECUTIVE DIRECTOR, U.S. COUNCIL OF THE MEXICO-U.S. BUSINESS COMMITTEE; AND FORMER AMBASSADOR TO BARBADOS

Mr. HUGHES. Thank you, Mr. Chairman, distinguished Members of the Committee. My name is Philip Hughes and I am the managing director for Washington operations of the Council of the Americas, a multisectoral business association comprised of 250 U.S. corporations with interests in Latin America. I am also the executive director of the U.S. Council of the Mexico-U.S. Business Committee, the U.S. side of the oldest private sector organization between Mexico and the United States. While both of these organizations are primarily focused on Latin America, let me emphasize they are U.S. organizations comprised of U.S. companies.

I am honored to appear before the Committee today on behalf of the members of the Council of the Americas and the U.S. Council to express our strong opposition to H.R. 2795. I have detailed testimony which we will submit for the record and I would like to summarize that testimony by emphasizing really five main points, Mr. Chairman, if I may.

Mr. SHAW. Yes, without objection.

Mr. HUGHES. First, the legislation in question, we believe, sets a very dangerous precedent by purporting to set up seasonal agricultural production as a legislated industry category, or more precisely, to permit the ITC to find that there is such a seasonal agricultural industry. Even if that could be sustained in the WTO, which Mr. Roh will explain it probably cannot, such an action would open up the possibility of other countries using a similar tactic to restrict lower priced U.S. exports of agricultural products. Being a temperate zone country, many of our agricultural exports are produced seasonally. Examples of many fruits and vegetables come to mind, some of which Mr. Crane and Ms. Dunn have already mentioned.

If we can define two domestic industries the way the ITC described it, one that is distinctive only because it competes with imported Mexican tomatoes at certain times of the year and another that produces during the rest of the year—that is how the ITC documents characterized this issue—think of how many U.S. agricultural exports could be discriminated against if other countries followed our example and did the same thing.

The second point I would like to make, as the largest agricultural exporter in the world, we have the most to lose. In the first 2 months of this year, I am informed, we exported about $861 million in agricultural products to Mexico.

Texas is the top agricultural exporter to Mexico, followed by Louisiana, Kansas, Nebraska, Missouri, Tennessee, Washington, Iowa, Illinois, Arizona, California, Arkansas, Minnesota, Wisconsin, Oklahoma, Colorado, Florida, New York, Michigan, and North Dakota. Those are the top 20. If farmers in those States saw their agricultural exports to Mexico curtailed in the event that the Mexicans would follow the example we would be setting with this legislation

and enact something like that of their own, how would those farmers react?

The third point I would make is that this legislation is inconsistent with our announced emphasis on insisting that our trading partners live up to their trade agreements with us. In January, Secretary Kantor, then U.S. Trade Representative, announced a major initiative creating a special unit at the U.S. Trade Representative's Office to monitor and ensure compliance by our trading partners with our trade agreements. How can we be credible in this effort if we enact legislation like H.R. 2795, which purports to create a new category of agricultural industry, or at least permit the ITC to recognize such a thing, specifically to sidestep our undertakings in NAFTA and the WTO?

The fourth point that I would make is that we need to consider the costs to the consumers that will result from this legislation. That, after all, is what trade agreements and legislation are all about, improving consumer welfare. This legislation will almost surely raise store prices of tomatoes for families and housewives in the interest of protecting one tiny segment of the overall U.S. tomato growing industry, a segment which, according to press reports and the ITC documents, is dominated by 4 families, and involves fewer than 100 growers and a limited number of shippers. We need to ask whether this is a necessary and appropriate step at this moment in 1996, even in defense of the interests that are at stake.

Finally, we need to consider the costs and consequences of retaliation that will surely follow the enactment of this measure. This is a judgment matter, but as Mr. Roh will explain, under the WTO, countries that are on the receiving end of safeguards action as a result of legitimate and fair trade are entitled either to compensation or to the right of retaliation to a level commensurate with their loss of market access.

Since the U.S. administration currently has no authority to offer compensation in the form of tariff reductions to Mexico, retaliation is the only course left open, and retaliatory action could legitimately be taken against any export or any industry from any other part of the United States. This raises the question, why should exporters in Texas or California or Ohio or Michigan, producers of unrelated products who are, so to speak, innocent bystanders as far as the tomato issue is concerned, pay the price of retaliation that will almost surely follow from this special protection for a small segment of the overall U.S. tomato growing industry?

All of these considerations, as well as the more detailed points that are made in my prepared statement, lead to only one overwhelming conclusion, in my view. Passage of H.R. 2795 or similar legislation would be a very bad mistake in terms of overall U.S. trade and economic interests.

[The prepared statement follows:]

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AND

U.S. COUNCIL OF THE MEXICO-U.S. BUSINESS COMMITTEE

STATEMENT OF AMB. G. PHILIP HUGHES
HEARING ON
THE SAFEGUARD INVESTIGATIONS OF PERISHABLE AGRICULTURAL PRODUCTS

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 25, 1996

Mr. Chairman and distinguished members of the Committee, my name is Philip Hughes and I am the Managing Director for Washington Operations for the Council of the Americas, a multi-sectoral business association of 250 U.S. corporations with interests in Latin America. I am also the Executive Director of the U.S. Council of the Mexico-U.S. Business Committee, the U.S. side of the oldest private sector organization between Mexico and the United States. While both of these organizations primarily focus on Latin America, let me emphasize that they are U.S. organizations, comprised of U.S. companies.

I am honored to be appearing before you today on behalf of the members of the Council of the Americas and the U.S. Council to express our strong opposition to H.R. 2795 — one of the most protectionist pieces of legislation introduced into the Congress in recent history. As indicated by earlier correspondence from the Chairman of the U.S. Council of the Mexico-U.S. Business Committee, former Secretary of Commerce Robert Mosbacher, we have been concerned for some time about the progress of this legislation.

History of the Issue

Last year, tomato growers in Florida petitioned for safeguard protection from Mexican tomato imports, claiming that their production in the months of January through April was a "seasonal" domestic industry, separate from the rest of the U.S. tomato industry, and so should be treated as a separate "winter tomato industry." The petition was rejected by the International Trade Commission (ITC) for a number of reasons, including the fact that current law requires that the domestic producers petitioning for relief must constitute a major proportion of domestic production, and does not have special provisions for identifying separate "seasonal industries."

In their ruling, the Commission noted that they must guard against "industry definitions that are drawn artificially narrow simply to make relief more likely." They concluded that the "concept of 'directly competitive' in the statute serves to expand the class of producers of products who may seek and obtain relief, rather that to create a subclass of preferred producers who may seek and obtain relief."[1] H.R. 2795 is intended to reverse the

[1] Fresh Winter Tomatoes, Inv. No. TA-201-64, USITC Pub. No. 2881 at I-11, note 26 (April 1995).

ITC's determination in this case[2] by amending the Trade Act of 1974 so that separate "seasonal industries" would be recognized in the definition of "domestic industry," thus allowing for safeguard protection in cases where only a segment of the domestic industry is at risk.

That is where the issue should have ended, but it gained political momentum even though the industry, according to *The Wall Street Journal*, is dominated by only four families "whose operations are highly diversified and, by all accounts, profitable more years than not."[3] *The Wall Street Journal* article from which I quote, written by Helene Cooper and Bruce Ingersoll, gives an exceptionally astute analysis of this issue. I would encourage all interested parties to read it.

Basis for Opposition to H.R. 2795

In international trade law, safeguard/emergency action provisions are exceptions to the rule. They permit signatory countries to increase tariffs above agreed levels, impose quotas or take other measures ordinarily prohibited by the agreements in response to harm caused by imports. If strict criteria are met, they allow a country to raise barriers to trade, when unexpectedly large increases in the import of those goods cause serious injury to a **domestic industry**. The criteria are strict for good reason, to prevent abuse of the law. For these discussions, the operative words here are "domestic industry." These provisions are intended to be used when an entire industry is at risk, not just a small segment of that industry separated from the rest by geography and production season.

The members of the Council of the Americas and the U.S. Council of the Mexico-U.S. Business Committee believe that trade-liberalizing policies have brought and will continue to bring prosperity to the Americas, and are committed to the letter as well as the spirit of the NAFTA and the WTO. In addition to being a clear violation of NAFTA and the WTO, as my colleague Chip Roh has clearly shown in his analysis prepared for the U.S. Council of the Mexico-U.S. Business Committee, we believe that passage of H.R. 2795 would impede free trade and lead to retaliation by our trading partners seeking to protect their producers from competitive U.S. products.[4] Since this retaliation would not be limited to winter tomatoes, or even to agricultural products in general, it has potentially harmful ramifications for many sectors of the U.S. economy.

H.R. 2795 also sets a very protectionist precedent for U.S. trade policy and would severely weaken the United States' credibility on trade-related issues, particularly given the U.S. government's recently announced actions to ensure our trading partners' compliance with trade agreements. Even faced with extremely difficult economic conditions and intense internal pressure, Mexico has been true to the NAFTA and has not resorted to protectionist maneuvers such as these. For the United States to break its own word when it comes to international trade agreements only impugns our country's good name in world trade fora.

The most basic reasons we oppose H.R. 2795 are economics and history, both of which teach us that protectionism is a short-sighted policy which encourages inefficiency and increases prices in order to shelter certain segments of the economy from competition. The

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[2] See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw); 142 Cong. Rec. S441 (daily ed. Jan. 26, 1996) (statement of Sen. Graham) ("This legislation is intended to facilitate a different result by the ITC in cases with facts similar to those presented in the case filed by the winter tomato growers.").

[3] "Playing Catch-Up", Helene Cooper and Bruce Ingersoll, *The Wall Street Journal*, April 3. 1996.

[4] "Comments on Miscellaneous Trade Proposals (Advisory No. TR-17)", Charles E. Roh, Jr. and David W. Oliver, for the U.S. Council of the Mexico-U.S. Business Committee, March 1, 1996.

fate of mercantilism and the theories of Adam Smith and David Ricardo, among others, prove that international trade creates economic benefits for both buying and selling countries. Free trade is probably the single-most important policy we can follow to raise the standard of living of ordinary people across this country.

International trade expands the number of markets in which a country can sell its goods, which results in greater production and greater use of inputs (including labor), thus increasing domestic employment. International trade does increase competition, but competition is something that should be encouraged. Competition reduces the prices consumers pay, and makes domestic companies more efficient, thus allowing them to compete in what we all recognize is a global economy.

As the leaders of the 34 Western Hemisphere nations gathered in Miami on the occasion of the Summit of the Americas said,

> A key to prosperity is trade without barriers, without subsidies, without unfair practices, and with an increasing stream of productive investments. Eliminating impediments to market access for goods and services among our countries will foster our economic growth. A growing world economy will also enhance our domestic prosperity. Free trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment.[5]

Impact on U.S. Businesses

I would like to focus the balance of my comments on the specific ways that this legislation will affect U.S. companies. While the imposition of certain emergency actions is permitted by the Safeguards Agreement and the NAFTA, they are not without costs for the initiating country. If passed, H.R. 2795 would negatively impact U.S. businesses in at least three specific, and very significant ways:

1. Increased Cost to Consumers

Basic supply and demand economics shows that the initial cost of legislation such as this will be born by the consumers of the goods in question. If, in a free market economy, domestic industry cannot produce goods that are competitive in both price and quality with like goods from foreign suppliers, consumers will demand that those goods be imported. If the price of those imports is artificially inflated by tariffs or restriction of supply, the consumers of those goods will be forced to pay more than they should.

H.R. 2795 was introduced to protect Florida's tomato producers from imports of Mexican winter tomatoes, but what is at risk here is not just a higher price for the slice of tomato that goes on your hamburger in December. Other imports would almost certainly be affected. Astute businessmen in all sorts of industries would not miss the opportunity to gain protection from competitive imports. Imports from Canada, Europe, Chile and Israel could be the next targets of such actions whenever a group of "seasonal" producers (regardless of the percentage of the domestic industry they actually represent) is hurt by competitive imports.

2. Compensation/Retaliation

Under the Safeguards Agreement and the NAFTA, safeguard actions by the United States initiated under H.R. 2795's new definition of domestic industry would invite retaliatory trade action by those countries affected by our actions. While allowing for safeguard action, these agreements also require compensation to be provided for the affected

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[5] "Summit of the Americas Declaration of Principles", December, 1994

country. Thus, should the United States take an emergency action against one of its trading partners, we would have to compensate that country for doing so. As stated in Article 801(4) of the NAFTA,

> The Party taking an action under this Article shall provide to the Party against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take tariff action having trade effects substantially equivalent to the action taken under this Article.

Thus, if we could not reach agreement on how to pay our trading partners to compensate for our actions, they would be completely within their commitments to the NAFTA and the WTO to take immediate retaliatory action in the form of increased tariffs on U.S. goods.

Perhaps the most important aspect of the issue of retaliation is the fact that the target of this reprisal does not have to be the producers and employees in an industry producing the same or similar products. This means that as a result of the change in law proposed by H.R. 2795, all U.S. export would face the possibility of being slapped with retaliatory tariff increases. So the burden of these measures could easily fall on products or sectors totally unrelated to the initial action. The effects of such a trade-distorting protectionist cycle would likely be felt throughout the economy, and for many years to come.

3. International Response

Any safeguard measures taken under this proposal would likely be challenged successfully under the WTO and/or NAFTA auspices, resulting in a finding that the United States had violated its international obligations. Already, 15 countries have notified the WTO that they consider this proposed change in law a violation of international law. Even if that were not the case, U.S. exports would most certainly face very significant repercussions.

H.R. 2795 would open a pandora's box of other protectionist actions by our trading partners. Facing the inevitable internal pressures for protection and given the fact that the largest economy and most fervent advocate of free trade and free market capitalism had turned its back on international obligations, it seems clear that our trading partners would adopt legislation to redefine the "domestic industry" language in their relevant trade law in a way that would make it easier to impose restrictions on competitive U.S. products. A wide array of U.S. exports, from apples, peaches, corn and wheat to snow tires, Christmas toys and seasonal clothing, could find the playing field in their current export markets tilted suddenly and sharply in favor of their local competitors. As Chip Roh said,

> The United States, as the world's leading exporter of agricultural products, would have a great deal at stake were the requirements for applying safeguard actions watered down in the manner contemplated by H.R. 2795. In Mexico, Canada, Europe, or Japan, new restrictions on products such as corn, apples, beef or poultry could be contrived. Moreover, while this development would certainly impact U.S. agricultural exports, the "who's competing with whom" approach contemplated by the bill could be used in the context of any number of industries of vital interest to U.S. exporters.[6]

In summary, I would like to reiterate what Mr. Mosbacher said in his letter to you earlier this year:

> By amending the Trade Act of 1974, H.R. 2795 would make it easier to obtain "safeguard" protection from imports, even in those cases where only a small

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[6] "Comments", page 4.

segment of the domestic industry was at risk. Although introduced in order to assist a tiny segment of the Florida agricultural sector, this legislation risks triggering a protectionist trade cycle which could have a severe negative effect on the entire U.S. economy. In addition to forcing U.S. consumers to pay higher prices, it would likely lead to retaliation against U.S. exports by our trading partners seeking to protect their "seasonal" producers from competitive U.S. goods. Because the United States is the world's largest exporter, we stand to lose the most from such tariff increases.

Finally, I would like to make one overarching point. This may seem like a trivial issue to some — a technical bill designed to remedy a narrow problem — but make no mistake, this is a big issue. It is not substantively narrow and, without a doubt, its passage would send an important signal that in this election year, the U.S. Congress is open to protectionist legislation. We at the Council of the Americas and the U.S. Council of the Mexico-U.S. Business Committee urge you not to start down this destructive path.

Thank you for this opportunity to address your committee on this important issue. I would be happy to answer any questions you might have for me.

Mr. SHAW. Thank you.
Mr. Roh.

STATEMENT OF CHARLES E. ROH, JR., PARTNER, WEIL, GOTSHAL AND MANGES, WASHINGTON, DC; ON BEHALF OF THE U.S. COUNCIL OF THE MEXICO-U.S. BUSINESS COMMITTEE

Mr. ROH. Thank you, Mr. Chairman. My name is Charles Roh and I am a partner in the Washington office of Weil, Gotshal and Manges, but I am also here on behalf of the U.S. Council of the Mexico-U.S. Business Committee.

In a previous life, I must say, I spent 14 years working for the U.S. Trade Representative's Office and it was my privilege there to work for opening up export opportunities for many U.S. agricultural interests, including some Florida products, so I am sorry to be here in opposition to something sought by the Florida delegation.

My colleague, Ambassador Hughes, has summarized the U.S. Council's policy objections to H.R. 2795. I will summarize our concerns in terms of our rights and obligations under international trade agreements.

For reasons discussed at greater length in the statement I submitted for the record, it is our view that H.R. 2795 is not consistent with the rules of the WTO Agreement or of the NAFTA. As you know, Mr. Chairman, both the WTO and NAFTA allow temporary import restrictions, such as quotas or high tariffs, if increased imports of a product cause or threaten to cause serious injury to domestic producers of the like or directly competitive product. Those import restrictions, which are commonly called safeguard or escape clause actions, can be imposed even on fairly traded products, which is why international rules allow such restrictions only in very narrow circumstances.

The WTO's safeguard agreement elaborated the previous GATT rules for when safeguard actions could be taken. One of these elaborations was a definition of the domestic industry, which is defined to mean "the producers, as a whole, of a like or directly competitive products, operating within the territory of the member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products."

H.R. 2795 would breach this WTO standard and reverse a determination made only last year by the ITC under existing U.S. law. H.R. 2795 would allow the ITC in the case of perishable agricultural products to adopt a seasonal definition of the U.S. industry, counting only those U.S. producers who sell all or almost all of their product in a particular growing season and disregarding all other U.S. producers of the like or directly competitive products. No provision of the WTO or NAFTA allows such a redefinition of the safeguard standards.

Proponents of H.R. 2795 have urged their redefinition of the industry standard so as to make it easier for certain producers to obtain import restrictions. They have argued for a broad and flexible interpretation of safeguard rules for this purpose. In the process,

they have also turned on its head the use of the term "directly competitive."

Mr. Chairman, it is perhaps worth a word on that. In the safeguard agreement, when we talk about producers of the like or directly competitive product, the use of the term "directly competitive product" is not intended to narrow the group of producers of the like product but rather to allow a more expansive view beyond producers of just the like product. Those who have been arguing for this bill have taken the view instead that what we should include is only those producers of a like product who are competitive in a particular season. Whatever the policy arguments for that, that is not an interpretation that is sustainable, in my view, under the WTO Agreement.

Mr. Chairman, I think it is most unlikely that the WTO will give the safeguard agreement the kind of reading that would be needed to justify H.R. 2795. The safeguard provisions are likely, if anything, to be read narrowly, since they are an exception to the WTO's normal trade liberalizing rules. That is especially so because under WTO rules, a country that takes a safeguard action that complies with the safeguard agreement is exempt for 3 years from the normal obligation to give trade compensation or suffer trade retaliation.

So what are the consequences of adopting H.R. 2795? Under the WTO and the NAFTA, safeguard actions carry a price. As just noted, safeguard actions that are found not to conform with WTO rules will give rise to a right on the part of the countries harmed by the safeguard action to trade compensation or trade retaliation.

The NAFTA has a different rule. Under the NAFTA, that right of compensation or retaliation exists whether or not the safeguard action was taken consistently with international rules and it is an immediate right of retaliation. So if we take a safeguard action, whether or not it is a legitimate safeguard action, against Mexico or Canada, they will have an immediate right to retaliation. There is no need for the retaliation to be on the same product. They can simply choose products of their choosing of similar value to restrict.

That means, Mr. Chairman, that some U.S. exporters who have done nothing wrong will find that they face new restrictions against their exports because the United States has restricted imports under this law.

I should add that the consequences for U.S. trade interests are not necessarily any better if this law passes, and as I think is most unlikely, the law is upheld in the WTO. As already noted, Canada and Mexico would still have the right to retaliate because there is no grace period from the retaliation right in NAFTA. There would be a grace period with respect to other countries for 3 years under WTO rules, and that might seem like a good result.

However, Mr. Chairman, as the world's largest agricultural exporter, we would have set a precedent that other countries would be sure to use against our exports, perhaps not in exactly the same products, perhaps not in exactly the same way, but the fertile imagination of international lawyers could certainly find many ways to act against our exports.

Thank you, Mr. Chairman.

[The prepared statement follows:]

U.S. COUNCIL OF THE
MEXICO-U.S. BUSINESS COMMITTEE
A COMMITTEE OF THE COUNCIL OF THE AMERICAS
WITH THE SPONSORSHIP OF THE CHAMBER OF COMMERCE OF THE UNITED STATES • AMERICAN CHAMBER OF COMMERCE OF MEXICO, A.C.

Statement of Charles E. Roh, Jr.
Before the Subcommittee on Trade of the
Committee on Ways & Means
Regarding H.R. 2795

Executive Summary

H.R. 2795, if enacted, would be inconsistent with U.S. obligations under the World Trade Organization Agreement and the North American Free Trade Agreement. Under the terms of those agreements, the United States is allowed to impose "safeguard" restrictions on imports of products that cause or threaten serious injury to the U.S. industry producing the like or directly competitive product. H.R. 2795 would narrow the definition of the U.S. industry more than is allowed in an effort to make it easier for the United States to impose such import restrictions. Any safeguard action that was imposed pursuant to H.R. 2795 would likely result in retaliation against innocent U.S. exporters, especially exporters of farm products.

Mr. Chairman:

Thank you Mr. Chairman. My name is Charles Roh and, together with Mr. Hughes I am testifying concerning H.R. 2795 on behalf of the U.S. Council of the Mexico-U.S. Business Committee.

I am a partner in the Washington office of Weil, Gotshal & Manges. Previously, I spent 14 years working for the Office of the United States Trade Representative, including three years as Legal Counsel to the USTR Mission to the GATT and three years as Deputy Chief Negotiator for the United States of the NAFTA.

Mr. Hughes is focussing on the policy issues involved in H.R. 2795, while my statement will focus on the question of the compatibility of the bill with U.S. obligations under the North American Free Trade Agreement (NAFTA) and the World Trade Organization Agreement (WTO). This testimony largely incorporates a paper that my colleague David Oliver and I prepared on the same question for the U.S. Council of the Mexico-U.S. Business Committee, which was submitted to the Subcommittee on February 29, 1996.

Our main conclusions regarding H.R. 2795 are that:

- the proposed amendment is incompatible with the obligations of the NAFTA and the WTO; and
- U.S. exports of other agricultural or industrial products would pay the price for this bill, because U.S. action under the proposed amendment would almost certainly result in retaliation against U.S. exports or, perhaps worse, adoption of similar policies by our trading partners that would harm U.S. exports.

I. Background

H.R. 2795 would significantly amend the safeguard provision of Section 201 of the Trade Act of 1974 by changing the definition of "domestic industry" and adding a definition of the term "like or directly competitive article." The effect of these proposed changes would be to allow the International Trade Commission ("ITC") to exclude certain U.S. producers of the relevant like product from the domestic industry in order to make it easier for "seasonal industries" to obtain relief from import competition under Section 201 of the Trade Act of 1974.

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As we understand it, the proposal is intended to reverse the April 1995 determination of the ITC in the Fresh Winter Tomatoes case.[1] In that case, Florida tomato growers argued that producers of tomatoes in the months of January through April should be treated as a "seasonal" domestic industry that was separate from the U.S. domestic tomato industry as a whole. Petitioners based their case on the claim that theirs was a separate domestic industry on the ground that producers in the January to April period "are the only producers producing a product which is 'directly competitive' with the imports." Fresh Winter Tomatoes, Inv. No. TA-201-64, USITC Pub. No. 2881 at I-11 (April 1995).

The ITC held that the petitioners' argument was inconsistent with the statute and not supported by the facts. Id. at I-10-11 and I-13. In reaching its conclusion, the Commission pointed out that "[p]etitioners' proposed domestic industry definition leads to the arguably illogical result of two separate industries producing tomatoes with identical characteristics and uses, some produced in the identical facilities, where the only distinction between them is that one produces products which are 'directly competitive' with imports entering at certain times of the year." Id. at I-11 (citation omitted).

II. H.R. 2795 Violates the WTO Agreement and NAFTA

H.R. 2795, if enacted, would violate the safeguard provisions of the WTO (which incorporates the GATT) and the NAFTA (which explicitly incorporates the rules of the WTO for this purpose). As discussed below, the safeguard rules allow import restrictions under specific circumstances involving serious injury to a domestic industry. H.R. 2795 would violate those rules by redefining the "domestic industry" in a way that is inconsistent with the WTO rules. The WTO rules are set out in Article XIX of the GATT and in the Agreement on Safeguards. Article XIX, also known as the "escape clause," authorizes WTO member countries to restrict imports of products where increased imports of those products "cause or threaten serious injury to domestic producers ... of like or directly competitive products." The WTO Agreement on Safeguards elaborates and expands rules for the application of Article XIX measures.

GATT Article XIX is an exception to fundamental obligations of the GATT. Article XIX permits member governments to increase tariffs above tariff bindings, impose quotas that would otherwise be prohibited by GATT Article XI, or take other measures ordinarily prohibited by the GATT in response to harm caused by imports -- even where the imports are fairly-traded. In fact, Article XIX is the only exception allowing restrictions of this kind against fairly-traded products. As an exception to the GATT's basic obligations, the safeguard provisions of Article XIX and the Safeguards Agreement would, as a matter of well established GATT interpretation, be construed narrowly against the country invoking the exception.

Section 201 of the Trade Act of 1974 implements in U.S. law the safeguard rules of the WTO and the NAFTA.[2] Section 201 authorizes the President to take appropriate action to assist a domestic industry in cases where the ITC finds that imports are a "substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." 19 U.S.C. § 2251(a). H.R. 2795 would amend Section 201 to permit the ITC to exclude certain producers of the relevant like products from the domestic industry to make it easier for "seasonal" industries to claim relief. It would even permit the exclusion of the very same "seasonal" producers requesting relief to the extent that they produced the same products at other times of the year. In our view, the proposed amendment would not withstand scrutiny by a WTO panel. Nothing in Article XIX or the WTO Safeguards Agreement suggests that a party may deliberately

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1. See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw); 142 Cong. Rec. S441 (daily ed. Jan. 26, 1996) (statement of Sen. Graham) ("This legislation is intended to facilitate a different result by the ITC in cases with facts similar to those presented in the case filed by the winter tomato growers.").

2. See S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 121 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7265.

exclude domestic producers of the like product in defining the domestic industry. Indeed, Article 4 of the Safeguards Agreement states the opposite. It defines "domestic industry" as the "producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products." (Emphasis added.)

In the Tomatoes case, the U.S. industry tried to argue around the requirements of Section 201 by urging that the term "directly competitive products" in Section 201 should allow the United States to exclude certain domestic producers of the admittedly like product (fresh tomatoes) and limit the domestic industry to those producers that face competition from imports at particular times of the year.

The ITC properly rejected this argument in Tomatoes on the grounds that it was inconsistent with the statute and unsupported by the facts.[3] Noting that the Commission must guard against "industry definitions that are drawn artificially narrow simply to make relief more likely," the Commission correctly concluded that the "concept of 'directly competitive' in the statute serves to expand the class of producers of products who may seek and obtain relief, rather that to create a subclass of preferred producers who may seek and obtain relief."[4]

The Commission's ruling in the Tomatoes case was consistent not only with U.S. law, but also with longstanding GATT precedent. "Directly competitive" is a term of art in GATT. GATT panels interpreting Article III.2, which also distinguishes between "like" products and "directly competitive" products, have repeatedly held that "directly competitive" refers to a broader grouping of products than those that would qualify as "like" products. That is, "directly competitive" products would encompass those products that are not sufficiently similar in characteristics to be "like" products, but which have similar end uses and are considered commercial substitutes. See, e.g., Japan -- Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages, BISD, 34S/83, 116-17 (1987)(whiskey, brandy, and vodka found to be separate like products within a single category of directly competitive distilled liquor products on the basis of their use and characteristics); United States -- Measures Affecting Alcoholic and Malt Beverages, BISD, 39S/206, 276-77 (1992)(various types of wine that arguably constituted separate like products "would nevertheless have to be regarded as 'directly competitive' products"); EEC -- Measures on Animal Feed Proteins, BISD, 25S/49, 63-64 (1978) (vegetable and animal proteins for feedstuff could not be considered "like" products but did constitute "directly competitive" products in light of their final use and technical substitutability).

Thus, the term "directly competitive" in the WTO agreements refers to the nature of the product and its uses and commercial substitutability for the like product in question. The inclusion of "directly competitive" products within the WTO agreements only serves to broaden the potential category of producers that can seek safeguard relief, i.e., to those categories of producers that, while not producing "like" products, are nevertheless producing a product that is substitutable for the imported product.

H.R. 2795, however, would turn the "directly competitive" concept on its head and use it to define a narrower domestic industry. H.R. 2795 would legislate a reversal of the Tomatoes determination by authorizing the ITC to exclude certain like product producers (including the same "seasonal" producers claiming injury with respect to their production at

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3. Tomatoes at I-10-11 and I-13.

4. Tomatoes at I-11, note 26. The ITC's conclusion regarding the meaning of "directly competitive" products is supported by the legislative history of Section 201, which defines "directly competitive" products as those that "although not substantially identical in their inherent or intrinsic characteristics [i.e., are not "like products"], are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor." See S. Rep. No. 1298, 93rd Cong., 2d Sess. 121 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7265.

other times of the year) from consideration in order to define the domestic industry on the basis of the degree of competition from imports at certain times of the year.[5]

Thus, the bill's application of the concept of "directly competitive" products is at odds with the accepted meaning and use of that concept in the WTO agreements. If enacted and challenged in the WTO, the proposed amendment would almost certainly be found by a WTO dispute settlement panel to be inconsistent with the obligations of the United States under the WTO agreements. Similarly, because Chapter 8 of NAFTA incorporates the obligations of the WTO in this respect, if it were challenged under NAFTA, the proposal also would be found to violate NAFTA.

III. Consequences of H.R. 2795 for U.S. Industry

The issue raised by the bill involves much more than the interpretation of arcane concepts of the WTO agreements. Enactment of the bill would have several harmful consequences.

First, any safeguard action by the United States under this proposal would almost certainly generate retaliatory trade action by the affected countries. The Safeguards Agreement and NAFTA permit member countries whose products are subject to safeguard actions to suspend "substantially equivalent concessions" to the trade of the country applying the safeguard measure (unless the parties otherwise agree on an amount of trade compensation). Safeguards Agreement, Art. 8(2); NAFTA, Art. 801(4). Because the proposed amendment would not be consistent with the Safeguards Agreement, the three-year moratorium on retaliatory action (set forth in Article 8(3) of the Safeguards Agreement) would not apply. Article 801(4) of NAFTA does not limit the right to retaliate in response to safeguard measures (even if validly imposed) by such a moratorium and, therefore, safeguard actions pursuant to the proposed amendment likewise would be subject to immediate retaliation by Mexico or Canada without even the need for a dispute settlement process.

Second, we would fully expect that safeguard measures taken under this proposal would be challenged in the WTO and/or NAFTA, and, for the reasons discussed above, we think that any such challenge would be successful, resulting in a finding that the United States had infringed its international obligations.

Third, in the very unlikely event that a WTO or NAFTA panel were to find the proposed amendment consistent with U.S. international obligations, the overall consequences for U.S. trade policy would still be negative. Specifically, in that event, we would expect U.S. trading partners to adopt legislation that would redefine the relevant "domestic industry" in a way that made it easier for those nations to impose restrictions on U.S. products. The United States, as the world's leading exporter of agricultural products, would have a great deal at stake were the requirements for applying safeguard actions watered down in the manner contemplated by H.R. 2795. In Mexico, Canada, Europe, or Japan, new restrictions on products such as corn, apples, beef or poultry could be contrived. Moreover, while this development would certainly impact U.S. agricultural exports, the "who's competing with whom" approach contemplated by the bill could be used in the context of any number of industries of vital interest to U.S. exporters.

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5. Proponents of the amendment acknowledge that the intended beneficiaries would be like product producers that compete with imports at a particular time of the year rather than producers of different products that are substitutable for the imported like product. See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw).

Mr. SHAW. Thank you.
Mr. Monteverde.

STATEMENT OF HUMBERTO MONTEVERDE, PRESIDENT, FRESH PRODUCE ASSOCIATION OF THE AMERICAS; ACCOMPANIED BY LEE FRANKEL, EXECUTIVE VICE PRESIDENT, FRESH PRODUCE ASSOCIATION OF THE AMERICAS

Mr. MONTEVERDE. Good afternoon, Mr. Chairman and honorable Members of the Subcommittee. My name is Humberto Monteverde. I am president of the Fresh Produce Association of the Americas, Nogales, Arizona, and I represent the American businesses and allied industries involved in the sales and distribution of Mexican produce. I am accompanied today by Lee Frankel, executive vice president of the association.

I have submitted a written statement which I will summarize and add a few comments. I would like my written statement to be included in the record as if read. I also would like to submit for the record an excellent article about the Florida tomato industry from a recent issue of the Wall Street Journal.

Mr. Chairman, the bill before us, H.R. 2795, does not mention tomatoes or seasonality, but we all know that it is about Mexican fresh winter tomatoes. H.R. 2795 continues the so-called tomato war between Florida and Mexico from last year, when the U.S. International Trade Commission said the law does not recognize a seasonal industry, and, therefore, tomatoes harvested in south Florida from January to April do not qualify its growers to safeguard import relief under section 201.

A seasonal industry sounds plausible, but let me tell you that the tomato is a particularly bad example to use for a seasonal industry. A tomato vine takes 90 to 120 days to produce fruit. Furthermore, a tomato is a perennial, although it is usually planted and harvested as an annual. A tomato vine planted in the early fall can be harvested until late spring, when the climate is too hot in Mexico for the flowers to set and produce fruit.

Let me clarify one thing. Tomatoes are imported from Mexico almost every single day of the year, with the exception of Christmas and New Year's and Easter, when they close American customs. During the winter seasons, both Florida and Mexico ship tomatoes, but they ship different types of tomatoes. Florida ships mature greens, which are picked green, then artificially processed to degreen them. Mexico, in contrast, ships vine-ripened tomatoes which are left on the vine and picked only when there is natural color to them.

In addition, if Florida growers lost any money this year, it was because of reduced production because of the weather, since prices were the highest they have been in years.

H.R. 2795 is applicable to any perishable agricultural product. It can be used by a lot of agricultural groups and that is why it is such a dangerous piece of legislation. If H.R. 2795 is adopted, it will allow almost anyone to claim injury from imports. A small group of growers can claim injury during a very short and specific period of time, even though other growers are doing very well. There is nothing to require import relief to be narrowly constructed.

As written, H.R. 2795 could increase tariffs and thereby increase the cost of many perishable imports to everyone in the United States all year long. If H.R. 2795 is adopted, and if eventually tariffs are raised, higher prices could be charged by the entire industry, even though the injury was claimed by a very small group.

For example, growers could get into the greenhouse tomato business and then complain just to get import relief for nongreenhouse tomatoes. Such complaints should be a business problem, not a legislative or political one. But with H.R. 2795, it would become a national issue and resolved at the Federal level.

There is also the possibility of a grower planting a small field in one area and then claiming seasonal injury from imports, even though the grower may have thousands of acres in another area that are profitable. In other words, I see a lot of possibilities for abuse with H.R. 2795.

A seasonal industry may sound like a plausible idea to the uninformed, but in the real world of agriculture, it is an absurd idea. If a seasonal industry is to be a reality, dates must be established for the season. If the season is from the first picking until the last harvest, a season for the winter tomato industry would extend from October to June. But that period is too long, because many areas in the United States will be producing tomatoes so that imports will not be the only competition. There will be multiple competitors.

To isolate a specific and narrow time in which imports compete with domestic tomatoes would involve picking arbitrary dates, say, January through March. That will mean the same tomato vine would belong to two industries, because, do not forget, a tomato vine will continue to produce into spring. The same tomato vine that competed with Florida winter tomatoes from January through March will suddenly become a noncompetitive vine on April 1 unless the April domestic tomato claims injury. In that case, the same winter vine would now belong to the spring tomato industry, ad nauseam.

You can see, Mr. Chairman, how ridiculous this can get. You can see also that some packing, sheds, tractors, and other equipment used in the winter tomato industry suddenly will become part of another industry on an arbitrary date. That does not make economic sense.

The tomato vine might seem like an extreme example of a seasonal industry, but take almost any product and you will see how the concept of a season is a moving target. In many cases, a season in the harvest travels north with the weather. Conceivably, each region can claim injury from imports and there would be a rolling procession of petitions as the weather changes from winter to spring to summer. Mr. Chairman, I doubt very much that this Committee has that in mind.

We see this bill as just another Florida demand for special treatment. Mr. Chairman, your Committee and administration already have given Florida special favored treatment. When NAFTA was negotiated, Florida got tariff rate quota for tomatoes. It also got a 10-year phaseout of tariffs for tomatoes, while other commodities were done in 5 years or less. Florida also received a special exemp-

tion from the Federal Government to use two chemicals on its tomatoes that are banned for use on imports.

In addition, Florida growers demanded marketing money from the taxpayers of Florida and the Florida Department of Agriculture responded by giving $1.9 million over the last 5 years for promotional efforts. That means the few multimillionaire tomato-growers in Florida are getting tax money to get richer. Now the same Florida growers are getting at least $1.5 million in Florida taxpayer money to file petitions against Mexican imports.

H.R. 2795 sets a bad precedent. The bill creates bad trade policy. It exposes American exports to retaliation. It is a bad idea, a bad bill, and just simply bad for America and American consumers.

Thank you for allowing me to address this Committee today. We will be very glad to answer questions.

[The prepared statement and attachment follow:]

STATEMENT OF HUMBERTO MONTEVERDE
PRESIDENT
FRESH PRODUCE ASSOCIATION OF THE AMERICAS

Mr. Chairman, my name is Humberto Monteverde. I am the president of the Fresh Produce Association of the Americas, an organization that represents well over a hundred U.S. importers, exporters and distributors of fresh produce in Nogales, Arizona. I am also the owner and president of HM Distributors, a family-owned business that packages and distributes fresh produce throughout the United States. I speak also today for everyone along the Arizona-Mexico border who depends on trade for their livelihood.

We oppose H.R. 2795.

1. Trade in Fresh Produce is Important to our Community

Nogales is ghe gateway city to the Mexican state of Sonora in southeastern Arizona. Trade is vital to our community. Imports of fresh produce are the backbone, the muscle, and the lifeblood of this community of 40,000 people during the winter months. Importers and distributors are responsible for hundred of millions of dollars of trade in fresh produce. Our industry has created thousands of jobs in Nogales and throughout the state -- ranging from truck drivers to mechanics, office clerks and secretaries, warehousemen to laborers, hotel restaurant and retail employees to service station attendants.

We also export U.S.-made paper products, seed, fertilizer, farm equipment and chemicals to fresh fruit and vegetable growers in Mexico. These products are manufactured throughout the United States and in our own backyard. For example, a Weyerhaeuser manufacturing plant in Yuma, Arizona - not far from Nogales - ships 40 percent of its output of containers to Mexican growers in Sinaloa. Wooden pallets, which are used to transport boxes of fresh produce, are also manufactured in Nogales and shipped to Mexico. The fresh produce industry is without question a major factor in the economic well-being of southern Arizona.

Each of these industries could be placed in immediate jeopardy if this legislation is passed. In an area that is already suffering from 20 percent unemployment, we can ill-afford to lose any more jobs.

II. This legislation is Bad Trade Policy

We oppose this legislation not only because it threatens our livelihood, but also because we understand the importance of free trade to the United States. Contrary to our commitments under the GATT and the NAFTA, this measure promises to trigger a perilous protectionist trade spiral. Essentially, it would help to shield a relative handful of U.S. farmers against competition from imports. In the process the bill would:

(1) Invite retaliation by our trading partners against U.S. products. Both the NAFTA and the WTO authorize such compensatory steps.

(2) Encourage U.S. trading partners to adopt similar protections to shield their commodities from U.S. competition.

(3) Undermine the U.S. drive to persuade other nations to honor their trade commitments.

(4) Establish a precedent allowing virtually any small group of producers of a perishable product in the United States or abroad to define themselves as "seasonal" regardless of whether or not that industry as a whole has been injured by imports.

For those of us who depend on international trade, we must ensure that the principles and the integrity of the NAFTA and the GATT are preserved. We must also ensure that a stable and predictable trading regime is protected. So, regardless of whether or not this bill was designed to reduce imports of Mexican produce or widgets from the European Union, I would oppose it. While support for the NAFTA and the GATT may be waning in Washington, DC, it is strong in Arizona.

III Florida Tomato Growers -- Still Vying for Protection

Mr. Chairman, as we all know, perhaps too well, among the strongest supporters of this legislation are growers of fresh fruits and vegetables in Florida - particularly a handful of tomato growers. During the winter months, Florida is the primary domestic suppliers of fresh tomatoes. It competes primarily with imports from Mexican tomatoes during the months of January through April. Although most of Florida's production takes place ooutside of these four months, it is this period that they seemed to be most concerned about. I guess that's because you cant't seek protection from domestic competition.

Although I have tremendous sympathy for growers who have suffered financilly, I have little sympathy for this group of producers that number about eighty. In fact, the industry is dominated by four families, who, by all accounts, have profited handsomely from growing tomatoes. Paul DiMare, one of the leading proponents of import protection, runs one of the largest vegetable operations in the country.

Florida growers have complained about Mexican imports for well over 20 years. A recent **Wall Street Journal** article chronicled: "Back when Jimmy Carter was president, Mr. DiMare accused trade officials of 'driving Florida farmers out of business' by failing to stop Mexican growers from selling tomatoes below cost. The Carter administration didn't do anything. Florida's tomato industry didn't collapse, and Mr. DiMare is still growing and packing tons of produce."

In any event, it seems that each time they have asked for import protection in recent years, they have found a sympathetic political ear in Washington. Short of defeating the agreement outright, Florida growers received exceptional consideration under the North American Free Trade Agreement. Tariff rate quotas were imposed on a variety of fresh winter vegetables, including tomatoes, and their tariffs were subject to a slow, ten-year phase out. Each day I am reminded of this, as I pay more for the produce that I import from Mexico.

Yet, there is little evidence that Florida growers have been harmed by imports. In fact, last year the International Trade Commission determined that whatever problems the Florida growers were experiencing resulted from factors other than imports.

As far as I'm concerned, the Florida growers have injured themselves. They refuse to produce the type of tomato that U.S. consumers want. Florida grows green tomatoes and then gasses them. Mexico, on the other hand, produces a vine-ripe tomato -- much like those that you grow in your own backyard during the summer. Supermarket receipts show that demand for Florida mature green tomatoes has declined, while demand for Mexican vine-ripe and Romas has increased. **The Wall Street Journal** quoted Mr. DiMare as saying "it doesn't really matter" how tomatoes taste because they are condiments, seldom eaten alone. An April 7 article in Fort Lauderdale's **Sun Sentinel** reported that even Mr. DiMare's packing houses in Tampa, Chicago and elsewhere purchase Mexican tomatoes.

"Some people want this huge tomato which we don't grow here, so we buy out of Mexico," he said.

So, instead of changing their production practices to satisfy U.S. consumers, they are spending $2 million on trade lawyers and lobbyists to shield themselves from imports. As far as I'm concerned that is a pretty poor way of conducting business - not to mention that U.S. taxpayers are shouldering the costs of most of these activities.

IV. Conclusion

Mr. Chairman, in conclusion, although to many this piece of legislation is just another technical-sounding bill, to those of us along the U.S.-Mexico border it is very simple -- it threatens the very businesses that we have worked so hard to develop. To all those in the United States whose jobs depend on trade, it threatens the stable trading relationships upon which we rely.

Thank you, Mr. Chairman.

PLAYING CATCH-UP
With Little Evidence, Florida Growers Blame
Tomato Woes on Nafta

Cheap Imports From Mexico Are 'Killing Us',
They Say in a Familiar Refrain

Soft Produce in Hard Boxes

By Helene Cooper and Bruce Ingersoll
Staff Reporters of The Wall Street Journal

HOMESTEAD, FL. - For years, tomato grower Paul J.DiMare has been predicting the demise of the business that made him wealthy.

Back when Jimmy Carter was president, Mr. DiMare accused trade officials of "driving Florida farmers out of business" by failing to stop Mexican growers from selling tomatoes below cost. The Carter administratio didn't do anything, Florida's tomato industry didn't collapse, and Mr. DiMare is still growing and packing tons of produce on the edge of the Everglades, about 30 miles southwest of Miami.

Now, Mr. DiMare is again decrying a surge of Mexican tomatoes and imploring the president to impose quotas and tariff increases. As before, he speaks in apocalyptic terms. Mexican growers are "killing us", he told Agriculture Secretary Dan Glickman in a public discussion. "They are absolutely murdering the state of Florida."

To Mr. DiMare and many other Florida growers, the villain these days is the North American Free Trade Agreement. The growers are exploiting the anti-Nafta backlash in this election year; indeed, Mr. DiMare keeps a thick sheaf of favorable news clippings on his desk. Yet the growers face problems that go far beyond any trade pact:

Pre-Nafta tariffs on Mexican tomatoes were already low, and the treaty's initial tariff reduction cuts their price by less than a penny a pound. What makes all Mexican exports-including produce-more competitive is the 40% peso devaluation, brought on in 1994 by that country's economic troubles. Mexican growers will lose that advantage if a recovey revives the peso, as many experts say will happen.

Mexican growers have improved the shelf life of their vine-ripened tomatoes, taking away an advantage once enjoyed by Florida, which picks its tomatoes green and exposes them to a gas to speed up the ripening process. Indeed, one U.S. agricultural official says Mexican tomatoes "taste far better" than those from Florida, but Mr. DiMare says "it doesn't really matter" how tomatoes taste because they are condiments, seldom eaten alone.

Hurricanes, cold snaps and other weather woes have hurt Florida tomato yields in recent years, enabling the Mexicans to capture a greater share of the market. Says Roberta Cook, an agricultural economist at the University of California, Davis: "Mexico often fills supply gaps when Florida production is down."

'Down the Tubes'

Florida growers insist that Mexican imports endanger thousands of U.S. jobs. Unless President Clinton intercedes "within the next few weeks, the Florida tomato industry is going down the tubes", warns Wayne Hawkins, general manager of the Florida Tomato Committee. Yet the state's industry is dominated by the DiMare clan and three other families whose operations are highly diversified and, by all accounts, profitable more years than not.

Mexicans see Florida growers as intransigent. They "have stated flatly that they dont't want to talk," says Eduardo Palau, head of CAADES, a group of growers in the state of Sinaloa on Mexico's Pacific Coast. "They just continue harassment through legislated proceedings."

Floridians also get little sympathy from their counterparts in California, whose summer-harvest tomatoes compete with Mexico's crop. "All this is about protecting those four big guys," say Ken Moonie, vice president of the California tomatoe operations of Calgene Inc., a subsidiary of Monsanto Co., which is also becoming a Florida grower. "It's not like corn or any agricultural commodity where thousands of

growers (are) involved."

Tomatoes and Politics

Yet the Clinton administration, which considers Florida essential in the November election, is heeding the plea for special protection. "It's not that we're afraid that the farmers won't vote for us-there aren't enough tomato farmers down there," says one Clinton strategist. "The fear is they'll hit us with a negative advertising campaign." So U.S. Trade Representative Mickey Kantor has endorsed a bill sponsored by the Florida delegation that would make it easier to slap tariffs on Mexican tomatoes.

Meanwhile, Florida growers are pressing Congress to impose U.S. packaging and labeling standards on the Mexicans - a wily stratagem. Hard, unripe Florida tomatoes are shipped in ordinary boxes; vine-ripened Mexican tomatoes are hand-packed, tray upon tray, in cushiony ones that resemble egg cartons. If Congress makes Florida-style boxes mandatory, the Mexican say their riper tomatoes would be battered into puree. The Floridians say the move would make it easier to inspect Mexican produce. It also would "allow us to level the playing field," says Ray Gilmer, with the Florida Fruit and Vegetable Association.

The tomato tussle illustrates how special interests can manipulate voter concerns about free trade, particularly in an election year. But there is a risk. Mexico or other trading partners could counter with tariffs and other measures of their own.

"We can't say we will have free trade, except for when it doesn't suit us," says Russell Roberts, a business professor and trade expert at Washington University in St.Louis. Without Mexican competition, he adds, Florida growers would nearly monopolize the $650 million winter-tomato market, giving shoppers higher prices and fewer choice.

For more than 20 years, Florida growers have competed against producers in Sinaloa. In fact, some of their fathers showed the Mexicans how to get started long ago. The Floridians have usually kept most of the U.S. market since, but that hasn't stopped them from grousing. Says William Patterson, a Department of Agriculture economist: "Almost every season, with the exception of years when extremely bad weather wiped out the Mexican crop, they've complained."

Lobbying the ITC

Last year, the Floridians tried to persuade the International Trade Commission, the U.S. agency that arbitrates such disputes, that Mexican imports were injuring their winter market. Though Floridians also grow tomatoes in the spring and fall, they argued their winter production should be treated as a separate industry. That would highlight the impact of Mexican imports and improve Floridians' chances of getting more protection. But the ITC refused, ruling that the overall U.S. tomato industry hadn't been hurt. The agency said it didn't make sense to define Florida production as two industries - one competing with Mexican tomatoes "at certain times of the year" and the second competing primarily with U.S. tomatoes at other times.

Undaunted, Florida growers got their congressmen to back a bill defining winter vegetables, including tomatoes, as a separate industry. The bill cleared the Senate and is pending in the House. Last week, they filed an antidumping suit with the Commerce Department, seeking increased tariffs on Mexican tomatoes. "I have looked into the eyes of proud farmers facing bankrupcy, choking back tears, as they tell of the plight of their crops, employees and creditors, "wrote Sen. Bob Graham, a Florida democrate, in a letter to local newspapers. "Was this Nafta's vision?"

Clearly, Mexican tomato imports are growing. According to the Agriculture Department, imports increased from 17,547 truckloads during the 1993-94 season (November to April) to 22,833 last season. As of the mid-March this year, Mexico shipped 19,759 truckloads of tomatoes. The Floridians have usually kept more than half of the winter market, though last year their share slipped to 37%.

Penny Tariffs

But Nafta doesn't appear to be the problem. The U.S. tariff on Mexican tomatoes was only 1.4 cents per pound before Nafta took effect in January 1994; lowering it to the present one cent hardly makes a difference. (Mr. DiMare says: "Nafta made it easier for Americans to go down there and set up shop.") The real issue is the peso devaluation that allows Mexicans to cut their dollar prices. But many of the Mexicans' production costs - including everything from pesticides to tractors - are denominated in dollars. As a result, says Ms. Cook, the agricultural economist, the cost competitiveness of Mexican growers hasn't improved in proportion to the devaluation.

The number of Florida tomato growers has declined in recent years. According to the Florida Tomato Growers Exchange, 88 growers are now producing tomatoes, down 10 from a year ago. The dropouts stayed in agriculture but "chose not to grow tomatoes this year," says Bernard Hamel, a field representative for the exchange.

There are many factors in the decline beyond Mexican competitiveness. The winter-vegetable business, like all American agriculture, is consolidating as corporate farms swallow smaller producers. Some growers have sold acreage to developers as suburban sprawl moved their way. Others lost struggles over land use and water management.

Still, Florida tomato production is rising while acreage is holding steady. Growers produced nearly 1.2 billion pounds in 1980-1981 on 46,300 acres, according to a University of Florida study, and 1.6 billion pouinds on 50,600 acres in 1994-1995. There have been dips and spikes in between, but the trend is up. Keith Collins, chief Agriculture Department economist, says, "There are some awfully big tomato producers down there."

Family-run businesses - particularly those owned by the DiMare, Gargiulo, Heller and Esformes families-have dominated the field. Some growers began as peddlers and wholesalers, and some grew tomatoes in Cuba until Fidel Castro forced them out.

Mr. DiMare, the 55-year-old grandson of a Sicilian immigrant, got his start in the tomato business from his father, who sold fruit from a pushcart in Boston. The family now runs one of the largest vegetable operations in the country, with farms in California, Florida and South Carolina. Mr. DiMare himself has done quite well. In 1988, he and two associates tried to buy the New England Patriots professional football team. He has gotten to know most of the political heavyweights in Florida, and many nationally; just last year, presidential candidate Pat Buchanan criticized Nafta at a rally at a DiMare packing plant near Miami.

The Florida growers tend to play down their production and marketing might and are secretive about earnings. But Monsanto, after studying the books of one family, the Gargiulos of Naples, Fla., paid $108 million for its far-flung opration. Tomatoes in Florida and elsewhere account for more than 50% of the revenue of the Gargiulo operation. During the past five years, Gargiulo's revenue more than doubled to $114 million yearly, according to disclosure reports filed by Calgene, a subsidiary of Monsanto. Calgene and the Gargiulo business are being merged with Collier Farms, a Florida grower acquired for $26 million.

Many large growers try to have operations in enough areas to grow and pack produce year round, offsetting vagaries of weather, currency or market fluctuations and changes in trade law. The Gargiulo family, in fact, grows tomatoes in both Florida and Mexico and ships tons of tomatoes into the U.S. from its Sinaloa joint venture.

Many California and Florida growers have different views of the Mexican threat. While Floridians produce mostly in the winter, the Californians grow mainly for the summer market and compete against Mexicans in nearby Baja California. But the Californians aren't blaming Nafta.

Indeed, many California growers have relocated or entered joint ventures in Baja, lured by lower land and water costs, cheaper labor and fewer regulations. They also consider themselves more used to competition than the Floridians, who for years have had a virtual lock on the winter-tomato market. Says Edward Beckman, president of the California Tomato Board: "My growers compete with growers in 28 states."

Mr. SHAW. Thank you.
Mr. Zapanta.

STATEMENT OF ALBERT C. ZAPANTA, EXECUTIVE VICE PRESIDENT, UNITED STATES-MEXICO CHAMBER OF COMMERCE

Mr. ZAPANTA. Thank you, Mr. Chairman. Thank you for the opportunity to testify today. I would also request that my statement be entered in for the record.

Mr. SHAW. Without objection.

Mr. ZAPANTA. The United States-Mexico Chamber of Commerce is a binational, bilateral chamber of commerce, fully funded by the private sector of both Mexico and the United States, representing over 1,000 U.S. businesses and the like in Mexico.

What I would like to begin my statement with today, Mr. Chairman, is to commend the Chairman and the Subcommittee for holding this hearing. Given the importance and complexity of the United States-Mexico trade relationship, it is certainly appropriate to examine U.S. legislation that might affect domestic industries, as well as our trade relationship with Mexico and throughout the world.

Today, I want to tell you why the United States-Mexico Chamber of Commerce, which represents businesses, organizations, and individuals throughout North America, believes the measures in H.R. 2795 that amend definitions of domestic industry and safeguard investigations involving perishable agricultural products will not be productive for the United States.

As you are all aware, the bill will provide protection against imports for U.S. producers of tomatoes and other seasonal perishable products. The legislation is primarily an effort to protect a limited portion of the tomato industry, a move that will work to the detriment of the U.S. robust export-oriented agricultural sectors.

By redefining who can qualify for protection under section 201 of the U.S. trade law, the United States is moving to shelter an industry that the U.S. International Trade Commission found injured not by unfair imports but by unfortunate climate conditions. In addition, the ITC determined Florida tomatogrowers were a relatively small portion of the U.S. tomato industry, making them ineligible for protection as a domestic industry. Thus, the effort to redefine them as seasonal.

Meanwhile, a much broader coalition of private sector interests could suffer retribution if the Congress seeks to protect one regional industry. Oilseeds, wheat, rice, barley, corn, meats, feed, and cotton fibers are among the top 50 U.S. exports to Mexico, our third largest trading partner and a country where U.S. imports account for more than 70 percent of all imports.

U.S. producers are also sending grains, dairy products, pork, poultry, apples, peaches, and other agricultural products to Mexico in substantial volumes. It could well be for Mexico to determine which of these industries qualify as seasonal in response to a protectionist piece of legislation.

The United States is a world leader in agricultural exports and we should not tailor legislation to protect narrow interests, legislation that could be a model for other nations looking to protect themselves from competitive U.S. agricultural goods.

The legislation is also counter to the U.S. position as a world leader for open trade. As the Nation with the world's largest economy and the most exports, it is imperative that the United States first set an example for open trade; second, work to open foreign markets; and third, to hold other countries to trade commitments. This would be made increasingly difficult if the United States does not maintain an open market on its own territory or honor its own commitments.

H.R. 2795 is certainly counter to the spirit of the North American Free Trade Agreement. In addition to directly affecting the United States-Mexico commercial relations, the legislation also sets a precedent for other limited interest groups in the United States who look to protection rather than competition as an engine for prosperity.

The Fort Lauderdale Sun-Sentinel in April of this year noted that much of the advantage for Mexican tomatogrowers comes from an investment in technology and products imported from the United States, technology the Florida growers passed up. An editorial concludes, "Florida's 80 tomatogrowers should begin finding their own solutions. Florida's farmers could take a classic free enterprise approach. They could concentrate on growing excellent tomatoes, trying to exceed the Mexican standard." Also it should be noted that while the Florida growers seek protection from Mexican competitors, many of the workers they employ are from Mexico.

The United States, Mexico, and Canada negotiated a fair agreement to boost economic activity in North America, making competition an engine of economic growth. Too much effort went into NAFTA to allow a special interest to unravel a portion of the treaty, a treaty that has clearly benefited a wide coalition of exporters in the United States.

Too many sectors in the U.S. economy are vulnerable to legislation that mirrors H.R. 2795. Many U.S. crops could be considered seasonal in other nations. Definitional gerrymandering will not serve interests in the United States, Mexico, or elsewhere in the world. We respectfully urge the Trade Subcommittee to vote no on H.R. 2795. Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement
before the Committee on Ways and Means
Trade Subcommittee
April 25, 1996
by Albert C. Zapanta
Executive Vice President
United States-Mexico Chamber of Commerce

Thank you very much for the opportunity to testify today. I would like to commend Chairman Crane and the Subcommittee for holding this hearing. Given the importance and complexity of the United States-Mexico trade relationship, it is certainly appropriate to examine U.S. legislation that might affect domestic industries, as well as our trade relationship with Mexico and throughout the world. Today, I want to tell you why the United States-Mexico Chamber of Commerce -- which represents businesses, organizations and individuals from throughout North America -- believes measures in House Resolution 2795 that amend definitions of "domestic industry" in safeguard investigations involving perishable agricultural products will not be productive for the United States.

As you are all aware, the bill will provide protection against imports for U.S. producers of tomatoes and other seasonal perishable products. The legislation is primarily an effort to protect a limited portion of the tomato industry, a move that will work to the detriment of the United States' robust, export-oriented agricultural sectors. By redefining who can qualify for protection under section 201 of U.S. trade law, the United States is moving to shelter an industry that the U.S. International Trade Commission found injured not by unfair imports but by unfortunate climate conditions. In addition, the ITC determined Florida tomato growers were a relatively small portion of the U.S. tomato industry, making them ineligible for protection as a domestic industry; thus, the effort to redefine them as seasonal. Meanwhile, a much broader coalition of private-sector interests could suffer retribution if the Congress seeks to protect one regional industry. Oil seeds, wheat, rice, barley, corn, meats, feed and cotton fibers are among the top 50 U.S. exports to Mexico, our third-largest trading partner and a country where U.S. imports account for more than 70 percent of all imports. U.S. producers also send grains, dairy products, pork, poultry, apples, peaches and other agricultural products to Mexico in substantial volumes. It could well be for Mexico to determine which of these industries qualify as "seasonal" in response to a protectionist piece of legislation. The United States is a world leader in agricultural exports, we should not tailor legislation to protect narrow interests, legislation that could be a model for other nations looking to protect themselves from competitive U.S. agricultural goods.

The legislation is also counter to the United States' position as a world leader for open trade. As the nation with the world's largest economy and the most exports, it is imperative that the United States first set an example for open trade; second, work to open foreign markets; and third, hold other countries to trade commitments. This would be made increasingly difficult if the United States does not maintain an open market on its own territory or honor its own commitments. H.R. 2795 is certainly counter to the spirit of the North American Free Trade Agreement. In addition to directly affecting U.S.-Mexico commercial relations, the legislation also sets a precedent for other limited interest groups in the United States who look to protection rather than competition as an engine for prosperity. The Fort Lauderdale *Sun-Sentinel* in April of this year noted that much of the advantage for Mexican tomato growers comes from an investment in technology and products imported from the United States -- technology the Florida growers passed up. An editorial concludes, "...Florida's 80 tomato growers should begin finding their own solutions. [...] Florida's farmers ... could take a classic free-enterprise approach. They could concentrate on growing excellent tomatoes, trying to exceed the Mexican standard." Also, it should be noted that, while the Florida growers seek protection from Mexican competitors, many of the workers they employ are from Mexico.

The United States, Mexico and Canada negotiated a fair agreement to boost economic activity in North America, making competition an engine of economic growth. Too much effort went into NAFTA to allow a special interests unravel a portion of the treaty -- a treaty that has clearly benefited a wide coalition of exporters in the United States. Too many sectors of the United States economy are vulnerable to legislation that mirrors H.R. 2795 -- many U.S. crops could be considered "seasonal" in other nations. Definitional gerrymandering will not serve interests in the United States, Mexico or elsewhere in the world. We respectfully urge the Trade Subcommittee to vote "no" on H.R. 2795.

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Al Kaplan, *Tourism Task Force - USMCOC*

Robert Weingarten, *Whitehall Financial Group*

Juan F. Woodroffe, *Commerce Development Administration-Puerto Rico*

Mr. SHAW. Thank you.

I think a brief comment with regard to the price of tomatoes is in order at this time. Mr. Monteverde stated that it was at an all-time high. We know that this was back in the earlier part of the season and was caused in part by a freeze. After the freeze, however, the Mexicans, in fact, held back on their tomatoes in order to run the price up.

In that, I can tell you that the farm price for tomatoes fell as low as 64 cents a pound, and at the same time, the average price of the tomatoes in the grocery store in Florida was $2.50, which bears little resemblance to the 64 cents a pound that became the farm price, and that was on April 10.

We could see what would happen with the farm price back in March when it got up to $1.20 on March 20, and this was caused by the Mexicans really holding back on the tomatoes, and then coming in and flooding the market with them.

I would like to also comment on the question of the longevity of a tomato plant. I happen to know quite a bit about farming and I know that the farmers do not leave their tomato plants in for such a length of time because the productivity of the vine becomes very marginal. If you are making use of good farm practices, you would not be using your land to harvest tomatoes for that extended period of time.

I would like to also mention to the corn producing people, Mr. Heard, the question of, right now, the existing law recognizes a seasonal perishable agricultural industry under 201 as it applies to a region or geographical area. So I would ask you, where do you see the difference in applying 201 to a seasonal industry as we are asking, from the recognition of a regional or geographical industry, which 201 presently does?

Mr. HEARD. Yes, sir. As representing the corngrowers and 13 other groups, we are concerned that once you start opening Pandora's box with this type legislation, then at what level is a geographic change? We just heard today about California. We would have to possibly go into different laws addressing each county as you go north in California as far as grapes, and the same could happen with tomatoes. So, we are concerned that once you get into this process of rewriting the law to adapt to a specific sector, then we would have this happening all over the United States and all over the world.

Mr. SHAW. Then I would be correct in saying that you do not support regional or geographic industries, either, is that correct?

Mr. HEARD. We would support what is in the law and what has passed Congress, what passed NAFTA, what has passed the WTO.

Mr. SHAW. Mr. Houghton, do you have any questions?

Mr. HOUGHTON. No, I do not.

Mr. MONTEVERDE. Could I make a brief statement?

Mr. SHAW. Absolutely.

Mr. MONTEVERDE. My business, I am president of Fresh Produce Association of the Americas, but I also run an importing firm of Mexican tomatoes. That is how I make my livelihood. I would like to know how I held back tomatoes, because you really confused me on that one. You mentioned that Mexicans held back tomatoes. I do not see how we held back tomatoes.

Mr. SHAW. You did. I do not know how you did it——

Mr. MONTEVERDE. I do not know how.

Mr. SHAW. You just simply held them back off the market and the price went up, and it went through the ceiling. You brought up the point that they——

Mr. MONTEVERDE. Shipments in March and February were higher than January. How is this holding back production? Then the other thing——

Mr. SHAW. I received the information from the secretary of agriculture of the State of Florida, Bob Crawford's office.

Mr. MONTEVERDE. The other thing, the longevity of the vine, you must understand, since you do know about tomatoes, that they are perennial. But our vine is an indeterminate vine, not a determinate short vine like Florida might use. So we can harvest from top to bottom all the way up and even have them go over 6 feet and down and keep harvesting. So the longevity of the varieties we use in Mexico is quite something else.

Mr. SHAW. You do leave yours in for that long a season in Mexico?

Mr. MONTEVERDE. It is the nature of the variety we use. Why would we cut production out sooner if the plant is still giving us fruit to market?

Mr. SHAW. If you have high productivity, certainly, but that is certainly not the case in Florida.

Mr. MONTEVERDE. Because of different varieties, different——

Mr. SHAW. But you were applying that to Florida in your testimony, if you recall.

Mr. MONTEVERDE. Pardon me?

Mr. SHAW. You were applying that to Florida in your testimony.

Mr. MONTEVERDE. I do not know——

Mr. SHAW. When you were trying to define a season, we were not trying to define a season in Mexico. We are trying to define a season in Florida, and that is the point that I make.

Mr. MONTEVERDE. My testimony is that there are different tomato vines and so I can only comment on what I am familiar with. I cannot comment about Florida, which I am sure you can appreciate.

Mr. SHAW. I thought you were commenting about Florida, but we will leave that where it is.

I thank all of you gentlemen for being with us here today.

Our next panel are a number of witnesses who are in support of H.R. 2795, Carl Loop, the president of the Florida Farm Bureau and vice chairman of the American Farm Bureau; Barrett Lawrimore, executive director of the South Carolina Tomato Association; Mike Bozick of the National Alliance for Seasonal Agricultural Trade; and Terence Stewart, who is managing partner of the law firm of Stewart and Stewart.

Each of you have submitted your written testimony, which will become a part of the entire record. We would encourage you to summarize or proceed as you see fit.

Mr. Loop.

STATEMENT OF CARL B. LOOP, PRESIDENT, FLORIDA FARM BUREAU FEDERATION; AND VICE PRESIDENT, AMERICAN FARM BUREAU FEDERATION

Mr. LOOP. Thank you, Mr. Chairman, Members of the Committee. I appreciate the opportunity to be here this afternoon. I appreciate you all having these hearings.

My name is Carl Loop. I am vice president of the American Farm Bureau Federation and also president of the Florida Farm Bureau Federation. Farm Bureau supports H.R. 2795 because it extends the same safeguards afforded other commodities to seasonal perishable agricultural products.

Sections 201–204 of the Trade Act of 1974 authorizes the President to help domestic industries adjust to import competition. After a review by the International Trade Commission, the ITC, these provisions give the President the authority to withdraw or modify concessions or impose duties for a limited period of time. These provisions were intended to provide domestic industries transitional relief from import surges to give them the opportunity to adjust to increased competition.

While the current law does expressly provide transitional relief for most U.S. industries and products, it does not provide a mechanism for seasonal perishable agricultural products to gain the same type of transitional relief measures offered to other U.S. products.

Practical relief is simply not available for seasonal perishable crops grown in my State. That fact was demonstrated last year when the Florida Tomato Exchange filed a petition with the ITC seeking provisional relief under section 202(d) of the Trade Act of 1974 for fresh winter tomatoes. The commission ruled that the winter tomato industry of Florida could not be examined separately from the summer tomato industry of California. In effect, the commission ruled that both types of tomatoes are the same because of its determination that the express "like or directly competitive article" meant that all tomatoes produced in the United States in a calendar year define a single industry.

In effect, this meant current law discriminates against perishable crops, offering protection to nonperishable crops but not to perishable crops. Current law, as enacted by the ITC ruling, also does not distinguish or recognize the differences between similar products produced during different and separate marketing seasons.

The deficiencies in current law mean that growers of perishable crops with very distinct market windows, including farms in Florida, do not have access to the type of relief measures we need to adjust to the incredible increase of imports of some perishable crops from Mexico. We hope that you will correct the deficiencies in the law so that we have the mechanism in the law that provides necessary safeguards and transitional measures that allow us to compete.

Make no mistake, imports of fruits and vegetables are causing serious and perhaps permanent damage to many Florida farms. Without the type of transitional relief that is afforded other products in similar situations, Florida simply will not survive in the winter vegetable industry.

Perishable crops are clearly different from other commodities. If market conditions are poor during harvest, farmers of perishable

crops cannot wait for prices to improve. They must take the market price at the time of harvest.

Clearly, some commodities produced by the winter Florida vegetable industry have separate and distinguishable marketing seasons from producers in other States.

There are many reasons why current trade law should be changed. The tremendous increase in vegetable imports from Mexico is due in large part to the devaluation of the peso, a policy change resulting from U.S. help and encouragement.

This is mainly a fairness issue. The passage of this bill does not automatically determine that farmers have been damaged or does it give them relief. It does, however, give them the opportunity to seek a hearing before the ITC if they think they have been harmed. The ITC will then determine if there is evidence to justify a hearing. In other words, it gives the growers their day in court. Thank you, Mr. Chairman.

[The prepared statement and attachments follow:]

STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Presented by
Carl B. Loop
Vice President
American Farm Bureau Federation

April 25, 1996

Good afternoon. I am Carl Loop, Vice President of the American Farm Bureau Federation and President of the Florida Farm Bureau Federation.

The American Farm Bureau Federation is the nation's largest general farm organization, representing over 4.5 million member families in all 50 states and Puerto Rico. Our members raise virtually every commodity grown in the United States. It is a pleasure to appear before the subcommittee today to offer our views on H.R. 2795.

Farm Bureau supports H.R. 2795 because it extends to seasonal perishable agricultural products the same safeguards afforded other commodities. We urge the committee to move quickly to enact these reforms, but to narrow your focus to perishable agricultural products, so export markets for other commodities are not harmed.

Sections 201-204 of the Trade Act of 1974 authorize the President to help domestic industries adjust to import competition, after a review by the International Trade Commission (ITC). These provisions give the President the authority to withdraw or modify concessions or impose duties for a limited period of time. These provisions, enacted before the passage of the North American Free Trade Agreement (NAFTA), were intended to provide domestic industries with transitional relief from import surges to give them the opportunity to adjust to increased competition.

While current law does expressly provide transitional relief for most U.S. industries and products, it does not provide a mechanism for perishable agricultural products to gain the same types of transitional relief measures offered to other U.S. products. Relief is simply not available for many crops grown in my state.

That fact was demonstrated last year when the Florida Tomato Exchange filed a petition with the ITC seeking provisional relief under section 202(d) of the Trade Act of 1974 for fresh winter tomatoes. The Commission ruled that the winter tomato industry of Florida could not be examined separately from the summer tomato industry of California. In effect, the Commission ruled that both types of tomatoes are the same because of its determination that the expression "like or directly competitive article" meant that <u>all</u> tomatoes produced in the U.S. in a calendar year define a single industry. Because of this, the Florida Tomato Exchange withdrew the petition.

In effect, this means that current law, as evidenced by the ITC ruling, does not distinguish or recognize the differences between similar products produced during different and separate marketing seasons. As a result, current law discriminates against perishable crops with separate marketing seasons -

offering protection to non-perishable crops, but not to perishable crops.

The deficiencies in current law mean that growers of perishable crops, with very distinct market windows, including farms in Florida, do not have access to the types of relief measures we need to adjust to the incredible increase of imports of some perishable crops from Mexico. Farm Bureau commends the Subcommittee on Trade for holding this hearing to learn firsthand how it is affecting farmers in my state. We hope that you will correct the deficiencies in the law so we have a mechanism that provides necessary safeguards and transitional measures that allow us to compete.

Make no mistake, imports of fruits and vegetables are causing serious and perhaps permanent damage to many Florida farmers. According to USDA data, Florida tomato growers lost on average $1,571 per acre in 1994 and $2,728 in 1995 - a combined loss of more than $209 million. As a rule of thumb, each $50,000 in lost revenue translates into one less American job. This equates to the loss of over 4,000 permanent jobs. Florida pepper growers over the same two year period lost more than $26 million.[1] Florida cannot continue to absorb these kinds of losses. Without the type of transitional relief that is afforded other products in similar situations, Florida simply will not survive in the winter vegetable industry. This would result in the loss of even more jobs - both seasonal and permanent.

Perishable crops are clearly different from other commodities. Some perishable crops, like fresh tomatoes, peppers or sweet corn can be stored for only limited periods of time. A mature green tomato has a shelf life of about 21 days. A pink tomato can be stored for 7-14 days. Peppers have a shelf life of 8-10 days. Sweet corn should be consumed within 6-10 days. After these crops are harvested, they must be marketed immediately. If market conditions are poor during harvest, farmers of perishable crops cannot wait for prices to improve. They also cannot hold them on the vine or in the field waiting for better markets. They must take the market price at the time of harvest or not sell at all. Producers of non-perishable crops have the opportunity to store their product for extended periods of time if market prices are low. They can wait for market conditions to improve. Farmers of perishable crops cannot. The price at harvest is the price they must take.

Clearly, some commodities produced by the Florida winter vegetable industry have separate and distinguishable marketing seasons than similar crops in other states. Florida is the exclusive domestic supplier for several months of the year for some perishable crops for example, bell peppers from January to April (Table 1). The Florida winter tomato industry is similar (Table 2).

California is also the exclusive U.S. commercial producer for many commodities including artichokes, garlic and kiwifruit. It also is the exclusive U.S. producer for many commodities during specific times of the year. California is the exclusive U.S. producer of avocadoes from March to June. It is the exclusive winter producer of asparagus.

Because of climactic conditions, some states are the sole producer of many commodities and have exclusive access to consumer markets. This exclusivity means that no other U.S. growing region is capable of competing during a particular marketing season. Because of this exclusivity, certain perishable commodity markets are clearly separate from other

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[1] Data compiled from USDA, Agricultural Statistics Board, National Agricultural Statistics Service, Vegetable Annual, 1993-95.

producers of the same or like commodity. While there is overlap of seasons where like commodities from other states and regions compete, a tomato grower in any other state outside Florida is unable to compete with Florida growers for the January fresh tomato market. Because of the highly perishable nature of these commodities, they also cannot be stored long enough to hold them to compete during a different season. For these reasons, Florida has an exclusive and separate winter vegetable industry for several commodities, Current trade law does not recognize this "separateness" or "exclusiveness." As a result, current law is inadequate because it provides transitional relief to some commodities, but not to perishable crops with separate growing and marketing season. In that regard the definition of "like or directly competitive article" needs to be changed so it recognizes separate and exclusive market seasons.

There are other reasons why current trade law should be changed. The tremendous increase in vegetable imports from Mexico is due primarily to the devaluation of the peso - a policy change resulting from U.S. help and encouragement.

On December 20, 1994, the Mexican government devalued the peso by 15 percent and has since allowed the peso to fall further relative to the dollar. Today, one dollar will purchase 7 pesos--an effective peso devaluation of 50 percent. The effect on tomato and pepper exports from Mexico were dramatic.

WEEKLY SHIPMENTS OF MEXICAN TOMATOES AND PEPPERS

Week Ending	10,000 pounds Tomatoes		Peppers
10/1/94	688		-
10/8/94	568		-
10/15/94	728		-
10/22/94	752		665
10/29/94	876		1,155
11/5/94	1,004		735
11/12/94	560		1,680
11/19/94	352		1,855
11/26/94	676		2,240
12/3/94	-		2,520
12/10/94	1,016	Peso	3,360
12/17/94	1,704	Devaluation	7,314
12/24/94	2,160		7,350
12/31/94	2,764		9,940
1/7/95	2,644		13,615
1/14/95	3,052		11,585
1/21/95	3,336		12,005
1/28/95	4,004		14,105
2/4/95	4,388		15,330
2/11/95	3,976		16,065
2/18/95	4,248		10,360
1/25/95	5,120		14,070
3/4/95	4,452		13,930
3/11/95	4,312		15,820
3/18/95	3,652		11,410
3/25/95	2,844		11,900
4/1/95	2,564		6,790
4/8/95	1,988		7,070

Exports of tomatoes from Mexico in January of 1994 totaled 108.08 million pounds. In January of 1995, the first full month after the peso devaluation, exports jumped 34 percent to 144.96 million pounds.

Exports of peppers from Mexico in January of 1994 totaled 46.33 million pounds. In January of 1995, the first full month after the peso devaluation, exports jumped 11 percent to 51.01 million pounds.

Yearly totals from 1994 to 1995 are similar. Tomato exports increased 58 percent in 1995 from 1994 totals. Pepper exports increased 20 percent. In 1993, before NAFTA, tomato exports totaled 882.9 million pounds. In 1994, the first year under NAFTA, tomato exports totaled 829 million pounds, a drop of 54 million pounds or 6 percent from 1993.

In 1993, before NAFTA, pepper exports totaled 223.18 million pounds. In 1994, pepper exports totaled 213.21 million pounds, a drop of 10 million pounds or 5 percent from 1993.

The peso devaluation means consumers in Mexico took an almost 35 percent reduction in per capita income overnight. This price instability caused a crisis of confidence. Businesses lost confidence in the peso as did many Mexican farms. For that reason, many farms sought dollars for their products regardless of price since they had no confidence that pesos received today would be worth the same tomorrow. This is why consignment sales are standard operating procedure for Mexican fruit and vegetable shippers. Consignment sales are sales where fruits or vegetables are shipped without a firm price. A price is assigned after reaching U.S. markets based on other sales for that day. Consignment or "open" sales are clear signs of seller indifference as long as payment is made in dollars.

If the Mexican government does not implement sound economic and fiscal policies that lead to a strong peso, imports of perishable commodities will continue to stream into the U.S.

Without a stronger peso, our winter vegetable markets will continue to be more attractive to Mexico's farmers, regardless of price. This is the key reason why current law needs to be amended to change the definitions of "domestic industry" and "like or directly competitive article."

We need to make available to domestic producers all the relief from the impact of import surges to which they are entitled under our trade agreements. Failure to realistically define the scope of an industry should not preclude the availability of relief.

For these reasons Farm Bureau supports H.R. 2795 and urges the subcommittee to act quickly to pass this important legislation.

Thank you for the opportunity to appear here today.

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TABLE 1: BELL PEPPERS - AVAILABILITY

1994 Arrivals From Producing Areas (1,000 CWT.) Based on unload/arrival figures in 22 major U.S. cities

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	1994	1993
ALABAMA	----	----	----	----	----	----	1	----	----	----	----	----	1	3
CALIFORNIA	----	----	----	----	74	163	158	131	166	185	91	4	972	1,031
COLORADO	----	----	----	----	----	----	----	----	2	----	----	----	2	----
CONNECTICUT	----	----	----	----	----	----	----	1	1	----	----	----	2	1
DELAWARE	----	----	----	----	----	----	----	1	----	----	----	----	1	----
FLORIDA	270	252	317	329	316	91	1	----	----	35	177	265	2,053	1,784
GEORGIA	----	----	----	----	3	139	60	5	2	26	18	2	255	170
ILLINOIS	----	----	----	----	----	----	11	29	21	9	----	----	70	39
INDIANA	----	----	----	----	----	----	1	8	6	----	----	----	15	4
KENTUCKY	----	----	----	----	----	----	2	2	1	----	----	----	5	4
LOUISIANA	----	----	----	----	----	10	1	----	----	----	----	----	11	11
MARYLAND	----	----	----	----	----	----	1	3	1	1	----	----	6	5
MASSACHUSETTS	----	----	----	----	----	----	----	6	6	1	----	----	13	17
MICHIGAN	----	----	----	----	----	----	1	32	42	3	----	----	78	86
MISSOURI	----	----	----	----	----	----	1	1	1	----	----	----	3	7
NEW JERSEY	----	----	----	----	----	----	35	77	41	26	3	----	182	203
NEW YORK	----	----	----	----	----	----	----	17	26	8	2	----	53	60
NORTH CAROLINA	----	----	----	----	----	34	88	6	3	1	----	----	132	121
OHIO	----	----	----	----	----	----	----	10	11	4	----	----	25	11
OREGON	----	----	----	----	----	----	----	----	----	1	----	----	1	----
PENNSYLVANIA	----	----	----	----	----	----	----	7	7	3	----	----	17	29
RHODE ISLAND	----	----	----	----	----	----	----	2	1	----	----	----	3	4
SOUTH CAROLINA	----	----	----	----	----	2	2	----	----	1	----	----	5	3
TENNESSEE	----	----	----	----	----	1	1	1	----	----	----	----	3	2
TEXAS	----	----	----	----	2	9	----	1	5	11	59	32	119	106
VIRGINIA	----	----	----	----	----	----	16	17	14	8	----	----	55	49
WASHINGTON	----	----	----	----	----	----	----	7	10	1	----	----	18	20
WEST VIRGINIA	----	----	----	----	----	----	----	1	----	----	----	----	1	1
TOTAL	**270**	**252**	**317**	**329**	**395**	**449**	**380**	**365**	**367**	**324**	**350**	**303**	**4,101**	**3,771**

U.S. arrival figures generally represent 33 percent to 50 percent of total product originating from individual sources identified. Some states, notably in the West and Midwest, are comparatively underrepresented by arrivals quoted. Figures are intended only to indicate relative availability of product.

TABLE 2: TOMATOES - AVAILABILITY
(1994 Arrivals From Producing Areas (1,000 CWT.) Based on unload/arrival figures in 22 major U.S. cities

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	1994	1993
ALABAMA	----	----	----	----	----	2	4	8	4	----	----	----	18	15
ARKANSAS	----	----	----	----	----	20	36	----	----	----	----	----	56	63
CALIFORNIA	8	----	----	----	20	298	612	725	661	643	400	88	3,455	3,703
COLORADO	----	----	----	----	1	2	3	----	1	2	1	----	10	0
FLORIDA	823	750	742	928	1,182	719	80	----	6	251	590	783	6,854	6,800
GEORGIA	----	----	----	----	----	36	11	1	1	9	5	----	63	52
ILLINOIS	----	----	----	----	----	----	9	14	6	----	----	----	29	39
INDIANA	----	----	----	----	----	----	1	1	2	----	----	----	4	2
KENTUCKY	----	----	----	----	----	2	18	20	1	----	----	----	41	43
LOUISIANA	----	----	----	----	----	3	1	----	----	----	----	----	4	3
MARYLAND	----	----	----	----	----	----	41	24	3	1	----	----	69	113
MASSACHUSETTS	----	----	----	----	----	----	----	1	2	----	----	----	3	3
MICHIGAN	----	----	----	----	----	----	2	39	56	5	----	----	102	97
MISSOURI	----	----	----	----	----	----	2	4	2	----	----	----	8	8
NEW JERSEY	----	----	----	----	----	3	42	43	27	8	2	----	125	157
NEW YORK[1]	----	----	1	3	1	3	4	12	23	3	1	----	51	39
NORTH CAROLINA	----	----	----	----	----	2	23	26	24	3	----	----	78	79
OHIO	----	----	----	----	1	3	9	44	61	21	1	----	140	131
PENNSYLVANIA[1]	4	3	4	2	2	3	3	40	80	8	1	----	150	118
PUERTO RICO	2	2	1	----	----	----	----	----	----	----	----	----	5	26
SOUTH CAROLINA	----	----	----	----	----	249	201	7	1	4	2	----	464	431
TENNESSEE	----	----	----	----	----	----	35	151	76	51	3	----	316	309
TEXAS	----	----	----	----	3	7	10	8	2	1	----	----	31	31
VIRGINIA	----	----	----	----	----	----	114	76	89	59	6	----	344	295
WASHINGTON	----	----	----	----	----	----	----	8	3	----	----	----	11	7
TOTAL	**873**	**755**	**748**	**933**	**1,210**	**1,352**	**1,261**	**1,252**	**1,131**	**1,069**	**1,012**	**871**	**12,431**	**12,564**

U.S. arrival figures generally represent 33 percent to 50 percent of total product originating from individual sources identified. Some states, notably in the West and Midwest, are comparatively underrepresented by arrivals quoted. Figures are intended only to indicate relative availability of product.

1. Includes some greenhouse tomatoes

Mr. SHAW. Thank you, Mr. Loop.
Mr. Lawrimore.

STATEMENT OF BARRETT S. LAWRIMORE, EXECUTIVE DIRECTOR, SOUTH CAROLINA TOMATO ASSOCIATION, CHARLESTON, SOUTH CAROLINA

Mr. LAWRIMORE. Thank you, Mr. Chairman and Members of the Committee. My name is Barrett Lawrimore. I am the executive director of the South Carolina Tomato Association. I represent 17 farms who handle 2,600 acres of tomatoes in the State of South Carolina, and that is all of the tomatoes grown there except for 347 acres by 1 Florida grower.

So I have been exposed to seasonal agriculture for a long time. I am a retired county extension director for 30 years, and I am also a member of Charleston County Council as the chairman of that, and that, I do not have any opposition, so I can understand how you have to work for your constituents, although they would give me another term free, and I really appreciated that. But in one way or another, I have been involved in seasonal work for a long time, and if I live as long as Strom Thurmond, I will make 70.

I asked to testify this afternoon to help make the point that this measure, H.R. 2795, enjoys a broad-based support in the U.S. seasonal agricultural community. Those of us who are deeply involved in perishable agriculture, be it tomatoes, cucumbers, eggplant, squash, grapes, watermelon, or any number of horticultural sectors, have long shared a concern that we do not enjoy fair and equal access to the U.S. trade remedy laws, and I want to repeat that, because we do not because we are seasonal. I would like for you to come down and let me show you our seasons. This leaves us feeling dangerously exposed, even helpless, against an influx of foreign products.

In relaying this concern, we do not mean to assign blame to Congress for slighting seasonal agriculture. This body, to its credit, has tried in the past to be sensitive to the special realities and needs of seasonal producers. Your provisional relief mechanism for perishable products is an example. Unfortunately, as last year's tomato case demonstrated, procedural refinements of this sort cannot begin to help us if the basic underlying substantive standard is unfavorably skewed.

You have already this afternoon heard that underlying problem described in some detail by trade and legal experts. Although I am no lawyer or neither a trade scholar, I am experienced in seasonal agriculture and can restate the issue from that perspective.

Let us begin with the plain fact that there are distinct seasonal sectors in agriculture. No one credibly disputes this. If these same seasonal sectors suffer from imports during their growing season, the law, as it is now interpreted, is more likely than not to leave them without relief. The reason is this: Seasonal sectors are not entitled to be analyzed in their relevant growing season. They are artificially grouped with production that falls outside of the season and that, virtually everyone would agree, you have to be competitive in your season.

This irrational, clumsy approach to seasonal agriculture raises two obvious questions. Question one, if the objective of the safe-

guard law is to ensure responsive, fact-finding-based relief, why allow the government to engage in a fictional analysis that ends up effectively discriminating against seasonal producers? Question two, are seasonal producers for some reason less entitled than others in U.S. commerce to receive fair analysis and responsive emergency relief?

Never once have I heard a comforting answer to any of these questions. True, I have heard a lot of legal and technical fine points about administrative precedents, all to explain why a fictional analysis is a perfectly appropriate trade remedy framework, but I can assure you that few, if any, U.S. farmers who are actively engaged in the hard work of seasonal agriculture grasp or appreciate the logic of any of those arguments. I would go further to bet that comparatively few U.S. citizens outside the beltway would grasp or appreciate why our trade remedies are structured so as to disregard commercial reality.

I have likewise heard from those who oppose the measure that an analysis based on commercial reality is disallowed under international law. I would only respectfully point out that the U.S. Government, which negotiates our international obligations and which is responsible for upholding those obligations and protecting not some, but all, U.S. commercial interests, has carefully analyzed this bill and determined it to be both legal and highly desirable. I find that decisive and hope that the Committee will, too.

This Subcommittee has a tradition of understanding and trying to accommodate the special needs of seasonal agriculture. H.R. 2795, as much as any other measure previously considered, is fundamental to ensuring that trade remedies work for seasonal production. Seasonal farmers have for too long been denied equal access to safeguard relief, even when they can prove they are suffering significant injuries due to imports. With our neighboring countries to the south increasingly active in the production of perishable crops, U.S. producers deserve more responsive attention and analysis under U.S. trade remedy laws. Please help us achieve that by quickly approving H.R. 2795 and assisting in its rapid enactment.

That concludes my remarks, and I will be around for any questions, if you need them.

Mr. SHAW. Thank you.

Mr. Bozick.

STATEMENT OF MIKE BOZICK, NATIONAL ALLIANCE FOR SEASONAL AGRICULTURAL TRADE, SACRAMENTO, CALIFORNIA

Mr. BOZICK. Thank you, Mr. Chairman and Members of the Committee. My name is Mike Bozick. I am vice president and general manager of Richard Bagdasarian, Inc., a family farming company that raises citrus and table grapes in southern California.

Today, I am representing the National Alliance for Seasonal Agricultural Trade. NASAT is an ad hoc group of California associations committed to providing temporary relief from fresh fruit and vegetable surge imports for growers of the same crops in the United States. Our members are the California Farm Bureau, Western Growers Association, Imperial Valley Vegetable Growers, and the California Desert grapegrowers League, of which I am a president.

I am also representing 80 table grapegrowers who provide 14,000 seasonal jobs in southern California, farmworker jobs. I am giving you some numbers here because I am going to say something in a moment. In addition to the required benefits, such as disability insurance, workers' compensation insurance, and unemployment insurance, we also provide medical and health insurance and there are a few of us who provide profit sharing plans.

We, as an individual company, provide full-time employment for 150 people in our citrus packing plant. The entire valley's wages range from $5.70 to $6 an hour. I say that because I have been competing effectively with the Mexican table grapegrowers for 30 years.

You have received our statement. I would appreciate if you would put that in the record, sir.

Before I begin my statement, I want the Committee and Members to know that I am not a lawyer nor an economist. I am a grower of citrus and table grapes and have been growing these crops for 30 years. I know when I am faced with economic conditions beyond my control, such as Mexico's devaluation of its peso and the rampant planting of table grapes in Sinaloa.

I urge you and your staff to read NASAT's 1996 statement of March 1. It explains a lot of things today that people really did not understand. There are a lot of crops that are involved and it gives examples of the seasonality of these crops.

I am here today to oppose the North American Free Trade Agreement. NASAT believes if Mexico had not devalued its currency, we would not have found it necessary to create our organization. We hope history will not repeat itself as our Nation enters into other free trade agreements.

There is much confusion about the proposed legislation in the Mexican agriculture and the U.S. agriculture community. I would like to describe what the legislation will not—and I repeat, will not—do. This amendment will not, if enacted, immediately increase tariffs on tomatoes and bell peppers. The amendment will not make these procedures easier for the seasonal perishable commodity petitioners. And the amendment will not permanently increase the tariff or impose a quota on the imported produce.

The legislation will require a seasonal perishable crop experiencing an import surge to demonstrate to the International Trade Commission all the safeguard requirements currently in the law. In addition, the petitioner will have to show that all, or a substantial percentage of, the crop that is sold during the growing season, and that the demand for the crop is not met to any substantial degree by producers in a different growing region and a different season.

Seasonable perishable crops such as wheat, corn, apples, and pears can be stored. We cannot keep our fruit more than 2 to 3 weeks in storage. We do not have the option of storing the fruit. If there is an import surge, we do not have the luxury of moving our trees and vines anyplace else. We cannot go to Mexico. We cannot go to the San Joaquin Valley. There is a permanent investment that we are faced with.

The pending legislation will not provide for instant relief for seasonal perishable crops. All the requirements of the existing law would have to be proved, in addition to meeting the test that I de-

scribed. We must prove that we have a workable, adjustable plan, and finally, the President has to approve this program.

I go back and I say the rampant planting of Mexican table grapes, in 1994, the Mexican table grapegrowers exported 4 million boxes to the United States. In 1995, they exported 8 million boxes to the United States, double their production. This is due to the devaluation of the peso and another factor. They could not go to the national markets so they put it here in the United States.

The relief would give seasonal perishable crops a period of a few years to make adjustments, and that is all we are asking for. We are not asking for anything special.

I have heard that some were opposed to the legislation in fear that other nations will implement similar or mirror legislation. It was my understanding that in the NAFTA, there was a cap that you could put on. If they wanted to increase tariffs on a particular crop, they could only do it a certain percentage. It could not be an exorbitant amount.

If another crop, a crop of another nation, were affected in the same manner, I would have no problem supporting that, as long as they met the same guidelines and had to go through the same hoops that I would have to go through with a 201 case.

In closing, I ask you to reflect on the prospects of my family and other families that have decades of work invested in their trees and vines. There is simply no ability to move these plants to Mexico or other parts of the United States. Industrial plants may be capable of relocation, but we do not have that option.

The proposed legislation before you is not contrary to global trade, contrary to what we may have heard here earlier. Instead, it merely gives a grower impacted by an import surge a few years to make the necessary adjustments to that new competition.

I remember reading in the Congressional Record that a former Secretary of Agriculture said U.S. agriculture should not fear import competition since we had the best technology and scientists. What the Secretary did not mention, however, was that the cultural practices developed in our country, any new variety that we develop, are immediately picked up by our competition, by our foreign competitors. Nor did he mention the currency devaluation. All the best technology, scientists, and bank loans cannot protect the U.S. grower from a devaluation such as the December 1994 Mexican devaluation.

I might add that in meeting in Hermosillo, or outside of Hermosillo in Mexico, I think it was in February, the Mexican banks told Mexican growers, if you wanted a loan to bring your crop in this year, you had to export your grapes to the United States in order to bring the dollar into Mexico.

Thank you, and I will be happy to answer any questions you might have.

[The prepared statement and attachment follow:]

STATEMENT OF MIKE BOZICK
NATIONAL ALLIANCE FOR SEASONAL AGRICULTURAL TRADE

Good morning Mr. Chairman and Members of the committee. My name is Mike Bozick and I am the vice president and general manager of Richard Bagdasarian, Inc., a family farming company that raises citrus and table grapes in southern California.

Today I am representing the National Alliance for Seasonal Agricultural Trade. NASAT is an ad hoc group of associations committed to providing temporary relief from fresh fruit and vegetable surge imports for growers of the same crops in the U.S. Our members are the California Farm Bureau, Western Growers Association, Imperial Valley Vegetable Growers Association and the California Desert Grape League.

I am also representing eighty (80) table grape growers who provide 14,000 seasonal farmworker jobs. In addition to the required benefits such as disability insurance, workmen's compensation insurance, and unemployment insurance, we also provide medical and health insurance, and there are a few of us who have profit-sharing plans.

NASAT previously submitted our statement on the proposed amendment to section 201 to the Committee on March 1st; I would appreciate if the March 1st statement would be printed in your Committee's hearing record. I will summarize the NASAT statement today. (Pause to let the Chairman accept your statement).

Before I begin with my statement, I want the committee and members to know I am not a lawyer, nor an economist. I am a grower of citrus and table grapes and have been growing these crops for thirty (30) years. I know when I am faced with economic conditions beyond my control, such as Mexico's devaluation of its peso.

I urge you and your staff to read NASAT'S March 1996 statement. It describes the necessity for the legislation you are considering today, and why there is a lack of equal treatment under the existing law for our perishable seasonal crops, compared to industrial articles.

When I use the term "equal treatment," I mean in the sense that the Harley Davidson motorcycle company was able to receive Section 201 assistance in the early 1980's. Today the company is competing effectively in world markets.

I am not here today to oppose the North American Free Trade Agreement. NASAT believes if Mexico had not devalued its currency, we would not have found it necessary to create our organization. We hope history will not repeat itself as our nation enters into future free trade agreements.

Mr. Chairman and members of the committee, you have a policy decision before you today. Section 201 is a trade relief program that can provide relief for industrial products and many commodity crops -- but it does not provide relief for perishable seasonal agricultural crops. However, you have an opportunity to provide equal treatment for seasonal perishable crops.

I was hoping that the U.S. Department of Agriculture would testify here today, because the Department could explain the complexities and volatility of the fresh fruit and vegetable market. The average consumer does not see the price fluctuations because they are shielded by the supermarkets. However, it is not unusual to have prices move by 100, 200 or even 300 percent in a day or two in the fruit and vegetable markets.

There is much confusion about the proposed legislation in the Mexican agricultural and U.S. agricultural communities. I would like to describe what the legislation will not -- and I repeat, will not -- do:

- The amendment, if enacted, will not immediately increase tariffs on tomatoes and bell peppers;

- The amendment will not make the proceedings easier for the seasonal perishable commodity petitioner; and,

- The amendment will not permanently increase the tariff, or impose a quota on, the imported produce.

The legislation will require a seasonal perishable crop experiencing an import surge to demonstrate to the International Trade Commission all the safeguard requirements currently in the law. In addition, the petitioner will have to show that all, or a substantial percentage of, the crop is sold during the growing season, and that the demand for the crop is not met to any substantial degree by producers in a different growing region and in a different season.

Unique Characteristics of Seasonal Perishable Crops

Few people understand that our crops can be grown in only certain locations. To be successful, the appropriate micro-climate, soil and adequate water are needed.

Seasonal perishable crops (like the federal program crops, such as wheat and corn) mature as the growing seasons move north in the U.S. However, the program crops have the option as they harvest their crops, to market them immediately or to store the crop.

Our seasonal perishable crops do not have the option of being stored. First, our crops normally have a shelf life of two, three or four weeks and they must be consumed during this period.

If there is an import surge, we do not have the luxury of storing the crop even for a few days.

Under the existing 201 law, if we were to bring an action, our economic information would be rolled into the economic information for the entire nation, even though the other harvest(s) of the same seasonal perishable crop was not impacted by the import surge.

If the seasonal perishable crop experiences competition from an import surge, we cannot move grapevines or trees to another growing area, so that we could produce at another time.

When we are faced with the unique experience of competing against a significant currency devaluation, our orchards and vineyards will be abandoned if we cannot compete against the surge imports.

I would like to show you a picture of my citrus grove and vineyards, that would have to be abandoned, if we could not remain competitive against an import surge(s).

Scope of Relief

The pending legislation would not provide for instant relief for the seasonal perishable crop. All the requirements of the existing law would have to be proved, in addition to meeting the test that I described. We must prove that we have a workable adjustment plan, and finally the President has to approve the program.

In the last twenty years, only one agricultural crop, canned mushrooms, was successful in receiving Section 201 relief (and canned mushrooms are not even considered a perishable crop).

The relief would give our seasonal perishable crops a period of a few years to make adjustments in our cultural and marketing practices.

"Mirror" Legislation

I have heard that some who are opposed to this legislation fear that other nations will implement similar, or "mirror," legislation.

If a crop in another nation was faced with the same dilemma we are facing, I would support giving the foreign producers a few

years to make necessary adjustments, provided those nations followed the same strict procedures followed by our International Trade Commission.

Incidentally, we are frequently faced with reference price problems in the European Union, and I have heard the EU has even implemented a new license system for crops.

Conclusion

In closing, I ask you to reflect on the prospects of my family and other families that have decades of work invested in their trees and vines. There is simply no ability to move these plants to Mexico, or other parts of the U.S. Industrial plants may be capable of relocation, but we do not have that option with respect to our orchards and vineyards.

The proposed legislation before you is not contrary to global trade. Instead, it merely gives a grower impacted by an import surge, a few years to make the necessary adjustments to that new competition.

In 1987 your committee made great progress on Congressman Bill Thomas' fast track perishability amendment in attempting to protect perishable crops. We urge you to move H.R. 2795 forward to complete the legislative project.

I remember reading from a congressional hearing record that a former Secretary of Agriculture said U.S. agriculture should not fear import competition since we had the best technology and scientists. What the Secretary did not mention, however, was that all of our technology, any new variety or cultural practice developed in this country, is immediately picked up by our foreign competitors. Nor did he mention currency devaluation. All the best technology, scientists and bank loans, cannot protect the U.S. grower from a devaluation such as the December 1994 Mexican devaluation.

Thank you, and I will be happy to answer any questions you may have.

National Alliance For Seasonal Agricultural Trade

NASAT Statement
Submitted to
The House Ways and Means Committee
April 25, 1996

Introduction

The National Alliance for Seasonal Agricultural Trade (NASAT) supports H.R. 2795, legislation that would permit an industry growing seasonal perishable crops successfully to seek assistance under Section 201 et seq. of the Trade Act of 1974, as amended, commonly known as the "escape clause" or "safeguard" legislation.

NASAT membership includes organizations that represent growers of seasonal perishable fruit and vegetable crops. These annual and perennial crops are grown mostly in the State of California.

Action against Unfair Foreign Competition and Injurious Imports

Where there is injury to a domestic industry due to increased levels of imports of a like or directly competitive product, safeguard action may be taken under Sections 201 et seq.. Relief includes the imposition of, or increase in tariffs, or increased quotas, and trade adjustment assistance. Relief which is not automatic is temporary, and the domestic industry must inform the U.S. International Trade Commission ("USITC"), why the petition is filed, and how it will make a positive adjustment to import competition.

Problem

Distinction Between One Crop and Seasonal Industry (Perishable) Crops

NASAT's concerns are directed to those seasonal crops that are perishable. To understand why NASAT members support H.R. 2795, it is necessary to understand the difference between industrial articles, agricultural crops, and seasonal perishable crops.

Under Section 201 et seq., there appears to be no distinction between the industrial article, "industry" agricultural crops and semi-perishable seasonal crops. However, the seasonal perishable crop cannot qualify for an adjustment remedy under the safeguard law.

Industrial Product

The door knob industry is a good example of an industrial article. It can be made any place in the United States every day of the year; in places that are cold or hot with little rainfall or abundant rainfall; in the winter or in the summer; in the State of Washington, Maine, or Texas. The determining factors for location of such an industry would probably be sufficient labor, proximity to transportation and proper zoning for the plant. Unlike agriculture, seasons of the year do not normally impact the production of the industrial article - the door knob.

One "Industry" Agricultural Crops

Examples of a one "industry" season semi-perishable crop would be corn, wheat, soybeans, oats, barley, etc.. These crops are mainly grown in the Midwest and depend on a certain environment, but they are one-season crops and can be stored for months and perhaps more than one year. USITC would consider the nation's crop collectively as the "industry", whether it is grown in Iowa or Georgia.

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Annual Seasonal Perishable Crops

Annual seasonal perishable crops are fruits and vegetables that require planting each season. Annual crops such as radishes, peppers, tomatoes, potatoes, strawberries, etc., will normally be a one season crop, (some regions may have the advantage of obtaining two crops in a growing season, as lettuce in Salinas, California), and the crops will be harvested and sold during a period of the year. The time period from planting to harvest will range from two to five months depending on the crop.

As an example, in January, strawberries are grown in south Florida and certain parts of California. Strawberries, like other seasonal perishable crops, need a certain type of soil, temperature, adequate water, and daylight. After several months when the temperature changes, the crop is harvested, sold and consumed, and it will be another year before the strawberry is planted in the area. A second, different region will be producing the strawberry after the first area completes its production. (Most likely if the strawberry were planted in a second region at the same time, the crop would be a failure because the second area lacks the necessary environment). If the first crop area experiences import surge competition, the crop will not be planted in that area in the following years, but later harvested strawberry production in different regions would continue in the future because they were not impacted as a result of the import surge.

Perennial Seasonal Perishable Crops

Perennial crops are crops that once planted, produce for more than one season (year). Unlike annual crops, perennial seasonal perishable crops do not produce in commercial quantities for three or more years after being planted. Some crops have more than $10,000 per acre invested, not counting the land, before the crops start producing.

Perennial crops can be segmented into two types: perishable and semi-perishable. Examples of perishable perennial crops are asparagus, peaches, nectarines, grapes, mangos, papayas, cane berries, etc. Semi-perishable perennial crops include dates, chestnuts, citrus, apples -- crops that need refrigeration and can last months before being consumed.

Specific Differences in Annual and Perennial Crops

Seasonal perennial perishable crops are different from annual perishable crops because they are permanently planted on the same acreage and demand different considerations. Annual crops normally are rotated because of pest build-up in the soil.

A major difference between the annual and perennial crop is the time required before the perennial crop can be commercially harvested. For example, dates may require some ten years before they can be commercially harvested; pistachios, some six years; citrus, three to four years; and asparagus, five years. Once perennial crops begin producing they continue to produce for a number of years. For example, asparagus plants produce for fifteen years, whereas, an annual crop like peppers produces for only one year.

Another principal difference between the seasonal annual crop and the seasonal perennial crop is the inability to relocate the perennial crop, if the crop suffers from an import surge. First, it is horticulturally impossible to relocate the seasonal perennial crop that has tree, vine or bush roots for production in the following season. Secondly, some of the seasonal crop regions are quite small in area because of environmental limitations. Many of these areas have supported the perennial crops for decades and the plants are replaced every ten, fifteen and even thirty years. How do you relocate 15,000 acres of peach trees, or relocate hundreds of acres of asparagus or mangos? The

farmer cannot relocate his or her plants. Or, how do you replace the micro-climate - this is impossible. But a door knob factory can move its equipment to another region in the U.S. - or even to another nation to compete in the world market.

Serious Injury or Threat of Serious Injury to a Seasonal Perishable Industry

A seasonal perishable crop industry is frequently one that sells its crop in a few weeks to two months, before another region in the U.S. starts its marketing season for that crop. If there is an import surge during the production and harvesting of the first seasonal crop, by the time the other domestic seasonal crops enter the market, the imported crop and the first seasonal crop have been sold in the market. Consequently, the first crop suffers the injury and the second, third and following seasonal crops are not injured by the import surge. Yet, under the existing law, all the seasonal perishable "like" crops are required to be considered as one industry. The effect of the current law is that, under the above scenario, the first harvested seasonal crop is eventually forced out of business.

Need for Legislation

The law does not recognize the seasonality situation of growers of perishable fruits and vegetables. At the current time, seasonal growers are considered to be a part of a national industry that may produce and sell during the whole year, which may include entirely different times of the year from that of seasonal growers. If growers in one region produce and sell at a time when no other domestic growers are producing and selling, economic data of all the domestic regions are nonetheless considered in determining whether there is import injury to the one region.

Application of H.R. 2795 Legislation in the Safeguard Program

A more specific example of how the legislation would function is provided in the following scenario:

A seasonal "like" perishable crop, asparagus, is grown in five distinct locations in the States of California, Oregon and Washington. The crop is grown in these different regions because of the micro-climate and soil type that is required for growing the crop successfully and to continue the supply of fresh produce to the consumer. The asparagus is first harvested in January in southern California and harvest is completed in the State of Washington in late June. British Columbia continues to harvest into July. The crop has a shelf life of two to three weeks, and each separate growing area normally sells a substantial percent of its crop before the next, further north area starts selling its crop. An import surge of the crop creates an injury or threat of injury to the first-in-time harvest and sold crop.

The seasonal perishable crop, asparagus, for the first particular growing season would have standing to file a petition, if the +crop demonstrates to the USITC all the existing safeguard requirements, plus if all of the production of the asparagus is sold during the growing season and the demand for asparagus in that season is not supplied, to any substantial degree, by producers of the article in a different growing region of the country and different season.

If the imported crop caused two seasonal perishable crops, not necessarily selling at the same time, to file the safeguard petition, then the two seasonal perishable industries would be required to provide the USITC with their economic data and perhaps have their cases merged into one case.

Scope of Relief

The proposed legislation would amend Section 201 et seq. to permit, for the first time, seasonal agricultural crops to receive the same opportunity that is provided other industries. The number of industries that would be eligible to seek relief under this legislation would be small, and the scope of relief would be extremely narrow. The legislation would not provide immediate relief, and any relief provided would not be permanent but temporary for a few years. In the last twenty one years, only one agricultural crop, canned mushrooms, was successful in receiving relief (adjustment assistance).[1]

The legislation would provide the opportunity for the seasonal perishable agricultural industry to have an opportunity to succeed with a safeguard case. If successful at the USITC level, the industry must still have its case approved by the President.

H.R. 2795 is Compatible with Article XIX of WTO

The Analytical Index[2] for the interpretation of Article XIX, Emergency Action on Imports of Particular Products, sets forth several conditions for the article to be fulfilled and these are:

> "(i) the product in question must be imported in increased quantities;
>
> "(ii) the increased imports must be the result of unforeseen developments and the effect of the tariff concession; and
>
> "(iii) the imports must enter in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products.

Applying the above principles to the problem of seasonal crops the petitioner must comply with the above conditions or the safeguard petition will fail before the USITC. H.R. 2795 merely permits the seasonal perishable crop that is grown during a particular growing season and sells all or most all of the production during that growing season to have a reasonable chance of succeeding before the USITC if it can comply with the safeguard principles described above in this section.

Other Considerations

Mirrored Legislation

Concern has been expressed that if the U.S. adopts this amendment other nations will implement the same program. NASAT has been concerned with trade barriers that prevent their fresh fruits and vegetables from entering foreign nations. An example of a safeguard type of program is the European Union reference price for fruits and vegetables. This permits the E.U. to increase tariffs on fruits and vegetables every year when the E.U.'s produce is being sold. Switzerland, during the very small Swiss asparagus production, can place a $5.00 per pound duty on California asparagus. Yet the Uruguay Round did not eliminate these practices.

These foreign programs do not have the agency proceedings required by the U.S. safeguard statute. If the E.U. and other foreign countries were to mirror the U.S. safeguard law, as amended with the proposed seasonal perishable legislation, NASAT would be elated. U.S procedures would be preferable to the current trade system used by many nations to discourage exports.

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[1] U.S. ITC Inv. No. TA 201-43, Mushrooms

[2] GATT, Analytical Index: Guide to GATT Law and Practice, Updated 6th Edition (1995)

U.S. Fresh Fruit and Vegetable Protection in the NAFTA Agreement

Your Committee has received correspondence claiming that the fresh fruit and vegetable industry received protection in the NAFTA through tariff rate quotas and long tariff phase out periods. This observation requires a response.

First, the exporting NAFTA producers received a huge trade benefit through the currency devaluation that took place in December 1994. To equate a five percent NAFTA tariff to a fifty percent currency devaluation is not a "level playing field".

Second, the opponents to the legislation assume that all fresh fruits and vegetables maintained a tariff. In contrast, numerous United States crops had no tariff or an extremely low tariff. One cannot claim that these crops had a reasonable time to adjust to the sudden currency devaluation.

It is important to recognize that NASAT is not supporting the legislation because of opposition to NAFTA. NASAT membership has for many years recognized the import surge problem and in fact supported the Committee's fast track perishable legislation in 1988 as a temporary remedy for import surges from any country.

Unfinished Business of the 100th Congress

In the 100th Congress, the House Committee on Ways and Means provided the needed relief for the seasonal perishable crops during debate on legislation (H.R. 3, the primary provisions of which became the Omnibus Trade and Competitiveness Act of 1988 (PL 100-418). Page 98 of the Committee report (House Report 100-576) includes the following paragraph:

> 5. Seasonal Products. The bill adds a special provision that, in cases involving imports of seasonal agricultural products, the ITC may find serious injury or threat thereof when the increased imports are largely entering during a specific period or season of the year and are largely impacting only those domestic producers harvesting or marketing during that season or period of year. (emphasis added). In applying this new provision, the ITC should continue to examine historical trends in imports and industry conditions, but should do so in the context of the seasonal nature of the product.

Clearly, the Committee intended to include those producers that sold a perishable crop during a period of the year when the other producers of the same crop were not harvesting and selling their like crop. Unfortunately, this provision was dropped in a House-Senate conference.

Conclusion

As earlier stated, the application of the proposed legislation would be narrow. In order for a perishable seasonal crop to receive relief from overwhelming foreign competition in the form of new or increased import duties, tariff rate quotas or other types of trade assistance, it would have to meet all the existing statutory criteria in addition to the following proposed legislative criteria:

- all or almost all of the production of the article is sold during the growing season; and,

- the demand for the article is not supplied, to any substantial degree, by producers of the article in a different growing season.

This requirement means that the seasonal perishable crop will be grown at a different time of the year than other domestic production areas, and that the crop will have to be substantially sold prior to the other grower season of the "like product".

Mr. SHAW. Thank you.
Mr. Stewart.

STATEMENT OF TERENCE P. STEWART, MANAGING PARTNER, STEWART AND STEWART, WASHINGTON, DC

Mr. STEWART. Thank you, Mr. Chairman.

At the beginning of this hearing, some on the panel took the position that the correct standard for evaluating whether or not this legislation should be enacted would be whether or not it is WTO-consistent. You have heard the statement from the U.S. Trade Representative's Office that it is. I would like to add just a few comments in support of what the USTR's Office had to say.

There are several rules in the construction of the GATT and now the WTO documents. First, not all things have to be in an agreement for them to be doable by a country. Second, various agreements within the package can be looked at to try to glean an understanding of how the WTO might look at any particular issue.

With those principles in mind, let me refer the Trade Subcommittee to the agricultural agreement, article 5, which deals with special safeguards. This was the provision that was put in within agriculture for the most sensitive products of the countries who were negotiating, which was virtually the entire world.

Article 5.6 of that agreement specifically recognizes within a special safeguard provision the right, indeed, the necessity to consider whether products are perishable or seasonal, albeit the very situation that you all are considering here with regard to the rest of the safeguard agreement.

Let me just read paragraph 5.6.

> For perishable and seasonal products, the conditions set out above,

dealing with when special relief can be provided,

> shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under subparagraph 1(b).

In other words, in the agriculture agreement itself, there is a recognition that you have to give special treatment, special consideration, to the unique characteristics of perishable and seasonal products. That is all that this bill attempts to do within the context of our safeguard agreement.

U.S. law currently recognizes the right to deal with regional industries. That is consistent with WTO obligations in the antidumping context, even though there is nothing within article 19 or the safeguard agreement that deals with regional industries. No one has challenged the U.S. right to have a regional industry definition in its law.

Similarly, here, too, a seasonal provision would do nothing more than give commercial recognition of a commercial fact within our statute; and as far as retaliation goes, no country is entitled within the parameters of NAFTA or the WTO to retaliate against the United States for implementing law without taking a challenge. Any law of the United States that affects trade can, of course, be challenged if a country disagrees with its consistency. Should we

lose such a challenge, the first opportunity the United States has is to modify its law to bring it into conformance.

In the context of whether the sky would fall, whether all of the U.S. agricultural exports would suddenly find themselves subject to retaliation, first, such action would be clearly contrary to our trading partners' obligations with the United States and one need only take a look at the track record of 201 in the past to evaluate the reasonableness of the claim of potential retaliation.

Safeguards have been provided as a central element of every trade agreement the United States has entered since 1934. It has been the promise to American business and workers and communities that there will be time to adjust if things unanticipated happen. Yet less than 10 percent of cases that have ever been filed have resulted in relief actually being afforded to domestic industries. If one looks at regional industries, to my knowledge, there has never been a regional case brought under section 201. There have only been a handful of regional cases brought under the antidumping law.

So a concern about the sky falling and all of agriculture being subject to retaliation, even assuming our trading partners were not going to abide by their international obligations, is nonsense.

With regard to the issue, Mr. Chairman, that I heard you commenting about with regard to the Mexicans withdrawing product from the market in March of this year in tomatoes, there is a large sheaf of documents that has been submitted to both the Commerce Department and the International Trade Commission, which do not come from the State of Florida but come from Mexican newspapers that refer to the Mexican producer organizations holding back huge quantities of tomatoes for the specific purpose of increasing prices in the United States, the very risk to U.S. consumers when the only real competitor in the United States, namely the seasonal industry that directly competes with the imports, is knocked out of the box.

That is the risk in Florida with regard to tomatoes and bell peppers. It is the risk that occurs in California with regard to grapes. It is a risk that can occur to many seasonal industries. Thank you very much.

[The prepared statement follows:]

STATEMENT OF

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Before the Subcommittee on Trade
of
The Committee on Ways and Means
United States House of Representatives

Hearing on H.R. 2795

April 25, 1996

I. Introduction

Thank you for the opportunity to testify today on H.R. 2795 which would amend the Trade Act of 1974 and that Tariff Act of 1930. My firm currently represents the petitioners in the ongoing Section 201 investigation of fresh tomatoes and bell peppers. However, I appear here today not on behalf of any client or client group but in my individual capacity. As such, the views expressed are my personal views and do not necessarily reflect the views of any client or those of other members of my firm.

II. U.S. Escape Clause

Current U.S. escape clause provisions are contained in Section 201 et seq. of the Trade Act of 1974, as amended [19 U.S.C. §§ 2251-2254]. In a Section 201 investigation, the International Trade Commission is charged with the responsibility of determining whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

As stated in the annual Overview and Compilation of U.S. Trade Statutes prepared by the staff of this Committee:

> From the outset of the trade agreements program in 1934, U.S. policy of seeking liberalization of trade barriers has been accompanied by recognition that difficult economic adjustment problems could result for particular sectors of the economy and, if serious injury results from increased competition by not necessarily unfairly traded imports, then domestic industries should be provided a period of relief to allow them to adjust to new conditions of trade. Beginning with bilateral trade agreements in the early 1940s, U.S. trade agreements, and eventually U.S. domestic law, have provided for a so-called "escape clause" or "safeguard" mechanism for import relief. This mechanism, while amended over the years, has provided authority for the President to withdraw or modify concessions

> and impose duties or other restrictions for a limited period of time on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive article, following an investigation and determination by the U.S. International Trade Commission (ITC)(formerly the U.S. Tariff Commission).

Id., 104th Cong., 1st Sess. at 96 (Committee Print, WMCP: 104-6).

Because unfair trade practices are not the basis for action, U.S. law and our international obligations under the GATT and now the WTO, have imposed the most difficult standard for obtaining relief. Injury must be "serious" not merely "material." Causation is similarly more difficult: "a substantial cause" vs. a cause. Finally, unlike antidumping or countervailing duty actions, where relief is provided, the United States must provide compensation in the form of other tariff reductions or face potential retaliation. This latter situation was modified in the Uruguay Round negotiations, so that no retaliation is permissible during the first three years of relief. See Agreement on Safeguards, Article 8:3; T. Stewart & M. Brilliant, "Safeguards," in The GATT Uruguay Round: A Negotiating History (1986-1992) at 1717 - 1820, Kluwer Law and Taxation Publishers (T. Stewart editor)(1993).

III. Past Experience and Existing Restrictions on Domestic Industry Definitions

Relatively few escape clause actions initiated over the years have resulted in relief actually being granted to domestic industries. There are a variety of reasons including the difficulty of the injury standard, the construction of the term "substantial cause" and the very limited willingness of past Administrations to grant relief where an industry was able to obtain an affirmative determination by the International Trade Commission. It is not clear to what extent Administration reluctance has been premised upon a desire not to grant further trade concessions on other products. If that has been the basis for refusal to grant relief, U.S. escape clause cases may be more successful in the future than they have been in the past.

The International Trade Commission in making determinations of whether domestic industries are materially injured or seriously injured under the antidumping and escape clause laws conducts an investigation to obtain information on the specifics of the particular industry and market situation. U.S. law and international agreements have recognized that industries and competition can be defined in terms of whether products are produced in certain regions for regional consumption or whether there is temporal and location overlap in how products are sold. See, e.g., Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 Article 3.3 (cumulation of imports permitted where "conditions of competition" indicate it is appropriate), 4.1(ii)(regional industry factors); 19 U.S.C. 1677(4)(C)(regional industry defined) and 1677(7)(G) (cumulation). Even in situations where the Commission has not found regional industry criteria to be met, the Commission has examined whether imports which primarily enter and compete in one market area have negatively impacted producers in that area. See, e.g., Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684-685 (Final), USITC Pub. 2862, at I-21 n.124 (March 1995); Potassium Chloride from Israel and Spain, Inv. Nos. 303-TA-15, 701-TA-213 (Final), USITC Pub. 1596 (Nov. 1984).

In the agricultural and horticultural arena, there are many products which have distinct growing seasons in particular parts of the country. While such products may be "identical" regardless of where grown, if the products are highly perishable, growers in the different regions will essentially not compete and not be capable of competing for significant parts of the year. Since there is no meaningful competition for large parts of the year by growers in such situations, the issue has arisen as to how the Commission should treat imports that effectively compete mainly with one of the regions of the countries. The Commission in 1995 in a "provisional remedy phase" determination under the U.S. escape clause decided that U.S. law should be construed to require an examination of a "national" industry in such situations despite the lack of meaningful competition between the imports and domestically grown product in areas other than Florida for much of the year. Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase)(April 1995).

H.R. 2795 is an effort to clarify U.S. law to permit an examination of injury and a definition of industry in perishable products along lines that reflect commercial reality in the marketplace. The bill should be adopted by the Committee. The Committee report should reflect that the provision is available to any agricultural or horticultural product that is highly perishable in nature.

IV. The Impact of H.R. 2795 on Section 202 Investigations

H.R. 2795 would modify current law in two ways. First, the bill would clarify the scope of the term "domestic industry" as used in Section 202 investigations. Current law allows the International Trade Commission to define the domestic industry as a subset of all producers of a particular product when the producers, their production, and the imports are concentrated in a geographic area.

The bill would provide another example of when the domestic industry may be properly defined in terms of actual competition. The bill would specifically authorize the Commission to define the domestic industry according to those producers who sell all or almost all of their production in a particular growing season. Last year, the International Trade Commission made a decision as part of its provisional relief phase determination in a Section 202 investigation of fresh winter tomatoes that the geographic industry provisions precluded finding the domestic industry limited to producers during an identifiable growing season. The Commission reasoned that if Congress intended alternative definitions of "domestic industry," the statute would have included those alternative definitions.

Passage of the proposed legislation would clarify to the Commission that the law permits seasonal industries to be recognized under the law.

Second, H.R. 2795 would modify the product definition for perishable agricultural producers who sell all or almost all of their production in a particular growing season. Under current law, the Commission must determine whether the imports are a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article "like or directly competitive" with the imported product. Although the terms "like" or "directly competitive" are not defined in the statute, the Commission has referred to the legislative history for guidance. The legislative history indicates that "like" products are those which are substantially identical in inherent or intrinsic characteristics while "directly competitive" products are substantially equivalent for commercial purposes because they are adapted to the same uses and are essentially interchangeable.

If the Commission were to adopt the seasonal definition of domestic industry under H.R. 2795, the bill would instruct the Commission to define the like product as that produced by the domestic industry during the applicable growing season. The imported product subject to investigation would likewise be limited to the products entered, or withdrawn from the warehouse for consumption, during that growing season.

The bill is consistent with commercial reality and permits relief to be provided to the limited industry directly affected by the import problem. Thus, the relief granted is consistent with the underlying spirit of U.S. law and our international obligations. See, e.g., Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 4.2 (in regional cases, relief should be limited to extent possible to regional imports); Agreement on Agriculture, Article 5.6 (agriculture special safeguard provision recognizes seasonal products and limits relief to seasonal period where criteria are met).

V. *H.R. 2795 Would Be Consistent With U.S. WTO Obligations*

H.R. 2795 would be entirely consistent with U.S. obligations under the Uruguay Round Final Act. For example, the Agreement on Agriculture contains a special safeguard provision which allows countries to provide special safeguard measures when the volume of imports of a specified agricultural product exceeds the "trigger level" during any given year. Agreement on Agriculture, Article 5. The Agreement only permits additional duties on these imports until the end of the year. The Agreement also permits safeguard measures when the price of the imports falls below a "trigger price."

In the case of perishable and seasonal products, however, the Agreement recognizes the need to take into account the special characteristics of the products. To wit,

> For perishable and seasonal products, the conditions set out above shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 [trigger volumes] may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under subparagraph 1(b)[trigger price].

Article 6 (bracketed material added).

Thus, member states are permitted to adopt trigger volume and price levels taking into account the specific characteristics of the perishable and seasonal products. Specifically, member states can shorten the time periods to measure import volumes for perishable and seasonal products. Likewise, "trigger prices" can include different reference prices for different periods. These provisions have been implemented in 19 U.S.C. § 3602.

Stated differently, the WTO already specifically recognizes the commercial reality of perishability and seasonality. There is no reason for such recognition not to be formally added to U.S. law. H.R. 2795 is a vehicle to clarify existing U.S. legal rights.

Thank you for the opportunity to testify. I would be pleased to respond to questions.

Mr. SHAW. Mr. Stewart, I would ask that a few of these accounts of Mexicans holding back on the crops be submitted, and I would ask unanimous consent that the record be kept open in order for you to submit that to the Committee to be a part of this record.

Mr. STEWART. We would be pleased to do that, Mr. Chairman.

Mr. SHAW. Without objection, so ordered.

[The following was subsequently received:]

Translation from El Debate, March 7, 1996, p. 5-A:

Tomato Exports Reduced

This month, Sinaloa farmers have refrained from shipping approximately 400 thousand boxes - over two thousand tons - of tomatoes to the United States, which means an 86 percent reduction in their normal exports as of February 29, but CAADES argued that this is not a decline in activity, but a measure implemented by the producers themselves, in an attempt to improve the price of the vegetable "which is reacting upwards."

EL DEBATE

Reducen exportaciones de tomate 3/3/96

Hortícultores sinaloenses han dejado de enviar en este mes alrededor de 400 mil bultos de tomate a Estados Unidos —unas dos mil toneladas—, lo que significa una reducción del 86 por ciento en sus exportaciones normales al 29 de febrero, pero la CAADES argumentó que no se trata de un desplome de la actividad sino de una medida implementada por los propios productores, buscando mejorar el precio de la hortaliza "que está reaccionando a la alza".

Luis Antonio Cárdenas Fonseca, presidente de la Confederación de Asociaciones Agrícolas del Estado de Sinaloa, informó que de 237 mil bultos que se enviaron el primer día de marzo, el volumen se redujo en 46 mil 545 el día dos; en 135 mil 254 bultos el día tres y el día cuatro, no se enviaron 201 mil 519, sumando en total 383 mil bultos.

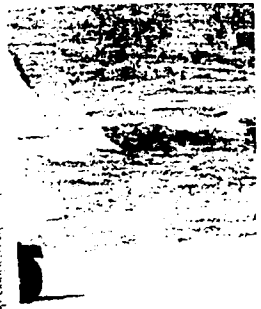
El tomate producido en Florida se vende en 12 dólares la caja de 4.5 kilos y el tomate mexicano alcanza apenas los siete dólares, aun después de esta medida implementada por los sinaloenses, de acuerdo a cifras de los mercados de Chicago, Florida y Nueva York, aunque en este último promedia entre los ocho y diez dólares.

"El objetivo de esta iniciativa, es enviar la mejor calidad en las mejores condiciones de comercialización y ya estamos viendo los resultados, al reaccionar favorablemente el precio", asegura Cárdenas Fonseca.

La medida persistirá todos los días hasta que sea necesario, enfatizó.

El presidente de CAADES resaltó que solamente se enviará tomate con por lo menos un 90 por ciento de calidad y de colores 1 al 3, ya que a partir del cuarto se acentúa el proceso de maduración.

El pasado 29 de febrero terminó la primera venta de exportación, en la que se permitía enviar, de acuerdo al Tratado de Libre Comercio, 175 mil toneladas de tomate.



constante vigilancia en playas y campos

Que intervenga el Ejército: CES

El presidente del Consejo Estatal de Seguridad, José María Espinosa de los Monteros, se pronunció ayer a favor de la intervención del Ejército pero sólo en sectores donde el resto de los cuerpos policiacos no han podido controlar la violencia, dijo además que es un absurdo intentar limitar funciones.

Dijo que lo primordial para todos los ciudadanos es disminuir la violencia, vivir en paz y armonía por lo que si bien no es función del Ejército trabajar en áreas de sindicaturas, debe exigirse a quien corresponde que cumpla y si no es así entonces deben entrar quienes sí pueden hacerlo.

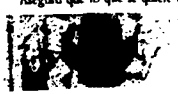
Aseguró que lo que se quiere es que se acabe el problema de la violencia que aumenta, de ahí que no se deben limitar funciones porque lo importante es disminuir la violencia en la forma en que sea más necesaria.

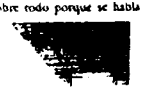
Precisó que si la propuesta del alcalde es para que entre el Ejército a sectores específicos, muy determinados en donde definitivamente los cuerpos policiacos de prevención no han logrado nada o participar porque no hay elementos suficientes no hay el más mínimo inconveniente de que entre esta fuerza.

No hay, dijo el más mínimo inconveniente de que entre el Ejército a esas zonas sobre todo porque se habla de sectores donde se promulga mucho el narcotráfico y otras por el estilo lo que además es función del Ejército.

Expuso que lo que se quiere es que el índice de violencia baje, que la ciudadanía pueda vivir tranquila y en armonía, por lo que si para esto es necesaria la participación del Ejército entonces sí vale la pena.

De hecho dijo que el Ejército ya realiza rondines, por lo que al parecer ahora sólo se trata de que llegue a zonas específicas, con mayor frecuencia pero siempre en coordinación con los cuerpos policiacos puesto que además las cifras indican que el problema sigue creciendo, finalizó.





Plantearán problemática

■ FREE TRADE

Lawsuit battles imports

ITC will study Florida's claims of harmful surges in Mexican volume.

By Larry Waterfield
Washington, D.C., Editor

In a move that's expected to increase tension between Florida and Mexican producers and exporters, Florida has filed a federal lawsuit under Sections 201 and 202 of the Trade Act claiming that its produce industry has been harmed by heavy imports of Mexican produce.

At a March 11 rally of growers and packers in Florida City, Fla., Bob Crawford, Florida's agriculture commissioner, announced the filing of the complaint, which will be investigated by the International Trade Commission.

Should Florida win the lawsuit, it is likely that trade relief, including emergency tariffs, would be implemented.

Crawford acknowledged that the North American Free Trade Agreement contains safeguards to protect against fruit and vegetable import surges, but Florida claims those safeguards are inadequate.

"The survival of our industry is

See Lawsuit, Page 3A ►

Lawsuit

(From Page 1A)

in serious doubt" unless NAFTA is enforced, Crawford said, claiming Florida stands to lose $1 billion a year if Mexican produce is dumped in the U.S. market at prices below the cost of production.

Florida growers and produce officials met March 8 with Mexican growers and officials in Dallas to discuss the situation. The meeting, described by participants as friendly, resulted in no concrete solutions that would resolve the trade dispute. At the meeting, which was sponsored by the U.S. and Mexican governments, Florida informed the Mexicans of their plans.

"We told them we were going to file the suit," said J. Luis Rodriguez, Florida trade consultant and former grower. "We didn't want them to read about it in the newspapers."

The Mexican Embassy, contacted by THE PACKER, had no official response to the Florida complaint. In the past, the Mexican ambassador has argued that the large export volume is justified under the provisions of NAFTA.

The parties plan to meet again in Mexico, though a date has not yet been set. Paul Drazek, special assistant for trade at the U.S. Department of Agriculture, is leading U.S. efforts to find a solution to the dispute.

Rodriguez said Florida also may file a dumping complaint against Mexico in April or early May, an event that also would trigger an investigation of shipments, prices and production costs.

Lee Frankel, executive vice president of the Fresh Produce Association of the Americas, Nogales, Ariz., said the supporters of the Florida lawsuit "don't even represent all of Florida. They are mostly from Dade County and Immokalee."

Courtesy Florida Fresh Fruit & Vegetable Association

Florida agriculture commissioner Bob Crawford announces the filing of a section 201 petition at a March 11 rally of growers and packers in Florida City, Fla.

He said the market needs two growing areas to keep prices reasonable and that Mexico is doing as much as it can to keep from flooding the market.

He also said it is common in the produce industry to sell at below cost during some periods to recoup some costs, with the hope of making money for the entire season.

But Florida produce groups are continuing to lobby Congress for legislation that will allow the ITC to take into account the seasonal aspect of the produce business when assessing trade damage.

That legislation is stalled in the House Ways and Means Committee. In addition, Florida is backing legislation introduced by Rep. Sonny Bono, R-Calif., that would require imported produce to carry country of origin labeling at retail.

Mike Stuart, executive vice president of the Florida Fruit & Vegetable Association, was in Washington, D.C., March 13-14 to meet with

Translation from El Debate, March 12, 1996, p. 14-A:

Tomatoes Shipped to the U.S. Returned

EL DEBATE de Los Mochis. - As a measure arising from an attempt to overcome the serious decline in the prices of ripe tomatoes faced starting last week in the United States, producers of this state agreed to return to their places of origin all the products present at the border of colors 5 and 6, the more mature; to suspend packing the product this weekend, and, starting tomorrow, to ship to the market only color 3 as a maximum, of 90% grade.

The agreement was signed Friday at a meeting with representatives of tomato growers of this state held within CAADES, Dr. Jorge Antolin Rojo Leyva said yesterday.

The head of the Department of Economic Studies of the Farmers' Association of Rio Fuerte Sur stated that this measure attempts to overcome the serious decline in prices of this product which began to appear starting last week in the neighboring market.

He pointed out that although the agreed upon measures are basic, it was necessary to establish them as a means to reduce the supply of the product in the U.S. market and to promote the resurgence of prices in the short term.

* * *

The problems which appeared since last week in the United States in the marketing of ripe tomatoes are rather serious, and arise precisely from the high production volumes which have been handled, but "we hope that with the measures taken the situation will return to normal in the short run."

3/2/96

Regresan tomate enviado a EU

EL DEBATE de Los Mochis.- Como medida emergente para tratar de superar el grave desplome en los precios del tomate maduro enfrentado a partir de la semana pasada en los Estados Unidos, los productores del estado acordaron regresar a sus lugares de origen todo el producto existente en la frontera en los colores 5 y 6, los más maduros; suspender este fin de semana el empaque del producto, y a partir de mañana sólo canalizar al mercado el color 3 como máximo, al 90 % de calidad.

El acuerdo fue signado el viernes en una reunión sostenida con los representativos de los productores de tomate del estado celebrada en la Confederación de Asociaciones Agrícolas del Estado de Sinaloa, informó ayer el Lic. Jorge Antolín Rojo Leyva.

El titular del Departamento de Estudios Económicos de la Asociación de Agricultores del Río Fuerte Sur, señaló que con la medida se busca superar el grave desplome en los precios del producto que a partir de la semana pasada comenzaron a presentarse en la vecina plaza comercial.

Apuntó que sin bien las medidas acordadas son de fondo, era necesario implantarlas como una forma de reducir la oferta del producto en el mercado estadounidense y pensar en una reactivación de los precios en el corto plazo.

Indicó que para esto fue necesario también, además de retirar todo el producto inaduro existente en la frontera, fundamentalmente en los colores 5 y 6, suspender totalmente ayer sábado y hoy domingo el proceso de empacar la legumbre en todos los empaques del estado.

Rojo Leyva señaló que de la misma manera, a partir de mañana se impondrán restricciones de calidad en los envíos, ya que únicamente podrán movilizarse tomates con colores 3 como máximo y con el 90 por ciento de calidad.

Los problemas que se han presentado a partir de la semana recientemente concluida en los EU para la comercialización de los tomates maduros son bastante serios, derivado precisamente de los elevados volúmenes de producción que se han manejado, pero "esperamos que con las medidas implantadas la situación logre normalizarse en el corto plazo".

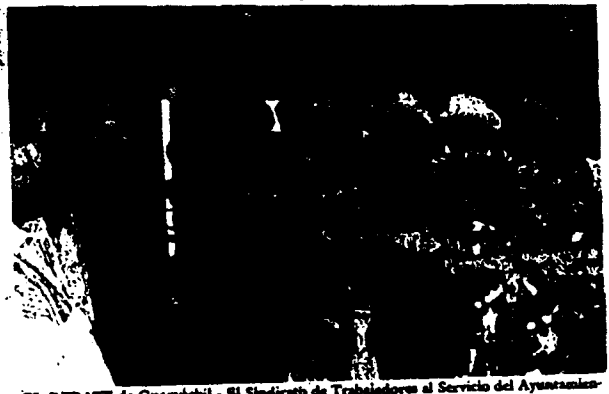
Amenaza la PGJE con reprimir a invasores

EL DEBATE de Los Mochis.- La Subprocuraduría de Justicia del Estado no permitirá que en la zona norte se violente el estado de derecho, y toda manifestación ilícita será combatida aunque se trate de un reclamo justo, declaró Efraín Alonso Gastélum Padilla.

La declaración surgió después de que varios manifestantes reclamaban respeto a la invasión de terrenos ejidales que sus dirigentes promovieron en demanda de un solar donde vivir.

"Todo ciudadano tiene el derecho de aspirar a un lote en donde vivir, pero nuestra responsabilidad es velar por que se respeten las leyes que privan en la sociedad; por lo tanto, ninguna invasión, por justa que sea, se permitirá, máxime cuando el hecho sea denunciado por los afectados", explicó.

Dijo que por ser una institución en donde se vigilan las garantías de los ciudadanos,



EL DEBATE de Guamúchil.- El Sindicato de Trabajadores al Servicio del Ayuntamiento de Angostura, se afiliró a la CTM.

Presumen panistas irregularidades en las finanzas del Ayuntamiento de Guasave

EL DEBATE de Guasave.- Existe cerrazón en altos mandos del Ayuntamiento de Guasave, manifestó el presidente del Comité Municipal del PAN, Germán Díaz Maleón, quien muestra desconfianza de la auditoría que efectúa la Contaduría Mayor de Hacienda del Congreso del Estado, pues es evidente que se oculta información, sobre todo en lo referente al inventario actualizado de bienes e inmuebles, relación de nóminas de funcionarios" y otros malos manejos.

Esto lo sustenta en la solicitud que hiciera el también regidor Vicente Galas López desde el pasado 2 de febrero de este año, la cual requería el informe de la entrega-recepción e inventario de bienes e inmuebles que dejó la administración pasada, efectivo en caja, fondos fijos, fondos especiales y cuentas bancarias.

La solicitud planteada por regidores ale-

Translation:

A review of prices conducted by [USDA] shows that in the first months of 1996 the prices paid to Florida vegetable growers were at levels still lower than the average for 1995 ($492.96/MT), and much lower than those of 1992 ($646.62/MT).

In the first weeks of March, however, various tomato packers, affiliated to CAADES in Sinaloa, regulated the flow of exports. [Emphasis added].

Source: Servicio Nacional de Informacion de Mercado [National Market Information Service--SNIM], Marketing in the U.S. of Six of the Main Vegetables Produced in Mexico in the 1993-96 Period, March 20, 1996, at 38. The SNIM report was prepared based on infomation from USDA sources (Vegetables and Specialties, Situation and Outlook Report; Agricultural Outlook; Market News Service). Id. at 40.

ha caído sensiblemente, ocasionando reducciones y sustituciones en el consumo interno de productos agrícolas. La baja en la demanda nacional, más la mayor rentabilidad del mercado externo, con un peso que se mantiene subvaluado frente al dólar, contribuyeron a liberar una mayor oferta exportable de estos bienes.

Sin embargo, no se debe perder de vista que los agricultores nacionales también han tenido que hacer frente a costos de producción crecientes, como resultado de la inflación, de las altas tasas de interés sobre créditos, y del nuevo tipo de cambio, ya que insumen también bienes de importación. Ante esta situación, se puede decir que los productores de nuestro país pudieron aprovechar la ventaja temporal que significó la devaluación del peso, ya que posteriormente el encarecimiento de los insumos nacionales e importados provocó un alza en los precios de los costos y precios de los productos mexicanos, lo que ha ido repercutiendo sobre la competitividad en los mercados internacionales. Por lo tanto, los efectos positivos de una devaluación sobre el comercio externo de un país sólo se da en el corto plazo. De tal manera, si persiste la ganancia de mercados de las hortalizas mexicanas en el mediano plazo, ésta se deberá a otros factores.

Se debe destacar que el valor de la producción de hortalizas invernales en Florida durante 1995 se ubicó en 837.89 millones de US Dls. (1.8 millones de TM). Este valor fue inferior en 38.5% en relación al obtenido en 1992, el cual alcanzó los 1,433.30 millones de US Dls. (2.2 millones de TM). Esto refleja una caída de la producción de las hortalizas en ese estado del 18.8% en volumen, y del 38% en valor. Además, la aportación de la entidad en la producción estadounidense de hortalizas pasó de 14.3% en 1992 a 10.2% en 1995. También la participación respecto al total de área cosechada en los E.U.A. también cayó, al ubicarse en 13.6% y 11%, respectivamente.

En conclusión, los analistas del USDA consideran que la fuerte competitividad de las hortalizas mexicanas prevista en el mercado estadounidense, provocaría que los agricultores de Florida de las seis hortalizas de invierno más importantes, continúen recibiendo menores niveles de precios por sus productos, por lo menos en el corto plazo.

Una revisión de los precios hecha por ese organismo muestra que en los primeros meses de 1996, los precios pagados al productor de hortalizas en Florida se ubicaron en niveles todavía inferiores al promedio de 1995 (492.96 dólares/TM), y muy por abajo de los de 1992 (646.62 Dls./TM).

Sin embargo, en las primeras semanas de marzo, varias empacadoras de tomate, afiliadas a la CAADES en Sinaloa, regularon los flujos de exportación. A ello se agregaron los daños consecutivos del huracán Opal en octubre, las precipitaciones intensas de noviembre'95 y enero'96, así como las heladas de fin de diciembre; todo lo cual redujo los rendimientos y en algunos casos, la calidad de la hortaliza. Estos daños aparentemente se reflejaron

hasta la menor cosecha de marzo de 1996.

Lo anterior incidió abruptamente en incrementos de precios en los productos fronterizos, y el mercado terminal de Los Angeles, Cal. El precio del tomate bola maduro, en caja de 20 libras, contenido 4x5, pasó de 0.94 US Dls./Kg. en la primer semana de marzo, a 2.20 y 2.47 US Dls./Kg. en la segunda y tercera semanas, respectivamente. Ello tendrá repercusiones en el volumen demandado para un producto que es de consumo generalizado en los E.U.A.

No obstante lo antes mencionado, con la puesta en marcha del TLC, la mayor entrada de hortalizas mexicanas a los E.U.A. era algo que se esperaba, aunque debido a los factores coyunturales ya mencionados, se ha penetrado el mercado estadounidense de manera anticipada.

En la segunda parte de esta nota se analizará el comercio bilateral entre México y los E.U.A. del pimiento, y los precios al mayoreo en algunos de los principales mercados de aquel país.

FUENTE: Elaborado por el **SNIM** con información de:
-**Vegetables and Specialties**. Situation and Outlook Report. /ERS/USDA.
-Agricultural Outlook. /ERS/USDA.
-Market News Service. /AMS/USDA.

Aragón No 195 Col. Alamos C.P. 03400 México D.F.
TEL. 518-51 60 (FAX) 530-31-61

Mr. SHAW. Mr. Thomas.

Mr. THOMAS. Thank you very much.

I apologize. I am trying to be in three places at once. This testimony begins to round out and broaden the concern of seasonal agriculture, although it is clearly focused on the tomato crop, because others have some good examples. For the life of me, I do not fully understand some of the folk who are conjuring up international bogeymen to stop us from having a fair opportunity to redress unfair trade practices.

I sometimes think, perhaps, that some folks have not spent either enough time or they do not appreciate specialty agriculture and seasonal agriculture. Everyone is, I think, pretty much aware of how important wheat and corn is to this country, but for those of us who are involved with products that somehow never equate with corn and wheat—and I grow hundreds of them, at least people in my district do—people, I think, fail to understand how much money is attached to these products. Almonds alone are a quarter-of-a-billion dollar industry.

You can go on and on with products that are grown not just in one State but in particular counties within the State. For us, artichokes and asparagus have very limited growing areas, grapes in the central valley. When they are treated in this way, it is enormously devastating to the economies in those areas.

What is not further appreciated is the fact that more and more, we are dealing with high-tech operations in which there is a very sophisticated agricultural espionage, because one of the things we have been able to do is through genetic manipulation and selective hybrids, develop new products for the marketplace which would give us a competitive advantage, notwithstanding the head-on conflict, because our products are better and they get stolen and the next season they are being grown in Mexico or somewhere else. I wish I could have gotten the cooperation of the Federal Government on how important stealing of these various products is, as well.

So I appreciate the testimony that you folks have delivered. Clearly, it is from the heart, because it is coming from the pocketbook. Once again, all you want is a fair chance to plead your case to seek relief.

Mr. Stewart, I have to agree with you. The argument that somehow there will be this massive retaliation—frankly, if you look at a number of countries and especially EU countries, they already have placed increased tariffs on our products during their growing seasons, and if, in fact, that occurs to us, that simply would be reciprocity rather than some new bold move on the part of the United States.

So I appreciate all of you. I especially appreciate Mr. Bozick coming all the way across the country. He is on the southern flank of the growing season. He should be first to market, and when you are first to market, you are supposed to get a fairly decent price for your crop.

But when you find out that someone is already there with an inferior product, undercutting you in a way that is not fair competition, you begin to want to say, I would like to have my day in court or at least in front of the International Trade Commission. This

legislation would allow you folks to do that. Then it is up to you to prove your case and plead it. All we want to do is try to give you the opportunity.

I want to thank you for the testimony. Thank you very much.

Mr. SHAW. Thank you.

Mr. Loop, let me ask you a question. You heard the testimony of the previous panel and the statement that the tomato was a perennial and how long the season could be, with one bush growing up to 10 or 7 feet, anyway, the witness indicated, way over his head. Are you familiar with that type of a tomato and what success would you have in adopting that type of a tomato to the State of Florida?

Mr. LOOP. No, sir, I am not familiar with it. I am not saying it cannot be done, but I cannot visualize it being a practical commercial way to do it.

Mr. SHAW. I would sure like to get some of those seeds. Of course, I would probably get in trouble with the Ethics Committee if I did not buy them, but I would like to buy some of those seeds and try them out. That sounds like a wonderful, wonderful thing.

I would like to thank this panel. I would like to thank all the panels and all the people who came to Washington this afternoon in order to share with us their experience, their fears, their concerns on both sides of this particular issue.

It is a most important issue when you are talking about the number of jobs that we are talking about, when you are talking about whole industries—and we are not only talking about Florida; this is not a special favor to Florida, when you are talking about a bill like this that is permissive in nature. It does not demand seasonality, it just allows the Trade Representative another consideration in his negotiation and his working out problems with other countries.

I think that the fear that has been stated by some of the witnesses is unfounded. However, I can understand that people do not like to rock the boat, particularly when you are talking about international trade.

But we are talking about industries leaving this country. Once they are gone, they are gone. You do not get them back. Then you will find yourselves really at the mercy of foreign countries. This fresh fruit and vegetables is a very important part of our lives here in the United States and we should have all the protection that is available under existing trade laws and is consistent with the trade laws as they have been negotiated in these agreements, as they have been negotiated with the other countries.

Thank you very much. This hearing is concluded.

[Whereupon, at 4:39 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATE OF ARIZONA
EXECUTIVE OFFICE

FIFE SYMINGTON
Governor

April 23, 1996

The Honorable Philip M. Crane, III
Chairman, Subcommittee on Trade
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Dear Phil:

I write to reiterate my opposition to H.R. 2795, which will be heard by the Subcommittee on Trade this coming Thursday. This legislation, if passed, will benefit a narrow segment of the winter produce industry at the expense of all other segments of that industry.

H.R. 2795 is a non-tariff trade barrier that would directly violate the intent and spirit of the North American Free Trade Agreement. It would result in increased costs and prices throughout the industry, much to the detriment of producers, suppliers, distributors and ultimately the customer. The burden of protecting Florida's industry will be borne by consumers throughout North America. This contradicts our commitments to free market ideologies and policies. This country was built on the foundations of fair trade and competition and our future depends on our ability to compete and trade freely throughout the world. H.R. 2795 is a flawed attempt to isolate a segment of America's economy from the global arena, which will result in loss of opportunities for the entire North American winter produce industry.

I strongly urge the Subcommittee on Trade to reject H.R. 2795 on the basis that it will adversely affect the entire North American winter produce industry and jeopardize thousands of jobs in the United States that are dependent on free trade.

Thank you for carefully considering this matter.

Sincerely,

Fife Symington
GOVERNOR

FS:ko
cc: Hon. Newt Gingrich, Speaker, U.S. House of Representatives
Hon. Bill Archer, Chairman, Committee on Ways and Means
Arizona Congressional Delegation
Keith Kelly, Director, Arizona Department of Agriculture
Border Trade Alliance
Fresh Produce Association of the Americas

1700 WEST WASHINGTON, PHOENIX, ARIZONA 85007 • (602) 542-4331

By permission of the Chairman

ENW.E.1034.05.96

May 8, 1996

The Hon. Philip Crane, Chairman
Subcommittee on Trade
House Ways and Means Committee
1104 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

We are writing on behalf of the Governments of Nicaragua, El Salvador, Honduras, Costa Rica and Guatemala to express our concerns over recent proposals (as enshrined in HR 2795, as introduced by Congressman Shaw, and S. 1463, which passed the Senate on January 26) that will alter the definitions of "domestic industry" for agricultural safeguard purposes to isolate seasonal production.

These legislative initiatives appear to contradict the United States of America's international obligations under several international trade agreements, such is the case concerning provisions under the North American Free Trade Agreement (NAFTA), and the Agreement on Safeguards in the Final Act of the Uruguay Round Agreement on the General Agreements on Tariffs and Trade.

Disaggregating domestic industries along seasonal lines would appear to violate the spirit, if not the letter, of these agreements. In this last regard, our countries --and other WTO members such as Canada, New Zealand, Brazil, Chile and Colombia -- have already expressed their preoccupation for the pending legislation before the WTO and urged the United States to reconsider the proposed amendment.

We feel that such an initiative sends the wrong signal regarding the promotion of liberalized trading regimes, both in the context of the WTO and in the context of the FTAA process, of which the NAFTA is an important element.

Moreover, efforts to unilaterally restrict access to the United States tomato market seem inconsistent with parallel efforts by the United States to open markets in other countries that are important trade partners in the agricultural sector.

While our governments understand the importance of maintaining viable domestic production against import surges, we also recognize that the discipline of trade liberalization requires the maintenance of open markets with predictable rules.

We are heartened to note that United States-Central American agricultural trade has steadily increased over the past few years. During 1994, for example, total United States agricultural exports to Central America exceeded $758 million, representing an increase of roughly 65 percent from the level five years earlier.

Similarly, the United States has become an increasingly important market for Central American agricultural products. From 1990 to 1995, US imports of Central American agricultural goods grew by 20 percent. These impressive trends, which will benefit both the farmers and consumers in the United States, in Central America, and throughout the world can only continue if together we advance, and abide by, a clear and consistent path of trade liberalization in agriculture.

We appreciate the opportunity to register these views. Please accept the assurances of our highest consideration.

Sincerely,

Roberto Mayorga-Cortes
Ambassador of Nicaragua

Ana Cristina Sol
Ambassador of El Salvador

Roberto Flores Bermúdez
Ambassador of Honduras

Sonia Picado
Ambassador of Costa Rica

Pedro Miguel Lamport
Ambassador of Guatemala

Before the Ways & Means Committee
Subcommittee on Trade
United States House of Representatives

Hearing on H.R. 2795 - A Bill Regarding Safeguard Investigations of Perishable Agricultural Products

Statement of the Florida Fruit and Vegetable Association

Mr. Michael Stuart
Executive Vice President
Florida Fruit & Vegetable Association
Post Office Box 140155
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April 25, 1996

I. Introduction

The Florida Fruit and Vegetable Association ("FFVA") appreciates the privilege of submitting this statement on behalf of its members in strong support of H.R. 2795. FFVA is a non-profit, agricultural trade organization the mission of which is to enhance the competitive and business environment for producing fruits and vegetables in Florida by effectively managing issues and providing collective services for the benefits of its members. Its membership includes fruit and vegetable growers, packers, and handlers throughout the state of Florida.

The membership of FFVA is actively supporting passage of H.R. 2795 to correct an inequitable administrative application of Section 201 law that results in a denial of relief for some seasonal agricultural industries, even when those industries can show serious harm due to imports.

II. The Vital Need for Statutory Clarification

Florida fresh winter tomato producers have tried, but failed, to obtain essential relief from surges of harmful Mexican imports in the past year. Faced with near financial ruin during last year's winter season, the Florida winter tomato industry filed a petition on March 29, 1995, with the International Trade Commission ("ITC") under Section 202 of the Trade Act of 1974, seeking relief from profoundly increasing volumes of imports from Mexico. The industry further sought, under Section 202(d) of the 1974 law, provisional relief pending the completion of the ITC's full 180-day investigation and 60-day Presidential review period. Despite their urgent need for relief, petitioners were forced to withdraw the case after the ITC's negative provisional relief determination because three ITC commissioners ruled that the Florida winter tomato industry must artificially be grouped and analyzed with *all* U.S. tomato growers, even though those other growers did not produce or sell during the relevant season or compete with the harmful imports.

A. The Inequity and Illogic of a "Product Line" Analysis for Seasonal Industries

In last year's Section 201 proceeding, petitioners, the Florida Tomato Exchange and its members, sought relief from imports of fresh winter tomatoes entering the United States during the months of January through April. Those fresh tomato imports during January through April, and those imports only, were subject to the investigation.

The statute defines the term "domestic industry" to mean:

> "the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."

19 U.S.C. § 2252(c)(6)(A)(i).

Those Florida tomato producers comprising the Florida Tomato Exchange and its members represent the *entire* fresh winter tomato industry in the United States. They, and they alone, are the U.S. tomato producers during the winter season, January - April. Accordingly, they alone produce the U.S. products that compete with the imports subject to the investigation. On that basis, petitioners logically argued that an industry recognized by commercial market standards as distinct from all other industry segments, based on its unique seasonal nature, should be recognized as distinct for purposes of seeking essential relief under our trade laws. Indeed, the Section 201 statute seemed to require such a finding, since the "domestic industry" to be analyzed by the ITC must be one that *competes directly* with the subject imports. Where the scope of a 201 investigation is limited to imports during a distinct period of time -- framed by a clearly defined agricultural growing season -- and those imports are perishable products with a very limited "shelf-life," the relevant "domestic industry" in such a case must be the industry that produces and sells its products during the same time period.

Two ITC commissioners, Commissioners Rohr and Newquist, agreed based on the following reasoning:

> "Although it may be somewhat unusual to define an industry on the basis of less than full-year production, in this instance, in our view, such a definition more fully realizes the statute's disjunctive mandate that the industry produce an article 'directly competitive' with the imports. Clearly, tomatoes harvested in the U.S. in the summer and fall months do not compete directly, nor for that matter indirectly, with imports which enter the U.S. between January and April."

Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase), Pub. 2881 (April 1995) at I-25.

The three-member "majority" acknowledged that the statute on its face does not expressly prohibit a four-month industry definition, but declined to depart from the administratively established "product line" analysis. Following that analysis -- which only takes into account factors such as physical properties of the article, customs treatment, and uses -- the Commission majority insisted on defining the domestic industry as *all* growers and packers of common round tomatoes within the United States during the full calendar year. This artificially expansive interpretation was used even though the record fully demonstrated that product grown outside of the January through April period did not compete with, and thus was not impacted by, the harmful imports.

By so ruling, the majority effectively held that a definable, deeply impacted segment of American agriculture could not avail itself of necessary import relief. On behalf of all winter vegetables that are now feeling the pain of import surges from Mexico and are legitimately entitled to the safety net of U.S. import relief laws, FFVA views this administratively dictated result with strongest alarm and opposition.

B. The Consistency of H.R. 2795 and S. 1463 with Statutory Intent

Nothing in the express language of the statute nor its legislative history indicates that Congress intended to preclude access to relief under Section 201 for seasonal industries that produce perishable agricultural products. Quite to the contrary, legislative history indicates that 201 relief was intended to be accessible to *all* legitimate U.S. industries, *as well as* certain relevant *subsets* of industries. The Senate Report on the 1974 Trade Act explicitly stated that the term "industry" in Section 201 included entities engaged in agricultural

activities. S. Rep. 93-1298, 93rd Cong., 2nd Sess., Nov. 26, 1974; reprinted in *U.S. Code Congressional and Administrative News*, 93rd Congress, Second Session 1974, Volume 4, at 7266. The Report further directs that

> "where a corporate entity has several independent operating divisions, and only some of these produce the domestic article in question, the divisions in which the domestic article is not produced may be excluded from the determination of what constitutes the 'industry' for the purposes of the Commission investigation and finding."

Id. Despite congressional intent that Section 201 relief be made available for all deserving domestic industries *and* relevant portions thereof, Florida vegetable growers in dire need of assistance have *de facto* been denied this recourse by reason of administrative interpretation.

The legislation introduced by Representatives Shaw and Canady, and similar legislation introduced by Senator Graham in the Senate (S. 1463) would remedy the unintended flaw in Section 201 by clearly defining the standing terms to provide recourse to industries producing perishable agricultural products in a distinct season. Legitimate seasonal perishable agricultural industries would no longer be prevented from seeking relief under Section 201 for serious injury caused substantially by increased imports.

III. The Continued Urgency of Import Relief for Florida Winter Vegetables

Since last year's Section 201 tomato ruling by the ITC, imports of Mexican vegetables have continued to surge. This is the case for virtually every major Florida winter crop: tomatoes, cucumbers, eggplant, peppers and squash. Early this season, Mexican shipments of some commodities were 60% ahead of 1995 shipments for the same period. (*See* attached.)

These ongoing surges have resulted in a dramatic collapse in prices for Florida growers. Many Florida producers cannot recover costs of production for their crops. Hundreds of Florida growers may not survive another season in this marketing environment.

The safeguard relief laws of this country must be made applicable to such circumstances if they are to have meaning to the whole of American agriculture. Moreover, if the laws are not clarified to address seasonal considerations, American consumers will be left in the very near future without a domestic winter vegetable industry, a result Congress surely must want to prevent.

IV. The Full Consistency of H.R. 2795 and S. 1463 With International Principles

The proposed legislation has been criticized by some who would argue that passage of this measure would violate the United States international obligations, and thereby expand protectionism and invite retaliation. No clear explanation has been given in support of these allegations. As USTR will affirm, nothing about this legislation conflicts with the international obligations of the United States. By clearly defining the "domestic industry" in Section 201, the proposed legislation remains consistent with the terms and definitions set out in NAFTA, GATT Article XIX (the "Safeguards" Article), and the WTO Safeguards Agreement.

With respect to the issue of NAFTA-consistency, which often receives special emphasis by the opposition, this legislation would not in any way diminish the rights of Mexico or Canada under NAFTA Article 802 to seek exclusion from any 201 proceeding on the grounds that exports of products from their countries do not account for a substantial share of total U.S. imports or contribute importantly to the serious injury at issue. *See* 19 U.S.C. §§ 3371, 3372.

For all international standards of law, relief under Section 201 would continue to be available only to legitimate domestic industries; a "domestic industry" could not be created simply to qualify for Section 201 relief. Relief under Section 201 would likewise continue to be granted only in those extraordinary cases where harm to the domestic industry is determined to be "serious" and where the relevant imports are determined to be the "substantial cause" of that harm.

Because the proposed legislation would correct the flaw in U.S. law in a limited way consistent with international agreements, there would be no legitimate international basis for foreign countries to "retaliate" against U.S. interests. Thus, any suggestion that retaliation may ensue from these measures is unsubstantiated and simply designed to stimulate opposition among the uninformed.

V. Conclusion

In sum, in order to remedy an unintended flaw in Section 201, which has prevented seasonal producers of perishable agricultural products from seeking legitimate relief from harmful imports, this Subcommittee should promptly approve H.R. 2795 and send it to the floor for action. Circumstances are so critical in Florida that time is of the essence for purposes of obtaining import relief.

FFVA will make itself available to all members of the Subcommittee to answer questions or address concerns about this vital measure.

Attachment

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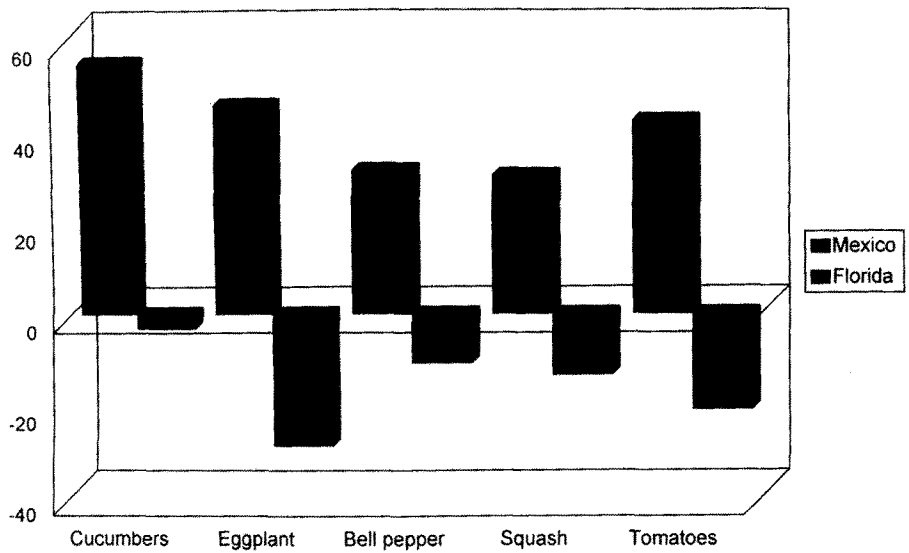
Comparison of Florida/Mexico Fresh Vegetable Shipments



May 1, 1996

VIA HAND DELIVERY

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Ways and Means Committee
U.S. House of Representatives
1104 Longworth House Office Building
Washington, D.C. 20515

Re: **H.R. 2795**

Dear Mr. Chairman:

The following comments are submitted for the record on behalf of the Florida Tomato Exchange in response to questions raised at last week's hearing on this legislation.

This bill would allow the International Trade Commission (ITC) to consider the seasonality of perishable agricultural commodities in connection with its determination of a domestic industry in Section 201 and 202 safeguard proceedings (Trade Act of 1974). The bill does not require the ITC to accept a seasonal industry petition. The language is merely permissive in nature, and will allow the ITC to consider the seasonality of a domestic perishable agricultural product industry. Presently, the ITC does not believe is has the authority to recognize a petition filed by a seasonal industry. However, the safeguard provisions do recognize manufacturing industries, other agricultural industries and even allow for recognizing an industry which is limited to a geographic or regional area.

The bill permits the ITC to consider in the definition of an industry only those producers who produce the perishable agricultural commodity during a particular growing season if the producers sell all (or almost all) of the production in that growing season, and during that growing season, other domestic producers of the commodity, who produce during a different growing season do not supply, to any substantial degree, demand for the commodity.

Hearing Before the Subcommittee on Trade, Ways and Means Committee

Opponents of the bill suggested it was not GATT/WTO or NAFTA consistent. However, the official arbiter of the issue is the U.S. Trade Representative (USTR). Ms. Jennifer Hillman, General Counsel, USTR, stated unequivocally that this bill was consistent with all the U.S. international trade obligations. Moreover, Ms. Hillman did not believe complaints of retaliation against other industries and other commodities were supportable. And, significantly, Ms. Hillman noted the administration's strong support for this bill. In other words, this bill is GATT and NAFTA legal and claims of dire consequences to various industries and threats of retaliation by our trading partners were simply, but completely, discredited.

In addition, Ms. Hillman noted that NAFTA was not the cause of increased imports of winter fruits and vegetables, and discussions of NAFTA changes were not relevant to the consideration of this bill. Ms. Hillman noted that periodic surges of winter fruits and vegetables had been noted over at least 20 years and

that this legislation was needed to allow the domestic industry even the possibility of addressing increased imports.

Another concern raised -- related to the recent 201 petition filed on behalf of the domestic tomato growers -- was whether this legislation is needed in light of the new investigation. It is important to note that the damage to the winter tomato industry is so devastating that the industry believes that it will show such great harm that even if every tomato grower in the country is considered as required under existing law, they will still be able to prove serious injury. Secondly, the winter tomato industry has taken this action and filed an anti-dumping petition because they believe they have to take every possible action to protect themselves against dumping and unfair practices which are devastating their industry.

This bill will not provide the winter tomato industry with a remedy; it will simply allow that industry (and all other seasonal industries), which produce and market when no one else is in the market, access to the trade remedy process. The industry will still have to prove what any other domestic industry must prove: that imports are a substantial cause of serious injury.

This really is not a question of whether this will solve seasonal industry's trade problems. It will help. The question really should be, however, should Congress exclude seasonal industries from having access to this trade remedy process. We believe there should be equal access to the process; that is what this legislation provides.

CONCLUSION

Under the existing law, all other industries have access to the 201/202 remedies. This bill mandates nothing. It is totally permissive. It simply provides a seasonal industry with access to a trade remedy process. That access is currently denied only to seasonal industries. This legislation is about fairness and equal access.

Sincerely,

cc: Florida Congressional Delegation

Wayne Hawkins
Executive Director
Florida Tomato Exchange

WAS-165027

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May 3, 1996

The Honorable Philip Crane
Chairman
Trade Subcommittee
Ways & Means Committee
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Food Marketing Institute is pleased to provide this statement for the Trade subcommittee hearing on H.R. 2795. FMI opposes H.R. 2795, legislation amending the definitions of "domestic industry" and "like or directly competitive article" in safeguard investigations involving perishable agricultural products because it will lead to reduced choice and higher prices for U.S. consumers.

The Food Marketing Institute (FMI) is a nonprofit association conducting programs in research, education, industry relations and public affairs on behalf of its 1,500 members including their subsidiaries — food retailers and wholesalers and their customers in the United States and around the world. FMI's domestic member companies operate approximately 21,000 retail food stores with a combined annual sales volume of $220 billion — more than half of all grocery store sales in the United States. FMI's retail membership is composed of large multi-store chains, small regional firms and independent supermarkets. Its international membership includes 200 members from 60 countries.

As the purchasing agent for consumers, food retailers and their wholesalers are primarily concerned with providing their customers with a wide variety of high quality products at the lowest possible price. This is especially true for fresh fruits and vegetables. These products are an extremely important part of a healthy diet and the produce section is a crucial factor in bringing consumers into stores. Indeed, according to FMI's TRENDS research, quality produce is **the** most important feature in selecting a primary food store *(Trends in the United States: Consumer Attitudes and the Supermarket, 1995, Food Marketing Institute).*

According to the enclosed information from the U. S. Department of Agriculture's Agricultural Marketing Service, Florida is a major supplier of tomatoes, bell peppers, cucumbers, eggplant, snap beans and squash for about nine months (October to June) of the year. During the winter months of January to March, there are two primary sources for vegetables in the United States--Florida and Mexico. H.R. 2795 is intended to reduce or eliminate this competition to the U.S. market during these winter months by creating an artificial three month season for Florida winter vegetables. This would mean that consumers would face reduced supplies and higher retail prices for their winter vegetables. We strongly oppose this effort to artificially limit consumer choice in the produce departments around the country.

FMI and its members are sympathetic to the difficult market conditions for Florida growers. On the face of it, a U.S. industry that has lost market share to imports and that forecasts its own continued decline is a cause for concern. If the Florida winter vegetable industry were to be eliminated, consumers would be adversely effected. Consumers need both domestic and foreign produce during the winter months and in our view there is plenty of opportunity for both foreign and domestic products to expand the market and grow their products.

There are several factors that have caused this loss of market share. Adverse weather conditions in recent years have reduced Florida's growing season, reducing production. According to the U.S. Department of Agriculture, Mexico's percentage of the total winter vegetable supply has increased eleven percentage points from 37 percent to 48 percent since the peso was devalued in December 1994. See enclosed information.

This reduced market share is also a factor of price and *quality*. Winter vegetables are highly perishable items. The fact is that Mexican growers produce and pack vegetables that are equal, and often superior in quality, to product that is available domestically during the same time period. Many consumers prefer the better tasting tomatoes grown in Mexico over the product available from Florida.

California and other producers of seasonal agricultural crops who support H. R. 2795 claim that only a small number of industries would be eligible to seek this relief. Even if this claim is accurate the dollar value of the crops is significant. If foreign competition is kept out of the market U.S. consumers will encounter higher fruit and vegetable prices. Proponents also claim that H.R. 2795 would only provide temporary relief for a few years. However, current safeguard law allows up to eight years for relief. Eight years of higher priced seasonal produce is not a "temporary" condition from the consumer's point of view.

In addition to reducing U.S. supply and choice and raising prices for consumers, H.R. 2795 will have an even more far-reaching effect. The United States is the largest exporter of agricultural products. By changing the trade law in this fashion, we are inviting our trading partners to retaliate on exports from the United States. As a result, the enactment of the legislation will harm U.S. consumers, U.S. producers who export, and U.S. workers employed by companies who export.

For all these reasons, we respectfully urge the subcommittee to reject this protectionist legislation that will benefit a few domestic growers at the expense of consumers around the nation.

Sincerely,

Tim Hammonds

Tim Hammonds
President and CEO

Enclosure

Winter Vegetable Supply for 1990/91 - 1994/95
(October -June Season)

	Florida	Mexico	Other
	(Percent of Total Supply)*		
1990/91	48	35	17
1991/92	57	25	18
1992/93	47	37	17
1993/94	43	40	18
1994/95	34	48	17

	Florida	Mexico	Other	Total
	(100 lb. units)			
1990/91	22654	16286	8218	47158
1991/92	27007	11683	8775	47465
1992/93	22393	17616	8089	48098
1993/94	20883	19289	8630	48802
1994/95	15799	22159	8037	45995

*May not total 100% due to rounding. Winter vegetables include tomatoes, cucumbers, eggplant, squash, snap beans and peppers.

Source: USDA Agricultural Marketing Service

Florida & Mexico Compete in U.S. Fresh Vegetable Market

Increased U.S. imports of winter fresh vegetables from Mexico have led Florida growers to demand Federal and state action to lessen the impact on domestic producer prices. In January 1996, Florida began stepping up inspections of all produce coming into the state, focusing on potential sanitary and phytosanitary violations and proper labeling on produce shipping containers. Also, Florida growers are seeking more frequent monitoring of incoming produce at the U.S.-Mexico border as a means for more timely tariff protection.

Florida growers' concern focuses on six fresh vegetables (tomatoes, bell peppers, cucumbers, eggplant, snap beans, and squash) produced during October to June. The term "winter" fresh vegetables applies to this group because of intense competition during January to March. In the winter months, Mexico's exports peak, and Florida's production is concentrated in the southern part of the state, near Homestead and Immokalee.

In the late 1980's, Florida typically supplied 45-50 percent of the U.S. market (October-June) for these vegetables, Mexico supplied about 35 percent, and other sources (principally California) sold 15-20 percent. Florida's share has decreased from 57 percent in 1991/92 to 36 percent in 1994/95, and the 1995/96 share could decline further.

Weather has been a significant factor in Florida's market share during the last five seasons. Florida's share was above average in 1991/92 because several El Nino storms (arriving in Mexico in late December) sharply reduced Mexican supplies for export to the U.S. Similarly, weather reduced Florida's supply—and market share—during 1994/95, beginning with damage from Tropical Storm Gordon. The 1995/96 season started late in Florida, due to cool and rainy weather. In addition, Mexico's Baja California shipped tomatoes through December—several weeks later than usual. The extended Baja season further weakened Florida's fall-season market.

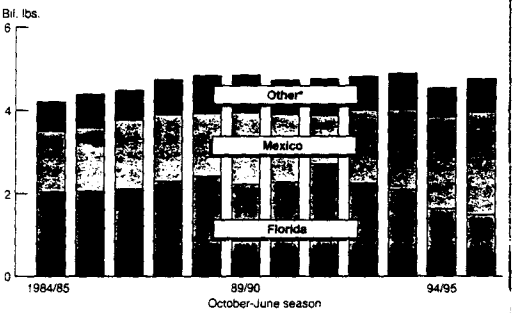
When the Mexican peso devalued in late December 1994, Mexican vegetable producers had an additional incentive to export winter fresh vegetables to the U.S. market. During January to June 1995, U.S. imports of the six vegetables increased 13 percent, even though much of Mexico's crop had been planted and there was limited opportunity to increase area planted. Diversion from Mexico's domestic market accounted for some of the increase, while higher yields also likely contributed.

The weakness of the peso continued into the current 1995/96 season, affecting Mexico's fruit and vegetable supply and demand. Mexico's inflation and unemployment rose, and consumer purchasing power declined. Reduced demand is a contributing factor in the 50-percent drop in U.S. horticultural exports to Mexico during 1995.

In response to sluggish domestic demand, Mexico's vegetable producers turned to the U.S. market to earn dollars. The peso's rate of exchange increased from 3 pesos per dollar in December 1994 to over 7 pesos in early 1996. In Mexico, growers are paying U.S. dollar-based prices for inputs like seed and fertilizer, and the higher costs may have reduced the supply response of Mexico's growers. However, the short-term net effect of peso devaluation appears to have given Mexican producers a profit advantage, because vegetable producers are paying lower real wages.

During calendar 1995, the value of Florida's winter fresh vegetable production decreased to $702 million, down from $1.2 billion in 1992. In early 1996, prices received by Florida growers for these vegetables, which account for three-fourths of Florida's fresh vegetable industry, have averaged below year-earlier levels and well below 1992. In the near term, with prospects for continued weakness of the peso, Florida growers are likely to continue facing stiff competition in the U.S. market for the six winter fresh vegetables.

Florida Supplies a Shrinking Share of U.S. Winter Fresh Vegetables



Tomatoes, bell peppers, cucumbers, eggplant, snap beans, and squash. 1995/96 forecast.
*Mainly California.
Calculated from USDA Agricultural Marketing Service data.
Economic Research Service, USDA

JIM KOLBE
5TH DISTRICT, ARIZONA
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR
SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, AND JUDICIARY
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May 8, 1996

Honorable Philip M. Crane
Chairman
Committee on Ways and Means
Subcommittee on Trade
1104 Longworth HOB
Washington, D.C. 20515

Dear Mr. ~~Chairman~~: Phil-

I am writing to express my strong opposition to H.R. 2795, which is virtually identical to S. 1463.

H.R. 2795 would amend Section 201 of the Trade Act of 1974 by altering the definition of "domestic industry" and "like product" for purposes of determining whether a domestic industry is seriously injured by a surge of imports. The bill would allow seasonality to become a factor in determining the impact of imports on a domestic industry.

Admittedly, I have a parochial interest in this legislation. If passed, it would have a serious and detrimental impact on Arizona's economy. Many Arizona importers, customs brokers, transporters, and distributors rely upon the winter vegetable trade for their livelihood. Should this trade be curtailed, it could have a devastating impact on many small and medium sized businesses.

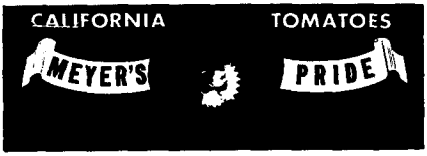
But my opposition to this legislation is deeper than Arizona's interest. The legislation invites retaliation from our trading partners and could undercut many of the gains the United States agricultural sector has made in the world marketplace. Many foreign countries, following our example, could justifiably target and exclude U.S. agricultural products such as apples, peaches, corn and wheat by utilizing "seasonality legislation" similar to that being considered here in the United States.

H.R. 2795 and S. 1463 harm the American consumer. They could be used to disrupt numerous "seasonal" products from other U.S. trading partners including products from Europe, Canada, Israel and Chile. Excluding these seasonal agricultural products from the U.S. market would adversely effect both the price and quality of agricultural products available to American consumers.

I appreciate your consideration of these factors as you examine the impact of this legislation on American agricultural brokers, producers and consumers. I request that this letter be made a part of the record on H.R. 2795.

Sincerely,

Jim Kolbe
Member of Congress



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April 19, 1996

Mr. Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: H.R. 2795

Dear Mr. Mosely:

Due to prior scheduling, I regret that I will be unable to appear before the March 25, 1996 Subcommittee on Trade hearing concerning H.R. 2795, a bill regarding safeguard investigations of perishable agricultural products.

I would have liked the opportunity to explain to the Members why I and many others in California oppose this legislation, and why it would strike a blow against those of us who are working hard to develop an integrated North American market for fresh vegetables that benefits producers and consumers alike in the three NAFTA countries.

My family has been in the tomato business in California for over 40 years and in Mexico for over 25 years. Today, we are one of the largest grower-packer-shippers in California, and now we are one of the largest distributors of vegetables and tomatoes from Mexico into the United States and Canada. During the 1993-94 season we shipped into Mexico over 800,000 boxes of tomatoes grown in California.

We, therefore, oppose legislation or any actions that would impede the flow of tomatoes or other fresh vegetables within what has become for us an integrated North American market.

Why would this so called "seasonality" legislation impede commerce? It would do so because it is specifically designed to afford market protection to a small number of growers in a distinct geographic region. If passed, it would set a dangerous precedent that other so-called "seasonal" industries could use for market protection.

The growing and shipping of tomatoes and other vegetables is essential to the employment of thousands of field workers near the United States border in the States of Sonora and Sinaloa, Mexico. If not employed by Mexican agriculture, these field workers would be looking at illegal immigration into the United States in order to make a living.

Any disruption of the vegetable industry in Mexico brought about by a change in the present NAFTA Agreement, as far as agriculture is concerned, would also be a serious blow to American commerce and exports into Mexico. We alone, one company out of about 50 operating in agriculture in Western Mexico, import into that country from the United States approximately 8,000,000 corrugated boxes made in the United States with a value of approximately $6,400,000 (American dollars), seed worth approximately $1,000,000, drip irrigation systems, glue for boxes, box making machines, potting material for green house production, twine for staking vegetable plants, fertilizers, insecticides, fungicides and any other number of capital items. This process has been going on for years, and any disruption of this process or curtailing production will surely increase illegal immigration into the United States and disrupt a much needed flow of money into Mexico.

What all of us operators in the integrated North American market fear most is retaliation. We are afraid that Mexico would seize the opportunity to claim "seasonal relief" from our perishable products. This legislation could initiate a series of retaliation/counter retaliatory measures. In the agricultural production sector from my talks with Mexican interests, I am afraid that the Mexican government would retaliate by stopping the importation of grain, apples, California wine, and many other items produced in the United States and shipped into developing markets in Mexico. In the end, consumers would pay more because their buying options would be limited, and. the majority of U.S. growers that prefer to operate in an integrated North American market would have their sales opportunities limited.

As the world's leading exporter of agricultural products, the United States should be setting the right trade policy examples, not the wrong ones. I strongly believe that H.R. 2795 is a wrong example.

Sincerely,

Robert L. Meyer

cc: Hon. Leon Panetta
Rep. Sam Farr

NAPAR

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Scranton, PA
Joseph Procacci, V. Chairman
Philadelphia, PA
Wm. D. Class, Jr. V. Chairman
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Morris Okun, Inc.
Post & Taback Inc.
Procacci Brothers Sales Corp.
Quaker City Produce Co.
RLB Food Distributors
Edward G. Rahll & Sons, Inc.
Rocky Produce, Inc.
William Rosenstein & Sons Co.
D. M. Rothman Co., Ind.
Royal Banana Company, Inc.
Rubin Brothers Produce Corp.
The Sanson Company
Ben B. Schwartz & Sons, Inc.
Serra Brothers, Inc.
Storeys' Fruit and Produce, Inc.
Struba Celery & Vegetable Co.
United Fruit & Produce Co., Inc.
Verdelli Farms, Inc.
Tony Vitrano Company
Wakefern Food Corporation
Wishnatzki & Nathel, Inc.

5906 Wilmary Lane
Baltimore, Maryland 21210
410 532-7060 (Office)
410 532-8593 (Facsimile)
410 868-3911 (Mobile)

April 12, 1996

The Honorable Bill Archer, Chairman
Ways & Means Committee
United States House of Representatives
Washington, D. C. 20515

Dear Chairman Archer:

The National Association of Perishable Agricultural Receivers (NAPAR) represents about 90 of the premier produce business operators in the United States (attached is a list of the member companies). Their collective sales exceed $3.5 billion per year and they employ over 23,000 workers. They move 30% of our nation's perishable products.

On behalf of this important segment of the produce industry NAPAR wishes to express its concerns about a bill pending before your committee that promises to jeopardize U. S. exports of many agricultural goods as well as other American products and services.

The measure H. R. 2795 was created to protect a handful of Florida growers against competition from Mexican winter tomatoes. It would do this by breaking America's word given in global trade agreements, inviting other nations to retaliate against American products and undermining the critical U. S. drive to hold other countries to their trade commitments. If implemented, this proposal would set a disturbing trade policy precedent It could have serious implication for United States agricultural exports; and would imperil many more American jobs than the handful that might be protected.

The measure also enhances the monopoly that Florida tomato growers now enjoy at the detriment of the wholesale tomato handlers in the United States. Granting the Florida tomato industry further trade privileges will also adversely impact the American consumer. Tomatoes sold for as high as $30 per box during the most recent Florida season. Without Mexican better quality, better packaged tomatoes, the price could have been $60 per box. Surely, Congress has a greater responsibility to protect all Americans rather than a select and wealthy few in Florida.

H. R. 2795 redefines a "domestic industry" as a "seasonal industry" for the purpose of providing safeguard relief to those seriously injured by increased imports. In other words, Florida growers of winter tomatoes would suddenly make themselves eligible for protection, even though they represent a fraction of the U. S. tomato industry.

The United States has already given its word on how an "industry" is defined for safeguard purposes, both in the World Trade Organization (WTO) accord and the North American Free Trade Agreement (NAFTA). It cannot violate its word now without facing serious consequences. For example:

1. Both the NAFTA and the WTO require nations imposing new safeguard measures to compensate affected exporting nations by making "concessions having substantial equivalent trade effects." This instantly makes H. R. 2795 a no-win measure.
2. The bill would encourage other countries to employ the "seasonality" principle to restrict U. S. exports. Major American exporters -- of goods ranging from apples and peaches to corn and wheat -- could find themselves being denied the opportunity to compete fairly in their current export markets.
3. The legislation would diminish the ability of the U. S. to hold other countries to their trade commitments. The United States, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements would only make a mockery of this "enforcement" initiative, which is designed to assist exports of many United States goods and services.
4. The bill could disrupt imports of numerous "seasonal" products from other U. S. trading partners in Europe, Canada, Israel, Chile and elsewhere that are consumed or processed throughout the United States. Imports could face new barriers whenever a group of "seasonal" U. S. producers (no matter how small) is found to be injured by import competition.

For all these reasons, we strongly oppose this legislation. It is not about fair trade or "leveling the playing field", let alone about free trade. Rather, it is a misguided attempt to unilaterally change the rules of international trade by a self serving few that will do serious damage to U. S. interests.

Sincerely,

J. Gary Lee

Enclosures: NAPAR Member List

NATIONAL ASSOCIATION OF PERISHABLE AGRICULTURAL RECEIVERS

NAPAR MEMBERS - April 10, 1996

A. & J. Produce Corporation
Adams Produce Company, Inc.
Andrews Brothers Inc.
Arrow Farms, Inc.
Aunt Mid Produce Company
Maurice A. Auerbach, Inc.
Big Bear Stores Company
Boston Tomato Company, Inc.
Brigiotta's Produce & Garden Center
Brismark/The Queensland Chamber Co-Op
Capital City Fruit Company, Inc.
Carbonella & DeSarbo, Inc.
Caruso Inc.
Castellini Company
G. Cefalu' & Brother, Inc.
Chep USA
W. D. Class & Son
Coastal Sunbelt Produce Company
Collotti & Sons Inc.
Community-Suffolk, Inc.
Peter Condakes Company, Inc.
Consumers Produce Company, Inc.
Corey Brothers Inc.
Costa & Harris Produce, Inc.
D'Arrigo Bros. Co. of New York, Inc.
DiMare/New England Farms
Dixie Produce & Packaging Inc.
Fast Food Merchandisers, Inc.
G. Fava Fruit Company
Joseph Fierman & Son Inc.
Al Finer Company
Finest Fruits, Inc.
Ellis Fleisher Produce Company
Four Seasons Produce, Inc.
Fruitco Corporation
Giant Food Inc.
Paul Giordano & Sons, Inc.
Goodie Brands Packing Corporation
The Grand Union Company
R. S. Hanline & Company, Inc.
The L. Holloway & Brother Company
The Horton Fruit Company, Inc.
Hunter Brothers Inc.
J. C. Banana Company
J. L. W. Produce, Inc.
James Produce, Inc.
Jumbo Produce
E. W. Kean Company Inc.
Kleiman & Hochberg, Inc.
Klinghoffer Brothers, Inc.
T. M. Kovacevich-Philadelphia, Inc.
L & M Produce Company, Inc.
Lyons Distributors, Inc.
M. & R. Tomato Distributors, Inc.
Tom Maceri & Sons, Inc.
Maryland Fresh Tomato Company, Inc.
Massave Produce, Inc.
Nardella, Inc.
Joseph Notarianni & Company, Inc.
Morris Okun, Inc.
P & C Foods
Pennbox, a division of Libla Industries, Inc.
Pinto Brothers Inc.
Post & Taback Inc.
Procacci Brothers Sales Corporation
Quaker City Produce Company
RLB Food Distributors
Edward G. Rahll & Sons, Inc.
Reddy Brand Packers, Inc.
Riccelli Produce Inc.
Rocky Produce, Inc.
William Rosenstein & Sons Company
Rosenthal & Klein, Inc.
D. M. Rothman Company, Inc.
Royal Banana Company, Inc.
Rubin Brothers Produce Corporation
Ryeco Inc.
Safeway Inc.
The Sanson Company
Ben B. Schwartz & Sons, Inc.
Serra Brothers Inc.
Smelkinson/Sysco
Standard Fruit & Vegetable Co., Inc.
Stires Recording Thermometer Company
Storeys' Fruit And Produce, Inc.
Strube Celery & Vegetable Company
United Fruit & Produce Company, Inc.
United Fruit & Produce Company, Inc. PA
Verdelli Farms, Inc.
Tony Vitrano Company
Wakefern Food Corporation
D. Wiggins Sales, Inc.
Wishnatzki & Nathel, Inc.

NATIONAL ASSOCIATION OF PERISHABLE AGRICULTURAL RECEIVERS

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• J.F. MANSON CUSTOMS BROKER

April 16, 1996

Mr. Phillip Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C.

Dear Mr. Moseley:

DANGERS OF H.R. 2795
"SEASONALITY" LEGISLATION

The House Ways & Means Committee will consider legislation at a hearing in April that is designed to provide a quick protectionist fix for Florida and some California fresh fruit and vegetable growers. Sponsored by Representative Clay Shaw (R-FL), this bill (H.R. 2795), identical to one Senator Bob Graham (D-FL) slipped through the Senate under unanimous consent procedures (S.1463), would invite reciprocity by Mexico, as well as other countries, and harm larger U.S. interests.

This bill is aimed at safeguards law, which, in the U.S. and elsewhere, provides relief when a "domestic industry" is seriously injured by increased imports. The legislation would violate the accepted purpose of safeguards law -- as well as the NAFTA and the WTO Safeguards Agreement - by redefining "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers.

Florida growers of winter tomatoes produce only a modest fraction of tomatoes grown annually by the U.S. industry. Last year, the U.S. International Trade Commission not only found that weather, rather than imports, was the chief source of the Floridians' problems -- but that in any case they were too small a portion of U.S. tomato growers to qualify as a "domestic industry." Hence, the unprecedented move to create a new "seasonal industry" category.

Sixteen nations have already objected to the legislation at the WTO and nearly twenty countries have written Congress and the Clinton Administration with their concerns. In addition, U.S. State commissioners of agriculture, grain and meat export

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associations, the food marketing industry, California tomato growers and U.S. trade law experts have all written to the Ways & Means Committee criticizing the bill. A significant cross-section of the pro-free trade community has also opposed the legislation. If successful, this bill would:

1. Require the U.S. to make trade concessions that could harm other U.S. exporters.

Both the NAFTA and the WTO require countries imposing safeguards measures to compensate the affected exporting countries by making "concessions having substantially equivalent trade effects." If the countries involved cannot agree on appropriate compensation, then the exporting countries may decide to unilaterally suspend "equivalent" benefits owed the United States, perhaps by raising tariffs or reducing quotas on some U.S. products. The United States would not be able to specify the industry which would suffer these new trade burdens. However, it would be normal for a foreign country hurt by new U.S. barriers to impose its compensatory measures on products which are most vulnerable to them.

2. Encourage other countries to employ the "seasonally" principle to restrict U.S. exports.

This proposal sets a dangerous example for other countries that may wish to enact similar changes in their own laws. Major American exporters -- of goods ranging from apples and peaches to corn and wheat, and perhaps even toys and seasonal clothing -- could find themselves being denied the opportunity to compete fairly in their current export markets. As the world's largest exporter, the United States has the most to lose from introducing new forms of protectionism.

3. Diminish the ability of the U.S. to hold other countries to their trade commitments.

The Clinton Administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements only undermines this "enforcement" initiative. U.S. industries hurt by the failure of foreign government to comply with their trade obligations could find it harder to obtain adequate remedies.

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4. Disrupt imports from other U.S. trading partners.

Although the "seasonality" legislation was proposed to protect Florida growers from imports of Mexican winter tomatoes, it could disrupt imports of numerous "seasonal" products from Europe, Canada, Israel, Chile and elsewhere that are consumed or processed throughout the United States. Imports could face new barriers whenever a group of "seasonal" U.S. producers (no matter how small) is found to be injured by import competition.

Very truly yours,

PACIFIC BROKERAGE CO.

By:
James F. Manson

JFM'gmm

On March 1, 1996, the Pro Trade Group (PTG) submitted comments to the Trade Subcommittee on miscellaneous trade proposals. In that submission, in part, we detailed the reasons for the opposition of the PTG to H.R. 2795, legislation designed to amend U.S. safeguards law.

As part of the Subcommittee's hearing today on this subject, one of the PTG members, the National Association of Corn Growers, will be testifying in opposition to this legislation. It will testify on behalf of a number of agriculture commodity associations.

We believe that it is important for the Subcommittee to recognize that the policy reasons for our opposition to this legislation transcend the interests of the agricultural community. Accordingly, we enclose here, and submit for the record of this hearing, a letter in opposition to this legislation which has been signed by, among others, a number of non-agricultural trade associations.

The PTG is a broad coalition of U.S.-based companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting policies which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

Further comments reflecting our views will be covered in a post-hearing submission.

Respectfully submitted,

Edward J. Black

Edward J. Black
President, Computer & Communications
Industry Association,
Chair, Pro Trade Group

THE
PRO
TRADE
GROUP

April 25, 1996

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Ways and Means Committee
United States House of Representatives
c/o 233 Cannon House Office Building
Washington, DC 20515

Dear Chairman Crane:

This is to commend the Ways and Means Committee for its decision to assert its jurisdiction to review H.R. 2795, a bill that would change U.S. safeguards law.

Under this legislation, the United States would unilaterally change the long-accepted global definition of a "domestic industry" to recognize separate "seasonal industries." This is a sweeping change that would, it effect, enable certain industries to obtain import restrictions despite the fact that their case has already been unsuccessfully filed with the U.S. International Trade Commission. The recent tomato case is an example.

Existing trade law has, in many cases, served our economy and U.S. business interests well. As the Committee considers this legislation, we urge you to remember that it is unwise to make substantial changes to our trade laws where a very strong case has not been made that that law is ineffective.

Although this legislation is driven by narrow interests, its negative ramifications for U.S. trade are broad. The passage of H.R. 2795 would put U.S. trade interests in immediate jeopardy because it violates the principles of international trade commitments made by the United States within NAFTA and the World Trade Organization (WTO). As a result, in addition to Mexico, the actual target of this legislation, 15 countries have already put the United States on notice on this matter. If H.R. 2795 or similar legislation becomes law, we would invite these countries and more to retaliate against U.S. exports. We also would invite a challenge before the WTO.

Passage of H.R. 2795 would signal that Congress has embraced protectionist legislation during this election year. As you know, the United States is the world's largest exporter, with exports accounting for 50 percent of our domestic economic growth in the last five years. We must not jeopardize this growth, and the jobs it creates.

The PTG is a broad coalition of U.S. companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting policies which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

1709 N STREET, N.W., WASHINGTON D.C. 20036
TELEPHONE: (202) 331-8045; FAX: (202) 331-8191
CHAIRMAN: EDWARD J. BLACK, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
TREASURER: WILLIAM PETERSON, CONSTRUCTION INDUSTRY MANUFACTURERS ASSOCIATION
EXEC. DIR/COUNSEL: BRUCE AITKEN, AITKEN IRVIN LEWIN BERLIN VROOMAN & COHN

Recent political rhetoric in some circles has portrayed international trade agreements as enemies of economic prosperity. Nothing could be further from the truth. International trade agreements (e.g., WTO, NAFTA) assure that we can sell into foreign markets. They open foreign markets to U.S. exports and they give us levers to assure that these markets remain open. But if the United States fails to live up to its trade commitments by passing H.R. 2795 or similar legislation, we will do the reverse. In short, we will encourage others to renege on their commitments to us.

You have been a long-time champion of open trade, fully cognizant of the link between U.S. trade performance and our adherence to international trade agreements. We look to you now for leadership in assuring that H.R. 2795, or similar legislation, is not passed by the Congress.

Sincerely,

Association of International Automobile Manufacturers

Citizens for a Sound Economy

Computer & Communications Industry Association

Construction Industry Manufacturers Association

Consumers for World Trade

International Trade Council

National Grain and Feed Association

North American Export Grain Association, Inc.

U.S.-Mexico Chamber of Commerce

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U.S. TRADE POLICY

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

SCHAUMBURG, ILLINOIS, MAY 20, 1996

Serial 104–86

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U.S. TRADE POLICY

MONDAY, MAY 20, 1996

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in Schaumburg Village Hall, 101 Schaumburg Road, Schaumburg, Illinois, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
April 26, 1996
No. TR-23

CONTACT: (202) 225-1721

Crane Announces Field Hearing on United States Trade Policy

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, announced today that the Subcommittee will hold a field hearing on the status and future direction of United States trade policy. This is the third in a series of hearings the Subcommittee is holding in 1996 to evaluate progress in United States trade policy. **The hearing will be held on Monday, May 20, 1996, at 10:00 a.m., at the Schaumburg Village Hall, 101 Schaumburg Court, Schaumburg, Illinois.**

Oral testimony will be heard from both invited and public witnesses. Invited witnesses will include Governor Jim Edgar and Acting United States Trade Representative Charlene Barshefsky. Also, any individual or organization not scheduled for an appearance may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

The 103rd Congress proposed legislation implementing the results of two historic trade negotiations, the North American Free Trade Agreement and the Uruguay Round Trade Agreements, which established the World Trade Organization. These agreements have been beneficial in creating new jobs, stimulating the American economy and raising the standard of living of American workers. The Committee on Ways and Means has jurisdiction over United States trade policy, including proposals to extend authority to the Administration for use in negotiating new international trade agreements.

FOCUS OF THE HEARING:

The Subcommittee requests that witnesses address the form and content of future trade policy undertakings as the United States approaches the 21st century. By way of illustration, the Subcommittee seeks testimony from the public on such issues as:

- What is the role of international trade in creating economic growth for United States workers and firms?
- For companies with business strategies emphasizing future growth through international expansion, which foreign markets present the most opportunity? How do Illinois firms incorporate international markets in their planning?
- How can the United States ensure that it maintains its historic leadership role in a fast-changing world economy?
- Which key trade initiatives and institutions such as the Asia Pacific Cooperation Group, the Free Trade Agreement of the Americas, and the Transatlantic Marketplace hold the most promise for expanding United States exports over the long term?
- How important is it for the United States to negotiate Chile's membership in the North American Free Trade Agreement?
- How can the United States best encourage China to participate responsibly in the international trading system?
- What should the trade negotiating objectives of the United States be in the post-Uruguay Round environment? Are there trade issues such as international rules governing services,

(MORE)

intellectual property, and government procurement which should receive priority attention by the Congress and the Administration? What are the most significant trade barriers that face United States firms who seek to do business in foreign markets?

- What kind of trade policy will maintain and improve the competitive position of the United States in the world economy?

- How does the United States develop a trade policy that best reflects the national interest?

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Thursday, May 9, 1996. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Monday, June 3, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the site of the hearing at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available over the Internet at GOPHER.HOUSE.GOV, under 'HOUSE COMMITTEE INFORMATION'.

*****

Chairman CRANE. Good morning and welcome to this hearing of the Subcommittee on Trade of the Ways and Means Committee on the status and future direction of U.S. trade policy. It is indeed a great pleasure to welcome my colleague from the House of Representatives, the Ranking Member on our Trade Subcommittee, my colleague from New York, Congressman Charles Rangel. And I am also happy that Congressman Don Manzullo, my friend from Egan, Illinois is able to be with us today. He serves as Chairman of the Small Business Subcommittee on Procurement, Exports, and Business Opportunities in the House of Representatives.

As the fifth-largest exporting state in the nation, open international markets are critically important to the creation of high-paying jobs in Illinois. By the same token, expanding trade is vital to our country, which is the world's greatest exporter. My purpose in bringing the Subcommittee here to Schaumburg is to focus on how one successful state approaches the international marketplace and to review how important trade is to future economic growth.

Finally, I have requested the witnesses comment on the most important trade issues facing their firms and associations.

We are honored to be joined later this morning by Governor Jim Edgar. And our first witness who will be testifying is Ambassador Ira Shapiro, who will share the perspectives of their respective administrations. It is important to put these issues into context by reviewing some key statistics which I expect our witnesses will reemphasize in their presentations.

In 1995, U.S. exports increased by 14 percent, reaching a total value of $784 billion. Here in Illinois we experienced an even bigger surge in export growth, as our exports rose by 24 percent over 1994 levels, to $33 billion. These exports came from a broad spectrum of Illinois industries, including industrial machinery and computer equipment, electronics, chemicals, agricultural and food products, transportation equipment and many more.

The message I want to share with you today is that exports translate directly into jobs here at home. Indeed the U.S. Commerce Department has estimated that every $1 billion in exports translates into 17,000 to 20,000 new jobs in the United States. Moreover, it has been estimated that those jobs pay up to 22 percent more on the average than their counterparts that produce for domestic consumption. Although Illinois is home to many of our country's largest exporters, including Motorola, Caterpillar, Archer Daniels Midland, Abbott Laboratories and Deere and Co., companies of this size dominate U.S. trade relations less and less. Increasingly, small businesses are succeeding in selling their products abroad. Already the U.S. Census Bureau has determined that 97 percent of Illinois companies that export, employ less than 500 employees each.

I am happy that the Subcommittee on Trade has this opportunity to receive testimony from our distinguished witnesses on the role that trade plays in the economy today and the future negotiating objectives of the United States to open new markets for the benefit of U.S. firms and workers. It has been estimated that trade will account for 36 percent of our gross domestic product by the year 2010, up from just 14 percent 25 years ago. Given this trend and the overall globalization of the world economy, I look forward to hearing our witnesses discuss priorities for future trade negotiations.

[The opening statement follows:]

Opening Statement by Chairman Philip M. Crane
Ways and Means Trade Subcommittee
Field Hearing in Schaumburg, Illinois
May 20, 1996

Good morning. Welcome to this hearing of the Subcommittee on Trade of the Ways and Means Committee on the status and future direction of U.S. trade policy. It is indeed a great pleasure to welcome my colleague from the House of Representatives, Congressman Charlie Rangel of New York, to my home state of Illinois. I am also happy that Congressman Don Manzullo, my friend from Eagan, Illinois is able to be with us today. He serves as Chairman of the Small Business Subcommittee on Procurement, Exports, and Business Opprotunities in the House of Representatives. As the fifth largest exporting state in the nation, open international markets are critically important to the creation of high paying jobs in Illinois. By the same token, expanding trade is vital to our country, which is the world's greatest exporter.

My purpose in bringing the Subcommittee here to Shaumburg is to focus on how one successful state approaches the international marketplace, and to review how important trade is to future economic growth. Finally, I have requested that witnesses comment on the most important trade issues facing their firms and associations. We are honored to be joined by Governor Edgar and Ambassador Ira Shapiro who will share the perspectives of their Administrations.

I think it is important to put these issues into context by reviewing some key statistics, which I expect our witnesses will reemphasize in their presentations.

In 1995 U.S. exports jumped by 14%, reaching a total value of $784 billion. Here in Illinois, we experienced an even bigger surge in export growth, as our exports rose by 24% over 1994 levels to $33 billion. These exports came from a broad spectrum of Illinois industries, including industrial machinery and computer equipment, electronics, chemicals, agricultural and food products, transportation equipment, and many more. The message I want to share with you today is that exports translate directly into jobs here at home. Indeed, the U.S. Commerce Department has estimated that every $1 billion in exports supports 17,000 to 20,000 jobs in the United States. Moreover, it has been estimated that those jobs pay up to 22% more on average that their counterparts that produce for domestic consumption.

Although Illinois is home to many of our country's largest exporters, including Motorola, Caterpillar, Archer Daniels Midland, Abbott Laboratories, and Deere and Company, companies of this size dominate U.S. trade relations less and less. Increasingly, small businesses are succeeding in selling their products abroad. Already, the U.S. Census Bureau has determined that 97% of Illinois companies that export employ less than 500 employees each.

I am happy that the Subcommittee on Trade has this opportunity to receive testimony from our distinguished witnesses about the role that trade plays in the economy today, and the future negotiating objectives of the United States to open new markets for the benefit of U.S. firms and workers. It has been estimated that trade will account for 36% of our gross domestic product by the year 2010, up from just 14% twenty-five years ago. Given this trend and the overall globalization of the world economy, I look forward to hearing our witnesses discuss priorities for future trade negotiations.

I would now like to yield to my distinguished colleague, Congressman Rangel for an opening statement.

Mr. RANGEL. Thank you, Mr. Chairman, and I ask unanimous consent that my entire written statement be placed in the record.

Chairman CRANE. Without exception, without objection, so ordered.

Mr. RANGEL. Mr. Chairman, I am glad to be here with you in Illinois and also with my colleague, Don Manzullo. New York has many of the same problems as Illinois and we are greatly dependent on expansion in foreign trade. I want to congratulate you for the bipartisan way in which you have led the Trade Subcommittee, notwithstanding the fact that we are presently going through the most difficult partisan atmosphere in recent history. Nevertheless, we have had a tradition of bipartisanship in trade and your leadership has really kept it that way, and I want to thank you publicly.

We all recognize that the economic future of the United States is going to be dependent on how we can expand our markets abroad. And since we are only 4 percent of the world population, we have to really develop these markets. Every billion dollars' worth of exports averages at least the creation of 15,000 jobs here in America, but the jobs that are being lost have to be of great concern to those people in urban areas and in former manufacturing areas since the jobs that are being displaced due to globalization and the emphasis on high tech have been the lower paying, lower skilled jobs. So it means that we have to ensure that foreign markets are not only held open, but also that there is a level playingfield. We want to make certain that nations do not take unfair advantage of us by not allowing our products a fair opportunity to compete. At the same time, our companies who are the beneficiaries of our open trade policy must recognize their responsibility to insist on higher levels of education for all of our people, as well as education and retraining for those Americans who are not benefiting from expanded trade.

There will be many more challenges in the future. This is a historic period that we are going through. I am proud to sit on the Committee and the Subcommittee that's going to have a lot to say about the direction in which the world and our country will be going, and I look forward to discussing these issues with the witnesses that will be here today. In fact, Governor Edgar has taken time out of his busy schedule to join us. I also would like to welcome my friend, Ambassador Ira Shapiro of the Office of the U.S. Trade Representative. He is one of President Clinton's top trade officials and international trade negotiators. And I look forward to hearing from the people of Illinois, on whom we must depend for support on a subject that has been exploited by many politicians as they try to have some Americans believe that if it is foreign, it has to be wrong.

Mr. Chairman, I thank you for the work that you have done in the Congress and for inviting me here to the great State of Illinois.

[The opening statement follows:]

OPENING STATEMENT
CONGRESSMAN CHARLES B. RANGEL
SUBCOMMITTEE ON TRADE
HEARING ON THE FUTURE OF
UNITED STATES TRADE POLICY
SCHAUMBURG, ILLINOIS
MAY 20, 1996

Thank you, Mr. Chairman, for holding this important hearing on the future of United States trade policy. I know that trade policy is an important public policy issue for the people of Illinois, who depend heavily on international commerce for their economic well-being.

I would first like to congratulate you for your outstanding work as Chairman of the Ways and Means Subcommittee on Trade in the 104th Congress. You have been a tireless advocate for open markets around the world, not only as Chairman of the Trade Subcommittee but also throughout your long and distinguished career in Congress. Moreover, as Chairman, you have continued to operate the Trade Subcommittee in a bipartisan fashion, which has long been the tradition in the Ways and Means Committee. We can only have a sound and sustainable trade policy for this country if it is formulated and implemented on a bipartisan basis.

Mr. Chairman, as you well know, the United States is the world's number one trader. We are the largest exporter of goods ($575 billion in 1995) and the world's largest importers of goods ($750 billion in 1995). We are also the largest international trader of services (with exports of $209 billion and a surplus of $62 billion in 1995). International trade, and exports in particular, are important for the well-being not only of the Illinois economy but of our national economy.

-- In 1995, despite a large trade deficit of $115 billion (both goods and services), our merchandise exports were expanding faster than our imports for the first time in recent years. U.S. exports rose by over 14 percent, which was 7 times more than our GNP growth. U.S. services exports rose by 5 percent.

-- Eleven million workers in this country owe their jobs to exports. On average, these jobs pay 13 to 17 percent more than non-trade jobs. Every billion dollars of exports supports, on average, 15,000 jobs.

-- On the other hand, imports displace jobs. It has been estimated by a University of Maryland economist that imports have displaced around 12 million jobs in this country. The jobs they displace tend to be lower-paying, lower-skilled jobs than export-related jobs.

-- Thus, exports create better jobs than the jobs that are displaced by imports. Trade tends to make the economy more efficient as a whole by creating more competition, making the best products and technology available to consumers at the lowest possible prices, and lowering costs of inputs to producers.

Trade Policy Challenges for Public Officials

-- The United States is no longer a self-contained economy and depends on trade with the world. As a mature economy with a low rate of population growth, our best opportunities for economic growth in the future are in trading with other countries. After all, the United States has only 4 percent of the world's population. That means that 96 percent of the world's market is outside our borders.

-- Public officials with policy responsibilities for trade have three major challenges:

- First, we must pursue policies to ensure that foreign markets are as open as ours to trade. We are generally doing a good job in negotiating agreements to gain access to markets abroad -- the recent Uruguay Round agreements are an example. We are also giving greater priority and attention, as we should, to overseeing implementation of those agreements by our trading partners and enforcement of our rights against violators.

- Second, we must devise policies to make the conditions of trade fair and equitable for U.S. companies and workers. While our past trade agreements have addressed issues relating to fair competition in trade -- such as antidumping practices, subsidies, and the like -- we must do a better job on labor and environment issues.

- Third, we must have domestic policies that will assist those who have been adversely impacted by trade. In this regard, we must acknowledge that trade creates winners and losers -- like any change in the economy -- and that the gain for the winners is much greater than for the losers. At the same time, our system must help the losers adjust and transition into new productive activities. This is an area where our policies have been deficient and must be improved -- we need better adjustment assistance, job-training, and education policies if all our people are going to operate successfully in, and benefit from, the global economy of the future.

Trade Policy Challenges for the Private Sector

-- While public officials have a number of trade policy challenges, the private sector, and particularly those companies and individuals engaged in trade, also have a number of trade policy challenges in the future. These challenges are even greater as the public at large and some politicians increasingly question the benefits to the United States of international trade and trade agreements.

- First, the private sector must educate their employees, their customers, their suppliers, and their stakeholders about the realities of international trade -- both the benefits and the costs.

- Second, the companies that benefit from international trade must take more action in assisting those who are disadvantaged by international trade -- by locating new U.S. production facilities in areas that have been hurt by trade, by hiring and retraining displaced workers, and by getting actively involved in educational and apprenticeship programs for the less advantaged of our society.

- Finally, the private sector cannot expect the government to be responsible for managing the transition to a global economy. There must be a true public-private partnership involved.

Conclusion

I look forward to discussing these issues with our witnesses today. I am particularly grateful that Governor Edgar has taken time out of his busy schedule to be with us at this hearing. I would also like to welcome Ambassador Ira Shapiro of the Office of the United States Trade Representative. Ambassador Shapiro is one of the Clinton Administration's top trade officials and international trade negotiators. Finally, I look forward to exchanging views with the fine people of Illinois who are scheduled to appear before the Subcommittee today.

Thank you again, Mr. Chairman.

Chairman CRANE. Thank you very much, Congressman Rangel, and I deeply appreciate your making that trip out from New York and the weather permitted you getting in this morning. And I would like to yield to Don Manzullo now for any opening statement you might like to make.

[Opening Statement of Hon. Donald A. Manzullo follows:]

Mr. MANZULLO. Thank you, Mr. Chairman. It is a real pleasure to be here this morning. The district that I represent is just to the west and north of here. It starts at the Mississippi River and runs all the way across the top of the State of Illinois, to the McHenry-Lake County border. The 16th Congressional District of Illinois is responsible for approximately one-third to one-half of Illinois' exports. We have 1,800 manufacturing facilities, from the one-person shop to the Chrysler Neon plant, and we welcome the opening of a Motorola plant with 5,000 employees in McHenry County. So our Congressional District is intricately related to trade. In fact, it is dependent upon trade in terms of accessing those foreign markets.

So Mr. Chairman, I look forward to the testimony of the witnesses, especially our leadoff witness, Mr. Shapiro.

Chairman CRANE. Thank you. In introducing Ambassador Shapiro, I would like to just mention the fact that, and elaborating on what Congressman Rangel said, he was named by President Clinton as Senior Counsel and Negotiator in the Office of the U.S. Trade Representative. He was confirmed by the U.S. Senate on June 30, 1995, and he has the responsibility for bilateral negotiations with Canada and Japan. He was appointed by President Clinton in March 1993 as General Counsel of the USTR. Previously he was a partner in the Washington office of Winthrop, Stemson, Putnam & Roberts, specializing in legislative and regulatory practice and international trade policy. I might note, as a footnote to that, that he reminded me this morning that he moved up to Evanston in 1972, at exactly the time I lost Evanston in my original district with the reapportionment. I do not know whether there was any connection or not, Mr. Shapiro, but with that, I yield to you for your comments.

STATEMENT OF HON. IRA SHAPIRO, SENIOR COUNSEL AND CHIEF NEGOTIATOR FOR JAPAN AND CANADA, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. SHAPIRO. Thank you, Mr. Chairman. I very much appreciate the opportunity to be here, to come back to Illinois, where I actually started my professional career more than 20 years ago, to talk about trade policy, what we think we have accomplished during the administration, the challenges ahead. And I want to emphasize at the outset, as you have already indicated, our trade policy, what we have done and the challenges we still face, has been a very bipartisan endeavor. Your leadership in the Congress, you and I have worked closely together on difficult fights over NAFTA and GATT. We have had great support on both sides of the aisle. Frankly, it is unfortunate that I do not see Governor Edgar here, because we would find a fair amount of common ground as well.

One thing that we have discovered in the last few years is that there is a broad and emerging consensus on a bipartisan basis as to what U.S. trade policy ought to be, and the President has pro-

vided leadership in that regard and I am proud of that. But, it also converged with the views of many in Congress, many in the private sector around the country and the Governors as well.

We are beginning, to see, Mr. Chairman, the results from the President's policy of insisting that other nations open their markets to our products and services. When the President was elected he said that his central commitment was trying to build the strength of our economy so that we could compete and win the global marketplace, so our workers and then their children after them coming into the work force, will have opportunities. That required a good many changes on the domestic front, ranging from deficit reduction to increased investment in education and training, and in our urban areas where there are so many needs that we have not met. But, it also required a new trade policy.

In the first weeks of his administration, the President sketched out a new trade policy, one that rejected the false choice, as he put it, between unilateral free trade on the one hand, and protectionism on the other hand. In a speech at American University in February 1993, he said, "Open and competitive commerce will enrich us as a nation and we will compete, not retreat," but he also said, "We will continue to welcome the products and services and investments of other countries into our market, but we will insist that our products and services be able to enter other countries' markets on the same terms," that we favored open trade, but with comparable access and reciprocal treatment. The days when we could carry the trading system by importing everybody else's products but allowing them to keep their markets closed to us were long gone.

We have pursued that policy I believe consistently and some would say almost relentlessly in the pursuit of open markets, for the reasons you all have stated. Exports are crucial to our economic health and our ability to prosper as a country depends on our ability to sell our products and services to the 96 percent of the world that is not within our boundaries. If I had to say one of the keys here, this is, in fact, the key.

This administration starts its trade policy from the premise and indeed, from the fact that we have the world's most competitive companies, workers, and farmers. We have all the tools and talent we need to compete in the world, as long as government plays its role in opening foreign markets, in leveling the playingfield, insisting that other countries play by the same rules, and dealing with, as Congressman Rangel said, those who are hurt by trade and those who also need the skills to participate in the global market. For that reason, the President has pursued the NAFTA, and the GATT, 200 trade agreements overall, including 21 with Japan.

And there is another premise that guided our policy there. Because we started with markets that were more open than our competitors, we benefit when we open their markets. We move, not just toward freer trade, but toward fairer trade, and that has been the connecting premise between all the things that we have done, getting people to negotiate, to lower their barriers, to enforce our trade agreements, and basically to clear the way for our competitive companies and workers.

We are starting to see the results, Mr. Chairman. In the last 3 years, the United States enjoyed record export growth; 4 percent in 1993, 10 percent in 1994, more than 14 percent last year, the first year of the Uruguay round, as countries all around the world lowered their barriers. We have also returned to being the world's largest exporter. Our agricultural exports were up 22 percent in 1 year. But, what is impressive about this showing is the broad based nature of our trade strength.

We lead the world in sectors as diverse as aircraft and agriculture. We set the standard for entertainment, for computers, for software, for telecommunications, but we have also come back strong in areas that we were very concerned about during the 1980's; automobiles, steel, and semiconductors. And the thing that I need to say at this point is that we would never claim that trade policy or trade agreements are doing everything. What we have now is government policy and our efforts converging with the efforts that business, and labor are making to make themselves competitive. So, we are essentially taking down the barriers at a time when our companies and workers are working hardest to be competitive.

We are seeing the overall results in low unemployment and investment-led expansion, perhaps the first in 30 years. It has not reached everyone and we are not going to stop at this point, but we are making progress and we are seeing growth. we have been named the leading economy in the world in terms of competitiveness for the last 2 years.

You do not have to look much farther in terms of these policies than the Midwest, because this State and this region have made extraordinary progress in terms of trade. The Washington Post recently reported that the 1990s had been a decade of exports from this region and foreign investment in the region. And Illinois is one of the leading examples where you have a state that increased exports 49 percent in 2 years, to a total of $32.6 billion, running the gamut from industrial to agricultural products. The story is the same through much of the Midwest. In Michigan, exports rose 40 percent in 2 years. This week's Business Week, Mr. Chairman, reported that Michigan is facing a shortage of skilled workers because the economy is doing that well and much of it is export-led growth.

Let me just hit a few of the areas that we are specifically interested in as well, and try to see how they fit into this mosaic. We have spent a great deal of time, Mr. Chairman, as you know, trying to open the market in Japan. Japan, for 20 years, has been one of the leading trade problems facing our country. We have proceeded on the view that sanctuary markets, closed markets, had no place in the international system particularly where the second largest economy in the world was concerned. We are seeing progress from the more than 20 trade agreements that we have negotiated. Last year the trade deficit was down 10 percent with Japan. Exports in Japan rose more than 20 percent last year and today I read in the Wall Street Journal that trade deficit with Japan had gone down from more than $6 billion in March 1995 to just over $4 billion in March 1996 It is still too much of a deficit and we have got work to do. We are seeing progress.

Here in Illinois, I read recently that Lt. Gov. Kustra had just been at the Neon plant, where they are making right-hand drive cars to sell in Japan. And we are seeing, as a result of competition between our auto companies and the success of our trade agreement with Japan, we are seeing the sale of cars and auto parts in Japan in significant amounts for the first time. At the same time, we are seeing the auto companies here in the U.S., Japanese companies, building more cars here rather than in Japan, and using more parts that are made in the United States. So, the picture is becoming an increasingly positive one, and the overall result, as the result of the work of our companies and our workers, is that for the first time since 1980, the United States was the leading automobile producer again in 1994, and the same thing happened in 1995.

As Congressman Rangel and I were talking on the way over here, one example struck me as illustrative of the globalization and the role of trade, as you described it, Mr. Chairman, 5 years ago Chrysler was selling vehicles in 22 countries around the world. Today, 5 years later, they are selling their cars in more than 100 countries. That's a stunning change, and it is a stunning change in world view that our best companies are taking and it is seeping down, as you said, to smaller businesses as well. Similarly, our auto agreement has benefited a great deal, Tenneco, here in the Illinois area. For more than 25 years they could not get into the Japanese market but now they are selling, for the first time, Monroe shock absorbers, in 1,400 Toyota dealers, affiliated companies throughout Tokyo and replacement parts in more than 6,000 service stations throughout Japan.

Now, as some have noted, I could go on at great length. I probably should not. I just want to say three more things briefly. First, part of the centerpiece of what we were doing was the Uruguay round and the new World Trade Organization. There was skepticism about the Uruguay round and the World Trade Organization, and yet it has both contributed to our export growth in the first year and it has also led to a very significant ability to use the dispute settlement system to pressure other countries to keep on opening their markets. I would be happy to get into that as questions go on.

Second, I do not want to gloss over the problem areas. We certainly face difficult challenges around the world, and the most prominent at the moment is China. We believe, as others do, that China should be an important part of the international trading system, but we believe they need to play by the rules of the trading system. At the present time, China remains one of the most protectionist trade regimes in the world. They block access to their market for many U.S. goods, capital goods, services and others, and they have engaged in rampant piracy with respect to our intellectual property. As you know, Mr. Chairman, last week we announced the publication of a $3 billion preliminary retaliation list because of their failure to carry out the 1995 trade agreement. We did not take that action lightly or happily, but the concern that Ambassador Barshefsky, just as Mickey Kantor had before and as the President has said, if you do not carry out the trade agreements you have entered into, then you're not going to be credible

around the world in opening markets, nor is it acceptable for us to stand by and have China engage in what is still rampant piracy of our copyrighted products.

The last thing I would say, Mr. Chairman, is that part of what the President has done is focused on the importance of developing nations and markets, and you have been a leader in this area. We are extremely committed to continuing the progress that has been made in Latin America and in the Caribbean, in trying to continue expanded trade and open markets. This is an area that has many problems and yet, it is an area where so much progress has been made in recent years toward democratization and toward economic openness, that we intend to keep on moving in that direction. And I believe that next year hopefully, from my standpoint, the President will be re-elected, but whoever is President, will believe that continuing the effort toward market opening in Latin America will be critical.

Mr. Chairman, the last thing I would simply say is that we all look forward to continuing the work with Congress on a bipartisan basis. This administration, particularly Secretary Kantor, late Secretary Ron Brown, the leadership he provided in trade, and all of us have valued the work that we have been able to do with you and to keep on working for the American people.

[The prepared statement follows:]

Testimony before the
Trade Subcommittee of the
House Ways and Means Committee
Ambassador Ira Shapiro
May 20, 1996

Introduction

Mr. Chairman, I appreciate this opportunity to appear today before this Subcommittee. It is especially a pleasure to come to Illinois to discuss the successes we've had in trade over the last three years, as well as the challenges which lie ahead. We are beginning to see positive results from the President's leadership, with the bipartisan support in Congress, in insisting that other nations open their markets.

In the first weeks of this Administration, President Clinton set forth a new trade policy, one that rejected that false choice between unilateral free trade and protectionism. In a speech at American University in February, 1993, "Open and competitive commerce will enrich us as a nation." And so, he said, "we must compete, not retreat." But he also said, "we will continue to welcome foreign products and services into our markets but insist that our products and services be able to enter theirs on equal terms." We favor open trade -- but with reciprocity. The days of one-way trade -- when we opened our markets with out insisting on comparable access to foreign markets -- are over. This insistence on equal access on equal terms is the basis of his trade policy and part of an overall strategy to create jobs; raise standards of living; and ensure fair and free trade works to the benefit of Americans.

The President understands that we live in a changing world. There are essentially four new realities which mark this changing world, and have an impact on our trade policy.

First, our economic strength begins at home. Recognizing this fact, the President has worked hard to restore the domestic economy. That meant enacting a smart and tough deficit reduction plan and reducing the size and scope of government. At the same time, his Presidency is dedicated to giving the American people the tools they need to prosper in the new economy -- tools like a decent education, safe streets, a government that creates opportunity, not bureaucracy. At the same time he has called for workers and companies to make the most of those opportunities. No one can face the challenges of a new century alone. We all must work together.

Second, the global economy is now a fact of life. Businesses operate internationally, and the economies of the world are truly interdependent.

Third, trade is more important than ever to our economy. Trade now equals over 30 percent of U.S. GDP, up from 13 percent In 1970. Over eleven million workers in this country owe their jobs to exports. On average, these jobs pay 13 - 17 percent more than non-trade jobs. Every billion dollars of exports supports 15,000 jobs. To grow and prosper at home -- and create high wage jobs -- we must open the most lucrative markets in the world to U.S. exports. We are six

percent of the world's population -- and we have the world's most competitive workers, companies and farmers. We will prosper by selling our products and services to the other 94 percent of the world.

Finally, in the post-Cold War world, national security and economic security cannot be separated. The days of the Cold War when we sometimes looked the other way when our trading partners failed to live up to their obligation are over.

President Clinton has pursued a trade policy to ensure America remains strong in this new era. Over the last three years, President Clinton and his Administration, with the bipartisan support of Congress, has negotiated nearly 200 trade agreements, including Nafta, which created the largest free trade zone in the world, the Uruguay Round agreement, the most comprehensive trade agreement in U.S. history, 21 agreements with Japan, and scores of other key trade agreements to open foreign markets to U.S. exports. And he has fought hard to ensure our trading partners live up to their obligations. Enforcing our trade agreements and trade laws is an important feature of the President's trade policy.

We are starting to see the results. During the last three years, the United States has enjoyed record export growth -- exports grew 4 percent in 1993, 10 percent in 1994 and over 14 percent last year, which also was the largest dollar volume growth in exports in U.S. history. We returned to being the world's largest exporter. Last year we also hit an all time agricultural export record of $55.8 billion --that's a 22% increase over 1994's strong performance. What is impressive is the broad nature of our economic strength. We lead the world in autos and agriculture, in software and entertainment, in computers and semiconductors.

The U.S. trade deficit with Japan fell by nearly 10 percent in 1995. U.S. exports to Japan were up 20 percent last year and 35 percent in the last three years. A study by the Council of Economic Advisors showed that in those sectors covered by recent trade agreements with Japan, exports have grown by 85 percent since the President took office. Exports to the dynamic economies in Asia (excluding Japan) and Latin America (excluding Mexico) have risen by 40% and 36% respectively in the last 2 years (1993 to 1995).

President Clinton has worked hard to help all Americans by building a strong economy. Because of his efforts --with trade a big part of the picture -- the U.S. economy is thriving. Our economy has created 8.5 million jobs in the last three years. Unemployment is now 5.4 percent. Recently the Bureau of Labor Statistics released numbers showing that wages are growing at their fastest pace in five years. All this growth has occurred while inflation has remained low and stable. The most recent indicator is that the GDP deflator for the first quarter of 1996 was 2.5 percent, about the same as the increase for the four quarters of 1995. Significantly, this continues to be an investment-led expansion. Business investment was up 14.5 percent at an annual rate this quarter. In fact, there has been an historic level of investment under President Clinton, laying the groundwork for future growth. Business investment has been up by 11 percent annually since President Clinton took office, a better record on investment growth than any administration since John Kennedy was President.

At precisely at the time when are businesses, workers and farmers regained their competitive edge, the Clinton Administration has fought hard to open markets around the globe. This concerted effort between the government and businesses, workers and farmers is a large part of the reason the World Economic Forum in 1995 judged the American economy to be the most competitive in the world for two years in a row --and up from number five in 1992.

Trade and the Midwest

We don't need to look any farther than right here in the Midwest to gauge our successes -- and the challenges before us. The President has fought hard to open markets so that workers and companies in the Midwest can sell their products abroad. But at the same time workers and businesses in this region have fought hard to regain a competitive edge in the global economy. Both efforts have paid off.

Remember a decade ago, when, if you said "Midwest," what came to mind was "Rust Belt." Dying factories. Boarded-up factories. Declining populations. But the workers and companies of this region, the heart and soul of this country, said, "We're not going to give up." They decided they were going to turn things around. And they did. It was hard, and a lot of folks suffered, but the region has bounced back. Now when you say, "Midwest," what comes to mind is exports, jobs, and new opportunities.

Trade has a lot to do with the brighter picture in the Midwest. The Washington Post recently said in a story about the economic revival of the Midwest, "The 1990s have been the decade of exports from the region and foreign investments in it." The Wall Street Journal recently reported that exports sustained the Midwest economy during the recent strike at the GM plant in Dayton.

Take Illinois for example, which is now an export powerhouse. Exports from Illinois rose 49 percent from 1993 to 1995, the largest such increase in the Midwest to a total of $32.6 billion. As recently as 1991, the last year such data was available, 18 percent of Illinois' manufacturing jobs were supported by exports. The range of goods that Illinois sells to the world runs the gamut from industrial machinery to electronic equipment to food. Illinois is the nation's second largest agriculture exporter with 3.1 billion dollars of exports.

The story is the same throughout the Midwest. Michigan is the nation's fourth-leading exporter of merchandise, and Michigan's exports rose an estimated 40 percent between 1993 and 1995. Michigan's merchandise exports alone support an estimated excess of 533,000 jobs in Michigan in 1995, up 150,000 since 1993.

Most of the credit for this success goes to the workers and companies throughout the Midwest. But some of the credit must go to the President because he has stood up for the interests of workers in the Midwest -- and across the country. He recognized that it won't do any good to create an excellent product at a competitive price, whether it is a car, a shock absorber, a bushel of corn, or a piece of medical equipment, if foreign countries keep those products out of their market. That's why he has fought so hard to open markets and ensure American firms can sell their goods and services abroad.

Clearly we are on the right course. By working together -- Republican and Democrat, businessman and worker -- we are moving into the future together.

Japan

When President Clinton took office, he knew it was long time past to pursue a new trade policy towards Japan. The President believed that Japan's closed markets harmed the U.S. and the global economy and that there was no place for sanctuary markets in today's globalized economy. He knew that we could no longer just sign an agreement with the Japanese and assume everything was alright. We must keep up constant, determined pressure on the Japanese to open their markets.

The President's new approach to trade with Japan took root in July of 1993 when he traveled to Japan and we completed the Framework Agreement, a new comprehensive approach to guide our trade relationship with Japan, covering macroeconomic, sectoral, and structural issues. Overall, in three years, the Clinton Administration has reached 20 trade agreements with Japan, some under the Framework, and some not, but all containing the same firm commitment to measurable results, and all marked by firm and consistent pressure to open Japan's markets. And the President has diligently enforced our trade agreements, including those negotiated before this Administration, as well as our trade laws. President Clinton has sought to open Japan's markets using all tools at his disposal: multilateral, regional and bilateral efforts.

The Administration's efforts are working. Last year, the U.S. trade deficit with Japan fell 9.7 percent and, according to Japanese figures, in January fell to its lowest level in 12 years. Japan's current account surplus declined to less than 2.6 percent of GDP last year, down from 3.2 percent in 1994 and 3.5 percent in 1993. The Framework calls for a highly-significant reduction in Japan's current account surplus in the medium term. U.S. exports to Japan are growing at record levels, rising 20.3 percent last year over 1994 levels, which had been the previous record high. Since the beginning of this Administration, U.S. exports to Japan have increased by 34 percent.

We are seeing export growth in all major categories: foods, feeds, and beverages (up 15 percent in 1995); autos, auto parts, and engines (up 36 percent); other capital goods (up 22 percent); industrial supplies (up 20 percent); and consumer goods (up 17 percent). These gains are particularly impressive given the slow growth that the Japanese economy has experienced for the past several years. In those sectors covered by trade agreements reached by this Administration (from telecommunications to autos to rice), exports have grown by more than 80 percent since the President took office -- nearly 2.5 times as fast as overall U.S. exports to Japan.

Nowhere has the change been more significant than in the automotive sector, the heart of our trade problems with Japan. For decades, Japan has restricted U.S. cars and auto parts. Last year, we completed an historic agreement to open those key markets. The result? U.S. exports to Japan of passenger cars and trucks are up 53 percent through November 1995, compared to the corresponding period of 1994. U.S. imports of Japanese autos and auto parts have decreased by

5.2 percent.

The Big 3 have opened nearly ninety new sales outlets in Japan since the Agreement was signed, better enabling Chrysler, Ford and GM to sell their vehicles to Japanese consumer. We believe that the Chrysler Neon, which will be sold through these new dealers, has an excellent chance of selling extremely well in Japan.

I understand that Lt. Governor Kustra this month went down and drove a new right-hand drive off the line at the Chrysler plant at Belvedere. The right-hand drive Neon will be shipped to eight countries, including Japan. In 1991, Chrysler was selling vehicles in only 22 countries. Five years later, they are selling their cars in over 100 countries worldwide.

Numerous U.S. parts companies that were previously unsuccessful in Japan now report significant new contracts and sales opportunities. *Tenneco Automotive*, headquartered in Chicago, is certainly one of these companies. Tenneco, which made significant efforts in Japan for 25 years, will for the first time sell Monroe shock absorbers as in Toyota's 1,400 dealer-affiliated repair shops and as replacement parts in more than 6,000 service stations throughout Japan.

Other US companies like Ohio-based *Dana Corporation* have also benefitted. Dana recently reached a contract with Toyota to be the first U.S. parts supplier to serve as the sole provider of auto frames to a Japanese company. Dana will manufacture the auto frames for Toyota Tacoma pickup trucks in Stockton, California.

Toyota, Nissan, and Honda all announced substantial new investments in automotive production within the U.S., and reached record levels of exports of their vehicles to other countries. Included in these investments were a $700 million light truck manufacturing plant by Toyota in Indiana, a $80 million transmission and engine assembly plant in Tennessee by Nissan, and expansion of engine production capacity by Honda in Ohio. Toyota announced that in 1998, at least three quarters of their vehicles sold in the US would be made in North America. Honda announced plans to produce 100% of its Accords and Civics in the United States by the end of 1996.

We are exporting Big Three cars to Japan. Our auto parts manufacturers are capturing a share of the Japanese market. And we are seeing is a two-tiered change by the Japanese auto companies: Japanese auto manufacturers are enlarging their presence here -- making cars here that they used to make in Japan -- and buying more U.S. parts. Because of the Clinton Administration's commitment to open Japan's market, U.S. companies made commitments to invest there, for example making 17 new right hand drive vehicles. This is a big part of the reason last year the United States was the number one producer of automobiles in the world, for the first time since 1980.

We still face a great deal of challenges with Japan. We are committed to ensuring that Japan live up to these agreements, and that they open those markets that are still closed. There are a number of important trade issues which still must be resolved, such as renewing the semiconductor

agreement, insurance, and film.

But overall, we are on the right course. These agreements are working. They are making it easier for U.S. companies to sell their goods and services in Japan, but they are also providing more opportunities for Japanese consumers. Obviously, our trade agreements are only one factor in this success. But they have had an impact.

President Clinton knew that the naysayers and pessimists who said that Americans simply can't compete in Japan were wrong. President Clinton knew that the problem was that Japan's markets were closed.

China

Nowhere are the opportunities and obstacles in this new era of trade relations more apparent than in the U.S. relationship with China. China is the world's fastest growing major economy, with real growth of almost 12 percent last year, and average growth rate of greater than 7% for each of the past fourteen years. Already possessing the world's largest population, by early in the next century, China may have the world's largest economy.

It is an understatement to say that the U.S.-China relationship is complex and multifaceted. America has a range of issues with China that go far beyond trade. We have a deep and abiding interest in human rights, and are critical when basic international norms are not met. We have continuing concerns in areas ranging from non-proliferation to environmental protection. And increasingly, trade is at the center stage of our relationship.

Unfortunately for the United States, the potential of the China market remains unfulfilled in many respects. China continues to maintain one of the most protectionist trade regimes in the world. China blocks access to its markets for many U.S. goods -- especially capital goods -- limits investment opportunities, and discriminates against U.S. and other foreign business people in many other respects. In areas of increasing U.S. comparative advantage -- especially services -- China keeps its markets closed while Chinese companies scramble to monopolize it.

The growing U.S. trade deficit with China symbolizes for most Americans the inequity in our bilateral trade relationship. If current trends continue, the U.S. trade deficit with China-growing at a 25% rate per annum -- will hit $38 billion. Within just a few years, our deficit with China is on pace to surpass our trade deficit with Japan. This is a situation that cannot be sustained.

China must open its markets. Its first step is to ensure compliance with commitments already made. China is falling short in this regard.

As you are well aware, last week the United States announced the publication of a $3 billion preliminary retaliation list targeting Chinese exports to the United States. This action, which set in motion a 30 day clock to gather public comment on the list before any final action occurs, came as a result of China's failure to enforce satisfactorily our 1995 agreement on intellectual property protection.

We did not take the move toward retaliation lightly. U.S. copyright industries alone represent more than 5 percent of the U.S. work force -- roughly equal to the U.S. auto industry -- and are growing three times as fast as the rest of the economy. The copyright industries contribute more than $350 billion a year to the U.S. economy, accounting for more than 6% of GDP. The U.S. computer software industry alone maintains a 75% market share worldwide.

We have worked very hard to solve this problem. We have met dozens of times with the Chinese. We sincerely hope that we can solve it before the 30 day deadline runs out. We have said all along that we will enforce our laws if China does not live up to its obligations. We will protect our economic interests.

WTO

I'd like to make a few points about the new World Trade Organization, created by the Uruguay Round. In 1993, President Clinton provided the leadership to complete the Uruguay Round negotiations. In 1994, Congress passed, with overwhelming bipartisan support, the legislation implementing the agreement. The Uruguay Round is the centerpiece of the President's efforts in trade. The largest, most comprehensive trade agreement in history, the Round opened new markets to U.S. exports in key U.S. industries, and established a new standard for the multilateral trading system by ensuring that everyone play by the same rules. The Uruguay Round is a big part of the reason exports have grown so dramatically. And although the WTO is still in its infancy, it is working in our interest already, helping to create open and fair trade.

We are using the new WTO rules aggressively to enforce U.S. rights under the Uruguay Round agreements. The United States has taken more complaints to the new World Trade Organization (WTO) than any other country -- we have invoked WTO dispute settlement procedures in 12 cases since the WTO was established in January 1995. Six of these 12 cases have been initiated since January of this year, and 4 of those are aimed at enforcing new obligations assumed by our trading partners during the Uruguay Round negotiations: involving failure by Japan, Portugal and Pakistan to enact certain laws protecting intellectual property rights, as called for under the new WTO agreements, and involving Hungary's failure to limit its agricultural export subsidies.

We have already seen results. The WTO rules and the new dispute settlement rules are already paying dividends by helping us increase jobs and exports. The new dispute settlement rules often make it possible for us to enforce WTO agreements without ever having to reach a panel decision. The fact that the WTO can and will authorize us to retaliate enables us to reach earlier settlements opening markets for more of our exports.

- **EU grains.** Last July we invoked WTO dispute settlement to enforce the EU's market access commitments on grains. In only five months we successfully reached a settlement. The grains agreement reduces import charges on rice and provides for review and consultation on the implementation of the European Union's "reference price system" for all grains.

- **EU enlargement.** When the EU enlarged to include Austria, Finland and Sweden, our

exports to these three countries of semiconductors and other products suddenly faced higher tariffs. After negotiations under WTO procedures, we succeeded in getting full compensation, through an agreement by the EU to lower tariffs on a range of semiconductors and hundreds of other products, for the entire EU market.

This was a long-time objective of our high-technology industries and will strengthen their ability to export from the United States. The tariff reductions in the agreement will result in $4 billion in tariff savings by U.S. companies over the next ten years. The agreement also commits the two parties to attempt to conclude an Information Technology Agreement that will eliminate tariffs in the information technology sector by the year 2000. The EU has already implemented these tariff cuts. This negotiation was more successful than negotiations in earlier EU enlargements, because we had WTO dispute settlement to back us up and the EU knew that we meant business.

- **Korea meat.** Our meat exporters had persistent problems with Korean regulations which banned sale of meat except within an arbitrary "Shelf life" that was too short to permit overseas shipments. We used the new WTO rules and the new WTO dispute settlement procedures, and we consulted with Korea. Korea agreed to fix our problem because they knew we were prepared to take them all the way through WTO dispute settlement and win.

- **Japan sound recordings.** We invoked WTO dispute settlement procedures in response to Japan's denial of protection to millions of dollars' worth of our intellectual property in sound recordings made between 1946 and 1971. Japan has already offered to change its law --but unless we are completely satisfied, we are going all the way through the dispute settlement process. WTO dispute settlement will help us fix this problem not only in Japan, but in other high-growth export markets in Korea, Taiwan and elsewhere in Asia.

We expect to continue to settle cases --or pursue them through the dispute settlement process until we obtain satisfaction --and we will be taking additional cases to the WTO in the coming weeks. At the same time, we will find ourselves defending U.S. measures in WTO dispute settlement proceedings, and we will keep the Congress apprised of every development in the cases brought against us. It would be unrealistic to deny that there are going be to cases in which WTO panels properly find that a U.S. law or regulation does not comport with WTO rules. When that happens, we will have to decide, in consultation with Congress, what is the best course of action to pursue.

The gasoline dispute. As we have already advised the Committee, on April 29 the WTO appellate body found against us in the dispute brought by Venezuela and Brazil regarding EPA's regulations on gasoline. While we would have preferred to win that case, I want to emphasize that (1) that we lost on fairly limited grounds and (2) that there were also important positive aspects to the findings in that dispute. To be clear, the Clean Air Act was not at issue in that case but rather one element of EPA's implementing regulations that treated foreign and domestic refiners differently. The appellate body recognized that discriminatory treatment might be justified to deal with EPA's concerns about access to data and enforcement with respect to

foreign refiners. However, it felt that EPA had not adequately explored options available to deal with these concerns, and that the United States had been more concerned about the costs of the various regulatory options to domestic refiners than to foreign refiners. We were gratified that the appellate body ruled in our favor in overturning the original panel's excessively narrow interpretation of the GATT's exception for conservation measures and that it admonished WTO panels to stick to the words of the WTO Agreements and not embellish upon them.

This element of the ruling recognizes and reaffirms the balance in the WTO agreements that provides us access to foreign markets while maintaining our freedom to protect the environment and conserve natural resources. We are currently reviewing our options for responding to this case, in consultation with Congress, and would welcome any input from the Committee. Let me reassure you that in assessing our options, out bottom line is that the results of this dispute will not compromise this Administration's commitment to strong and effective implementation of the Clean Air Act.

Telecommunications. At the end of April, the Clinton Administration led a successful effort to extend multilateral negotiations aimed at opening the global telecommunications market. Vice President Gore announced last year that the United States would open its telecom market *if other nations would open their markets*. Unfortunately, a critical mass of offers had NOT been reached. Rather than accept a bad deal -- or walk away from the good offers tabled by many countries -- the United States won support for an extension of the telecom talks to February 15, 1997.

The United States took the initiative to forge a consensus on an extension of the talks. The additional time will allow other nations to improve their market-opening offers and help to achieve our common goal -- a global telecom agreement. Such an agreement -- if done right -- can unleash the tremendous pent-up demand in most other countries for better and cheaper telecommunications services.

Much has been accomplished in the talks to date. For example, thirty countries have accepted pro-competitive regulatory principles -- a particularly significant achievement in light of past domination by monopolies. In addition, ten countries have tabled offers with market opening roughly equivalent to the U.S. offer. We are cautiously optimistic that the extension will allow us to obtain access to foreign markets. Many of our trading partners are currently in the middle of legislative processes that can influence the quality of their offers. Others have legislative authority to commit to more than they offered in these talks. Still others have made offers that need sharp, specific improvement. We aim to use the extension period to persuade all of these countries to bind the full range of market opening possible under their laws, and to change their laws, if necessary, including the adoption of fair and effective rules of competition.

Conclusion

Mr. Chairman, President Clinton believes we can never build walls of fear around our country. American workers are the most productive and competitive in the world and they are not afraid of fair, head-on competition. Our choice is not between one way trade and no trade. Our challenge is to make sure we have two-way trade.

The President has set the nation on a course that will forge prosperity into the next century. He's done it with his efforts on the economy, in foreign affairs, and with trade. We are moving in the right direction. But we still have a long way to go and we must all work together to get there. We must all take responsibility to do our part to forge new opportunities for the American community. For the President that means he will continue to stand up for the interests of American workers, farmers, and companies. As Americans we must join together to create the new American Century -- an era of limitless possibilities. Together, we can build a better future for our families and ourselves. Thank you. I would be happy to answer any questions.

Chairman CRANE. Thank you, Mr. Ambassador. You touched on the WTO, World Trade Organization, and its trade dispute resolution process, and said that you could elaborate a little bit more on that. Could you really get into the question of addressing some of the specific complaints some American businesses have registered against foreign trade barriers, and how that process has worked.

Mr. SHAPIRO. Yes, Mr. Chairman. When we fought for the WTO, we said that the dispute settlement system would give us the opportunity to aggressively enforce U.S. rights, and we have done so. We have taken more complaints to the WTO than any other country. We have invoked dispute settlement procedures in 12 cases already, and since that time, we have seen a number of cases that we have been able to settle on positive terms, that we would not have been able to settle under the old system because the old system was nonbinding. For instance, we were able to invoke dispute settlement to enforce the EU, European Unions, market access commitment on grains. For many years agricultural exports and the European barriers have been quite critical, but we were able to get a quick settlement there because they knew if we went to dispute settlement, they would lose and we would be able to retaliate.

Similarly, we have been able to get quick settlement on the EU, so called enlargement. When they expand EU, they basically were able to raise tariffs on certain of our products. They are supposed to compensate us and they often take a long time to do that, by lowering tariffs. But in this case, we were able to get full compensation and lower tariffs on hundreds of products, including semi-conductors because we started dispute settlement.

In the same way, with Korean meat and shelf life restrictions and with the Japanese law by which they were not giving our sound recordings full 50 year protection, by starting WTO procedures, we have been able to get settlements or move toward settlements. We have not gotten a final settlement in the sound recordings. So we have also brought intellectual property cases against Portugal, Pakistan, India and Hungary. So, there are a number of cases where we are moving ahead and using the dispute settlement aggressively.

Chairman CRANE. Mr. Ambassador, there has been a lot of political rhetoric, from a variety of sources about the alleged negative effects of our North American Free Trade Agreement. Now, it is because many people have not separated that peso devaluation from what the objectives were of the NAFTA Agreement and it fails to take into consideration the past history. With the peso devaluation in 1982, our exports to Mexico dropped to half of what they were because of the erection of tariff barriers against our products going into Mexico. This time the drop was less than 10 percent because they still are continuing to move forward in lowering any kind of tariff barriers, and in addition to that, it took us 9 years after 1982 before we got into a trade surplus again with them. And last year's exports to Mexico were approximately, as I recall, $1.5 billion higher than they were before the peso devaluation, so our exports are still going up. But could you elaborate a little bit on that situation, because there is a lot of misrepresentation, and a lot of folks are

confused thinking that we handicapped ourselves and put ourselves at a disadvantage as a result of NAFTA.

Mr. SHAPIRO. Mr. Chairman, you have made the best arguments and made some of the most important points on this, so I do not want to repeat them all. But from our standpoint, the case for doing NAFTA at the outset was compelling. The barriers in Mexico were much higher than the barriers coming the other way. Most of the overwhelming number of changes made in Mexico, the lowering of their barriers to our exports the first year of NAFTA, our exports soared. Last year, despite all the trouble, and this is about the worst case one could go through, because of NAFTA, exports did not decline very much and Mexico was not able to go back to the kind of closed market that it maintained in the past. Interestingly, Mr. Chairman, in addition to the numbers you have indicated, the fact is that the benefits of NAFTA for us, vis a vis other trading partners in Mexico were quite clear. It was a sharp drop in European exports to Mexico, and in Japanese exports to Mexico, but ours stayed pretty firm despite the very serious economic impact.

The other thing, though, is that we firmly continue to believe that Mexico is our neighbor, it is a friend, it is a country that we have to maintain positive relationship with. Our ability to do that would have been hampered seriously had we not had NAFTA. You can look at recent events; there have been cases where Mexico has cooperated in unprecedented ways on law enforcement, for the first time extradition from Mexico to our country, which has been a problem for many years, has been cooperative. A week ago they signed a 5 year agreement with respect to cleaning up and working together at the border on pollution. So there are still many problems, but overall we are in a stronger position with NAFTA than we would have been.

Chairman CRANE. What would be the status, Mr. Ambassador, or the economic effects rather of termination of most-favored-nation, for China with our pending reexamination of this issue in June and July?

Mr. SHAPIRO. Mr. Chairman, the effects would be extraordinarily serious economically and they would be very serious in terms of our relationship with China. The most favored nation, does not connote special treatment. It is basically the treatment we give to all our trading partners. If we end MFN, most-favored-nation, tariffs facing Chinese goods would go from something like an average of 5 percent to 50 percent. Basically it would radically change the trade relationship, and it would cut off trade. It would be a major setback in terms of any relationship with China. We have difficult problems with China that we all acknowledge at the present time, but the policy that the President wants to pursue and is seeking bipartisan support in Congress for is a policy of engagement with China, continuing MFN, but responding in targeted ways with sanctions where appropriate. That's what we are trying to do in the intellectual property area. Giving them MFN does not endorse all their policies. It does not endorse the human rights, trade, or proliferation policies. Without MFN, we will have a grave, grave problem.

Chairman CRANE. One final question. Can you speak to the challenges that lie ahead for U.S. trade policy? You touched, in your

testimony, on Japan, China, and the WTO, all of which are important, but what can you tell us about the administration's plans for reinvigorating our negotiations for, not just Chile's accession to NAFTA, but the pursuit of the President's stated objective for hemispheric free trade by 2005, and also the Asia Pacific cooperation effort.

Mr. SHAPIRO. As I said, Mr. Chairman, I always manage, despite the length of my written statements, never to cover everything. But, we are committed to moving ahead with the agenda of the Summit of the Americas and free trade in the Americas, which we have set a goal with 34 nations in this hemisphere for free trade by 2005. While obviously you and I have talked about this, not moving on Chile now has been something of a delay, but overall the free trade in the Americas effort is moving ahead. There are a number of working groups dealing with the issues and preparing for time at which trade agreements, at higher and higher levels of discipline, can be entered.

This is the second most rapidly growing area in the world in terms of economics. They are our hemispheric neighbors and we believe it is a critically important region. Frankly, we also believe that our European and Japanese competitors are working very hard to try to compete with our foothold in the hemisphere. So, we are going to keep on moving in the direction of expanded trade because it is freer and fairer trade. The APEC, Asia-Pacific Economic Cooperation Forum, process is a longer term process. Asia is the fastest growing region in the world; great potential, but great challenges, too. We need to be there fighting to insure that the countries in Asia do not follow the Japanese model, that as they prosper, they open rather than trying to stay closed. So we are going to continue being engaged in Asia. The President will be at APEC in Manila at the end of the year and the APEC work continues.

Chairman CRANE. Thank you, Mr. Ambassador.

Mr. Rangel.

Mr. RANGEL. Mr. Ambassador, I do not know how high a priority trade is on America's domestic agenda. However, most people who speak out politically frame trade in the most negative terms—that the foreigners are taking advantage of American manufacturers. Certainly, the manufacturers of pharmaceutical products, the recording industry, the movie industry, and the software industry have claimed that they cannot effectively compete if all of their research and development is just going to be illegally reproduced abroad without any of the cost and that they might as well not be in the country if that country has, as a matter of policy, the idea that just stealing Americans' products is going to be a way of life.

Now, with China, we have entered into all types of agreements with them as well as having China pledge to reduce the barriers to the introduction of American products there. And even as we talk, when the President has threatened sanctions against them, as you said, of $3 billion, their response is that they are prepared to put sanctions against us. So we are talking about a possible trade war with China, while many in the United States are concerned with the violation of human rights, many leaders are concerned with the reports that they use prison labor for many of the goods exported all over the world and into the United States. I just want

to know how do you sell most-favored-nation treatment for China to America when it appears as though China has not been a very friendly country to do business with as it relates to fairness and standards of mutual respect; other than saying of course, that if we do not give it to them, there would be grave consequences. But, how do you explain it to someone who is unemployed or who has been downsized, who cannot find the low-skilled job and we hear all of these reports, and not just from troublemongers. How do you explain why China should be treated equally when the record indicates that they have not treated us fairly?

Mr. SHAPIRO. Congressman, I guess I would answer in several ways, or make several points. First, in supporting MFN, we are not in any way turning our eyes away from those problems that you are identifying. That is why we have the sanctions and that is why we will continue pursuing the human rights abuses and the abuse of child labor or prison labor at the same time.

Mr. RANGEL. But, doesn't it appear to be a reward for China to be treated like other nations that trade with us, that they have a mutual respect for our concerns? I know that those issues that we talk about can never go away but it seems more like a reward for their failure to obey international principles.

Mr. SHAPIRO. I do not think it is a reward if you're continuing to take action against them where appropriate. And, if we are providing and continuing to provide the leadership in driving the hard bargain with them about the terms if they will ever get into the World Trade Organization, what we are saying, though—and I agree. I understand that this will not be the easiest sell in the world. But what we are saying is, we are still better off being engaged with China, and you cannot walk away from the problem posed by more than 1 billion people in the world economy, or the problem posed by a government that is not playing by the rules of the trading system.

Mr. RANGEL. We will leave it there, that it is a difficult sell. When you have countries that have such low wage standards or that have indentured servants or prisoners do a lot of the work, and when you find that in the United States we have basically given up manufacturing as being one of the key assets that we have, and as it has been clearly pointed out, that while we do get more jobs, those jobs are in high tech areas and the losers are those people that have marginal skills. One of the things that's made our republic so great—I was at Ellis Island last night and as we listened to how many poor people came to the United States without education, but had hopes, they had dreams, but most importantly they had low skill jobs where they could hope that their kids would get a better education and do a lot better than they would be able to do. Now we find that our school system is not working the way we want, that there seems to be a connection between poverty and less education, and there always has been the connection between less education and low skilled jobs. So if the school system is not working, and the low-income jobs are not available, and the leadership in the Congress wants to do away with the Department of Education, and there are less funds being appropriated for education than there is, for jails and penitentiaries, don't we really need to have the level of education in this

country be an important and vital component to successful leadership in the trade area?

You mentioned Michigan was having problems with finding high tech employees. But, it seems to me that there is a major problem in America with the low skilled people and some communities having little hope for the future also being those most involved in drugs, violence, crime, and jail. I see a direct relationship between the low investment in education and high investment in research and development, but I do not see any attention being paid by our government or the private sector in bringing up the educational level in terms of exports.

Could you share with me your observations?

Mr. SHAPIRO. Well, you're focusing on what is probably the fundamental problem facing our country, which is, while we can talk about and indicate that we have become the most competitive country in the world, we are generating high wage jobs. What is happening to the people who are not the beneficiaries, who do not have the skills and the education to participate. I guess I would answer it this way. The first is that the trade policy that overall generates the strongest economy and the strongest economic base is a benefit to our country. Beyond that, though, there is no doubt that you have got to take money, government money, and you have got to have private sector leadership, you have got to directly address the questions of education and training and particularly, in those areas that are the poorest areas.

The President has talked about education and training and infrastructure since the beginning of the administration. So, I do not see that those two things are things that one would trade off. I think you need to do both. I mean the low wage jobs that existed in the past are not all there, and yet there are jobs in Michigan, manufacturing jobs in Michigan, that are going unfilled at the moment because we are not training people adequately enough to take them. So, we have to do that as well.

The one thing where I would somewhat disagree with one point you made, Congressman, we are not getting out of manufacturing. We are manufacturing more, we are manufacturing with fewer people because that's the nature of the change, but part of the reason we are coming back economically strong is that we have a strong auto sector, machines.

Mr. RANGEL. I misspoke. I meant the type of manufacturing that required the least amount of education.

Mr. SHAPIRO. I agree it is a problem, because those entry level jobs and the lower skilled jobs are not there as much. I went through an auto plant the other day and they make a lot of cars with fewer people, as you know. We have got to invest directly in these problems.

Mr. RANGEL. My last question is when we were fighting the communists, we had all types of leaders dedicating their lives to breaking down the solidarity of the communists as a threat to the free world. And as we deal with the narcotic problem, we have people fighting internationally and domestically in that area. I do not find anyone defending the Department of Education, and in some communities the local school boards are so ineffective and corrupt that no one would believe that the future of our country should remain

in their hands. And so, I would just ask for a little direction in terms of what you describe to be a vacuum in terms of our success and exports. After the President expresses his feelings about how important it is, and after exporters respond to questions of how important it is, I cannot find the leadership in terms of doing something about it. Could you help me there?

Mr. SHAPIRO. I am not sure I am the best person to help you, but I did spend time the other night with Secretary Riley who you know and who I believe would argue that in a lot ways in terms of goals 2000, in terms of upgrading education, in terms of school to work transition, and in terms of other areas, we have been, as an administration, fighting to improve the education system. I would probably be better off referring to my wife because she is the educator in the family. But, I do not think any of us think we have done enough, and in the next 4 years, I am hopeful that this will be the priority that it ought to be, because obviously, as you and I discussed on the way over here, we are not going to make the progress and sustain the progress unless we have the world's best education system.

Mr. RANGEL. I will leave it on that, because I have given the maximum cooperation to my Subcommittee Chairman here because he has earned it and he deserves it. But, I am going to ask publicly and privately that he try to assist me in focusing on what we have to do as a nation to raise our National standards in education, not just through statements or programs that we open up with work, but to set that out as a national goal, as Kennedy did to reach the moon, so that we can continue, not only to provide the leadership in the world in trade, but also to improve the standard of living for every American, which really is what leadership in trade is all about. So I look forward to working with you, and certainly, Chairman Crane, I will be working very hard in trying to see that we do not get involved in education, but we try to show those who are the beneficiaries of expanded trade how they have to assume more of the responsibility. Thank you very much.

Chairman CRANE. Thank you, Congressman Rangel. Let me thank you also for the bipartisan support for the tax credit for corporations educating employees. Upgrading skills in that manner is a very positive initiative and it originated from the private sector, not from government. But I appreciate your support.

Mr. MANZULLO. Thank you very much. I have more of a comment than anything. If you want to respond to it, that's fine, Mr. Ambassador.

I am very much troubled over the Clinton administration's dualism in exports. Let me get very specific. In reference to the Three Gorges Project in China. We met with Mr. Brody, who was the president of the Ex/Im Bank last November. The administration pulled the rug on Ex/Im financing for Caterpillar, which was in process of selling 200 million dollars' worth of machines to the Three Gorges Project in China. This is the world's largest public works project. The reasons given for that were in the words of Senator Paul Simon, not sufficient. The Illinois House Members along with Senator Simon, met with Mr. Brody, and as Senator Simon said, the project will be built with or without U.S. participation. Because of the environmental concerns over the Chinese alligator,

the Yangtze River dolphins and the Siberian crane, which in the minds of many people who are experts in aquatic life, would not be in danger, the Chinese Government, 10 days ago, put out a request for offers to Norway, France, Germany, Japan, Switzerland, Canada, and Russia for 4 billion dollars' worth of capital improvements, purposely excluding the United States.

I have just about had it with the administration. I have made a real pest of myself on Capitol Hill, again in a hearing, International Economy Policy and Trade Subcommittee on which I serve as vice-chairman along with Congressman Toby Roth. Because for the administration to whine, and I am not saying you're doing that, but there is an incessant whining going on over the widening trade deficit between the United States and China. Then to talk about China as one of the most protectionist trade regimes, well, I would submit, Ambassador Shapiro, that Mr. Clinton, the President of the United States, is one of the most protectionist trades, because he does not understand international trade in the manner that the late Commerce Secretary, Ron Brown, understood it. This man was a real hero to the international business community. Secretary Brown was light years ahead of the administration.

And here we are, the administration asking for MFN for China. I have several industries in the district I represent, ranging from TC Industries in Crystal Lake which makes the blade tips for Caterpillar to Bergstrom Manufacturing in Rockford which makes the heating and ventilated air conditioning system. In a meeting that we had in December with Senator Simon, the administration's excuses for not participating in the Three Gorges Dam Project were so weak. For example, the Department of Justice said that in the National Security Council interagency working group, which supposedly got together and came up with this consensus not to allow Ex/Im Bank to be involved with the financing, that they were afraid there would be a lawsuit over the extraterritorial application of the Endangered Species Act. And I turned to the lady from the Department of Justice and said you were hired by the U.S. Government to defend our laws and not to cowardly back away from a threat of a lawsuit, and to those talking about the violations of the human rights because there will be displacement of a lot of people.

The erection of the Three Gorges Dam will produce the world's largest hydroelectric dam. The energy provided from this dam is the equivalent of a train 5,000 miles long filled with high sulfur coal. It is one of the premier projects in the world. And here we are now with the bids going out. We will see those Komatsu tractors as opposed to Caterpillars at the site. We will see all the foreign countries being involved in this project, and the project will be completed. It is not a maybe, it is not an iffy, it is being built. This dualistic trade policy in the Clinton administration is blocking out, in the State of Illinois, hundreds of millions of dollars of exports. When I hear people, such as yourself, talking about the Clinton administration and how great it is doing in the promotion of exports from this country, I simply have to pinch myself to say there is another side here. We are missing out on one of the largest exporting opportunities we have.

In addition to that, there is the Freeport Gold Mine expansion in Indonesia. We found out that the U.S. AID had funded an orga-

nization called WAHLI, to the tune of $1 million, which is an Indonesian environmental organization. That organization, funded with American funds, in turn lobbied OPIC not to allow American investment in Indonesia. We have got some big problems in international trade. The biggest problem is that exporting has become politicized and that is wrong. When Mr. Rangel said, in his opening statement, that this Congress has become more politicized than any other Congress, well, perhaps that's from his perspective because his party has been in control for 40 years. But in a sense he was correct, because everybody is politicizing every issue.

If you want to comment on the Three Gorges Project, that's fine and maybe beyond the area in which you have been working. It is, because your expertise is Canada.

Mr. SHAPIRO. Japan and Canada, also some GATT.

Mr. MANZULLO. Right. If you want to comment on it, that's fine. I just wanted to make that a part of the record and I do not expect an administration response from you, but I would like to hear your thoughts.

Mr. SHAPIRO. Well, Mr. Manzullo, I would say first that we have, as an administration, pursued and given a great deal of support to all kinds of projects around the world. There have been those that have been criticizing the administration at different times for being too involved in supporting various company efforts, whether it was aircraft or telecommunications or other matters.

On Three Gorges, and I appreciate the comment on Secretary Brown, who obviously was a great leader in the effort to give support to business around the world. On Three Gorges, I have not been involved in it and really cannot comment, except to say a project of that magnitude was studied carefully and not at all the concerns of Caterpillar and others in Illinois, the genuine concerns and desire to participate and certainly by no means taken lightly. But I cannot comment beyond that, because I have not spent the time on it.

Mr. MANZULLO. I appreciate that there is a lingering problem that came over from the Bush administration. The TDA, Trade Development Administration, and OPIC are not allowed to get involved in China. That obviously is neither a Republican nor a Democratic type of issue. But, we really have to take a look at where the United States stands in trade.

I understand there are a lot of problems going on. We in Illinois fear that if China retaliates against vegetable oils it could hurt Illinois farmers. Illinois is the largest soybean producer in the United States and a few years ago China was an exporter of soy meal. Now they are an importer of soy meal and soy vegetable oil and that is coming from our state.

I just want to take the opportunity to share with you those thoughts. I also want to share with you the fact that I was down in Mexico 2 weeks ago with the Inter-Parliamentary Union with Mexican Members of Congress and U.S. Members of Congress. Last year I was in Canada with the Canadian-American Inter-Parliamentary exchange. We had the opportunity to spend 3 days with the new Mexican Ambassador to the United States, Jesus Herzog, who went to the University of Illinois and understands a lot of our problems. And aside from the fights over tomatoes and

avocados and shrimp and tuna, it is apparent to me that NAFTA has really forced Mexico to come to grips with maturing in the international market. We are looking forward to more NAFTA success stories, and I want to thank you and the President for the persistence in pursuing a congressional adoption of NAFTA and GATT.

Mr. SHAPIRO. I want to thank you and the Chairman for the steadfast support that we had. It was obviously a difficult political battle. There are those in the Congress and in the country who still doubt it, but over time, the fact that it was the right thing to do and the right course of action for our country and the hemisphere will become evident. Thank you very much.

Chairman CRANE. Thank you, Mr. Ambassador. I know you are on a tight time constraint with a flight to make, weather permitting.

One quick note to what he had to say about Three Gorges, though, and those Yangtze cranes. Now, you do want to take care of the cranes.

Mr. MANZULLO. Yes, take care of the cranes.

Chairman CRANE. Have a good trip, too. Thank you very much.

Now, what I want to do is invite our next panel up and arrange some priorities in presentations, because I know one of the panelists has a flight to catch, also. And Governor Edgar should be in here shortly. I would like to now invite Martin Singer, with Motorola; Robert F. Kelley, managing partner of international affairs for Andersen Worldwide; Marschall Smith, senior vice president, secretary and general counsel of IMC Global, Inc.; and Ron Bullock, president of Bison Gear and Engineering.

If you gentlemen would proceed, with Mr. Singer going first, and I do not know that time constraints are on any of the rest of you. Are you on really tight time constraints as far as catching flights? If not, we'll let Mr. Singer go first. But if you would be so gracious, when the Governor gets here, to let us put him on and then we can let him exit, because I know he has tight time constraints.

But with that, Mr. Singer, we would like to hear your remarks. If you can confine your statement to 5 minutes or less, any printed statement will be made a matter of the permanent record.

STATEMENT OF MARTIN SINGER, VICE PRESIDENT AND GENERAL MANAGER, WIRELESS ACCESS AND BUSINESS DEVELOPMENT, DIVISION, CELLULAR INFRASTRUCTURE GROUP, MOTOROLA CORP.

Mr. SINGER. Thank you very much.

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Martin Singer. I am the vice president and general manager of the Wireless Access and Business Development Division of Motorola Cellular Infrastructure Group. it is a great pleasure to appear before you on behalf of Motorola. We appreciate the chance to offer our perspective on the status and future direction of U.S. trade policy, and we congratulate the Chairman on reaching out to the business community to solicit our views. I will offer a few observations on broad themes and will focus my remarks on the issue of U.S.-China commercial relations. Let me begin with some background about Motorola.

Motorola is the world's largest producer of cellular telephones, two-way radios and pagers. We are also one of the largest semiconductor companies in the world, and the remainder of our sales are in related areas of electronics. Total Motorola sales worldwide have doubled in the past 3 years to $27 billion in 1995.

While Motorola is a global enterprise, with facilities in 70 countries, our roots are planted firmly in the U.S., specifically in Illinois. Motorola is proud to call Schaumburg home of its worldwide headquarters.

Motorola currently employs about 23,000 people in Illinois, with more than 7,000 of them located here in Schaumburg. The infrastructure for cellular systems is in Arlington Heights and McHenry. Cellular phones and accessories are made in Libertyville, and our newest facility is in Harvard. Motorola's Land Mobile Products Sector is headquartered in Schaumburg, where we recently assembled the wireless communication system that will be used at the Atlanta Olympics. Our Messaging, Information and Media Sector is also headquartered in Schaumburg, and our Automotive, Energy and Controls Group is based in Northbrook. The company also has operations in Lake Zurich, Vernon Hills, Buffalo Grove and Urbana.

International trade plays a pivotal role in creating and sustaining economic growth for American workers and companies. A few Motorola statistics illustrate this point.

In 1988, 36 percent of Motorola's total revenues were derived from sales outside the United States. In 1995, that figure was 63 percent and growing. Indeed there are some products, such as the one I manage for Motorola, that are designed solely for non-U.S. markets. Over that period, our worldwide revenues grew from $8.25 to $27 billion and our employee base grew from 102,000 to more than 140,000.

Of the 40,000 new jobs created, half were created outside the United States and half were created in this country. Although the U.S. sales as a proportion to the total worldwide revenues decreased from 63 to 37 percent during that period, we still added 20,000 new jobs in the United States.

The best way for the United States to maintain its leadership in the world economy is by pursuing a trade policy that combines three elements: persistent efforts to break down foreign tariff and nontariff barriers to market access. While much progress has been made, U.S. goods and services still face significant barriers in many markets. Second, advocacy and export promotion, including elimination of existing U.S. export disincentives. Other countries recognize the critical importance of trade to the well being of their economies and provide significant support to their exporters. Three, aggressive enforcement of United States trade laws aimed at unfair foreign trade practices. My written statement addresses these issues in detail, so I will focus the rest of my remarks on one of the most important relationships the U.S. has today, namely with China.

Motorola has a keen interest in ensuring that there are sustained positive relations between the United States and China. Motorola's U.S. exports to China have grown significantly in recent years, reaching about $1.2 billion in 1995. Indeed, we have about

a 48 percent share now in the cellular infrastructure market. These exports support thousands of high wage American jobs at Motorola and at our supplier companies around the country. A fact sheet detailing Motorola's activities in China is included with my written statement.

Motorola strongly supports China's most-favored-nation status without conditions. MFN is not preferential treatment. It is the cornerstone of any normal bilateral trading relationship.

We are especially grateful for your continued leadership in support of MFN, Mr. Chairman, as well as the support of other Members of this Subcommittee. We are heartened by recent indications that there is growing bipartisan congressional support for MFN renewal. We understand that, as this hearing is being conducted, President Clinton is affirming his support for MFN renewal as part of a major address to the International General Meeting of the Pacific Basin Economic Council, over which Motorola's vice chairman and CEO Gary Tooker is presiding.

We would like to believe that this strong showing of bipartisan support for China's MFN renewal without conditions would make it easy to accomplish. But, there are some who would want to use the MFN debate as an opportunity to express their concerns about other issues, including human rights, proliferation, security, intellectual property right, market access barriers and so on.

All these issues are important. They demand careful consideration and cannot be dismissed lightly. But, we believe that efforts to address concerns about such matters through alternative legislation that would be considered in tandem with China's MFN renewal would be highly counterproductive.

Withdrawal or conditioning of China's MFN status would invite retaliation, which would jeopardize Motorola's exports to and business in China. This would give our competitors an unfair advantage in the rapidly expanding Chinese economy and would threaten Motorola's ability to compete throughout the Asia-Pacific region.

The annual debate over China's MFN status puts the U.S. Government in the position of trying to measure progress in artificially short increments. Since Motorola first went to China in 1986, we have seen a rise in the standard of living and improvement in the human condition in China. In some areas, they still have a long way to go, to be sure. But, it is important to look at how things are evolving.

Motorola exposes its Chinese employees to market-driven business and management practices and to our core principles of respect for the individual and uncompromising integrity in everything we do. We provide thousands of hours of training to employees, suppliers and government officials at Motorola University in Beijing and Tianjin. Motorola is the largest donor to the Hope Project, which builds elementary schools in rural China. Last fall, Motorola became the first foreign company to cosponsor an environmental protection symposium that brought together Chinese policymakers, regulators, scholars and practitioners, and we are now exploring other environmental protection and awareness projects with fellow companies. Finally, Motorola is sponsoring an Employee Home Ownership Program, which covers construction fi-

nancing, mortgage financing to the employees, funds for community amenities and a portion of the mortgage payment liability.

Our ability to contribute to positive change in China demands that ties between the United States and China stabilize and deepen over time. Renewal of China's MFN status this year is the right short term objective. But over the long term, the United States and China should take the steps necessary to stabilize and normalize their commercial ties.

Normalizing these ties would include permanent MFN extension, China's accession to the World Trade Organization on commercially acceptable terms, and additional improvements in bilateral trade ties through a step-by-step reciprocal process. Motorola's ability to compete in China on fair terms is essential, and we call on policy makers in both nations to do their part to help us accomplish these vital objectives.

Motorola's continued ability to create American jobs and support economic growth in the U.S. demands that we compete in markets around the world. To be successful, we need the U.S. Government to act as a partner, through market access negotiations, aggressive export promotion efforts and elimination of U.S. export disincentives, effective enforcement of U.S. trade laws and an enhanced appreciation that actions taken for domestic political purposes can have an adverse impact on American companies' ability to compete in the international marketplace. Thank you.

[The prepared statement and attachment follow:]

Statement of Motorola Inc.
Before the
Ways and Means Subcommittee on Trade
May 20, 1996
Schaumburg, Illinois

Good morning, Mr. Chairman and members of the Subcommittee. My name is Martin Singer, and I am the Vice President and General Manager of the Wireless Access and Business Development Division of Motorola's Cellular Infrastructure Group. It is a pleasure to appear before you today on behalf of Motorola.

The focus of today's hearing is on the status and future direction of US trade policy. We commend you for conducting this hearing, because these are important matters that deserve careful deliberation. I will offer some general observations on the broad themes suggested for discussion, but would like to focus my oral remarks on the timely issue of US-China commercial relations.

Let me begin by giving you some background about Motorola.

About Motorola

Motorola is the world's largest producer of cellular telephone, two-way radios and pagers. That accounts for about 60% of our total sales. We're also one of the largest semiconductor companies in the world, which accounts for another 30% of our sales. The remaining 10% is from related areas of electronics. Total Motorola sales have doubled in the past three years, to $27 billion in 1995.

While Motorola is a global enterprise, with facilities in 70 countries, our roots are planted firmly in the United States and specifically in Illinois, the location of our corporate headquarters. Motorola is proud to call Schaumburg home of its worldwide headquarters.

Here in Illinois, the infrastructure for cellular systems is made in Arlington Heights and McHenry. Cellular phones and accessories are made in Libertyville, and our newest facility is in Harvard. Our Land Mobile Products Sector is headquartered in Schaumburg, where we recently assembled the wireless communications system that will be used at the Olympics in Atlanta.

Schaumburg is also the headquarters of our Messaging, Information and Media Sector, which is planning a facility in Elgin. In Lake Zurich, the sector's Multimedia Group makes cable telephony equipment. A telephone system that provides voice, video and high-speed data communications service has been demonstrated in a test system in Arlington Heights. The group also makes cable modems that connect users with the Internet. Our Automotive, Energy and Controls Group, based in Northbrook, makes a wide variety of electronic components. Battery packs for wireless products are made in Vernon Hills, while electronic ballasts are made by Motorola Lighting in Buffalo Grove. The Motorola Computer Group has a software design center in Urbana.

The Importance of International Trade to Motorola

International trade plays a pivotal role in creating and sustaining economic growth for American workers and companies. The importance of being able to trade freely and on fair terms across international borders will become increasingly important as we move toward the 21st century.

The expansion of trade is not a one way street -- increased trade flows of goods, services and investment provides benefits to United States as well as to our trading partners. A few Motorola statistics will illustrate the point. In 1988, 36% of Motorola's total revenues were derived from sales outside the United States. In 1995, that figure was 63% and growing. Over that period, our worldwide revenues grew from $8.25 billion to $27 billion. By the year 2000, we anticipate that fully 75% of our total revenues worldwide will result from sales outside the United States.

Also, between 1988 and 1995, our employee base grew from 102,000 to over 140,000. Of the roughly 40,000 new jobs created, half were created outside the United States and half were created right here in this country. As we have created these new jobs in the US, the proportion of manufacturing jobs relative to the total has remained stable. And we've been able to eliminate such jobs as quality-assurance inspectors and expediters as Motorola's quality and cycle time have improved, so both the "quality" of the manufacturing jobs and the total number of jobs in the US have gone up.

The number of our employees right here in Illinois nearly doubled during the 1988-1995 time frame, growing from about 12,000 to more than 23,000. More than 7,000 of Motorola's employees are located here in Schaumburg today.

In other words, though our US sales as a proportion of total worldwide revenues decreased from 63% to 27% during that period, we still added 20,000 new jobs in the US. These statistics bear out the fact that access to international markets has allowed Motorola to grow and strengthen its competitive position and it s contribution to the US economy through increased jobs and revenues.

Since 1988, countries containing four-fifths of the world population, or more than 4 billion people, have either moved or begun the transition from closed markets to become integral players in the he global economy. This has created enormous opportunities for telecommunications, one of the most basic forms of infrastructure. Wireless systems enable developing economies to leapfrog old technologies and install modern networks very quickly.

Our most dramatic growth has been in Asia, where sales represented only about 5% of Motorola's total in 1985, and now account for more than 30%. Latin America is another rapidly growing region with huge potential. Exciting changes also are taking place in Eastern Europe, the Middle East and Africa.

Components of a Successful US Trade Policy

The best way for the US to maintain its leadership role in the rapidly growing and changing world economy is by pursuing a trade policy that combines three fundamental elements:

(1) Persistent efforts -- through bilateral, plurilateral and multilateral means -- to break down foreign tariff and non-tariff barriers to market access. While much progress has been made in recent years, US goods and services still face significant barriers in many markets;

(2) Advocacy and export promotion, including the elimination of existing US export disincentives. Other countries recognize the critical importance of trade to the continued growth and well-being of their economies, and provide significant support to their exporters. The US must take steps to ensure that its exporters are playing on a level playing field; and

(3) Aggressive enforcement of US trade laws aimed at curbing unfair foreign trade practices. As trade barriers have been removed and international competition increases, the potential for infringement of intellectual property rights (IPR) and other unfair trading practices continues.

Let me address each of these issues in turn.

Market Access

There are several initiatives underway in regions around the world to address tariff and non-tariff barriers, including the Asia-Pacific Economic Cooperation (APEC) forum, the Free Trade Area of the Americas (FTAA) dialogue, and the Transatlantic Business Dialogue (TABD). Each of these offers an important opportunity to work cooperatively with other nations to address significant remaining tariff and non-tariff barriers, and it is important for the United States to stay engaged in them.

At the same time, it is equally important for the United States to be realistic about what it can reasonably expect to achieve in each of these fora. Over-ambitious expectations will erode the credibility of these opportunities, and risk producing lowest-common-denominator results. Through a process of consultation with the private sector and with the Congress, US negotiators should identify its priority objectives in each of these regional negotiations.

Likewise, as the United States develops its objectives for the WTO ministerial to be held in Singapore later this year, it is important to be realistic about expectations of what can be accomplished. First and foremost, all WTO signatories should focus on meaningful and effective enforcement of their Uruguay Round obligations. Where possible, efforts to adhere to negotiated commitments should be accelerated.

It is also important to conclude successfully the as-yet unconcluded WTO negotiations in basic telecommunications services. Unfortunately, as the original April 30 deadline set for these negotiations drew near, it became clear that the basic US requirement for high-quality offers from a critical mass of foreign countries had not been met. Offers to open markets, particularly from developing countries, were woefully deficient, especially for international services, including satellites. Rather than seeing those negotiations fail, however, we have strongly supported the WTO Secretariat's plan to extend the talks until February 1997 and to implement all final offers on January 1, 1998. Both services and equipment providers will benefit from more open markets and competition worldwide, but a satisfactory result entails improved access from a significant number of countries -- not just a handful.

While the Uruguay Round agreements should help US companies do business in foreign markets by removing formal governmental barriers to trade and providing increased protection for intellectual property, many unfair obstacles that still remain. Principal among these are anticompetitive practices and structures created by foreign businesses to prevent US and other companies from competing on an equal footing in those foreign markets. Often these practices are openly condoned by the foreign governments. These anti-competitive practices take many forms, and are often secret and difficult to prove, but we must continue to

press for their elimination. The US Trade Representative must continue to use its authority under Section 301 and related trade laws to identify and challenge such practices where they have the effect of restraining US companies seeking to do business abroad, and the US must push the WTO to begin to work on measures to eliminate such practices. Only when this is accomplished will foreign markets be as open to American companies as US markets are to foreign companies.

To accomplish the full compliment of its trade agenda, the United States Government clearly needs fast-track negotiating authority. This is critical if the US is to retain its credibility with our international trading partners. Important work is going forward in various regional fora, even though that activity is confined to information sharing rather than negotiation at this time. The United States cannot continue to open markets and remove barriers to competitive American goods and services without fast track authority in place. Indeed, some Latin American countries in particular have pointed to the lack of fast track authority as an indication that the United States is not really serious about wanting to open markets. We therefore urge the Congress and the Administration to work together toward adoption of an acceptable fast track provision.

Japan

As noted earlier, Motorola most dramatic growth has been in the Asia-Pacific region, where sales now account for more than 30% of our total revenues. We are actively pursuing opportunities in several markets throughout Asia, and welcome the trend in many of these countries towards greater liberalization of their trade, investment and regulatory regimes.

In addition to the multilateral efforts ongoing through APEC, the US needs to continue on a bilateral basis to address continued market access barriers in several key markets in Asia.

This is particularly true in Japan. Japan remains a high priority market for Motorola. Our business there includes semiconductors, pagers, cellular telephones and other wireless communications. Although we have made strides in the Japanese market, they have often come about largely as a result of US Government pressure to eliminate trade barriers. Section 301 and other provisions to combat foreign unfair trade practices have been invaluable in prying open the Japanese market in cases where multilateral rules have not been up to the task.

The agreements negotiated with Japan have indeed yielded positive results for Motorola. The Semiconductor Trade Arrangement led to an increase in many foreign-capital companies' semiconductor sales to Japan, including Motorola's. In addition, the March 1994 Cellular Telephone Agreement was a win for all involved -- users, manufacturers and carriers. Under the terms of the agreement and the subsequent system deployment plan, sales of Motorola infrastructure equipment grew dramatically, as the system was built out in the Tokyo/Nagoya region. Combined with deregulation in the cellular telephone market -- which enabled customers to own and maintain their subscriber units and allowed carriers to reduce service costs and usage rates -- the Japanese cellular market saw an explosion of users. Japanese and non-Japanese manufacturers alike now offer a wide range of cellular telephones to the market. As a result of greater consumer choice, lower prices and more comprehensive service, the number of subscribers on IDO's Motorola-based analog cellular system grew from 12,000 in March 1994 to more than 600,000 in December 1995.

Other areas have not reached their full potential, however, including Japanese Government agency procurement, where the foreign share of the market remains essentially flat despite the Framework procurement agreement negotiated in October 1994. We continue to need vigilant US Government monitoring and enforcement of bilateral agreements such as this to ensure that Japan does indeed implement measures and practices that will increase foreign share.

Similarly, in the case of the Semiconductor Trade Arrangement, we continue to need a new government-to-government agreement that builds upon the successes we have seen over the last decade in expanding foreign market share in Japan. The current agreement expires in July, and the Japanese Government must be convinced to come to the table before that time to negotiate a renewed pact.

Latin America

Countries throughout Latin America have undergone dramatic transformation in recent years, with democracy, economic stability, privatization and full participation in international political and commercial circles. The countries in this region have re-written their rules, and are opening up for trade and investment. They look to the United States for support and leadership as they undergo these dramatic changes.

Some of our hemispheric trading partners, notably Chile, have undergone significant reforms to join the US in free trade and investment. Unfortunately, the United States is not there for them, and they are turning elsewhere. For example, MERCOSUR and Chile are entering into an agreement to zero out their respective tariffs. Chile is the 35th largest trading partner of the United States. Not significant in macro terms, perhaps, but what kind of message does it send when the US cannot enter into negotiations with a country that has done everything we could ask to liberalize its regime? The United States, regrettably, has lost the upper hand in trade negotiations. This policy-by-default enables us only to hope that new arrangements

forming without US participation will not undercut or harm American interests -- hardly the leadership stance one would expect from a superpower that professes to be interested in writing the rules for its economic future.

Europe

In Europe, Motorola is participating in several initiatives to ensure that trade relations are open and fully competitive. In the Trans-Atlantic Business Dialogue (TABD), we are pursuing initiatives to: expand the use of mutual recognition agreements in order to reduce unnecessary costs of testing and certifying electronic equipment; reduce the burdens of export controls, and reduce semiconductor tariffs. We are optimistic about achieving some progress on all three of these issues.

Export Promotion and Advocacy

The second critical element of a successful US trade policy is advocacy, export promotion and the elimination of existing US export disincentives. Foreign companies increasingly enjoy a significant competitive advantage over American firms because of the extent of support they enjoy from their governments. In addition to negotiating for the reduction or elimination of tariff and non-tariff barriers in foreign markets, there are several steps the US Government must take to support American companies as they strive to compete in today's international marketplace. Chief among these are: (1) The continued expansion of export promotion and advocacy efforts, and (2) The elimination of existing US disincentives to exports. These cannot be considered "optional" activities by the US Government.

The support Motorola has received from both the Administration and the Congress has been a key factor in many of our successful bids, from Hungary to Honduras. We note in particular that Ron Brown's personal enthusiasm and attention to export promotion and advocacy were exemplary. We look forward to continued support from Secretary Kantor and his team at the Commerce Department, as well as from Capitol Hill and from our embassies around the world, to ensure that there is a level playing field for American exports.

Beyond advocacy, the US Government must act expeditiously to eliminate a number of critical disincentives that hinder American exports and tend to make American exporters relatively less competitive than our foreign counterparts. These include both the relative paucity of US Government-back trade financing resources and the US export controls that remain tighter than those maintained by most of our major trading partners.

On the trade finance front, we are concerned about recent congressional efforts to sharply curtail or in some instances eliminate programs. Though perhaps well intentioned as means to address budget constraints, such measures would set US competitiveness back significantly at a time when greater, not less, support is required.

On export controls, we note the still highly restrictive export controls on all of our telecommunications and computer products that contain encryption. These controls cost Motorola market share, yet they do not protect national security because the customer can buy similar products from foreign producers. The United States needs to eliminate controls on widely available encryption and stop treating encryption as a munitions item subject to the same types of procedures as exports of tanks and F16 fighter aircraft.

Enforcement of US Trade Laws

The third element of a successful US trade policy must continue to be aggressive enforcement of US trade laws aimed at curbing unfair foreign trade practices. Motorola has long sought to assure that companies throughout the world compete on an level playing field. Unfair trade practices result in a break-down of the rules of competition and can destroy even the best, most efficient companies, particularly in the electronics field.

The growth and prosperity of the US economy has been driven largely by American technology innovation and leadership. Therefore, it is essential that the United States have and use the tools necessary to ensure the effective protection of US intellectual property rights. This includes both urging other countries -- through Special 301 and other means -- to adopt and enforce effective IPR regimes, and maintaining effective mechanisms -- such as Section 337 -- to preclude infringing products from being imported into the US.

In addition, great progress was made during the Uruguay Round to expand and strengthen the scopt of the rules of the road governing international trade. But the Uruguay Round did not address the full range of issues that confront American companies in foreign markets, such as anti-competitive practices. Moreover, not all of our major trading partners are now members of the World Trade Organization. And even among WTO member countries, not all have signed on to the voluntary elements of the package, such as the Agreement on Government Procurement. Therefore, it is critical for the United States to retain both its ability and willingness to utilize Section 301 and other mechanisms as appropriate in order to address these outstanding issues.

Finally, the capital investment required for companies in the electronics industry is massive, while the variable costs of production are ever-decreasing. Therefore, economies of scale and positioning at the early stages of the market are crucial to success. In such an environment, foreign industries can gain tremendous advantages over US companies if they are able to use

protected or subsidized positions in their home markets to underwrite the capital costs and then produce large volumes, dumping the excess onto the US market at little more than variable cost.

The United States has only limited ability to attack the portion of this problem that occurs solely in foreign countries, but it does have the ability to counteract the unfair aspects of these practices as they spill into the US. This is what the antidumping and countervailing duty laws are designed to do. They do not prevent foreign producers from selling in the United States, they only seek to prevent foreign industries from using their unfair advantage to dump their products at low prices in the US market, destroying American competitors in the process.

Three times, Motorola has faced this scenario - - massive and severe dumping of pagers, of cellular phones, and of semiconductors in the US market, while the foreign market for such products was severely restricted to American companies. It was only through the application of the antidumping laws that these US industries were able to oppose this strategy and avoid being driven from the market. Today, Motorola and the US industry are world leaders in these industries, and US workers are successfully building and exporting these products worldwide.

We must resist any short-sighted efforts to undermine the effectiveness of these laws. Efforts to make the laws more susceptible to political pressure or to waive them where the customers who have been paying the dumping prices to foreign companies complain about having to pay fair prices are misguided. Regrettably, we believe that this is precisely what the so-called "short supply" legislation would do, and for this reason, Motorola opposes this measure. As with any other law, the antidumping laws on rare occasions may produce temporary undesired results, but only the existence of a predictable, objective and effective law will discourage foreign industries from attempting to take advantage of the open US market to supplant US businesses fighting to compete in the global economy.

US-China Relations

The remainder of my remarks is focused on one of the fastest growing and most important bilateral trading relationships that the US enjoys today, and which is of particular interest to Motorola, namely: China.

Motorola has a keen interest in ensuring that there are sustained positive relations between the United States and China. Motorola's US exports to China have grown significantly in recent years, reaching about $1.2 billion in 1995. These exports support thousands of high-wage American jobs, at Motorola and at our supplier companies around the country. A fact sheet detailing Motorola's activities in China is included with this statement for your reference.

As you can imagine, Motorola strongly supports renewal of China's most-favored nation (MFN) status without conditions. MFN is not preferential treatment. It is the cornerstone of any normal bilateral trading relationship. The US extends MFN treatment to imports from virtually all of its trading partners.

We are especially grateful for your continued leadership in support of MFN extension, Mr. Chairman, as well as the support of other members of this subcommittee. We are heartened by recent indications that there is growing bipartisan congressional support for MFN renewal. And we understand that as this hearing is being conducted, the President is affirming his support for MFN renewal as part of a major Asia address to the International General Meeting of the Pacific Basin Economic Council, over which Motorola's Vice Chairman and CEO Gary Tooker is presiding.

We would like to believe that this strong showing of bipartisan support for China's MFN renewal without conditions would make it easy to accomplish. But as you well know, there are many in the Congress who want to use the MFN debate as an opportunity to express their concerns about a range of issues, including human rights, proliferation, security, intellectual property rights, market access barriers and so on.

All of these issues are important. They demand careful consideration and cannot be dismissed lightly. But we firmly believe that efforts to address concerns about such matters through alternative legislation to be considered in tandem with China's MFN renewal would be highly counterproductive. Such "messages" may address a certain domestic need, but they also contribute to Chinese perceptions that the United States is intent on pursuing an antagonistic policy of containment. Though this may be the furthest thing from the truth, these actions fuel such perceptions, which unfortunately contributes to an endless cycle of mutual misunderstanding.

Achieving and maintaining good US-China relations require a sustained long-term commitment by both nations. Corporations can and should play a supportive role. Motorola is trying to convey to Chinese policymakers the importance of recognizing that their actions do have an impact on public opinion worldwide, and that they shouldn't behave as though their actions in one area do not affect their interests in other areas. Likewise, American policymakers must understand fully the implications of their actions. If we treat China as an enemy, it will behave as an enemy. No US interests are served by backing into a confrontation with an emerging world power.

Withdrawal or conditioning of China's MFN status would invite retaliation, which would jeopardize Motorola's exports to and business in China. This would give our foreign competitors an unfair advantage in the rapidly expanding Chinese economy, and would threaten Motorola's ability to compete throughout the Asia-Pacific region.

The annual debate over renewal of China's MFN status puts the US Government in the difficult position of measuring progress in artificially short increments. Since Motorola first went to China in 1986, we have seen a rise in the standard of living and improvement in the human condition in China. In some areas, they still have a long way to go, to be sure. But it is important to look at how things are evolving, not at a snapshot.

Motorola does not condone China's actions towards Taiwan earlier this year. Likewise, we support further improvements in China's human rights record. But Motorola believes that withdrawal or conditioning of China's MFN status, or the imposition of unilateral sanctions that hurt American workers or exporters without significantly affecting Chinese policies or actions, is not an effective response to these issues. For this reason, we were relieved that the United States was able to address its most recent concerns about alleged Chinese violations of nonproliferation agreements and norms without resorting to unilateral sanctions.

Unilateral sanctions are never our first preference as a means to resolve an issue. Thus, in the case of the current intellectual property rights dispute between the US and China, we remain hopeful that negotiators in both countries will make every effort to resolve this dispute before the sanctions are actually imposed. But Motorola believes that faithful implementation of negotiated commitments is extremely important. If these commitments are not being met satisfactorily, then the issues must be addressed.

Doing business in China is not just about making profits. The American approach to doing business and to corporate responsibility can and does foster positive change. We believe Motorola's presence in China contributes to improvements in Chinese society in several ways.

Just as we do in every country in which we operate, Motorola exposes its Chinese employees to market-driven business and management practices, and to our core principles of respect for the individual and uncompromising integrity in everything we do. We provide tens of thousands of hours of training to our own employees, suppliers and government officials at Motorola University in Beijing and Tianjin, and through on-the-job training. Motorola is the largest donor to the Hope Project, which builds elementary schools in the poorest parts of rural China. Last fall, Motorola the first foreign company in China to co-sponsor an environmental protection symposium that brought together Chinese policymakers, regulators, scholars and practitioners, and we are now exploring other environmental protection and awareness projects with fellow companies. Motorola is sponsoring an Employee Home Ownership Program, which covers construction financing, mortgage financing to the employees, funds for community amenities and a portion of the mortgage payment liability.

Our ability to contribute to positive change in China with activities such as these demands that ties between the United States and China stabilize and deepen over time. Renewal of China's MFN status this year is the right short-term objective. But over the long term, the United States and China should strive together to take the steps necessary to stabilize and "normalize" their commercial ties. By "normalization" we mean promoting changes in US and Chinese policy that will allow the two countries to enjoy a commercial relationship regardless of where we stand on other issues. Motorola believes that stable US-China commercial relations are in our company's best interest, but more importantly, serve the interests of both nations.

Normalizing US-China commercial relations would include permanent MFN extension, China's accession to the World Trade Organization (WTO) on commercially acceptable terms, and additional improvements in bilateral trade ties through a step-by-step reciprocal process. Motorola's ability to compete in China on fair terms is essential, and we call on policymakers in both nations to do their part to help us accomplish these vital objectives.

Conclusion

In conclusion, Motorola's continued ability to create American jobs and support economic growth in the United States demands that we compete in markets around the world today and in the future. To be successful, we need the US Government to act as a partner, through bilateral and multilateral market access negotiations, through aggressive export promotion efforts and elimination of US export disincentives, through continued effective enforcement of US trade laws, and through an enhanced appreciation that actions taken for domestic political advantage often can and do have an adverse impact on American companies' ability to compete in the international marketplace.

Again, Mr. Chairman, we commend you for conducting this hearing and thank you for your continued dedication to ensuring that the formulation and implementation of US trade policy are conducted with purpose and proper direction.

Thank you.

Motorola in China

Overview

Motorola is a leading supplier of advanced telecommunications and electronics equipment in China today. Products sold by Motorola in China include cellular phones, pagers, radio communications systems, and communications and semiconductor components.

The goal of Motorola in China is to serve as a model for cooperative development. Motorola is undertaking a wide variety of initiatives with both its employees and customers to achieve that goal. The company employs nearly 7,000 people in China today. That number is expected to grow to 14,000 by the year 2000.

Motorola's long-standing commitment to training and education are evident in China. All Motorola employees in China receive extensive training in human resource principles of participative management, empowerment, motivation, individual dignity and ethics.

A branch of Motorola University (MU) was established in Beijing in 1993 to train employees, customers, suppliers, and government officials in a range of management, technical and other areas. MU established a second branch in China, in Tianjin, at the end of 1995.

Customers in China include the Ministry of Posts and Telecommunications, provincial telecommunications authorities, municipal and other public safety authorities, financial institutions, educational institutions and private companies.

History and Evolution

Motorola opened a representative office in Beijing in 1986 and has experienced rapid growth since the early 1990s as an active participant in China's transition to a market economy. Motorola (China) Electronics, Ltd. (MCEL), a wholly-owned Motorola entity, was incorporated in March 1992. P.Y. Lai is president of MCEL.

In June 1992, Motorola broke ground on its first major manufacturing facility in the Tianjin Economic Development Authority (TEDA) area of Tianjin. The facility began operation in March 1993. Motorola's Tianjin factory produces pagers, cellular telephones, communications components and semiconductors, mostly for sale in China and other markets in Asia.

In March 1995, Motorola announced its first joint-venture arrangement in China with Leshan Radio Factory for the manufacture of discrete semiconductors. Since then, Motorola also has concluded joint venture arrangements with Nanjing Panda Electronics Group Corporation to produce home computers based on certain PowerPC™ microprocessors, and with Shanghai Radio Communications Equipment Manufacturing, Ltd. to produce pagers.

In September 1995, Motorola announced plans to build a large capacity integrated circuit wafer fabrication plant in the city of Tianjin. The plant will begin manufacture of eight-inch semiconductor wafers with sub-micron line widths by 1997. These products will serve customers in automotive, communications, personal computers, peripherals, and digital consumer markets.

Motorola began operation of its Asia Manufacturing Research Center (AMRC) in Beijing in December 1995. This is the company's first manufacturing research lab outside the United States. Earlier in 1995, AMRC announced a joint manufacturing research project with the Computer Integrated Manufacturing System-Engineering Research Center at "China's MIT," Qinghua University in Beijing.

In addition to production facilities in Tianjin, Motorola investment in China includes headquarters offices in Beijing; branch offices in Shanghai, Guangzhou, Tianjin, Harbin, Nanjing and Chengdu; a Motorola service shop and software center in Beijing, and Motorola University training centers in Beijing and Tianjin. Future plans call for opening sales and service offices in another 20 cities throughout China.

Operating and Financial Results

Motorola's 1995 combined sales to China and Hong Kong reached $3.2 billion, or nearly twelve percent of the company's total worldwide revenues. Motorola's investment of more than $1 billion makes it the largest U.S. investor in China today.
Motorola's exports to China from the United States totaled roughly $1.2 billion in 1995, supporting jobs in many states, including Arizona, Florida, Illinois, and Texas.

Cornerstones

Motorola's operations in China rest on the same two key beliefs that guide all of Motorola's operations worldwide -- respect for the dignity of the individual and uncompromising integrity in everything we do. These beliefs help create an environment of empowerment for all in a culture of participation. The commitment to teamwork and continual learning also are key elements in developing the company's operations in China and its partnership with the Chinese people.

Motorola has a business code of conduct that all employees worldwide are expected to uphold. Motorola has translated its code into Chinese, and this document is used to brief all new hires in China.

In 1994, Motorola University began the Chinese Accelerated Management Program (CAMP), an intensive management training program for high potential Chinese employees. CAMP's 14-month program includes classroom and on-the-job training, as well as a two month overseas posting.

In 1995, Motorola University provided more than 600 training days for customers and government officials, and more than 15,000 training days for employees in China. MU trained more than 500 of Motorola's China-based employees in English, and also conducted customer satisfaction and Six Sigma Quality training courses for employees from 40 Chinese supplier companies.

Motorola brought more than 600 Chinese to its U.S. facilities during each of the last three years for meetings on Motorola technologies, design meetings with engineers and technical training. The company's business units also provided more than 25,000 training days to employees at the Tianjin facility through on-the-job training and machine operator training.

In addition to in-house training, Motorola actively supports higher education in China. The company provided an estimated 2,000 scholarships over the last four years for Chinese students at technical universities, including Qinghua University, Beijing University, Beijing Posts and Telecommunications University, Tianjin University, Nankai University and Fudan University.

Motorola established three microprocessor/microcontroller labs and five communications labs at universities in China, and will expand this program to 20 universities over the next five years. The company supplied electronics kits and technical manuals to about 30 universities throughout China in the past three years.

Motorola also is contributing to environmental and community efforts in China today. Motorola is the largest donor to the Hope Project in China, having given more than $820,000 to this program that supports elementary schools in rural China.

In November 1995, Motorola became the first foreign company in China to co-sponsor -- with the Tianjin Environmental Protection Bureau -- an environmental protection symposium that brought together Chinese policymakers, regulators, scholars and practitioners from throughout the country.

Motorola has begun an employee home ownership program in an effort to attract and retain the best employees in China by providing a high quality living environment. This program, which is encouraged by the Chinese Government, covers construction financing, mortgage financing to the employees, funds for community amenities and a portion of the mortgage payment liability. The first two buildings covered under this pioneering program will be ready for occupancy by the end of 1996.

Chairman CRANE. Thank you, Mr. Singer.

Now, if I have been properly informed, the Governor is here.

Governor, would you mind coming up, because I know your constraints are tight. We'll have you proceed at this point.

Mr. Singer, I know that you have a flight to catch. So keep an eye on the clock, and if your constraints are such, we understand.

STATEMENT OF HON. JIM EDGAR, GOVERNOR, STATE OF ILLINOIS

Governor EDGAR. Thank you, Mr. Chairman. I appreciate this. Sorry to make you go out of order here. I have got to go back and meet with the legislative leaders in Springfield, trying to close our session. I would rather stay here with you.

I appreciate very much the opportunity to be with you today to talk about a very important issue, and that's trade. In today's business environment the world economy is undergoing a fundamental transformation as the result of globalization.

This movement is so extensive that investment and patterns of trade are being decisively shaped by companies operating on a global scale and with a global vision. The world and U.S. economies are being globalized. There no longer are borders as far as trade is concerned. Changes in remote areas of the world, therefore, have an economic impact in both large and small markets thousands of miles away.

To enhance our competitiveness and preserve our economic power and living standards, the United States depends more and more on access to foreign markets for our products, services and investments. A strong international trading system and open markets are essential to maintaining American prosperity. For many companies, trade is no longer an option, it is a necessity.

Trade is an increasingly important engine of economic growth. In simplest terms, exporting means concrete opportunities for businesses. New customers, new sources of revenue, decreased business cycle vulnerability, improved production, economies of scale and extended product life, among others, are all central to the health of U.S. firms, and all are provided by growing trade opportunities.

Trade, however, is not just a growth strategy. It is a strategy for survival. The harsh fact of business life today is that while some American firms may choose to avoid exporting, most cannot choose to avoid international competition. It is almost impossible to identify a product or service produced in the United States that does not face new competition from international markets.

As a result, many of our businesses already have learned we can no longer rely on our home markets for growth because our home markets are now an export market for competing firms from every corner of the world.

There is another reason for the United States to increase its exports, a reason even more important to our future than short term business and job growth. Being actively engaged in trade makes our businesses, and therefore the United States as a whole, more competitive.

Companies that trade are exposed to new technologies critical to their survival and growth. Also, companies that are engaged in trade can form alliances with new overseas partners with whom

they can pool product lines and generate entirely new products for new customers. Whether they export directly, form joint ventures, contact overseas distributors, or simply sell to overseas subsidiaries of their current domestic customers, international business development make firms stronger global competitors.

Illinois has reaped many benefits from actively participating in the global economy. For example, approximately one out of eight jobs is dependent on exports. One out of four Illinois manufacturing jobs is a direct result of exports. Every dollar of Illinois exports generates 4 cents in State tax revenue.

The U.S. Department of Commerce estimates that 28,000 jobs in Illinois were created by trade with Mexico and Canada alone between 1993 and 1995, over a 23-percent increase during that 2-year period. Equally impressive, exports and foreign investment accounted for over 625,000 Illinois jobs in 1995. Illinois continues to be a front runner in exports. In 1995, Illinois moved to fifth place in direct exports, marking the second consecutive year the state's ranking has improved.

We saw aggressive exporting show healthy growth in every area of the world. For example, exports to Canada grew almost 10 percent, over a 38-percent increase to Japan, over 24-percent increase to the United Kingdom, over 21 percent to Germany, 28 percent to China and an amazing 80-percent increase to South Korea. Total exports between 1994 and 1995 increased more than 23 percent, nearly doubling the national export growth rate of 13 percent.

During my tenure as Governor, I have made exporting assistance a cornerstone of our economic development efforts in Illinois. Illinois exports worldwide have grown dramatically during the last decade, increasing to $32 billion in 1995, as compared to $13 billion in 1985.

At this time, I would like to share with the Subcommittee several companies in Illinois that have enjoyed export-oriented success. Recently, the State of Illinois was instrumental in arranging appointments with proper government officials to successfully help Ameritech Corp. secure a 25-year contract and a 30-percent stake in Hungary's telephone company. This joint venture created the largest privatization arrangement in Central and Eastern Europe. This cooperative project is expected to result in the installation of over 1.5 million phone lines by the year 2000 in Hungary. In addition, Ameritech is currently examining privatization in Belgium, Ireland, and Portugal involving investments between $500 million and $2 billion. Ameritech is taking steps toward truly becoming a global telecommunications supplier.

With the assistance of the State of Illinois, the Wrigley Co., a long-time corporation rooted in Chicago, established Wrigley Poland in 1992. Wrigley Poland is the leader in chewing gum products in Poland, with a 57 percent market share. Wrigley plans to construct a plant in Poland that will make Wrigley one of the top 10 Illinois facilities in the country.

But, large multinational corporations are not the only ones in Illinois that are thinking global, and this is a very important point. They are not the only ones succeeding.

Treatment Products, Ltd., makers of car cleaners and waxes, had been attempting to expand its small presence in Mexico since 1990.

Stiff Mexican tariffs that ran as high as 20 percent made achieving that goal impossible for the $6 million Chicago-based company with 25 employees. Six months after NAFTA went into effect, tariffs started dropping gradually, and the company landed contracts with almost every major retail chain in Mexico. As a result the company has hired four new employees, and sales to Mexico have tripled. That's a small company, but it underscores the importance of international trade for small businesses as well as the large companies.

International trade has a direct benefit not only to the companies actively engaged in trade, but to the communities in which they are located, and we are learning that trade works both ways. Recently, Sparta, a community of 5,000 residents in Southern Illinois, an area of our State where unemployment runs the highest, experienced the closure of a major employer, Spartan Printing. More than 850 residents of Sparta and Randolph County worked at that facility and found themselves out of work.

Because of NAFTA and the barriers which it has removed, a major printing and paper distribution company in Mexico is once again providing and economic security to that small community. It was able to secure the assets of the company and is planning to modernize the printing facility and rehire many of the original employees.

In conclusion, I would like to stress that Illinois is one of the great world-class trading hubs in the international marketplace. John Deere, Abbott Labs, Motorola, Caterpillar, U.S. Robotics and many other global giants call Illinois their home because Illinois is working to maintain a business climate that fosters growth, expansion and trade.

Diversity is our strength, and Illinois products and services are in demand across the world. We export everything from chemicals to cosmetics, machinery to metals, and agriculture to architecture. Today, more than ever, it is the time to compete and not retreat.

Let me in conclusion just echo what the gentleman from Motorola has said in so many words, that it is crucial, if we are going to continue to see growth in economic trade, that we do not allow our trade policy to be held captive by political differences we might experience. A few years ago in Illinois, in the rural parts of our state, the farmers were very upset when there was a grain embargo because of a disagreement with the Soviet Union. The same is true today when we might have disagreements with nations like China. We have to be very careful that our disagreements do not result in our people being penalized because of trade barriers. The most-favorable-nation status for China is something that we provide for almost every country on this globe. It is misnamed. It just means normal trade. But it would have a very negative impact, on Illinois, as many other states, if we do get into a situation where we are not able to carry out trade with the world's largest country. And that's true for many other countries around the globe. So again, I just want to stress that international trade is the key to I believe our economic well being. It is an area where growth is occurring and it is something that we need to continue to work to expand, and I would hope that we'll continue to see the Federal Government, the policies we have seen in the last few years has helped improve that opportunity and not see barriers put in the

way of allowing our private sector to do what they do so well and that's create economic opportunity for our people, which means jobs, which means hope for a much brighter future.

So thank you again for allowing me to share my thoughts with you.

[The prepared statement follows:]

United States Committee on Ways and Means
Subcommittee on Trade

Testimony of Governor Jim Edgar
State of Illinois

Thank you.

I appreciate very much the opportunity to be with the members of this committee today to talk about the importance of trade.

In today's business environment ... the world economy is undergoing a fundamental transformation as the result of globalization.

This movement is so extensive that investment and patterns of trade are being decisively shaped by companies operating on a global scale and with a global vision.

The world and U.S. economies are becoming globalized.

There no longer are borders ... as far as trade is concerned.

Changes in remote areas of the world therefore have an economic impact in both large and small markets thousands and thousands of miles away.

To enhance our competitiveness and preserve our economic power and living standards ... the United States depends more and more on access to foreign markets for our products ... services ... and investments.

A strong international trading system and open markets are essential to maintaining American prosperity.

For many companies ... trade is no longer an option.

It is a necessity.

Trade is an increasingly important engine of economic growth.

In simplest terms ... exporting means concrete opportunities for businesses.

New customers ... new sources of revenue ... decreased business cycle vulnerability ... improved production ... economies of scale and extended product life -- among others -- are all central to the health of U.S. firms

... and all are provided by growing trade opportunities.

Trade ... however ... is not just a growth strategy.

It is a strategy for survival.

The harsh fact of business life today is that while some American firms may choose to avoid exporting ... most cannot choose to avoid international competition.

It is almost impossible to identify a product or service produced in the United States that does not face new competition from international markets.

As a result ... as many of our businesses already have learned ... we can no longer rely on our home markets for growth

... because our home markets are now an export market for competing firms from every corner of the world.

There is another reason for the United States to increase its exports ... a reason even more important to our future than short-term business and job growth.

Being actively engaged in trade makes our businesses - and therefore United States as a whole - more competitive.

Companies that trade are exposed to new technologies critical to their survival and growth.

Also, companies that are engaged in trade can form alliances with new overseas partners with whom they can pool product lines and generate entirely new products for new customers.

Whether they export directly ... form joint ventures ... contact with overseas distributors or simply sell to overseas subsidiaries of their current domestic customers, international business development makes firms stronger global competitors.

Illinois has reaped many benefits from actively participating in the global economy.

For example ...

- Approximately one out of eight jobs in Illinois is dependent on exports.
- One out of four Illinois manufacturing jobs is a direct result of exports.
- Every dollar of Illinois exports generates four cents in state tax revenue.

The U.S. Department of Commerce estimates that 28,800 jobs in Illinois were created by trade with Mexico and Canada alone between 1993 and 1995, a 23.4 percent increase over that two-year period.

Equally impressive, exports ... and foreign investment accounted for 625,300 Illinois jobs in 1995.

Illinois continues to be a front runner in exports.

In 1995 ... Illinois moved to fifth place in direct exports ... marking the second consecutive year the state's ranking has improved.

We saw aggressive exporting show healthy growth in every area of the world.

For example ... exports to Canada grew 9.8 percent ... 38.4 percent to Japan ... 24.3 percent to the United Kingdom ... 21.5 percent to Germany ... 28.1 percent to China ... and an amazing 80.7 percent to South Korea.

Total exports between 1994 and 1995 increased more than 23 percent ... nearly doubling the national export growth rate of 13 percent.

During my tenure as Governor ... I have made exporting assistance a cornerstone of our economic development efforts in Illinois.

Illinois exports worldwide have grown dramatically ... increasing to $32 billion in 1995 from $13 billion in 1985 ... an impressive increase of approximately 150 percent.

At this time, I would like to share with the committee several companies in Illinois that have enjoyed export-oriented success.

Recently ... the State of Illinois was instrumental in arranging appointments with proper government officials to successfully help Ameritech Corporation secure a 25-year contract and 30 percent stake in Hungary's state telephone company.

This joint venture created the largest privatization deal in Central and Eastern Europe.

This cooperative project is expected to result in the installation of 1.5 million phone lines by the year 2000 in Hungary.

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International trade has a direct benefit not only to the companies actively engaged in trade ... but to the communities in which they are located.

And we are learning that trade works both ways.

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In conclusion, I would like to stress that Illinois is one of the great world-class trading hubs in the international marketplace.

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Diversity is our strength and Illinois products and services are in demand across the world .

We export everything from chemicals to cosmetics ... machinery to metals ... and agriculture to architecture.

Today more than ever, it is time to compete and not retreat.

Thank you very much.

Chairman CRANE. Thank you, Governor. Let me ask you a quick question before I defer to Congressman Rangel.

The implementing legislation of NAFTA and GATT and the World Trade Organization do not permit preemption of State and local laws, and I just wondered if you have seen any conflicts in the international agreements thus far negotiated with our State laws here in Illinois. How has this affected the lawmaking process in Springfield, since we have formed these international trade relationships?

Governor EDGAR. I have not seen any major problems. One thing that has been helpful throughout, both in the Bush and Clinton administrations, is that there had been consultation with state Governors throughout the negotiations of NAFTA and the implementation to make sure that we had input. Any concerns that we thought were legitimate would be raised early enough in the process so that they could be dealt with. That does not mean that there are not times when I know there are bills introduced in the Illinois General Assembly, buy the United States or buy Illinois products that we think could cause some problems, but for the most part, there is a growing understanding on the part of legislators, as well as those in the executive branch, that we have to think more global, that it is a two-way street and if we start trying to put restrictions, we are going to have it done to us. Again, we are fortunate in Illinois that most of the people involved in policymaking understand that we are part of the global marketplace. We are fortunate that we have trade delegations come through Illinois on a regular basis and the countries are very astute. They do not just come and visit the Governor, they also spend time with state legislators and local officials. So again, I have not seen any major problems, but I also will commend the Federal Government that they have been willing to include us in discussions along the way so we can maybe predict or eliminate any of those possible bottlenecks.

Chairman CRANE. That's encouraging and you enumerated some of our major exporting corporations here. I mentioned in my opening remarks, before you arrived, that 97 percent, according to the latest figures, of our exports out of Illinois are coming from companies employing 500 or less. So, it has a vast sweeping range of benefits to our state to an extreme.

Governor EDGAR. If I might comment. One of the things we have recognized as far as the state in trying to help promote that, with limited resources, that there is not really a whole lot we can do for the Motorola's; they can teach us some things. But, as for the small and medium size businesses, we think we can provide assistance and a scenario where government, both at the Federal and State levels, can provide some technical assistance. It is very important that we both do our part to help open some doors or assist in the large corporations, as I mentioned, with Ameritech, and some other major companies. But particularly back home, to work with those small and medium size companies and providing them some of the technical assistance and wherewithal to encourage them to get into the market. That's where the real growth is going to be and that's where we know the new jobs in Illinois are going to be created, with the small and medium size businesses. Trade is such an im-

portant part of whether they are going to be successful and growing in the years ahead.

Chairman CRANE. Thank you so much, Governor. This is Congressman Rangel who is our Ranking Minority Member on the Trade Subcommittee.

Mr. RANGEL. Governor, let me thank you for taking time out, of your busy schedule, to share your views with us. They are very important views, and I am convinced that the more Governors can do to share the importance of trade, which is not always easily understood by voters, the more difficult it is for, not only local, but Federal officials to demagog the issue because an informed community can recognize what's going on.

I agree with you, it is so easy to make a political issue out of trade, when you're dealing with foreigners as opposed to our flag-waving Americans, whom we all love and want to protect. It is so easy to make a foreign country the scapegoat of all our troubles. I assume that, since you talked about our trade with China, your view would be similar in relating to our lack of trade with Cuba, which is being motivated by politics more than by trade issues.

Governor EDGAR. I do not think there is any doubt that that is a major factor. Also, looking at the dependability of your trading partner, that is a factor that has to be taken into consideration, can you rely on them, if you reach an agreement. I do not claim to be an expert on Cuba. I understand some of the emotions as some Cuban-Americans might feel for the current government in Cuba. But again, overall we need to be very cautious when we allow purely political reasons to determine our trade policy. I am not as familiar as maybe some would be on the potential of what that can mean for jobs and economic opportunity for people in the United States if we had better trade relations with Cuba.

Mr. RANGEL. Well, it is not so much how much we would benefit, even though we would and our national integrity is more important that just monetary benefit. But, when we start imposing sanctions and secondary boycotts against trading partners after we are already into these complicated and sensitive trade agreements, then you can see that it is the politics of the election rather than where we stand with all of the nations, not just Cuba, but CBI, Carribbean Basin Initiative countries, Central America, Mexico, South America, and Europe.

Governor EDGAR. There is no doubt. As you said that, I was thinking there is other regions in the world where we have done that and our trading partners have gone away and I am not sure how effective we have been. So, we have to be realistic when determining our trade policies, too. To achieve the political end we want to achieve, may not be obtainable if everybody else is still trading.

Mr. RANGEL. Unless what we want to achieve is electorial votes, and then that's a different question.

Governor EDGAR. I could assure you, as I know in my state and I am sure it is in your state, the best thing you can do politically is show your help and get jobs.

Mr. RANGEL. That's my next point. Since you have to be a player and be sensitive to our international trading partners in order to have your constituents get jobs, have you been able to get a feel as relates to the labor force who the winners and losers have been.

What are the problems resulting from trade and what solutions have you directed toward alleviating some of the problems of the losers?

Governor EDGAR. The area in particular that raised the most concern was NAFTA. I was a very strong supporter of NAFTA. In fact, it had very strong bipartisan support here in Illinois. We did have some losers, there is not doubt. In fact, we had a small very successful business that for years was prospering, but it was going to find itself in dire straits competing with Mexican firms. There is no doubt we have had some fall off in jobs, but we also know of other cases where we have seen an increase in job production because of the result of NAFTA.

What we as a state, and the Federal Government, need to do is to monitor that and to recognize that you're going to have some winners and losers and for those who are losers, try to provide some technical assistance so they can either find other avenues for economic opportunity or to assist them in trying to move their product line where they can be competitive.

I do not think we can ever expect any of these trade agreements to leave the status quo, and all be positive. There are going to be pluses and minuses. We have seen in Illinois, particularly from NAFTA and most of all the other trade agreements, it has been a positive for the State. Now, the industries in this State or the businesses are such that, we knew going in, that NAFTA made a lot of sense. We do not compete with their agricultural goods, we produce things they cannot compete with. The same is true, for the most part, in manufacturing. There are a few, as I mentioned, like the broom manufacturer, who are going to get hurt. But overall our electronics, our manufactured goods, found themselves with more of a market. So, Illinois may not be the best example of a State that had to deal with a lot of adversity because of some of these trade agreements. we have seen a lot more pluses. But where we have seen adversity, we tried to assist those companies in training dollars and whatever else is necessary so that they could retool or direct their interests to another area.

Mr. RANGEL. Are you satisfied that the state educational system, with local and Federal support where possible, is able to keep up with the great demands of high technology that the future will bring us?

Governor EDGAR. We are going to have to continue, in fact, that is one of the pluses of being part of the global marketplace. It forces us to do a better job at home. One of the areas we are going to have to continue to improve on is in the training of our young people so that they can be competitive in the work place with the people of other nations. One of the major impetus behind reforms in our schools is coming from the private sector because they recognize if they are competing in a global marketplace, they have to get better results. So, I will not tell you that I am satisfied with the status quo. I feel good that we recognize the need for improvement, and there seems to be much more of a community support for improvement than perhaps a decade or so ago. I think everyone recognizes that we need to continue to improve.

Now, I cannot tell you that I have got all answers on how we are going to achieve that. In fact, one of the debates we are in right

now in Springfield is dealing with accountability in our schools and how we can get better results. It is an issue that all the States are looking at and trying to deal with. I would say, sir, that States probably are in a better position, State and local authorities, in trying to deal with that than any rules and regulations coming out of the Federal Government in trying to improve our schools.

Mr. RANGEL. That was going to be my next question. I know you agree that the private sector has to and is getting more involved in the question of education, but my next and last question would have been, do you see the Federal Government and/or the Congress playing any role at all in being of assistance to the private sector and the state and local government in reaching the standards that our Nation will have to raise in order to continue our leadership in exports?

Governor EDGAR. I really believe it should be primarily and I would say even more than primarily, exclusively the responsibility of state and local government, who traditionally have been charged for particularly elementary and secondary education. The Federal Government traditionally has been more involved in higher education through scientific research and that area. But, it would be better to leave it that way so we do not have to spend a lot of time trying to sort out just what would be the Federal Government's responsibility and also deal with a lot of background noise that has developed as a result of some of the Federal policies, which are well intended, but unfortunately it stirred up some controversy in the hinderlands that we spend an awful lot of time trying to deal with. We could spend our time better if we were able just to concentrate on making sure we are seeing meaningful reforms in our schools.

So private sector involvement is critical. Maybe they could give you some thoughts on if there are any Federal actions that could be taken to encourage or even allow them to do more as far as being involved with schools at the state or local level. But overall, my sense is that this is an area that state and local should be left with. Not that we are perfect, but I think we have been in that business and it is easier than trying to divide responsibility between three layers of government.

Mr. RANGEL. Well, please ask your education person to send something to me to more broadly support the train of thought which exists now with the majority in Congress. I am the beneficiary of the GI bill, and it is going to take a lot of talking for me to be convinced that my Governor or mayor could have done for me what the GI bill had done. By the same token, I really did not think that Kennedy's proclamation that we were going to put a man on the moon was that important until I really saw what it did to increase the exposure of young people to math and science and the other benefits that came from the moon walk efforts. So those are the things that I think of, and I hear more and more people agreeing with you. And I truly believe that education, increased education, is going to help us, not only with jobs, but with family values and with wanted and loved children and with the refusal of drugs, crime, violence, and the expenditure of jails, for which in New York we pay $60,000 a year per prisoner. We have one-and-a-half million people in jail in this country. And I may be wrong, but I truly believe that education is the key to not only train us

but to relieve us of some of the financial and social pressures we are under.

Governor EDGAR. We are in total agreement on the importance of education, Congressman. In regard to the GI bill and other things you mentioned, as I said, in higher education, there has been a tradition of the Federal Government involvement. It has been a positive involvement, and I would not suggest that we end that. The comment about elementary and secondary schools is a different debate, not necessarily on the dollars and cents and limited resources which I recognize you have got to deal with as we do at the state level. But, the fact that historically elementary and secondary schools have been left pretty much to the state and local governments, and I would urge them to continue. Higher education, as I said, you historically have had more involvement.

Mr. RANGEL. We are out of that, too. We are out of education. The hallways are filled with college and university professors. The trustees kind of agree with the majority. Just let government stay out of it. The Presidents really think differently.

Governor EDGAR. We will send some information to you, or at least our viewpoint.

Mr. RANGEL. Because I want to keep this thing bipartisan.

Governor EDGAR. We appreciate you being in Illinois today.

Mr. RANGEL. Thank you. It is my first visit to Illinois. I want to thank you for giving me this opportunity.

Chairman CRANE. It is God's country. Let me reassure you, though, Governor, that he learned how to spell, add and subtract and got all those skills long before the feds were putting any money into even the GI bill.

Mr. RANGEL. I learned how to run in Korea long before I got the GI bill.

Governor EDGAR. He does not remember, but we have something else in common. Both our daughters were Cherry Blossom princesses the same year, a couple years ago.

Mr. RANGEL. That's right. Under the Democratic administration.

Governor EDGAR. I did not realize that.

Chairman CRANE. I would like to yield now to Congressman Manzullo, my neighbor to the west.

Mr. MANZULLO. Governor, I want to thank you for coming here. I do not have any questions. You said everything and you have done everything in your administration that anybody could possibly do toward encouraging companies to settle here in the State of Illinois and to get involved in exports. I want to take this opportunity to thank you for being here. I want to thank you for the leadership and a very unique project at the old Savannah depot. The Fish and Wildlife Service reached an accord with the State of Illinois and local development groups so that the 11,000 to 13,000 acres of an abandoned Army ammunitions depot will be turned into a partnership with conservation and with businesses and hopefully some of those businesses will be used for exporting.

I just want to share something with you, one of the NAFTA success stories that most of you have no idea happened. We have a Clausen Pickles in Woodstock. Kraft has three factories in my congressional district, the original J.L. Kraft cheese factory in Stockton, which is the largest manufacturer of bulk swiss cheese in the

State; Kraft has bought the Del Monte pudding factory in Rochelle; and Clausen Pickles. Clausen, because of NAFTA, was able to buy cucumbers cheaper in Mexico. It is just one of the great victory stories of NAFTA. They produce 100 million pounds of pickles each year. Clausen has, it is a 70 or 80 percent market share of refrigerated pickles. But, that's another success story because of NAFTA and one that's really growing in Rochelle. Rochelle is where Hormel Foods came in. Hormel is now shipping 60,000 pounds of boned pork to Japan each week, in addition to producing 1.1 million pounds of bacon each week. That's a result of GATT, with the lowering of the trade barriers.

So, I want to publicly thank you for your leadership in promoting NAFTA and promoting GATT because those two treaties have done absolute total miracles in the 16th Congressional District for our exports.

Governor EDGAR. Thank you, Congressman. I like to comment. My support has not been alone as far as Governors. One of the areas that we have strong bipartisan support among the 50 Governors is in the area of trade, whether it was for NAFTA or more recently talking about most favorable nation status for China and other areas. I think you'll find that both Republican and Democratic Governors all recognize the importance of trade to their states and economic growth and that there is that sense that you try not to succumb to the temptation of demagoguing which is something no one here has ever done, but others have been known to do.

Mr. RANGEL. No, we do not get involved in politics.

Governor EDGAR. But, it is an area where I truthfully say that there is very strong bipartisan support among all the Governors on that, and something that we very much appreciate the action of the Federal Government, both administrations, and from Congress in the last few years. We are moving in the right direction, so we look forward to continuing working with you in the months and the years ahead as we open up more markets. I am convinced that the work force in Illinois can compete with anyone on the globe, and I am sure Congressman Rangel feels the same about the people of New York. I really believe the American people are up to the task if we give them the opportunity and hopefully we will.

Chairman CRANE. Governor, I agree wholeheartedly with what you said, and I wanted to express profound appreciation to you for making this meeting this morning. And we will let you make your graceful exit at this point since I know you have got to go down and straighten things out in Springfield this afternoon.

Governor EDGAR. No, no. As Members of the Legislative Branch, not straighten out, just work together.

Chairman CRANE. On a bipartisan basis.

Mr. RANGEL. Let me join with the Chairman in thanking you once again, and if we can ever be of any help, feel free to share with us where Congress is giving you more help than you need.

Governor EDGAR. OK.

Chairman CRANE. Thank you, Governor. All right. We will now proceed with the panel. Ron Bullock, I know you have time constraints. If you would give us your testimony next and then if you

have to run, we understand. The others hopefully can stay here for a little while.

STATEMENT OF RONALD D. BULLOCK, PRESIDENT, BISON GEAR AND ENGINEERING CORP., ST. CHARLES, IL; CHAIRMAN, SMALL MANUFACTURERS FORUM; AND ON BEHALF OF NATIONAL ASSOCIATION OF MANUFACTURERS

Thank you. My name is Ron Bullock. I am president and owner of Bison Gear and Engineering Corp. We are headquartered in St. Charles, Illinois. We manufacture electric motors and gear motors. We have got three facilities in Illinois, and 205 employees located in Elgin and Downers Grove, as well as St. Charles. I brought along a catalog. I point out that they are in multiple languages, they are fully metric, and they highlight the address of a new assemble-to-order operation that we just started up in Zeewolde, of the Netherlands.

I am here today to testify on behalf of the National Association of Manufacturers, and as chairman of the Small Manufacturers Forum, representing over 10,000 NAM members with fewer than 500 employees. Also, as an exporter, I am in a very good position to give a perspective on international trade policy from a small company's standpoint.

Generally speaking, it is the NAM's position that international trade is essential to maximizing benefits arising from world productive output and thereby contributing to U.S. economic growth, as well as enhancing the economic welfare of individuals throughout the world. The NAM believes that the most effective basis upon which to conduct trading relations is a system that enhances the role of free market forces while minimizing government intervention in trade.

To this end, the NAM strongly supported and still supports the implementation of the NAFTA and GATT World Trade Organization agreements. It is only through transparency, harmonization and the elimination of unfair trade practices through these and other multilateral arrangements, that we will truly produce a strong and effective worldwide marketplace.

While many espouse the importance of international trade and exporting for the United States, many fail to pinpoint exactly what it is that the United States has at stake in the multilateral trading system. Through work done by the Institute for International Economics in conjunction with the educational and research affiliate of the NAM, the Manufacturing Institute, two important reports have been released which provide new insights into the importance of trade to the U.S. economy. Specifically, these reports examine the performance of exporting versus nonexporting companies, and document that exporting matters to the average American worker and American company far more than most people realize. Conclusive data demonstrates that there are distinct differences between exporters and nonexporters in terms of pay, productivity and performance.

Pay in export plants on the average is 15 percent better. Benefit levels are 37 percent higher. Productivity is 40 percent greater. Exporting improves companies' survival rates by 10 percent, and job growth is 17 to 18 percent greater.

The data on job growth was perhaps the most surprising. Virtually all the decline in average employment was attributable to nonexporting plants. In contrast, the work force at exporting plants grew by 17 to 18 percent. Second, the role of small business in this employment growth was even more surprising. Small exporters had growth levels 1 to 2 percent higher than average.

Another interesting discovery is that better wages, job growth, and productivity seem to appear in exporting companies once a company makes a commitment to exporting, not just after a company has reached a certain level of exporting. These benefits show up across the board, demonstrating that the benefits do not just apply to big multinational firms. For example, our own company, Bison, has doubled productivity over the past 8 years, introduced a profit-sharing 401-k program and greatly improved its training and education outreach program, with 36 employees, or 20 percent of our direct work force enrolled in college courses since this program was launched 18 months ago. This is a record we are very proud of. We have also been involved, to respond to Congressman Rangel, in the local school districts. We have had teachers in on 3-week internships, and as a result, we have come up with a multidisciplinary program that we have helped launch in the Downers Grove school system whereby freshman and sophomore students have an opportunity to focus on math, science and technology. It is something that will reap benefits down the road. We see it as a necessary element in interfacing with our community in order to be successful in the global marketplace. While all of these improvements cannot be entirely attributed to our exporting, I can tell you that competing on a global basis certainly sharpens our focus in both how we are investing in capital equipment and our people. We now have established a human resources balance sheet to accompany our financial balance sheets.

The U.S. key leadership in the international marketplace must be maintained. We need to be involved in as many dialogs and negotiations as possible and appropriate to ensure positive progress and direction. That is why, for example, passage of fast track procedures for trade agreements is critical. The NAM supports a clean and unfettered fast track proposal and urges Congress, in conjunction with the administration, to work expeditiously toward that end. Without fast track, the United States looks uncommitted and risks losing its credibility as the leader of the international community.

With regard to China, the NAM supports the extension of MFN status for another year, and is encouraging Congress and administration to look further ahead toward normalization of this commercial relationship. I might point out that Bison has gear motors on cellular telephone assembly lines in Tianjin, China, at the Motorola facility and other Motorola locations around the world. So we see plenty of opportunities that exist in China for us. Nonetheless, NAM feels that, and I agree, China must be ready and able to commit to the WTO regime before being accepted as a member.

From a small manufacturer's standpoint, many U.S. manufacturers are content to pursue the North American Free Trade area for sales opportunities as it represents over one third of the world's economic activity. Bison was encouraged to increase its export ac-

tivities by the original Canadian Free Trade Agreement and would encourage the addition of Chile to NAFTA, as well as other Central and South American countries as they qualify. Generally, we need to find a way to encourage other small to medium size firms to export through enhancing banking regulations and providing low cost financing of export receivables. For small companies, the bank lines of credit often will exclude export receivables from your borrowing base. So some help could be provided there through Congressional legislation.

As far as internal policies, we would recommend progrowth legislation that encourages savings and investment through reduction of taxes and a commitment to a balanced budget. Our global competitors benefit by Tax Codes that promote job creating investment and low interest rates resulting from a balanced budget. Examples are the resurgence of Italian competitors as a result of the Sabatini and Tremonti laws making capital investment extremely attractive, and of course, the Japanese who benefit by accelerated depreciation and extremely low interest rates. Congress is applauded for finally passing a product liability bill and the President is roundly condemned for vetoing it. Europe passed a much better version of our bill in the EC in 1992 and our unpredictable tort system has chased major industries off shore, small aircraft and medical equipment being two examples. Quite frankly, this was one of the reasons we got serious about exporting. We should also be aware of nontechnical trade barriers. The European Community has enacted regulations requiring CE registration, a safety requirement very close to UL, and EMC, electromagnetic compatibility relating to radio frequency interference. These technical requirements effectively raise trade barriers to U.S. firms endeavoring to export to the EC. We should encourage agencies like the National Institute of Standards and Technology and ANSI, the American National Standards Institute to be pro-active in representing U.S. interests within the International Standards Organization. Believe me, you're no less safe using a UL listed product than using one that's CE listed and electomagnetic compatibility has limited applicability. The United States is renowned for its volunteer support of safety and standards development and we should make sure that we take care to utilize this resource in the ISO process.

In sum, continued pursuit of free trade, fair trade, increased transparency and upward harmonization of international trading rules is critical to the well being of the United States. We encourage Chairman Crane, Congressman Rangel and the rest of the House Ways and Means Trade Subcommittee to keep up the good work in furthering this effort, and stand willing to contribute to our economy and our workers by reaping the fruits of this Committee's labors in advancing the goals of a strong international marketplace.

[The prepared statement follows:]

Testimony of
Ronald Bullock, President
Bison Gear and Engineering Corporation
on Behalf of the
National Association of Manufacturers
on U.S. Trade Policy
Before the Subcommittee on Trade
May 20, 1996

My name is Ronald Bullock, President and owner of Bison Gear and Engineering Corp., Headquartered in St. Charles, IL, and I 'm here today to testify on behalf of The National Association of Manufacturers. As Chairman of the Small Manufacturers Forum representing over 10,000 NAM members with fewer than 500 employees, and also an exporter, I will try to give a perspective on international trade policy from a small company's viewpoint.

Generally speaking, it is the NAM's position that international trade is essential to maximizing benefits arising from world productive output and thereby contributing to US economic growth, as well as enhancing the economic welfare of individuals throughout the world. The NAM believes that the most effective and efficient basis upon which to conduct trading relations is a system that enhances the role of free market forces while minimizing government intervention in trade.

To this end, the NAM strongly supported, and still supports, the implementation of the NAFTA and GATT/WTO agreements. It is only through transparency, harmonization, and the elimination of unfair trade practices through these, and other multilateral arrangements, that we will truly produce a strong and effective worldwide marketplace.

While many espouse the importance of international trade and exporting for the US, many fail to pinpoint exactly what it is that the US has at stake in the multilateral trading system. Through work done by the Institute for International Economics in conjunction with the educational and research affiliate of the NAM(the Manufacturing Institute), two important reports have been released which provide new insights into the importance of trade to the US economy. Specifically, these reports examine the performance of exporting vs. non-exporting companies, and document that exporting matters to the average American worker and American company far more than most people realize. Conclusive data demonstrates that there are distinct differences between exporters and non-exporters in terms of pay, productivity and performance:

- pay in export plants is, on average 15 percent better;
- benefit levels are 37 percent higher;
- productivity is 40 percent greater;
- exporting improves company survival rates by 10 percent; and
- job growth is 17-18 percent greater.

The data on job growth was perhaps the most surprising. Virtually all the decline in average employment was attributable to non-exporting plants. In contrast, the workforce at exporting plants grew by 17-18 percent. Second, the role of small business in this employment growth was even more surprising. Small exporters had growth levels 1-2 percent higher than average.

Another interesting discovery is that better wages, job growth, productivity, etc. seem to appear in exporting companies once a company makes a commitment to exporting, not after it reaches a certain level of exporting. These benefits show up across the board, demonstrating that the benefits don't just apply to big multinational firms. As an example, our own company Bison, has doubled productivity over the past eight years, introduced a profit-sharing 401-K program and has greatly improved it's training and education outreach program, with 36 employees (20%) enrolled in college level courses since it's launch 18 months ago. While this cannot entirely be attributed to our involvement in export activities, I can tell you that competing on a global scale has brought our investments in both capital equipment and our people into sharp focus. We now have a human resources balance sheet to accompany our financial balance sheets.

In addition to a strong commitment to the multilateral trading system, the NAM also believes that bilateral trade agreements in certain instances can help enhance the role of free market forces while minimizing governmental intervention in trade. Bilateral agreements by their very nature can better raise the level and detail of mutually acceptable trade parameters, which can establish strong precedents for future multilateral negotiations.

The United States' key leadership role in the international marketplace must be maintained. We must be involved in as many dialogues and negotiations as possible and appropriate to ensure positive progress and direction. That is why, for example, passage of fast track procedures for trade agreement is critical. The NAM supports the passage of a clean and unfettered fast track proposal and urges the Congress, in conjunction with the Administration, to work expeditiously toward that end. Without fast track, the United States looks uncommitted and risks losing its credibility as the leader of the international community.

With regard to China, the NAM supports the extension of most favored nation status (MFN) for yet another year, and is encouraging the Congress and Administration to look further ahead towards normalization of this commercial relationship. Certainly the US/China relationship is not without its problems, and the business community has been frustrated by the slow pace China has set in living up to its bilateral agreements. However, the opportunities that trade with China presents are enormous and virtually dictate that we work arduously to settle our differences without upsetting the apple cart. China is the United States' fastest growing export market already, and we have not begun to tap its potentials. Nontheless, China must be ready and able to commit to the WTO regime before being accepted as a member.

From a small manufacturer's standpoint, many U.S. manufacturers are content to pursue the North American Free Trade area for sales opportunities as it represents over one third of the world's economic activity. Bison was encouraged to increase its export activities by the original Canadian-U.S. trade agreement and would encourage addition of Chile to NAFTA, as well as other Central and South American countries as they qualify. We need to find a way to encourage other small to medium sized firms to export through enhancing banking regulations and providing low cost financing of export receivables.

As far as internal policies, we would recommend pro-growth legislation that encourages savings and investment through reduction of taxes and a commitment to a balanced budget. Our global competitors benefit by tax codes that promote job creating investment and low interest rates resulting from a balanced budget. Examples are the resurgence of Italian competitors as a result of the Sabatini and Tremonti laws making capital investment extremely attractive and, of course, the Japanese who benefit by accelerated depreciation and extremely low interest rates. Congress is applauded for finally passing a Product Liability Bill and the President is roundly condemned for vetoing it! Europe passed a much better version of our bill in the EC in 1992 and our unpredictable tort system has chased major industries off-shore, small aircraft and medical equipment being two examples. Quite frankly, this was one of the reasons we got serious about exporting. We should also be aware of non-tariff technical trade barriers. The European Community has enacted regulations requiring CE registration (a safety requirement very close to UL) and EMC, electro-magnetic compatibility relating to radio frequency interference. These technical requirements effectively raise trade barriers to United States firms endeavoring to export to the EC. We should encourage agencies like NIST and ANSI to be proactive in representing US interests within the International Standards Organization. Believe me, you are no less safe using a UL listed product than using one CE listed and electro magnetic compatibility has limited applicability. The U.S. is renowned for it's volunteer support of safety and standards development and we should make sure that we take care to utilize this resource in the ISO process.

In sum, continued pursuit of free, fair trade, and increased transparency and upward harmonization of international trading rules is critical to the well being of the United States. We encourage Chairman Crane and the House Ways and Means Trade Subcommittee to keep up the good work in furthering this effort, and stand willing to contribute to our economy and our workers by reaping the fruits of this Committee's labors in advancing the goals of a strong international marketplace.

Chairman CRANE. Thank you, Ron. Are you on a tight time constraint right now? Because I have just one question I wanted to direct, and Congressman Rangel may have one and then we could let you depart And we'll go to our other witnesses, if that's agreeable.

Mr. BULLOCK. Thank you.

Chairman CRANE. I was more impressed with that 17 to 18 percent higher growth rate in employment by those firms that were into exports than those that are simply selling domestically. I was wondering, though, is there any study or indication of job security, whether those jobs are more stable, if you're into the export market or are they more stable if you're just producing for the domestic market?

Mr. BULLOCK. I believe that tenure and turnover are both improved with exporting companies. I would have to get you a copy of that particular report.

Also there is kind of a symbiotic relationship between the large multi-nationals and the smaller companies in exporting. As I mentioned, we provide components and equipment that are used by our larger customers. As those companies rationalize their work forces, we also provide sourcing services in the way of engineering. We have 10 percent of our employees who have engineering degrees, and we provide other services that our larger customers may no longer have capabilities for keeping in-house. So, there are some good working relationships that go on between the larger companies and the smaller companies as well.

Chairman CRANE. That's encouraging. Congressman Rangel.

Mr. RANGEL. Thank you, Mr. Bullock. I assume that the exporting manufacturing company, would have no problem with an increase in the minimum wage.

Mr. BULLOCK. As a matter of fact, the manufacturing sector, in general, does not pay the minimum wage. We pay much better than minimum wage.

Mr. RANGEL. I mean politically speaking, could we depend on your support for it?

Mr. BULLOCK. Personally speaking, I have no problem with it. There has to be some give and take, and our typical starting wage is probably two and a half to three times the minimum wage. However, I do feel very strongly, we do need to do some things to improve education and training. Manufacturing, in general, spends more on education and training than the public education sector. That is both an encouraging sign, and a sign that the manufacturing community has had to provide this education out of necessity, because of the poor preparation that we see from the public school system.

Mr. RANGEL. The private sector is doing more, and without that, we would not have been able to have the successes we are having now.

With the losers in the work force, especially in the manufacturing area, have there been any studies or any ideas that you would have as to how we could soften the pain of unemployment?

Mr. BULLOCK. Let's go back to the minimum wage. We do get a lot of young people that get their first job working for minimum wage. I know I worked for minimum wage myself, $1.25 an hour.

Mr. BULLOCK. In our own company, and many of my peers have similar programs, we have a two-tiered wage structure that we have implemented. For the first 21 months of employment we have a structured program where we are basically taking people into our work force, providing they can do three things; they are able to demonstrate literacy, they can pass a fairly simple shop math test, indicating what used to be about an 8th grade level of mathematics when I was in school, and third, they can pass a drug screening test. We take those people in and we have a 21 month training program. The new hires also have an opportunity to continue their education as part of our tuition letter of credit program.

Mr. RANGEL. I am saying, the NAM, are you satisfied that there are sufficient cushions for those people who are the losers in the expansion of world trade, that they are taken care of by outfits like Bison?

Mr. BULLOCK. If we can encourage greater exporting activity, it will create opportunities for the people that may be displaced from other jobs. In addition, exporting increases our total productive output and our productivity. So if we can keep that going, yes, we are satisfied that we will all be able to provide a number of good training and educational programs for employees.

Mr. RANGEL. Well, I will have to get in touch with the NAM and see what you have done on that because we find that those people that were working, that newer Americans have taken lower skilled jobs and they find it very difficult, especially those that have worked ten or 15 years, to be retrained or to start all over. So, that the NAM is on the right track, but maybe I can get in touch or you can have someone get in touch with me to see.

Mr. BULLOCK. I will do that. We also have another program that is called the high performance work place, where we are using supplier networks to increase skill and training requirements over a wider base. We'll send that material to you.

Mr. RANGEL. And knowing how you support keeping politics out of trade policy, you would not support our present policy that relates to Cuba, would you, from a trade point of view?

Mr. BULLOCK. From a trade standpoint? The administration's policy?

Mr. RANGEL. It would be everyone's policy now since he has adopted most of the Republican policies. I think you can go with a bipartisan, Miami policy, whatever you want to call it.

Mr. BULLOCK. Not an area of my expertise. I really cannot comment on that.

Chairman CRANE. Mr. Bullock, I thank you for your testimony and sorry you have got to run. But now, we'll yield to Mr. Kelley. And if you could switch seats with Mr. Bullock for the mikes.

STATEMENT OF ROBERT F. KELLEY, MANAGING PARTNER, INTERNATIONAL AFFAIRS, ANDERSEN WORLDWIDE

My name is Robert Kelley. I am managing partner for international affairs for Andersen Worldwide. I must admit that after hearing about cellular phones and brooms, pickles and gears, it is a real pleasure to talk about the other 70 percent of our GDP, services.

In fact, my message here today is to raise the salience of the importance of services in the global economy. If I leave one impression with you, I hope it is that innovation in services is the key to competing in the 21st century. My comments will be organized, in terms of context, first, telling you who I am and why we are very interested in global trade. And then I will tell the story of our company which exemplifies my main message, which is that innovation in services is the key to competing in the 21st century. And then I will offer some very specific recommendations of how we can improve our public policy in international trade.

In terms of my perspective, I sit on the Business and Industry Advisory Committee to the OECD Trade Committee, and the International Chamber of Commerce's Investment and Trade Commission, and I am also a member of the U.S. Trade Representative's Investment and Services Policy Advisory Committee. My job at Andersen is threefold. It is to remove barriers to us operating as a global company. Second, to prevent the erection of any new barriers; and third, to identify issues that affect our operations globally and begin to shape their outcome.

Andersen is a product of Chicago. It is the fruits of the labor of 6 people who started the company in 1913 on LaSalle Street. Today we are serving businesses around the world in 76 countries. Those 6 people have grown to 82,000 people worldwide. It is a partnership so my perspective is from that of an equity owner. We have 2,600 partners worldwide. In Illinois we have 5,600 employees. Many of those are associated with our world headquarters. Also, on the roads that lead from O'Hare to St. Charles, there are about 50,000 people from around the world that travel to our education center in St. Charles, Illinois, which is a facility of 135 acres, accommodating 1,700 people at one time. We bring people from all over the world to train in our center at St. Charles. It is kind of a reverse export; they bring money here to spend, which is not normally the way we look at exports.

The reason I am here is to express our concern about the status of international trade affairs around the world and the fact that we seem to have a disproportionate amount of attention and resources devoted to manufacturing pickles, bacon, gears and motors, and brooms. We overlook the biggest part of our national economy and the fastest growing part of our economy's worldwide services.

To give two examples of my promise, just take the commonly referred to deficit in trade, which about 1 year ago was around $170 billion. Well, that's three times the amount of the imbalance in services trade. The differences are in the arithmetic; the services imbalance was a surplus and the manufacturing imbalance was a deficit. In 1958, when I joined the work force, I joined the services component, which numbered 30 million employees at that time out of a total of 65 million. In 1992, that 65 million had grown to 120 million American workers, and the number of those in the service economy numbered 75 million.

Today we recognize that the GATT and all the other trade agreements have really advanced American interests abroad and brought about many improvements to facilitate world trade. What is often overlooked is GATT also has another part. It is called GATS, the General Agreement on Trade and Services. Within

GATS we have managed to set up a working party on professional services which is an investment for all professional service providers around the world. This, in itself, is a major development because it has great long term benefits. One of the major efforts of this working party is to promote the use of international accounting standards around the world. This may sound rather moot or arcane or boring, but the truth of the matter is that investors, capital providers, pension fund members would all benefit from having the same set of financial statements that they could compare companies around the world.

Now, in terms of specific recommendations, I have broken them down into two categories. The first category contains tactical recommendations and they are priorities for action. First, this Subcommittee, all of American business should really work earnestly to ensure the effective implementation of the Uruguay round which includes the GATS rules on services. In particular, in the GATS area we need to complete the sectoral negotiations in telecommunications, financial services and other service areas.

Second, it would be a big impetus if this Subcommittee encouraged the administration to demonstrate real interest in the working party on professional services. It is really the forerunner to breaking into global trade in services for professional services firms by setting up rules that people can play by around the world.

Third, it is important to monitor the other negotiations and actions that are happening around the world outside of GATS. They include the multilateral agreement on investment, the Asia-Pacific Economic Cooperation initiatives, and the free trade area of the Americas. And, we need to prod the negotiators when their efforts flag and ensure that their talks do not go off course. Fast track should be reauthorized as soon as possible.

Strategically for the future, the single most important issue for this Nation is to begin correlating national policy with global trends. Three salient, global trends that affects everyone are one; the convergence of telecommunications and computers; two, discontinuities in governments and other institutions; and three, globalization of markets and people.

My second strategic recommendation is; we need to develop ways to measure and account for trading, trading the new form of capital which is knowledge; the intangibles; the invisibles. We have outmoded ways of trying to control and protect intellectual property rights. We need to concentrate on developing new ways to measure and account for these invisibles.

And third; it is a very obvious fact that the next trade agenda will be heavily influenced by the issues of competition and investment. What is not obvious is the fact that if the United States does not develop the potential of its people, competitive advantages will be gained by countries that capitalize on the power of technology to leapfrog competitors. In a word, that spells retraining our American work force.

Last, I would hope that the Congress stay the course of supporting world trade because it is key to us. Andersen Worldwide would not be 82,000 people today. It would be 600 people, practicing in downtown Chicago. But, now we are an $8 billion business that's doubled in the last 5 years. And, in no small part, we owe that to international trade.

My last comment is a philosophical statement. I would hope that the Congress continues to make political decisions for economic purposes as opposed to making economic decisions for political purposes. Thank you.

[The prepared statement follows:]

TESTIMONY OF ROBERT F. KELLEY
SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS
MAY 20, 1996
EXECUTIVE SUMMARY

- Andersen Worldwide (AW) is the world's largest professional services firm with over 82,000 employees in 360 offices in 76 countries. Last year, AW revenue topped the $8.0 billion mark, a doubling in the last five years. This success is in no small part attributable to the recent global trend toward liberalization of trade and investment.

- Services constitute 60-70% of most advanced economies, demonstrating the importance of services in our economy and the enormous potential in foreign markets for US service providers. World trade in services exceeds global trade in computers, telecommunications and office equipment, motor vehicles and parts, and textiles and apparel combined. Services are "enablers" of other industries, inextricably linking services with sectors such as manufacturing. US trade policy must be crafted with these relationships in mind.

- The World Trade Organization (WTO) represents the greatest opportunity for liberalization in services. The General Agreement on Trade in Services (GATS) is the single greatest achievement of the Uruguay Round, bringing the fastest growing -- and, arguably, the most important -- sector of the world economy into the multilateral trading system.

- The GATS establishes important trading rules including the principle that regulation of domestic activity has international consequences, laying the groundwork for regulatory convergence, which will benefit service industries, consumers, investors and regulators. The GATS also has broadened the definition of "trade" to include movement of capital and people -- critical issues for services firms.

- Liberalization in services will continue in the WTO. In the short term, there are sectoral negotiations in maritime, financial services, telecommunications and professional services. In the longer term, a new round of services talks will begin in the year 2000.

- The professional services talks are ongoing in a Working Party on Professional Services (WPPS). The WPPS has begun its work with the accountancy sector with a three part agenda: developing disciplines on domestic regulation, promoting international standards and, establishing guidelines for the recognition of qualifications. The success of the WPPS is important not just for professional services, but for the credibility of the WTO as a whole.

- While implementation and expansion of the GATS will remain the focus of services trade liberalization, we also must take advantage of possibilities that lie in other international negotiations including the Multilateral Agreement on Investment (MAI), the Free Trade Area of the Americas (FTAA), and the Asia Pacific Economic Cooperation (APEC) forum. Some negotiations will require fast track, which should be reauthorized as soon as possible.

- The US must lead the movement to further liberalize trade and investment -- not as a favor to anyone else, but because it is in our own interests. The tremendous significance of services to the US economy and to other sectors such as manufacturing must not be underestimated. Trade policy must be made with careful consideration given the implications of that policy for the service sector.

Recommendations:

- The Subcommittee should work to ensure effective implementation of the Uruguay Round agreements including: implementation of new GATS rules, completion of sectoral negotiations in services, and interpretation of WTO materials and their effective dissemination.

- In particular, the Subcommittee should express to the Administration its interest in and support for the efforts of the WTO's Working Party on Professional Services, especially with the approach of December's WTO ministerial meeting in Singapore.

- The Subcommittee should carefully monitor progress on negotiations such as on the Multilateral Agreement on Investment, the Asia Pacific Economic Cooperation initiative and the Free Trade Area of the Americas, prodding negotiators when they flag and ensuring that the talks do not go off course. Fast track should be reauthorized as soon as possible.

Introduction
Mr. Chairman and distinguished members of the Subcommittee:

My name is Robert F. Kelley. I am Managing Partner--International Affairs for Andersen Worldwide, which is the coordinating entity for Arthur Andersen and Andersen Consulting member firms around the globe. I appreciate the opportunity to share my views and suggestions on:

- the importance of trade and investment in services to the US economy,
- the place of the service sector in future US trade policy, and
- the international agreements and negotiations which will have an impact on services.

But first, I want to commend you for holding this hearing on the future of US trade policy. You remain a stalwart supporter of free trade, and the companies, workers, and consumers of Illinois are direct beneficiaries of your efforts. I also would like to thank your staff, not only for their work in organizing this hearing, but also for their continued diligence and willingness to work with the private sector.

Andersen Worldwide
Andersen Worldwide is the world's largest professional services firm, operating from more than 360 offices in 76 countries. The Arthur Andersen business unit provides accounting, audit, tax, business advisory, and specialty consulting services to clients. The Andersen Consulting business unit provides global management and technology consulting services.

Our clients range from the largest of multinationals to medium-size and small enterprises to individuals. To best serve any of these clients, of course, we must be able to operate in the world markets in which they operate.

Forty-seven thousand of our over 82,000 people are employed by our member firms outside the US, while 35,000 work in the US. Closer to home, Andersen Worldwide has roughly 5,600 employees in Illinois -- the great majority in the Chicago area -- in our headquarters, our practice offices, our research and development facilities, and our extensive professional education campus in St. Charles. For this audience I need not belabor the point that these are high skill, high paying jobs. I might add that our Firm is the top recruiter of graduates from US colleges and universities.

Last year our revenue topped the $8.0 billion mark, and a look at where these earnings come from also helps demonstrate how international a firm we are. Of our $8.1 billion in revenue, $4.3 billion was earned abroad, while $3.8 billion was earned in the US.

We are quite proud of the fact that our revenue has doubled in the last five years. We believe such growth is unique for a professional services firm of our size , and we expect similar strong results in the next five years. Our success is in no small part attributable to our increased involvement in markets overseas. While revenues for Andersen Worldwide in the Americas grew an enviable 17% last year, our Europe/Middle East/India/Africa practice grew 25% in US dollar terms and our Asia/Pacific practice grew 28% in US dollar terms.

We have benefited tremendously from the worldwide trend toward liberalization of trade and investment. Such liberalization helps economies grow and helps our clients grow. When our clients grow, we grow. An additional benefit from this trend has been an improvement in our ability to serve these growing clients. We see continued liberalization as vitally important to our continued success.

The Importance of Services
As a professional services firm, Andersen Worldwide is part of the overall service sector. As you know, this widely diverse part of the economy also includes telecommunications, financial services, transportation, audio-visual services, and others. Broadly speaking Mr. Chairman, you and all other public servants also are a part of the service sector.

The importance of the service sector would seem to be self-evident, but far too many policy makers -- and, to be fair, businesspersons, academics and others -- continue to think of a nation's trade and economy in terms of cars built, wheat exported, and VCRs imported.

In most industrialized economies, services constitute 60-70% of gross domestic product. These figures give a clear indication of the importance of services in our economy, and these numbers also give some indication of the enormous potential in foreign markets for US service providers, who are among the most competitive in the world.

Between 1958 and 1992, employment in the US doubled from 66 million to 121 million. This growth was fueled almost entirely by the services sector, which saw its employment grow from 31 million to 74 million.

It is important to emphasize that these services jobs are not low wage and low skill, despite the misinformed characterizations being made about them. Since 1970, services job creation has been particularly robust in relatively high paying sectors such as healthcare, business services and engineering services. Average wages in these sectors have grown at a faster rate than average manufacturing wages during that time period. Furthermore, recent studies have indicated that employment levels in some lower wage service sectors such as restaurants have shown a decline. In short, it is the service sector that is creating the jobs, and most of them are high skill, high paying jobs.

It is true that trade in goods still significantly outpaces trade in services. But allow me to provide important perspective on this subject. World trade in services exceeds global trade in computers, telecommunications and office equipment, motor vehicles and parts, and textiles and apparel combined. However, the attention of Congress, the coverage in the media, and the resources of US Trade Representative and the Commerce Department devoted to services trade does not match the attention, coverage, and resources devoted to computers, cars, and textile trade. With you, Mr. Chairman, I know I am preaching to the converted. It is just frustrating at times to see so many tails wagging the dog.

And let me be clear, I do not mean to cast US trade policy as a situation of "Services" vs. "Manufacturing." Nothing could be farther from the truth. Services and manufacturing are inextricably linked, and I believe trade policy should be made with that in mind.

Services are "enablers" of other industries:

- corn must be transported to market -- a service;
- a new machine tool plant must be financed -- a service;
- new cars must be advertised -- a service;
- a sale of coal must have a contract -- a service;
- an oil company contemplating a foreign investment must have a feasibility study done -- a service;
- a heavy equipment company must stay in constant contact with its foreign subsidiaries -- a service;
- a computer maker hires someone to reengineer its entire operation in order to compete -- a service;
- a shipment of textiles must be insured -- a service; and
- last, but not least, financial statements must be audited -- a service.

Of course, examples such as these are endless. US trade policy -- and economic policy for that matter -- must be crafted with these interrelationships in mind. A holistic approach, if you will, is what is called for.

As I mentioned before, US services firms are among the most competitive in the world, and they also help make other US companies more competitive. Thus, US services firms contribute positively to overall US competitiveness, to overall US job creation, to overall US productivity, and to overall US growth.

For those who are concerned with the trade deficit, let me point out that services consistently run a trade surplus. Last year, for example, the services trade surplus was $63 billion, while the manufacturing trade deficit was $174 billion.

World Trade Organization (WTO)

I believe that one of the primary reasons services trade has lagged behind goods trade is that the global trend toward liberalization only recently has begun to encompass trade and investment in services. The watershed year for services was 1986, with the launch of the General Agreement on Tariffs and Trade (GATT) Uruguay Round.

Clearly, for the large majority of service firms, the WTO -- GATT's successor organization and product of the Uruguay Round-- represents the greatest opportunity for liberalization. In fact, I would argue that the Uruguay Round's General Agreement on Trade in Services (GATS) is the single greatest achievement of the Round. The fastest growing -- and, arguably, the most important -- sector of the world economy has been brought into the multilateral trading regime.

At last, there is a framework of rules established for trade and investment in services. Among the most important of these GATS rules concern:

- most-favored nation treatment (MFN),
- transparency of laws and regulation,
- national treatment,
- international payments and transfers,
- market access,
- effective dispute settlement, and
- fairness of the regulatory process.

The effective implementation of the new GATS rules should be an important goal for future US trade policy, Mr. Chairman. The multilateral system has been dealing with goods trade for decades, yet still there are numerous disputes over the rules and their application. Services trade is a new issue and, I might add, a more complex one than goods trade. Vigilance and good faith will be required on all sides in order to secure successful implementation of the GATS system.

Of particular significance among the new GATS rules is the last I mentioned, regulatory fairness. Not only does the GATS recognize that governments often use regulation of a foreign company's cross-border activity as a trade barrier, but the GATS also establishes the principle that regulation of domestic activity has international consequences as well. The GATS lays the groundwork for regulatory convergence, which will benefit service industries, improve the quality of regulation, and help consumers and investors.

Perhaps an even more important point about the new framework of services rules is that the GATS has broadened the definition of "trade" to include movement of capital and people -- critical issues for services firms. For many service sectors, there is no effective way to enter a new market without investing capital there. In addition, for many service sectors, including my own, intellectual capital -- people -- is our primary resource. In some cases, if we can not get our people across borders, we can not get the job done.

But while the GATS is a tremendous first step toward the liberalization of trade and investment in services, it is just that -- a first step. As you well know, some GATS rules cover only service sectors specifically included in the agreement by each country. And some service sectors are not covered at all.

But the deficiencies of the GATS are well known and probably draw more than their share of the spotlight. Suffice it to say the GATS is a firm foundation, but much more needs to be built. In fact, further liberalization in services was contemplated by the Uruguay Round agreements.

In the short term, there are sectoral follow-on negotiations arising from the Uruguay Round. For example, the maritime talks face a June 30, 1996 deadline, while, after initial discussions proved fruitless, the telecommunications negotiations and financial services talks have been extended into next year. In professional services, a working party was established to develop disciplines applying GATS rules to the professions.

Work in each of these sectors will require commitment by the US private sector, by the Administration, and by Congress in order to achieve success.

Professional Services

Of these sectoral negotiations, of course, we at Andersen Worldwide are particularly concerned with the professional services talks. A separate ministerial decision created a Working Party on Professional Services (WPPS) under the WTO's Council on Trade in Services. The WPPS will be a "laboratory" for determining whether the GATS rules on domestic regulation can be given practical meaning. It has been said -- with a bit of tongue in cheek -- that the GATS rules are like a mandate for a fair and equitable tax code, and the WPPS's efforts will be like drawing up an actual tax code that fits the mandate.

The WPPS has begun its work with the accountancy sector. Progress in accountancy will pave the way for work on the other professions, and progress on the professions will pave the way for work on other industries in the Council on Trade in Services.

The WPPS has the following three part agenda set out in the ministerial decision. "[T]he Working Party shall concentrate on:

(a) developing multilateral disciplines relating to market access so as to ensure that domestic regulatory requirements are: (*i*) based on objective and transparent criteria, such as competence and the ability to supply the service; (*ii*) not more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;
(b) the use of international standards and, in doing so, it shall encourage the cooperation with the relevant international organizations as defined under paragraph 5(b) of Article VI, so as to give full effect to paragraph 5 of Article VII;
(c) facilitating the effective application of paragraph 6 of Article VI of the Agreement by establishing guidelines for the recognition of qualifications."

If the WPPS succeeds in developing proper regulatory disciplines, the benefits are manifold. These disciplines will stimulate reform in domestic regulation, not solely in measures enforced "at the border." In addition, any liberalization achieved is much less likely to be reversed. Having made international obligations, governments will be reluctant to respond to domestic pressures by reversing those decisions.

Finally, these disciplines will move national regulators to common approaches and, in time, perhaps to harmonization. Since businesses now face widely different regulatory structures from market to market, such disciplines from the WTO would encourage increased investment and trade.

The chair of the Working Party is Ambassador Leonora Saurel of El Salvador, a dynamic and highly respected figure in Geneva. The WPPS has met four times. While the United States and some other parties have been active in pursuing the WPPS's goals, the participation of other nations has lagged. It is crucial to the credibility and effectiveness of the Working Party that its efforts on accountancy succeed.

In addition, I believe that success of the WPPS is important not just for the accountancy sector, not just for professional services, but for the WTO as a whole. Will the rules in the GATS remain just high sounding words, or will governments take the steps necessary to give those words positive practical effects of tangible commercial value?

Furthermore, after the unsatisfactory progress over the past few years for all concerned in the telecommunications, financial services, and maritime sectoral negotiations, the WPPS offers a wonderful opportunity to demonstrate that the WTO can advance liberalization in services. Commitment by the US government to the success of the Working Party also demonstrates the commitment of the US to the multilateral system, a commitment that is being questioned in some quarters.

The Way Forward

In addition to sectoral negotiations, the Uruguay Round agreements also call for a new round of talks on overall commitments in the service sector. Slated to begin in the year 2000, these negotiations will focus on improvements in existing commitments and the addition of sectors not already scheduled by countries. Remember, some GATS rules only come into force on sectors a country includes in its schedules.

During the Uruguay Round, many countries were reluctant to schedule certain sectors, or go beyond *status quo* or "standstill" commitments in the sectors they did schedule, due to uncertainty over how the addition of this "new" service sector to the multilateral system would fare. Effective, credible implementation of the GATS will be critical to making the case to these countries for the expansion of their schedules.

Of course, there are other areas within the GATS that need additional attention in order for the full commercial value of the agreement to be realized. For example, in the area of movement of personnel, more work must be done to give precise definitions to categories of professionals such as "technical personnel" and "executives." In order for companies to take advantage of such provisions, governments and companies must have a common understanding of which professionals fall into which categories.

In addition, much of the good work of the Uruguay Round and the WTO remains inaccessible to many businesses -- particularly to small and medium-size companies that lack the resources of most multinationals. Countries such as the US should lead an effort to provide interpretation of agreements, schedules of services commitments, and tariff schedules, and improve dissemination of useful materials. Opportunities for US companies are being lost solely due to a lack of information.

While implementation and expansion of the GATS will remain the focus of services trade liberalization, we also must take advantage of possibilities that lie in other international negotiations. For example, now that the GATS has established the "legitimacy" of investment and movement of personnel as issues for the trading system, we must move to make such rules apply across all economic activities.

The Multilateral Agreement on Investment (MAI), being negotiated among the countries of the Organization for Economic Cooperation and Development (OECD), is a good place to start. I understand substantial progress is being made in this ambitious endeavor to broaden investment rules.

There appears though to be a tension arising between those who seek an agreement with high quality rules, negotiated among OECD countries, then offered to other nations for membership; and those who seek an agreement with somewhat lower quality rules, but negotiated among and covering a wider array of countries.

Both sides make good points that need not be irreconcilable. We all agree on the need for the highest quality rules achievable. At the same time, we must keep in mind that it is not among the OECD nations that US companies find most of their investment problems. An MAI not joined by the developing world would not offer much additional value. Helping to find the proper balance between the quality of rules and the geographic reach of the MAI is another challenge for this subcommittee.

Other opportunities for progress lie in the multitude of regional agreements proliferating around the world. As I have said before, our commitment to the multilateral process is firm, but we see no conflict in pursuing liberalization in regional or bilateral fora. In fact, arrangements such as the North American Free Trade Agreement (NAFTA) can be laboratories for services agreements, the lessons of which can be applied in the WTO.

It is disappointing that agreement could not be reached on new fast track authority, even for the rather narrow purpose of adding Chile to NAFTA. I would urge that this issue be revisited as soon as possible after the presidential elections.

Fortunately, NAFTA is not the only free trade initiative in this hemisphere. Work on a Free Trade Area of the Americas (FTAA) has been gaining momentum since the Summit of the Americas in Miami in 1994. In March, trade ministers meeting in Cartagena, Colombia, launched four new working groups, including one on services. This working group will begin with necessary spade work, such as cataloging existing agreements that impact services, before moving on to developing recommendations for reaching an FTAA in services.

As I said, work on the FTAA is in the early stages. The subcommittee should carefully monitor these proceedings, prodding negotiators when they flag and ensuring that the talks do not go off course.

At a similar stage of development is the Asia Pacific Economic Cooperation (APEC) free trade initiative. Work on services and most issues has just begun. Still, reaching a free trade area within APEC is an ambitious undertaking with commensurate potential benefits if it is successful. I am certain that Andersen Worldwide is not the only service firm that views the Asia/Pacific region as a priority area for growth. As with the FTAA, the subcommittee should keep a watchful eye on these negotiations.

Conclusion

In conclusion, let me express a worry about the political climate in the US. On Capitol Hill, on the presidential campaign trail, and in other quarters around the country, the voices of protectionism are getting louder. Legitimate domestic economic concerns are being miscast by some as the result of America's free trade policies. It will require leadership from Congress, the Administration, business, and others to meet this challenge and win the intellectual argument.

Every day, the US economy becomes more inextricably linked to global markets. So much of the growth we have enjoyed has been the result of trade. This is no time to retreat. The US must lead the movement to further liberalize trade and investment -- not as a favor to anyone else, but because it is in our own interests. Mr. Chairman, I know you and other members of this subcommittee already are fighting the good fight. I offer you any assistance we can provide.

In the area of professional services, I would like to ask for additional help. I believe it would be valuable for this subcommittee to express to the Administration its interest in and support for the efforts of the WTO's Working Party on Professional Services, especially with the approach of December's WTO ministerial meeting in Singapore. As I have said, the Working Party is in danger of faltering, and I believe that its success or failure will have an impact felt far beyond the offices of firms like mine. I look forward to working with you, other members of the subcommittee and your staffs to ensure that the WPPS is successful.

Finally, the tremendous significance of services to the US economy and to other sectors such as manufacturing must not be underestimated. When you are developing trade policy, whether it be vis-à-vis the WTO, APEC, the FTAA, the MAI, or another issue, I hope you will consider the implications of that policy for the service sector.

Thank you Mr. Chairman, and I would be happy to answer any questions you might have.

Chairman CRANE. Thank you, Mr. Kelley. Mr. Smith. You might just switch seats there. In fact, if the two of you could sit fairly close, just for questions, so you can rotate that mike back and forth.

STATEMENT OF MARSCHALL I. SMITH, SENIOR VICE PRESIDENT, AND GENERAL COUNSEL, IMC GLOBAL, INC, NORTHBROOK, IL

Thank you, Mr. Chairman, Congressman Rangel. I am Marschall Smith, of IMC Global in Northbrook. IMC Global is the U.S. and probably the world's largest producer of agricultural crop nutrients. IMC would like to focus very narrowly this afternoon on U.S. trade with China.

China is the United States largest and also the fastest growing consumer of agricultural crop nutrients. Over $1 billion of our primary product and of billions of dollars more in Chinese imports took place last year and we expect greater imports in the coming years.

In order to maintain American leadership in the crop nutrient industry in China, IMC and the other members of our industry have entered into long term supply agreements with the Chinese suppliers. The advantage of these long term contracts is job security for American workers today and showing the Chinese that the United States can be a dependable long term supplier of what is for China a vital import. Frankly, the stability of the long term relationship that is developing is jeopardized by our practice of renewing MFN status with China on an annual basis. IMC supports permanent extension of MFN to China, coupled with China's membership in the World Trade Organization on commercially reasonable terms. We feel that the establishment of those long term secure relationships with the Chinese will enable the U.S. to focus then on achieving the sort of trade reform and the sort of reform in the Chinese practices that we have been advocating and put aside the procedural wrangling on an annual of renewal or nonrenewal of MFN. That's our position.

I hope the brevity of my remarks won't be taken as a lack of concern. We think it is terribly important to establish sustained relationship with China and doing away with annual renewal of MFN will be the important first step.

[The prepared statement follows:]

TESTIMONY OF MARSCHALL I. SMITH
IMC GLOBAL INC.

Good [morning][afternoon], Mr. Chairman and Members of the Trade Subcommittee. My name is Marschall Smith and I am Senior Vice President and General Counsel of IMC Global Inc., a corporation headquartered nearby in Northbrook, Illinois.

As our name suggests, IMC Global and its several subsidiaries and joint venture operations comprise one of the world's leading producers of crop nutrients for the international agricultural community. We are a leading producer of potash, with one facility in New Mexico, and also a producer of nitrogen for crop nutrients. IMC's joint venture with Freeport McMoRan Resource Partners, IMC-Agrico, is the nation's largest producer, marketer and distributor of phosphate crop nutrients.

IMC-Agrico employs about 4500 workers to operate three phosphate plants in central Florida that export product through the Port of Tampa, and three phosphate plants in Louisiana that export product through the Port of New Orleans. Far and away our leading phosphate crop nutrient product is diammonium phosphate, or DAP. From ten mines in Florida and Louisiana with over 360 million tons of high quality phosphate rock reserves, we mine the rock and then process it. In our beneficiation plants, we wash, clean, size and grade the mined material. Next we react the material with sulfuric and phosphoric acids, and then granulate it with ammonia to produce DAP.

We mine about 27 million tons of phosphate rock a year, and have established a capacity to produce 8 million tons of dry phosphates, including 6-1/2 million tons of DAP. I share these facts with you, Mr. Chairman and Members, to underscore how important DAP is to our phosphate business. Without the People's Republic of China as a customer, we would be largely out of the DAP business.

China has five times as many people to feed as the U.S., but only about half our acreage of arable land on which to grow crops. In other words, China needs to feed 20 percent of the world's population, but has only 7 to 9 percent of the world's arable land. China therefore needs crop nutrients to make the most productive use of that land. China imports about 5 million tons of DAP annually, with a market value of over 1 billion dollars, to support its agricultural production. Of these 5 million tons, China buys nearly all its product from the U.S. and of that amount about 40 percent from IMC-Agrico, or about 2 million metric tons. Over the last three years, U.S. exports of DAP to China have accounted for between 55 and 60 percent of total U.S. DAP exports.

China is not only our largest DAP market, but also our fastest growing market. While the global crop nutrient market fluctuates, China has substantially increased imports of DAP since 1993. Moreover, prices have risen as well as sales volumes.

To capitalize on these favorable developments, we have entered into new, longer term supply contracts with our customers

in China for our phosphate products. We have opened an office in Hong Kong and are monitoring investment opportunities in port facilities and bulk blending plants in China. None of these investments would detract from our operations and employment in Florida and Louisiana; to the contrary, they would facilitate our sales to China of product made at home in the U.S.A.

Against this background, Mr. Chairman and Members, you can appreciate the reasons why IMC Global supports most-favored-nation treatment for China. At IMC, our workers, joint venture partners, subsidiaries, suppliers, communities and the ports from which we export all benefit from trade with China. If the United States refused to allow China to export to our country on MFN terms, realistically we would have to expect that China could reciprocate this treatment. Instead of buying DAP and other crop nutrients mined and processed in and transported from the U.S. by American workers, the Chinese could buy instead from our competitors around the world.

Indeed, IMC Global supports the renewal of MFN for China not only this year, Mr. Chairman and Members, but every year. We believe the time has come to provide for permanent MFN treatment, without going through an annual exercise that has become nonproductive or even counterproductive. The provisions of U.S. law under which the MFN review is conducted annually actually pertain only to conditions regarding Chinese emigration, not to the larger human rights and other issues on which the debate generally focuses.

While the U.S. has many problems with China, our company believes that the annual MFN debate destabilizes trade with China, without providing leverage to resolve any of those problems. The U.S. would be better positioned to make real progress toward satisfactory resolutions of various problems with China if it had a stronger, less uncertain relationship with China based in permanent reciprocal MFN treatment.

For the same reasons, IMC Global supports what we understand to be the U.S. position on China's accession to the World Trade Organization. IMC believes the U.S. should welcome China's membership in the WTO on commercially acceptable terms. As an economic powerhouse, China cannot expect and is not entitled to membership without regard to the obligations and responsibilities it agrees to undertake. As a still developing nation, China may merit reasonable transition periods in which to come into compliance with some obligations and responsibilities.

However, the objective should be clear: the U.S. should support Chinese membership in the WTO at the earliest date that China offers commercially acceptable terms. The goal is to integrate China into the world trading system and thereby to promote its compliance with the rule of law and its use of markets. When this goal is achieved, the U.S. will be able to use the dispute settlement procedures of the WTO, and will have to rely less on unilateral U.S. actions or threats of action. Multilateral actions are more likely to be productive and less likely to be controversial, resulting in relatively more stability and less disruption to trade for the benefit of all, including the United States.

Rather, the benefit of a firmer, more predictable relationship between the United States and China based on permanent, reciprocal MFN would be its resilience. With our trading partners who are sure of our reciprocal commitment, we enjoy mutual confidence that the relationship will withstand even the most contentious disputes. For example, our relationship with our largest trading partner, Canada, has withstood repeated frictions over softwood lumber, broadcasting and print, dairy and yogurt, wheat and fish. Likewise the U.S.-Japan relationship has endured successive trade frictions over, for example, semiconductors, film, insurance, glass, beef, citrus, apples, copyright and patent issues, civil aviation, government procurement and public works, leather goods, and structural impediments -- a long, long list. Yet our trade, investment and geopolitical relationship with Japan remains strong and vibrant in part because it is grounded, structurally, in permanent MFN.

We believe that revocation of MFN from China would limit the positive influence of the United States in China. If we extend permanent MFN, on the other hand, we believe that the United States and individual Americans will have the maximum opportunity to influence the Chinese people about not only our market economics, but also our values and beliefs.

In conclusion, Mr. Chairman and Members, IMC supports permanent MFN for China, and China's WTO membership on acceptable commercial terms, because we think these developments would increase positive American influence in China to our mutual best interest. If we were to condition or revoke MFN for China, or oppose its entry into the WTO even if it offered satisfactory commercial terms, we would not only hurt our own economic interests and workers, but also reduce our opportunity to promote and influence positive changes within Chinese society.

Mr. Chairman and Members, thank you for permitting me to share the views of my company with you today.

Chairman CRANE. I thank you very much for your testimony, and I agree with your position on going through this drill every year with China. It is important, as some have already mentioned today, to recognize that it is not most-favored-nation trade treatment; it is normal trade treatment. That creates a distortion that confuses, a lot of people's understanding of it.

Let me ask you, if MFN for China was terminated this year, would your company be worried about retaliation by the Chinese in the fertilizer sector?

Mr. SMITH. We'd be terrifically worried about competition from other countries. There is Morocco and a number of other suppliers, who are very competitive, and frankly, the MFN status is vital to maintain American competitiveness. It is over $1 billion in just one product, diammonium phosphate. Conceivably that those sales could be jeopardized, and there are other suppliers around the world that would love to get into that market.

Chairman CRANE. If China were to become a member of the World Trade Organization, what sort of market access commitments do you think the USTR should seek on behalf of your sector?

Mr. SMITH. We are really not experts on WTO and I probably should not comment. Obviously we support Chinese membership only on terms that the government would find commercially reasonable. We think that the Chinese, in order to obtain WTO membership, would probably be willing to make some reasonable concessions. But again, we see it as a uniform package. The United States coming forward with MFN extension on a more sustained basis we think would be a first step for Chinese WTO negotiations.

Chairman CRANE. For you, Mr. Kelley, what are your expectations for the Singapore Ministerial Meeting that's scheduled December 18, with the World Trade Ministers? What do you think might be achievable for the professional services sector by our USTR at that meeting?

Mr. KELLEY. It is a very good question. It is one that we have taken an active role in to make sure that through the International Chamber of Commerce and other world institutions, that the ministers are given a definite commitment to complete the working party work program by 1997. And pardon me for being rather assertive, but we have taken the position that we are not going to leave it up to governments or business or anyone else to do this, because it is something that needs to be done, and we are committed to having that ministerial decision, and there are papers being prepared as we speak.

Chairman CRANE. Very good. Mr. Rangel.

Mr. RANGEL. Thank you. Do both of you support the President's sanctions against China for violation of intellectual property rights and agreements?

Mr. SMITH. We certainly support action against China. The piracy of U.S. trade secrets cannot and should not go on.

Mr. RANGEL. How about Libya and Iraq?

Mr. SMITH. The difficulty with all of that is we need to take action, but we also need to show these countries the United States can be an assured supplier of products. The balance between those is very difficult. I frankly spent the weekend reviewing the sanc-

tions on China, and I am not sure I understand them enough to comment.

Mr. RANGEL. Iraq and Libya are not intellectual property rights, they are more political. How about Cuba?

Mr. SMITH. IMC does not currently have a policy on Cuba, Congressman Rangel.

Mr. RANGEL. What policy are we talking about?

Mr. SMITH. Well, we would support free trade and we support fair trade. To the extent that the U.S. Government would open up free trade, we'd obviously be very delighted with that.

Mr. RANGEL. And does IMC pay a tariff on the phosphate that goes to China?

Mr. SMITH. It varies from country to country. My understanding is that on phosphates into China, there is no tariff.

Mr. RANGEL. Mr. Kelley, what is it that you would have your country to do to encourage professionals to support the 70 percent of professional services that are being exported?

Mr. KELLEY. Well, 70 percent of our GDP, it is not all exports, of course. Public policy needs to be tuned to the importance of the service economy in the U.S.

Mr. RANGEL. How would that be shown?

Mr. KELLEY. Well, in one perspective, there is a point that you raised earlier about education. We are really negligent in the area of education, and we need to shift and build the infrastructure for services in this economy and part of that would be through education, which is a service in itself, and to retrain the people.

Mr. RANGEL. Do you think it is possible that industry could include that as a part of their trade policy as something that's going to be important if we are going to continue the leadership?

Mr. KELLEY. Yes, sir.

Mr. RANGEL. I have never heard anyone testify as you have. It is always on the agenda. But if we can have it up front, because you are talking about the skills that would have to be higher in terms of education and the jobs that we are losing, many similar jobs in agriculture.

Mr. KELLEY. The big threat as it relates to China and other countries that have low wage rates, is the fact that if they discover the use of—and I should direct this to all of you—if they discover the use of the power of information and technology, they can actually leap frog us, because they do not have the encumbrance of all the existing investment and infrastructure, like telecommunications. They can go straight to wireless, and they can go straight to computers and help their people realize their potential. We, at this point, have the advantage but we will lose the advantage if we do not answer the challenge in education. It is very frustrating. We are very committed to education. We have a school of the future project, and we work with a small software company and this is all pro bono, all pro bono.

Mr. RANGEL. Could you direct me to any literature that has shown any studies in this area?

Mr. KELLEY. I have already made the note.

Mr. RANGEL. Would you send it to me? Thank you.

[The information was not available at the time of printing.]

Mr. Smith, I do hope that your organization studies our political problems in Congress in responding to the political needs of our constituents with the sanctions because the three that are mentioned are very political in nature, but you never can tell where your importing country is, for very, very political reasons. So, it is people able to play on the fears of our constituents and a lot of people will not let anything stand between them getting reelected. It may be a little too late to say well, they were not bothering you at that time, therefore, you did not study it. But if we are going to be respected throughout the world, we should have a coherent foreign policy that every country and every manufacturer can depend on. We work hard to be bipartisan because we want to make certain that our work product would be presumed to have been created in the bipartisan way. We get the benefit of the doubt when we enjoy that reputation, and as we try desperately hard to do it in legislation, our country should do the same thing as relates to policy. But I want to thank both of you for very informative testimony. Thank you.

Chairman CRANE. Thank you very much, everyone. With that, we will stand in recess for approximately 15 to 20 minutes, and reconvene at that time with our panel of Sally Jackson, Robert Berman and Richard Paullin.

[Recess.]

Chairman CRANE. We might reconvene, and is James Faust here? Mr. Faust, we will have you testify with this next panel, with Sally Jackson, Robert Berman and Richard Paullin, unless anybody else has a tight time constraint as far as a plane.

We will let you go first, Mr. Faust. And as I mentioned before, if you can kind of summarize your comments to keep them within the 5 minute constraint, all of your printed statement will be a matter of permanent record, and we will let you proceed.

STATEMENT OF JAMES L. FAUST, EXECUTIVE VICE PRESIDENT, ANTEC CORP.; AND PRESIDENT, ANTEC INTERNATIONAL DIVISION, ROLLING MEADOWS, IL; ON BEHALF OF ELECTRONICS INDUSTRY ASSOCIATION, AND TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Thank you, Mr. Chairman. My name is Jim Faust, and I am the executive vice president of ANTEC Corp. We are a Rolling Meadows-based company which specializes in the design, engineering and manufacturing of products for the broadband video, voice and data networks and distribution of products for those industries. For example, we manufacture and distribute products used in the cable television networks, such as laser transmitters and receivers, network interface devices on the sides of homes and the powering and transmission equipment utilized to transmit video, audio and data information. ANTEC is an international company with about 2,000 employees, located in 34 locations, with 1995 sales in excess of $650 million.

I also serve as president of ANTEC's International Division which leads the company's efforts in international markets. My testimony today is on behalf of ANTEC, my company, as well as on behalf of the EIA, the Electronics Industry Association and the

TIA, Telecommunications Industry Association, two Washington, DC trade associations to which ANTEC belongs.

In reviewing our industry's perspective on global trade and its role in America's economic future, it is important to set the general framework of our industry's economic philosophy. In a sentence, it can be summarized as this: ANTEC, EIA and TIA all have a deep belief in free and open global markets. The success of capitalism is revealed daily across the world and across industry such as ours that are seeking to provide better products and services that risk their companies' capital or their shareholders' capital in bringing new ideas and products to the market.

Free and open markets benefit not only large multinational corporations, but also small to medium size companies such as ANTEC. We believe that for a company to be successful, we must work toward a leadership position in the worldwide video and telecommunications marketplace. It is no longer enough to strive to be a leader only in domestic markets, because the products ANTEC makes and distributes are used throughout the world, as the MTV, CNN and possibly even CSPAN video revolution spreads. Our company's mission is to be a world leader in fiberoptic coaxial based information transport technologies and services.

As a growing company, we have realized significant growth from export sales. We have operations in countries including China, Hong Kong, Singapore, Australia, Mexico, Brazil, Argentina, the United Kingdom, Spain and Canada. We believe our international growth will continue as long as there is a level trade playingfield. In 1993 our international sales represented only about 4 percent of our business. In 2 years the percentage of international sales has grown to 17 percent of our company's total sales. From 1994 to 1995, ANTEC's international sales have increased approximately 120 percent and continue at this rate in 1996.

We recognize that trade barriers in the future will likely not take the form of tariffs, but more likely will be embodied in technical barriers and differential product standards across borders. The EIA and the TIA firmly support the development and application of international standards that are voluntarily agreed to by industries.

ANTEC and its manufacturing divisions have voluntarily agreed to comply with the ISO, International Standards Organization, 9001 certification efforts, the standards for products and services established by the ISO, are widely used throughout Europe and other parts of the world. We recognize that established standards add to the quality and value of our products and have added to our success. We endorse and support government efforts to promote the voluntary standards process on both domestic and international levels. We do not support government efforts to set these standards, as these are likely to stifle the development of new and competitive technologies. ANTEC, we believe, is well-positioned to continue its growth in the international market, where we believe growth is encouraged by the liberal regulatory markets of many, but not all, countries. We expect to see continuous strong growth for our company in the Asia-Pacific region, in Latin America, and to a somewhat lesser extent in Europe.

The global video, voice and data communications revolution has and will continue to provide us with opportunities to compete in offering access to the information superhighway, which believe also, Congressman Rangel, will help with the educational infrastructure, certainly here and abroad. Please help, rather than hinder us, in our efforts by making sure that the U.S. Government supports policies aimed at fostering the continuation of free and open global markets. Thank you.

[The prepared statement follows:]

COMMENTS OF JAMES L. FAUST

EXECUTIVE VICE PRESIDENT, ANTEC CORPORATION &
PRESIDENT, ANTEC INTERNATIONAL

BEFORE THE SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS & MEANS
U.S. HOUSE OF REPRESENTATIVES

May 20, 1996
Schaumburg, Illinois

Thank you, Mr. Chairman. My name is Jim Faust and I am the Executive Vice President of ANTEC Corporation, a Rolling Meadows-based company which specializes in the design and engineering of hybrid fiber-coaxial (HFC) broadband networks and the engineering, manufacturing, materials management and distribution of products for these networks. For example, we manufacture and distribute products for cable TV and telephone company networks such as laser transmitters, network interface devices for the sides of homes, powering and transmission equipment. ANTEC is an international company of about 2,000 employees in 34 locations with 1995 sales of over $658 million.

I also serve as the President of ANTEC's International Division which leads the company's efforts in international markets. My testimony today is on behalf of my own company as well as on behalf of the Electronic Industries Association (EIA) and the Telecommunications Industry Association (TIA), two Washington, D.C. area trade associations to which ANTEC belongs.

EIA is a 72 year old national trade organization representing U.S. electronics manufacturers. Committed to the competitiveness of the American electronics producer, EIA represents the entire spectrum of companies involved in the design and manufacturer of electronic components, parts, systems and equipment for communications, industrial, government and consumer use.

TIA is a full-service national trade organization with a membership of 600 large and small companies which provide communications and information technology products, materials, systems, distribution services and professional services in the U.S. and other countries. TIA's member companies manufacture virtually all of the products used in the modern communications network.

In reviewing our industry's perspective on global trade and its role in America's economic future, it is important to set a general framework of our industry's economic philosophy. In a sentence, it can be summarized as this: ANTEC, EIA and TIA all have a deep belief in free and open global markets. The genius of capitalism is revealed daily across the world and across our industry as those seeking to provide better products and services risk their (or their shareholder's) capital in bringing new ideas to the market.

Free and open markets benefit not only large, multinational companies, but also small-to-medium sized companies such as ANTEC, a company looking beyond its U.S. offices to foreign markets. We believe that for our company to be

successful, we much work toward a leadership position in the worldwide cable television market. It is no longer enough to strive to be a leader in the domestic market because the products ANTEC makes and distributes are used throughout the world. Our mission is to lead the world in fiber-coaxial based information transport technologies and services.

As a growing company, ANTEC had realized significant profits from export sales, and set up manufacturing operations in foreign countries. Since ANTEC became a public company in 1993, its international sales have skyrocketed.

ANTEC International has operations in several countries including China; Hong Kong; Singapore; Australia; Mexico; Brazil; England; Spain; and Canada, and we believe our international growth will continue. ANTEC's goals include diversifying its domestic customer base and growing its international business, and we have been quite successful at doing that. In 1993, international sales represented just about four percent of ANTEC's business. In two years, the percentage of international sales grew to 17 percent of the company's total sales. From 1994 to 1995, ANTEC's international sales increased approximately 120 percent.

The role of trade as a percentage of America's gross domestic product has increased from about seven percent in 1950 to about 16 percent in 1980. Today, trade accounts for more than 26 percent of the U.S. Gross Domestic Product (GDP).

U.S. trade policy must include a commitment to enhance U.S. exports to continue to provide opportunities for young, growing companies like ANTEC to compete. We believe U.S. trade policy should have a three-pronged approach focusing on: removing unilateral disincentives to exports and easing regulatory burdens (i.e. current U.S. control policies); aggressively promoting U.S. exports through sophisticated and well-coordinated government export promotion programs, and strengthening efforts to ensure the fair treatment of U.S. products and services overseas.

Electronics has led the way in bringing our nation's economy into the global marketplace. A number of leading electronics and communications companies derive more than 50% of their total revenues from export sales. Our industry has been making strong progress in addressing the challenges of globalization and international trade. The U.S. electronics industry exported $124 billion in 1995, a 23% increase over its imports in 1994.

Exports today are a major source of profits for American companies and help provide good-paying jobs for U.S. workers, as well as develop jobs abroad for people in other countries. In fact, Commerce Department data points out that every $1 billion of exports result in 22,000 jobs in this country. ANTEC's international division includes over 100 people and is growing daily. Our international growth has created new jobs not only for U.S. workers, but also for people who live in the different countries where we are located.

To help ANTEC and other companies continue growing in the international market, U.S. foreign policy must change many of its nearly half-century old

assumptions and should not unduly interfere with efforts to keep markets open. Keeping markets open abroad is key policy objective for both the EIA and TIA and we believe it should also be a top goal for U.S. foreign policy. For this reason, for example, EIA supports the continued granting of unconditional Most Favored Nation (MFN) trading status to China, along with the disassociation of trade policy from labor and human rights concerns. ANTEC has sales offices in Shanghai and Beijing and contracts with manufacturers in Shanghai. Our company believes there is much opportunity to expand our growth in China and would like the U.S. government to help, rather than hinder us in our expansion efforts.

EIA and TIA endorsed and supported passage of the North American Free Trade Agreement, NAFTA, and the Uruguay Round of the General Agreement on Tariffs and Trade, GATT, which established the World Trade Organization, or WTO. EIA/TIA continue to believe that these agreements are in the best interests of the U.S. electronics industry as well as the nation. Efforts like these that reduce the barriers to free and fair trade are essential to the development of our industry worldwide. ANTEC has expanded its Latin American and Canadian division and believes NAFTA is a key to helping companies get into or expand in North American markets.

We recognize that trade barriers in the future will likely not take the form of tariffs, but more likely be embodied in technical barriers and differential product standards across boarders. EIT/TIA firmly supports the development and application of international standard voluntarily agreed to by industry.

For example, ANTEC and its manufacturing division have voluntarily agreed to comply with ISO 9001 certification efforts, a standard for products and services established by the International Standards Organization and widely used throughout Europe. We recognize that established standards add to the quality and value of our products and have added to ANTEC's profit margin. We endorse and support government efforts to promote the voluntary standards process on both the domestic and international levels. We do not support government efforts to set standards, as these are likely to stifle the development of new and competitive technologies.

Trade has also become a great stimulus to technological innovation, as competition in global markets spurs U.S. manufacturers to even higher levels of performance. For example, ANTEC has been a key player in the development of the world's first combined voice, video and interactive network by Optus Vision, a consortium in Australia. This advanced broadband network, which can be looked at a model for what U.S. cable TV companies have been working on for the past few years, is touted as the first hybrid fiber-coaxial network built to provide voice, video and data services. ANTEC has been awarded $90 million in contracts with Optus Vision to provide several products for the new network, which is expected to be operational late this year.

ANTEC is well-positioned to continue its growth in the international market where, we believe, growth is encouraged by the more liberal regulatory markets of other countries. We expect to see continued growth in the Asia-Pacific area, in Latin America and in the industrialized European nations. ANTEC believes we can continue our profitable growth in the international market without necessarily

becoming a much larger company.

Our continued expansion into foreign markets is however dependent on the U.S. government's efforts to either encourage or discourage foreign trade. We believe, along with our trade associations, EIA and TIA, that the U.S. government must work toward encouraging free and open global markets. We want to be able to continue to bring our new ideas, products and services to the world market in a regulatory environment that does not jeopardize our ability to realize profits from our salesmanship opportunities. It is important to our industry and our company that we have the ability to compete with companies in the U.S. and other countries in a free and open global marketplace.

The global communications revolution has and will continue to provide us with opportunities to compete in offering access to the information superhighway. Please help rather than hinder us in our efforts by making sure that the U.S. government supports policies aimed at fostering free and open global markets.

Chairman CRANE. Thank you very much, Mr. Faust. Let me just ask a quick question. How can governments best facilitate harmonious standards between Europe and the United States?

Mr. FAUST. Europe, in particular, is tough for a company like ours, because they have had standard-setting bodies that work at somewhat cross-purposes with ours. Of late, we are seeing with the need to interconnect the world, the ability to meet on a more open playingfield. So, I would say just to continue the efforts as they are going on now. We are seeing improvement, but we are not there yet.

Mr. CHAIRMAN. Progress, but not as fast as you would like. Congressman Rangel.

Mr. RANGEL. Mr. Faust, have you had a chance to review and reach any conclusions on our trade policies with Cuba?

Mr. FAUST. No. I would say for a company like ours, which builds infrastructure for telecommunications, if Cuba is open for us to sell into, we'd be happy to sell into it.

Mr. RANGEL. Are you familiar with the Helms-Burton Act?

Mr. FAUST. No, I am not.

Mr. RANGEL. Thank you.

Chairman CRANE. Thank you very much, and have a safe flight. Now, we will proceed to you, Sally.

STATEMENT OF SALLY A. JACKSON, PRESIDENT AMD CEO, ILLINOIS STATE CHAMBER OF COMMERCE

Ms. JACKSON. Thank you.

Mr. Chairman and Congressman Rangel, I represent the Illinois Chamber of Commerce, where I am the president and chief executive officer. Our 5,000 members are a very large segment of the Illinois economy. We employ about 23 percent of the total work force, over 1 million people. They represent all sectors of the economy; manufacturing, service, wholesale and retail trade, literally all factors of our economy, and they are predominately small businesses. Over two-thirds of our members have fewer than 100 employees. So while many of the large corporations, whom you have heard from already today, represent that segment of multi-national interest and capability, we also work closely with those companies that rely on outside expertise to help them get access to these new markets. And they are very interested in international trade and very engaged in the process of developing their own strategies in order to benefit from international trade.

Illinois has a long tradition of being a part of the international marketplace, as you heard from Governor Edgar and others. We were the first State 25 years ago to recognize that important factor in our economy and opened an international office, the first of any state, in Brussels, Belgium. And that has given us an opportunity to use state government, business associations and the private sector to support the various changes in trade policy in order to access opportunities for Illinois businesses.

NAFTA recently was a very important change in those laws for Illinois, with Canada being our number one trading partner, Mexico number five now. We have monitored the implementation of NAFTA very carefully. We have overwhelming support in the Illinois Chamber for NAFTA, and we find, after 2 years of imple-

mentation, that we have net an increase of 28,800 jobs in Illinois in that 2-year period, directly tied to NAFTA. And how does that compare to total job creation here in Illinois during that period? Well, on average, over the last 5 years, we have seen about 60,000 jobs every year. So, nearly 30,000 in a 2-year period is about 25 percent of our average job growth in total in the State of Illinois. So it has had an overwhelmingly positive impact. That is even with the devaluation of the peso and significant falloff in Mexico in the second year. So we are enthused about the success of NAFTA. The net impact is significant, and we do have programs and opportunities for those workers who are dislocated as a result of jobs lost to trade.

The Federal Government has supported those programs for years, through initiatives like the Trade Readjustment Act, the Trade Assistance Act, and now NAFTA dislocation has been brought into that realm of assistance. We find here in Illinois, with increases in international trade, we also see reductions in the levels of unemployment in Illinois. We have been on a downturn the last 5 years. Forty-five percent of our businesses in the entire State of Illinois now pay the minimum level of unemployment insurance, which means they have had virtually no unemployment experience in the last 4 years. So there is a relationship that's having a very positive impact.

I thought you might be interested in some specific examples of small businesses attempting to get into this market, and I would like to quickly tell you a couple of those stories.

One of our members in Southern Illinois is in the packaging and distribution of candy and other products for consumer checkout counter purchase. They have been very successful expanding in the United States. Recently they found an opportunity to sell their products in Japan. They were able to obtain enough orders to fill an entire shipping crate for sale to Japan and in the process of finalizing the paperwork, they found that all the original research and consultation they had been involved with related to a category of confectionery goods, which is their primary segment, but the product that was most popular and successful in orders in Japan was microwave popcorn, which unfortunately is an agricultural product. So with assistance and advice, they still ended up preparing all of their documentation inappropriately, created long delays in their capability to be able to fulfill orders that were real.

So we see small businesses, in this case a business that employs slightly over 100 employees, struggling to get access. They have the ability to sell. They have the capability to reach the market, but they get confused about some of the technical features of our laws, and that's the message for small business that I would like to leave you with; the need for small businesses to access accurate information easily in order to support and implement the policies that are increasingly fairer and fairer for free market open competition. The Federal Government can and should reduce the paperwork and make information and support more accessible.

[The prepared statement and attachments follow:]

TESTIMONY PRESENTED TO THE SUBCOMMITTEE ON TRADE OF THE HOUSE COMMITTEE OF WAY AND MEANS ON MAY 20, 1996 AT SCHAUMBURG, ILLINOIS BY SALLY A JACKSON, PRESIDENT AND CEO ILLINOIS STATE CHAMBER OF COMMERCE

Congressman Crane and members of the Subcommittee on Trade of the House Committee on Ways and Means, thank you for inviting the Illinois State Chamber of Commerce to testify before you in this important field hearing on the status and future direction of U.S. Trade Policy. The Illinois Chamber is the largest broad-based business association in the State of Illinois with more than 5,000 members representing all sizes and industry sectors in the Illinois economy. These companies employ well over 1 million workers, or one out of every five employees in the State of Illinois. Manufacturing, business services, and wholesale and retail trade are the largest sectors in our membership. Three quarters of our members are small businesses employing fewer than 100 employees.

Illinois has long been a participant in the international economy. More than 20 years ago, Illinois was the first state to establish a foreign trade office, which is still operational in Brussels, Belgium. With our long tradition of agricultural exports, complemented by industrial exports and expanded increasingly in recent years by business services, that long-term trend in our economy continues to grow. For several years our annual increases in exports have been running at nearly double the rate of increase for the nation as a whole. In 1995, Illinois' exports increased 23.6% to a record high $32 6 billion This compares to an overall national increase in exports of 13.8%. Greater than 1 out of every 8 jobs in our total workforce are now dependent on international trade. In the manufacturing sector its greater than 1 out of every 4 jobs, and increasing each quarter. Our top export continues to be industrial machinery and computer equipment at $8.3 billion. Exports of electronic and electrical equipment totaling 7.2 billion experienced a 41.7% increase this past year. Other major sectors include chemicals and allied products at $4.4 billion, up 19.1%, agricultural products up 41 2% to $2.3 billion and transportation equipment up 14.3% to $2.2 billion.

The Illinois Chamber and businesses we represent support the free enterprise system and open competitive markets. We encourage continued efforts to broaden the successful base of existing trade agreements including the NAFTA Our members of all sizes and sectors are involved with trade: both import and export; both product and service; in all geographical areas of the global economy. The approaches vary from self-sustained family businesses which explore international partners for supply or sales, to our large multi-national corporations that have a long history of full production and business engagements in numerous countries in the world.

Consider a family-owned business in Bridgeport, Illinois which packages and distributes a variety of candy and checkout counter consumer goods They recently established a contact to represent them in the Japanese market to sell Illinois produced popcorn packaged for retail sale. Their representative was able to secure adequate orders to fill the first full shipping container, and as they prepared to conclude the final details of the transaction they discovered that their product was governed by agricultural export laws as opposed to consumer good laws, and several revisions in their strategy had to be implemented. The innovation and energy of small business to identify means of expanding their markets internationally is there Nonetheless, the variations in specific requirements of existing trade law and policy are confusing for small companies to learn on their own. Therefore, we see increases in self-help trade associations developing here in Illinois on a regional basis so that people can learn and share experiences and respond more appropriately in their first efforts.

Another family-owned small business in Lawrenceville, Illinois, has developed a niche market specialty telephone product. For more than 10 years they have imported the basic molded plastic telephone from a supplier in Korea and have prepared the circuitry in their plant here in Illinois. They found this to be a cost effective and reliable supply source for the last decade. Even the smallest of businesses are successfully engaging in the identification and sustained use of international partners to grow their businesses here in Illinois, and provide employment for Illinois workers.

Another family-owned business which produces precision telescoping surveyor's rods and equipment in Mound City, Illinois, has demonstrated success by competing head-to-head with its top Japanese competitor to now garner marketshare worldwide for this niche specialty equipment. This second generation family business has demonstrated that the existing trade policy of the United States allows entrepreneurs to create successful markets worldwide even with the toughest competition.

Let's reflect on the results of two years under the North American Free Trade Agreement for Illinois business. The NAFTA provides Illinois' strong manufacturing and agricultural economy with a competitive advantage in dealing with its first and fifth largest trading partners, Canada and Mexico. Since the agreement became effective on January 1, 1994, Illinois has experienced an increase of 33,600 manufacturing jobs with 93% of the increase (31,400) occurring in Illinois' top ten export industries. In addition to growth in Illinois' job base, wages have substantially improved since the emergence of NAFTA. The average manufacturing wage in the top ten industries (industries with substantial exports to Mexico and Canada) has been consistently higher than the average for all manufacturing. Furthermore, a number of Illinois top export industries (transportation, industrial machinery, primary metals, and chemicals) already maintain an average manufacturing wage that is substantially higher than the norm.

A year after NAFTA's inception, Illinois experienced a 34% increase in exports to Mexico and a 17% increase in exports to Canada. Although Mexico faced serious economic adversity in 1995, NAFTA continued to promote trade, increase economic competitiveness and foster productive investment within the region. Even with the recent devaluation in Mexico, unlike the 1982 peso devaluation, Mexico remains fully committed to continuing their economic intregation through trade and investment liberalization as agreed upon under the NAFTA. Between 1993 and 1995, according to Illinois data generated by the U. S. Department of Commerce 28,800 Illinois jobs were sustained through trade with Canada and Mexico. This is a 23.4% change over a two year period and demonstrates that NAFTA created prosperity in Illinois despite the severe devaluation of the peso in Mexico.

NAFTA opens markets for American products that were previously closed in Mexico and Canada. Over the next 15 years, NAFTA will eliminate tariffs completely and remove many of the non-tariff barriers that have hindered trade among the three countries. This approach will continue to be successful and we encourage the expansion of the treaty and the approach used to negotiate this treaty with Chile and others in South America

The Illinois Chamber also wishes to support continuation of "Most Favored Nation Status" for China. We support a U.S. trade policy that opens markets for U.S. exports, generates more jobs for American workers, and helps lead toward a more open China. Renewal of Most Favored Nation Status is fundamental to that goal The ability of U.S. companies to compete and prosper in China and the creation and maintance of U.S jobs will be undermined if our relationship with China continues to spiral downward. Last year U S companies exported roughly $12 billion in goods and services to China. These exports supported approximately 200,000 high wage jobs. Imports and investments sustained many thousands more All of this investment and trade will be at stake without More Favored Nation Status We support the U S Chamber's detailed position of unconditional renewal of China's Most Favored Nation Status, which is found as an attachment to my printed testimony and incorporated therein

China is vital to America's economic future and American companies and workers have a huge stake in future expansion of U.S. trade with China U. S. economic sanctions on China would seriously harm U.S. workers, consumers and high growth industries including chemical, electronics, agriculture, telecommunications, power generation, petroleum and aerospace. Trade provides a positive basis for U.S.-China dialogue by building cross-cultural ties and awareness of American culture and political values. The United States needs to maintain bi-partisan support for a clear, credible and consistent long-term China policy. The long-term goal of American trade policy should be a stable U.S.-China commercial framework that opens markets for U.S. exports, generates more jobs for American workers, and supports positive steps toward a more open China.

As we approach the 21st century global economies are taking center stage and nations all over the world are scrambling to establish economic partnerships. By maintaining a partnership with our neighbors we will remain competitive in the global markets and ensure economic growth and prosperity for all Illinoisans. My expanding that partnership even further, we will be even more successful.

I wish to thank the Subcommittee Chairman Congressman Crane for holding this hearing and demonstrating the significance of international trade to the Illinois economy which is truly a microcosm of our nation. Thank you.

March 12, 1996

BASIC NAFTA DATA
With Final 1995 MISER Data

This table shows Illinois exports in 1993, 1994 (the first year of NAFTA), and 1995. MISER reports worldwide Illinois exports grew 20.2% in 1994 and 23.6% in 1995 compared to U.S. growth rates of 10.2% and 13.8%. After increasing 37.7% in 1994, Illinois exports to Mexico, as estimated by MISER, were down 25.4% in 1995, and Mexico dropped from our third largest customer to fifth. The year-to-year rate of change of Illinois exports to Mexico bottomed out in the second quarter of 1995 (-32.2%) and improved in the third and fourth quarters (-24.2% and -23.1% respectively). ADM today reported a similar pattern of recovering sales to Mexico. MISER estimated Illinois exports to Canada grew 17.6% in 1994 and 9.8% in 1995.

The direct export data used here are the MISER Series II data which are tabulated by zip code of exporter. Both MISER Series I and Series II undercount Illinois' agricultural exports. A correction for the agricultural export undercount was made based on U.S.D.A. export statistics for Illinois. Services exports for states are not included in either MISER series nor in any other known, published data. Illinois' total exports were used to trigger the REMI econometrics model for the state to determine the total employment due to these direct exports. The estimates are the direct and the indirect jobs (including services involved in producing goods for export) resulting from total exports.

Agricultural exports represent approximately 7% of the Illinois shipments to Canada and 23% of the Illinois exports to Mexico

Illinois' Exports and Jobs Sustained
(Dollars in Billions)

	1993	1994	1995	93-95 Change	Percent
Total Exports	$22 871	$27 007	$33.390	$10.519	46.0%
Jobs Sustained by Tot. Exports	464,600	548,400	625,300	160,700	34.6%
Exports to NAFTA	$6 952	$8 434	$8.566	$1.614	23.2%
Jobs Sustained by NAFTA	123,200	155,500	152,000	28,800	23.4%
Exports to Canada	$5.368	$6.305	$6.926	$1.558	29.0%
Jobs Sustained by CN Exports	91,900	109,700	116,600	24,700	26.9%
Exports to Mexico	$1.584	$2.129	$1.640	$.056	3.5%
Jobs Sustained By MX Exports	31,300	45,800	35,400	4,100	13.1%

MFN1

ILLINOIS JOB AND SALARY GROWTH

Jobs (in thousands)

Industry Sector	1993	1994	1995	*Numeric Growth* 1993-94	1994-95	1993-95
Industrial Machinery	137.8	137.7	139.2	-0.1	1.6	1.4
Electronic Equipment	106.6	113.8	120.0	7.0	6.4	13.4
Chemical Products	63.7	62.8	62.2	-1.1	-0.4	-1.5
Ag. Products (*)	N/A	N/A	N/A	N/A	N/A	N/A
Transportation Equipment	43.9	48.0	50.3	4.1	2.3	6.4
Food Products	95.2	94.9	95.0	-0.3	0.1	-0.2
Instruments	36.4	35.3	34.0	-1.1	-1.3	-2.4
Fabricated Metals	99.2	104.5	110.9	5.3	6.4	11.7
Primary Metals	49.4	48.8	46.5	-0.6	-2.3	-2.9
Rubber & Plastics	58.0	59.6	61.2	1.6	1.6	3.2
Paper & Allied	33.5	34.5	35.8	1.0	1.3	2.3
Total Top 10 Exporters	723.7	739.5	755.1	15.8	15.6	31.4
Total Manufacturing	933.1	952.1	966.7	19.0	14.6	33.6
Total Jobs	5330.5	5482.9	5598.6	132.4	135.7	268.1

Average Hourly Earnings (in dollars)

Industry Sector	1993	1994	1995
Industrial Machinery	13.84	14.05	14.29
Electronic Equipment	9.97	10.10	10.47
Chemical Products	13.32	13.73	14.21
Ag. Products (*)	N/A	N/A	N/A
Transportation Equipment	14.39	14.89	15.79
Food Products	11.49	11.55	11.89
Instruments	10.92	11.38	11.91
Fabricated Metals	12.41	12.57	13.00
Primary Metals	13.88	14.03	14.28
Rubber & Plastics	10.74	10.86	11.32
Paper & Allied	11.43	11.57	12.10
Total Top 10 Exporters	12.5	12.44	12.81
Total Manufacturing	12.04	12.25	12.83

(*) Jobs data for Agricultural Production (crops) are not available from the CES.

Data Source: Current Employment Statistics Program, monthly payroll survey of approximately 11,000 Illinois businesses

Prepared by Economic information and Analysis, Illinois Department of Employment Security 04/17/96

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WHY COMPREHENSIVE ENGAGEMENT IS THE ONLY CHINA POLICY THAT MAKES SENSE

The U.S. Chamber strongly supports unconditional renewal of China's MFN status and comprehensive engagement with China. The United States should not use China's MFN status as a means to "send a message" on human rights, intellectual property rights, arms proliferation or other issues.

The policy of comprehensive engagement recognizes our vital interest in maintaining regional stability, preventing weapons proliferation, fostering democratic ideas and working towards fair and free trade.

- **China's MFN status helps the United States achieve its human rights and other interests.**

  Trade provides a positive basis for U.S.-China dialogue. Trade builds cross-cultural ties and awareness of American cultural and political values. If China's MFN status were revoked, we would erode our economic relationship, harm those forces in China which are most sympathetic to political reform, and put more power into the hands of hard-liners who favor stronger government control.

  The best way for the United States to see a prosperous, free China is for U.S. firms to stay commercially engaged.

- **Trade with China is in America's economic interests.**

  America's exports to China continue to grow.

  In 1995, U.S. exports to China totaled approximately $12 billion, up more than 26% from 1994. As China continues to develop, it will spend billions of dollars in areas where U.S. firms are very competitive.

  America's investment in China continues to grow.

  U.S. direct business investment in China for 1994 was $1.7 billion dollars, up 82% from 1993. Total U.S. investment in China is well over $9 billion.

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"MFN STATUS FOR CHINA"

IMPORTANT FACTS AND FIGURES

- In 1995, U.S. trade with China supported over 200,000 high-wage jobs in the United States, plus tens of thousands more jobs in ports, retail establishments, and consumer goods companies.
- Without MFN, tariffs on about 95 percent of U.S. imports from China would increase dramatically. American consumers would bear the brunt, with price increases of 30-50% or higher on many common consumer goods.
- China is among the world's fastest growing economies, with real growth of more than 10 percent last year, and an average growth rates over 7% for each of the past fourteen years.
- Bilateral trade has grown from $2 billion in 1978 to nearly $60 billion in 1995.
- U.S. exports of goods to China have been growing at more than 20 percent per year since 1990; total exports of goods and services to China were approximately $12 billion in 1995, up more than 26% from 1994.
- China must invest over $745 billion in infrastructure development, according to the World Bank. Loss off MFN will cost U.S. firms dealing in high-technology equipment, aerospace, telecommunications, petroleum technology, computers and power generation.
- Cultural links between the United States and China have been growing dramatically. In 1994, U.S. travellers to China numbered more than 470,000 and nearly 40,000 Chinese students were enrolled in American Universities.
- U.S. business invested in China $1.7 billion dollars during 1994, up 82% from 1993. Total U.S. business investment in China amounts to $9 billion.

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"WHY MFN STATUS FOR CHINA"

1. **The United States must stick to its policy of engagement.**

   The annual struggles over MFN and numerous threats of sanctions have undermined efforts to implement a long-term U.S. strategy toward China, and set back progress on trade and human rights. The United States has pursued a policy of "engagement" with China since 1973, when President Nixon's visit led to the resumption of diplomatic relations. This policy has been followed by Presidents Nixon, Ford, Carter, Reagan, Bush, and Clinton with bipartisan Congressional support. Under engagement, the United States and China have recognized that both nations have an interest in overall cooperation, even though we may differ on certain issues.

2. **China's human rights abuses, particularly imprisonment of prominent political dissidents, are troubling to all Americans.**

   But massive sanctions would hurt the cause of human rights: sanctions would cut off U.S. influence, isolate pro-American Chinese officials, and strengthen the political standing of Chinese government hard-liners. It is important to take a long-term perspective of progress on human rights in China.

3. **American companies have been and will continue to be forces for positive change in China.**

   On the human rights front, the opening of China's economy to the rest of the world has been a strong catalyst for local political reform. Through their presence American companies promote human welfare and the principles of democracy and free enterprise. To promote further progress on human rights in China, the United States must remain commercially engaged.

   The Chinese people have experienced vast and on-going improvements in economic freedom, living standards, access to information, and political expression during the 15 years since relations were normalized. Individual Chinese are now free to choose their place of work, seek out new entrepreneurial opportunities, watch foreign television programs, read Western magazines and newspapers, and express political views in private.

4. **Unilateral sanctions do not succeed in changing the behavior of foreign countries, particularly when the target country is an important economic and military power.**

   In the case of China, the U.S. would be acting alone; the target has a large and healthy economy; and the economic costs to the U.S. would be high. Based on these criteria, the prospects for success with China appear minimal at best, and punitive U.S. sanctions have a high risk of backfiring.

5. **Linkage of China's trade status to emigration, child labor and human rights has no support among our major competitors.**

   Europe and Japan are ready and willing to step in and meet China's infrastructure and technology needs if we invoke economic sanctions.

6. **Revoking MFN is likely to increase, not decrease, the U.S. trade deficit.**

   China is the fastest-growing market in the world for U.S. exports. Our exports have doubled in the last five years to over $12 billion. Imports of low-cost consumer goods, such as textiles, shoes, and toys account for China's trade surplus. If MFN were revoked, assembly of these goods would not return to the United States, but instead would likely go to other developing country suppliers in Asia, such as India, Thailand, Indonesia or Pakistan. In other words, these consumer goods would still be imported, but at a higher price, so there would be a net deterioration in the U.S. trade balance, and loss of about $12 billion in American exports to China.

7. **The IPR issue is important to American companies, but it should not be linked to China's MFN status.**

   While China has made some progress in meeting its obligations on under the 1995 bilateral accord on IPR protection and market access, we recognize that much more remains to be done. The U.S. Chamber has and will continue to support the efforts of our government to improve IPR protection and market access. China's compliance with the IPR Accord should be a priority in bilateral negotiations, but loss of MFN will make sanctions meaningless.

Chairman CRANE. Very good. Next, Bob Berman.

STATEMENT OF ROBERT S. BERMAN, CHAIRMAN, INTERNATIONAL POLICY SUBCOMMITTEE, CHICAGOLAND CHAMBER OF COMMERCE

Good afternoon, ladies and gentlemen. My name is Robert Berman and I practice corporate law at Rudnick & Wolfe in Chicago. I am here today on behalf of the Chicagoland Chamber of Commerce, where I serve as the chairman of the Chamber's International Policy Committee.

The Chamber represents over 2,000 businesses in the greater metropolitan Chicago area. Our membership employs over 1 million individuals in the Chicago region. We have a great interest in the issues you are discussing today and we appreciate this opportunity to share our views with you.

When we found out that we would be participating in this hearing, we simply contacted our members and posed some questions to them. We asked our members are you emphasizing international expansion in upcoming years, and if so, in which regions? And moreover, we asked our members to convey to us any messages they had about problems, obstacles, issues which they have encountered in doing business overseas.

In a nutshell, the two regions our members focused on in their responses to us are the regions covered by NAFTA and APEC. The North American and Asian-Pacific regions show great promise for our members. As for issues that we would like to convey to you, I will just go through a few of them very briefly.

The first one is corrupt business practices. Many of our members are small to mid-size companies that cannot afford, even if so inclined, to participate in some of the corrupt practices undertaken by many foreign competitors. Foreign multinational corporations may not only be able to afford illicit payments, but also may receive favorable tax treatment in their home countries for such reprehensible conduct. We support stringent efforts to oppose extortion and bribery and to persuade foreign nations to disallow tax deductions for bribes which companies pay to foreign officials in obtaining export contracts. By granting a tax deduction for such expenses, foreign nations encourage corruption and place our members at a competitive disadvantage in the global marketplace. The U.S. Government should pressure foreign nations to establish transparent procedures relating to the acts of public officials in commercial transactions. Proper enforcement involves the adoption and implementation of strict laws, regular surveillance and investigation, and severe penalties for those who violate the law.

The second issue pertains to government procurement policies. We would like to see more fair and open government procurement policies adopted in a number of countries, particularly in those countries which are modernizing their infrastructures. In such nations, the public sector presents tremendous opportunity for Chicagoland businesses which excel in areas such as telecommunications, energy and construction. We strongly oppose the practice of governments in certain countries to discriminate against foreign bidders, and we support both multilateral and bilateral efforts to

pressure foreign countries to adopt and implement more transparent and fair procurement policies.

Third, we would like to mention agriculture promotion. Given that we represent the breadbasket of the United States, naturally we would like to see greater promotion of our agricultural industries overseas. High growth in the population and national income of developing and newly industrialized countries provides significant opportunities for increased exports of food products as well as the tools, machinery and equipment necessary to develop local agricultural industries. Once such industries are established, additional opportunities will develop for U.S. companies in connection with the packaging, distributing, marketing and advertising of food products. Midwestern businesses are leaders in these sectors and should play an active role in this chain of development abroad.

Another sensitive issue which our members have expressed to us pertains to intellectual property protection. Piracy and counterfeiting of intellectual property in certain foreign countries has been a tremendous problem for our members. Without a guarantee of intellectual property protection, we are discouraged from investing or transferring technology abroad. We support bilateral and multilateral initiatives to pressure our trading partners, not only to adopt necessary laws and regulations, but also to vigorously enforce the principles set forth in various multilateral initiatives.

One more issue pertains to trade and customs infrastructures. As Governor Edgar mentioned this morning, exports play a tremendous role in our State's economy. Consequently, we have a great interest in supporting efficient customs procedures in foreign markets. Obstacles such as complicated tariff systems, unpredictable customs valuation procedures and complex rules of origin raise the cost of international trade for our members. Harmonized tariff schedules and rules of origin, proper training of foreign customers officials and the implementation of carnet systems to facilitate the sampling of U.S. goods abroad are a few examples of steps which we would encourage.

In conclusion, I hope that the views which I have expressed have provided you with an insightful understanding of the concerns of our members, whom I feel are representative of Chicago's business community. I have touched upon only a few of our areas of interest, but we would like you to know that we fully support all initiatives and efforts undertaken by the U.S. Government to create new and enhance existing opportunities for U.S. businesses overseas. We would be happy to help out in any way possible.

[The prepared statement follows:]

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CHICAGOLAND CHAMBER OF COMMERCE
INTERNATIONAL POLICY COMMITTEE

VIEWS ON FUTURE TRADE LIBERALIZATION
AND CURRENT INTERNATIONAL POLICY ISSUES

HEARING OF THE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

MONDAY, MAY 20, 1996
SCHAUMBURG, ILLINOIS

Good morning Ladies and Gentlemen. My name is Robert Berman, and I am an attorney at Rudnick & Wolfe in Chicago. I am a member of the Chicagoland Chamber of Commerce, and the Chair of the Chamber's International Policy Subcommittee. The Chamber represents more than 2,000 companies that collectively employ over 1,000,000 individuals in the metropolitan Chicago area. Our membership has a vital interest in the issues which you are discussing, and we thank you for the opportunity to share our views with you.

I will spend the next few minutes describing our support for continued progress of trade liberalization within the regions covered by the North American Free Trade Agreement ("NAFTA") and the Asia-Pacific Economic Cooperation ("APEC") forum. While our members are interested in seeing greater developments in trade and investment relations in other regions, including South America, Africa, and the European Union, the North American and Asia-Pacific markets present particularly valuable opportunities for members of the Chicagoland business community who emphasize future growth through international expansion. After commenting briefly on NAFTA and APEC, I will highlight certain issues which we consider to be high priority matters of international policy.

REGIONAL INITIATIVES

North American Free Trade Agreement

Strong economic ties within the region covered by NAFTA is undoubtedly in our best interest. Since NAFTA went into effect, employment in the U.S. manufacturing sector has increased by 225,000 jobs. Both in the U.S. and in Illinois, Canadian and Mexican markets are the first and second largest destinations of our exports. The province of Ontario alone buys more U.S. goods than Japan. As for Illinois, between 1993 and 1994, Illinois exports to Canada increased by over 17%. In 1994, exports to Canada accounted for 24% of the State's total exports. In 1995, Illinois companies exported approximately $7 billion of goods to Canada, a large portion of which included automobiles, telecommunications equipment, various chemicals, metals and plastics, aircraft, electric generators, and engines.

In 1995, Illinois ranked fifth among U.S. states in terms of exports to Mexico, with sales totaling $1 billion. Illinois industry sectors whose exports to Mexico experienced large percentage increases in 1995 include: metal mining (72% increase); lumber and wood products (55% increase); petroleum and coal products (8% increase); and forestry (4% increase). Such impressive trends exist notwithstanding Mexico's recent currency crisis. Although total U.S. exports to Mexico may have decreased in 1995 following the peso devaluation, they were still higher than pre-NAFTA. Furthermore, without NAFTA, U.S. exports to Mexico could have

fallen by as much as $25 billion. Thus, NAFTA provides a degree of certainty to often unpredictable international trading conditions.

Asia-Pacific Economic Cooperation

Market reforms, economic liberalization, and rising standards of living throughout the Asia-Pacific region present tremendous opportunities for U.S. and Illinois companies. As a forum for the declaration of national commitments to create a regional free trade regime through trade and investment incentives, APEC is an extremely important initiative. Although it began as an informal discussion group, APEC has evolved into a promising body to strengthen commercial ties in an area which is home to the world's fastest growing economies. Illinois companies in industries ranging from aviation to telecommunications to food and consumer goods can benefit significantly from efforts undertaken by APEC's members to promote and facilitate commercial relations. However, we emphasize the importance of adhering to the time frame which APEC's members have set forth for the implementation of the forum's principles. A rapid pace of reform will keep the momentum going strong and will benefit nationals of all countries involved.

HIGH PRIORITY ISSUES

Corrupt Business Practices

Many of our members are small to mid-size companies that simply cannot afford to participate in some of the corrupt practices undertaken by many foreign competitors. Foreign multinational corporations may not only be able to afford illicit payments, but also may receive favorable tax treatment in their home countries for such reprehensible conduct. This is unfair and inappropriate in the emerging global trading infrastructure. We support stringent efforts to oppose extortion and bribery, and to persuade foreign nations to disallow tax deductions for bribes which companies competing for export contracts pay to foreign officials. By granting a tax deduction for such expenses, foreign nations encourage corruption and place U.S. companies at a competitive disadvantage in the global marketplace. The U.S. government should pressure foreign nations to establish and enforce transparent procedures relating to the acts of public officials in commercial transactions. Proper enforcement involves the adoption and implementation of strict laws, regular surveillance and investigation, and severe penalties for those who violate the law.

Government Procurement Policies

We would like to see more fair and open government procurement policies adopted in a number of countries, particularly in those countries which are modernizing their infrastructures. In such countries, the public sector presents tremendous opportunity for Chicagoland businesses which excel in areas such as telecommunications, energy, and construction. We strongly oppose the practice of governments in certain countries to discriminate against foreign bidders, and we support multilateral efforts such as the WTO Agreement on Government Procurement as well as bilateral initiatives to pressure foreign countries to adopt and implement more transparent and fair procurement policies.

Agriculture Promotion

Given that we represent the "breadbasket" of the U.S., naturally we would like to see greater promotion of our agricultural industries overseas. High growth in the population and national income of developing and newly industrialized countries provides significant opportunities for increased exports -- of food products as well as the tools, equipment, and machinery necessary to develop strong local agricultural industries. Once such industries are established, additional opportunities will develop for U.S. companies in connection with the packaging, distributing, marketing, and advertising of food products. Midwestern businesses are leaders in these sectors and should play an active role in this chain of development abroad.

Intellectual Property Protection

Piracy and counterfeiting of intellectual property in certain foreign countries is a vexing problem for Chicagoland businesses. Violations of intellectual property rights place our members at a costly disadvantage in attempting to expand sales to foreign markets. Without a guarantee of intellectual property protection, we are discouraged from investing or transferring technology abroad. Accordingly, such practices must end. We support both bilateral and multilateral initiatives to pressure our trading partners not only to adopt necessary laws and regulations, but also to vigorously enforce the principles set forth in initiatives such as the Uruguay Round TRIPS Agreement -- and to do so without delay.

Trade and Customs Infrastructures

One out of every four jobs in Illinois' manufacturing sector is a result of exporting our goods, and one out of every eight jobs in Illinois depends on exports. Given the importance of exports to our State's economy, we have a great interest in supporting efficient customs infrastructures in foreign markets. Obstacles such as complicated tariff systems, unpredictable customs valuation procedures, and complex rules of origin raise the cost of international trade. This is especially true in the case of small to mid-size businesses that lack the resources of major multinational corporations to deal with such issues efficiently. Harmonized tariff schedules and rules of origin, proper training of foreign customs officials, and the implementation of carnet systems to facilitate the sampling of U.S. goods in foreign markets are a few examples of steps which would further our interests abroad.

Environment

We support the adoption of effective environmental laws and regulations in the world's developing and newly industrialized nations. Sustainable development is threatened and the quality of the world's natural surroundings will diminish unless sound environmental policies accompany market reforms and industrialization. Regional initiatives to define environmental goals and articulate uniform standards would be an efficient and productive way to achieve desired results, and to help U.S. companies comply with local laws. Environmental objectives should not, however, be linked to trade and investment goals. A healthy environment is conducive to increased commerce, but trade sanctions are inappropriate tools to enforce environmental policy.

CONCLUSION

I hope that the views which I have expressed have provided you with an insightful understanding of the concerns felt by our members, whom I feel are representative of Chicago's business community. I have touched upon only a few of our areas of interest relating to trade liberalization and international policy. However, we fully support all initiatives and efforts undertaken by the U.S. government to create new and enhance existing opportunities for U.S. companies in all foreign markets, and would be pleased to assist you in any possible way. Thank you.

Chairman CRANE. Thank you, Mr. Berman.
Mr. Paullin.

STATEMENT OF RICHARD PAULLIN, EXECUTIVE DIRECTOR, INTERNATIONAL TRADE ASSOCIATION OF GREATER CHICAGO

Mr. PAULLIN. Good afternoon. My name is Richard Paullin. I am the executive director of the International Trade Association of Greater Chicago. We are an Illinois not-for-profit voluntary business association, the largest such association in Illinois, and one of the largest in the Midwest. Our 520 members represent a range of materials, merchandise and service providers with interests in import, export, licensing, joint ventures and investments abroad.

As an association, we are dedicated to furthering international trade by providing a forum for the exchange of practical information within the international business community. For over 18 years, Mr. Chairman, we have held regular meetings on the third Wednesday of each month, practically in this neighborhood, almost always in a suburban Chicago location near O'Hare.

Over the years, we have counted some of America's largest corporations as members, but today I am really representing the majority of our membership, those small and medium size enterprises struggling to compete in today's rapidly changing global environment. In general, these are firms which do not have a 3 or 5 year strategic plan for international. For them, survival in international markets usually means closing the deal within the next 3 to 5 months. For them, U.S. trade policy needs to have a single unified objective and that is to support in a consistent and a sustained manner, the exports of U.S. growers, manufacturers and service firms.

To do so, we think the policy must be grounded in the harsh realities of the present and what we foresee into the 21st century. Three trends in particular kept coming up over and over again as we talked to our members.

First, greater China will soon eclipse the United States as the world's largest economy, profound repercussions not only for the geopolitics, but for trade and investment as well.

Second, although our Nation's exports of agricultural products, manufactured goods and services will continue to grow, our share of global trade will continue to decline, as will our ability to influence other nations' trade policies. We have said earlier this morning and today, the United States is the world's largest exporter, and indeed we used to account for something like 30 or 40 percent of all world trade, but that was 40 years ago. Today, we account for roughly 15 percent and it is going to go down as world trade expands.

The third trend that our members note is that regional trade alliances will continue to burgeon and solidify, creating opportunities for countries who are members of the alliances and providing disincentives to nonmembers. These alliances including the European Union, include NAFTA, South America, and whatever is going to happen out in Asia. We think they are important. We think the United States needs to engage in more alliance building. We think that we are dragging our feet, frankly, with respect to Chile and NAFTA.

To insure our economic security in the 21st century, we believe that U.S. trade advocacy, promotion and policy functions currently performed by 19 Federal agencies and coordinated by a committee, we think these functions need to be consolidated, streamlined and managed by one agency that speaks to our trading partners with one consistent voice. We think that one agency's priorities should be to promote strategic commercial alliances worldwide, because these provide American exports with greater market access and transparent rules for trade and investment.

Second, we think the objective should be approve and enhance the quality, the scope and the delivery of commercial market intelligence. Three, to develop a comprehensive program for promoting U.S. service exports and protecting intellectual property rights. Four, to form strategic alliance with our trading partners to combat violations of international trade practices and intellectual property rights. Right now it seems when we have an intellectual property dispute, for example, with China, that we are the only one out there pointing at China and saying you have got to change your ways. Why cannot some of our other western allies get involved in it? We should be building coalitions.

We should address domestic policies and programs to make U.S. firms more competitive exporters. For example, port charges, infrastructure, we have poor roads and highways, the educational infrastructure that you spoke of so eloquently earlier, Mr. Rangel.

We should negotiate aggressively to remove foreign market barriers for U.S. exporters. We should not be backing down on that. And we think that the People's Republic of China, in no particular order, the European Union and Japan should be key targets for those negotiations.

Finally, we think that a single agency needs to seek ways to involve U.S. firms in international markets. There have been some studies out over the last 5 or 6 years that suggest that something like 10,000 U.S. firms that could export, do not. Well, if they do not get started, they are not going to get with the program and it is going to be too late. So thank you very much for your time.

[The prepared statement follows:]

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THE FUTURE OF U.S. TRADE POLICY

Statement by

Richard Paullin
Executive Director
The International Trade Association of Greater Chicago

Before the
U.S. House of Representatives Ways and Means Committee
Subcommittee on Trade
The Honorable Philip M. Crane, Chairman

May 20, 1996
Schaumburg, Illinois

The International Trade Association of Greater Chicago (ITA/GC) is an Illinois not-for-profit, voluntary business association and the largest such association in Illinois. Our 520 members represent a range of materials, merchandise and service providers with interests in import, export, licensing, joint ventures and investments abroad.

As an association, we are dedicated to furthering international trade and commerce by providing a forum for the exchange of practical information within the international business community. For over 18 years we have held regular monthly meetings, on the third Wednesday of each month, at a suburban Chicago location. These meetings feature a technical presentation as well as a significant opportunity for the exchange of information among attendees.

The ITA/GC has become a recognized leader in promoting international commerce. In May 1994, the Association was honored by Illinois Governor Jim Edgar with the first *Governor's Award for Export Awareness and Development*. In 1990, the ITA/GC received one of the country's highest international trade awards, *the President's "E" Award for Export Service*. According to then U.S. Secretary of Commerce Robert Mosbacher, the ITA/GC received this prestigious award *in recognition of outstanding contributions to the increase of U.S. trade abroad*.

Over the years, we have counted some of America's largest corporations as members, but today I am representing the majority of our membership: those small and medium-sized enterprises struggling to compete in today's rapidly changing global marketplace. In general, these are firms which do not have a three-year or five-year strategic plan. For them, survival in international markets means making the sale within the next three-to-five months.

International trade is vital to our economic security. Exports accounted for almost 25% of U.S. Gross Domestic Product (GDP) in 1995 and for 30% of real GDP growth in the U.S. over the last ten years. In Illinois, the nation's fifth largest exporting state last year, exports of $32.6 billion in 1995 were up 23.6% over 1994, supporting approximately 650,000 jobs. One in four Illinois manufacturing jobs is export related.

Moreover, from a January 1996 study by the Institute for International Economics and The Manufacturing Institute, we know that: export-related jobs pay 10-15% more than the average wage; worker productivity in exporting firms is 20% above the average; exporting firms expand their employment almost 20% faster than non-exporters; and that small and medium-sized exporters account for 70% of these results.

U.S. trade policy should be designed with one objective: to support, in a consistent and sustained manner, the exports of U.S. growers, manufacturers and service firms. To do so, the policy must be grounded in the harsh competitive realities of the present and those foreseen for the 21st century, including:

- Greater China will soon eclipse the U.S. as the world's largest economy.
- Although our nation's exports of agricultural products, manufactured goods and services will continue to grow, our share of global trade will continue to decline, as will our ability to influence other nations' trade policies.
- Regional trade alliances will burgeon and solidify, creating opportunities for members to the detriment of non-members.

To ensure our economic security into the 21st century, we believe that the U.S. trade advocacy, promotion and policy functions, currently performed by 19 federal agencies and "coordinated" by a committee, must be consolidated, streamlined and managed by one agency that speaks to our trading partners with one consistent voice. That agency's priorities should be to:

- promote strategic commercial alliances worldwide to provide American exporters with greater market access and transparent rules for trade and investment;
- improve and enhance the quality, scope and delivery of commercial market intelligence;
- develop a comprehensive program for promoting U.S. service exports and protecting intellectual property rights;
- form strategic alliances with our trading partners to combat violations of international trade practices and intellectual property rights;
- address domestic policies and programs to make U.S. firms more competitive exporters;
- negotiate aggressively to remove foreign market barriers for U.S. exporters, particularly with respect to barriers in the People's Republic of China, the European Union and Japan; and
- seek ways to involve more U.S. firms in international markets.

Thank you for this opportunity to present our views.

Chairman CRANE. Thank you, sir. Let me ask you a question first, Ms. Jackson. You said two-thirds of your members employ 100 or less. What percentage of that membership is in the foreign export market?

Ms. JACKSON. Right now, about 10 percent of the small companies have begun to export.

Chairman CRANE. Are there, in your estimation, significant opportunities for expansion to those small companies?

Ms. JACKSON. Dramatic. Even with the participation in expansion we have seen so far, there is dramatic opportunity for them.

Chairman CRANE. But, a part of the problem is knowing what all the procedures are for entering foreign markets. I have heard from a number of small companies that they are totally perplexed and consider the procedure too complicated, so they abandon the whole idea.

Ms. JACKSON. And it also relates to the comment that was made about the 19 Federal agencies with different roles in the process, the need to be able to go one place to get information, to take you from start to finish. it is impossible to do that now. Different interpretations of the same regulations over time are a major problem.

Chairman CRANE. Let me ask the staff. Do you know the 19 different agencies involved?

Staff. I know some of them.

Chairman CRANE. If not, could you get us a list of the 19 different agencies?

Ms. JACKSON. I bet together we could.

[The information was not available at the time of printing.]

Chairman CRANE. Frankly, while I favor the dismantlement of the Department of Commerce, the trade functions of the Commerce Department should be preserved, and consolidated under, in effect, one roof where you could simplify that procedure. It is something Congressman Rangel would support also.

Mr. RANGEL. Talk with me next year.

Chairman CRANE. OK. Now, Mr. Berman, you were talking about bribery and corruption. Is that confined to a region in the trading community? In other words, trade with the EU, is there any significant evidence of bribery or corruption involved there?

Mr. BERMAN. Our comments regarding bribery and extortion really was not region specific. Our members have voiced concerns about bribery in various countries. Just off the top of my head, we have not had many issues arise pertaining to bribery in Western Europe, more in the Asian region.

Chairman CRANE. Is it the least developed countries? Is there a differential in bribery and corruption in some of the most advanced countries versus some of the least?

Mr. BERMAN. Not necessarily. We have had some issues arise with bribery—I should not exclude actually Western Europe—in some European countries. So more comments have arisen in connection with Asian countries, many of which have arisen in developing Asian countries, more so than the developed countries. I cannot really generalize because comments and concerns have been made in various countries.

Chairman CRANE. Now, procedurally, what do you do, or a company, what does it do when it finds it is contending with bribery

or corruption in trying to get into a market? Do you protest to the USTR or to the Commerce Department?

Mr. BERMAN. I imagine that it would depend on the size and nature of the company involved. Many of our small and mid-size companies that have raised this issue really have not done anything in terms of conveying the message to the government. Some of them had to back away from various lucrative markets, just because they cannot afford the costs, the risks of getting involved in this kind of practice.

Chairman CRANE. I wish you would encourage them to communicate that, because it gives us a little bit more negotiating leverage. We are trying to expand the concept of free markets. That is market access here, as well as ours over there. And so if you could encourage your members to try and give us as much input as they can.

I will yield to my distinguished Minority Leader.

Mr. RANGEL. I will accept that.

Chairman CRANE. That's because he was in that majority position all that while, it goes to his head.

Mr. RANGEL. I have become used to it. Tell me, how would a small business cut a deal to export? Where would they go? What services do you provide to afford opportunity for small businesses to get access to export deals?

Mr. PAULLIN. None directly. As a voluntary trade association, what we do is try to bring parties together. So usually that means, and some of our most successful programs in fact are, we get trade missions from abroad to meet with our membership and then we move on and let the businesspeople talk.

Mr. RANGEL. Has the U.S. Department of Commerce set up those type of trade missions for you here?

Mr. PAULLIN. Probably. It seems in the last 5 years, there are more and more trade missions that are just here, because this is the market, and in fact, our Chinese friends would tell us there is a group in town from some province this week and there was a group in town last week and there is another group from another province.

Mr. RANGEL. Would not your associations be the best really to get a better understanding of the law and things that have to be done, so that we could hear from you in terms of finding out what is working and what is not working and foreign missions could get in touch with you to bring together your membership who have an interest in that.

Ms. JACKSON. All of us do a great deal of that, and we do it cooperatively, too, in many cases. That is one response that has been necessary because information has not been readily available from other sources, not only about individual contacts for business, but also in terms of how to do business. We do support more of the "How To Do Business" activities, in terms of training and education, perhaps than we do identifying specific partners. But this is a very active area in Illinois, particularly the Chicago region, for trade delegations. There are reciprocal delegations regularly. We help them organize trade missions from Illinois to all regions of the world.

Mr. RANGEL. The more you get a reputation for providing that service, the more foreign missions will rely on you and the more city, state and Federal officials who may be causing problems would attempt to make it easier. It seems to me that your groups are the hub, we should rely on you to organize the trade delegations.

Mr. PAULLIN. If I may, in response, we have become the hub by default because at the Federal and the state levels, at least here in this area, there is less money and resources. They have left a vacuum and the marketplace has said to us, there is a vacuum, move into it.

Mr. RANGEL. This is exactly where I thought you would want government to stay out of it. Your association would use the memberships dues, to do this. It is my understanding that those who have these trade sessions have to pay to participate. But our embassies are doing a fantastic job abroad, in the host countries, to convert them with groups in the United States that they can visit. If there is anything more that we can do in bringing you into contact with what resources we have in different countries, our embassies have converted to become chambers of commerce for the United States businesspeople. It is an exciting thing to see.

Mr. PAULLIN. And they do a fantastic job with what they have got to work with. If I could just point out, we called on, on my little paper here, for better market intelligence, better commercial intelligence. Worldwide the United States, as I understand it, as of a couple years ago, we had about 150 commercial officers around the world. Japan has 150 commercial officers in the United States alone. If we want to really be serious about promoting our exports, let's get more people out there promoting them. I know guys in the embassies, and with what they have got, they do a fantastic job. They do not have a lot.

Mr. RANGEL. The missions that we do have surprised me. Until Ron Brown became Secretary, I did not realize how many anchors we do have in various countries. I thought becoming an ambassador was something, but really we have so many—I do not know. What do they call those posts?

Chairman CRANE. Foreign commercial officers.

Mr. PAULLIN. Those are the people I am talking about.

Mr. RANGEL. Well, we may need more. But your agencies can push us to see, in oversight, what more they could be doing and what additional resources they would want. Do you believe dismantling the Department of Commerce would be of any assistance at all to small businesses?

Mr. PAULLIN. I do not have a problem with it. All of those 19 agencies need to be stirred into some new kind of a mix and streamlined and move most of them out of the United States and into our embassies, because that's where the market intelligence is.

Mr. RANGEL. That's happening. We have to watch very carefully when Democrats or Republicans, ahead of time, decide what they are going to do and then find reasons as to why they are going to do it, but you have a vested interest in all of this and we depend on you, who work in the trenches with those people that are really generating the trade, to be hard on us in terms of how we can make it easy, either by getting involved or withdrawing.

I assume that the Cuban question is so political that your organizations would rather not even dignify it as a trade issue.

Mr. BERMAN. Actually this might be something we can follow up on. A couple of our members got into the issue of the Helms-Burton legislation and we are in the process of drafting a paper of our position on the legislation. We have not obtained the proper clearance, but I would be happy to forward a copy to you as soon as we do.

Chairman CRANE. If you would yield for a second, Congressman Rangel. In that same context, there will be that bill coming before us very soon. That is the International Relations Committee bill?

Staff. The Iran-Libya sanctions.

Chairman CRANE. Take a long hard look at that one, too.

Mr. RANGEL. You have to get involved in these things because if you do not, we will have a political field day for any constituents that have a problem with anybody. As for China, anything could change politically. And then it will be too late to develop a solid force.

Do you identify with any national groups that you represent?

Ms. JACKSON. The U.S. Chamber of Commerce. We work with the U.S. Chamber of Commerce very closely on international issues.

Mr. RANGEL. I do not see them as involved with small businesses. Do you go to a national meeting with the U.S. Chamber?

Ms. JACKSON. They have representatives here in Illinois that cover this region as well.

Mr. RANGEL. And you find at your National meetings that small businesses are on the agenda?

Ms. JACKSON. Yes, very much so. And a number of their publications are directed specifically to assist small business.

Mr. RANGEL. Well, my community has small business and they have a problem getting information. They know something big is going on and they want to be a part of it. We just do not have the time in the Washington, DC U.S. Chamber Office, and so your chambers are going to be one of the fastest growing organizations, at least I hope so, that we have in this country. You have got the little man to show smaller businesses that they cannot afford to hire high profile attorneys, how they can get involved and to let us provide an easier way to share with you information rather than the complex Tax Code and all those things that scare people off. There has to be an easier way to provide this information, and I hope that when you meet with your memberships, you try to get their ideas, because so many people are just afraid to speak up. If you could be their spokespeople, we certainly will be responding to you. This Subcommittee would like to assist the export dealmakers in getting together. Thank you so much.

Chairman CRANE. Thank you all for your participation and patience.

Finally, let me ask Jeff Napier and Lyric Hughes to come down here before us. We are going to wrap up today's hearing.

All right. We will go with Mr. Napier first and then Ms. Hughes.

STATEMENT OF JEFF W. NAPIER, PRESIDENT, NATIONAL MARINE MANUFACTURERS ASSOCIATION, CHICAGO, IL

Mr. NAPIER. Thank you, Mr. Chairman. It is my pleasure to be here, Congressman Rangel. For the record, my name is Jeff Napier, and I am president of the National Marine Manufacturers Association, which is a manufacturing trade group representing over 1,500 manufacturers of primarily recreational, but in some cases, commercial marine products of all types. We have several dozen companies headquartered here in Illinois. While our industry is generally characterized as comprised of small businesses, at both the manufacturing and retail level, we do have a few large companies in the billion dollar range led by Brunswick Corp. of Lake Forest, Illinois and Outboard Marine Corp. of Waukegan, Illinois, and our association itself is headquartered in downtown Chicago.

Over 70 percent of our 1,500 member manufacturers are involved in the international marketplace, with the typical member selling at least 15 percent of its output internationally, in many cases up to 25 percent. This results in about 15,000 to 20,000 jobs because of the international marketplace. The trade association that I represent is itself internationally involved in many international standards making bodies; international government relations; the production of boat shows, which is a primary marketing tool for our industry, both throughout the U.S., with about 8,000 foreign trade distributors in attendance, and production of boat shows in other countries like Canada and Mexico, to sell our members' products there. Last, but not least, organizing U.S. pavilions in boat shows all over the world. We work regularly with the U.S. Commerce Department on some of our international trade issues, also with the USTR's office, U.S. embassies and consulates around the world, and the Ex/Im Bank. In a good year, we will typically export more than a billion dollars. And while our industry is cyclical, it is one of the few U.S. manufacturing industries with a favorable balance of trade, as high as $600 million within the last few years. So, that's the size and shape of our industry and its international trade involvement.

I would like to, Mr. Chairman, if I could, address a few of the questions that the Committee posed. I cannot address them all in the limited time. Let me just say briefly that we actively favored the passage of NAFTA. We did not benefit as much as we would like. We made several representations to the USTR for accelerated phase out of the Canadian and Mexican tariffs and we have what we consider a fairly slow phase out. Nonetheless, we think that we will, over time, enjoy significant benefits from both of those markets.

Regarding Chilean membership in the North American Free Trade Agreement, we think it is very important for the U.S. to negotiate Chile's membership in NAFTA at a very early date. In fact, it is overdue. If the United States is the chief exponent of reciprocal free trade, we must actively encourage those who seek to join reciprocal free trade group. Chile's economic resurgence, following adoption of free market economics, on the first count, deserves to be applauded and rewarded and that would send a strong message to the rest of the hemisphere. Second, Chile's membership in NAFTA would permit the comparative advantage economics to

work more strongly for all countries in the group, increasing economic efficiencies on the one hand, and lowering economic cost to U.S. business and consumers in all countries, and it is clearly a win-win situation.

At the very parochial level, if I may, we note a fairly strong demand for our products, boating industry products, in Chile, but there is a big problem which is a tariff in excess of 50 percent. Extending NAFTA to Chile would reduce that tariff and we would expect almost immediately several million dollars worth of sales, and the creation of several hundred new American jobs within a few months.

Regarding the Chinese situation, we think Congress could do a great service to itself and to the country if we changed the name of MFN to something else. It would stop it from being such a political football, and I am really quite serious about that. It is unfortunate that this has happened, but that would be a step in the right direction. Beyond that, we would recommend a couple other measures.

First of all, the widest commercial contacts with China that are possible will better integrate China into the world's economic marketplace, and basically making it harder for China to return to past relations. So we think that's quite important. Second, we have to be a more reliable trading partner. It seems to me that every time there is an election in the United States, we change the conditions on which the countries can do business with us internationally, and that makes it difficult to try to sustain a trade relationship. China now has the advantage working what amounts to bilateral trading agreements against each other. That is to say, we and China seem to be constantly at swords' points when, in fact, what should happen is that the western world trading norms, and the developed country trading norms should, as a group, be pressed with China, so that it is not just the United States against China. What we are really after here, it seems to me, and what our trading partners in other areas of the world should be after, is getting China to adopt the world trading norms.

Let me say that some of the problems that we have in dealing with some of the agencies involved in trade in the United States is that we are frequently given a sympathetic hearing but then told in a polite way, we would like to help you but you are really too small. We would like to help you reach, but you're not tall enough. So quite often we are very low on the priorities. Well, half of the U.S. economy is, in fact, small business. It seems to me that some of these agencies might do well if they had a congressional mandate to have what amounts to a small business division or department within that, to deal with industries like ours. We are an industry of hustlers internationally but in fact, we could use a little help in clearing out some of the barriers to trade.

In developed countries, most of the barriers to trade we face are nontariff. That is to say, complex standards and procedures have been deliberately used to slow down imports. In the case of the nondeveloped countries, most of the problems are tariffs. We find that the Commerce Department has been our biggest ally. The late Secretary Brown has intervened personally on our behalf with good results in all cases. Some of the people in Commerce have helped

us work with the Embassies and Consulates around the world with good results. So we think that Commerce especially does a good job for us. But in general, a small business has a tough time getting very much help out of some of the agencies.

In the interest of time, I will conclude my remarks and be happy to answer any questions.

[The prepared statement follows:]

TESTIMONY OF
JEFF W. NAPIER, PRESIDENT
NATIONAL MARINE MANUFACTURERS ASSOCIATION
BEFORE THE SUBCOMMITTEE ON TRADE
U.S. HOUSE COMMITTEE ON WAYS & MEANS
MAY 20, 1996
SCHAUMBURG VILLAGE HALL, SCHAUMBURG, IL

Mr. Chairman and members of the subcommittee, my name is Jeff W. Napier and I am president of the National Marine Manufacturers Association, a trade group representing over 1,500 manufacturers of recreational boating products of all types including several dozen companies headquartered here in Illinois. While our industry generally may be characterized as comprised of small businesses at both the manufacturing and retail level, we do have a few large companies led by Brunswick Corp. of Lake Forest, Illinois and Outboard Marine Corp. of Waukegan, Illinois. The National Marine Manufacturers Association is itself headquartered in Chicago, Illinois.

Over 70 percent of our 1,500 members are involved in the international marketplace with the typical member selling at least 15 percent of its output internationally and in many cases up to 25 percent. This is true across virtually all product lines from boats to engines to equipment and services. The trade association I represent is itself internationally involved in many international standards making bodies; international government relations; the production of boat shows throughout the U.S. with many foreign buyers in attendance; production of boat shows in Canada and Mexico to sell the products of our members as well as organizing pavilions in boat shows from Singapore and Tokyo to Rio; Amsterdam; Genoa, Italy and Dubai. We work regularly with the U.S. Commerce Department on some of our international trade issues and also with the U.S. Trade Representatives on occasion as well as U.S. Embassies and Consulates around the world.

The U.S. recreational boating industry typically exports $1 billion in an average year and, while cyclical, is one of the few U.S. manufacturing industries with a favorable balance of trade -- as high as $600 million favorable within the last few years. Not bad for an industry of small company entrepreneurs.

The role of our association in the international marketplace is:

(1) To help our companies achieve distribution by offering exhibitors turnkey marketing efforts through boat shows. Internationally and domestically shows are a major marketing tool for the industry;
(2) Working to reduce or eliminate tariffs and non-tariff barriers to trade both by working through our government and through international boating industry organizations; and
(3) Working to harmonize international product standards so that our products are more universally acceptable in international marketplaces and we can enjoy the economies of scale which come from long production runs.

It should be noted that the U.S. is well situated to enjoy the economies of scale in the making and selling of boating products for the international marketplace because half the world's market for boating products is right here in the U.S. Another 35 percent of the marketplace lies in the countries of Western Europe with the rest scattered in Japan and the developing countries of southeast Asia plus a few small markets in Australia, the Middle East and Africa.

We cannot offer detailed intelligent commentary on all of the questions which are the focus of this hearing, but can address some of them and hope that our comments will be of assistance to the Committee.

What is the role of international trade in creating economic growth for the United States workers and firms?

International trade has a large role in creating economic growth for U.S. workers and firms -- and that role will grow larger in the future. Just on the face of it, the macro economic considerations of having the world's largest economy, the world's most productive economy and the highest levels of products and services development in so many different fields gives the U.S. an immense comparative advantage -- which is what international trade is all about. Not to exploit that tremendous comparative advantage with policies of reciprocal free trade would be a tremendous disservice to the American people and their economic well being. Those deceitful demagogues who suggest that high tariffs are necessary to keep out foreign competition and who would otherwise have us look inward are destructive forces of our economic well being, in my opinion. A good part of the growth of the recreational boating industry is due to international trade and, moreover, our international markets tend to be counter-cyclical to the U.S. markets helping us sustain a higher level of employment when the U.S. economy is in recession.

For companies with business strategies emphasizing future growth through international expansion, which foreign markets present the most opportunity? How do Illinois firms incorporate international markets in their planning?

In the case of the recreational boating industry, the sale of our products depends on the consumer's level of discretionary income. Our products are purchased after the necessities of life are provided for. Thus, our customers are primarily to be found in the economically developed countries of North America and Western Europe and among the higher income levels in developing countries. We plan our business strategies accordingly with major emphasis on developed countries where distribution for our industry is also fairly well developed now. Notwithstanding, we are making investments in developing economies such as our new boat show in Mexico -- the first such marketing event of its type in that country. We try to blaze the trail for our member companies, sometimes quite literally. We try to encourage the development of needed industry infrastructure in those countries by providing information, seminars, forums and general advice to our international colleagues.

How can the United States insure that it maintains its historic leadership role in the fast changing world economy?

We can start by maintaining reciprocal free trade as the bedrock of our international economic policies and vigorously pursue it. The fact is, people the world around are pretty much the same and all want to increase their standard of living and enjoy peace and see a better life for their children. Marketplace economics -- whether characterized as pure capitalism or modified capitalism free market economics -- deliver economic prosperity more surely and more widely to more people than any system the world has seen -- and reciprocal free trade is a major underpinning.

More than that, reciprocal free trade with that greatest market in the world -- the United States -- gives our international friends and would-be friends a closer view of our freedoms and values which, in my discovery, there are not only curious about, but eagerly embraces once informed. Thus, they tend to become more like us -- and isn't that what we should prefer? Nothing will export our human rights values as a nation better or faster than exporting our goods and services. How do we explain, for example, that English has become the *de facto* second language around the world -- destined within a decade or two to become the first language of the world as more millions of Chinese learn it? And with the language comes the culture and with the culture the values. But trade is the engine pulling the train of our values abroad.

Which key trade initiatives and institutions such as the Asia Pacific Cooperation Group, the Free Trade Agreement of the Americas, and the Trans Atlantic Marketplace hold the most promise for expanding United States exports over the long term?

We cannot answer that questions with intelligence since our familiarity is limited to the North America Free Trade Agreement. That agreement has been beneficial in reducing both the Canadian and Mexican tariffs which were higher than U.S. tariffs for Canadian and Mexican marine industry products. Tariffs and similar taxes are a major burden on the sale of our products since our products are price-sensitive and purchased with the consumer's discretionary income.

How important is it for the U.S. to negotiate Chile's membership in the North America Free Trade Agreement?

We think it is very important for the United States to negotiate Chile's membership in the North America Free Trade Agreement at a very early date.

First of all, as the chief exponent of reciprocal free trade, the U.S. must actively encourage those who seek to join a reciprocal free trade group. Chile's economic resurgence following adoption of free market economics on the first count deserves to be applauded and rewarded with joining the club -- a recognition which is already overdue. A strong message would be sent to the rest of the hemisphere.

Secondly, Chile's membership in the North America Free Trade Agreement would permit the comparative advantage economics to work more strongly for all countries in the group increasing economic efficiencies, on the one hand, and lowering economic costs to U.S. businesses and to consumers in all countries. It is, quite literally, a win/win situation.

At the parochial level, Chile's membership in the North America Free Trade Agreement would reduce high Chilean tariffs on U.S. boating products going into that country. There is a significant demand for our products there, but tariffs in excess of 50 percent make the price of our products in the marketplace virtually prohibitive. So, the U.S. boating industry would be an immediate and direct beneficiary of a new market opening with Chile's membership in the North America Free Trade Agreement. We would expect several millions of dollars of sales to result almost immediately and the creation of several hundred new American jobs within a few months of such membership.

How can the United States best encourage the China to participate responsibly in the international trading system?

We would recommend a two-pronged approach: First, wide commercial contacts with China so they become integrated into the world's economic marketplace even more than is the case now making it harder for China to turn back from the benefits of open marketplaces and world trading norms.

Secondly, work actively with China's other developed country trading partners to suggest, as a group of trading partners, China's adherence to certain international trading norms ranging from observance of intellectual property rights to adoption of international product standards and financial transaction standards. This type of group trading partner initiative vis-a-vis China is likely to be more productive for all who deal with her rather than letting China play one trading partner off against another -- including the U.S. -- while maintaining vague and arbitrary international trading policies.

What should trade negotiating objectives of the United States be in post-Uruguay Round Environment? Are there trade issues such as international rules governing services, intellectual property, and government procurement which should receive priority attention by the Congress and Administration? What are the most significant trade barriers to face United States firms who seek to do business in foreign markets?

While less developed countries, in particular, tend to have high tariff barriers to the products of the U.S. marine industry, in general our impression is that non-tariff barriers are a greater factor in restricting trade than tariff barriers. Specifically, complicated and conflicting standards for products in individual markets as well as non-uniformity between countries are a major roadblock to international trade. Accelerated adoption of International Standards Organizations product standards would solve many of these problems and U.S. trade policy should seek that result -- starting with adoption of such standards domestically by the U.S. on an accelerated basis to both set the example and quicken mutual recognition agreements regarding standards between bilateral trading partners. While world trade is moving in this direction, it is much slower than it needs to be and U.S. leadership could accelerate the process.

What kind of trade policy will maintain and improve the competitive position of the United States in the world economy?

As indicated previously, reciprocal free trade and the several subsidiary policies it involves will maintain and improve the competitive position of the United States. The more vigorously that policy and subsidiary policies are pursued, the greater the benefits to be achieved. In this connection, the activist role which the late Secretary of Commerce Ron Brown played was quite helpful -- not merely the high visibility trade trips with business leaders, but the day-to-day aggressive assistance which Commerce Department bureaucrats provided less visible members of U.S. industry trading in international markets such as the U.S. boating industry. In recent years the international activities of the Commerce Department have become much more intimately involved with the U.S. industry and much more aggressive and responsive.

U.S. trade policy also needs to better consider the needs of small business people. We have dealt with such agencies as the Ex/Im Bank, U.S. Trade Representatives office, Commerce Department and others. With the exception of the Commerce Department, the other agencies are helpful in providing information on their programs -- but when it comes to actually responding to specific requests, the attitude is somewhat, "We'd like to help you but you're too small, we've only got time for Boeing and Motorola sized issues." While we certainly want our government helping the international market efforts of those companies, there should be some focus and resource availability for smaller companies and non-high tech companies which can successfully export, where consumer products are in demand internationally and where success of such small companies in the international marketplace will also create American jobs.

How does the United States develop a trade policy that best reflects the national interest?

Most of the goals of U.S. trade policy are well established and widely agreed: A growing share of the world market for goods and services, creation of U.S. jobs, extending U.S. influence and culture throughout the rest of the world -- and let our trading partners enjoy similar advantages in order to help reduce costs to U.S. consumers -- all of which should make the world a more prosperous and peaceful place. The means to achieve those goals have certainly become abundantly clear in the last seven years -- embracing free market economics where the marketplace and not governments decide what is made for whom, by whom, how and at what price.

The main questions remaining involve how to accelerate the process of free market economics around the world and those questions largely lie in the area of reducing government involvement in marketplace matters as well as economic matters broadly. To the extent that government regulation is necessary and desirable, uniform regulation among countries or reciprocal recognition of nearly uniform regulation should be a trade policy goal.

Finally, at the micro economic trade policy level, U.S. trade associations such as the National Marine Manufacturers Association are good sources for information on specific trade policy needs. Collecting the top 10 needs from 300 or 400 trade associations serving industries involved in international markets would produce 3,000 or 4,000 specific items which could, in turn, be quickly organized into groups or patterns of like issues to be acted upon -- probably less than 100 in all. That would be a quick way to develop a very specific trade policy serving well the needs of 75 percent or better of all exporting companies in the U.S.

Chairman CRANE. Thank you, Mr. Napier. Ms. Hughes.

STATEMENT OF LYRIC HUGHES, PRESIDENT, T.L.I. INTERNATIONAL CORP.; AND NATIONAL COUNCIL FOR U.S.-CHINA TRADE

Ms. HUGHES. Thank you. My name is Lyric Hughes, and I guess I started on the road to international in 1963 when I was 10 years old and my father joined U.S.A. and we moved from Skokie to Tehran. So since that, a little more recently, I have been president of the International Trade Club of Chicago. I founded Women in International Trade, which is now a national organization, and chairman of a group called Education for Global Involvement. And I am here today as a member of the National Council for U.S.-China Trade, which supports the permanent normalization of relations with China in terms of trade. I will focus my remarks on U.S.-China trade today.

I am president of T.L.I. International Corp. We have been in business for 20 years, and we are an international marketing communications firm based in Chicago. T.L.I. has done business with the People's Republic of China for 17 years, since my first visit there in 1979. Our mission is to help U.S. companies sell their products and services abroad by supporting their communications efforts. We are probably best known for bringing the Super Bowl to China, which we did when the Bears went over in 1986. More recently, we also brought the Rose Bowl. By the way, the Super Bowl idea was an idea of a U.S. Department of Commerce official, as was my first visit to China in 1979. And without the U.S. Department of Commerce, I would not be in business today, and we would not be able to offer the help that we do to American businesses.

Chairman CRANE. And you are letting them watch the Bulls?

Ms. HUGHES. Yes, we are. Michael Jordan is better known, we understand, than President Clinton.

Most governments support the efforts of their companies abroad, and NAFTA, which I worked for, is a good example of how trade policy can favorably effect U.S. companies. Only in the United States are companies doing business in China at the mercy of elected officials in terms of knowing that the business deal they make today might be undone tomorrow.

Since Jimmy Carter and the U.S. grain embargo against the Russians, our worldwide competitors have benefited from our country's attempts to gain political leverage by undermining the private interest and critical international activities of its citizens abroad.

Denying most-favored-nation status to China (that is normalized trade relations) would be the wrong sanction at the wrong time, punishing the wrong people. Not only the Chinese, but the U.S. firms whom you have heard from today would suffer. Obviously there are many problems with the U.S.-China trade relationships. There are many days when I am frustrated, and I swear that I will never go to China again or do business there. However, we realize what an important market this is for the United States and that we must persevere.

Of biggest concern to our clients, which include Fortune 500's and very small companies, is the protection or lack of protection of

their intellectual property. Through our antipiracy efforts on their behalf, through the Chinese media, I have come to understand the complexity of this problem in China. I found that high level officials in China are absolutely sincere in their desire to stem counterfeiting and other illegal activities, and they have a selfish reason to do so. Piracy not only discourages investment by foreigners, but it discourages their own people from building new industries without proper protection under the law.

But, imagine trying to regulate the activities of a country with five times as many people as the United States, from one central capitol such as Washington. Withdrawing MFN will not hurt the criminals who participate in these activities. It will do nothing to help the Chinese central government eradicate the program which it is only in recent history had legal authority to attack.

Another issue often cited in favor of withdrawing MFN, is China's human rights record. The year I went to China in 1979, was a year of famine in Southern China, which our Chinese hosts never mentioned at the time they hosted banquets for our delegation from the states of Illinois and Arkansas. In this country, the inalienable right achieved by the Chinese citizen has been the right to eat. Now that these basic needs have been achieved, I feel that China's continued economic growth and intercourse with the western world are the surest way of gaining more rights and protections for her citizens. The horrors of the cultural revolution could only have been carried out while China was isolated from the rest of the world. Do we really want to bring China the to point of isolation once again?

Finally, is it the time, with the succession of China's highest officials in a state of transition and uncertainty, to pressure Chinese officials and undermine the core of U.S.-China relations? Is this the time to give the hardliners an excuse not to deal with the United States? In closing, the annual ritual in which we are participating today is in danger of becoming institutionalized and ineffective.

I agree with Congressman Rangel's opinion that we must turn our focus, I would like to see the hearings next year focus on educational reform and building a global work force from the ground up. This Wednesday in Chicago, the Illinois Board of Higher Education will be focusing on just that activity, and working not only at the higher educational level. The United States has the best higher educational institutions in the world, bar none. It is just very paradoxical that we are under attack for our primary and secondary systems. We think integrating what we need to do internationally in building a global work force, will be something that would be the proper focus of a national debate. We would welcome continued discussion on that issue. Thank you very much for your attention.

[The prepared statement follows:]

STATEMENT OF
LYRIC HUGHES, PRESIDENT
T.L.I. INTERNATIONAL CORPORATION
CHICAGO, ILLINOIS

My name is Lyric Hughes, and I am president of T.L.I. International Corporation, an international marketing communications firm based in Chicago, Illinois. TLI has done business in the People's Republic of China for 17 years, since my first visit there in 1979. Our mission is to help US companies sell their products and services abroad by supporting their communications efforts.

Most governments support the efforts of their companies abroad. Only in the US, are companies doing business with China at the mercy of elected officials in terms of knowing that the business deal they make today might be undone tomorrow in Washington, in order to achieve the policy goals of Congress. Since Jimmy Carter and the grain embargo against the Russians, our worldwide competitors have benefited from our country's misguided attempts to gain political leverage by undermining the private interests and critical international economic activities of its citizens abroad.

Denying most favored nation status to China would be the wrong sanction, at the wrong time, punishing the wrong people. Not only the Chinese, but our US firms who have stayed the course through difficult times, and made investments totaling millions of dollars, would suffer.

The Japanese are our biggest competitors in China, and Japanese companies do business in China unhampered by the annual ritual of MFN approval. The same is true of the Europeans and the Australians.

Let me state clearly that I am not an apologist for the Chinese. Our company is not a lobbyist for their government; rather we work for US companies who want to do business in China and around the world. I am not here to claim that the Chinese are the most wonderful people in the world; rather I will tell you frankly that there are some frustrating days when I feel that I never want to do business in China again. Just as there are other days when I know that I am privileged to be a witness to massive historical changes within the largest single social group in the world.

There is no doubt in my mind that in time of war, we would be justified in utilizing whatever weapons we have to defeat our enemy. We are not, however, at war with China, a country my parents generation fought and died to protect from Japanese aggression.

Obviously, there are many problems with the US-China relationship. Of biggest concern to our clients, which include companies both large and small, is the protection, or lack of protection of their intellectual property. Through our anti-piracy efforts on their behalf, I have come to understand the complexity of this problem within China. I have found that high-level officials in China are absolutely sincere in their desire to stem counterfeiting and other illegal activities, and for very good reason. Piracy not only discourages investment by foreigners, it also discourages their own people from building new industries without proper protection under the law.

However, China is a nation of nations, and is really more of a historical ideal than a fully functioning, centrally governed country. Imagine trying to regulate the activities of a country with five times as many people from one central capitol such as Washington. Most of the counterfeiting activities take place far from Beijing, in southern China. Withdrawing MFN will not hurt these criminals, and it will do

nothing to help the Chinese central government eradicate the problem which it has only recently had the legal authority to attack.

Another issue often cited by those in favor of withdrawing MFN is China's human rights record. The year I went to China, 1979, was a year of famine in southern China, which our Chinese hosts never mentioned at the time they hosted banquets for our joint delegation from the States of Illinois and Arkansas. In this century, the inalienable fight achieved by the Chinese citizen has been the right to eat. Now that basic needs have been achieved, I feel sure that China's continued economic growth and intercourse with the Western world is the surest method of adding more rights and protections for her citizens. The horrors of the cultural revolution could only have been carried out in a China isolated from the rest of the world. Do you really want to bring China to the point of isolation once again?

Let us imagine an entirely reverse situation. China decides to grant its own brand of MFN to its trading partners on a selective basis. China's statesmen, in examining America's fitness for this honor, bring up America's horrifying drug problem. "Why can't they solve this wasteful and destructive behavior," intone their elders, "we did." China issues warnings to the US trade officials that unless America's drug problem is solved, China will henceforth take retaliatory trade measures.

The US trade officials are stunned. Although they agree that there is a problem, they have no authority to control it, and moreover they resent a foreign power directing them in what they regard as a primarily domestic issue. What have the Chinese gained in this scenario?

Finally, is this the time, with the succession of China's highest officials in a state of transition and uncertainty, to pressure Chinese officials and undermine the core of US-China relations? Is this the time to give the hard-liners an excuse not to deal with the US?

In closing, the annual ritual in which we are participating today is in danger of becoming institutionalized and ineffective. My opinion is that MFN status, once granted to any nation, should not be permanent. A formal revocation procedure, for acts of war and for other good cause should be established, which could be instituted at any time. A threat with no specific date would, I think, be much more effective. This would 1) give the US-China trade relationship a badly needed sense of permanence 2) give trading partners on both sides a sense of security 3) reduce annual payments to US China lobbyists 4) distress our European and Japanese competitors and 5) save taxpayer time and money.

I would like to ask the Congress whether or not any other country has a similar procedure, and in an increasingly interdependent and multilateral world, whether we need this exercise any more. It is time to recognize the myth of a US-China bilateral trade relationship, divorced of consequences in the outside world. Is there any benefit accruing to your constituents? If the answer is none, perhaps our limited resources can be expended elsewhere.

Chairman CRANE. Thank you, Ms. Hughes. Mr. Napier, let me ask you a quick question. That 50 percent higher tariff on your products in Chile is so inconsistent with some of the positive steps they have made in moving toward free trade. Is that a particularly sensitive industry down there?

Mr. NAPIER. It is sensitive. It is a price-sensitive industry because the consumer purchases the products with discretionary income. So it is sensitive everywhere. Is it sensitive in Chile? No, not really. It is trading material for other things. They do not have a big industry. It is a question of taxing all sorts of imports as heavily as they can under their old regime. They have not gotten around to changing it yet. We have had some representations made, but have not really gotten anywhere yet.

Chairman CRANE. Keep me apprised of that one, because we are still keenly interested on a bipartisan basis in getting Chile into a free trade relationship with us.

Ms. Hughes, I just want to commend you on your testimony and your actions in behalf of expansion of our trade relations with People's Republic of China. I have mentioned your argument many times, that what more fundamental human right is there than the ability to feed, clothe, and shelter your family? The advancement of free markets and private enterprise over there, what they like to call Leninist capitalism, the ultimate oxymoron. But, the advancement of Leninist capitalism is providing the greatest hope that the Chinese people have ever experienced. So, we do not want to see it get derailed and unfortunately politics tend to get in the way at times, in the advancement of our common commitment to advancing free markets.

With that, I yield to Congressman Rangel.

Mr. RANGEL. I find it so inconsistent to have this view and then to have this other view that we have with Cuba. I truly believe if it was not for the private sector, most-favorable-nation treatment for China would be politically dead. They are communists. They have killed U.S. troops in Korea. The North Koreans have killed troops. The North Vietnamese, they are all communists, they have killed troops. The Cubans have not killed anybody. And they are not a threat to our national security. Everyone says that a free marketplace is the best place in order for true democracy to bloom. And yet, with Cuba, we do not even allow student exchanges or tourism or the normal things that we believe in the United States as the showplace of the world. We should just let Cubans see our dreams and aspirations instead of denying them food and medicine and hoping that a small group of people in Miami will be able to cause a revolution, where some ill-prepared people are supposed to go up against this well trained army. It really shatters me because of the eloquence of the private sector in really selling a very unpopular thing, that is, MFN for China, to the American people. Americans are just trained not to like communists no matter who they are. Then we see Tiananmen Square and we do not like them for that. And they are stealing from us. Violating intellectual property rights is nothing but theft. We can never compete if all of our research and development, in medicines and in movies, are stolen; if all you have to do is get a dubbing machine and sell it for half the price. It is going to put us out of business. Despite all of these

things that the Chinese do to us, the businesspeople still say, if you do not allow them to trade with us, it will be worse. It is courageous, if self-serving, for businesspeople to say what they think is in the nation's interest that's their right. But, how so many intelligent and concerned and patriotic Americans can just say, I do not know about Cuba, I do not know about Helms-Burton, I do not know anything about what is unpopular for me to know about. You are depending on a sound nonpolitical trading policy. That's what you are begging us for. And we should not do things to get us elected. We should do things that are in our National interest. And both sides play the same issue, year after year, decade after decade, and get a lot of campaign money and all shoot craps for the electorial vote.

It is not that I feel that strongly about Cuba, but we have got to do the same thing with Libya, Iran and then I am going to have to get my list of countries that I just do not like and compete, you know, just say I have got my list, I will take one of yours, you take one of mine and then you guys are going to be right in the middle wondering what has that got to do with trade policy. I hope when you have your meetings, someone just might raise it. It is not a lot for everyone to sell or to buy from Cuba, but if you meet with any of our rice growers, or chicken growers, automobile people, or people who grow the beans, they have got a heck of a lot of interest in opening up trade with Cuba.

But your testimony has really allowed me, at least, to get a better feeling of knowing the facts, since I was really taking it for granted. It is really great to be out here.

As for the boat industry, do you find anything in our present tax system that you think puts you at a disadvantage in exports?

Mr. NAPIER. No, not since the excise tax was repealed. That devastated us, if you remember that a few years ago.

Mr. RANGEL. I forgot all about that.

Mr. NAPIER. What it did was it cut our domestic sales so low that we no longer enjoyed the economies of scale in our manufacturing which enabled us to be very competitive internationally. Now we are building back.

Mr. RANGEL. we learned from that. I was thinking more of the value-added tax.

Mr. NAPIER. It does not affect us that much. Our two biggest problems are the nontariff barriers to trade in the developed nations and the tariff barriers in the developing nations.

Mr. RANGEL. Well, thank both of you. You were very informative.

Mr. NAPIER. Thank you.

Ms. HUGHES. Thank you.

Chairman CRANE. We appreciate your testimony, and with that, the Subcommittee stands adjourned.

Thank you, Congressman Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

[Whereupon, at 2:31 p.m., the hearing was adjourned.]

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IRAN AND LIBYA SANCTIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

MAY 22, 1996

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IRAN AND LIBYA SANCTIONS

WEDNESDAY, MAY 22, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:54 p.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
May 17, 1996
No. TR-24

CONTACT: (202) 225-6649

Crane Announces Hearing on Iran and Libya Sanctions

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, announced today that the Subcommittee will hold a hearing on Iran and Libya sanctions. **The hearing will take place on Wednesday, May 22, 1996, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 2:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from Administration witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

Pledged to undermine the Middle East peace process, the Government of Iran continues to sponsor international terrorism, develop weapons of mass destruction and otherwise engage in behavior adverse to the national interest of the United States and to world stability. For its part, Libya continues to harbor the two individuals accused of blowing up Pan Am flight 103 over Scotland. The United States and its allies are under increasing pressure to address these activities through economic sanctions and other means.

H.R. 3107, the "Iran Oil Sanctions Act of 1996," sponsored by Congressman Benjamin A. Gilman (R-NY) was reported by the Committee on International Relations on March 21, 1996. The bill, as introduced, was referred sequentially to the Committee on Ways and Means. The House bill would require the President to impose two or more sanctions, from a list of five, which includes import and government procurement sanctions against persons that he determines have exported to Iran a list of goods or technology which enhance Iran's ability to develop its petroleum resources. Also subject to sanctions would be any person the President determines has made investments in Iran of at least $40 million in any 1 year, which directly contributed to enhancement of Iran's ability to develop its petroleum resources. The sanctions in this bill would apply in a similar manner to persons engaging in business with Libya.

Companion legislation, S. 1228, which would require the President to apply sanctions to violators of an investment ban, was approved by the Senate on December 20, 1995. The Senate bill does not include import sanctions on the list of economic sanctions to be applied to violators of the investment ban.

FOCUS OF THE HEARING:

The focus of the hearing will be to receive testimony from the Administration on its policy goals with respect to: (1) ending support for terrorist activities by Iran and Libya through economic sanctions or other means; (2) the efficacy of employing a secondary boycott to achieve the elimination of trade and investment by our allies in those countries; (3) the most effective mechanisms by which to achieve a multilateral trade and investment discipline with respect to countries that support international terrorism; and (4) how the use of secondary boycotts or extraterritorial unilateral actions might affect United States obligations under multilateral trade agreement and treaties.

WAYS AND MEANS SUBCOMMITTEE ON TRADE
PAGE TWO

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Thursday, May 23, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available over the Internet at GOPHER.HOUSE.GOV, under 'HOUSE COMMITTEE INFORMATION'.

*****

Chairman CRANE. First, I want to apologize to our witnesses for getting such a late start, but we do not control the activity over on the floor.

I would like to welcome the administration witnesses today. I look forward to hearing their testimony about the most effective mechanisms for curtailing support for international terrorist activities by Libya and Iran.

In an effort to undermine the Middle East peace process, the government of Iran continues to sponsor international terrorism, develop weapons of mass destruction and otherwise engage in behavior adverse to the national interest of the United States and to world stability.

For its part, Libya continues to harbor the two individuals accused of blowing up Pan Am flight 103 over Scotland. The United States and its allies are under increasing pressure to address these activities through economic sanctions and other means. Often, the United States feels alone in taking a stand against rogue states, while Europe and other allies pay only lip service and snap up contracts forfeited by U.S. firms.

However, the United States must not construct solutions that only further hurt U.S. businesses and drive a deeper wedge between the United States and its allies that makes improved cooperation against behavior we all abhor less likely. We must not make the United States the subject of criticism and challenges but rather keep Iran and Libya firmly in our collective sights.

I hope that during the course of the hearing, we can have a discussion on the appropriateness of secondary boycotts to achieve foreign policy goals, the impact such actions by the United States have on our international trade obligations and the effectiveness of unilateral and extraterritorial actions in pressuring rogue nations such as Iran and Libya. We want to ask the administration what Congress should do and what statutory restrictions should be placed on the trade and investment of our allies in order to achieve the goals we all desire. We also need to discuss how such actions affect our international obligations under the WTO and what actions might lead to dispute settlement under its rules.

Thank you again for coming, and I am looking forward to hearing your testimony. I will now yield to our Ranking Minority Member, Charlie Rangel.

Mr. RANGEL. Mr. Chairman, I am very pleased that you are holding this hearing today on the Iran Oil Sanctions Act. It is important that the Committee on Ways and Means follow its normal procedures and exercise its prerogative in dealing with legislation referred to it from other Committees containing consequential provisions within our jurisdiction.

There appears to be a general bipartisan agreement that strong measures are warranted and necessary to deal with renegade nations such as Iran and Libya, which pose a clear threat to vital U.S. national interests and to international security. At the same time, we must consider carefully the possible consequences of imposing unilateral sanctions for our economy and on relations with our allies.

In the end, we must decide whether the provisions of the Iran Oil Sanctions Act as reported by our colleagues on the Committee

on International Relations offer the most appropriate and effective means to achieve our foreign policy objectives. In view of the problems that we are having with Helms-Burton with our international trading friends, I welcome Principal Deputy Assistant Secretary of State David Welch, U.S. Trade Representative General Counsel Jennifer Hillman, and Deputy Assistant Secretary of the Treasury, William Barreda to the Subcommittee and look forward to the views of the administration.

I also welcome the opportunity to continue to work with you, Mr. Chairman, on a bipartisan basis as we consider this important bill.

Chairman CRANE. Thank you, Mr. Rangel.

Let me reassure other Members that if they have statements, they will be made a part of the record.

[The opening statement of Mr. Ramstad follows:]

OPENING STATEMENT OF HON. JIM RAMSTAD

Mr. Chairman, thank you for calling this hearing today to discuss sanctions against Iran and Libya.

I am encouraged that current trade sanctions against Iran appear to have made an impact on Iran's ability to add to its military power and acquire nuclear, biological and chemical weapons.

Clearly, however, more needs to be done. We must stop Iran from strengthening its political, economic and military position in the Middle East, spreading Islamic fundamentalism and subverting peace in the Middle East through international terrorism.

I strongly support proposals to undermine Iran's ability to fund international terrorism. It is important that we craft a sound bill which will also encourage our trading partners and allies to join us in a multilateral disciplinary effort against these terrorist countries.

Mr. Chairman, thanks again for calling this hearing. I look forward to listening to the testimony of today's witnesses and exploring in greater depth these important issues.

Chairman CRANE. With that, I would like to finally get to our witnesses, and I think we will take them in the order in which they appear on the witness list, so Mr. Welch, if you would go first, and then Ms. Hillman, next.

STATEMENT OF C. DAVID WELCH, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF NEAR EASTERN AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. WELCH. Mr. Chairman, Members of the Subcommittee, I thank you for the opportunity to appear today to testify on the important subject of legislation regarding sanctions against Iran and Libya.

For the last 9 months, the administration has been closely engaged in bipartisan conversations with Congress about this bill. There are three key themes that strike me as having emerged from these consultations.

First, it is clear that we are all concerned about the threat posed to U.S. interests by unacceptable Iranian behavior.

Second, we share outrage about Qadhafi's defiance of U.N. Security Council resolutions which call on Libya to turn over the perpetrators of the Pan Am 103 bombing and to cease all support of international terrorism.

Third, we have agreed that we must take additional American action to respond to these challenges by increasing the pressure on these regimes.

We are now seeking the most effective way to increase the pressure on Iran and Libya.

With your permission, I would like to focus my remarks today on the question of effectiveness. Our objective as described by my boss, Secretary Christopher, is to maximize the pressure on Iran and Libya while minimizing the costs to other important American interests.

The unacceptable activities pursued by Iran and Libya are similar, as has been our firm response to these threats. I would welcome the opportunity in the question and answer period to address a catalog of what we have done diplomatically and in support of our response to these threats.

The administration has worked to develop recommendations for this legislation that are influenced by our understanding of the differences—and there are important ones—between these two countries. Some are obvious. There are differences in population, history, religion, and form of government. Some are less important, however.

One important example is the level of foreign involvement in the oil and gas sector. Only one foreign oil company has invested in Iran since the Iranian revolution in 1979. Libya, on the other hand, has long welcomed foreign involvement in its oil and gas sectors, over the years entering into contracts with some two dozen foreign companies for production and exploration rights.

A second crucial difference between Iran and Libya is the approach toward each country adopted by our allies. Following the Pan Am 103 bombing and that of the French airliner, we worked successfully with the British and French to galvanize support for a broad U.N. sanctions regime on Libya. By contrast, few other governments support the U.S. approach of economic pressure in Iran.

As you know, we engage in regular discussions about Iran and Libya with our G–7 partners and other nations. There is little disagreement about the threat Iran and Libyan behavior pose to our common interests. We differ in our assessment, however, of the best way to convince them that it is in their interest to abandon those threatening policies. Again, in the question and answer period, we can review this more at length, but in the interest of brevity, I will continue on.

We believe, in short, that other governments have to assume more responsibility for the efforts to contain threats that endanger us all. Fundamentally, we think our allies and trading partners do share our opposition to terrorist activities of Iran and Libya. Recently, many Western governments have begun reevaluating their policies toward these two countries. The EU, Canada, Japan and other allies want to see changes in Iranian and Libyan behavior, and our shared objectives in that regard provide a strong base for continued diplomatic efforts to gain greater cooperation for a policy of economic pressure.

Let me spend a little bit more time now on an effective solution. The administration has worked closely with the House International Relations Committee, the Ways and Means Committee, and the Banking Committee of the House to craft its version of the bill. Let me summarize our position.

First, we support sanctions against investment in Iran's petroleum resources. Investment is the chokepoint of Iran's economy. Fewer barrels mean fewer dollars. The mere threat of sanctions is already working to keep some foreign oil companies out of Iran.

Conversely, we believe sanctions against trade with Iran would be ineffective and counterproductive. We simply will be unable to keep Iran from acquiring those goods common to the oil and gas industry which are manufactured and sold by trading companies all over the world. And the costs, both of trying to monitor and enforce such a ban unilaterally, and of the potential retaliatory measures that other governments will take should we impose sanctions, are high.

Second, we support sanctions against companies that violate the U.N. Security Council bans on certain trade and transactions with Libya. We have worked hard in the United Nations to build and sustain international support for these sanctions against Libya, including bans on certain oil and gas equipment as well as prohibitions on military goods, aviation parts and services, and financial services.

Global restrictions are more effective than unilateral American action. It makes sense to add to this existing U.N. sanctions regime. But we believe sanctions against investment in Libya's oil and gas resources would be ineffective and counterproductive. It is too late for us to stop foreign investment in Libya's oil and gas sector because some two dozen companies are already working there now. It is likely that the governments of these companies would take action to protect them. Such retaliatory measures could have a harmful impact on U.S. companies and workers.

Third, we support a modification that would allow us to avoid imposing sanctions against institutions that finance investment deals. The administration is concerned that such sanctions by the United States against foreign financial institutions would be costly to our firms, could be disruptive to our own financial markets, would reduce the attractiveness of the United States as a financial center and could invite retaliation against U.S. financial firms. A focus on blocking the companies would be sufficient.

Fourth, we support modifications to the structure of the bill that would provide the President with greater flexibility in applying sanctions. We would like to give the President the latitude to respond most effectively to each individual situation. We will use the legislation to advance U.S. interests, but we need the flexibility to properly target our actions.

Fifth and finally, we support a modification to the provision that would require the President to indiscriminately impose sanctions against both parent companies and their subsidiaries, including American companies, whether or not the party was involved in the sanctionable activity.

Mr. Chairman, Members, we believe that these recommendations strike a responsible balance. They would permit us to succeed in imposing additional economic pressure on Iran and Libya without causing a boomerang effect that unnecessarily hurts other American interests.

In conclusion, let there be no doubt about the commitment of this President and the Secretary of State and others in the administra-

tion to take tough action to respond to the threat posed by Iran and Libya. But we are also responsible, and you share that responsibility, for considering the full spectrum of American interests. We believe it is possible to work together to craft a sanctions bill that maximizes the impact on Iran and Libya while minimizing the unnecessary costs to other U.S. interests.

We know Congress shares our concern. We welcome the opportunity to continue these consultations, and together, we think we can arrive at a bill that does the job.

Thank you very much.

[The prepared statement follows:]

Statement by C. David Welch
Assistant Secretary, Acting
Bureau of Near Eastern Affairs
U.S. Department of State

"STRIKING A BALANCE: MAXIMUM PRESSURE ON IRAN AND LIBYA, MINIMUM COST TO AMERICAN INTERESTS"

House Ways and Means Committee
Subcommittee on Trade
May 22, 1996

Introduction

Mr. Chairman, and Members of the Subcommittee, I would like to thank you for the opportunity to testify before you today on the important subject of legislation to impose sanctions against Iran and Libya. Throughout the past nine months, the Administration has been closely engaged in bipartisan discussions with Congress about this bill. During these consultations, three key themes have emerged. First, it is clear that we are all concerned about the threat posed to U.S. interests by unacceptable Iranian behavior. In recent weeks, for example, we have witnessed the devastating impact of Iran's political and material support for groups that use violence against the Middle East peace process. Second, we share outrage about Muammar Qadhafi's defiance of UN Security Council resolutions, which call on Libya to turn over the perpetrators of the Pan Am 103 bombing and to cease all support of international terrorism. Third, we have agreed that we must take additional American action to respond to these challenges by increasing the pressure on these regimes. Amid this harmony of views, we are now seeking the most effective way to increase the pressure on Iran and Libya.

With your permission, my remarks today will focus on this question of effectiveness. What measures should we adopt to ensure that our efforts to create economic pressure on Iran and Libya will have an impact on Tehran and Tripoli that does not boomerang into the United States? Our objective, as described by Secretary Christopher, is to maximize the pressure on Iran and Libya while minimizing the costs to other American interests.

A Brief Analysis of Iran and Libya

The unacceptable policies pursued by Iran and Libya are similar, as has been our firm response to these threats. We object to their support of international terrorism and their pursuit of weapons of mass destruction. To block Iran and Libya from obtaining the military capabilities they seek, we have pursued a policy designed to thwart their attempts

to acquire new equipment. For our part, we established the strictest national export controls in the world. We then engaged in successful negotiations with 30 other governments, and obtained their agreement to prevent countries whose behavior is of concern -- including Iran and Libya -- from acquiring arms and sensitive dual-use goods and technologies for military purposes. In addition, we cooperate with other governments in an effort to prevent either regime from acquiring items for their programs of weapons of mass destruction. Our policies have also exploited the financial troubles experienced by both regimes. To support their militaries and terrorist activities, both Iran and Libya need cash. The two countries are rich in oil and gas resources, and consequently their economies depend heavily upon the export sales of oil and gas. But because of government mismanagement, including financial support for rogue programs, both Iran and Libya are now experiencing economic troubles.

Since the Senate Banking Committee kicked off Congressional consideration of this bill last fall, the Administration has worked to develop recommendations for this bill that are influenced by our understanding of the important differences between the two countries. Some are obvious, like the differences in population, history, religion, and form of government. Some are less apparent, however. One important example is the level of foreign involvement in the oil and gas sector. Following the Iranian revolution in 1979, Iran refused to permit western companies to develop its oil and gas resources. Last year's decision to permit the French oil company, Total, to develop an offshore field was a dramatic shift in Iranian policy, brought on by Iran's cash flow problems. Yet despite its desire for foreign investment, Iran continues to put political and economic obstacles in the way of negotiations with foreign companies. Libya, on the other hand, has long welcomed foreign involvement in its oil and gas sector, contracting over the years with some two dozen foreign companies for production and exploration rights. Located just a few miles from southern Europe, Libya has worked hard to develop close and lucrative business ties with European oil companies.

A second crucial difference between Iran and Libya is the approach toward each country adopted by our allies. Following the Libyan bombing of Pan Am 103 and of the French airline UTA, flight 772, we worked successfully with the British and the French to establish global prohibitions on certain trade and transactions with Libya at the United Nations. This international consensus about how to respond to the Libyan threat has successfully restrained Libya's ability to engage in objectionable behavior. By contrast, few other governments support the U.S. approach of economic pressure on Iran. Despite their shared concerns about Iran's activities, most other countries have been unwilling to take action that would jeopardize their trade ties with Iran.

The Approach of Our Allies and Trading Partners

As you know, we engage in regular discussions about Iran and Libya with our G-7 partners and other nations. Together we review the record of objectionable behavior created by Iranian and Libyan activities. There is little disagreement about the threat

such behavior poses to our common interests. These shared concerns have led other governments to work closely with us on export controls for military goods. Our cooperation on this important issue has enabled us to constrain the military capabilities of both countries. Yet we want to eliminate the need for preventive measures by convincing Iran and Libya that it is in their interest to abandon threatening policies. It is here that we disagree with our allies. What is the best way to convince Iran to change its behavior? What is the best way to convince Libya to alter its behavior?

Our major trading partners, chiefly Canada, Europe, and Japan, are strongly opposed to this sanctions legislation because they consider it to be an attempt to force U.S. policy on their citizens. They also believe that trade-related sanctions imposed unilaterally by the United States will violate the principles of free trade that we have worked hard to establish internationally. These governments are also reluctant to adopt measures that will mean a loss in business for their companies. Some doubt whether economic pressure will succeed in altering the behavior of Iran and Libya. In addition, the Europeans -- especially the United Kingdom and France, who also suffered directly from Libyan terrorism -- are strongly opposed to any new U.S. action against Libya that is divorced from the existing UN consensus. They argue that other countries will have no incentive to abide by the UN sanctions regime if the United States acts independently.

As an alternative to economic pressure on Iran, the EU favors a policy called "critical dialogue." Japan and Canada favor a similar approach. We do not object to the EU's policy of dialogue with Iran, but we believe that dialogue without pressure is insufficient to bring about a change in Iran's policies. Likewise, although the EU expresses concern about Libyan behavior, European countries have been reluctant to support our efforts to increase UN sanctions against Libya. Until Iran and Libya are forced to pay a cost for their actions, they will have no incentive to change their policies. The challenge for the United States is to convince other nations to join our efforts.

Like you, we have been disappointed by the lack of support from our friends and allies for our efforts to increase the economic pressure on Iran and Libya. We believe other governments must assume more responsibility for the effort to contain threats which endanger us all. We also find it difficult to understand why these regimes merit financial benefits, or even "business as usual." We would prefer to work in cooperation with our allies and major trading partners, but we have told them we are committed to responding to these threats unilaterally, if necessary.

But, fundamentally, our allies and trading partners fully share our opposition to the terrorist activities of Iran and Libya. Like us, they do not want our common concerns to be overwhelmed by our difference in tactics. Recently, many western governments have begun reevaluating their policies toward the two countries, in response to continued unacceptable activities, including offensive statements made by Iranian and Libyan officials after suicide bombings in Israel. The EU, Canada, Japan, and other allies want to see changes in Iranian and Libyan behavior, and our shared objectives provide a strong

base for continued diplomatic efforts to gain greater cooperation for our policy of economic pressure.

An Effective Solution

Drawing upon these factors, including our understanding of the policies and economies of Iran and Libya, and the concerns and motives of our allies, the Administration has worked closely with the House International Relations Committee, the Ways and Means Committee, and the Banking Committee to craft the House version of the bill.

Let me summarize the Administration's position.

(1.) We support sanctions against investment in Iran's petroleum resources. Investment is the chokepoint of Iran's economy. Blocking foreign investment in Iran's oil and gas sector will have a major impact on the country's economy by limiting its level of oil and gas production, and thus the government's revenues. Fewer barrels will mean fewer dollars. Moreover, we are confident that we can succeed in this endeavor, because the mere threat of sanctions is already keeping some foreign oil companies out of Iran. But we believe sanctions against trade with Iran would be ineffective, and counterproductive. We simply will be unable to keep Iran from acquiring those goods common to the oil and gas industry, which are manufactured and sold by trading companies all over the world. And the costs -- both of trying to monitor and enforce such a ban unilaterally, and of the retaliatory measures that other governments will take if we impose sanctions on their companies -- are too high.

(2.) We support sanctions against companies that violate the UN Security Council bans on certain trade and transactions with Libya. We have worked hard in the UN to build and sustain international support for sanctions against Libya, including bans on certain oil and gas equipment as well as prohibitions on the transfer of military goods, aviation parts and services, and financial services. Global restrictions are more effective than unilateral American action. It makes sense to add to this existing UN sanctions regime. But we believe sanctions against investment in Libya's oil and gas resources would be ineffective, and counterproductive. It is too late for us to stop foreign investment in Libya's oil and gas sector, because some two dozen companies are already working there now. It is likely that the governments of these companies would take action to protect them. Such retaliatory measures could have a harmful impact on U.S. companies and workers.

(3.) We support a modification that would allow us to avoid imposing sanctions against institutions that finance investment deals. The administration is concerned that U.S. sanctions against foreign financial institutions would be costly to U.S. firms, could be disruptive to financial markets, would reduce the attractiveness of the United States as a financial center, and could invite retaliation against U.S. financial firms. We don't need to run that risk of harming American banks and businesses. The fact of the matter is that

Iran needs more than just bank loans to develop its oil and gas fields. Iran also needs the expertise of a foreign oil company to pull off these multi-million dollar and multi-year deals. A focus on blocking these companies should be sufficient.

(4.) We support modifications to the structure of the bill that would provide the President with greater flexibility in applying sanctions. We'd like to give the President the latitude to respond most effectively to each new situation. We will use the sanctions authority aggressively, but we need flexibility so we can properly target our actions.

(5.) Finally, we support a modification to the provision that would require the President to indiscriminately impose sanctions against both parent companies and their subsidiaries, including American companies, whether or not the party was involved in the sanctionable activity.

We believe these recommendations strike a responsible balance. They will permit us to succeed in imposing additional economic pressure on Iran and Libya, without causing a boomerang effect that unnecessarily hurts other American interests.

Conclusion

There can be no doubt about the commitment of the President and Secretary Christopher to take tough action to respond to the threat posed by Iran and Libya. But they are also responsible for considering the full spectrum of American interests. We believe it is possible to craft a sanctions bill that maximizes the impact on Iran and Libya while minimizing the unnecessary costs to other U.S. interests. We have carefully developed recommendations to do just that, based on our understanding of Iran and Libya and on our appreciation of the factors that guide the approach of our trading partners and allies. We know Congress shares our concerns about Iran and Libya. We welcome the opportunity to continue our consultations with the House Ways and Means Committee, the House International Relations Committee, and the House Banking Committee. Together, we can craft a bill that effectively increases the pressure on Iran and Libya.

Chairman CRANE. Thank you, Mr. Welch.
Ms. Hillman.

STATEMENT OF HON. JENNIFER HILLMAN, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY WILLIAM E. BARREDA, DEPUTY ASSISTANT SECRETARY FOR TRADE AND INVESTMENT POLICY, U.S. DEPARTMENT OF THE TREASURY

Ms. Hillman. Thank you very much, Mr. Chairman. I want to thank you for the opportunity to appear before you to discuss the Iran Oil Sanctions Act of 1996.

This legislation has important repercussions for U.S. business and trade interests. We very much appreciate this Committee's focus on the important trade aspects of this legislation.

I also want to thank you, Mr. Chairman, and Members of the Committee for the time and effort that you have spent working toward bipartisan support for an appropriate and effective Iran-Libya sanctions bill.

Iran and Libya engage in unacceptable behavior that we cannot ignore. The administration strongly supports measures that will increase the pressure on Iran and Libya. Until these regimes are forced to pay a cost for their objectionable behavior, they will have no incentive to abandon their unacceptable policies. The United States is committed to dealing with these threats effectively.

The administration has supported congressional efforts to develop effective legislation. We have measured all legislative proposals by asking whether the legislation will effectively increase economic pressure on Iran and Libya, while at the same time minimizing the adverse impact on U.S. business and trade relations. We have the same objective as you do—creating economic incentives for Iran and Libya to behave responsibly without creating undue problems for ourselves.

Deputy Assistant Secretary Welch has ably described in his testimony the administration's concerns about H.R. 3107 and why some key provisions of the bill fall short of our effectiveness yardstick. USTR agrees that the provisions of H.R. 3107 are not sufficiently tailored to pressure Iran and Libya at the least cost to our trade interests.

I want to address specifically concerns expressed by our trading partners that H.R. 3107 and similar legislation are simply further evidence of U.S. unilateralism that will destroy the multilateral trading system.

As you know very well, the United States is firmly committed to the multilateral trading system. U.S. leadership has provided the foundation on which the multilateral system is based. This administration made it a high priority to complete the Uruguay round and obtain congressional approval for the WTO implementing legislation. We remain at the center of efforts to strengthen the system further at the WTO, the OECD and other forums.

We have told our trading partners on numerous occasions that they should not doubt our resolve to provide leadership in responding to international challenges, both to the multilateral trading system and to our political and economic system. That is why we

have led the effort to deal with Iran and Libya's unacceptable behavior through multilateral action.

However, in cases where we have not been able to obtain sufficient multilateral action, but where our National security and economic interests are at risk, we need to look at alternatives. But we must take care to measure the impact of the alternatives on our trading partners, on the multilateral trading system, and on U.S. business and economic interests.

We have also heard from our trading partners that some of the provisions in H.R. 3107 are inconsistent with our obligations under the NAFTA and the WTO Agreements. We are willing to argue for tough measures to address the unacceptable behavior of Iran and Libya, but we also have been working with this Committee to address the concerns raised by our trading partners. Making the changes suggested by my colleague from the State Department would enable us to succeed in our efforts to effectively increase the pressure on these regimes and force them to cease their unacceptable behavior.

Our recommendation is that any final legislation should fundamentally do three things. It should focus on investment in Iran's oil and gas sector; it should focus on trade with Libya that has already been sanctioned by the international community; and it should give the President greater discretion so that he can fashion the most appropriate remedy in response to the particular facts of each case.

I want to be clear that we support measures that will increase the economic pressure on Iran and Libya. In the process, however, we also want to minimize any unnecessary costs to U.S. business and trade interests. The administration wants to work with the appropriate congressional committees to strike that right balance.

I would be glad to answer any questions you might have.

[The prepared statement follows:]

STATEMENT OF AMBASSADOR JENNIFER HILLMAN
GENERAL COUNSEL
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
ON H.R. 3107
BEFORE THE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON TRADE
HOUSE OF REPRESENTATIVES

MAY 22, 1996

I want to thank you for this opportunity to appear before you today to discuss H.R. 3107 -- the Iran Oil Sanctions Act of 1996. This legislation has important repercussions for U.S. business and trade interests. I appreciate the Committee's focus on the trade aspects of this legislation. I also appreciate the time and effort that you, Mr. Chairman, and others on the committee have spent working toward bipartisan support for an appropriate and effective Iran-Libya sanctions bill.

Iran and Libya engage in unacceptable behavior that we cannot ignore. The Administration supports measures that will increase the pressure on Iran and Libya. Until these regimes are forced to pay a cost for their objectionable behavior, they will have no incentive to abandon their unacceptable policies. The United States is committed to dealing with these threats effectively.

The Administration has supported Congressional efforts to develop effective legislation. We have measured all legislative proposals by asking whether the legislation will effectively increase economic pressure on Iran and Libya, while at the same time minimizing the adverse impact on U.S. business and trade relations. We have the same objective as you do -- creating economic incentives for Iran and Libya to behave responsibly without creating problems for ourselves.

Assistant Secretary David Welch has ably described in his testimony the Administration's concerns about H.R. 3107 and why some key provisions of the bill fall short of our effectiveness yardstick. USTR agrees that the provisions of H.R. 3107 are not sufficiently tailored to pressure Iran and Libya at the least cost to U.S. business and trade interests.

I wanted to address specifically concerns expressed by our trading partners that H.R. 3107 and similar legislation are simply further evidence of U.S. unilateralism that will destroy the multilateral trading system. Let me say that the United States is firmly committed to the multilateral trading system. U.S. leadership has provided the foundation upon which the multilateral system is based. This Administration made it a high priority to complete the Uruguay Round and obtain Congressional approval of the WTO implementing legislation. And we remain at the center of efforts to strengthen the system further at the WTO, the OECD and other fora.

We have told our trading partners on numerous occasions that they should not doubt our resolve to provide leadership in

responding to international challenges -- both to the multilateral trading system and to our political and economic system. That is why, as my colleague from the State Department has detailed, we have led the effort to deal with Iran and Libya's unacceptable behavior by multilateral action.

In cases where we have not been able to obtain sufficient multilateral action, but where our national security and economic interests are at risk, we need to look at alternatives. But we must take care to measure the impact of any alternative on our trading partners, on the multilateral trading system and on U.S. business and economic interests. We need to craft an alternative that balances all these interests, while putting maximum pressure on the pariah states.

We have also heard from our trading partners that some provisions in H.R. 3107 are inconsistent with our obligations under the North American Free Trade Agreement and the WTO Agreement. We are willing to argue for tough measures to address the unacceptable behavior of Iran and Libya. But we also have been working with this Committee to address the concerns raised. Making the changes suggested by my colleague from the State Department would enable us to succeed in our efforts to effectively increase pressure on these regimes and force them to cease their unacceptable behavior. Our recommendation is that any final legislation should:

-- Focus on investment in the Iran's oil and gas sector.

-- Focus on trade with Libya that already has been sanctioned by the international community.

-- Give the President greater discretion so that he can fashion the most appropriate remedy in response to the particular facts of each case.

I want to be clear that we support measures that will increase the economic pressure on Iran and Libya. In the process, however, we also want to minimize any unnecessary costs to U.S. business and trade interests. The Administration wants to work with the appropriate Congressional committees to strike the right balance.

I would be glad to answer any questions you may have.

Chairman CRANE. Thank you, Ms. Hillman, and I want to express appreciation to Mr. Barreda, who is not here to make a presentation at the outset but is here as Deputy Assistant Secretary for Trade and Investment Policy at Treasury to respond to inquiries from Members.

As the result of an Executive order issued 1 year ago, the United States has an embargo on trade with Iran. The International Relations Committee bill proposes a secondary embargo. A secondary embargo is when the United States not only refuses to trade with a country, but also penalizes or refuses to deal with any third parties that deal with that country. It is the coercion of other countries that trade with Iran which is the crux of the secondary boycott in this instance.

The proposed legislation is a secondary boycott because it forces companies to cease their dealings with Iran or jeopardize their business interests in the United States.

In 1977, Congress enacted comprehensive antiboycott legislation prohibiting U.S. companies from complying with or supplying information in connection with the Arab boycott of Israel by the Arab League of Countries. U.S. law prohibits U.S. companies from cooperating with such restrictive practices. Our policy in this regard is grounded in the promise that the foreign governments cannot be permitted to dictate business relationships among U.S. firms and citizens. U.S. antiboycott law is the result of a strong American view that measures must be taken by the United States to guard our sovereignty and independent decisionmaking.

As I understand it, the International Relations Committee is proposing to reenact the antiboycott provisions of U.S. law in pending Export Administration Act legislation which I would like this Committee to consider as soon as we can work out our differences on this Iran-Libya bill.

Mr. Welch, the sovereignty issue is fundamental to U.S. involvement in the international trading system. This Committee labored many hours to reassure Americans that U.S. sovereignty would not be compromised by membership in the new World Trade Organization. Can you give the Committee a perspective on how our trading partners will view the proposed Iran-Libya legislation with respect to their own sovereignty?

Mr. WELCH. I would like to try a brief answer to that question, and then, if I may ask my colleague, Jennifer Hillman, to elaborate a little bit with respect to our trade policy.

Generally speaking, I think a safe summary of the allied reaction to the proposed legislation is a combination of disagreement on principle and concern about the particular effects of the various things that they have seen in legislative language.

But behind that, Mr. Chairman, is I think a broad basis of international consensus on the threat posed by Iran in particular and also by Libya to the interests of the international community. Whereas in the past, there had been some element of disagreement over the nature of the problem in Iran and Libya, that has evolved considerably, particularly in recent years and, frankly, as the behavior from Iran has become more abhorrent.

We sense less of a difference there now; a convergence of policies and a determination that is growing on the part of these countries to try to do something effective with respect to Iran and Libya.

There is always for the United States a balance of interests here. An important principle in our approach has been to stake out a position of leadership in responding to these critical threats from these two regimes. That position of American diplomatic leadership enables us to build a stronger consensus for international action. Without that leadership, I do not think we would have such action.

With respect to your broader question about the philosophy and our approach on trade matters, if I might, I would like to defer to Ms. Hillman.

Ms. HILLMAN. Mr. Chairman, to the extent that our trading partners have commented on this, you have touched on the issue that they have raised, and that is the issue of a secondary boycott and the potential for unilateral sanctions and the issue of extraterritoriality. That is the concern that many of our trading partners raise.

In responding to that, I think we should put this legislation into its appropriate broader context. As you know, we would all prefer a multilateral solution and have worked very hard to try to achieve multilateral results in addressing the problems with Iran and with Libya.

At the same time, we have to recognize that there are a number of important issues that pose such a threat to our National security or our political or economic system that we do need to consider acting alone. In those extraordinary circumstances, we look to a number of factors to make that decision of whether it is appropriate to consider unilateral action or, if you will, to go it alone.

The factors that we would look at include, first of all, whether our action would be effective when we are acting by ourselves; second, the impact that such actions might have on our relations with our allies and friends; third, what economic and political costs might be entailed in such action; fourth, what alternatives exist at the time of the decision to bring about more appropriate behavior; and fifth, other considerations that would be relevant to the particular facts of a given case.

As a general matter, we try to avoid enactment of laws that result in friction with our trading partners. Such measures, we would note, tend to shift the focus away from, in this instance, Iran and Libya and instead end up focusing much of the attention on what our disputes might be with the European Union or others over this legislation, which definitely would have a detrimental effect on its impact. We want the focus to be on Iran and Libya, not on a related dispute that may come between us and some of our other trading partners.

Finally, I would note that all of this takes place in the context of working with you in the Congress. Some of the sanctions measures that have originated in bills proposed in the Congress are ones that we want to try to work with to find an appropriate formulation that takes into account these five factors that I have outlined that we would look at as to when it would be appropriate to take unilateral action.

Chairman CRANE. Ms. Hillman, what aspects of the bill raise questions as to the consistency of our agreements under WTO and NAFTA, and are there sections of these agreements under which the United States could be challenged?

Ms. HILLMAN. I would say that our trading partners have raised concerns in two areas. One is import sanctions, and the other is government procurement sanctions in terms of their consistency with NAFTA and the WTO obligations.

Fundamentally, that is why we are seeking the additional flexibility for the President in determining what sanctions to apply. If you give the President the appropriate amount of discretion, we may be able on a case by case basis to work through the situation in a more appropriate way.

That is the reason why it is so important to know what triggers the sanctions—whether it is investment that triggers the sanctions, or whether it is trade in goods that triggers the sanctions. If we get the trigger right, we will be able to apply the sanctions in the most appropriate way in order to avoid too much friction with our trading partners.

Chairman CRANE. Let me reassure Mr. Welch and Mr. Barreda—you folks jump in any time if you wish to elaborate on any of the directed questions.

Ms. Hillman, what will be the effect on U.S. efforts to isolate Iran internationally if the United States becomes the subject of challenges and criticisms under the WTO, and will this help or hurt our goal of restricting development of the Iranian oil sector as a way to diminish the government's support of international terrorism? Finally, why do countries like Canada, Great Britain and Germany strongly oppose H.R. 3107?

Ms. HILLMAN. I may ask David Welch to answer the basic core of your question.

Mr. WELCH. First, if this turns into a dispute between us and our allies, I think the only victor in such a situation would be Tehran or Tripoli.

Second, if some of the concerns that we have been talking about in our prepared testimony are addressed as we go through consultations with the Congress on the best type of legislation, we think that that outcome can be avoided. And since we share a common purpose here, that is, in making sure the pain is felt most in Tripoli and in Tehran, I think that with these sorts of modifications, we can have that outcome and avoid a contentious dispute with our allies.

That possibility is there, and that is why we have these concerns.

Chairman CRANE. One of the options before the Ways and Means Committee with respect to the bill that has been sequentially referred is to strike provisions in our jurisdiction such as the import sanction and the provision that would prohibit a sanctioned firm from participating in a U.S. Government procurement contract. How would the administration counsel us in this regard?

Ms. HILLMAN. On the issue of import sanctions, I would note that we clearly do have significant concerns about import sanctions. They are not in the Senate bill, I would note. We would like to work with the Committee to fashion a menu of sanctions that pro-

vides the President with the most flexibility we can in tailoring the sanctions to fit the facts in each case.

Government procurement sanctions were also not in the Senate bill. There are provisions within both the WTO provisions on trade in goods as well as the section on government procurement that allow you to take an exception for national security reasons.

Chairman CRANE. What is the administration's position on unilateral secondary boycotts, and what is the administration's position on the bill, H.R. 3107?

Ms. HILLMAN. On the issue of secondary boycotts, I think I went through the kinds of factors that we would look at as to when it is appropriate to take action that would result in the United States imposing in essence a secondary boycott or imposing any form of unilateral sanction on an extraterritorial basis. The five factors that I outlined are the criteria we would use in assessing whether or not that would be appropriate in that particular situation.

And in terms of the legislation itself, I think David Welch has gone through the administration's concerns and the areas in which we would counsel some modifications to the current H.R. 3107.

Mr. WELCH. Mr. Chairman, we support the intent behind this draft. We declared our support for the Senate Banking Committee version as it came out of the Banking Committee, but there have been a number of additions, not simply to the list of sanctions, but in other areas as well, as the House version has moved through the legislative process in this Chamber.

We put our concerns broadly not because we wanted to stay away from the specifics but because this bill is a complex one; there are interactions that are important between, as Ms. Hillman mentioned, the trigger for sanctions, what the sanctions are, how many of those apply, the circumstances under which they are applied, and the scope and reach of the legislation to parents and subsidiaries.

It is the interaction of those things that is important in this legislation. If you change some elements of it, you will have different effects, and we would have to see what the balance of risk and benefit would be in each of those cases.

Chairman CRANE. Could European firms as well as those of any nations that are our trading partners limit contact with U.S. suppliers as a result of this bill even if those U.S. suppliers have no knowledge or relationship of an activity that may be prohibited under this bill, and could the bill have any kind of chilling effect on the use of U.S. suppliers for projects throughout the world, even though a project may have no involvement with an investment in Iran?

Mr. WELCH. Mr. Chairman, I was just asking my lawyer to try to narrow in a little bit more carefully on my question. In my prepared testimony, I mentioned the concern we have about the relationship between parents and subsidiaries. I do not know if that is what you are driving at, sir, but here, if I might elaborate a little bit, if that is the area you are interested in in terms of the effect on American firms——

Chairman CRANE. That is a part, but we had presentations made that if I manufacture, say, a component part of something, and I sell it to you, and that component part goes into some bigger pro-

duction, and you in turn sell it to Ms. Hillman, and she in turn has been doing business in Iran, what is the reverberating potential on you as the manufacturer of that component part?

Mr. WELCH. I see. Under the present Executive order that applies to Americans dealing with Iran, if an American firm knows that the product that they are making and exporting to a foreign firm is going to end up in Iran, they are not supposed to do that.

Chairman CRANE. Well, no; let us assume they do not know that, but through the chain of command, it ends up in Iran. Are they vulnerable?

Mr. WELCH. If they are innocent of any knowledge in that respect, my understanding is they are not subject to any sanctions under domestic laws that presently apply.

But just so we are clear about what I am addressing here, it is existing rules that apply to Americans dealing with Iran—not what is in the legislation. It goes beyond.

Chairman CRANE. And my final question is this. Companies like Seimens, Shell, ABB, to name a few, employ hundreds of thousands of workers across the United States. What would be the effect of this legislation on those firms, and has the International Relations Committee taken such effects into account during their consideration of this bill, to your knowledge?

Mr. WELCH. It is a hypothetical question. There are potential effects on American workers that would arise from a variety of circumstances under this draft legislation. This is an important consideration in judging what parts of the bill are most appropriate and most effective. It is a concern that we have addressed with all the Committees that we have talked to, not just the International Relations Committee.

You would have to ask your colleagues on that Committee, but my sense from talking to them is that there is an awareness of the potential economic impact of the legislation, and an awareness that there has to be a calculation of the risks and benefits to the United States in undertaking these things.

We would like more flexibility in exercising that judgment, Mr. Chairman. That is the purpose of our discussion with the Committees on this topic. Because we think that if we have a little more latitude in how it is used, then we might be able to mitigate some of these harmful effects in the economic area and in other areas.

Chairman CRANE. I would now like to yield to my colleague, Charlie Rangel, but with the announcement that the first bells have gone off; when second bells go off, Charlie still will have the floor when we come back, but we will recess long enough to make the vote.

Mr. RANGEL. Thank you, Mr. Chairman.

Has the President made any public statements about what he is willing to sign, to your knowledge?

Mr. WELCH. At the time——

Mr. RANGEL. At the time that you are testifying; do we know what the President's view is on this?

Mr. WELCH. Yes, sir.

Mr. RANGEL. And are you prepared to draft something that you believe would reach the objectives that the administration wants?

Mr. WELCH. We are prepared to discuss that with the Committee, just as we have with everybody else we have talked to on this bill; absolutely.

Mr. RANGEL. Do you consider Cuba to be more of a threat to our National security or promoting international terrorism or pursuit of weapons of mass destruction? Do you consider them a more major threat to America than Iran and Libya?

Mr. WELCH. Mr. Congressman, I have an ugly basket of difficult countries to deal with that does not include Cuba. It is a big enough basket as it is. I am afraid I am not an expert on Cuba, but my judgment is that in the case of the ones that I have to worry about and the ones that we are discussing here today, Iran and Libya, I think the threat that they pose to U.S. interests has been and is and likely will be considerable and that very tough measures are appropriate with respect to each.

I have not done a mental balance check against Cuba. I do not work on Cuba.

Mr. RANGEL. I do not think you have to work on Cuba. You are an American, and you know what they are doing. They have political prisoners over there, and they have had a dictator there for some 30 to 40 years. You know more about Cuba than most of us do, and you also know our trading partners.

Now, we did not hesitate to put secondary boycotts against our trading countries. We have cases in the World Trade Organization that have been brought by our European trading partners; we have been involved in GATT and NAFTA.

I cannot see any of the objections that you raise—and maybe you can enlighten me—that were not raised when we were considering the Helms-Burton bill.

Ms. HILLMAN. Mr. Rangel, I only note that we have now had consultations requested both by Canada and Mexico in terms of Helms-Burton and are now in consultations with the European Union. I think there is an important distinction between what Helms-Burton does and what this legislation would do in terms of any proposed or any possible retaliation or efforts by our trading partners. Upon enactment, the sanctions in Helms-Burton automatically took effect. The legislation that we are talking about now would allow discretion to the President in terms of application of the sanctions.

Mr. RANGEL. Ms. Hillman, my point is——

Ms. HILLMAN. Therefore, the mere passage of the bill, the mere passage of a sanctions bill on Iran-Libya would not necessarily trigger any response from our trading partners, but clearly, as soon as any specific actions or measures were taken under it, we could be subject to requests for consultations by our trading partners.

Mr. RANGEL. What I am saying is that it seems to me that Helms-Burton took away the discretion of the President, placed it in the hands of the Congress and was a far more restrictive bill than the one that is before you today.

Ms. HILLMAN. Obviously, there are very different measures in the Helms-Burton legislation than in this legislation. Helms-Burton really went to a private right of action for American citizens to sue over trafficking in property that was expropriated and a denial of visas to enter the United States by those persons. So

it is a very different range of actions—but you are correct, it is mandatory in Helms-Burton.

Mr. RANGEL. I know, but you are reading, and I am just talking with you. Do you believe that the Helms-Burton bill is less severe as relates to the way we treat our trading partners than the legislation that is before you today?

[Pause.]

Chairman CRANE. Wait. Can I interrupt here and let our panelists reflect on that, Charlie, because we are running out of time on this vote. We will stand in recess until the vote is completed, and we will be right back.

[Recess.]

Chairman CRANE. Before I ask the panelists to respond to that last question, would you repeat the last question for the panelists, please, Charlie?

Mr. RANGEL. I do not want to belabor the point, Mr. Chairman. I just do not want us to be reading from two sets of books when we have a political objective—and I am not above politics. So for that reason, I want to know what the President is prepared to sign—I do not want a situation where you tell us to do something, then the Republican leadership gives you something, and you sign that. Those of us who want to do the right thing find ourselves listening to you without knowing what is going to be signed.

Now, I think you will agree that you are using a dual standard with Cuba as opposed to what you are using with Iran and Libya. I think there is general accord on that. I think that generally, you would acknowledge that these two notorious countries represent a more severe threat not only to the United States, but to the preservation of democracy throughout the world. I think there is no challenge there.

I think the fact that they are amassing all types of destructive weapons and spreading violence throughout the world is something that the whole world knows, and still we cannot get our allies to come together and stand with us. Thus, we must resort to what amounts to a unilateral secondary boycott.

Now, having said that, if you truly believe that I am wrong, I will just pause, if you have got to justify why we are doing this. But even though I was on the other side of the issue with Cuba, it does not take away from my political question, which is are you prepared to bring to this Committee draft legislation that Republicans and Democrats can look at and discuss with other Committees to see whether or not you are prepared to put your oar in the water while we attempt to reconcile the differences here, because this is a very, very political question we are dealing with at this time of our political calendar.

Mr. WELCH. Mr. Congressman, thank you. I agree. We want to do that. We want to get the right and the effective thing in each of these cases. This is a really serious problem. We think we have a serious approach. We have suggested language at various stages of the legislative process to deal with the Iran case and subsequently with the Libya case after it was introduced. We have been prepared all along to do that, and we are prepared to continue that effort.

In my testimony today, I summarized where our concerns were, but if the Committee or its staff have specific points in any of those areas, we are prepared to discuss that further with them. We will volunteer even if we are not asked. Thank you for asking, though.

Mr. RANGEL. Well, Mr. Chairman, I am not as up to date in terms of the negotiation as I should be, but are you satisfied that our staff has access to their point of view as well as the other parties that we have to deal with in terms of jurisdictional questions?

Chairman CRANE. Well, I know that we have all been working together, that is, with the administration and with representation from the International Relations Committee and the Banking Committee, in an effort to resolve this in a way that is consistent with our objectives and our international trade agreements.

Mr. RANGEL. Well, the reason I ask, Mr. Chairman—and you have been very kind—is because people are asking, Where do you stand on this issue? Of course, we stand on the side of national security, what is moral, right and equitable, but we need to see the language. So the quicker we can see some language, even if it is just proposed language, the faster we can be more precise in making certain that we provide the type of effective sanctions against these two nations that we would want.

So I yield, Mr. Chairman, and thank you.

Chairman CRANE. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Obviously, my friend and colleague from New York asks difficult questions because he is dealing with the fact that we are all working in the human condition and that oftentimes we do not necessarily react identically in what some folks might say are identical situations. I think proximity, shared cultural baggage in a larger sense, and a number of other issues have put us in what might be a somewhat inconsistent position——

Mr. RANGEL. That is quite a stretch, but I accept it.

Mr. THOMAS [continuing]. And I think it is best and frank to simply say we probably are somewhat inconsistent in terms of the way we are dealing with these two issues, I want to work with the gentleman from New York to try to be more consistent and it may not necessarily mean passing this to be consistent. I prefer revisiting the other position.

Counselor Hillman, I was a little bit concerned with one of the remarks that you made in terms of problems that may occur simply by the passage of this legislation. What I got a little bit from your statement was that if it were simply put on the books, but no sanctions were triggered, it would not necessarily be a problem. It seems to me, with the downside of this legislation if it were put on the books in the House version, notwithstanding not triggering the sanctions, there would be a significant, in my opinion—perhaps not significant in other opinions—but a chilling effect on the question of investment given the downside potential of the legislation if the sanctions were triggered.

Do you agree with that?

Ms. HILLMAN. Mr. Thomas, I would note that already, we have had an expression of concern from the European Union about this legislation. Certainly our trading partners can always request con-

sultations at any time to express concern about this legislation and may very well do so.

But the simple passage of the legislation itself would not call into question any specific WTO or NAFTA obligations that would rise to the level of dispute settlement.

Mr. THOMAS. I am talking about real world concern of people who have a dollar, a deutsche mark, a franc or a pound to put somewhere. If in fact this were on the books, it would have some effect on their decisionmaking in terms of investment. I think that is just a given.

Ms. HILLMAN. Correct.

Mr. THOMAS. Given the House legislation in terms of the secondary boycott—I am sorry—did you wish to respond?

Mr. BARREDA. Thank you very much, Congressman. I would want to comment a bit on the financial aspects. As you know, the bill as reported out by the House International Relations Committee included financing of an investment as a sanctionable activity. We do think that including financing would have an adverse effect on the attractiveness of New York City as a financial center. It does create some uncertainty there that I think would cause some people to consider whether they should in fact move some activity outside of New York to other countries.

Mr. THOMAS. Well, clearly, with the passage of this legislation out of some Committees and the idea that it might actually become law, there are people who are in favor of this, and there are members of the international community who have commented negatively, but there are others who have commented positively.

It just seems to me that if we are going to ban imports from, say, European companies who have dealt in oil and gas technology with business unrelated to that specific activity, which is the key on secondary boycotts, that those who are interested in having it occur in the United States probably would have already structured their own legal responses the way they are urging us.

So my question would be this. For example, in terms of countries that might have an interest in the outcome of this legislation—and Israel would be one that would be high on a lot of people's lists—do they have a provision which would trigger secondary boycotts on the books in dealing with Iranian or Libyan oil and gas technology?

Mr. WELCH. Mr. Congressman, to the best of my knowledge, the answer is no, although——

Mr. THOMAS. Do you know if they contemplate putting on the books legislation similar to this which a number of people are urging that we put on the books?

Mr. WELCH. To conclude what I was going to say, my understanding of their situation is that they are in a de facto state of war with those two places and as such do not trade with them at all.

What they would do with respect to——

Mr. THOMAS. Well, finishing my statement, the idea of trading with them at all directly and then boycotting them would in itself be a boycott. My concern is the full ramifications of this legislation in the secondary boycott area. You could fully comply in a state of war in not trading with a particular country and not trigger a sec-

ondary boycott that this legislation would trigger. So to me, there is not a direct analogy. If there is in your mind, I would like to——

Mr. WELCH. No, no. I was just trying to provide a complete answer. The first part of my answer was, with respect to your question, to the best of my knowledge, they do not impose such measures right now.

Mr. THOMAS. And so they do not have, even in a tantamount state of war, a secondary boycott involvement with companies that may or may not be dealing with—we do not know for sure?

Mr. WELCH. I am being careful about that because I do not know for sure. I can undertake to check and provide an answer for the record, although they can of course do so themselves directly. But to the best of my knowledge, they do not have such measures in effect.

Mr. THOMAS. Well, to the best of your ability, if you could do some research and get back to us, and I will try to do it as well—it just seems to me that when someone urges us to take a particular position, I am always curious as to the position that they might have. And clearly, not trading directly with Iran and Libya is something that virtually all of us here are very comfortable with. That is not the thrust of the legislation that is in front of us.

Mr. WELCH. Agreed.

Mr. THOMAS. So I think all of us could accept that if that were the legislation. That is not what is in front of us, and I was just curious if, in any public policy statement, the Government of Israel indicated that it was also carrying out what amounts to a secondary boycott against anybody who does trade with Iran and Libya, which is clearly what this legislation would do.

Mr. WELCH. I will provide that answer for the record.

[The following was subsequently received:]

We expect to submit a comprehensive report on this topic in the near future. On June 13, the Committee on Ways and Means approved H.R. 3107, "The Iran and Libya Sanctions Act of 1996." This bill was then approved 415 to 0 on June 19 by the House of Representatives. Section 4(e) of the bill, titled "Interim Report on Multilateral Sanctions; Monitoring," would require the President, not later than 90 days after the date of the enactment of the act, to report, inter alia, on "whether the member states of the European Union, the Republic of Korea, Australia, Israel, or Japan have legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investment in Iran or Libya." Through the vehicle of this report we will address the concerns raised by this question.

Mr. THOMAS. Thank you.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. First, let me say that none of the questions I ask reflect any sympathy for Libya or for Iran, but I have been concerned that our policy toward Cuba has been an unmitigated disaster that was conceived wrong and has not done anything to solve the problem down there. And I have a very jaundiced view of any unilateral embargo, no matter how well intended. In fact, if I remember my history correctly, I do not believe there has ever been a successful unilateral embargo in modern history, anyway, and probably none before that time.

What have this administration and previous administrations done to try to get some kind of broad-based embargo—broad-based,

including other countries involved in the rogue activities of these two countries?

Mr. WELCH. Thank you for asking that question, Mr. Congressman; it is an important one. In the case of Libya, there exists a broad-based, robust U.N. sanctions regime that applies. The United States——

Mr. GIBBONS. Does it apply in both trade and investments, or just one or the other, or both?

Mr. WELCH. Actually, it applies to more and to less. It deals with weapons trade, with dual-use technology trade, with aviation services and certain technologies, with certain kinds of financial transactions and, last, with certain kinds of oil and gas equipment.

So it does apply to trade, but it also applies more broadly in other areas.

Mr. GIBBONS. Now, is that embargo against Libya being widely observed, or is it not being widely observed?

Mr. WELCH. It is mandated by U.N. Security Council Resolutions under chapter 7 of the U.N. Charter. These have obliged countries internationally to observe the resolutions. Like any sanctions regime, sir, there are problems in monitoring and in enforcing it. Generally speaking, it is a pretty good regime—I think it is safe to say I would be a lot happier if I had that one applying to Iran also; we do not have that with respect to Iran.

Mr. GIBBONS. Now, Iran has been a rogue state at least since 1979 and probably before that, but at least since 1979 when they kidnaped all of our Embassy personnel over there and held them as hostages. What is the track record on getting any kind of multilateral embargo against Iran?

Mr. WELCH. If you will allow me 1 minute longer on this answer, because here it is more complex. We have worked over those years very hard to try to build a regime that would constrain Iran's objectionable behavior. We have had some success in some areas. We have not gotten as much multilateral cooperation as we would like; it is a work in progress.

Briefly, we have what we think is pretty good cooperation and understanding from our allies to prevent Iran from acquiring arms or sensitive dual-use items for military purposes. We also have agreement among the major Western powers that there should be no nuclear cooperation of any sort with Iran. We are working on Russia and China to urge them to cease all such nuclear cooperation with Iran. All countries agree that Iran should not obtain items that are useful for weapons of mass destruction.

We have also had some success in the economic area as well. The World Bank does not give Iran new loans. We have introduced some difficulty into Iran's effort to reschedule its official debt, which is considerable, Mr. Congressman. We have also had some bilateral success with individual countries on specific programs that they have underway in Iran.

We have concentrated recently on trying to control the amount of official credits and guarantees and insurance that governments provide in support of their trade with Iran. This is in effect an effort to subsidize such trade.

We have some success in that area, too—a significant reduction in the volume and pace of such officially backed transactions. We

would like our allies to do more, and we are pressing in any number of respects and will be doing so in the coming months.

You may have noted that the Secretary of State gave a speech yesterday on terrorism where Iran was a significant focus. There, he indicated that we would be continuing to work with our allies to increase the economic pressure on Iran and also that we would be trying to work constructively with Congress to achieve legislation that has that same purpose.

I can go on a little bit longer, but I think that is a good answer.

Mr. GIBBONS. Is the only international tribunal we have to work on embargoes such as this the United Nations? Is that the only place where we try to get more people in these embargoes?

Mr. WELCH. No, I don't think so.

Mr. GIBBONS. Have we ever tried to get the major trading nations together and sit down and have a meeting with them? They meet in the G–7, they meet as NATO, they meet in a number of different formats; why haven't we tried any of those ways to bring the major industrialized and financial nations together on some unified action?

Mr. WELCH. We do, and——

Mr. GIBBONS. Someplace where the real small nations do not have the majority of the votes.

Mr. WELCH. We do that, Mr. Congressman, and in effect, we try to push every button we can when it comes to this kind of problem.

Mr. GIBBONS. I just have not seen you pushing them; maybe you pushed them, and I just did not see them.

Mr. WELCH. Well, I can point to a record of increasingly active measures we have taken with our allies in this regard, and you will see at the upcoming G–7 meetings that there will be a focus on the pariah states, including, I think, at a minimum a statement from them that addresses the problem of terrorism from Iran and other places.

With respect to what we have done specifically to try to build a better multilateral structure, the G–7 is our best target—it is not our only one, but it is a good one. We have worked there, and we have managed to set up a working group on Iran specifically with our European partners and with Canada, which meets every 6 months. We had a meeting not long ago, and there is another one coming up, I think in the late summer. That is an institutionalized way to have a discussion about all aspects of the Iran problem. The Europeans can bring their concerns to the table, and so can we.

Mr. GIBBONS. How about the WTO; have we ever done anything in the WTO about rogue nations? Has it ever been on our agenda?

Ms. HILLMAN. No, it has not yet been addressed in the WTO forum. In general, to the extent the WTO addresses it, it is more an exemption from all of the disciplines of the WTO that would be available for national security reasons. In that sense, it is addressed to the WTO, but it has not been raised specifically.

Mr. GIBBONS. All of my questioning is brought about by the frustration that I do not believe unilateral sanctions work very well, and I do not think we have done enough to develop a mechanism by which we can get multilateral sanctions against these countries. I think if this administration and other administrations would focus on getting some multilateral responses to these kinds of prob-

lems, that we would be much more effective than we have been. I am not denigrating the United Nations, but I think all of us know the structural problems of the United Nations and getting anything done there, where we have so many small nations that are always worried about their rights and responsibilities.

I would like to see something done about Iran and Libya, but I am afraid that if we go it alone as we have had the propensity to do on many things in the past, we are just going to be met with more frustration and perhaps some damage to our own economy by ineffective action.

Mr. WELCH. I think that that is absolutely right, sir. The best approach is a multilateral one, and I can assure you that I have instructions to continue that day after day, and we know your interest, and we will continue doing that.

Mr. GIBBONS. And Ms. Hillman, I would suggest that perhaps the WTO—I know you have a lot of problems, and you are just on a shakedown cruise—could pay attention to these rogue nations, and I think it would develop a lot more popular support if they would venture in and try some of these things.

Ms. HILLMAN. I appreciate the suggestion, Mr. Gibbons. Certainly, we absolutely agree with your notion that the best way to approach the problem is multilaterally, and we appreciate your suggestion and will look into it.

Mr. GIBBONS. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

I would like to ride on what Mr. Gibbons said for a moment, because we keep saying that we are going to do something on a multilateral basis, and somehow nothing works. And I am not pointing my finger at the White House, at the State Department or at anybody, but it just seems that we have got to craft another approach to this thing. Now, it may be that out of our discussions here and whatever happens with this legislation, our allies will come to the table and be more reasonable, but this is something which I know President Clinton mentioned when he was running for office in terms of the release of two hostages of Libya, and he talked about Iran, and he talked about trying to get the United Nations to impose sanctions on the oil of both of those countries. So I guess if there were any message that would come from me and I think from others around here, it would be that we just are not doing a very good job at that. We want to have something happen, we give lip-service to it, and somehow it does not happen.

Let me just try to pin this whole thing down. Obviously, we are not the sole trader or investor in this world, and there are others involved, and we are all interrelated, and when you trade, you have got to do it with proper sensitivity for others. Iran and Libya have not been helpful—as a matter of fact, they have been horribly dangerous—and the whole point is to try to hobble Iran and Libya without creating an "ebola" economic virus which hurts everyone involved. And that is really tricky.

But let me try to understand this, and maybe the witness from the Treasury could help me here. Let me give you a couple of examples from my State. There is a company in my district. It is a subsidiary of a European company, and it is the sole producer of

a particular product, and it imports products to go into that final product.

If the bill, as I understand it, H.R. 3107, goes through, and if the foreign parent sells a product in Iran, then the company in my district is at fault by association, having done absolutely nothing—and there is no control over this. Then the President, if I understand it, has to approve two sanctions—one, an export and import sanction, so that in effect, from an economic standpoint, our company goes out of business.

Now, am I right or am I wrong?

Ms. HILLMAN. You are correct. In terms of your reading of the bill, yes, the subsidiary of your company would be subject to the terms of the bill, and under the terms of H.R. 3107 as it is written, the President would be required to impose at least two of five different sanctions that are called for in the bill.

Mr. HOUGHTON. So we are doing what we think is right; we are producing a product which has nothing to do with Iran, and we are down the drain. That does not seem fair.

Second, let me give you another example, and this does not happen to be in the little town of Corning, New York, in which I live, but it happens to be in New York City. I am a New York City bank. I exist. I clear every night my accounts, which is required in terms of international procedure, and one of the banks that clears with me has been involved in financing some investments in Iran. Therefore, I am a culprit just by my association in that clearing process, and I cannot clear, and therefore, the whole clearing operation, which now is a pretty sizable activity in New York, moves. It moves to London or Paris or wherever. Is that right?

Mr. BARREDA. In commenting on one of Mr. Thomas' points, I mentioned that that is a concern we have. That is why the administration suggested in Mr. Welch's testimony that the financing of an investment not be a sanctioned activity, that the investment itself be what is sanctioned.

And a minor point—your conclusion is right, Congressman—the sanction would be that the U.S. bank, your New York bank, could not lend money to the foreign-sanctioned institution, and that is what would cause the problems in the clearance system and perhaps the incentive to——

Mr. HOUGHTON. And could not clear, and therefore, there would be obvious retaliation.

Mr. BARREDA. There would certainly be an incentive to move it abroad, yes, Mr. Congressman.

Mr. HOUGHTON. Sure. Now let me ask you another question. I am in a business, and I am a subsidiary of a foreign company, and the foreign company has made a contract with Iran in some way, but it was before this legislation, in whatever form it takes, is passed. So therefore, just because of what I did prior to the legislation, I am a culprit. Is that right?

[Pause.]

Mr. HOUGHTON. Well, if I understand it, the investment trigger would require a boycott of firms carrying out contracts entered into prior to the enactment of this particular legislation.

Ms. HILLMAN. Mr. Houghton, I think in our view, the legislation is not clear on this point. I think there is some ambiguity in the way the particular draft is worded at this point.

Mr. HOUGHTON. Well, we all live in a world of ambiguity. However, it seems reasonably clear to me, and if I were a manufacturer, I would be shaking in my boots for something I did prior to any legislation about which I had no knowledge.

Ms. HILLMAN. Clearly this is an issue which the administration is recommending a change to the language to address the point that you are raising.

Mr. HOUGHTON. So let me follow up again. In order to avoid some of the pitfalls of the examples which I have cited here, maybe eliminating the trade trigger for Iran and a limit for Libya to the U.N. list, and then defining the investment to apply only to contracts entered into later on, also then to exclude coverage of financing altogether—things like this would make the legislation clearer, more commercially acceptable and therefore avoid what appears to me to be massive retaliation on the part of the people who really are our friends.

Mr. WELCH. Mr. Congressman, in your recitation of some examples, you have brought out with specifics some of the general concerns that we have testified about here today. To repeat briefly what those are, the actions that would trigger sanctions should be different to have the most effective impact in each case. With respect to Iran, we think the chokepoint is investment. With respect to Libya, we want to support an international, U.N.-approved sanctions regime that exists.

Second, there is a potential metastasizing effect from the financing provision as it is now written, and I cannot predict how that might go. My Treasury colleague has given you an indication of the potentially serious consequences there. We think that that investment definition would be better written without that provision.

Third, the relationship of parents and subsidiaries is written presently in such a manner as to have an effect that in my view is disproportionate on American companies and those who may have unknowingly engaged in trade with a sanctioned person.

With respect to the contract sanctity provisions, it depends on the specific contract that we are talking about, but we believe there can be some improvements in that area as well.

Mr. HOUGHTON. That is all, Mr. Chairman. Thanks very much.

Chairman CRANE. Thank you.

Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I would like to thank the three witnesses for being here today. I think certainly all of us are frustrated, and I understand you all have to be frustrated over the situation as well—Mr. Houghton was saying that during the 1992 election, the President talked about many of these things, and we have not done a good job—but I would like somebody else to come up with some alternatives when we discuss these things because this is a very, very tough issue. In fact, I think that over time, you are going to see an erosion of the concept of free trade as these things go on. The United States takes the lead on intellectual property sanctions against the Chinese, and everyone else takes advantage of our lead but refuses to take any

of the risk; we see the same thing with Libya, Iran, Iraq, and it goes on and on and on, and we get caught in an obviously very difficult situation when we cannot get multilateral support.

These other countries know that when we take these actions, the country involved may ultimately, like China, for example, retaliate, and obviously it puts us in a financial disadvantage, and it is a problem that I think nobody in this country really knows the answer to at this time. We have a lot of discussions about the problem but we have not been able to come up with a solution.

I think the one time we had everybody working together was with South Africa, although the Japanese were very late in coming on board, but that was the one time in the mideighties when that actually had some impact.

Our problem today is a more practical one, and let me see if I can state the situation correctly. I think all of us agree that we need to impose some kind of probably unilateral sanctions on Libya and particularly on Iran; I do not think there is a Member in the House or in the Senate who would necessarily disagree with that.

The issue is what kind of sanctions. The Senate bill came out—you all supported the Senate bill—and my understanding after hearing your testimony is now that the International Relations bill is one that is very difficult for you—obviously, there is potential retaliation if it goes into effect by other countries, particularly the import sanctions, and the fact that the President has less flexibility, obviously, with the International Relations bill.

We have probably 2 weeks before we have to take some action and maybe 1 month before this thing hits the floor.

I think the real frustration is that if it hits the floor, the probability is that the most extreme version might become the law. And we understand that Mr. D'Amato has supported the House version.

Given that, I think we need to have some real, strong signals from the administration as to what they can live with and what they cannot live with because negotiations are going on now, and obviously, you are going to have to be involved in this. And I think you have laid out some of them in terms of the issue of the trigger and also the issue of the sanctions themselves. But I think you are going to have to take more of a leadership role on this.

Am I misstating the situation? Will we see perhaps a more visible position on this issue over the next week or two as we try to come up with some bipartisan, bicommittee agreement if we possibly can?

Mr. WELCH. The administration wants a tough bill; they want to target Iran and Libya effectively. It is the No. 1 priority for my boss, the Secretary of State, so it is my No. 1 priority. I will do that, Mr. Congressman.

We are delighted to offer language on any of the provisions on the bill or on the bill in its entirety. This is something that we have been willing to do all along; we have had some effect with what we have said, and I am glad to have this additional opportunity today in front of this Committee to lay out again our concern, and any chance you give me and my colleagues to continue doing that, we welcome it.

Mr. MATSUI. I appreciate that. My only concern is if we put the Senate bill and the House bill as it came out of International Rela-

tions next to each other, would you be able to pinpoint where your problems are and what is your bottom line, because we are going to need that. Look, no one is going to stick his neck out on an issue like this for obvious reasons in an election year unless we get some leadership, both in the House and in the Senate and certainly in the administration. No one is asking anybody to do this by themselves.

And I know, from reading this legislation, that the import sanction is a major problem. You have the issue of insufficient flexibility for the President. Obviously, the private sector has significant problems with this. Now, if you do not care enough to take a risk, we are not going to do it either, and we need to know what your bottom line is so we can make some decisions.

This thing is going to roll on its own without anyone stopping it, and before you know it, it is going to sit on the President's desk, and you are going to say, Oh, my God, what are we going to do now, what are we going to recommend to the President? And the fault will be due to the fact that in the months of February, March, April and May, nobody showed leadership.

These are the kinds of quagmires that create significant problems later on, and somebody is going to have to speak out on this. I can tell you that this bill is not very good coming out of International Relations. Anybody who has any trade experience or been on this Committee will understand that. But as I said, I am not going to be one of 25 Members voting against a bill if I do not see somebody else talking about it.

So I do not know—maybe it does not require any further response, but I think it does.

Mr. WELCH. I think it does, too. We are willing to do exactly what you ask.

Mr. MATSUI. Thank you.

Chairman CRANE. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman.

I would agree with everyone who spoke before me that the ideal solution is multilateral. I would agree with Mr. Houghton and others that perhaps we can refine and focus this legislation more. But the fact is we have tried multilateral approaches, and Mr. Welch has described the great efforts that he has gone through to try to devise multilateral approaches which, as they relate to the oil industry which is the focus of this legislation, have been largely unsuccessful to date.

I would remind Mr. Matsui that the South African precedent which he points to was originally a unilateral initiative by the United States, and there have been other instances——

Mr. MATSUI. If the gentleman would yield, in fact I was a strong supporter of that, and I am a strong supporter of what is going on now; and hope my comments were not suggesting that we should not go unilaterally, and I do not think the gentleman thought that.

Mr. ZIMMER. Thank you. I appreciate that, because I think sometimes we lose focus of why we are here. I am a cosponsor of this legislation, and although I certainly am ready to see it refined and focused, we have got to remember why this legislation has been introduced.

The Nation of Iran has been identified as the world's leading state sponsor of international terrorism in a world that has many sponsors of international terrorism. It has been identified as such by the President, by the Secretary of State, and by the CIA. And in the case of Libya, Libya is constructing the world's largest chemical weapons complex. It harbors terrorists. It refuses to this day to hand over those suspected of instigating the bombing of Pan Am flight 103 over Lockerbie, Scotland, which killed 270 people including 189 Americans.

I would point out also that just yesterday, the Secretary of State noted that the President of Iran, who has been identified by some as a moderate, has said that Prime Minister Rabin's assassination was "divine vengeance," and the Secretary went on to say that Iran frequently meets with all the terrorist groups, including Hezbollah, Hamas, the Islamic Jihad, and the Popular Front for the Liberation of Palestine General Command; it actively encourages these groups to use terror to destroy the peace process; it provides them with money, up to several million dollars a year in the case of Hamas, the Islamic Jihad and others, and up to $100 million a year in the case of Hezbollah.

Under Secretary of State Peter Tarnoff recently said, "A straight line links Iran's oil income and its ability to sponsor terrorism and build weapons of mass destruction." And I would say that, considering that Iran currently derives more than 90 percent of its hard currency from the petroleum sector, and the fact that it needs continuing investment to upgrade its oilfields so that it can continue to be an exporter, it is absolutely essential for the future of the world in which terrorism has become the major threat that we move forward in this direction.

So the question I would like to ask you, Mr. Welch, is how would this legislation have an impact on that straight line linking Iran's oil income and its ability to sponsor terrorism?

Mr. WELCH. Thank you. That is why we are here, to ensure that it does. If I could quote a little further from the Secretary's speech yesterday, sir, he also said that, "This is the reason we have been working with Congress on legislation to further tighten economic restrictions on Iran."

I absolutely agree with what you said. This is precisely the right chokepoint. How do we know that? Well, the Iranians themselves told us. Since the revolution in Iran, their oil production has declined by half. It is not because they could not get access to pumps or to whatever they wanted to buy for their oilfields; it is because they could not run them themselves. What they really need is what they declared they needed last November when they hosted a conference to discuss some very large oil and gas contracts—investment. These are significant major investments without which Iran will not be able to stabilize its oilfields and increase its oil production.

If you stop that sort of investment or curtail it, you have a major and significant economic impact in Iran. That is precisely why we have chosen this chokepoint. It provides the exact targeted focus for the kind of legislation we would like to see.

Mr. ZIMMER. And the legislation you would like to see at this point is unilateral, while you are still working to develop a multilateral approach.

Mr. WELCH. Sir, the administration declared its support for the Senate Banking Committee's version of the legislation, which had the investment trigger for Iran.

Mr. ZIMMER. You have accounted for all your efforts, and you described the effort to develop a multilateral consensus as "a work in progress"—could you tell me what tangible results you have had from that? I understand that recently, when the Secretary of State met with the Foreign Minister of Germany, which is Iran's largest trading partner, the Foreign Minister acknowledged that his country is "fully aware of the evil things that Iran has been doing and is still doing."

What progress have we made despite all the efforts of the State Department and other diplomats?

Mr. WELCH. Some part of that question, Mr. Zimmer, I answered earlier in a general overview of what we have been trying to accomplish through the years with respect to Iran and Libya.

Mr. ZIMMER. But what do we have to show for it? There are working groups and conferences and communiques.

Mr. WELCH. What we have been able to do is that essentially, no country is providing any aid to Iran; none of our allies are. The Japanese have one project that they were supporting which is in suspension right now.

In terms of official credits and guarantees, most of our trading partners and allies, although they have those on the books, are not drawing them down. The volume of new such credits and guarantees has declined substantially.

Iran's own economic record is so abysmal that that may have been a substantial influence in what these countries are prepared to do also. I am not going to claim that we were entirely the reason why they did that.

In the weapons of mass destruction and military technology areas, we have a more complete, concrete effort on the part of our allies to——

Mr. ZIMMER. I was asking about the oil industry.

Mr. WELCH. In the oil industry, there really is no foreign investment beyond the Total Project of last year in Iran. So the beauty of this concept is that it applies prospectively, and the deterrent power is therefore clear.

Mr. ZIMMER. Do you believe that the threat of this legislation or legislation like it has deterred that investment already?

Mr. WELCH. Yes.

Mr. ZIMMER. So a threat of unilateral action has had an impact on the behavior of our allies?

Mr. WELCH. Yes. Yes, it has.

Mr. ZIMMER. Before I yield back my time, I just want to conclude by saying that it seems to me that the threat of unilateral action has produced more results than all of the enormous efforts you have put forward to try to develop a multilateral consensus at this point, and as Mr. Matsui pointed out, sometimes multilateral consensus follows our unilateral actions.

I yield back. Thank you, Mr. Chairman.

Chairman CRANE. I think, before starting with another interrogator—how long are your questions, Mr. Payne?

Mr. PAYNE. I will be very brief.

Chairman CRANE. Well, then, we might go forward with your questions, and then we will recess and make this vote and come right back.

Mr. PAYNE. Thank you very much, Mr. Chairman, and I thank all three of you for testifying today. This has been very helpful and very enlightening.

I think that we all agree that we need to do the toughest possible thing we can do in order to ensure that we stop the terrorism that seems to be growing in the world at this time. But since we are the Trade Subcommittee, we also need to look at how this will impact upon our trading partners and how it will impact upon us.

I understand that the first thing we really need to come to agreement on is exactly what will trigger the actions that will be taken. I think we have concluded that the bill before us, H.R. 3107, which has both a trade and an investment trigger, might be a much more satisfactory piece of legislation if it only had the investment trigger.

Is that an accurate statement?

Mr. WELCH. Our judgment has been that the best focus for Iran is investment, and the best focus for Libya is the existing U.N. Security Council regime. People who violate that regime will be sanctioned. It is when you mix these two cases without regard to their special differences that problems arise and magnify.

Mr. BARREDA. And Mr. Payne, by "investment," we do not refer to the financing of the investment but to the actual investor, such as the example used with Total.

Mr. PAYNE. The language in the bill does include financing. It states that it would make investments—including financing in Iran or in Libya of $40 million or more in one year that directly contributes to the enhancement of the petroleum industry—the trigger that would trigger this event.

You are saying that, excluding the financing, this criterion would apply in Iran, generally, as stated here; however, it would not be the case in Libya?

Mr. WELCH. Sir, I think the present draft of the bill that you are looking at has in it a list of definitions, one for investment. One of the definitions of an investment is certain financing. It is that provision that Mr. Barreda is referring to.

The bill, since it mixes Libya and Iran in its present form, therefore applies to both.

Mr. PAYNE. OK. Well, since I have a brief period of time, let us focus for a moment on Iran. As you began today, you said there is really only one project or one instance where there has been investment in Iran. I take it that was the Total Project that you spoke about a few moments ago, that was essentially initiated in the recent past, so that for some reason, these investments that are occurring in Iran did not happen over a reasonably long period of time and suddenly are occurring now. Is that a true statement?

Mr. WELCH. There is an important reason for that. The revolutionary government in Iran did not allow foreign investment in its oil and gas industry, but because they were doing such a rotten job

running it, they decided they would. They had a problem and looked for the best way to correct it. That is why we picked this chokepoint to exert pressure on. We think it would work because they themselves declared that it would.

Mr. PAYNE. And to date, we have not had anything like this as part of the embargo that we have had on Iran?

Mr. WELCH. Well, American companies could not do it, of course, but that is correct. There is no multilateral agreed regime that would have that effect.

Mr. PAYNE. And so I guess this is very much the same question that Mr. Zimmer asked. In your opinion, then, this is the most effective thing we can do to achieve the balance that we need to achieve and to take the necessary steps to end terrorism—this single trigger, as you have stated it, is the most effective thing that we could do to accomplish that in your opinion?

Mr. WELCH. I think this would hurt them in a major way. I am not going to say it would cause them to end terrorism. I cannot make that judgment with that degree of confidence. But it is absolutely clear that it will hurt Iran, and it will reduce their primary source of foreign exchange. Oil exports are their largest single foreign exchange earning, and this will affect that.

Now, that balance of risks and benefits that we identified before is critical to judgment on these things. It therefore has a large potential benefit.

We also assess that some of the risks that we have discussed here today, in terms of the effect on Americans, the enforceability concerns, the monitoring, the effect on international agreements, those would be considerably less with an investment trigger for Iran because there is no such investment beyond Total right now; it would be deterring investment.

Mr. PAYNE. And I take it, Ms. Hillman, that you and USTR agree with that statement as well?

Ms. HILLMAN. Yes, we do.

Mr. PAYNE. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. The Committee will stand in recess to make this vote, and then we will complete our hearing as soon as we come back from the vote.

Thank you.

[Recess.]

Chairman CRANE. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman.

I first want to thank you for giving all of the Members of the Ways and Means Committee an opportunity to participate in this hearing. I also want to thank the administration witnesses for being here and testifying and their willingness to work with our Committee in creating the strongest possible bill.

Quite frankly, I agree with Mr. Zimmer and his comments. I am a cosponsor of this legislation and I think the bill, as drafted and reported by the International Relations Committee gives the administration ample flexibility. It is a clear message to the world about the United States standing up against the current practices in Iran and Libya.

The issue of whether we should work on a multilateral basis or whether we should work unilaterally is certainly an issue that will be debated. I think most people agree that a multilateral approach is the best and most effective way to proceed, and gives us the easiest way to enforce whatever laws we pass.

Yet history has taught us that the best way to get multilateral response is for the United States to be willing to take unilateral action, which, in turn, leads to other nations taking us more seriously and following the leadership of the United States.

We have taken unilateral action in South Africa, the Soviet Union, Cuba and in many other parts of the world, where we stood up for human rights, or stood up against certain practices of other countries. We were told by our business interests that this would adversely affect American companies, and we would harm our interests. Lo and behold, we were the leaders of the world, and we got multilateral action, and most importantly, we got change in the underlying practices of the countries.

My concern is that there is no disagreement about the problems in Libya and Iran. You make a rather strong point that in Iran, oil income is used to support terrorist activities and the development of weapons of mass destruction; they have not modernized their oil facilities; they need international investment in order to do that; and we want to stop international investment, but that this practice will not work in Libya because Libya already has the international investments that have modernized their facilities.

I guess my question is if we sit around and wait and argue about how much international support we can get before we act, do we not run a risk that Iran will in fact get the international investors they need, and then, maybe next year, you will be coming back before this Committee and saying that we cannot use the investment strategy any longer because unfortunately, the investors are already there, and we cannot do anything about that as we do not want to upset the international financial community? It is just going to pull operations out of the United States, and therefore, we cannot do anything about Iran, so let us go on to the next thing, and hopefully we will stop something else.

Don't we run that risk of delay that there will be people who will invest, particularly when there is no cost to that investment? We have not spoken as the leader of the free world on this issue. Yet I appreciate the fact that we want to dot all the i's and cross all the t's and talk to all of our allies, and so forth. Nevertheless, it has been well acknowledged that we have the right on security issues under all of our trade agreements to take steps that are necessary to prevent these types of actions. We have the right to act; the question is whether it will be effective, and I appreciate that. We are all guessing as to whether waiting and getting more support is indeed the best way or moving forward.

I would appreciate your response.

Mr. WELCH. I think your focus on leadership on the part of our country is very important. This is what we want to do. Let me be very clear about that. We want to work with the Congress to take the lead again on this issue with respect to Iran and Libya.

As you point out, if we wait around for others to follow, we may be waiting a long time. I would not say that I would forsake the

effort to get better multilateral support. We will push that button as well, Mr. Congressman, and continue to do so. It is not really an either/or proposition in that sense; we move forward in both respects.

Properly targeted, this legislation would have a powerful impact on both of these important problems, and it would do so while minimizing the other risks to our foreign policy and our economic interests. I am not going to say that there are no other such risks or that we can have 100 percent clean outcome in that regard. We will have to bear some risk. But the benefit is potentially quite good, too. I have spoken already about the impact it would have in Iran and in terms of maintaining the consensus internationally on strong action against Libya. If we do that, we will have an effect, and the intent of this legislation would be supportive in that regard.

Mr. CARDIN. Ms. Hillman has pointed out that in the sanctions here, the President has discretion. I understand you want more discretion in the White House, and we need to talk about that. But there is discretion here. I remember when I first came onto the Ways and Means Committee and was talking to our Trade Representative about the international climate; our system is sometimes to our advantage, in the separation of powers, where the Congress has a certain role and the executive branch has to negotiate—of course, we do fast track in order to give you the authority to negotiate. But many times in international settings, you have to work with an independent Congress, and therefore, sometimes we push you in directions that are helpful in negotiating with our allies.

It seems to me it might be helpful with our trading partners if the Congress speaks with the strongest possible voice on this issue to let the international trading community understand that we are demanding action as it relates to Libya and Iran. And certainly you, in your diplomatic skills, need to negotiate and use the powers that we give you in a way that is most effective in accomplishing results.

But it seems to me—and I am not going to ask you to answer this question; let me just put it on the record—that we help you if we give you the strongest possible bill so that when you negotiate with trading partners, they understand how serious this Congress is. The worst thing we could do would be to water down the bill reported out by the International Relations Committee and show that our trading partners do not really have to take us seriously—they have already won a battle in Congress, and they can win a battle with the administration and just let this one go by the wayside.

So I hope that we will work together for a strong bill and not just any bill and an intent that we want all of our trading partners to work with us, but a bill that gives teeth to sanctions against companies that provide the financial wherewithal to support the terrorist activities that are taking place in these two countries.

I start with the International Relations bill and challenge us to see whether we cannot come up with a stronger bill, and certainly not one that will weaken that legislation.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Ms. Hillman, if H.R. 3107 were law today, how many companies or persons would be subject to the sanctions referred to in section 4?

Mr. WELCH. As we were discussing this in its earlier version, sir, we took a look at this, working with our intelligence community and analysts of the industry—not from industry, but of the industry—to see what the universe was out there. To be perfectly honest with you, it is very hard to define. It is a very large universe. There are many potential exporters of this kind of technology, there are a lot of important pieces of goods and technology that will be useful in the oil and gas industry.

You can set a dollar limit, as has been attempted, you can define a list, but what we are talking about here, internationally, is regarded as innocent trade. Therefore, the burden of monitoring it, to say nothing of enforcing it, would be considerable on us at a time when we have resources that are stretched for, frankly, much more dangerous trade.

We have been of the opinion in taking a look at that problem that it is basically too hard to do. Second, I am not sure it would be all that effective in getting at what their problem is. We believe that the critical chokepoint for the Iranians is their desire to have foreigners come in and invest in their oil and gas industries, to build up and manage these projects for them so they can regain their position in the international oil market. That is a more critical chokehold in our view and one that we can more easily grab hold of.

Mr. COYNE. Section 9 directs the President to establish and maintain a list of petroleum and natural gas-related goods. Is there any way to at least come to some close estimate of how many people would be affected?

Mr. WELCH. You are talking about tens of countries that export that sort of technology, and in terms of the goods and articles themselves, the stuff you would have to watch—it is a huge list. Frankly, we did not get very far into that because as has been apparent here, we are arguing against that. We do not think it would have the effect intended, and it would be too hard to do.

Mr. COYNE. But if it became law, you would have to——

Mr. WELCH. It is the law of the land, then, and we would be obliged to follow up on it.

Mr. COYNE. Thank you.

Chairman CRANE. Thank you, and I want to express appreciation to all of our panelists for their participation. This took longer than we had anticipated, but I think it was a worthwhile hearing, highlighting some of the significant problems that were not adequately addressed during the markup of H.R. 3107.

And I want to state that the hearing record will remain open for written statements only until tomorrow, and also, there will be submission of some questions in writing that we will get to you folks from colleagues who were not able to be here with us personally.

[Followup questions and answers to the Office of the U.S. Trade Representative from Mr. Laughlin follow:]

Q. The Committee has heard from a number of U.S. business groups concerned that, following the enactment of the legislation, retaliation by our major trading partners could put thousands of hardworking Americans out of work not only in the 14th District of Texas but also throughout Texas and the rest of the country. Has the administration made a detailed assessment of how many Americans could lose their jobs if foreign governments carry through on their threats to retaliate? If so, please submit the detailed assessment along with the impact on various regions of our country and the various sectors of our economy including but not limited to: The pharmaceutical industry, banking and financial institutions, electronic and high-tech firms, oil and gas (including oilfield supply companies), petrochemical, and the automotive industry. If no detailed assessment has been conducted, when can this Committee expect to receive such an assessment in order to determine the impact of this legislation on the American workers and the American economy?

A. The executive branch has not assessed the impact of passage of H.R. 3107. We believe that the Congressional Budget Office is best equipped to conduct such an assessment for this Committee.

Q. I understand at least one private-sector study has been done in an effort to quantify how much business U.S. companies could lose if foreign businesses engage in a secondary boycott at the direction of their governments. I am advised the study concluded U.S. businesses had $10 billion at stake just with foreign companies that do business with Iran. Has the administration made a detailed assessment of how much business American companies could lose if their current foreign business partners turn to other companies for the supply of goods and services in the future? If none has been made, please submit a detailed assessment that addresses the potential financial impact on the various sectors of the economy previously listed. Further, when can this Committee expect to receive such an assessment?

A. The executive branch has not assessed the impact of passage of H.R. 3107. We believe that the Congressional Budget Office is best equipped to conduct such an assessment for this Committee.

Q. As reported by the International Relations Committee, the bill would authorize the President to impose sanctions on totally innocent subsidiaries of sanctioned companies, including totally innocent ones in the 14th District of Texas. I am advised that enactment of this provision would be unprecedented. Are you opposed to the inclusion of this unprecedented provision in any form? Can you cite any other instances in which totally innocent subsidiaries of sanctioned companies have been sanctioned?

A. The administration agrees sanctions should not be applied to companies that do not participate in the triggering event with actual knowledge. We are not aware of other statutes that impose such vicarious liability on subsidiaries of companies subject to sanctions.

Q. As reported by the International Relations Committee, the bill also could be read to be applied retroactively. As you know, this Committee has a long history of making changes in the law only prospectively. Would you agree that we should preserve that longstanding policy in this case as well? If not, could you please cite examples for this Committee that justify your position on this issue?

A. As currently drafted, H.R. 3107 can be read to already existing investments or trade because of ambiguous language. The administration supports efforts to clarify that the law would only apply prospectively.

Q. I know the administration has been concerned about high gasoline prices consumers have been paying at the pump. Has the administration made a detailed assessment of the possible impact on consumer prices of reducing the supply of Iranian or Libyan oil on the world market? If no such assessment has been made, when can this Committee expect to receive such an assessment?

A. The executive branch has not assessed the impact of passage of H.R. 3107. We believe that the Congressional Budget Office is best equipped to conduct such an assessment for this Committee.

Chairman CRANE. With that, the Committee stands adjourned.

[Whereupon, at 5:15 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

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STATEMENT OF THE ANTI-DEFAMATION LEAGUE
ON THE
IRAN FOREIGN OIL SANCTIONS ACT
HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE
MAY 22, 1996

We commend the Subcommittee on Trade for convening today's hearings on the Iran Foreign Oil Sanctions Act and appreciate the opportunity to proclaim the Anti-Defamation League's continuing support for this important initiative.

This legislation is a meaningful complement to existing U.S. sanctions. The ban on U.S. trade with Iran has already curtailed investment in Iran but only a multilateral approach can effectively impede Iran's sponsorship of terrorism and dangerous campaign to acquire weapons of mass destruction.

As Iran embarks on a diplomatic offensive to reach out to new allies, enactment of this bill -- without weakening amendments -- would expand the scope of U.S. sanctions and enhance U.S. ability to achieve international isolation of Iran. The U.S. can and must take stronger steps to urge our allies to participate in an international effort to fight Iran's support for terrorism.

Attached is an advance copy of an ADL backgrounder on Iran's continued sponsorship of terrorism and the status of international efforts to isolate the regime.

Sincerely,

Lisa Klinghoffer *Ilsa Klinghoffer* *Abraham H. Foxman*
Leon and Marilyn Klinghoffer Memorial Foundation
of the Anti-Defamation League

Anti-Defamation League of B'nai B'rith, 823 United Nations Plaza, New York, NY 10017 (212) 490-2525 FAX (212) 867-0779

MAY 1996

IRAN: A PARIAH STATE AMONG THE COMMUNITY OF NATIONS

As the leading state sponsor of international terrorism engaged in a campaign to acquire weapons of mass destruction, destabilize moderate regimes in the Middle East, and derail the Arab-Israeli peace process, the Islamic Republic of Iran remains a pariah state among the community of nations.

Although Iran has the fourth-largest oil reserves in the Middle East, it has had difficulty maintaining its production levels over the last two years as a result of aging oil fields and the high cost of developing its reserves. Iranian oil production has declined by 30 percent since 1979 and imports and exports are down. Teheran also faces a $33 billion foreign debt. Its current drive to attract seven billion dollars in foreign investment to bolster its weakening oil industry and secure additional international debt refinancing raises serious policy questions for the United States and the international community.

TERRORISM

Iran is today the most active and dangerous sponsor of state terrorism and of radical groups that employ terrorism, responsible for the deaths of over 1000 people worldwide since 1979. According to the State Department's newly-released *Patterns of Global Terrorism: 1995*, "Iran remains the premier state sponsor of international terrorism and is deeply involved in the planning and execution of terrorist acts both by its own agents and by surrogate groups." Since 1984, Iran has consistently appeared on the U.S. Department of State's list of states sponsoring terrorism.

As the leading patron of Islamic extremist and Palestinian rejectionist terrorism, Iran provides groups such as Hamas, Hezbollah, and the Popular Front for the Liberation of Palestine-General Command with weapons, funds, training and intelligence. Teheran has also become the leading supporter of Sudan's National Islamic Front and has forged a partnership with Sudan to pursue its international terror campaign. Iran has provided Sudan with tens of millions of dollars in military aid and arms since 1991 and Sudan in turn affords Iran a strategic foothold in North Africa and the Horn of Africa. Iran finances and equips terrorist training camps in Sudan; it sends Iranian Revolutionary Guards to undergo training there and to train Islamic militants from across the region.

Teheran also engages in active subversion of moderate Arab regimes and targets Iranian dissidents abroad. Iran reportedly provides $200-300 million annually to its radical allies abroad. Its opposition to Israel and the Arab-Israeli peace process translates into money, arms and training for terrorist operations.

The Iranian terror network extends beyond the Middle East to Western Europe, Africa, Southwest Asia, and Latin America, targeting Jews, Americans and other innocents. Allegations that Iran maintains its European headquarters for terrorism in its embassy in Bonn, Germany have resurfaced in the media based on a recent report by Germany's federal internal intelligence organization, BfV, obtained by the London *Daily Telegraph*.

The Iranian Embassy in Bonn is believed to be Teheran's coordinating center for terrorist activities throughout Western Europe, the acquisition of illegal weapons and technology and the planning of assassinations of Iranian dissidents.

Most recently, Belgian authorities discovered a powerful mortar and a huge shell in a cargo of pickles en route from Iran to Germany on an Iranian ship docked in Antwerp in March 1996. Belgian and Israeli officials said that they may have been intended for use by terrorists against Israeli and Jewish targets in Western Europe.

Support for Hezbollah

Hezbollah is an umbrella for several radical Shi'ite Muslim groups under the spiritual and political guidance of Iran. Teheran helped found Hezbollah in 1982 when it sent Iranian Revolutionary Guards to southern Lebanon to fight against Israel's invasion. Iran has continued to provide Hezbollah with funds, training and logistical support to aid Hezbollah's growth, export Islamic revolutionary ideology and gain a foothold in Lebanon. Revolutionary Guards today continue to offer logistic aid and training to Hezbollah recruits. Hezbollah Secretary-General Hassan Nasrallah trained in Iran, holds frequent meetings with Iranian leaders and communicates with Teheran via the Iranian Embassy in Beirut.

Through its proxy Hezbollah, Iran has conducted lethal terrorist attacks against Americans, the most notorious being the 1983 car bomb attack on the U.S. Embassy in Beirut killing 49 and the 1983 car bomb attack on the U.S. Marine Barracks in Beirut killing 241. Iran and Hezbollah are believed responsible for the 1992 bombing of the Israeli Embassy in Buenos Aires that killed 29 and the 1994 bombing there of the Jewish Community Center that killed 96. Iran has also been linked to the July 1994 bombing of a commuter plane in Panama and the bombings in London of the Israeli Embassy and offices of the Jewish community. In March 1994, three Iranian agents were arrested in Thailand after a failed attempt to detonate a truck bomb at the Israeli Embassy in Bangkok.

Iran is believed to fund Hezbollah at $80 million annually and Iranian Revolutionary Guards train Hezbollah guerrillas at bases in southern Lebanon. Most recently, Iran rearmed Hezbollah terrorists with Katyusha rockets during Hezbollah's April 1996 campaign against civilian cities in northern Israel.

Support for Hamas and Islamic Jihad

An Iranian-Islamic Palestinian alliance began to emerge during the intifada and gained momentum with the burgeoning Arab-Israeli peace process in the wake of the 1991 Gulf War. United in their militant rejection of Israel and in pursuing the end of the peace process, Hamas, Islamic Jihad and Iran strengthened ties.

The relationship was cemented when a delegation of senior Hamas and Islamic Jihad leaders visited Teheran in October 1992 and was reportedly promised $30 million

annually, as well as training and logistical support in Iran, southern Lebanon and Sudan. Hamas subsequently opened an "embassy" in Teheran. Israeli authorities believe that Iran now subsidizes 10 to 20 percent of Hamas' estimated $70 million budget.

American and Israeli officials maintain that Iran has provided financial support and training to Hamas and Islamic Jihad suicide bombers who have launched deadly attacks against Israeli civilians, including those responsible for the February and March 1996 attacks in Jerusalem and Tel Aviv. In early April, Israeli authorities said they had arrested a Palestinian man, recruited by Islamic Jihad in Turkey, who underwent military training in Iran. The suspect admitted that workers at the Iranian Embassy in Turkey had provided counterfeit documents to Islamic Jihad which he had used to travel to Iran.

Iran's support of Islamic extremist groups in the Middle East is alarming to moderate Arab leaders who have recently begun working together and with Israel to combat the internal security threats posed to them by these groups. Despite the widespread recognition of Iranian-sponsored terrorism and its threat to the stability of the Middle East and the West, the March 1996 anti-terrorism summit convened in Egypt failed to mention Iran in its final communique.

Attacks Against Dissidents and Moderate Arab Regimes

Iran has a well-organized campaign against exiled Iranian dissidents and has reportedly assassinated 60 foes of its regime abroad over the last two decades. According to the State Department, Iran killed seven dissident figures in 1995, up from four in 1994. Teheran's campaign against exiles is reportedly based in the Iranian Embassy in Bonn, Germany.

Most recently, two Iranian exiles were assassinated in Turkey in February 1996; in March, two Sunni Iranian clerics were murdered in Pakistan and an Iranian opposition activist was killed in Baghdad. Also in March, 1996, Germany issued a warrant for the arrest of Iranian Intelligence Minister Ali Fallahiyan suspected of having ordered the September 1992 killings of a Kurdish opposition political leader, and three other opposition members in a Berlin restaurant. Five men have been on trial since October 1993 for the killings and the alleged ringleader of the murders, Kazem Darabi, is a senior operative of Iranian foreign intelligence.

Iran supports Shiite and Sunni Muslim extremist movements in Turkey, Jordan, Egypt, Algeria, Iraq, Bahrain, Tunisia and Afghanistan as well as radical secular nationalist groups in a host of countries. Most recently, Iran is suspected of fomenting domestic unrest among Shi'ite Muslims in Bahrain directed against the Sunni Muslim Bahraini government.

Iranian Revolutionary Guards are reportedly training Islamic extremist terrorists from Algeria, Egypt and Tunisia at terrorist training camps in Sudan. American officials have identified five Iranian-financed and administered training bases around Khartoum, Sudan.

The Egyptian government maintains that several thousand Egyptian militants have undergone Iranian training in Sudanese camps and that Iran is responsible for training and organizing Egyptian radicals who have attacked foreign tourists in Egypt. Most recently, the United Nations has imposed sanctions on Sudan for refusing to surrender three suspects in the 1995 assassination attempt on the life of Egyptian President Hosni Mubarak. The U.S. recently closed its embassy in Khartoum and ordered all U.S. diplomatic personnel to leave the country. Algeria severed diplomatic relations with Iran in March 1993 for its support of Islamic militants in Algeria.

ACQUISITION OF WEAPONS OF MASS DESTRUCTION

Deepening economic misfortunes and the Western arms embargo have forced Teheran to scale back its procurement of conventional arms and the Iranian conventional military buildup forecast several years ago has not been realized. However, Iran's efforts to develop nuclear, chemical and germ weapons remain a source of great concern.

Iran reinstated its campaign to acquire and develop nuclear weapons in 1984 and over the past decade it has invested billions of dollars to build a wide array of nuclear research facilities and to train Iranian nuclear physicists and engineers abroad. Teheran has publicly opened more than fifteen new nuclear facilities since 1988, and has built a large number of underground facilities, where it is suspected Iranian scientists are engaged in secret uranium production and enrichment. Iran's civilian nuclear power program has provided the regime with a cover for its nuclear weapons production.

Iran has reportedly acquired nuclear technology from China, Russia, Pakistan, some former Soviet republics as well as sophisticated dual-use technology from European companies - primarily German - that can be adapted for military purposes. Current intelligence assessments place Iran's nuclear weapons capability at eight to ten years away.

Intelligence experts suspect that Teheran has an active chemical and biological warfare program. According to recent CIA estimates and a May 1995 report by *Jane's Intelligence Review*, Teheran has stockpiled between several hundred and 2,000 tons of chemical weapons and has sought to buy biological agents in Europe and the United States.

Teheran is also aggressively seeking increasingly sophisticated surface-to-surface missiles and has purchased hundreds of ballistic missiles and the technology to produce them from North Korea and China. These Scud-B and Scud-C missiles enable Teheran to attack fellow Persian Gulf nations. Iran has also reportedly agreed to buy North Korean Nodong-1 missiles with an estimated range of over 600 miles, thus posing a threat to distant targets including Israel. These surface-to-surface missiles are capable of delivering conventional, chemical, or nuclear warheads.

Most recently, Defense Department officials confirmed that Washington is concerned about Iran's building of tunnels on its southwest coast that could be used to launch or

store long-range missiles. Iran's missile buildup and its effort to develop weapons of mass destruction raise the potential threat of Iran engaging in nuclear, chemical and biological terrorism.

Despite intense American opposition, Russia concluded an $800 million contract with Iran to rebuild the Busheir nuclear power plant, build three other plants and train Iranian nuclear engineers. Also included in the January 1995 agreement were plutonium production reactors, a gas ultracentrifuge plant and what appeared to be a nuclear weapons test shaft - items which U.S. officials charge effectively transfer nuclear weapons technology to Iran. In May 1995, Russian President Borris Yeltsin acknowledged that the agreement "does contain components of civilian and military nuclear energy" but asserted that "the military component" was subsequently removed from the contract.

Under pressure from the U.S., China announced in September 1995 that it was suspending, but not canceling, a deal to supply two nuclear power plants to Iran. With Chinese government acquiescence, Chinese companies are reportedly helping Iran develop chemical weapons.

OTHER PARIAH ACTIVITIES & INFLAMMATORY RHETORIC

• Iran has printed millions of counterfeit U.S. dollars which are circulated by terrorist organizations in Lebanon's Bekaa Valley. The counterfeiting operation, according to analysts, is aimed at undermining the world's confidence in U.S. currency and at supporting programs to obtain weapons of mass destruction and fund terrorist activites.

• Iran is also a key transit route for drugs smuggled to Europe from Afghanistan and Pakistan. In March 1996, the State Department said it would keep Iran on the list of states judged not to be cooperating in the war against drugs.

• Iranian President Akbar Hashemi Rafsanjani: "The Zionist regime has so cruelly massacred the defenseless people of Lebanon that no such precedent has been witnessed throughout the history of humanity." (*Reuters*, 5/15/96)

• Head of Judiciary Ayatollah Mohammad Yazdi: "Religious minorities in Iran enjoy freedom... However,...Baha'ism is not a religion but an espionnage establishment...Iran will by no means sacrifice... Islamic rules in order to appease international bodies." (*Reuters*, 5/14/96)

• IRNA (State-run Islamic Republic News Agency) Broadcast: "Israel, the only state in the world to be created by terrorism and brutal use of force, is now tasting its own medicine. The divine retribution on those who spread corruption and injustice on the earth will be severe. The blasts prove that the Zionist state stands utterly powerless to prevent the attacks by the heroic youth of Islam." (*Reuters*, 3/7/96)

• Ayatollah Ali Khamenei: "The government and the people of Iran believe that the

existence of Israel is false and artificial. In fact, there is no nation called Israel, rather Zionist leaders, acting solely on racism, have gathered some people from around the world and set up a made-to-order state in order to occupy Palestine." (*Reuters*, 2/8/96)

• President Rafsanjani: "Rabin, who had expressed happiness about the assassination of Shqaqi, was assassinated himself... That is nothing but a clear example of divine revenge for oppressors and is a manifestation of God's show of force." (*Reuters*, 11/5/95)

• Iranian parliamentarian on the international medical symbol: "The snake is a symbol of Jewish power... and the staff is a sign of freemasonry." (*Reuters*, 9/5/95)

POLICY RESPONSE: CONTAINMENT OR CONSTRUCTIVE ENGAGEMENT?

Washington has been trying for some time to isolate Iran in the international community. Bars on American trade with Iran began in the wake of the Iranian November 1979 takeover of the American Embassy in Teheran. Iran's placement on the terrorism list in 1984 prohibited U.S. foreign aid and credits and restricted Iranian access to US dual-use items. Direct imports from Iran were banned in 1987 and the export to Iran of American high technology was banned in 1992. The U.S. currently has the world's toughest curbs on exports of dual-use items, arms and financial transfers to Iran.

In 1993, the U.S. initiated a policy of containment aimed at putting pressure on Iran to relinquish its pursuit of weapons of mass destruction, its sponsorship of international terrorism and its fiery opposition to the Arab-Israeli peace process.

Toward this end, the U.S. first launched an aggressive campaign to halt international refinancing of Iranian debt payments and loans. Washington initially failed to prevail upon our allies and in 1994, Iran successfully rescheduled $12 billion of its foreign debt in agreements with Germany, France, Japan, Belgium, Austria, Switzerland, Italy, Denmark, Sweden, Spain and the Netherlands. Since then, however, European nations and Japan have reduced their granting of new credits and loans to Iran.

In 1995, Japan decided to delay indefinitely a $450 million loan to Iran to build a hydroelectric power plant on Iran's Karun river. The loan was the second installment of $1.8 billion in development credits Japan had set aside for Iran, with the first installment of $465 million already disbursed. France recently announced that while it would not prevent private French companies from engaging in Iranian oil development projects, it would not finance the projects.

Similarly, while American lobbying initially failed to dissuade the World Bank from extending to Iran $463 million in loans in 1993, the World Bank and the IMF have agreed to put on hold all new Iranian loan requests.

Loopholes in U.S. law had permitted American oil companies to purchase Iranian oil and sell it abroad through foreign subsidiaries. Such purchases, amounting to $4.25 billion in 1994, led to the U.S. becoming Iran's largest trading partner. In response to Iran's

continued pariah activities and its drive to attract foreign investment, pressure increased to eliminate these loopholes. The Clinton Administration subsequently took a number of steps, including a March 1995 executive order which bars U.S. companies from engaging in oil development agreements with Iran and a May 1995 order banning all American trade and investment with Iran including the purchase of Iranian oil by foreign subsidiaries of U.S. companies.

In Congress, Senator Alfonse D'Amato (R-NY) has taken the lead in expanding the scope of sanctions against Iran. In January 1996, the Senate passed legislation sponsored by Sen. D'Amato that would open to U.S. sanctions any foreign company or bank that invests $40 million or more in Iranian and Libyan oil and gas industries after the legislation's passage. Sanctions include: denial of U.S. Export-Import Bank assistance, U.S. export licenses, and U.S. financial institutional lending. The House International Relations Committee passed a similar, stronger measure in March 1996 and at this writing, the bill awaits action by the full House.

The legislation reportedly contributed to recent decisions made by Royal Dutch/Shell Group and the Australian oil firm Broken Hill Proprietary Co. (BHP) not to pursue investment options in Iranian energy projects.

European Support for Iran

In disagreement with the U.S., our European allies and Japan believe that engaging countries that support terrorism is more effective than punishing them; they have consequently formed a policy of "critical dialogue" with Iran centered around a multibillion-dollar trade and investment relationship. The Europeans view Iran as a potentially-lucrative market. Accordingly, they have at times minimized Iran's role in sponsoring Islamic extremist terrorism. Our allies continue to trade with Iran, subsidize Teheran with below-market rate loans, and European oil companies have secured the very Iranian oil projects from which U.S. companies withdrew.

American officials counter that European loans, debt rescheduling and trade with Iran from 1989 to the present have failed to yield Iranian political moderation. Recent U.S. executive orders and Congressional legislation aim to stem the foreign investment in Iranian oil development projects which Teheran so desperately seeks. When Conoco, a subsidiary of DuPont Corp., withdrew from its agreement to develop Iranian offshore oil and gas fields in the wake of President Clinton's Executive Order, however, the French company Total S.A. picked up the $600 million deal in July 1995. The Total deal was the first major oil investment in Iran by a major Western company since 1979.

Several other French oil firms are currently in talks with Iran to develop other oil and gas fields. In February 1996, French Transport Minister Bernard Pons visited Teheran in the first visit of a French cabinet minister since 1992. He concluded an agreement with his Iranian counterpart in which Iran and France agreed to cooperate in building airport and rail facilities and boost transport ties.

With longstanding historical ties to Iran, Germany is currently Iran's largest trading partner, having exported $6 billion worth of goods to Iran in 1993. Bonn has underwritten about $10 billion in sales and investment by German firms. In February 1994, German banks rescheduled another $600 million in private debt on generous terms. In February 1995, Germany reinstated government-backed credits for exports to Iran and granted Teheran $102 million in credit guarantees. Bonn and Washington continue to disagree about what constitutes dual-use items with Germany insisting that only civilian goods are exported to Iran.

After Germany, Japan, Italy, Britain and France are Teheran's other main suppliers and clients, conducting hundreds of millions of dollars worth of business annually with Iran. Accordingly, the European Union strongly objected to the U.S. Senate passage of the Iran sanctions bill in January 1996.

In the wake of strong Iranian support for the recent spate of Hamas atrocities in Israel, the European countries summoned Iranian ambassadors to their respective countries to express concern. An EU delegation traveled to Teheran to press the message that Iran should condemn terrorism if it wants its dialogue with the EU to continue. Nevertheless, at the recent April 1996 meeting of EU foreign ministers in Luxembourg, the ministers agreed to continue their "critical dialogue" with Iran and repeated their long-held stance that this would be a more productive way for moderating Iranian policy than any ostracism of Teheran. In May 1996, German Foreign Minister Klaus Kinkel reiterated European policy: "It is in our view better to continue the dialogue with Iran rather than break off all contacts, introduce sanctions and further radicalize Iran by isolating the country."

Other Recent Global Engagement In Iran

• Iran today is South Africa's main oil supplier and its largest trading partner in the Middle East, excluding North Africa. In 1995, South Africa welcomed Iran's foreign minister, concluded a deal that would allow Iran to store 22.5 million barrels of oil in a facility on South Africa's west coast and signed an agreement to cooperate in mining.

• Violating a pledge to President Clinton in September 1994 that it would sign no new arms deals with Iran, Russia initialed a 10-year military cooperation agreement with Iran in December 1995, providing up to $4 billion in additional weapons sales to Teheran.

• Since 1992, when the Central Asian Republics joined the Economic Cooperation Organization (ECO) founded in the 1980s by Iran, Pakistan and Turkey, Iran has been forging ties with the Republics. Most recently, in May 1996, Iran and Turkmenistan opened a rail link that opens a new trade route from Europe to the Far East and gives landlocked Central Asia access to Iran's Gulf ports. Iran has also sealed two oil deals with Azerbaijan and Kazakhstan.

• Other countries recently boosting trade and other ties with Iran are China, Pakistan, Croatia, Bulgaria, North Korea and South Korea.

[By permission of the Chairman]

Bundesverband der Deutschen Industrie e.V.
(Federation of German Industries)

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U.S. Sanctions Legislation, e.g. vis-a- vis Iran/Libya - BDI Position-

The BDI is watching with great concern current initiatives by members of the U.S. Congress to impose measures of an extraterritorial nature in the context of sanctions against a number of countries. If these measures are indeed adopted, they will not only seriously harm German companies affected by them, but also have negative consequences for those companies' investments in the USA and their U.S. trading partners.

The U.S. measures designed to punish foreign companies when they invest in or do business with the countries concerned are incompatible with the principles of true partnership and mutual trust between friendly trading partners. They are at variance with certain rules of international law and with the principles of the multilateral trade system.

This applies to the planned U.S. sanctions against Iran and Libya. In the latter case, the USA is thus undermining the common course adopted by the United Nations in its policy toward Libya.

This measure has particularly serious implications in that it empowers the Administration to punish not only the company concerned, but also its subsidiaries or its parent company as well as any other interest involved, if they are deemed to have been aware of the infringement. German companies with investments in the development of oil and natural gas production in Libya would be particularly affected. The measures in question would jeopardize investment projects some of which have been developed over decades and are of special importance for securing energy supplies in the German market.

Against this background, the BDI calls upon the U.S. Congress to abandon its plans for the extraterritorial application of sanctions and to return to the common course adopted by the United Nations regarding Libya. Otherwise, the measures in question will place considerable strain on transatlantic relations. Sanctions against foreign companies will restrict their opportunities for investments and trade in the United States and directly endanger jobs there, including those created by German companies.

Therefore, German industry welcomes the European Commission's inquiry about what countermeasures could be taken, should the need for such measures arise.

Justice for Pan Am 103, 309 Yoakum Pkwy, #1509, Alexandria, VA
(703) 751-2497

STATEMENT OF ROSEMARY WOLFE
PRESIDENT, JUSTICE FOR PAN AM 103
HOUSE WAYS AND MEANS COMMITTEE
HEARING ON IRAN OIL SANCTIONS ACT OF 1996
MAY 22, 1996

Mr. Chairman and members of the Committee. I welcome the opportunity to present a statement for the record.

Justice for Pan Am 103 is an organization of families of victims of the Pan Am 103 bombing dedicated to the search for truth and justice and an aggressive foreign policy against terrorism. Nearly eight years after the terrorist bombing of Pan Am 103 over Lockerbie on December 21, 1988, we are no closer to securing justice against those responsible for the murders of our loved ones. And we are more aware than ever before of our vulnerabilities as Americans and citizens of the world to the expanse and perils of terrorism.

H.R. 3107, as amended, is perhaps the most significant, forceful, and controversial piece of anti-terrorism legislation to come before the Congress. Its passage would signal U.S. determination, leadership, and courage in imposing consequences on foreign companies for certain oil development and investment in Iran and Libya in the face of heavy opposition from European governments who continue to put economic interests before all others.

As witness to history, the past eight years have shown that doing business with terrorist states does not stop terrorism from advancing. To the contrary, terrorists and their state sponsors are strengthened by the power of their purse strings and the knowledge that there are no consequences for their actions and they can strike again. Outside of military action, financial isolation of terorist states is the only thing than can begin to shake the foundations of their economy-- and the base of their terrorist activity.

Terrorism is big business. Terrorists are well financed by governments--the most well known among them are multimillionares; their operations for the most part are part of a sophisticated, interwoven network; and they are given safe havens in the countries where they are based. Without an economic as well as political commitment this base cannot be destroyed. H.R. 3107 would be a powerful beginning.

There are ways that the United States, its allies, and other freedom loving nations of the world can work together to modify the effects on their economies of oil development and investment cutoff in Iran and Libya. Because are allies, particularly, are unwilling to face this challenge now, the United States must lead the way and absorb the economic consequences that may result.

In the end, if terrorism succeeds, the economic and social perils will be worse than any temporary discomforts from the

deterrence this legislation would create. Positive action against terrorism is an investment we must be willing to make and a policy we must be willing to advance before the world community.

What we Pan Am 103 families have learned in our own fight for justice is that when the United States exercises leadership the rest of the world will follow. What we also know is that halfway measures do not work.

Apart from the original question of the wisdom of the United States and its key allies, Britain and France, seeking multilateral action at the UN rather than unilateral action against Gaddafi, what we do know is that the original and follow up sanctions resolutions against Libya would never have been passed by the Security Council were it not for U.S. pressure. And having personally been involved with other families in the effort to get the original UN sanctions against Libya strengthened, it was not until the United States was convinced that the sanctions should be strengthened that they were.

For over a year the families were told that our allies and the rest of the world community would not support additional sanctions, and the United States did not press for action. When the United States had the resolve to pressure our allies and the rest of the world community, we were able to get additional sanctions.

But, to our dismay the even the additional sanctions did not succeed in getting Gaddafi to comply. What is more, we have recently learned that over 40 foreign businesses are not even complying with the existing sanctions. The UN, as far as we know, has not taken action to enforce the sanctions. The United States and its allies have not pressed the issue. And, there is no immediate hope for further action here or elsewhere.

From the beginning of UN involvement, the families pressed for a worldwide oil embargo against Libya--the only action many of us believed would be strong enough to get Gaddafi to comply. The United States undertook this as an option far too late in the UN process--long after the additional sanctions were imposed against Libya and long after erosion of the sanctions had already begun.

To this day, the economic pressures are not strong enough to get Gaddafi to comply. While not a panacea, H.R. 3107, as amended, would allow the United States to unilaterally take further action against Libya. We urge that no modifications be made to the legislation. We urge the retention of prohibitions against both Iran and Libya, the retention of prohibitions on key goods and services for oil development and the retention of oil investment prohibitions. In the case of Libya, without the oil investment provisions, the legislation would be meaningless. More importantly, the legislation would also be meaningless without the rentention of at least two sanctions against offending parties.

In concluding, H.R. 3107, as amended, would not only send a clear message to terrorist states but would let them know that we are willing to take the powerful actions that can put them out of business.

STATEMENT FOR THE RECORD

GREG LAUGHLIN, M.C.

SUBCOMMITTEE ON TRADE

MAY 22, 1996

LIKE OTHER MEMBERS OF THE COMMITTEE, I ABHOR TERRORISM AND BELIEVE OUR GOVERNMENT SHOULD TAKE STEPS TO STOP THE SPREAD OF WEAPONS OF MASS DESTRUCTION IN THE MIDDLE EAST. HOWEVER, IN CONSIDERING LEGISLATION INTENDED TO ADVANCE THESE GOALS, WE SHOULD NOT LOSE SIGHT OF THE NEED TO ASSESS ITS IMPACT ON OUR OWN ECONOMY AND OUR OWN CITIZENS.

THUS, BEFORE THE COMMITTEE COMPLETES ITS WORK ON H.R. 3107, THE PROPOSED IRAN OIL SANCTIONS ACT OF 1996, I BELIEVE THE COMMITTEE SHOULD MAKE A THOROUGH ASSESSMENT OF WHAT IMPACT THE ENACTMENT OF THIS LEGISLATION AND THE IMPOSITION OF SANCTIONS BY THE PRESIDENT COULD HAVE ON PRICES AMERICANS PAY FOR GASOLINE AT THE PUMP. IN ADDITION, WE MAY WISH TO DETERMINE HOW MANY AMERICANS COULD LOSE THEIR JOBS AS THE RESULT OF THE IMPOSITION OF SANCTIONS ON INNOCENT U.S. SUBSIDIARIES OR THE ENACTMENT OF RETALIATORY MEASURES BY FOREIGN GOVERNMENTS. SOME OF THESE JOB LOSSES WILL NOT ONLY BE IN THE 14TH DISTRICT OF TEXAS BUT THROUGHOUT TEXAS AND OUR NATION.

TO REDUCE THE RISK OF INNOCENT AMERICANS BEING HURT, THE BILL SHOULD BE AMENDED TO ENSURE THAT COMPANIES ARE NOT SANCTIONED FOR THE PERFORMANCE OF CONTRACTS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE LEGISLATION. OUR COMMITTEE HAS A LONG AND WELL-ESTABLISHED PRACTICE OF ENSURING CONTRACT SANCTITY IN ADOPTING LEGISLATION. WE SHOULD CONTINUE THAT PRACTICE NOW.
IN ADDITION, THE COMMITTEE SHOULD INSIST THAT THE BILL BE AMENDED TO DELETE THE PROVISION POTENTIALLY SUBJECTING INNOCENT U.S. SUBSIDIARIES TO SANCTIONS FOR CONDUCT ENGAGED IN BY OTHERS ABROAD. TO MY KNOWLEDGE, CONGRESS HAS NEVER BEFORE SUBJECTED INNOCENT SUBSIDIARIES TO EXPORT CONTROL SANCTIONS.

GIVEN OUR COMMITTEE HISTORIC EFFORTS TO CREATE JOBS THROUGH TRADE, I THINK IT IS CRITICAL THAT WE TAKE THESE AND OTHER STEPS TO AVOID UNINTENDED CONSEQUENCES THROUGH THE ENACTMENT OF THIS TYPE OF LEGISLATION.

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Matthew Brooks

May 22, 1996

The Honorable Philip M. Crane
Committee on Ways and Means
Chairman, Subcommittee on Trade
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Crane:

On behalf of the members of the National Jewish Coalition, we woul to thank you for holding today's hearing to discuss H.R. 3107, The Ira Sanctions Act of 1996. The NJC is in strong support of this imp legislation.

The legislation, which imposes economic sanctions on foreign comp that assist in the development of the energy sectors of Iran and Liby necessary in light of the active involvement of Iran and Libya in ac international terrorism. Both Iran and Libya are dependent upon thei and gas industries to finance their military activities. In fact, over ni percent of Iran's hard currency comes from its oil sector. By dete foreign investment, the sanctions will severely impact Iran and Li significantly reducing their financial involvement in international terro and curtailing their ability to acquire weapons of mass destruction.

While the impact of this legislation may have a chilling effect on s companies who trade with Iran and Libya, the cost of leaving these nat unchecked could be disastrous. As Under Secretary of State Peter Tar stated at a recent congressional hearing (October 11, 1995), there i "straight line that links Iran's oil income and its ability to sponsor terro [and] build weapons of mass destruction... Any... private company helps Iran to expand its oil [sector] must accept that it is indire contributing to this menace." The United States cannot, and must not, b away from our global responsibilities.

Again, we appreciate the Subcommittee's attention to H.R. 3107. Please not hesitate to contact us if we may provide you, or the other members the Subcommittee, with any additional information.

Sincerely,

Cheryl Halpern
National Chairman

Matthew Brooks
Executive Director

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