TRADE RELATIONS WITH EUROPE AND THE NEW TRANSATLANTIC ECONOMIC PARTNERSHIP

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Advisory of July 14, 1998, announcing the hearing	2

WITNESSES

Office of the U.S. Trade Representative, Hon. Charlene Barshefsky, U.S. Trade Representative	18
U.S. Department of Commerce, Hon. David L. Aaron, Undersecretary of Commerce for International Trade	35

CSC Biotechnology Committee and Corn Refiners Association, Inc., Kyd D. Brenner	107
European-American Business Council, Willard M. Berry	79
Foreign Sales Corporation Coalition, Jeremy O. Preiss	114
Goodyear Tire and Rubber, Isabel Jasinowski	99
Grocery Manufacturers of America, Inc., Mary C. Sophos	89
Institute for International Economics, Ellen L. Frost	67
Monsanto Company, Robert L. Harness	101
National Foreign Trade Council, Jeremy O. Preiss	114
Qualcomm Incorporated, Kevin Kelley	119
Smith, Hon. Robert F., a Representative in Congress from the State of Oregon, and Chairman, Committee on Agriculture	6
Transatlantic Business Dialogue, P. Vincent LoVoi	58
United Technologies Corporation, Jeremy O. Preiss	114
Warner-Lambert Company, P. Vincent LoVoi	58

SUBMISSIONS FOR THE RECORD

American Automobile Manufacturers Association, American Forest & Paper Association, Fertilizer Institute, Manufacturing Jewelers and Silversmiths of America, Inc., Rubber Manufacturers Association, and Toy Manufacturers of America, joint statement	134
American Chamber of Commerce in Japan, Glen S. Fukushima, statements	135
American Council of Life Insurance, statement	146
American Forest & Paper Association, statement	148
America Online Incorporated, William W. Burrington, statement	155
California Cling Peach Growers Advisory Board, statement and attachments	163
Chiquita Brands International, Cincinnati, Ohio, statement	177
Coalition to Defend the FSC, statement	184
European Telecommunications Standards Institute, Karl Heinz Rosenbrock, Sophia Antipolis, France, letter and attachments	190
JBC International, James Clawson, letter	202
Lighthizer, Robert E., Skadden, Arps, Slate, Meagher & Flom, LLP, Washington, DC, statement	207
Underwriters Laboratories Inc., Gordon Gillerman, letter	215
U.S. Chamber of Commerce, Willard A. Workman, statement	219
Wine Institute, Robert P. Koch, letter	224

TRADE RELATIONS WITH EUROPE AND THE NEW TRANSATLANTIC ECONOMIC PARTNERSHIP

TUESDAY, JULY 28, 1998

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

The Subcommittee met, pursuant to notice, at 11 a.m., in room 1100 Longworth House Office Building, Hon. Philip M. Crane, (Chairman of the Subcommittee) presiding.

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
July 14, 1998
No. TR-29

CONTACT: (202) 225-1721

Crane Announces Hearing on Trade Relations with Europe and the New Transatlantic Economic Partnership

Congressman Philip M. Crane (R-IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on trade relations with Europe and the new Transatlantic Economic Partnership (TEP). **The hearing will take place on Tuesday, July 28, 1998, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 11:00 a.m.**

Oral testimony at this hearing will be from both invited and public witnesses. Invited witnesses will include the Honorable Charlene Barshefsky, United States Trade Representative. Any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The United States and the European Union (EU) share the largest two-way trade and investment relationship in the world. Although tariff barriers on most manufactured goods have been significantly reduced, many non-tariff barriers continue to impede bilateral trade. These include discriminatory regulations, standards, and testing procedures which restrict trade in a wide range of agricultural and manufactured products.

In December 1995, the United States and the EU launched the New Transatlantic Agenda to initiate specific joint U.S.-EU actions aimed at addressing global economic, political, and humanitarian challenges more effectively, fight international crime, terrorism, and drug trafficking, support peacemakers around the world, and bring down barriers to commerce.

At the May 18, 1998, U.S.-EU Summit, the two trading partners launched the TEP, a broad trade liberalization initiative. The TEP includes a common commitment to work cooperatively to strengthen the World Trade Organization (WTO) and other multilateral institutions and to increase the involvement of non-governmental entities in transatlantic relations. The two trading partners pledged to work cooperatively to achieve a Multilateral Agreement on Investment in the Organization for Cooperation and Development. In addition, the United States and Europe signed an Understanding on Expropriated Property to resolve longstanding disputes regarding the application of sanctions to European companies under the Cuban Liberty and Democratic Solidarity Act (P.L. 104-114), often referred to as the "Helms-Burton" legislation, and the Iran-Libya Sanctions Act (P.L. 104-172).

The TEP initiative builds directly on achievements of the Transatlantic Business Dialogue (TABD), a forum of top American and European business leaders established in 1995 to develop ways to reduce barriers to U.S.-EU trade and investment. The TABD has made recommendations covering such topics as: the development of common standards, concluding mutual recognition agreements, eliminating tariffs in information technology products, adding to or accelerating some Uruguay Round tariff cuts, and implementing anti-bribery and anti-corruption statutes in Europe.

(MORE)

Another important development in U.S.-E.U. trade relations is Europe's move toward full economic and monetary union, including adoption of the "euro" as the region's common currency. Although it is unclear what specific effects the European Monetary Union (EMU) will have on the U.S. economy, many have speculated that if the EMU is successful, the euro could eventually vie with the dollar as an international reserve and payments currency, putting some downward pressure on the value of the dollar over time.

Finally, both the agriculture trade negotiations in the WTO, set to begin in 1999, and ongoing WTO dispute settlement proceedings, remain central to achieving progress on the U.S.-EU trade agenda.

In announcing the hearing, Chairman Crane stated: "This hearing provides a good opportunity for us to study important developments in transatlantic commerce and prospects for further liberalization. The TABD initiative has already made important contributions to our long-term goal of eliminating trade barriers and resolving conflicts between the United States and Europe. There is much more to be accomplished. I am particularly interested in several pending WTO dispute settlement cases, covering products such as bananas, beef produced with growth hormones, and computer equipment, as well as the reach of U.S. unilateral trade sanctions and the EU challenge to our foreign sales corporation tax structure."

FOCUS OF THE HEARING:

The focus of the hearing is to examine current developments in trade relations between the United States and the EU, with emphasis on the bilateral agenda established under the TEP. Testimony is requested on any of the topics discussed above, including U.S. trade negotiating objectives with Europe, prospects for the 1999 agriculture negotiations, and the resolution of pending and future consultations and dispute settlement proceedings with the EU in the WTO.

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, July 22, 1998. The telephone request should be followed by a formal written request to A.L. Singleton, 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 on Trade 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 accordance with House Rules.**

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, along with an *IBM compatible 3.5-inch diskette in WordPerfect 5.1 format,* of their prepared statement 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 close of business, Friday, July 24, 1998.** Failure to do so may result in the witness being denied the opportunity to testify in person.

(MORE)

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 six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label*, by the close of business, Tuesday, August 11, 1998, to A.L. Singleton, 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 submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**

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, company, address, telephone and fax numbers where the witness or the designated representative may be reached. 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 available on the World Wide Web at "http://www.house.gov/ways_means/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

*****

Chairman CRANE. Will everybody please take a seat so we can get underway here? We are going to be on an irregular and somewhat tight time constraint because of the services over in the Capitol Building.

Our first witness that I want to welcome is our chairman of the House Agriculture Committee, Bob Smith, from the State of Oregon, and we will have you on, Bob, until they break us for that forum in the Capitol, which I think is going to be about 11:30.

And I want you to know that you have my admiration for your leadership in reducing trade barriers to U.S. agriculture exports and for the key role you're playing in maintaining the pressure for fast-track trade legislation. I know that we both agree that the trade agenda with the European Union, particularly in the agriculture arena will be severely damaged if Congress and the President aren't successful in enacting H.R. 2621, the Ways and Means fast-track bill. You have been working diligently, I know, to bring more of your committee members onboard, and we applaud your efforts.

The focus of today's hearing is trade with Europe and the new transatlantic economic partnership initiative, which was announced by the two trading partners at the May 18 summit meeting. Europe is not quite our largest export market, but the totality of the bilateral trade and investment relationship makes Europe perhaps our most important economic partner.

The reality of globalization and economic independence is illustrated by the large two-way flow of investment dollars between the U.S. and Europe. Three million U.S. workers are employed in European-owned factories, while another 1.1 million U.S. workers manufacture products that are directly exported to Europe.

Witnesses today will address prospects for further trade liberalization under the auspices of the new Transatlantic Economic Partnership, TEP, and the companion private sector initiative, the Transatlantic Business Dialogue. Much of the potential for success, it seems to me, lies in the area of achieving harmonization of standards and mutual recognition agreements for regulatory procedures.

Later, I will also welcome Ambassador Barshefsky, who will testify after you, Bob, and after our break. I appreciate her desire to keep the U.S. trade agenda moving forward in the absence of fast-track negotiating authority.

However, I would caution that we must not let the TEP or any other bilateral talks deflect attention from the primary need to secure fast-track negotiating authority. Nor should we allow leverage to be diverted from our goal of achieving a successful result in the WTO negotiations on agriculture, which are set to begin in December of 1999.

And with these comments, I will yield to our Ranking Member, Mr. Matsui.

Mr. MATSUI. Thank you very much, Mr. Chairman. I have a statement, and because of the time constraints and the fact that we will have a vote, or at least a call of the House, in about a half hour, I'd like to submit my statement for the record, and just welcome, obviously, Chairman Smith from the Committee on Agri-

culture and, of course, USTR Ambassador Barshefsky and David Aaron, as well.

Thank you, Mr. Chairman.

Chairman CRANE. And with that then, we shall yield to you for your presentation, Bob.

STATEMENT OF THE HON. ROBERT F. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON, AND CHAIRMAN, COMMITTEE ON AGRICULTURE

Mr. SMITH of Oregon. Thank you, Mr. Chairman, and gentlemen. It is a privilege to be here to say hello to you and discuss for a moment agriculture's thoughts about the European Union and international trade.

Mr. Chairman, as you well know, in 1996, the Congress changed agriculture from the previous 60 years of support and subsidy to a program of marketplace. And it was significant that we now are going to challenge farmers in America to use the marketplace to sell their goods and not the government. In doing that, of course, there were in this case, this year, great problems that developed, because commodity prices are down and there are all kinds of discussions about what we should do about low commodity prices. Should we revive the old subsidy idea, or should we stay on the track that we have established? And that is to find markets for our farmers' production.

Now, heretofore, farmers relied on two markets. One was a subsidy from the government and the other was, of course, what they could get from their product. But since we have deprived them and we are phasing them out over the years—in the year 2002, there will be no more subsidies—then it becomes our responsibility in government to provide them with the markets, which they are not capable of doing, nor should they.

So it was part of our bargain in 1996 that the government provide the market and the farmers produce as best they could do so. That brings us to this whole question of what do we do about trade and markets for farmers. And I want to emphasize the essential responsibility for this Congress not only to pass fast track, but to pass full funding of IMF, and as we did, lift sanctions on Pakistan and India, as well as normal relations with China.

But on fast track especially, historically this country has been a leader in international trade. And we believe in free trade principles. In the Uruguay Round, it was the United States that led the argument that there should be no barriers against products flowing from one country to another, no trade barriers. And we should go to tariffication rather than other problems we had in trade. So we were the leader.

Now it becomes our responsibility to pass fast track, it seems to me, and give this President the opportunity to enter into agreements with other countries and to open trade for our products. It is happening all around us. Bilateral negotiations are going on. MERCOSUR is working out programs in South America; the European Union is identifying bilateral relationships with countries. Canada is doing so; so is Mexico.

If we do not pass fast track, we will certainly injure this country's opportunity in the 1999 revisitation of the WTO to act for ag-

riculture, certainly, but for the rest of this country in a positive manner.

The European Union, Mr. Chairman, having taken my committee to Germany and Belgium and France recently, the European Union is our second-largest agricultural partner. In fact, last year we did about $10.5 billion with them, and we imported about $7.5 billion from them. It's a good market for agricultural products, but it still has very, very many problems and many barriers to our exports.

For instance, it's a well-known fact that the European Union subsidized heavily. I always carry this chart with me, Mr. Chairman and members, wherever I go, be it Europe or Asia or anywhere else, because it shows graphically the difference between subsidization of the European Union and our own subsidy programs.

In fact, it shows about $47 billion of European subsidies to agriculture products, while our subsidy program is $5.3 billion and then phases out totally in the year 2002. So if we continue on, we can see that the European Union has huge subsidies and ours are phasing out. That gives us a strong position in the 1999 revisitation, but it is still a fact.

And any way you want to cut it, we are suggesting to the European Union that rather than subsidize their crops and their commodities heavily, which distorts the world price and the market internationally, we don't want to quarrel with them about how much money they send to farmers, if that means that they maintain the environment that they have been farming for thousands of years, as they say. They have a greater sensitivity than we, they say, to the land.

I point out to them our CRP programs and others, but we suggest that they decouple the program and pay their farmers as much as they want to pay them for the protection of the land and let the commodity go on the world market. That does two great things for Europe, the European Union. It takes care of their farmers and it reduces the cost of living in Europe dramatically. And then it gives the rest of the world an opportunity to compete in a world free trade system.

So we have suggested that to them, and Mr. Fisher, by the way, has attempted to start down that line not totally, but he is considering it, at least. I must say, he is not too popular, by the same token.

Any way you want to divide it up, the European Union heavily subsidizes against our products. For instance, there is another way of measuring this thing. It is the Organization for Economic Cooperation and Development, another measurement. By this measure, the European Union outspends the U.S. by more than three and a half to one for products.

We know that exports currently are 30 percent of the United States farm cash receipts. We produce more than we can consume in this country and therefore, exports, we know, are essential to not only prosperity, but success of U.S. farmers and ranchers.

When we look to the WTO decisionmaking in 1999, we know that it's an important precedent for TRQ's, for tariff rate quotas, as well, another problem that we face, of course, in international trade. In 1999, we believe with the proper tools, the United States

can negotiate for further reduction of tariffs. We think we can open new markets, we can address unfair trade practices around the world. Of course, other issues that we have in great debate these days are biotechnology products that you know about, BT corn, Roundup Ready soybeans, et cetera. And future negotiations depend upon our ability to give ourselves the proper tools like fast track and other opportunities.

So, Mr. Chairman, I thank you for this brief moment with you. I think it is important to remember that basically our opportunity to import is very little or restricted. In other words, there are very few barriers against products coming into the United States. The barriers we have are with our trading partners, and we still have problems with Canada and Mexico, but especially with the Europeans.

And the European Union is a very, very large market and we ought to be tough in negotiating in 1999 to open the markets to not only agriculture products, but all the products we produce in this country. I thank you very much for the time.

[The prepared statement follows:]

THE HONORABLE ROBERT F. (BOB) SMITH
CHAIRMAN
COMMITTEE ON AGRICULTURE

BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE
ON WAYS AND MEANS
July 28, 1998

Thank you Mr. Chairman. I appreciate your invitation to appear before the Trade Subcommittee of the Ways and Means Committee to discuss agriculture trade relations with the European Union.

In 1996, significant reforms were made to U.S. farm programs. These reforms returned control of the farming operation to the producers in exchange for sharp restrictions on the level of government support to the farmer. The goal was to provide U.S. farmers with the flexibility to plant for the market. Farmer's income will come from the marketplace and not from the government. For this plan to be successful, the U.S. government must ensure that our farmers and ranchers can compete against other exporters, and not against foreign governments.

Fast Track

It is essential that the President be provided with fast track negotiating authority so that the United States can aggressively pursue the 1999 World Trade Organization agriculture negotiations and open markets, reduce subsidies, and promote free and fair worldwide agriculture trade.

Historically, U.S. agriculture has been a leader in free trade principles. It has also been one of the exports most harmed by the policies of foreign governments. In order to secure trade agreements, especially a multilateral trade agreement affecting agriculture, fast track authority must be provided to the Administration.

Bipartisanship is how the United States is able to secure trade agreements and ensure that the rules are followed. The Uruguay Round Agreement and NAFTA are in place because of the work begun by the Reagan Administration; the negotiations that took place during the Bush Administration; and the negotiations that were concluded and the agreements signed during the Clinton Administration.

I support broad fast track legislation and believe it is imperative that we move forward. Our trading partners look to the United States to lead on global trade matters.

U.S. and EU Agriculture Trade

The EU is the second largest export market for U.S. agriculture. In 1997, U.S. agricultural exports to the EU were $10.5 billion and imports from the EU totaled $7.5 billion. The EU is a good market for U.S. agriculture.

Nevertheless, using any yardstick, the EU subsidizes agriculture more than the U.S. This is a well known fact.

Not only does the EU spend large amounts of money, it spends that money on programs that distort world markets. Certainly the EU should spend whatever it and its taxpayers determine appropriate to support EU farmers. But the EU should not link that support to production and thereby distort world agriculture markets.

EU export subsidies and domestic support total $47 billion. U.S. export subsidies and domestic support total $5.3 billion. This comparison is based on data supplied to the Congressional Research Service of The Library of Congress by the U.S. Department of Agriculture (USDA) and the Commission of the European Union.

In addition, documentation from the Organization for Economic Cooperation and Development (OECD) confirms the disparity in expenditures, illustrating significantly higher agriculture spending by the EU. By this measure the EU outspends the U.S. by more than three and one-half to one. *

If we are to reduce this disparity we must open negotiations with the EU, and all countries within the WTO. The success of U.S. agriculture depends on it. For American farmers and ranchers, trade is an essential part of their livelihood. Currently exports account for 30% of U.S. farm cash receipts. We produce much more than we consume in the United States; therefore exports are vital to the prosperity and success of U.S. farmers and ranchers.

U.S. and EU Disputes and WTO Decisions

Despite having positive decisions from the WTO on two cases brought by the U.S. against EU agriculture practices, no trade in beef or bananas has resumed. I congratulate the U.S. Trade Representatives and officials at the U.S. Department of Agriculture for their success in prevailing before the WTO. However the successes are not complete until the EU implements these decisions.

On January 16, 1998, the WTO Appellate Body upheld the Panel ruling that the EU's hormone ban is inconsistent with the WTO sanitary and phytosanitary agreement. In addition, a WTO arbitrator's decision, issued in May 1998, provides that the EU must implement this WTO decision by May 13, 1999.

Remember that the EU has banned most U.S. meat exports since 1989. At that time, the EU represented a $100 million market for U.S. producers.

A failure by the EU to implement the WTO decision would undermine the principles of science-based risk assessment incorporated in the sanitary and phytosanitary agreement and threaten the continued viability of the WTO dispute settlement process.

In the case of the WTO decision on access to that market for bananas, the United States, along with Ecuador, Guatemala, Honduras, and Mexico, challenged the process by which the EU imported bananas. Preferential treatment was given by the EU to certain Caribbean countries' exports of bananas and the method of EU administration of the tariff rate quota (TRQ) was brought into question. The U.S. position prevailed at the WTO.

The WTO decision is an important precedent for how the WTO will look at TRQ's. Tariff rate quotas are used frequently for agriculture products and can be used as non-tariff trade barriers.

1999 WTO Negotiations

The 1999 WTO negotiations offer a platform for further reduction in barriers to trade and further expansion of agricultural trade opportunities. I do not believe that the 1999 WTO negotiations should be a forum to re-negotiate the gains achieved in the 1994 Uruguay Round Agreement. Instead, we want to move forward with liberalization of worldwide agriculture trade.

The 1999 WTO negotiations can provide a unique opportunity for United States agriculture to further reduce tariffs, open new markets, and address unfair trade practices around the world. Other issues likely to be on the 1999 WTO negotiating agenda include trade in biotechnology products and the operations of state trading enterprises. Other items on the agenda for the 1999 WTO agriculture negotiations could be the administration of tariff rate quotas and the use of safeguards for specific commodities.

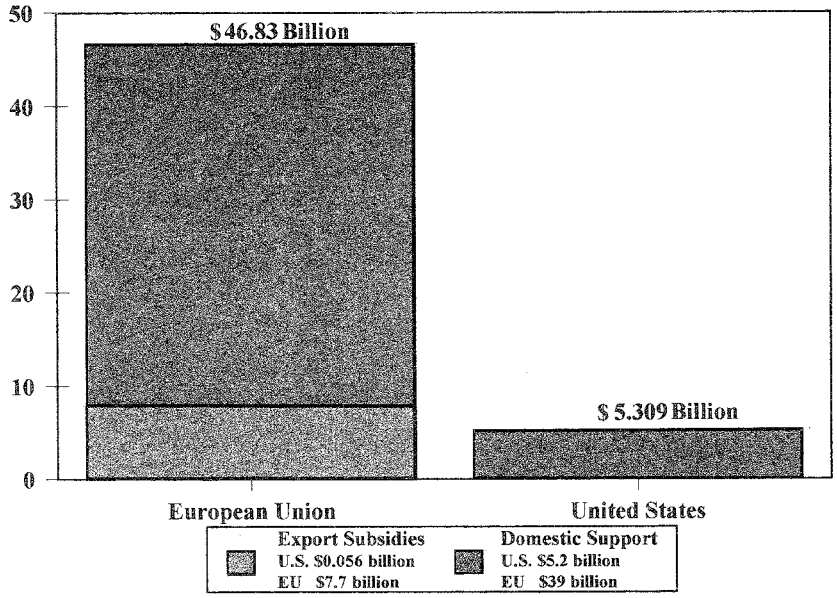
Trade Agreements and Prosperous U.S. Agriculture

I want to see improved access for U.S. agricultural exports; I want to see non-tariff trade barriers eliminated; and, I want growth and expansion of our agriculture trade because it is good for United States farmers and ranchers, and all who contribute to providing food for people of our country and the world.

Thank you Mr. Chairman for the opportunity to present my views to the Trade Subcommittee.

* In the OECD, a standard measure for the level of government assistance to agriculture is the Producer Subsidy Equivalent (PSE). For 1996, the United States PSE was $23.5 billion or 16% of the value of agricultural production, while the PSE for the EU was $85 billion or 43% of the value of agricultural production. By this measure the EU outspends the U.S. by more than three and one-half to one.

1997 U.S. vs. EU Spending on Agricultural Support



Source: U.S. Dept. of Agriculture and Commission of the European Union. (estimate)

Chairman CRANE. Thank you very much, Mr. Chairman. Let me ask you a question, though, upfront about that $47 billion subsidy of agriculture in the European Union. If you'll just put those farmers on a direct pay dole and eliminate their subsidies, aren't all of our consumers buying their agricultural products taking that hit?

Mr. SMITH of Oregon. Well, we don't think so, because we believe, for instance, that we are the most competitive nation in the world in foodstuffs. Let me give an example. Today, wheat is probably worth $3 a bushel. If you were in France at a farm that I visited within the last few months, you would be receiving about $8 a bushel. If you had a cow in the United States worth $600, that cow is worth $1200. We don't mind the competition, Mr. Chairman. We just want the chance.

I'd like to distribute this, Mr. Chairman, if I may, or ask the clerk to leave in front of the members——

Chairman CRANE. Are those extra copies that you have there, Bob?

Mr. SMITH of Oregon. Yes.

Chairman CRANE. Oh, yes, please. Will one of the staff do that?

Is there a danger that negotiating with the EU on standards in the transatlantic economic partnership could diminish our leverage for achieving a successful launch of the WTO agriculture negotiations?

Mr. SMITH of Oregon. I don't think so. I don't mind a bilateral discussion with the emphasis as long as agriculture is included. If you recall, the first discussion we had in a bilateral basis with the European Union did not include agriculture. I don't think that you strain our opportunity in the WTO by talking to the European Union independently at all, as long as everybody is at the table.

Chairman CRANE. The U.S. has won two landmark WTO dispute settlement cases against the EU on beef hormones and bananas. In my view, a failure by the EU to implement these decisions would undermine the credibility of the WTO dispute settlement system to the detriment of the U.S. and the EU. Are we seeing a disturbing pattern on noncompliance on the part of the EU?

Mr. SMITH of Oregon. Well, I'm glad you mentioned that, Mr. Chairman. I have that in my prepared remarks, and I hope you emphasize and reemphasize that with Ms. Barshefsky because you are absolutely correct. If the WTO doesn't follow through with finality on beef hormones and bananas, then there is no purpose for a World Trade Organization whatsoever.

They've ruled; they've found in all their judicial capacity that the European Union is violating these two issues. It has to come to finality, otherwise, as you intimate, the review of the Round will simply be a review of what hasn't happened. And we certainly don't need that. We don't need to look back and rehash these things that have already been decided. We ought to be looking ahead to the future.

So you are right on point and I hope you will emphasize that with Ms. Barshefsky.

Chairman CRANE. Thank you. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman. I just want to follow up to Mr. Smith on your question. Bob, how are the discussions going with the EU now on the beef hormone issue and the issue of ba-

nanas. Are you satisfied at this time in terms of whether they are going to implement or not?

Mr. SMITH of Oregon. No, I am not satisfied at all. In fact, I raised my voice when I was in Paris and Berlin and Belgium to those officials in the European Union because they seemed to continue to delay the implementation by one hook or another.

Now, the banana issue we understand will be resolved by January of 1999. The hormone issue, they say, well, we have to have a new review which may take two to three years. We don't understand that. So I think we must keep the pressure on, because that is unacceptable. And I mentioned it, and I think we ought to say as a government, that is unacceptable.

Mr. MATSUI. Well, thank you, I appreciate this. Obviously, we have a lot of work to do. We have attempted to abide by the WTO rulings. The Fuji film case is a great example of that. Obviously, Kodak is being hurt by that, but we are doing certain things and we are certainly not violating the terms of the ruling. We would hope that the EU would follow the same kind of provisions we are. But thank you.

Mr. SMITH of Oregon. I thank the chairman.

Mr. MATSUI. Thank you.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman. Bob, good to see you.

Mr. SMITH of Oregon. Thank you.

Mr. HOUGHTON. Just two questions. One, if you were given a fair chance, literally, in terms of this market, what would this mean in terms of dollars? What are we talking about? Is it billions? Is it hundreds of millions?

Mr. SMITH of Oregon. Are we talking about the European Union now?

Mr. HOUGHTON. Yes, right, EU.

Mr. SMITH of Oregon. Well, as I mentioned, we are selling them about $10 billion in agricultural products. They are buying about $7.8 billion from us. The European Union is largely self-sufficient. They export very small amounts, maybe in the neighborhood of 10 percent.

Because they think they are so self-sufficient, they raise these barriers. They are doing what we did 60 years ago with Smoot Hawley and others. They think they are self-sufficient, therefore, there is no reason to reduce barriers to incoming products. Well, they'll find out they are wrong. It is costing them a huge amount of money.

So the amount of money that is a possibility to export to the European Union is in the billions. We export about $60 billion worth of goods today in agriculture. That could possibly double if they would allow us to be competitive.

Mr. HOUGHTON. It would double just in the EU.

Mr. SMITH of Oregon. I think it could be very, very important.

Mr. HOUGHTON. All right. Now, let me just ask you the second question. We were meeting with a group of English and German parliamentarians and talking about science in general. We talked about information technology, environment. One of the things was genetic engineering, and I think you mentioned this before. It seems as if we are brewing for a trade war over that.

Do you have any other comments you'd like to make?

Mr. SMITH of Oregon. Well, they are very sensitive about anything "genetically modified." Genetically modified organisms are being debated today. In fact, France brought two genetically modified corn programs forward and they're arguing and debating today whether they should continue to do that.

We say to them simply, look, defend whatever right your consumer has and you believe they have. We have been debating the question of labeling. I think the ultimate answer for the European Union and others who are sensitive is some sort of a fair kind of labeling. We know that, for instance, a tomato paste that was labeled "may have genetically modified organisms,"—something like that, I don't know the language exactly—but it was offered in England and the GMO had no legs. The tomato paste, in fact, sold in more volume than it did before.

So I think there are ways to do this without interrupting what we know is great progress. I mean, biotechnology has improved volume some 30 percent in the generation of products, so it is the future.

Mr. HOUGHTON. I guess, Bob, the thing I am worried about is they have taken sort of an idealistic stance on genetically manufactured products, that you could see that $7 billion evaporate just on ideology.

Mr. SMITH of Oregon. Well, we are not sending them any——

Mr. HOUGHTON. No, but the way we are going now.

Mr. SMITH of Oregon. Oh, the future may look very dismal, you are correct. But they are going to have to cope with this issue, and they are going to do it, because as I mentioned to Mr. Fisher, I said, look, I hope you go about doing exactly what you are doing because we'll outcompete you, we'll outsell you, and you're going to be in the dark ages of food production in the world. And he smiled at me and agreed, because that is the future and they know it.

Mr. HOUGHTON. Thank you very much.

Chairman CRANE. Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. Do I understand that under the WTO, the agricultural subsidies will phase out by 2002?

Mr. SMITH of Oregon. That's correct.

Mr. MCDERMOTT. So it's a fait accompli; it's going to happen.

Mr. SMITH of Oregon. Well, not under the WTO. Under our passage of the bill in 1996, that phased out all subsidies by the year 2002.

Mr. MCDERMOTT. But that's really coincident with——

Mr. SMITH of Oregon. Coincident with it, yes.

Mr. MCDERMOTT. Okay. Now, I listened to your talk about the need for fast track, and not understanding the mind set of people who voted against it from agricultural areas in the first place, I wonder what argument you would make to them that would change their point of view.

I mean, I find it difficult philosophically to deal with the idea that you want the government out of everything but at the same time you want the government to create markets where they go out and negotiate for you. So I am interested in how you make that ar-

gument to those people in agricultural areas who turned fast track down in the past.

Mr. SMITH of Oregon. Well, as the chairman has agreed and Mr. Archer, I approached that issue like you did, and I realized that agriculturists are very suspicious of what has happened in the past. If you have bad markets, you blame NAFTA and you blame the WTO, and how could we bring them along.

I have suggested, and the chairman has agreed, that language be added to the authorization for fast track which will allow the Agriculture Committee of the House and of the Senate and anyone else who is interested to be brought along, as is the Ways and Means Committee of the House and Finance Committee of the Senate, to be brought along in these negotiations as they are building so that no one is left in the dark. It will not be done in the dark of night, as is suspicioned, and then dumped on us in the last minute.

Beyond that, the Agriculture Committee of the House and the Senate will have an opportunity to see the agreement before it is finally penned, before it is finally completed and signed. Therefore, if it is alien to agriculture, then likely no administration will bring an agreement to this Congress for confirmation if the agriculture community isn't satisfied with it, because they'll defeat it.

Therefore, for the first time, agriculture people in America have a chance to be brought along, to watch as the negotiation is taking place and to view the document before it is penned, which gives them a great deal of satisfaction and protection that they have never had before so that they can come along today and say, yes, we can support fast track under those conditions and we do. That is why you'll see a big difference there. There are only 12 members of my committee that were supporting fast track last year when we finally dumped it. Now there are many more.

Mr. MCDERMOTT. So it's a kind of modified fast track in that they would have the ability to say to the administration, don't sign this agreement that you have worked out with the WTO?

Mr. SMITH of Oregon. As you do. The same language that allows the Ways and Means Committee and the Finance Committee would merely be offered to the Agriculture Committee, the same language exactly.

Mr. MCDERMOTT. Explain to me the concept of how the government creates markets. You sort of suggested that the trade-off was you get rid of subsidies and the government will provide markets.

Mr. SMITH of Oregon. I meant that the government has to be a representative of farmers in trade negotiations, in opening markets for our goods around the world. That's our future. Agriculture certainly does not want to take our domestic market for granted, but the future for agriculture is in trade. The future, because we are so efficient in our production, and we have such safe food and it is so efficiently produced, we can compete anywhere. All we need is an opportunity.

So the government must be our ambassador to open markets. That's what I meant.

Mr. MCDERMOTT. Thank you.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. I am glad you are here, Chairman Smith. On behalf of the wheat farmers in Washington State, we want to thank you

very much for your leading that effort to get rid of the Pakistan sanctions. And I am very happy that we have decided that we will have that vote on fast track this fall. I think that is vitally important, certainly for your interest, but for the interests of all of us who purchase products from other nations.

We want to be able to buy at competitive prices and I think fast track, in giving the President the negotiating authority without the role of the Congress at the table, with the role of the Congress to vote up or down on it, I think that is going to be very important for us. And I believe that if we do this right this time, we can come up with those six or seven votes that we were not able to secure the last time and put fast track back in action.

But in the area of sanctions, I did want to take advantage of this opportunity, since we don't see you before this committee too often, I would like to ask you to take a look at the whole area of sanctions for us generally and tell us what your sense is now on their effectiveness as a tool of foreign policy, how they hurt or help the agriculture community and where you would like to see us go.

Mr. SMITH of Oregon. Well, thank you very much. I tend to lean towards those who believe that sanctions against agricultural products are not effective against governments. They might be effective against allowing people to starve, which I don't think is really any benefit from our policy point of view.

So I am one of those who believes that we ought to eliminate agricultural sanctions from any sanctions that this government might use, because I don't think it is beneficial. I don't see how depriving Pakistan, for example, of wheat, advances our opportunity to punish them for setting off a nuclear device.

It certainly punishes American farmers to be assistants of Australians and Canadians who are standing there at the door to take the market. But if you are really trying to punish a nation, I don't understand why it is a punishment to a nation to deprive them of agricultural products.

Ms. DUNN. Thank you very much. Thank you, Mr. Chairman.

Chairman CRANE. Well, with that, we thank you very much, Bob, for your presentation and appearance here today. This is a quorum call and we will stand in recess subject to the call of the Chair at a quarter to with our Trade Representative Charlene Barshefsky.

[Recess.]

Chairman CRANE. Would everyone please take seats. We shall resume the committee hearing and we have with us now our next witness, the Honorable Charlene Barshefsky, our noted U.S. Trade Representative. We appreciate your being here with us this morning. It is a little chaotic with scheduling, as you know, because of the events planned over in the Capitol Building, but we do certainly have time without interruption for your presentation.

So I yield at this point to the distinguished Ms. Charlene Barshefsky.

STATEMENT OF HON. CHARLENE BARSHEFSKY, U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ms. BARSHEFSKY. Thank you, Mr. Chairman. Good morning. Let me thank you for calling this hearing on American trade relations with the European Union.

My testimony, which I will submit for the record, addresses the state of our trade relationship with the EU today, the transatlantic partnership launched by President Clinton, our trade disputes with the EU, the EU's expansion, and other issues.

But let me begin by putting these issues in some context. A strong economic relationship with Europe is of fundamental importance to American workers, businesses, and agricultural producers. And in a larger sense, it is a necessary complement to a strong security relationship with Europe if we are to guarantee peace and prosperity in the next century.

Our trade and economic policy thus seeks the following goals: A close strategic economic relationship with Europe; fair market access in Europe for American companies; removal of impediments to mutually beneficial trade and investment; ensuring that the growth and deepening of the European Union does not lead to the exclusion of American business; the integration of new market democracies in Central Europe, Southeastern Europe, and the former Soviet Union into the regional and international economic institutions of the West; further development of the multilateral trading system; and the promotion of shared values.

In these areas, we build on an already strong relationship. In 1997, our goods exports to the European Union were $141 billion, supporting 1.3 million jobs. Services exports to the EU were $77 billion, nearly a third of our worldwide total. And despite the perception of Europe as a mature market, our growth opportunities remain high. In 1997, for example, our goods export to the EU grew by $13 billion, more than our total goods exports to China.

Our direct investment in each other's economies exceeds $750 billion, almost perfectly balanced. The EU's investment in America now supports three million jobs. This is particularly important in manufacturing where one in every 12 U.S. factory workers is now employed by a European firm.

Through the transatlantic agenda announced in 1995, we have found ways to further improve this relationship, including the negotiation of a mutual recognition agreement that will reduce regulatory barriers facing sectors worth about $60 billion in annual two-way trade, including medical devices, telecom equipment, and pharmaceuticals. We have also concluded agreements on customs cooperation and shortly, on veterinary equivalency.

And at the U.S.-EU summit in London last May, we launched an effort to bring this economic relationship to a new level, the Transatlantic Economic Partnership will address some of the key problems in U.S.-European trade relations. It will seek to solve problems that affect both partners, and it will find areas in which we can cooperate at the WTO and in third markets.

Thus, the initiative will engage the EU pragmatically and constructively to realize the remaining untapped potential of transatlantic markets, head off disagreements before they become crises,

and enter into the new century with a further strengthened and mutually beneficial trade relationship.

We have identified seven key areas on which to focus our efforts. First, agriculture, including food safety procedures and the transparency of regulatory processes in, for example, the biotechnology area. The TEP is, of course, only part of our efforts on behalf of agriculture.

If I might digress for a moment, as we approach WTO negotiations in 1999 on agriculture, issues including implementation of existing WTO commitments, State Trading Enterprises, eliminating export subsidies, ensuring that farmers and ranchers can use safe, advanced scientific techniques, including biotechnology, transparency in regulatory policy, and further market access commitments clearly need attention.

The EU's common agricultural policy presents a major challenge in a number of these areas, including extensive import protection, direct commodity-specific price support policies, and export subsidies.

Second, we will address in the Transatlantic Economic Partnership, government procurement, a $200 billion market in the EU where small and medium-sized businesses face particular difficulties.

Third, technical standards, where we are examining ways to reduce mutual barriers and standards while maintaining our high level of health and safety protection.

Fourth, services, the area in which we can both expand market opportunities and bring on small common interests to boost the coming WTO negotiations.

Fifth, intellectual property rights, where we can work on a number of areas, including worldwide enforcement. We have already begun with a successful effort to raise patent protection in Bulgaria and Cyprus.

Sixth, electronic commerce, a market projected to grow to $300 billion in the U.S. alone by 2001; and finally, increased public participation in debates on trade policy, including labor, environmental, consumer groups and other important interests with the aim of promoting shared values.

For example, we wish to seek common approaches to trade in the environment and the international promotion of core labor standards, as well as transparency at the WTO.

In the months to come, we—and the EU—in consultation with Congress and other interested parties, will formulate a specific action plan to achieve the Transatlantic Economic Partnership's goals. This will include identifying specific areas for negotiation, as well as areas for WTO cooperation.

At the same time that we announce this initiative, our present relationship with the EU is by no means free of disputes. We will not tolerate failure to comply with trade agreements or WTO rules, and we will use our own laws and our rights at the WTO to ensure that American trade interests are respected.

Thus, for example, we have used special 301 procedures a number of times this year against the EU to ensure protection of our intellectual property rights, and we are effectively using WTO dispute settlements.

Our active WTO complaints against Europe involve income tax subsidy cases against five EU member states and intellectual property rights against four member states. In two cases involving agricultural policy, specifically the EU import regime on bananas and the EU ban on beef from cattle grown with bovine growth hormone, WTO dispute settlement panels and the appellate body have ruled in favor of the United States. The European Union has an obligation to respect these results and we will insist on rapid and full implementation.

The European Union has likewise initiated WTO cases against us. We will defend our interests in all of these. The challenge to our FISC tax provision, for example, is extremely troubling. The FISC rules were enacted over 14 years ago to settle a dispute with the EU, and to conform U.S. tax rules to our international obligations. In addition, there is no commercial harm to the EU. This case, as in all others, will be defended vigorously.

Let me conclude with two subjects we face in the future. First, the EU is deepening its single market through the adoption of the euro, and further regulatory harmonization and expanding to take in new members.

With respect to the euro, we have a strong interest in a stable and prosperous Europe. The more the single currency helps ensure that stability and prosperity, the more welcome that project will be. We support the integration of Central and Eastern European countries into the Western political and economic institutions.

However, we are in close contact with the EU and bilaterally, with Central and Eastern European countries, to ensure that the process of European integration does not reduce market access for Americans.

Second, we will seek cooperation from the European Union as the World Trade Organization admits new members and embarks on new negotiations. We have had good cooperation thus far on ensuring the accession of China and Russia to the WTO on commercially meaningful terms. However, U.S. and EU interests in future accessions may not always coincide, and we will ensure that our rights and interests are fully protected.

The core of the negotiations to begin next year in the WTO will be the WTO's built-in agenda. In this, as in all areas, we will seek the cooperation of the EU as talks proceed.

Mr. Chairman, our trade relationship with Europe is already one of the major forces for global prosperity. While we have disputes with the EU, which we are working to resolve, this should not obscure the bigger picture. Strengthening the U.S. and EU relationship will open new opportunities to millions of American workers, businesses, and agricultural producers; and in the larger sense, it will ensure that the wise policies the United States adopted after the Second World War remain in place after the Cold War, laying the foundation for a more peaceful and prosperous world in the next century.

Thank you very much, Mr. Chairman, for having this hearing, and I look forward to your questions.

[The prepared statement follows:]

Testimony of Ambassador Charlene Barshefsky
U.S. Trade Representative
Before the House Ways and Means Committee
on Trade Relations with the European Union

July 28, 1998

Good morning, Mr. Chairman. Thank you very much for calling this hearing on American trade relations with the European Union.

POLICY GOALS

Taken as a single market, the European Union is the largest economy in the world outside our own. America's trade and investment relationship with the European Union is the largest in the world. For the past fifty years the United States and Western Europe have helped create and develop the rules and institutions which have promoted peace and prosperity throughout the world: NATO, the United Nations, the Bretton Woods institutions, the GATT and now the World Trade Organization. And in the future, as the European Union expands, this relationship will become still deeper and still more important.

Our economic relationship with Europe is thus of fundamental importance to American workers, businesses and agricultural producers, to world prosperity, and beyond that to a stable peace in the next century. In this relationship, U.S. trade policy seeks to achieve the following goals:

-- The maintenance of a close strategic economic relationship with Europe.

-- Fair market access in Europe for American businesses, farmers and ranchers, with the use all the tools available to us to ensure that we have that access.

-- Removal of impediments to mutually beneficial trade and investment.

-- Ensuring that the growth and deepening of the European Union does not lead to exclusion of American businesses from important European markets.

-- Supporting integration of new market democracies in Central Europe, Southeastern Europe and the former Soviet Union into international economic institutions.

-- Joint development of the multilateral trading system, where possible.

-- Promotion of shared values.

DIMENSIONS OF US-EUROPEAN TRADE RELATIONS

The economic importance of this policy alone is immense. The European Union, as the world's largest economy outside the U.S., is in total America's largest trade and investment partner, the largest source of foreign direct investment in the United States and the largest destination for our own foreign direct investment.

In 1997, our goods exports alone to the European Union were $141 billion, supporting 1.3 million jobs in America. Our services exports to the EU were $77 billion -- nearly a third of our services exports worldwide.

Despite the perception of Europe as a mature market, our future export growth opportunities are high. Even if Europe continues to grow at recent modest rates, its economy expands by about $200 billion each year -- the equivalent of three new economies the size of Ireland. Thus, in 1997 our goods exports to the EU grew by $13 billion over the $128 billion level we reached in 1996. This $13 billion increase is a figure larger than the total of all our goods exports to China in 1997.

Our economic relationship with the EU is even more significantly marked by the extent of bilateral investment ties. Our direct investment in each other's economies together exceeds $750 billion dollars. One in every 12 U.S. factory workers is now employed by a European firm. And three million U.S. jobs directly depend on European direct investment in America.

BROADER IMPLICATIONS

But our economic relationship with Europe is more important than even these figures show. It is the necessary complement to strong political and security ties with Europe, creating an overall strategic partnership which is the world's most important guarantor of peace, security and prosperity.

History shows this very clearly. Our disengagement from Europe after World War I, in both security and trade, helped to deepen the Depression and weaken the foundations of world peace. After the Second World War, our military presence in Western Europe helped ensure that neither the Cold War nor older political rivalries developed into open conflict. Our cooperation with the European democracies in the Marshall Plan, the World Bank and IMF, and the creation of the General Agreement on Tariffs and Trade resulted in an era of prosperity, democracy and peace in Western Europe.

After the Cold War, in the absence of a great common threat to Europe and the United States and in the presence of a number of trade disputes, it is possible to lose sight of our vast common interests and responsibilities. And the Clinton Administration is determined to make sure that will not happen. We plan to make our partnership with Europe in the next century as fruitful for Americans, and as important to world peace and prosperity, as it has been since 1945.

Thus, for example, the President has bolstered our security partnership with the European democracies through NATO expansion. He has encouraged the expansion of the European Union. And he has led our effort to reinvigorate our economic partnership with the European Union.

TRANSATLANTIC ECONOMIC PARTNERSHIP

This is the context in which, three years ago, we initiated the New Transatlantic Agenda. That launched an effort to deepen and broaden our transatlantic cooperation on a wide range of issues, covering not only trade but diplomatic and global challenges -- such as crime and the environment -- about which Europe and the United States share common concerns. Beyond the government-to-government discussions, the New Transatlantic Agenda also led to the creation of the Transatlantic Business Dialogue (TABD) to bring American and European business leaders together to identify common interests and goals.

These processes helped bring about the successful conclusion of a Mutual Recognition Agreement (MRA) that will reduce regulatory barriers facing sectors worth $60 billion of annual two-way trade, including medical devices, pharmaceuticals and telecommunications equipment. We also concluded agreements on customs cooperation and equivalency in veterinary standards and procedures. And at the US-EU Summit in London last May, President Clinton, Prime Minister Blair in his capacity as then head of the EU Presidency, and EU Commissioner Jacques Santer launched an effort that will bring this process to a new level: the Transatlantic Economic Partnership.

In the Transatlantic Economic Partnership (TEP) we engage the EU pragmatically and constructively to realize the remaining untapped potential of transatlantic markets; head off disagreements before they become crises; and enter the next century with a further strengthened and mutually beneficial trade relationship. Through it we hope to find the areas of mutual interest, remove barriers to our trade, and lay the groundwork for cooperation in multilateral issues. We have identified seven key areas to focus our efforts:

Technical Standards -- We are examining ways to reduce mutual barriers in standards, while maintaining our high levels of health and safety protection. This would be worth tens of billions of dollars in reduced costs for American firms. For example, the duplicative regulations, unnecessary paperwork, and other problems identified by the Trans-Atlantic Business Dialogue reduce the value of exports to Europe by up to 2%, meaning a loss to American exporters of $3 billion last year. Some of the sectors industry has proposed that we consider for action in this area include automotive, cosmetics, non-road heavy equipment and tires. The Administration will ensure that any action we might propose to the EU would maintain our high health, safety and environmental standards.

Agriculture -- Regulatory barriers currently pose real and present obstacles to our agricultural exports. EU treatment of the products of biotechnology offers a notable example of

such regulatory barriers and is an area we plan to address as part of TEP. Greater cooperation in food safety is another area from which both the U.S. and Europe can benefit.

Let me here say a few words about agriculture in the larger context beyond the TEP. The President emphasized the importance of agricultural trade in his address to the Geneva WTO Ministerial Conference in May. As we approach the WTO negotiations in 1999, issues including implementation of existing WTO commitments, State Trading Enterprises, eliminating export subsidies, ensuring that farmers and ranchers can use safe advanced scientific techniques including biotechnology, transparency in regulatory policy in biotechnology and other areas, and further market access commitments clearly need attention. The EU's Common Agricultural Policy presents a major challenge in several of these areas, including extensive import protection; direct, commodity-specific price support policies; and an export subsidy budget of approximately $6.1 billion in Fiscal Year 1997.

Government Procurement -- The TEP also provides us the chance to find ways in which to cooperate in government procurement to improve market access for US small and medium sized firms to a $200 billion EU procurement market.

Services -- We are also exploring together ways to expand our market opportunities for services and provide a boost to the upcoming WTO negotiations on services, in which we will have many common interests, and common positions, where possible, will help us achieve them.

Intellectual Property -- We have already worked together to strengthen enforcement for intellectual property rights protection around the world and particularly in Europe. EU pressure also brought Cyprus' patent regime into compliance with the WTO. The TEP will build on and formalize this cooperation, leading to the reduction of barriers within the EU and in third markets for our intellectual property-intensive producers.

Electronic Commerce -- Finally, the TEP will also enable the US and EU to build on our December 1997 joint statement on electronic commerce, which is projected to grow to a $300 billion market in the U.S. alone by 2001.

Public Participation and Promotion of Shared Values -- The public in both Europe and the United States is increasingly interested in trade policy. Therefore we are working on a joint effort to expand the dialogue within our societies on trade to include labor, environmentalists, consumers, and other important interests, much as the TABD has improved US-European trade dialogue with business. The initiative also seeks to develop common approaches to trade and the environment and the international promotion of core labor standards, as well as transparency at the WTO.

In the months to come, we and the EU will discuss a specific action plan to achieve the Transatlantic Economic Partnership's goals, including commitments to specific negotiations on individual subjects and areas for multilateral cooperation, including in the World Trade

Organization. We and other relevant agencies will undertake broad consultations with Congress, as well as business, labor and non-government organizations to further refine U.S. negotiating objectives.

EUROPEAN UNION EXPANSION

Beginning these efforts now is especially important, since the EU is both deepening its single market through adoption of the "euro" and further regulatory harmonization, and expanding to take in new members.

With respect to the "euro," the United States has a strong economic and security interest in a stable and prosperous Europe. This gives us a strong stake in a European Economic and Monetary Union that gives the region the strength and confidence it needs to move ahead with reform and continue to integrate its economy more fully with the rest of the world.The more the single currency helps Europe develop a robust and healthy economy, open to world markets and in which we can compete as efficiently as possible, the more welcome the project will be.

The E.U. now includes fifteen countries: Austria, Belgium, Britain, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden. This list will grow in the future, as the EU has identified Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia as the next candidates for membership. Numerous other countries, including Bulgaria, Latvia, Lithuania, Romania and Slovakia are also readying themselves for eventual membership. Turkey has already joined a customs union with the EU and expressed an interest in full membership.

Just as we supported European integration at its beginning in the 1950s, we continue to support it now as a force for stability on the European continent. As a general principle we also strongly support the integration of the new democracies into the political and economic institutions of the West. And with respect to Central and Eastern European countries that actually hope to join the EU, business prospects for our firms in these markets should in most instances improve once EU accession is completed.

We do not, however, take this for granted. Through the TEP, we will be in close and continuous contact with the European Union as these integration efforts move ahead. We are also engaging Central European governments in separate bilateral consultations. We will thus closely monitor their accession negotiations with the EU, and ensure that these do not damage U.S. interests. To assist us in this, we have asked the International Trade Commission to do a study of the impacts of EU enlargement, which we expect to be completed next spring. Thus, we will minimize the chance that this generally beneficial process from developing in ways which could reduce American market access or otherwise work against American economic interests.

DISPUTES

At the same time, our present relationship with the EU is by no means free of disputes. And in these disputes we will use all the tools at our disposal to assert the rights of American industries, service providers and agricultural producers.

This includes use of our own domestic trade laws. We have recently cited the European Union as a whole, and several member countries, under the Special 301 law to ensure full protection of U.S. intellectual property rights. Italy, for example, was placed on the Priority Watch List last May for failure to enact effective anti-piracy legislation including penalties consistent with WTO TRIPs provisions. Italy's Senate has since passed the legislation, and we are awaiting action from the Chamber of Deputies.

Most of our disputes, however, are now resolved at the WTO. The WTO system was designed to help put, to the extent possible, potentially explosive trade problems into a rules-based context. The fact that we have so many WTO cases involving the EU reflects, in part, the diversity of transatlantic economic activity. It also reflects the fact that we will not tolerate non-compliance with trade agreements or WTO rules, and we will exercise our rights vigorously to ensure that American trade interests are respected.

Active complaints against the European Union which are still in the dispute settlement process involve income tax subsidies in five EU member countries and intellectual property rights in four member states.

We also have two cases involving agricultural policy, specifically the EU banana import regime and the EU ban on beef from cattle grown with bovine growth hormone. In both of these cases, WTO dispute settlement panels and the Appellate Body have ruled in favor of the United States. The European Union has an obligation to respect WTO panel results, and we will insist on timely and full implementation of these rulings.

The European Union has likewise initiated WTO dispute settlement procedures against the US on several issues. Consultations to date have involved the sanctions invoked by the Commonwealth of Massachusetts against companies invested in or doing business with Burma; the Foreign Sales Corporation rules of the Internal Revenue Code; harbor maintenance fees; the 1916 Antidumping Act; and countervailing duties imposed against imports of certain lead and bismuth steel products from the United Kingdom.

We will defend our interests vigorously in all dispute settlement procedures filed against the U.S., and let me offer the EU's challenge to our FSC tax provisions as an example. This is an extremely troubling development: the FSC rules were enacted over 14 years ago with the express purpose of settling a dispute with the EU and conforming U.S. tax rules to our international obligations. In addition, there appears to be no commercial harm to the EU. We are firmly convinced of the legality of our tax system and will defend that view vigorously should a panel ultimately be established.

We have also cooperated constructively with the EU on a number of WTO dispute settlement cases challenging the actions of third countries.

RELATIONS IN THIRD MARKETS

Finally, let me say a few words about our relationship with the European Union in third markets. Here, too, we can gain much by increased bilateral cooperation but we must also bear in mind that the EU will in many cases be a serious competitor whose interests do not always coincide with ours.

We have had good cooperation thus far with the EU on ensuring the accession of China and Russia to the WTO on commercially meaningful terms. However, US and EU interests during the accession of future prospective WTO members might not always coincide, and we will ensure that our rights and interests are respected.

We are also concerned that the EU's process of negotiating its free trade agreements with more than twenty countries and regions could have a negative impact on the commercial interests of U.S. firms in those markets. We are closely monitoring these agreements to ensure that they do not create new barriers to American goods, services and agricultural products.

CONCLUSION

In conclusion, our trade relationship with Europe is already one of the major forces for prosperity in America, Europe and worldwide. However, much untapped potential remains. Our policy will address new areas and open new opportunities for millions of Americans.

It will ensure better market access for American businesses, workers, farmers and ranchers. It will take advantage of mutual interest in reducing paperwork and unnecessary regulatory burdens. It will help integrate new democracies into the world economy. And it will develop the multilateral trade system we and Europe helped create fifty years ago. This is in the fundamental economic interest of the United States, and it is also the essential complement to an engaged security policy in Europe.

Thus, in the largest sense, a strengthened economic engagement with Europe will help make sure the wise policies the United States adopted after the Second World War remain in place after the Cold War. It will ensure that the United States remains fully engaged on the European continent. It will ensure that American leadership continues to promote open, fair and mutually beneficial trade in the next century. And it will lay the foundation for a more peaceful and prosperous world in the next century.

Thank you, Mr. Chairman.

Chairman CRANE. Well, we appreciate your appearance here, Madame Ambassador, and we are grateful to you. There is something I would like to put to you that is not necessarily immediately germane to your presentation, but it is something that is a matter of concern to a lot of us. That has to do with the renewal of fast track. You indicated that now is not the time to consider fast track.

My concern, especially with regard to agriculture, is whether it is fair to make U.S. farmers and ranchers wait until next year before we start consideration of it. Secondly, I think it is impairing our strength in international trade relations for Congress not to have renewed that authority for the President.

And as you know, there is a growing commitment on the part of at least the House leadership, and hopefully the Senate too, that we might bring fast track up. Chairman Bob Smith indicated that if we make some accommodation to the Agriculture Committee, that he thinks he can pick up roughly 24 to 30 Members of his members. Originally, the count there was only about 12. And if that were so and we retained the numbers that we had last year going into November, that would be enough to put us over the top.

What are your views on that?

Ms. BARSHEFSKY. Well, first of all, as you know, Mr. Chairman, the administration strongly supports fast-track authority. We were disappointed that the bill had to be pulled in November, but that was the most prudent course at the time.

There is no question that fast track is essential and vital. If we look at the European Union alone, we see that Europe is now in the process of approving pre-trade agreement negotiations to begin with MERCOSUR—that's Brazil, Argentina, Paraguay and Uruguay, Chile and Mexico. This is obviously not in our interest inasmuch as we will not be a member of any of those pacts unless we have adequate authority to proceed with our own array of free trade agreements in this hemisphere, as well as around the world.

Having said that, we don't wish to see fast track be brought up to lose. And at this juncture, we don't believe that the votes are there either on the Republican side or on the Democratic side. I appreciate the efforts that the Chairman of the House Agriculture Committee is making, but at this point, we don't perceive that the votes are there at this juncture.

From the administration's point of view, we would like to see those pieces of trade legislation that can move forward before the election move forward. For example, the Africa bill, which you have cosponsored and been so instrumental on; CBI parity, which you were also instrumental on; shipbuilding, and several other areas; GSP, several other areas. We'd like to see those move forward because we believe that there is quite strong bipartisan support for those, and then take up fast track post-election.

Chairman CRANE. Well, I'm sure you followed our vote on renewal of normal trade relations with China. Going into that debate, we had a fear that while we were reasonably confident we could prevail, we anticipated a dropoff in the vote totals from last year. In the end, we actually got an increase.

And if the fast-track vote were taken up in September and the primaries are essentially all behind us, those who are paranoid about labor union money being poured into their opponent's cam-

paign kitty, except for general election fears, should not be all that exercised, it seems to me.

And those that are going to anticipate that kind of reaction in general elections are going to get it anyway. I have talked to our ranking minority member on the Trade Subcommittee, and he feels reasonably confident that he can retain the numbers he had last year. Now, the burden then is on us to try and increase the numbers that we had, and ideally Bob can increase his a little, too. That would help.

But if we were to get a pretty strong head count that looked like we could prevail, and we communicated that to you, then you guys ought to make a full court press from your end of Pennsylvania Avenue also. We will keep you updated on that and let you know.

Let me ask you a question on the Transatlantic Economic Partnership initiative. Are you certain that it won't diminish leverage the U.S. will have in the WTO negotiations on agriculture where we can discuss the reduction of export subsidies in domestic support payments, something that when Bob was making his presentation, he pointed out that the EU spends almost $47 billion in agiculture subsidies, in contrast to our $5 billion.

What Bob suggested is that they put all of their farmers on a dole and make direct cash payments to them and eliminate those subsidies, but I believe that stiffs us on any of their subsidied agriculture products coming in here. We are going to have to pay more, wouldn't we?

Ms. BARSHEFSKY. Right. Well, let me just say that the Transatlantic Economic Partnership and any talks under it will in no way prejudice our leverage in agriculture discussions in the WTO in 1999. And were we or I to perceive any remote possible diminution in our leverage for WTO talks, we would not negotiate those issues in the Transatlantic Economic Partnership.

The 1999 WTO talks in agriculture are absolutely critical. But at the same time, to the extent some of our bilateral irritants can be resolved through the Transatlantic Economic Partnership, I'd like to go ahead and try and resolve those or try to reduce the nature of those disputes in advance of heading into the 1999 talks.

Let me give you one example. We have a persistent problem with Europe with respect to trade in bioengineered or genetically-modified products. These disputes threaten to impair the bilateral relationship to a significant degree. At this juncture, we are awaiting approval from the French government of certain GMO varieties of corn which the European Union has already approved. And we have indicated to the French government in the strongest terms, including by the President and the Vice President, that undue delay by the French will not be tolerated.

If we were able, in the context of the Transatlantic Economic Partnership, to even reform the process by which the regulatory process by which GMO varieties are considered, that would go a long way to helping lessen the unpredictability created by the current climate and the current lack of discipline on the EU regulatory process.

That, it seems to me, would be worthwhile to try and accomplish and would in no way endanger our leverage in the 1999 talks and

would provide more immediate relief to our farmers who everyday plant more and more using GMO's.

So we will not do anything that impairs our leverage, but where we can resolve disputes that are essentially bilateral in character, we'd like to move forward on those and successfully pursue them in the context of the Transatlantic Economic Partnership.

Chairman CRANE. Given the similarity in our economies, it has always been surprising to me how rarely the U.S. and the EU are able to cooperate in the WTO. Where could coordination between the U.S. and the EU and the WTO be improved?

Ms. BARSHEFSKY. I think there are a number of areas. First of all, your observation is very well taken. My observation is that when the U.S. and the EU fight in the WTO, most of the rest of the countries take a pass and just watch the fun. That's terribly counterproductive. It disempowers the United States, and it actually disempowers Europe.

So we do need to find ways to cooperate better since we do share so many common interests. Certainly in services trade, where the U.S. and Europe are the world's largest services suppliers and largest services exporters, we should be doing more to cooperate so that we set very high standards for market openness in services trade through the WTO.

In areas of WTO transparency, that is, giving credibility to the WTO through more open and transparent processes, including the dispute settlement process, we and Europe have a shared history of due process, of transparency in our legal regimes. That shared history should be brought to bear on WTO practices and on the practices of other large, multilateral institutions.

Those are two examples of areas where we and Europe should do much more to cooperate and much less to fight.

Chairman CRANE. What's your timetable for agreeing on a specific action plan for the TEP with the EU?

Ms. BARSHEFSKY. I think we are looking at this fall. We should have a specific plan in terms of areas for negotiation, areas for cooperation, and so on, sometime in late September or October. And that is our current scheduling.

Chairman CRANE. Very good. I will now yield to our distinguished colleague, Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman. I am a little out of breath here, just having come back and I am sorry I did not hear the testimony. But it is always good to see you, Ms. Barshefsky.

I just wanted to ask you a particular question. We approved here on the committee in October of last year a bill to extend trade authorities procedures with respect to reciprocal trade agreements. This was on fast-track legislation. And we offered an amendment on ensuring that the administration—let me just read this thing, because the question really is do you think it is a good idea and whether we should reinsert it. "Preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping and countervailing duty laws, and avoid agreements which lessen the effectiveness of domestic and international disciplines." I won't go on.

But I have always felt that something like that is important to at least inscribe in law. I don't know how you feel about it.

Ms. BARSHEFSKY. I think it is very important at every opportunity to make clear to our trading partners that the U.S. will vigorously enforce its trade laws, including the anti-dumping and countervailing duty laws; but also, of course, the full range of other laws that we have, whether super 301 or special 301 or regular 301 or Section 1377 for telecommunications and so on and so forth.

To the extent that there is any doubt about that at all, then by all means, these issues should certainly be inscribed, whether in fast-track legislation or elsewhere. This administration, putting aside the anti-dumping and countervailing duty laws, which tend largely to be private remedies, has brought over 85 enforcement actions against our trading partners, including 41 WTO cases.

So we are not at all shy about enforcing our trade laws. I think it is absolutely critical that we use all the tools Congress has given us, and reenforcing of that by Congress, I think is a good idea.

Mr. HOUGHTON. Thank you very much. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. I apologize for being late, but the ceremony in the rotunda is just coming to conclusion.

Ambassador Barshefsky, beyond the fact that I think there is general agreement that you have done a terrific job during your tenure as our Trade Representative in every quarter of the globe, I have a specific question I would like to raise with you.

It addresses the new transatlantic agenda. My question is how can this new partnership help Northern Ireland, which Bill Clinton has invested so much in, and many of us who have been longstanding players in that conflict are so grateful to him for. Do you have any specific recommendations?

Ms. BARSHEFSKY. Well, this is an issue I think we will be looking at. As you know, the Department of Commerce has been heading an effort with respect to Northern Ireland—and perhaps Under Secretary Aaron can testify to this when he comes on up—but the Commerce Department has looked, for example, at matchmaking between the U.S. and Northern Ireland companies to try to spur investment in Northern Ireland and spur business and strategic alliances.

In addition, the U.S. has been instrumental in setting up a fund for new startup businesses for Northern Ireland, and there are a number of other efforts that are ongoing, and I think Under Secretary Aaron can speak to those.

The question from time to time has been raised, should the U.S. do a free trade agreement of some sort with Northern Ireland. I am not aware that the Irish government or the government of the United Kingdom or the European Union have expressed an interest in this. And of course, Northern Ireland is a subcentral entity, if you will, which complicates the situation.

But I think from our point of view, we are pleased to look at all possible options. As you rightly point out, the President has been very instrumental with respect to the peace process in Northern Ireland. And to the extent that creating a stronger economic base in Northern Ireland will help that process, and we believe it will, we want to do everything that we can to encourage that.

So we would look forward to working with you. Certainly, I would suggest that perhaps Under Secretary Aaron can speak to this issue also when he comes on up.

Mr. NEAL. Again, a note of gratitude. It is this administration that has elevated peace in Northern Ireland internationally and drawn attention to it, again from every sector of the world, and we are grateful for your interest. Thank you, Mr. Chairman.

Chairman CRANE. Well, again, I want to express appreciation to you, Madame Ambassador, for appearing here today. Because of the disruptions resulting from the murders that took place in the Capitol, it has led to change in everybody's schedule, but we felt that we probably ought to go forward with the hearing because of people having made the accommodations to be here.

Wait a second. I have one more member here that I will recognize before we say goodbye, and that is Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman, and thank you, Madame Ambassador, for being here. I know this is a hard day for all of us on this side, and for you not to have the attention of the members, I apologize for that.

I did have a question. I am sorry I had to miss your testimony, but I think I have a pretty good idea of what you talked about in relation to WTO and the EU. It relates to the beef hormone case, the banana case, to see where we are. I apologize again if you have gotten into this in any detail.

But my question basically to you is where are we in terms of our litigation against the EU. You and Peter Shear have done a tremendous job, and I want to commend you publicly for that, for your work in litigating against the banana policy of the EU based on the WTO case and the two GATT cases which preceded it.

My sense is that the EU is almost institutionally unable or unwilling to comply with the WTO case, and that this is indeed a test case, and indeed has implications well beyond the hormone issue or the banana issue. Both cases are test cases. The banana case is sort of first-in, first-out, and therefore needs a focus.

With all the important interests that are at stake in this case, I guess my question to you is what can the U.S. do to stop European implementation of their new proposed regime, which I think is worse than the existing regime. Which is ironic that after the WTO case, they then push through a regime that is even more harmful to U.S. interests.

It is my understanding that there is an EU–WTO deadline of January 1, 1999. How can Congress, this subcommittee in particular, but Congress in general, help you to achieve our objective of keeping the EU from implementing its new proposed banana arrangement and ensure full compliance with the WTO case?

Ms. BARSHEFSKY. Let me respond to both the banana and the beef hormone issue. You are quite right that the deadline for compliance by the EU with the panel's ruling in the banana case is January 1, 1999, and we expect full implementation by the EU by that time, which means a WTO-consistent banana regime, first off. That is most important. Second, and equally important, assurances that the Lomay rights, or the rights granted under the Lomay Convention, for example, for the Caribbean and others, are fully respected.

The EU, as you know and as you have indicated, has come forward with a new banana licensing regime which we believe to be more discriminatory than the regime that it replaces. We have told the Commission this. We have indicated this, and I have indicated this personally to every one of the member States.

The process we are now engaged in is to see if we can get the original panel to reconvene in essentially emergency session to take a look at this new regime and to render an opinion before the deadline for compliance on its WTO consistency.

We are very confident that in that proceeding, we will prevail, and the regime as proposed will be viewed WTO-inconsistent. We are holding Europe to the January 1, 1999 deadline for compliance. And we certainly hope Europe revisits the regime it has put forward well before that date.

With respect to beef hormones, the EU has left on the clock ten and a half months in which to comply. We have been working very closely with our industry. The EU, as you know, wanted four years to comply with a panel ruling indicating that its ban on our beef exports was WTO-inconsistent. We went to arbitration. This is after winning the panel decision and the appellate body decision. We then went to arbitration because the EU didn't get the point apparently the first two times, to make clear that they had the normal 15-month period in which to comply, which now on the clock leaves about 10 and a half months.

That ban needs to be lifted. It is WTO-inconsistent. No further scientific studies need to be done. Sufficient science exists, both in the United States and in the EU, and it is time for the EU to get on with the process of full compliance.

Here again, we are going to stick with the WTO-imposed deadline of May 1999 for full compliance. Obviously, if there is not full compliance, we will take action at that point.

Mr. PORTMAN. Again, if you have any recommendations as to how this Congress can be helpful, I think we would like to entertain those. Personally, I am frustrated by both of those cases, and I think the record is clear that the Europeans are not likely to comply without the United States government continuing to litigate it strongly, and in particular—and I know this is something that makes some of your trade lawyers shudder—but threatening retaliation.

I think the banana case, it is a 301 case, and the beef hormone case has been dragged on. I personally believe that if you were to come to this Congress and lay out your case, that you would get strong support, not just for the compliance procedures under the new WTO, which are rather muddled as I read them, but for retaliation procedures.

I just think it is better to go ahead and make our case very strongly. I commend you for your quote that was in your most recent press release. "The United States will not hesitate to exercise its full rights under WTO. Our rights include withdrawal of concessions on EC goods and services." I think we have to not only make the threat, but I think we then have to stand by it if the Europeans continue to be in noncompliance, which is such an obvious position that they have put themselves in with this latest proposal, particularly.

I would urge you to be aggressive on it, both with regard to continued litigation, which you are doing, but also not to be shy to come to this Congress. I think under 301—again, I know that many in the trade community hesitate to exercise that because it is unilateral, but sometimes you have to use unilateralism in order to enforce multilateralism, which is really what this is. I hope that you will do that.

Again, if you have any comments today as to how we could be helpful, I would love to hear them. I know the chairman is a strong free trader, as am I and most members of this subcommittee and committee, thank goodness. But is tough for us to always be out on point, whether China MFN, now China NTR, or whether it is fast track or whether it is WTO, when in cases like this, where we are so obviously in the right, we cannot achieve our results.

It is going to be more and more difficult for those of us who are free traders to prevail here politically. So if you have any thoughts today as to what this Congress or this committee could do to help you. And do you have any response to my suggestion?

Ms. BARSHEFSKY. Well, let me say simply at this point that we would be very pleased to work with you. We have told Europe that we will not hesitate to retaliate with respect to bananas and with respect to beef hormones if we reach the point at which they fail to comply on the deadline for compliance.

And let me make one comment about that. Under WTO rules, countries normally are granted a period in which to comply with WTO rulings. And that period is normally 15 months. The United States was chief among those who argued for a period within which compliance could take place because of our concerns that were we to lose a case, and were we to have to come back to Congress for authority to undertake an action or perhaps revise regulatory rules or such other activity, we would need about that amount of time within which to complete our own work.

So in the current case, the EU is not, in either bananas or hormones, beyond its due date for compliance. In both cases, we made clear the 15-month rule stands. In hormones, the EU thought they should fall outside the general rule and instead take four years. And of course, an arbitrator took our view and said, no, 15 months is normal; you can do this within 15 months. And the clock on both bananas and hormones is ticking under those rulings.

Because that time period within which to comply is one that we ourselves have utilized for the full 15 months just recently, it is my view that it would not be appropriate to undertake retaliatory action during a ruled legal period of compliance.

However, once that period of compliance is done, if there has not been full compliance, then we should and will avail ourselves of all tools, including very, very likely retaliation.

Mr. PORTMAN. Thank you very much, and thank you, Mr. Chairman, for the indulgence. I would just make one final point, which is once they implement this new regime, it may be more difficult as a practical matter to alter that regime and to get to a GATT and WTO compatible regime. Therefore, I feel strongly that the threat of retaliation backed up by not just press releases, but perhaps even some indication of what that retaliation might be and therefore, a sense that it is real, is going to be necessary.

I would hope that we go beyond the compliance procedures, which as I read them, really could end up with us going back full circle again through a process of appeals and almost a never-ending series of European appeals, and instead move to a much more aggressive threat of retaliation and then following through on that threat if necessary. And I hope it would not be necessary.

Thank you very much, Mr. Chairman, and again, Ambassador Barshefsky, thanks for your outstanding work on this litigation.

Ms. BARSHEFSKY. Thank you.

Chairman CRANE. Well, we thank you, Mr. Portman. Again, let me express appreciation to you for being with us, Charlene, and apologize for the circumstances, which are beyond our control.

But we appreciate your being here and spending the time with us. And to follow up on what Rob Portman was talking about, we look forward to working with you in all fronts involving trade. But I'd like to sit down and talk to you further, after Labor Day about fast track renewal.

And with that, we will let you be excused, and again, thank you.

Ms. BARSHEFSKY. Thank you so much, Mr. Chairman.

Chairman CRANE. And our next witness is the Honorable David L. Aaron, Under Secretary of Commerce for International Trade with the U.S. Department of Commerce.

And it is my understanding that we don't anticipate interruptions again until approximately 2:30. But we do have two panels after the testimony of Mr. Aaron and we routinely ask folks to try to summarize in their verbal presentation within five minutes roughly, and then all written testimony will be made a part of the permanent record.

With that, you may proceed, Mr. Aaron.

STATEMENT OF HON. DAVID L. AARON, UNDERSECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, U.S. DEPARTMENT OF COMMERCE

Mr. AARON. Thank you very much, Mr. Chairman. Let me begin by commending you for holding this hearing. The European Union (EU) is one of our most important commercial partners, as Ambassador Barshefsky pointed out. The EU buys over $1 trillion of goods and services made by U.S. firms, making it more than twice as large a market for American companies as Canada and three times as large as Japan. Furthermore, the EU is an important ally in opening markets to the rest of the world.

But, like all good things, there is room for improvement. This hearing will help us focus needed attention on the opportunities and the challenges of this critical relationship.

With your permission, I'd like to focus my remarks today on Commerce's partnership with industry and the Transatlantic Business Dialogue (TABD) and the commercial challenges we face in the coming year.

As this committee is aware, the Commerce Department has played a pivotal role in building government support for the TABD, the unprecedented process of bringing U.S. and European CEO's into a dialogue with top trade officials on both sides of the Atlantic that has enormously contributed to reducing trade barriers and to further opening markets.

Recent successes include the Mutual Recognition Agreements, or MRA's, and the Information Technology Agreement. The TABD has also been highly effective in increasing government attention in areas such as the EU-specified risk material ban, metric labeling, and electronic commerce.

I want to emphasize the strong and innovative leadership of the TABD by the U.S. and EU chairs, Lodewijk deVink of Warner-Lambert and Juergen Schrempp of Daimler Benz. Their leadership has been the driving force for this year's successes.

Secretary Daley will lead the U.S. Government delegation to the 4th TABD conference in Charlotte, North Carolina in November. Three issues gaining momentum for this year's conference are electronic commerce, implementing and concluding additional MRA's, and metric labeling. These are all positive developments.

But important issues remain to be resolved, including the EU's implementation of its data privacy directive, its policies on genetically-modified organisms, the accession agreements with Central and Eastern Europe, and the third generation wireless telecommunications equipment discussion.

Europe has been very active in developing its privacy policy. Its directive on data privacy mandates a comprehensive regulatory approach to privacy that applies to all industry sectors. Were the EU under this directive to consider the United States' system not to provide an adequate level of data protection, the effects on data flows between the United States and Europe could be severe. For example, a multinational company could be prohibited from transmitting any data from its European operations to the United States and to other overseas locations.

In March, I began bilateral discussions with my European Commission (EC) counterpart, John Mogg. We established the twin goals of ensuring effective data protection and avoiding any disruptions in data flows. This dialogue is an important step in avoiding any adverse effects of the EU directive that might occur on trade when it is implemented in October.

With the announcement of the Online Privacy Alliance, the Better Business Bureau Online, and Trustee last week, I believe all the elements of effective private sector privacy policies are in place. The way is now open for the EU to decide that U.S. companies that sign on to those policies meet its privacy requirements.

The marketing of genetically-modified organisms in the EU is another important issue. The EU, the major market for U.S. agricultural products, has a slow and unpredictable process for approving products developed through advanced biotechnology.

Although technically a success, the delayed approval of three corn products resulted in a loss of $200 million in U.S. exports this year. The EC is trying to make up for lost sales by opening up more corn tenders this year and next. We plan to work closely with the EU in the coming months to develop a more timely and transparent approval process.

As the EU expands, we are actively working to safeguard the interests of U.S. companies. Two areas, broadcast quotas and import tariff rates, are particularly troublesome. Some countries have adopted the most restrictive interpretation of EU broadcast directives. For example, all programming in Poland must have at least

50 percent European content, and Romania's draft legislation lacks any flexibility whatsoever.

On tariffs, the EU association agreements grant preferential treatment to EU products, while maintaining the higher MFN rates for U.S. products. This preferential treatment calls into question the GSP eligibility of some Central and Eastern European countries. We are working to identify the products most directly affected, and look forward to the ITC study due next year. We are also working bilaterally and multilaterally to address these concerns.

In our meetings with the Europeans last week, we discussed the EU's third generation wireless standards development in Europe and its relationship to the International Telecommunication Union's (ITU) third generation or 3(g) standards development process. The EC assured us that they will not preclude member States from licensing multiple 3(g) technologies, though they clearly stated a preference and a goal of having one common standard operating throughout Europe.

We intend to follow the EU process closely, as we are concerned that it is premature to recommend any specific standard for third generation at this time. Third generation wireless standards are of critical importance to us, both in regard to future technology, as well as their impact on the current market for wireless technology. We believe that all ITU members should support any and all 3(g) standards which meet the ITU requirements.

These, Mr. Chairman, are just some of the priorities we see for the near term to further build the transatlantic marketplace. In addition to the TABD, Secretary Daley and I have ongoing dialogues with trade officials from the European Commission, Germany and France.

There is no question that the EU represents important commercial opportunities for U.S. companies, and in general, we can expect the EU to work with us productively in the world economy. In many ways, this extended open-ended commercial cooperation is a new way of opening markets and liberalizing trade. We look forward to working with this committee to shape the future of the U.S.-EU relationship.

Before closing, I'd like to call to the committee's attention the ratification of the OECD Antibribery Convention. This Convention will enter into force in 1998 only if it ratified by five of the ten largest OECD economies. We hope to have Senate ratification of the Convention in August and congressional action on the implementing legislation in this Congress. U.S. leadership is essential.

Thank you, Mr. Chairman. I'd be happy to answer any of your questions.

[The prepared statement follows:]

PREPARED STATEMENT OF AMBASSADOR DAVID L. AARON
UNDER SECRETARY OF COMMERCE
FOR INTERNATIONAL TRADE

BEFORE THE SUBCOMMITTEE ON TRADE
OF THE HOUSE COMMITTEE ON WAYS AND MEANS

JULY 28, 1998

Mr. Chairman:

I would like to begin my statement by saying that the Department of Commerce is delighted that the Subcommittee is holding this hearing today. With the hearings focused on transatlantic commercial relations last year at this time as well as this one today, the Subcommittee has done much to bring needed attention to the importance of U.S.-European commercial relations. The U.S.-European commercial relationship is by far our largest. And it is undergoing some historic changes -- such as the announcement of the Transatlantic Economic Partnership (TEP) at the May 18 U.S.-EU Summit and the launch of the euro less than six months away on January 1, 1999 -- that we will be discussing today.

I also am very pleased to be testifying before the subcommittee as the Under Secretary of the Commerce Department's International Trade Administration (or "ITA"), which has played a leading role in working for closer transatlantic commercial relations, both in addressing trade barriers and in promoting U.S. exports. The Department works very closely with the Transatlantic Business Dialogue (TABD) with the goals of reducing the cost of doing business between the two largest economies in the world and providing leadership in moving toward global trade liberalization. Also, the Commerce Department has been the driving force behind several innovative initiatives that have fundamentally changed the landscape of transatlantic trade -- for example, the Mutual Recognition Agreement recently concluded between the United States and the European Union was initiated by the Department of Commerce. I also want to highlight our the strong export promotion program in Europe -- the "Showcase Europe" program -- operated by Commerce's Commercial Service. Our efforts are aimed particularly at assisting small and medium-sized firms increase their exports to Europe.

There is much concern today, and with good reason, about U.S. deficits with our trading partners -- especially our trading partners in Asia, like China and Japan. We have a trade deficit with China of about $1 billion a week, and could have a trade deficit of $62 billion with Japan in 1998. During the first five months of 1998, we ran nearly a $6 billion deficit with the European Union, which is the subject of this hearing, nearly twice the level over the comparable period for 1997. In 1996, the last year for which complete data are available, the United States ran a global trade deficit of $181 billion, while the European Union experienced a trade surplus of $55 billion.

In my statement today, I will demonstrate not only the importance and overall balanced nature of the U.S.-EU commercial relationship, but that the Administration is working hard to maintain this relationship as the cornerstone of our program to work for open markets and to ensure that U.S. businesses are given a fair shake when they trade internationally.

THE TRANSATLANTIC MARKETPLACE

The Transatlantic Marketplace is by far the world's largest. Together the United States and Europe account for $16 trillion of GDP, nearly half of the value of goods and services produced in the entire world. The European Union (EU) taken as a whole is an enormous commercial market -- virtually as large as the NAFTA market of the United States, Canada and Mexico combined. In fact, about one-third of all the world's goods and services produced outside the United States are made in the EU.

The EU is by far our largest commercial partner, each year buying over $1 trillion of goods and services made by U.S. companies. This makes the European Union twice as large a market for American companies as Canada, and three times as large a market as Japan. This fact often surprises those who look only at trade statistics. They point out that Canada -- not the EU -- is the largest U.S. export market, and they are right in saying that transpacific trade flows are larger than transatlantic trade flows. But our trade flows across the Atlantic are much more balanced in terms of exports and imports. I also noted that most international business is done by investing and producing in foreign markets, not just exporting to them -- and Europe is the overwhelming leader in U.S. international investment. The balance in our trade relationship extends to investment as well with Europe being the largest investor in the United States. Due to this, about three million Europeans work for U.S.-owned companies in Europe and about three million Americans work for European-owned firms in the United States. In fact, one in every 12 U.S. factory workers is now employed by a European-owned firm.

U.S. investment in Europe also results in greater U.S. exports with about one-third of all U.S. exports to Europe going to supply U.S. affiliates located there. We believe that this is a very important way for small and medium-sized businesses, in particular, to start doing business in the EU market.

There is room for continued expansion of transatlantic commerce, including in U.S. exports. For one thing, one-fourth of U.S. exports to the EU go to the UK market, even though the United Kingdom accounts for only one-sixth of the EU economy. The German economy is twice the size of Britain's, yet U.S. companies export 50 percent more to Britain than to Germany. An important reason is that U.S. companies have been more comfortable with the common language and other attributes of the UK, and have devoted relatively less attention to "the Continent." One of the Commerce Department's goals is to get more companies that already export to Britain to begin exporting to the rest of Europe. This is particularly important now that the EU will have a single currency, which should help smaller U.S. companies see the EU as one market.

U.S.-EUROPE PARTNERSHIP IN GLOBAL TRADE POLICY

The European Union not only is our largest commercial customer and supplier, it also plays a vital role as our partner in opening world markets and in liberalizing the multilateral trading system. Through all of the various rounds of multilateral trade negotiations since the world trading system was founded fifty years ago this year, Europe has shared a vision of an increasingly open world trading system, and has worked with us to achieve that goal.

The many accomplishments of the General Agreement on Tariffs and Trade and its successor, the World Trade Organization, could not have been achieved without the agreement and joint leadership of the United States and Europe. We do not always agree with our European partners on what needs to be done -- the best example is the Uruguay Round, which was stalled for several years while the United States and the EU worked out their differences on agricultural trade. The Uruguay Round moved forward only when those differences were resolved. In addition, the EU has not been as supportive of our efforts to open Asian markets as we had hoped.

Nevertheless, when we agree on what is to be done, we achieve great things. Over the last few years these achievements have been particularly impressive: the Uruguay Round, the Information Technology Agreement, the Telecommunications Services Agreement, and the Organization for Economic Cooperation and Development (OECD) agreement to criminalize bribery of foreign publics officials, to name some of the major ones. This is not to say that our interests and those of Europe are always in sync -- when we can't come to terms with the EU, we just can't move forward with our plans to liberalize the world's markets. In short, we have learned over time that we need each other to get the important work done.

THE NEW TRANSATLANTIC AGENDA

In recognition of the need for close consultation and cooperation, the United States and the European Union inaugurated the "New Transatlantic Agenda" (NTA) at the Madrid U.S.-EU Summit in December 1995. It marks the first time that we are dealing with the EU as a political institution on a large scale, and it also moves the relationship to one that seeks cooperative action on resolving problems. The NTA is the blueprint for U.S.-EU cooperation into the 21st century and expands our relationship, not just in commerce, but across the board -- to provide a comprehensive mechanism to resolve problems and to find areas of common interest in which joint approaches can be developed.

One of the most important aspects of the NTA is the breadth of its mechanisms, providing a degree of contact among U.S. and European government officials unparalleled in the past. At the top, the semi-annual U.S.-EU Summits at the Presidential level provide the impetus to keep the relationship moving forward. The Summits are supplemented by meetings of the "Senior Level Group" (SLG) in which I participate, bringing together the senior trade and economic officials of both sides. The SLG in turn is supported by the "NTA Task Force" of working-level officials who meet to resolve problems and add new items to the common agenda.

An important aspect of the NTA is the goal of creating an eventual barrier-free transatlantic marketplace for trade and investment, working on a pragmatic basis to take step-by-step action to identify and eliminate remaining commercial obstacles across the Atlantic. In a little over two years, the NTA has helped resolve a remarkable number of problems and has prevented the growth of smaller problems into larger ones.

For example, government and industry leaders on both sides applauded the successful conclusion of a Mutual Recognition Agreement on product testing and certification that will reduce the costs of exporting in six industrial sectors covering $50 billion in two-way trade.

THE TRANSATLANTIC ECONOMIC PARTNERSHIP

Despite these achievements, we can do more to deepen the transatlantic economic relationship. The Transatlantic Economic Partnership (TEP) announced at the May 18 U.S.-EU Summit is our most recent effort to concretely identify those areas where the United States and the European Union can work toward greater market liberalization under the NTA. While we do not seek the creation of a free trade area, we have identified specific areas to reduce trade and investment barriers across a range of areas including goods, services, and agriculture in the TEP work plan currently under development. This initiative will be good for U.S. and EU member states' businesses, and will further strengthen the transatlantic economic relationship.

Since the Summit, Commerce officials have been actively engaged in the U.S. Government interagency TEP working group process, led by the Office of the U.S. Trade Representative (USTR). We have officials within the International Trade Administration, Bureau of Export Administration, the National Telecommunications and Information Administration, the U.S. Patent and Trademark Office, and the National Institute of Standards supporting TEP work. Commerce has also participated in several discussions between U.S. Government and the European Commission officials to develop the joint action plan for the TEP, as called for in the Summit Statement.

While the TEP has many elements, most officials in the EU and United States concede that the regulatory and standards issues that ITA's Europe Office pioneered are the major component of these trade negotiations. While USTR is the lead agency, Commerce has actively engaged business and private sector representatives and is developing concrete, specific ideas for action. We are also ensuring that relevant TABD recommendations are considered in the draft work plans for the TEP. Commerce is the lead for the U.S. Government on the TABD, as I will discuss later in my testimony.

In addition to TABD input, U.S. Government staff are analyzing the comments received from USTR's *Federal Register Notice* on the TEP. We continue our active outreach to the private sector and non-governmental organizations. Hearings such as the one today also allow the Administration to gage your interest and concerns in the initiative. The European Commission is engaged in similar work.

U.S. and European Commission negotiators hope to have developed a substantial draft work plan to implement the TEP initiative shortly. After the European summer recess, the next steps will be to refine the draft work plan during the month of September, for review by the EU member states in early October.

It is in both sides' interests to have the most ambitious and positive work plan possible. We hope that the EU member states will approve the broadest possible negotiating mandate for the European Commission sometime this fall.

The TEP will build on foundations laid in the New Transatlantic Agenda, and add greater momentum to what we have been trying to achieve under that process. The TEP will also reinforce our work in the World Trade Organization and other global fora.

THE TRANSATLANTIC BUSINESS DIALOGUE

Another important vehicle for liberalizing transatlantic trade -- and a major factor in the successful reduction of commercial obstacles in the Transatlantic Market over the last three years -- is the work of the Transatlantic Business Dialogue -- the TABD. The TABD was the brainchild of former Commerce Secretary Ron Brown who encouraged the private sectors on both sides of the Atlantic to get more involved in the process of breaking down transatlantic commercial barriers. Commerce -- ITA -- continues its active involvement with the TABD, coordinating and leading the U.S. Government's interface with this business initiative.

The TABD, made up of representatives from U.S. and EU businesses, offers business the opportunity through a process of developing and submitting specific recommendations to government to advise us on how we can best move forward with the liberalization of the massive transatlantic marketplace; and to help business reduce costs caused by redundant government requirements. The TABD's work has produced a number of significant successes and continues to provide government with the advice we need.

This government-business dialogue is unique in the world and has contributed immensely to the reduction of trade barriers across the Atlantic. No other forum has risen so rapidly to become as effective as the TABD. It has become the single most important channel through which business can help shape the bilateral trade agenda of governments. In fact, the success of the TABD is being emulated by the emergence of a Transatlantic Labor Dialogue and also is reflected in the desire of business communities elsewhere to seek comparable mechanisms.

The TABD has consistently told government officials that the main impediments to trade across the Atlantic are not tariffs -- although there are some important areas such as paper products where we seek lower tariffs -- but are divergent approaches to development of standards, testing and certification requirements, and other regulatory differences. While the most significant achievement has been the Mutual Recognition Agreement or MRA, the TABD has been an important factor in virtually all of the improvements in our transatlantic trade. The original thesis has certainly proven true: when both business communities agree that a particular action is in the interest of both sides, it is much easier for governments to act -- and to act quickly.

The TABD prepares a report for each Summit, in which U.S. and European business explain their joint recommendations to the presidents, which the TABD CEO leadership presents personally to the Summit leaders. In December, outgoing U.S. chair Dana Mead (CEO of Tenneco) and Jan Timmer (former CEO of the huge Dutch conglomerate, Philips) presented to the Summit leaders the recommendations from the most recent TABD conference, held in Rome last November, containing a broad array of practical recommendations to reduce transatlantic commercial obstacles further.

At that Rome Conference we announced an important step forward in working to address the TABD's recommendations -- a sub-Cabinet level interagency process, which I lead, to examine each of the TABD recommendations for their merits and practicality. The score card we worked with the TABD to develop includes over 130 recommendations from the Rome conference and we are now tracking these recommendations with other interested U.S. Government agencies. Our implementation rate exceeds one-third and we are aiming for the TABD's goal of a 50 percent implementation of recommendations by December 1998, or "as soon as possible".

Under the leadership of Warner-Lambert and Daimler Benz this year, the TABD has gotten off to a much faster start than in previous years. We are working now with the TABD to focus on how to make the next TABD Conference, to be held on November 5-7 in Charlotte, North Carolina, an event greater success than past TABD Conferences. Secretary Daley will lead the U.S. Government delegation to the Charlotte Conference. Some of the issues gaining momentum for the Conference are electronic commerce (which was the centerpiece of last year's Rome Conference), MRAs -- implementation and the conclusion of additional agreements (the TABD wants MRAs negotiated for chemicals and heavy equipment), and metric labeling.

THIRD GENERATION WIRELESS TELECOMMUNICATIONS EQUIPMENT

We are concerned about how the standards-development process in Europe affects U.S. telecom manufacturers and potential service providers. We are consulting with industry to determine ways to ensure the U.S. technologies are given a fair chance to compete in the EU market. The European standards-setting body -- the European Telecommunications Standards Institute or "ETSI" -- developed a standard for the next-generation of wireless services last February, which it has submitted to the International Telecommunication Union for evaluation as an international standard. Some U.S. manufacturers have complained that they are unfairly disadvantaged by the standard in its present form, which we are looking into. Furthermore, if an EU operator were barred from using U.S.-developed technology due to mandatory use of a single standard, the EU (or the member state's) adherence to its obligations under the General Agreement on Trade in Services could be called into question. Based on bilateral discussions with the EU last week, we are optimistic that the EU, its member states, and ETSI will cooperate in ensuring that U.S. manufacturers have fair access to the EU market and that potential service suppliers are licensed on a technology-neutral basis, in accordance with the EU's WTO commitments on telecommunications services.

BRINGING DOWN TRADE BARRIERS

In just over two years, active government and business efforts aimed at improving the Transatlantic Marketplace have produced remarkable results. These include:

-- A Mutual Recognition Agreement (MRA) covering computers and telecommunications equipment, pharmaceuticals, medical devices, electrical equipment, electromagnetic interference, and recreational boats. The MRA will eliminate or substantially reduce redundant testing and certification covering close to $60 billion of trade -- and U.S. industry has estimated it will save close to $1.3 billion annually when fully implemented. Small and medium-sized companies will benefit particularly;

-- A bilateral customs agreement that reduces some of the costs and paperwork involved in shipping across the Atlantic;

-- A veterinary equivalence agreement that when signed will facilitate trade in live animals and animal products;

-- A joint Science and Technology Agreement;

-- An agreement to seek maximum harmonization and minimally different standards on outboard marine engines; and

-- An agreement to develop harmonized auto standards, in a new international group, achieving an objective long-sought by the U.S. auto industry to reduce the proliferation of global auto standards while maintaining the highest levels of safety.

OECD ANTIBRIBERY CONVENTION

Last year we also achieved a breakthrough on the anti-corruption issue with the OECD member states and five other countries committed to a binding international convention, obligating them to criminalize bribery of foreign officials and ratify this agreement by year-end. We are looking forward to working with the OECD to resolve the remaining issues over the next year; the issues of bribes to political parties and party officials are very important. The Convention will enter into force in 1998 only if it is ratified by five of the ten largest OECD economies (the United States, Germany, Japan, France, the United Kingdom, Italy, Canada, Korea, the Netherlands, and Belgium-Luxembourg). The United States hopes to be able to ratify the Convention by the August recess. Good progress has been made in the remaining countries of the top ten -- including European countries -- but we are anxious that they take the required action so that the Convention can go into effect this year.

ECONOMIC AND MONETARY UNION / THE EURO

In addition to the noteworthy successes in bringing down trade barriers, we also welcome the historic announcement that 11 European countries will establish an Economic and Monetary Union (EMU). The United States has long supported European integration. We admire the determination that Europe has shown in moving toward the economic convergence that makes EMU possible.

A strong and stable Europe, with open markets and healthy growth, is good for America and for the world. A successful EMU that contributes to a dynamic Europe is clearly in our best interest.

U.S. small and medium-sized exporters (SMEs) will be able to look at Europe as a single market, and not have to worry about denominating their trade entirely in dollars, or dealing with many different exchange rates. This will attract more SME's to export to Europe.

Generally, large U.S. multinationals have prepared for the euro. However, many small and medium-sized U.S. exporters need guidance on many of the coming changes. We at the Commerce Department have begun a major educational campaign to help get these small and medium-sized companies get ready for the launching of the euro on January 1, 1999.

We will sponsor 13 seminars across the country between August 4 and November 18. Commerce Assistant Secretary Patrick Mulloy will speak at the first seminar August 4 in Minneapolis/St. Paul. Participants for the seminars include U.S. government trade specialists, staff from American embassies in Europe, and private sector experts. These individuals will lead sessions and share their first-hand experiences and advice on topics ranging from export pricing, marketing, and distribution practices to the euro's impact on accounting software and legal contracts. We also have conferences scheduled in Baltimore; Birmingham; Philadelphia; Cleveland; Nashville; St. Louis; New Orleans; Boston; Charleston, South Carolina; Charlotte; Cedar Rapids; and Dallas.

Our goal is to ensure that U.S. companies understand the expanded opportunities the euro will create for U.S. exports. We want to make sure that our businesses are fully equipped with the requisite marketing and financial information to capitalize on these opportunities.

We do not believe that a successful euro will drastically reduce the dollar's role in the world economy. Any reduction in the dollar's role, if it occurs, will take place gradually. We are confident that as long as U.S. macro-economic policies continue to earn the respect of world markets, investors will continue to desire dollar denominated investments. It is also possible that the introduction of the euro will make Europeans more supportive of U.S. efforts to open Asian markets, particularly if those countries invest more of their reserves into euro holdings.

MORE WORK TO BE DONE

All of the developments I have just discussed speak well for the future of U.S.-EU commercial relations. We have developed effective mechanisms for addressing outstanding issues and are continuing to fine tune these mechanisms through initiatives such as the TEP. But there are still important issues to be resolved. These include: data privacy legislation, issues surrounding approval and labeling of genetically modified organisms, and problems for U.S. companies associated with the process of EU enlargement. The first two issues pertain to regulations that could, if not resolved, affect a substantial amount of U.S. exports to the European Union. Steps the EU could take in food safety policy, for example, have the potential to affect not only a large amount of U.S. agricultural exports, but also a full range of pharmaceuticals and cosmetics exported by the United States. We also are concerned about the effect on U.S. companies of the process of EU enlargement, including an increasing tariff differential with EU products as applicant countries make the transition to the common external tariff.

EU Data Protection Directive

By bringing news and information to people on a global basis and allowing them to communicate more freely with one another, the internet and other electronic networks serve an extremely useful function. These technologies also have the potential for exploding in significance as a means for conducting commerce, with revenues projected by the World Trade Organization to exceed $300 billion by 2001.

These technologies, though, also permit the transmission, processing, and storage of vast amounts of information about individuals -- creating information trails that could provide others, in the absence of safeguards, with the personal details of their lives. Electronic networks already process huge amounts of data, sending credit card, banking, and other information globally. Over the past several years, the United States and other nations have become increasingly concerned about finding ways in which data privacy protection can be ensured.

Europe has been very active in developing privacy policy. In July 1995, the EU adopted a Directive on Data Protection that mandates a comprehensive regulatory approach to privacy that applies to all industry sectors. It severely limits secondary uses of information, mandates creation of independent national data authorities, and requires companies to register with those authorities before compiling, copying, or transmitting any information.

Significantly, the Directive prohibits the transfer of personally identifiable data to third countries, such as the United States, if they do not provide what the EU considers to be "an adequate" level of data protection. The Directive requires member states to comply by October 25, 1998.

Initial indications by the EU in 1997 suggested that self-regulatory privacy efforts by the private sector in the United States would not be deemed adequate, and consequently data transfers to companies in such industry sectors could be prohibited. If the EU were to determine that the U.S. system did not provide "an adequate" level of data protection, the effects on data flows between the United States and Europe could be severe -- so severe as to affect trade flows and perhaps even internal economies. For example, a multinational company could be prohibited from transmitting any data from its European operations to the United States and other overseas locations.

When it issued "A FRAMEWORK FOR GLOBAL ELECTRONIC COMMERCE" in July 1997, the Administration emphasized the importance of privacy protection and encouraged private sector leadership to develop effective self regulatory regimes. Since then, the Administration has been encouraging the private sector to develop and adopt effective self regulatory privacy codes of conduct. Over the past few months, industry has taken promising steps toward creating effective systems of self regulation. Industry has formed corsortia and is developing and implementing effective privacy codes of conduct that include enforcement mechanisms. Although much work remains to be done by the private sector, we need to recognize that the private sector has taken important steps forward in this area.

Serious bilateral discussions on the EU's Data Protection Directive intensified in 1998. In March, I began bilateral discussions with EC Director General for the Internal Market, John Mogg. These discussions indicated that the Commission has taken a more flexible approach on implementation. Importantly, the Commission has said that it could view as adequate, for example, effective privacy protections provided through self regulation; it no longer is insisting that other countries pursue the same sort of legislated approach being implemented in the European Union.

In my meetings with Director General Mogg since that initial meeting, we established the twin goals of ensuring effective data protection and ensuring that the EU seeks to avoid any disruptions in data flows. Key member countries have also been consulted, and officials support this dialogue as an important step in avoiding any adverse trade effects of the EU data privacy directive. It has become apparent now that the EU wants to avoid a disruptive interruption of data flows and will work with the United States to try to ensure that they do not occur.

Genetically Modified Organisms

I will turn now to another serious issue affecting transatlantic trade -- the marketing of genetically modified organisms ("GMO's") in the EU. This issue relates to a widespread European fear for food safety and a loss of confidence by European consumers in national and EU regulators within the new borderless Europe.

The United States leads in developing genetically modified organisms that hold tremendous promise for global consumers and producers. As the world's largest and most efficient agricultural producer, our farmers and ranchers must have access to the technology which will allow them to be more productive. Unfortunately, the European Union, which is a major market for U.S. foods, feed ingredients, and other agricultural products, has a slow and unpredictable process for approving new U.S. agricultural products developed through advanced biotechnology. Worse yet, the already cumbersome process has been affected by the general fear for food safety caused in Europe by "mad cow" disease in a way that rather than emphasizing scientific evidence, tends instead to ignore it.

Two U.S. products did receive EU approval in 1996 -- varieties of "Roundup Ready" soybeans and "BT" corn. Both products were granted entry into the EU under the EU's Directive 90/220, which sets out the process of approving genetically modified organisms. However, the Directive is imprecise in laying out authorities and procedures, and has contributed to a slow approval system that lags far behind that of the United States and other industrialized countries.

The two products approved in 1996 were in the pipeline two years, and were the subject of intense political and scientific discussion both internally within the EU and across the Atlantic. The approval of those products, however, did not result in clearing the decision-making pipeline, and no new products were approved for entry in 1997.

In March 1998, after lengthy delays, the EU member states finally voted in favor of three U.S. genetically-modified corn products. The Commission announced approval of these products on April 22, but the products still cannot be imported into the EU because the sponsoring member states for these varieties have not yet given their consent for marketing. French officials are conducting a further public discussion and are not able to say when they will approve the products. As these new products are co-mingled with other corn varieties in U.S. exports, the delay in approval in effect blocks the export of any corn to the European Union. American exporters have been unable to bid on most of this year's more than $200 million in contracts with our only European markets -- Spain and Portugal. (These markets are open only brief periods of time in the year to U.S. corn exports by virtue of special agreements providing compensation for EU enlargement.)

Thus we have two problems with GMO's -- the loss of $200 million in exports this year, and also the continuing problem of an approval process that does not work effectively and is a threat to further U.S. agricultural exports.

The longer term problem is as, if not more serious, than our short term losses. The EU approval process for the products of biotechnology is non-transparent and overly political. We need a process that works. To date, U.S. producers of GMO's have suffered significant losses because the EU's procedures for approval of genetically-modified products are lengthy and unpredictable. Moreover, because the United States does not differentiate between GMO and non-GMO food, and they may be co-mingled, the delays in EU approval procedures therefore obstruct the export of both GMO and non-GMO products. We need to work closely with the EU to finalize approval and develop, for future biotech crops, a workable, timely, and transparent approval process.

The European Commission (EC) appears to understand our frustration with the EU approval process and is trying to make up for lost sales as we speak by opening up more corn tenders this year. The EC also has promised to roll-over the tenders for next year that we were not able to fill this year because of the delays in the EU GMO approval process.

The United States also is concerned that the EU's recent labeling regulation announced at the end of May will further confuse matters for U.S. products of biotech products. U.S. negotiators are meeting with the Europeans this week to help clear guidelines on when products must be labeled. GMO labeling and the EU approval process for GMO's will also be taken up in the Biotech Group of the Transatlantic Economic Partnership. We hope that this group can tackle long-term solutions to these serious problems.

EU ENLARGEMENT

Another issue we are working on actively to safeguard the interests of U.S. companies concerns the enlargement of the EU. On March 31, 1998, the EU launched accession negotiations with Poland, Czech Republic, Hungary, Estonia, Slovenia and Cyprus. These countries are in the first tranche of countries to be considered for EU membership. Those which are slated to join at a later time include: Romania, Latvia, Lithuania, Slovakia and Bulgaria.
Negotiations have just begun for the first six countries, with the EU "screening" the acceding countries' laws and regulations for their conformity with EU law. This is being done topic-by-topic, starting with the simplest areas. Reportedly, the process will identify specific areas where negotiations will have to take place and where there is little disagreement expected. This process is expected to last throughout 1998 and into 1999 for certain countries and will indicate where further negotiations are needed. These countries, however, are not actually expected to join the EU until 2002 at the earliest.

The U.S. Government fully supports EU enlargement into Central and Eastern Europe ("CEE"). EU enlargement will encourage further economic reforms and facilitate these countries' continued transition to market economies. In many ways, U.S. business will also profit from enlargement because it will create a familiar, predictable environment in which U.S. companies can compete as these countries' commercial laws and regulations are harmonized with EU norms. One area in which we have already seen improvement due to harmonization is in product standards/certification and other import regulations.

However, U.S. commercial interests in the region may be negatively affected by the transitional arrangements prior to accession and the final terms of accession. In fact, to a certain extent, they already have. Broadcast quotas are the best example. Some CEE applicant countries, encouraged by the European Commission, have adopted the most restrictive interpretation of EU directives, leaving out built-in flexibility. For example, Poland followed this path with the EU Broadcast Directive, and all of its programming now must have at least 50% European content. Similarly, in Romania, draft legislation lacks the built-in flexibility allowed in the EU directive.

We expect similar cases to arise in the future as these countries adopt EU legislation and is important now to exchange information and views with the these countries at the beginning of their accession negotiations.

Another area in which U.S. commerce is impacted is the level of tariff rates which U.S. and EU products face upon import. Since 1991, the European Union has signed association agreements with Poland, Hungary, Czech Republic, Slovak Republic, Romania, Bulgaria, Estonia, Latvia, Lithuania, and Slovenia. Some U.S. companies have complained that the association agreements hinder their business prospects in these markets.

These agreements grant preferential tariff treatment to EU products and establish schedules for gradually reducing tariff rates on EU non-agricultural products each year until the rates reach zero. For U.S. products, higher most-favored-nation (MFN) rates are maintained. These tariff differentials between the EU and MFN rates will last until these countries' final adoption of the EU common external tariff, presumably the entire transitional period.

Commerce's Market Access and Compliance unit is working to identify which product groups are affected by EU tariff preferences. The International Trade Commission (ITC) is conducting a year-long, detailed investigation which will thoroughly review the effects of the association agreements on U.S. commerce.

We also are actively engaging the governments of the applicant countries on the issue of enlargement, which is now a major part of our commercial agenda with them. We are working bilaterally and multilaterally to address areas of concern to U.S. interests. The World Trade Organization (WTO) and the OECD are two important fora for us to use in order to maintain progress made in market liberalization and encourage further openness. Four of the five countries in the first round of negotiations (Poland, Czech Republic, Hungary, and Slovenia) are members of the WTO, and three of these (Poland, Czech Republic, and Hungary) are OECD member countries.

Where these CEE countries have made commitments and obligations, their membership in these organizations provide us with a forum for their discussion. And in areas where the opinions of the United States and EU differ, these commitments still provide us with leverage to use during bilateral talks. For example, in discussions with Poland, we have used its OECD membership to cite where its inflexible broadcast quotas violate its commitment to this multilateral body. Similarly, using its WTO obligations, we are working on a bilateral basis with Romania to build flexibility into its broadcast legislation prior to passage.

Outside of their international obligations, we also have periodic bilateral discussions through which we have had some success in persuading these countries to lower MFN tariff rates in response to company complaints. The most recent development in our bilateral discussions on EU enlargement is the creation of an informal process of bilateral consultations with the applicant countries as they start negotiations with the EU. These consultations are an opportunity for the United States to influence CEE decision-making at an early stage of their negotiations with the EU. They provide a forum in which the United States can attempt to resolve trade problems which arise from these countries' accession to the EU.

CONCLUSION

In conclusion, I would again like to thank the Subcommittee for holding these hearings to allow us to discuss the many important initiatives that we are pursuing to liberalize transatlantic commercial relations. The U.S.-European commercial relationship is truly the cornerstone of our international trade strategy. Not only is our bilateral commercial relationship the largest worldwide, the United States and the EU also are partners in working for liberalized trade and investment throughout the world -- in Asia, Latin America, and in Africa. Without our strong joint leadership, little would be accomplished in multilateral fora to advance the trade agenda. Exciting new developments, such as the Transatlantic Economic Partnership, are cementing our already solid relationship. We also are encouraged by the introduction of the euro, which will cut costs of U.S. companies doing business in Europe, and the continued vitality of the TABD, which has contributed so much to creating this new-found sense of momentum toward trade liberalization.

Accelerated work under the NTA over the past three years has brought about some impressive successes, such as the conclusion of the MRA, to cut costs for U.S. business operating in the transatlantic environment. There is much work to be done on other important issues, such as the EU privacy directive and genetically modified organisms, but with mechanisms we have in place that feed into our regular Summit process, and the launching of the TEP, I am optimistic that workable solutions can be found. The relationship is simply too important and too strong to allow such issues to go without solutions.

Chairman CRANE. Thank you, Mr. Aaron. Does the administration support Europe's move to a single currency, the euro? Is this development in the interest of the U.S., and do you see any downside? Is there any possibility that a single currency will reduce the role of the dollar in the world's economy?

Mr. AARON. Thank you for that question, Mr. Chairman. We think the advent of the euro is a very important step in European unification, a process which we have supported for several decades.

As for its effect on U.S. business, we think that there will be important advantages for U.S. exporters, particularly small and medium-sized exporters who will no longer have to deal with a multiplicity of currencies and can price their products not just in dollars, but in the local EU context.

This will also help them simplify their distribution systems in Europe and perhaps rely on a single agent or distributor instead of having to have multiple distributors for different parts of Europe. So we see some particular advantages in this as far as U.S. small- and medium-sized businesses are concerned.

The Commerce Department is trying to help our small and medium-sized businesses get prepared for the euro by holding a series of conferences. We have 13 scheduled between now and the end of October in different parts of the country to share with our small and medium-sized business clients all of the details of how the euro will go into effect, what they have to be thinking about, what opportunities are presented to them by the advent of this development.

As for its impact on the U.S. currency, the dollar, as a reserve currency, we think that any change that takes place in the reserve currency holdings of other countries will take place only gradually; and our Treasury Department does not have any undue concern about this process.

Indeed, there is a possibility that if other countries, particularly Asian countries, move to adopt the euro as part of their portfolio, our European countries will see with us a greater coincidence of interest in opening up the Asian markets. And the reason for that being, of course, that it could have an impact on the euro's strength itself. If it becomes a reserve currency for Asia, they will have an interest in making sure those Asian markets are open too.

Chairman CRANE. Are all of the members of the EU in favor of the euro currency?

Mr. AARON. Well, only 13 countries of the 15 are at the present time planning to join the euro. At this stage, I believe, in addition to the United Kingdom, I think Denmark is standing aside. Of course, Switzerland will still have its own currency because it is not a member of the EU. And the Eastern European countries that are candidate members of the European Union will continue to maintain their currencies.

But it will be an enormous internal market and we believe that U.S. companies will be well-poised to take advantage of it. In some respects, our companies may be better positioned to take advantage of it than even European countries, because we've been looking at Europe as a single market for a long time. And just as we benefited enormously when Europe created the so-called single market by means of reducing its various barriers between trade among the

countries, so we think American companies stand to gain significantly from the reduction of this remaining trade barrier which is the different currencies that now exist in the EU.

Chairman CRANE. Thank you. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. Mr. Aaron, you heard Ms. Barshefsky say you had all the answers in Northern Ireland.

Mr. AARON. I wish she would say that more often, actually.

Mr. NEAL. She was very skillful in suggesting that you were the man that held that knowledge. Let's talk for a second, if we can, about the Transatlantic Business Dialogue and economic development in Northern Ireland.

I understood the point that she raised about some resistance in the Republic of Ireland and in the United Kingdom to a free trade accord similar to what is practiced in other quarters. Are those problems that can be overcome, or should we be looking past that to other solutions on how we might assist this fragile peace agreement?

Mr. AARON. Well, let me tell you what we are trying to do about it since Secretary Daley visited there a month or so ago. He brought 16 companies there, including 8 Fortune 500 companies and they have established, I think, a number of important business leads that we believe will result in both investment and business relationships between Northern Ireland and the United States.

We are supporting the Northern Irish effort. They are going to come to the United States and visit 11 different cities in an effort to secure greater business relationships, including investment, for Northern Ireland. We are facilitating that through our domestic field offices here in the United States, and believe that we can put together a really terrific program for them. This is, of course, one of the most important things that can happen, that this peace process be buttressed by greater foreign investment.

We are also expanding our commercial service operation in Northern Ireland. We will have a larger staff there so we can both encourage and recruit more U.S. businesses to do business in Northern Ireland.

In addition, while Secretary Daley was in Northern Ireland, he signed some cooperative arrangements on the scientific side with the Northern Irish authorities for monitoring the oceans in the region. This will be a NOAA-related project from the Department of Commerce that we think can be very important.

The thing that people have to recognize is that Northern Ireland is superbly poised to be a high technology center. It has terrific educational opportunities. They have strong universities. They have a very well-educated population. And not to make light of it, but the possibility of a sort of a silicon bog in Northern Ireland is really a very realistic possibility and we are looking for mechanisms to tie together that interest in Northern Ireland with high tech cooperation with our own Silicon Valley.

Finally, we will be establishing a trade mission with software and high technology to support that effort which will be taking place early next year. And of course, the President will be visiting Northern Ireland in early September and hopefully, we are looking for opportunities there as well to bring some commercial support to that mission.

Mr. NEAL. Thank you. Thanks, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman. Mr. Aaron, good to see you. Thank you very much for being here.

I'd like to hone in a minute on this MRA or the Mutual Recognition Agreement. You know, for years, the basic barrier has been one of setting standards, and it has been a real problem and the Europeans have not given in to this. Now you say that you have an MRA. First of all, is it working? Secondly, it only involves certain products, computers, telecommunications, pharmaceuticals, things like that. They are a whole raft of other products outside that. What is going to happen with them?

Mr. AARON. Well, we believe that there is an opportunity for further mutual recognition agreements to cover other areas. In particular, we are moving forward with one on automobile standards. As you probably know, our automobile industry has been concerned about the potential for the proliferation of standards which will keep our automobiles, our parts and so forth, out of other countries.

In recent weeks, in the last month really, the United States has come to an agreement in the UN context, but supported by the Transatlantic Business Dialogue, to reach agreement on automobile standards. So we are very encouraged by this development and we see that as an important breakthrough as well.

In addition to this, we see off-road equipment standards as being very important. We think that there's an important possibility in automobile tires. We think there are some important opportunities in chemicals. So there is a whole range of areas where mutual recognition agreements could be useful and helpful to us.

For example, we think that the current mutual recognition agreement, which covers computers and telecommunications equipment, pharmaceuticals, medical devices, electrical equipment, electromagnetic interference, and recreational boats will be an enormous boon particularly to small and medium-sized businesses who have to depend on third parties to do their certification.

What this means is that if U.S. businesses certify once in the United States under a system that the Europeans accept, then they don't have to do it again in Europe to gain access to the Europe an Market. This also applies to European businesses wanting to gain access the U.S. market. The can certify in Europe to U.S. standards with no need to duplicate this testing in the United States. As Charlene pointed out, this covers $60 billion in trade across the Atlantic, and will probably reduce the cost of products on both sides by about $1 billion a year.

So these are what I call the homely issues of international trade, but as homely as they are, they are extremely important from the standpoint of serving our consumers.

Mr. HOUGHTON. Well, what you are saying is it is working, it will be expanded, and it will help the United States?

Mr. AARON. I believe that's correct, sir.

Mr. HOUGHTON. Good. Thanks very much.

Chairman CRANE. Mr. Jefferson.

Mr. JEFFERSON. Thank you, Mr. Chairman. In an effort to overcome U.S. export regulatory access problems to EU, we've negotiated some Mutual Recognition arrangements under which the EU

certifies or inspects or tests products and sends them to us, and we do the same thing to them on a mutually agreeable basis. What insurances do we have, really, that they will test, inspect, and certify products and send to us in which will be comparable to what our internal agencies would require of products that go on the market for safety and quality and whatever?

Mr. AARON. Right. I think it's very important to recognize that these mutual recognition agreements do not constitute any lowering of our standards whatsoever, and, indeed, in sensitive areas of health and safety, laboratory testing for pharmaceuticals and so forth, we have arrangements for us to actually inspect and, in effect, certify for ourselves that the procedures and the medical and pharmaceutical laboratory practices that are going on, are, in fact, up to our standards. So, I think that there's a very strong built-in safeguard here which our FDA insisted upon.

Mr. JEFFERSON. So, you say you set standards, and you make sure that the testing facilities are up to our standards, but can you be sure that the day-by-day testing that is done, is there some random way to look at the results of what the EU inspectors and testers actually do?

Mr. AARON. Yes. This inspection of the laboratories, doesn't just happen once—it continues. I'm not an expert in FDA procedures, but my understanding is that European products will be treated the same as U.S. products. That would fall outside the scope of this agreement and would be conducted the way the FDA believes is appropriate.

Mr. JEFFERSON. Well, you know, there's a big preoccupation with, as there should be, with food safety, and that's a question that I guess you've answered as best you could, but it still leaves lingering doubts in the mind of the public, and I think it needs some reassuring there.

But let me ask you something else. Do you believe——

Mr. AARON. Let me add that we do not have an MRA on food safety. We have an MRA on pharmaceuticals, and we have one on biologics safety and health issues.

Mr. JEFFERSON. There are some what? I missed what you said at the end, I'm sorry. There are some what sort of certification processes with respect to food.

Mr. AARON. For phytosanitary regulations that we have between the United States and Europe.

Mr. JEFFERSON. Do you believe that the Transatlantic Economic Partnership will help facilitate our negotiations with the EU on the broader U.S.-EU trade agenda issue?

Mr. AARON. Yes, I do. I think that we have set up a monitoring and coordinating process within our own government here, which I share, which looks at all the issues and proposals that the TABD has put forward, and at last year's Rome conference the TABD put forward about 130 proposals. By the end of this year, TABD wants the U.S. Government to have implemented about 50 percent of them. We will have about 30 that we've, frankly, told them are non-starters; that just are either impractical or they off the list. And that leaves a residue of a number of important suggestions that we will be working on, many of them in the context of the new Transatlantic Economic Partnership. Others we will continue to

work bilaterally the way we did the MRA under the New Transatlantic Agenda. We're going to keep all of them very active, and the TABD is making an important contribution to all of it.

Mr. JEFFERSON. The last thing, of the items you have concluded, the 50 or so, which are the biggest ones you think will have the greatest impact for our country? And of the ones you think you may not get done, which of those do you think would make the biggest difference if you were to get them done?

Mr. AARON. I think the most important issues that we have on the table now relate to recognition of genetically-modified organisms. And there, we really have to go to the larger question of the role of science-based decisions in dealing with scientific progress as it affects food, pharmaceuticals, and all sorts of areas where public health and safety are involved. There is an increasing tendency in Europe to not regard science as even a relevant consideration in these decisions. It's sort of policy by public opinion. We recognize the trauma that the Europeans went through over the Mad Cow disease issue, and we realize the impact that this had on public opinion, especially with regard to the scientific community and the regulatory community in Europe. But, nonetheless, the fact of the matter is that public policy decisions ought to be based on sound science as best as possible. Right now that's not happening, and it's not happening in a transparent manner.

So, I think the most important thing we can do given the size of our agricultural trade and the impact on everything from food to cosmetics to medical devices that are implanted in people's bodies, is to get a more regularized and sensible arrangement to deal with these issues. Establishing such an arrangement would have the most positive impact.

I would note that we have a series of negotiations coming up in the WTO as well as in our bilateral relationship with the Europeans that ought to significantly liberalize trade across the Atlantic. This is the largest trading relationship. It is the most important trading relationship in the world. We and the Europeans are more alike than anybody else, and we ought to be able to come to important agreements where we have erased almost all of the barriers to trade across the Atlantic. That's the objective in the New Transatlantic Agenda, and I hope that can be fulfilled.

Chairman CRANE. Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman, and a couple of quick questions. One, just building on the standard setting that has already been discussed by Mr. Houghton and others. It has to do with standard setting on wireless technology. The WTO, as you know, has an agreement; a number of States are all committed not to pass laws that create technical barriers to trade and particularly not allow their standard setting body to set standards that are designed, in fact, to create barriers to trade.

In the case of wireless technology, ETSI, which is the EU standard setting body for this technology, has come up with one standard, I understand. It's a single standard that effectively shuts out many of the American or other technologies from the European marketplace, and it's difficult to see, other than for trade reasons to protect their own wireless market, why they would do that. Has this been investigated? Are you all looking into whether they've

violated the WTO agreement on technical barriers to trade through the ETSI standard setting?

Mr. AARON. Yes, we are looking into that quite carefully, and, indeed, we have been in the process of negotiating and discussing this issue with the EU including in discussions just last week. The EU would like to have a single standard, but they are not going to require that their member States have only a single standard. That's their position at the present time.

Our view is that multiple standards should be allowed, and the marketplace should decide which of these standards is sufficient or appropriate. There are several different standards. As you know, there are several second generation standards—GSM, TDMA and CDMA—and there's the advanced third generation standards, which are being discussed. Competitive business pressures are being brought to bear on the European standard setting organization, ETSI. We are in the scrum dealing with these issues as well; trying to keep this process as open as possible.

At this point, we are not taking the position that setting a single standard would be a violation of a WTO obligation, but we are looking at that carefully to make sure that this standard-setting process is not creating a barrier to trade.

American businesses are taking a number of different positions on these standards issues. From a governmental standpoint, we want to press for the most open arrangement possible.

Mr. PORTMAN. With regard to the Central European accession negotiations ongoing—I understand those are your phase-out of tariffs over time—does that concern you as it relates to U.S. exports that those Central European countries would be getting preferential treatment as compared to U.S. products coming in, and is that something that the U.S. Government should be involved with?

Mr. AARON. Yes. We have taken this issue up both with the European Commission and with the countries concerned. These countries have all signed association agreements with the EU. Each of these agreements has a schedule of tariff reductions that will bring the affected countrys tariffs in line with the European common external tariff.

We have no objection to that, but we do have an objection to these countries giving the Europeans a tariff preference before they are members of the European Union. Ironically, once these countries become members of the European Union, they'll be bound by the European Union's tariffs which are quite a bit lower than their own. The only interests advantaged by this process are European businesses which are given lead time to consolidate their position in the market before they face outside competition. This is unfair, and we have raised this with these countries. Also, it may not be possible for them to receive GSP if they continue these kinds of preferential tariffs.

Mr. PORTMAN. And that's a decision made by those individual countries and not by the EU?

Mr. AARON. That's correct. In other words, what they do with their own external tariff, apart from the EU, is at the purview of these countries.

Mr. PORTMAN. That's something that they would have the power to act on in order to sustain their GSP treatment of the United States, but that's a lever we have.

Mr. AARON. That's right. They have the power to not discriminate against us.

Mr. PORTMAN. I want to thank you for your testimony.

Chairman CRANE. Mr Aaron let me say that you are particularly adept at using the acronyms of trade.

Mr. AARON. I'll go through the ABC's of that with you, Mr. Chairman, any time you'd like.

Chairman CRANE. That's quite alright, Mr. Aaron. [Laughter.]

We thank you for your testimony here today. We appreciate your responses and, again, apologize for the irregularities in our proceedings. We will excuse you now and invite our first panel, P. Vince LoVoi, vice president, government affairs and public policy, Warner-Lambert; Isabel Jasinowski, vice president, government relations, Goodyear Tire and Rubber; Ellen Frost, Senior Fellow, Institute for International Economics; Willard M. Berry, president, European-American Business Council; Mary Sophos, senior vice president, government affairs, Grocery Manufacturers of America.

And if you folks will take seats, we will follow our five-minute rule and that is if you will please try and hold your oral presentations to five minutes. All written statements will be made a part of the permanent record, and, with that then, we shall proceed in the order I introduced you. Mr. LoVoi.

STATEMENT OF P. VINCENT LoVOI, VICE PRESIDENT, GOVERNMENT AFFAIRS AND PUBLIC POLICY, WARNER-LAMBERT CO.; AND U.S. WORKING CHAIR, TRANSATLANTIC BUSINESS DIALOGUE; ACCOMPANIED BY ISABEL JASINOWSKI, VICE PRESIDENT, GOOD YEAR TIRE AND RUBBER CO.; AND GROUP ONE WORKING CHAIR, STANDARDS AND REGULATORY POLICY, TRANSATLANTIC BUSINESS DIALOGUE

Mr. LOVOI. Thank you, Mr. Chairman. Mr. Chairman, members of the subcommittee, I am Vincent LoVoi, vice president of the Warner-Lambert Company. I'm testifying today as the U.S. working Chair of the Transatlantic Business Dialogue. I am accompanied by Ms. Isabel Jasinowski, vice president of the Goodyear Tire and Rubber Company who manages the TABD Standards and Regulatory Policy Group. I ask that her prepared comments be entered the record immediately following mine.

Mr. Chairman, the TABD is a unique business-like process where American and European business leaders develop joint policy recommendations to improve the U.S.-EU marketplace. Over the past three years, we have worked closely with the U.S. Government and European Commission to address a broad range of specific issues. The TABD's pragmatic issue-driven process has made it possible for a variety of industries to engage officials and achieve meaningful results. We sincerely commend the U.S. Department of Commerce for its leadership vision and responsiveness.

And, Mr. Chairman, we do not need to tell this subcommittee why our participating companies believe the European market is so important. This panel has focused on that subject for years and rather than repeating facts and figures from your own record, Mr.

Chairman, I'll simply commend the subcommittee's foresight and underscore the TABD support for that view. This is particularly true given world events over the past year.

The TABD supports the Transatlantic Economic Partnership initiative while encouraging negotiators to be mindful of the pragmatic results-oriented TABD approach. The theoretical should not get in the way of the practical. Real economic growth and real problems solved, rather than negotiating points scored, should measure its success. The TABD is heartened by USTR's commitment to an aggressive timetable and actions planned for the TEP. We believe that many of the recommendations should be ready for implementation prior to the year 2000, and we applaud USTR's implied endorsement of this view. Indeed, TABD urges Government to implement agreements immediately upon completion.

Many TABD recommendations are addressed head on by the Transatlantic Economic Partnership. Let me emphasize, however, that we particularly support the stated aim to improve regulatory cooperation in such areas as manufactured goods and to reduce unnecessary regulatory impediments. Mutual recognition and harmonization of standards have been the hallmark of TABD since its inception.

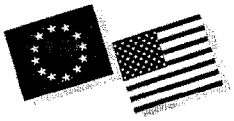
TABD also encourages governments to continue working on recommendations by our participating companies that do not fall within the corners of the proposed negotiations. An important example of such initiative is the pressing need for this Congress this year to act on legislation to implement the OECD convention on bribery and corruption.

Before closing, Mr. Chairman, let me note that President Clinton, Prime Minister Blair, and President Santer commended the TABD as a new paradigm for advancing trade dialogue in their joint communique at the London Summit. They encouraged other constituencies to engage in parallel transatlantic dialogues.

The TABD is both appreciative and honored by this characterization. We echo the call for parallel dialogues. We have already met at the staff level with the potential organizers of some of these efforts and would be pleased to share our experience with anyone committed to free trade in an open and harmonious transatlantic marketplace.

In conclusion, Mr. Chairman, the TABD supports the Transatlantic Economic Partnership initiative. We believe that properly focused negotiations can simultaneously advance both those issues identified within the TABD scope as well as other TABD priorities. Thank you, Mr. Chairman.

[The prepared statement follows:]



TRANSATLANTIC
BUSINESS DIALOGUE

TESTIMONY OF

P. VINCENT LOVOI
VICE PRESIDENT, GOVERNMENT AFFAIRS AND PUBLIC POLICY,
WARNER-LAMBERT COMPANY
AND
U.S. WORKING CHAIR,
TRANSATLANTIC BUSINESS DIALOGUE

BEFORE THE HOUSE WAYS AND MEANS COMMITTEE,
SUBCOMMITTEE ON TRADE

JULY 28, 1998

WARNER LAMBERT

Mr. Chairman and Members of the Subcommittee, I am Vincent LoVoi, Vice President of Government Affairs and Public Policy for the Warner-Lambert Company. I am testifying today as the U.S. Working Chair of the Transatlantic Business Dialogue ("TABD") on behalf of the many U.S. companies participating in the TABD. Mr. Lodewijk de Vink, the President and Chief Operating Officer of Warner-Lambert, presently serves as overall U.S. Chair of the TABD. Also, Mr. Chairman, I am accompanied today by Ms. Isabel Jasinowski, Vice President, Government Relations of the Goodyear Tire & Rubber Company, who serves as U.S. Group Manager of the TABD Standards and Regulatory Group. The proposals put forward by that group are most relevant to the proposed Transatlantic Economic Partnership ("TEP").

Warner-Lambert is a worldwide company that employs approximately 42,000 people devoted to developing, manufacturing and marketing quality health care and consumer products. Our Parke-Davis division produces important prescription drugs such as Lipitor, ReZulin, Accupril, Neurontin and Dilantin. Our consumer product brand names include Listerine, Sudafed, Benadryl, Schick, Wilkinson Sword, Rolaids, Halls, Trident, Certs and Tetra. We are pleased to have significant operations in Illinois and Michigan.

Mr. Chairman, I am here to share the TABD's thoughts on U.S.-European trade as outlined in our Mid-Year Report and to provide comments on the TEP announced at the U.S.-EU Summit May 18, 1998. This report, as well as all documents released by TABD, may be found at our website **www.tabd.com**

The TABD is a unique business-led process where American and European business leaders develop joint policy recommendations to improve the U.S.-EU marketplace. Over the

past three years, through close cooperation with the U.S. Government and European Commission, the TABD has developed concrete recommendations for abolishing barriers to transatlantic business transactions and encouraging global trade and investment. The TABD's pragmatic bottom-up process has made it possible for a broad spectrum of industries to engage officials on specific problems, including urgent concerns with immediate deadlines. We sincerely commend the U.S. Department of Commerce for its leadership, vision and responsiveness in this process.

We are often asked what makes the TABD successful. Let me briefly comment on this question. First, the TABD has been successful because it focuses on a *constructive* agenda. There are numerous U.S.-EU trade disputes that continue to plague the relationship. There are areas where businesses across the ocean cannot agree with one another; other areas where business and government are at odds. Instead of dwelling on those, TABD focuses on areas where there is *consensus*. Second, based on the principal of consensus, the TABD allows European and American businesses to speak together with one single voice. This enables decision-makers in government to better understand the impact of regulatory policies on commerce. Finally, the TABD is successful because it is driven by *CEOs* and others in senior management who not only are able to make decisions, but are inclined to do so. Participating CEOs and senior managers have the ability to speak on behalf of their entire industrial sector and thus bring agility and decisiveness to the process.

The TABD supports the TEP initiative and encourages negotiators to complement the pragmatic results-oriented TABD approach by building a stable framework for the transatlantic

marketplace. The TABD should aim to preserve the practical achievements of the TABD, and facilitate further progress in the implementation of TABD recommendations. TABD also encourages governments to continue to work on initiatives outlined by the TABD, which do not fall under the parameters of the TEP as defined in the Summit declaration.

The TABD views the TEP initiative as a constructive signal that both the U.S. Administration and European Union authorities recognize the importance of the transatlantic economic relationship. TABD's work draws upon the fact that the world's largest trading and investment partnership, accounting for $2 trillion dollars in two-way trade and corporate sales in each other's markets, must break away from stalemates and instead work together on practical, common goals that benefit both economies. This initiative gives new momentum to the vision of a barrier-free transatlantic marketplace that can be the core of a renewed global trading system for the new millennium.

The TABD is further encouraged by the governments' commitment to draw up a specific action plan for achieving results through the TEP based on an aggressive timetable. The TABD believes it is critically important for government to work to eliminate obstacles to trade and investment in order to reap the benefits that globalization has to offer. TABD supports the process contemplated by this initiative to the degree that it accelerates implementation of TABD recommendations already undertaken by the two government authorities and deepens government future commitment to carry out future recommendations that the TABD will generate. Further, TABD believes that many of the recommendations put forth by the business

communities should be ready for implementation prior to the year 2000. Indeed, TABD urges governments to implement agreements immediately upon completion.

The TABD strongly supports the TEP's stated aim to improve regulatory cooperation in such areas as manufactured goods and to reduce unnecessary regulatory impediments. Since its inception, one of TABD's main priorities has been to identify and work to eliminate trade barriers that result from differing standards and regulatory requirements between the U.S. and EU. Simply put, TABD has already held out as a vision the possibility that products could enter the transatlantic marketplace on the basis of "approved once, accepted everywhere."

For the past three years, TABD has also worked to advance constructive recommendations related to business facilitation and global issues. TABD supports the intention outlined in the TEP to devote negotiators' attention to these issues. The work of the TABD, however, extends beyond the parameters of the intended TEP negotiations as outlined by the Summit Declaration. The TABD believes that all issues identified by the TABD, not only those that are ripe for the TEP, must continue to get the attention from governments that they deserve. Many, Mr. Chairman, require attention from this Congress. In particular, TABD encourages the adoption of legislation to implement the OECD convention on bribery and corruption, and a resolution to the debate on economic sanctions, export controls and taxation which all are vital to securing a vibrant and comprehensive U.S.-EU trade agenda and continued economic interdependence.

As for other global issues, TABD stands ready to provide input into the TEP process with a goal towards ensuring that the World Trade Organization (WTO) advance global standards harmonization, and to offer guidance and support that represents the consensus of views of hundreds of business leaders from the largest trading partnership in the world. The TABD welcomes the conclusions of the last WTO Ministerial Conference in Geneva and reiterates its full commitment to the multilateral trading system, based on the principle of non-discrimination and binding commitments voluntarily accepted by the members of the system. The TABD continues to encourage a solid partnership between the U.S. and the EU governments in advancing multilateral trade initiatives and channeling regional energies into multilateral negotiations. While the TABD focuses on specific U.S.-EU trade and investment barriers, the remedies that TABD seeks are consistent with, and ultimately depend on, a strong global trading system.

The TABD reaffirms its support for full and effective implementation of the WTO agreements as well as exploration of means of further trade liberalization. The TABD recommends that the U.S. and the EU cooperate closely to develop an agenda for the 1999 Ministerial which reaffirms continued improvements to market access and continuing trade liberalization as the priority mission of the WTO and includes further tariff reductions in agreed upon sectors, based on the Information Technology Agreement model.

Finally, President Clinton, Prime Minister Blair, and President Santer commended the TABD as a new paradigm for advancing trade dialogue in their joint communiqué at the London Summit. They encouraged other constituencies to engage in parallel transatlantic dialogues. The

TABD is both appreciative and honored by this characterization. The TABD has advanced a constructive free trade agenda with concrete proposals that reflect consensus from interested parties on both sides of the Atlantic, and we encourage parallel dialogues along those lines. We have already met at the staff level with organizers of some of these parallel dialogues and will be pleased to share our experience with anyone committed to free trade and an open and harmonious transatlantic marketplace.

Our Mid-Year Report provides an overview of our priorities halfway through this year and is a tool by which the business community and the governments will be able to measure success. Our next step in the TABD process this year is our annual conference. It will be held in Charlotte, North Carolina, in November. You might be interested in knowing that we selected Charlotte out of 30 cities because we found a host organization there, the Carolinas Partnership, an economic development group, that embodies the notion of the public-private cooperation in achieving goals which benefit all stakeholders. This is the foundation of what TABD is all about too.

In conclusion, the TABD supports the TEP initiative. We believe that properly focused negotiating energy by the governments can simultaneously advance both those issues identified within the TEP scope as well as other TABD priorities.

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Chairman CRANE. Thank you.
Ms. Frost.

STATEMENT OF ELLEN L. FROST, SENIOR FELLOW, INSTITUTE FOR INTERNATIONAL ECONOMICS

Ms. FROST. Thank you, Mr. Chairman, for this opportunity. I have just written a short commentary on what we know about the Transatlantic Economic Partnership thus far and where it might go from here. With your permission, Mr. Chairman, I would like to submit that commentary for the record.

Chairman CRANE. Without objection, so ordered.

Ms. FROST. I will confine my verbal remarks today to a few brief observations about the global and domestic challenges facing the transatlantic powers. At the outset, I want to make it clear that I fully support the Transatlantic Economic Partnership, especially its regulatory component, and I greatly admire the achievements of the Transatlantic Business Dialogue.

My concern is that the Transatlantic Economic Partnership may not be sufficiently ambitious. There are at least two reasons why negotiators should aim high. First, agreements between the United States and the European Union send a signal to the rest of the world about whether or not the two powers are serious about taking further steps towards a rule-based, market-oriented, global economy. The Partnership should back up its words with action. For the last 50 years, progress towards multi-lateral trade liberalization has depended heavily on agreements between Washington and Brussels. While other countries have become important players, future progress within the WTO presupposes some form of transatlantic consensus. It is hardly reasonable to expect other countries to make politically difficult choices to open their economies if the transatlantic powers do not continue to set an example.

The Partnership announcement asserts that the United States and the European Union will give "priority" to pursuing their objectives through the WTO and that their primary goal is multilateral liberalization. This is good news, but thus far neither the European Union as a whole nor the Clinton administration has publicly committed itself to a clear-cut and truly ambitious WTO agenda in the form of either a "Millennium Round" or anything else. At best, certain pioneering agreements may emerge from the partnership that can serve as models for future WTO negotiations.

Second, the Transatlantic Economic Partnership has acquired new urgency because of the Asian economic crisis and its effect on the rest of the world. In the United States, the crisis is likely to shave one-half to one percentage point from the 1999 economic growth rate and to boost the U.S. merchandise trade deficit with the Asia to levels that undermine domestic support for trade.

Recognizing the value of economic competition in stimulating recovery, members of APEC have reaffirmed their commitment to open trade and investment by 2010/2020, but no such commitment exists across the Atlantic. With the important exception of regulatory initiatives, the Transatlantic Economic Partnership is so limited that it runs the risk of diminishing the post-war tradition of transatlantic leadership within the global trading system, leader-

ship that has contributed so much to Asian and global economic growth.

Despite these two imperatives, the need for multilateral leadership and the Asian crisis, a transatlantic initiative does not appear to be a high priority either in Brussels or in Washington at this time. During a recent trip to Brussels, I found that too many other events and evolutions are competing for policy-level attention. Here in Washington, aside from Africa and the Caribbean basin, the Clinton administration does not appear to be focusing much on trade as a national priority or using the "bully pulpit" to communicate its benefits.

Fast track is still in limbo, which inevitably undermines our credibility in the context of APEC, the Federal Trade Area of the Americas (FTAA), and the WTO. I do not have to tell Members of Congress why this is so. It is because trade has become a divisive issue in domestic politics, particularly within the Democratic Party.

That brings me to my final point. Trade is a divisive domestic issue in part because it leaves some people behind. It follows that building support for trade calls for more effective efforts to help those people adjust to global competition.

Several months ago, the Institute for International Economics held a conference on restarting fast track. Several leading Congressional opponents of fast track made it clear that they fully understand the benefits of trade to the American economy as a whole. They are holding fast-track hostage, they said, in order to draw attention to those who lack the skills and resources to compete.

I am no expert in this area, but I imagine that Congress and the administration should be talking about such things as the portability of pensions and health care, local public-private partnerships centered on community colleges, consolidated and flexible adjustment assistance designed to achieve a better match between training and jobs, dissemination of lessons learned, and a range of other measures that take advantage of the flexibility and creativity of our economic system. Some of these tools are in place, but taken together and explained in the context of global competition, they could help reassure Americans about their economic future.

My conclusions are that the Transatlantic Economic Partnership is worthwhile, but that it has not lived up to its name as yet. It has not risen to the challenges I described: setting an example of global leadership by signaling a serious commitment to trade liberalization, devising trade initiatives to cope more effectively with the Asian crisis, and addressing domestic concerns.

If the United States and the European Union want to reassert global economic leadership in a serious way, they should consider adopting a broad vision and a strategy with an overall deadline for open trade and investment. An exclusive commitment to external monetary policy cooperation would also be timely. Experience with APEC demonstrates that the mere existence of a commitment to open trade and investment by a date certain generates momentum. A broad commitment of an APEC variety would capture political attention and add political momentum to this unfulfilled partnership. On a more detailed level, the follow-on action plan now being negotiated could provide much needed momentum to both bilateral and global initiatives.

Thank you very much, Mr. Chairman, for giving me this opportunity to present my views.

[The prepared statement and attachment follows:]

THE "TRANSATLANTIC ECONOMIC PARTNERSHIP:" WILL IT LIVE UP TO ITS NAME?

Statement by Ellen L. Frost
Institute for International Economics
Before the Trade Subcommittee of the House Ways and Means Committee
U.S. House of Representatives
July 28, 1998

Thank you for this opportunity to testify before the Trade Subcommittee. My name is Ellen Frost. From 1993 to 1995 I served as Counselor to U.S. Trade Representative Mickey Kantor. Last year I published a book entitled *Transatlantic Trade: A Strategic Agenda,* in which I proposed a framework of cooperation and commitment in the form of a North Atlantic Economic Community, or NATEC.

I have just written a short commentary on what we know about the Transatlantic Economic Partnership thus far, and where it might go from here. With your permission, Mr. Chairman, I would like to submit that commentary for the record. I will confine my verbal remarks today to a few brief observations about the global and domestic challenges facing the transatlantic powers.

At the outset I want to make it clear that I fully support the Transatlantic Economic Partnership. Since the action plan implementing the Partnership is still under negotiation, it is too early to judge its specific content. But the outline released at the Birmingham summit last month clearly reinforces transatlantic economic cooperation. The focus on common interests helps to offset the bitterness of our disputes over economic sanctions and certain agricultural issues. In the regulatory arena, the Partnership adds momentum to the unprecedented and impressive achievements of the Transatlantic Business Dialogue.

My concern is that the Partnership may not be sufficiently ambitious. There are at least two reasons why negotiators should aim high:

First, agreements between the United States and the European Union send a signal to the rest of the world about whether or not the two powers are serious about taking further steps toward a rules-based, market-oriented global economy. The Partnership should back up words with action. For the last fifty years, progress toward multilateral trade liberalization has depended heavily on agreement between Washington and Brussels. While other countries have become important players, future progress within the World Trade Organization presupposes some form of transatlantic consensus. It is hardly reasonable to expect other countries to make politically difficult choices to open their economies if the transatlantic powers do not continue to set an example.

The Partnership announcement asserts that the United States and the European Union will give "priority" to pursuing their objectives through the WTO, and that their

"primary goal" is multilateral liberalization. This is good news, but thus far neither the European Union as a whole nor the Clinton Administration has publicly committed itself to an ambitious WTO agenda -- either a "Millenium Round" or anything else. At best, certain pioneering agreements may emerge from the Partnership that can serve as models for future negotiations.

Second, the Transatlantic Economic Partnership has acquired new urgency because of the Asian economic crisis and its effect on the rest of the world. Indonesia, Thailand, and South Korea are all suffering recessions, while growth in Malaysia and the Philippines is predicted to be only about a third of what was previous projected. Japan, which could and should be a locomotive for the region, appears paralyzed, at least for the moment. In the United States, the crisis is likely to shave one-half to one percentage point from the 1999 economic growth rate and to boost the U.S. merchandise trade deficit with Asia to levels that undermine domestic support for trade.

Recognizing the value of economic competition in stimulating recovery, members of APEC have reaffirmed their commitment to open trade and investment by 2010/2020, but no such commitment exists across the Atlantic. With the exception of regulatory initiatives, the Partnership is so limited that it runs the risk of diminishing the postwar tradition of transatlantic leadership within the global trading system – leadership that has contributed so much to Asian and global economic growth.

Despite two imperatives – the need for multilateral leadership and the Asian crisis -- a transatlantic initiative does not appear to be a high priority either in Brussels or in Washington at this time. During a recent trip to Brussels, I found that too many other events and evolutions are competing for policy-level attention. Chief among them are European monetary union, the deregulation of key sectors, the enlargement of the EU toward the east, developments in the former Yugoslavia, relations with Russia, and trade agreements with Mexico and Mercosur. A corresponding battery of issues faces American policy-makers.

Europeans might devote more high-level effort to a transatlantic initiative if they perceived that Americans were seriously committed to global engagement. But what they see is discouraging. Aside from Africa and the Caribbean Basin, the Clinton Administration does not appear to be focusing much on trade as a national priority or using the "bully pulpit" to communicate its benefits. Fast track is still in limbo, which inevitably undermines our credibility in the context of APEC, the Free Trade Area of the Americas, and the World Trade Organization. I do not have to tell members of Congress why this is so -- that trade has become a divisive issue in domestic politics, particularly within the Democratic Party.

That brings me to my final point. Trade is a divisive domestic issue in part because it leaves some people behind. It follows that building support for trade calls for more effective efforts to help those people adjust to global competition.

Several months ago the Institute for International Economics held a conference on re-starting fast track. Several leading Congressional opponents of fast track made it clear that they fully understand the benefits of trade to the American economy as a whole. But they are holding fast track hostage, they said, in order to draw attention to those who lack the skills and resources to compete.

I am no expert in this area, but I imagine that Congress and the Administration should be talking about a package that includes the portability of pensions and health care, local private-public partnerships centered on community colleges, consolidated and flexible adjustment assistance designed to achieve a better match between training and jobs, dissemination of lessons learned, and a range of other measures that take advantage of the flexibility and creativity of our economic system. Some of these tools are in place, but taken together – and explained in the context of global competition -- they could help to reassure Americans about their economic future.

* *

In conclusion, the Transatlantic Economic Partnership is worthwhile, but it has not yet lived up to its name. It has not risen to the challenges I described – setting an example of global leadership by signaling a serious commitment to trade liberalization, devising trade initiatives to cope more effectively with the Asian crisis, and addressing domestic concerns.

If the United States and the European Union want to reassert global economic leadership in a serious way, they should consider adopting a broad vision and a strategy, with an overall deadline for open trade and investment. (An explicit commitment to external monetary policy cooperation would also be timely.) Experience with APEC demonstrates that the mere existence of a commitment to open trade and investment by a date certain generates momentum. A broad commitment of an APEC (or NATEC) variety would capture political attention and add political momentum to this unfulfilled partnership. On a more detailed level the follow-on action plan now being negotiated could provide much-needed momentum to both bilateral and global initiatives.

Thank you for giving me this opportunity to present my views.

IIE International Economics Policy Briefs

THE TRANSATLANTIC ECONOMIC PARTNERSHIP

Ellen Frost
Senior Fellow

For the last fifty years, progress toward multilateral trade liberalization has depended heavily on agreement between the United States and the European Union. This Policy Brief argues that the current form of transatlantic economic cooperation – known as the Transatlantic Economic Partnership – is so limited that it runs the risk of diminishing this tradition. The follow-on action plan now being negotiated between Washington and Brussels, however, could provide much-needed momentum to the global trading system and should thus be viewed as an opportunity to restore the traditional pattern..

Origin of the Transatlantic Economic Partnership

Announced at the Birmingham summit of May 1998, the Transatlantic Economic Partnership traces back to the 1995 US-EU summit in Madrid, where Presidents Clinton and Santer announced a "New Transatlantic Agenda." The Agenda was essentially a political gesture intended to underscore the staying power of the transatlantic alliance and to offset a series of specific strains ranging from Bosnia to U.S. economic sanctions. The economic pillar of the Agenda was a "Transatlantic Marketplace," to be achieved by "progressively reducing or eliminating barriers that hinder the flow of goods, services, and capital." A new private sector group, the Transatlantic Business Dialogue (TABD), was established to define and promote the specific trade and investment agenda needed to bring the Marketplace to fruition.

The 1995 summit sought to enunciate what Secretary of State Warren Christopher had heralded six months earlier: a common vision, a common purpose, and a common transatlantic agenda.[1] But the Marketplace initiative was disappointingly vague. It was not defined with any specificity, included no commitment to comprehensive coverage, and lacked an overarching deadline for achievement. Not surprising, it never achieved any political momentum.

The one substantive achievement stemming from the Marketplace initiative was regulatory cooperation. Thanks in large part to the TABD, in 1997 Washington and Brussels reached agreement – after years of effort – on a package of "mutual recognition

[1] "Charting a Transatlantic Agenda for the 21st Century," Speech by Secretary of State Warren Christopher, Casa de America, Madrid, Spain, June 2, 1995. (Photocopy)

agreements" (MRAs) eliminating duplicative testing and certification in six sectors.[2] The U.S. Government estimates that this package, which covers about $47 billion worth of trade, eliminates costs equivalent to two or three percentage points in tariffs.[3]

In the meantime, other problems arose that soured the prospects for broader transatlantic economic cooperation. Chief among these was U.S. sanctions legislation, namely, the Helms-Burton and D'Amato laws (directed at Cuba and Iran/Libya, respectively). Europeans reacted furiously to U.S. efforts to impose sanctions on their companies and citizens, quickly invoking blocking legislation and launching a dispute settlement case in the WTO. A compromise solution, also announced at the Birmingham summit, provides for active EU support for certain US policy goals in return for exemptions from specific provisions of the sanctions laws. This agreement, however, has still not secured Congressional approval.

In addition, several agricultural quarrels related to biotechnology have escalated. The US-EU trade quarrel *du jour* centers on resistance in several EU member states to importing genetically modified strains of corn, soybeans, and other commodities from the United States.

Mindful of these new disputes, and hoping to restore momentum to the process of trade liberalization, the European Commission proposed to EU member states in March 1998 a formal agreement that would establish a Transatlantic Marketplace with the United States. Spearheaded by Commission vice president Sir Leon Brittan, this version of the Marketplace proposal laid out an ambitious agenda covering both bilateral and multilateral topics. The proposed agreement envisaged such measures as zero tariffs on industrial goods by 2010, a free trade area in services, and a bilateral agreement on investment. Notable exclusions, however, included agriculture and audiovisual services.

For both substantive and tactical reasons, the Brittan initiative failed to secure the support of several EU member governments, most notably (and vociferously) France. But the transatlantic impulse did not die. Most of the topics covered in the Brittan initiative survived, albeit in a greatly watered down version, and were collectively renamed the "Transatlantic Economic Partnership."

Content of the Transatlantic Economic Partnership

The document issued at the Birmingham summit was, however, little more than a vague, bare-bones outline of the Transatlantic Economic Partnership. Discussions are now underway to flesh out an action plan. Although it is too early to say what the action plan will consist of, a few facts seem clear.

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[2] Telecommunications, radio transmitters, electric and electronic products, pharmaceuticals, medical devices, and recreational marine craft.

[3] USTR press release, May 28, 1997; and Department of Commerce press release, June 13, 1997.

This time around, the transatlantic thrust is primarily multilateral. Gone are the would-be bilateral commitments to zero industrial tariffs by 2010, a free trade area in services, and a transatlantic investment agreement. Initiatives on industrial tariffs and the liberalization of services sit squarely in the context of the WTO, while those on investment, competition, public procurement, and the environment refer to "appropriate multilateral fora." (This wording suggests, but does not spell out, a commitment to a new WTO round, as also proposed by Sir Leon Brittan under the label of the "Millenium Round.") Language on government procurement refers mainly to facilitation of bidding (e.g., through electronic notification of requests for procurement). The commitment to improved intellectual property protection is understood to refer mainly to enforcement of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in third countries, although bilateral initiatives may be included as well. There may be new language on worker rights. The prickly question of sanctions is addressed in a separate document ("Transatlantic Partnership on Political Cooperation").[4]

Building on the prior success of MRA negotiations, the most explicit commitments in the Transatlantic Economic Partnership have to do with overcoming regulatory obstacles. Those named include technical barriers to trade, the treatment of biotechnology, and sanitary and phytosanitary standards (governing the treatment of animals and plants, respectively). Listed as "instruments" are MRAs, scientific and regulatory dialogue, and a high degree of transparency and consultation. Services are covered as well, but for the most part the focus is on reaching a consensus in advance so that future regulations (e.g., those arising from new technology) can be standardized or harmonized. Such negotiations are well suited to a bilateral framework because mutual recognition agreements and similar accords encompass country-specific facilities and procedures and are thus necessarily bilateral.

Observations

The document issued in Birmingham represented little more than a vague outline. The action plan now being negotiated may have a little more "meat," but truly ambitious targets are unlikely at present. Still, the exercise may prove to be valuable. This mixed assessment rests on the following observations:

1. A transatlantic initiative is not a high priority in Brussels at this time. Too many other events and evolutions are competing for policy-level attention. Internal developments include European monetary union; the deregulation of key sectors, including telecommunications and financial services; and a range of institutional questions, ranging from voting procedures to the expanding role of the European Parliament. External competitors include the enlargement of the EU toward the east;

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[4] The Transatlantic Economic Partnership and other documents can be found on the European Commission's Web site, http://www.europa.eu.int.

developments in the former Yugoslavia; relations with Russia; the fate of the Lome agreement; and EU activities in Latin America, notably negotiations with Mexico to establish a free trade agreement and the first-ever EU-Latin American summit, scheduled for 1999 in Brazil.

2. *The Clinton Administration is not focusing much on trade.* Despite pressure from House Republicans, the Administration wants to postpone the effort to secure Congressional renewal of "fast-track" trade agreement authority until some time after the 1998 elections. (An ambitious transatlantic initiative could be of help in winning the fast-track debate in 1999, if it is combined with the current APEC and FTAA initiatives as well as with the WTO.) Trade remains a highly divisive issue within the Democratic Party.

3. *Not surprisingly, therefore, signs of commitment to real progress are weak on both sides.* Neither the United States nor the European Union has demonstrated a real commitment to new trade liberalization at this point in time. Nor does the Transatlantic Economic Partnership live up to its middle name, since a truly "economic" agreement would include cooperation on external monetary policy. Despite the advent of the euro and the formal opening of the European Central Bank, transatlantic cooperation in this area is still woefully underdeveloped.[5] A truly ambitious, comprehensive, strategic commitment to open trade and investment -- similar to the "North Atlantic Economic Community" (NATEC) proposed by this author last year -- is nowhere in sight.[6]

4. *Nevertheless, officials on both sides of the Atlantic see value in the Partnership because of its emphasis on regulatory harmonization.* The Partnership's emphasis on overcoming regulatory barriers reflects the high level of investment between the European Union and the United States. As of 1997, European companies accounted for 62% of foreign direct investment in the United States ($425.2 billion), compared with 22% from Asian companies. 49% of U.S. direct investment abroad ($420.9 billion) has gone to Western Europe, compared with only 17% to Asia.[7] Duplicative test and certification procedures cost these companies a lot of money – over $1 billion a year for the U.S. information technology industry alone.

Since both Americans and Europeans maintain high levels of health, safety, and environmental protection, regulatory authorities should be able to agree on how to protect their citizens. But regulators on the two sides of the Atlantic reflect different traditions, answer to different constituencies, and see little reason to change their standards and

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[5] C. Fred Bergsten. 1997. "The Dollar and the Euro." Foreign Affairs, Vol. 76, No. 4 (July/August), 83-95. See also C. Randall Henning. 1997. *Cooperating with Europe's Monetary Union* (Washington DC: Institute for International Economics, Policy Analysis 49.)

[6] Ellen L. Frost. 1997. *Transatlantic Trade: A Strategic Objective* (Washington DC: Institute for International Economics, Policy Analysis 48).

[7] Source: Bureau of Economic Analysis, Department of Commerce. Figures are on a historical-cost basis.

procedures, especially when they face intense public pressure from non-government organizations. The Partnership could help overcome these cultural and political barriers.

5. *The failure of the Brittan initiative may have cleared the way for more focused thinking about global trade liberalization in the WTO.* The Partnership announcement asserts that the United States and the European Union will give "priority" to pursuing their objectives through the WTO, and that their "primary goal" is multilateral liberalization. The Dutch and others resisted Sir Leon's notion of a free trade area in services in part because they wanted to avoid undermining the WTO. Several EU member governments are in favor of a new "Millenium Round," but neither the EU as a whole nor the Clinton Administration has committed itself to an ambitious WTO agenda. The United States has agreed, however, to chair the next WTO ministerial meeting in late 1999 -- and thus implicitly to take the lead in forging the next set of major multilateral trade talks.

Conclusions

The Transatlantic Economic Partnership is so foggy and limited that one might well ask whether it is needed at all. After all, pressures stemming from globalization are pushing Brussels and Washington in the direction of liberalization anyway. Why bother?

A partial answer is that the Partnership adds limited but positive synergy to transatlantic economic cooperation, especially in the regulatory area. As one American official puts it, the TEP forces both sides to produce bigger "deliverables" at each summit than would otherwise be the case. Depending on the content of the action plan, another answer is that the Partnership, if properly designed and publicized, could help get the global trade "bicycle" moving forward again.

Such momentum could be particularly helpful in the United States, which is already facing a domestic stalemate over trade policy – as reflected in the President's inability to obtain new fast-track authority since 1994, despite the strength of the economy. This stalemate could easily worsen, as the country is likely to experience both slower growth and a sharply rising trade deficit with Asia. Europe, with its stubbornly high rates of unemployment, could benefit from renewed momentum as well. Finally, cooperation between the world's two biggest economies sets a good example for others. Tackling new issues in a spirit of cooperation improves the atmosphere in Geneva and may set a precedent for future multilateral agreements.

A few reservations are nonetheless in order. While the new emphasis on multilateral agreement is welcome, the Partnership is not yet ambitious enough to "ratchet up" the multilateral system. It is not even a potential "economic cooperation forum" that has adopted ambitious trade liberalization goals, as APEC has -- let alone an "economic community" along the lines of the proposed NATEC. If the transatlantic partners are going to limit themselves to regulatory cooperation, they should not give their efforts

grandiose titles.

If on the contrary the United States and the European Union want to reassert global economic leadership in a serious way, they should consider adopting a broad vision and a strategy, with an overall deadline for open trade and investment.[8] An explicit commitment to external monetary policy cooperation would also be timely.

The usual objection to an ambitious commitment to joint action is that it is worthless unless it contains both detailed goals and meaningful enforcement procedures. At present, the United States lacks fast-track authority and the European Commission faces multiple distractions. Neither side is exactly overflowing with political will.

Nevertheless, an effort to define an ambitious bilateral and multilateral agenda is worth the effort. Indeed, it is essential to help reverse the current malaise and get the trade bicycle rolling again. Experience with APEC demonstrates that the mere existence of a commitment to open trade and investment by a date certain generates momentum. A broad commitment of an APEC (or NATEC) variety would capture political attention and add political momentum to this unfulfilled partnership.

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[8] For example, free trade by 2010. See C. Fred Bergsten. 1996. "Globalizing Free Trade." *Foreign Affairs*, Vol. 75, No. 3 (May/June), 105-120.

Chairman CRANE. Thank you, Ms. Frost.
Mr. Berry.

STATEMENT OF WILLARD M. BERRY, PRESIDENT, EUROPEAN-AMERICAN BUSINESS COUNCIL

Mr. BERRY. Thank you, Mr. Chairman and members of the committee for the opportunity to testify. I'm Willard Berry, president of the European-American Business Council. The Council is the one transatlantic organization that regularly provides actionable information on policy development and works with officials in both U.S. and Europe to secure a more open trade and investment climate. A number of witnesses today have remarked on the size and the extent of this remarkable economic relationship, and it's also important to point out that it has an impact on nearly every congressional constituency.

Perhaps, the most remarkable aspect of our trade and investment relationship with Europe is that it is balanced, free of the long-term deficits that have characterized our relationship with Asian countries, in particular. Today, economic relations with Europe—between Europe and the U.S. are stronger than they have ever been. Trade and investments continue to grow; long-standing disputes are being addressed; there is more cooperation than ever before in the WTO and other multi-lateral fora.

The Transatlantic Economic Partnership demonstrates that governments on both sides of the Atlantic are committed to a positive agenda to increase trade and investments for our mutual benefit. Obviously, we have many points of friction, but that is inevitable in an economic relationship of this size. The Council hopes that while we try to manage the disputes, we do not let them characterize or define the relationship. For too long, problems in agriculture held up progress on other trade issues. Even now, disputes over the EU banana regime, hormone ban, and EU approval of genetically-modified food products have soured relations between the governments. Various U.S. sanctions measures—the Helms-Burton law in particular—have been particularly damaging, threatening to disrupt EU-U.S. cooperation in the WTO and endangering other trade initiatives.

We strongly support the TEP initiative announced in May. The EABC and its members caution, however, that these efforts should not detract from ongoing work in other fora. The EU and U.S. have correctly tried to structure the TEP so that it will be supportive of ongoing and future negotiations in the WTO. EABC, a strong supporter of the WTO, expects that EU-U.S. coordination, in order to promote WTO work, in agriculture services and other sectors will be a substantial benefit from the TEP. We see the TEP as complimenting the Transatlantic Business Dialogue. In fact, our expectations is with the U.S. and the EU who will use TABD recommendations as the basis for their negotiating objectives in relevant areas of the TEP. EABC also hopes that the U.S. and the EU will begin negotiations under the TEP as soon as possible. Increased cooperation on multi-lateral issues will be most useful if it has a positive impact on new WTO negotiations to be launched in 1999 and 2000. Many bilateral aspects of the TEP could be concluded in a short

time which would build support for the process within the business community.

I'd like to turn to sanctions. The proliferation of economic sanctions in the U.S. continues to strain the EU–U.S. relationship. The Clinton administration and the European Commission have reached an agreement on expropriated property and secondary boycotts that is meant to settle the dispute over Helms-Burton and ILSA. EABC strongly urges Congress to amend Helms-Burton so that the President can waive Title IV which requires that executive visas be denied for companies investing in expropriated property in Cuba. Congress' cooperation in this matter would allow the U.S. and EU to continue their cooperation in addressing the issue of illegal expropriation without using ineffective, unilateral sanctions.

EABC also recommends that Congress enact the Crane-Hamilton-Lugar bill to reform the process of considering new economic sanctions. Because of the concern of increasing local and State government initiated sanctions, we encourage Congress to discourage efforts by State and local governments to enact sanctions measures and to maintain its role in the conduct of foreign policy.

Two issues I would like to briefly address which present problems currently in the relationship are online privacy and biotechnology. The EABC is a member of the Online Privacy Alliance which was mentioned by Under Secretary of Commerce. I would like to say that this issue we are beginning to address through a constructive dialogue between the administration and the EU and industry. Based on these efforts, we are cautiously optimistic this issue can be addressed without a disruption in trade or data flows.

On biotechnology, the current dispute on the EU's failure to approve some genetically-modified corn which is blocking all U.S. corn exports to EU demonstrates the need for timely, predictable, and science-based regulatory processes, recommendations which are being advanced under the TABD. Thank you, Mr. Chairman, for the opportunity to testify.

[The prepared statement follows:]

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STATEMENT OF
WILLARD M. BERRY
PRESIDENT
EUROPEAN-AMERICAN BUSINESS COUNCIL

before

HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON TRADE
"TRADE RELATIONS WITH EUROPE AND
THE NEW TRANSATLANTIC ECONOMIC PARTNERSHIP"
July 28, 1998

INTRODUCTION

Mr. Chairman and members of the committee, thank you for the opportunity to testify. I am Willard M. Berry, President of the European-American Business Council. The Council is the one transatlantic organization that provides actionable information on policy developments and works with officials in both the US and Europe to secure a more open trade and investment climate. Our 80 member companies include US- and European-owned firms -- therefore our work on trade, tax and investment issues is devoted to improving the business environment on both sides of the Atlantic. We are active on our own and through the Transatlantic Business Dialogue (TABD) in strengthening the economic relationship between the US and Europe, heading off trade disputes, and increasing US-EU cooperation in the World Trade Organization (WTO) and other multilateral fora. We aim to be the definitive source of knowledge and leading business advocate on US and European political activity affecting transatlantic companies.

Trade and investment flows between the US and Europe provide real benefits for Americans. Nearly six million US jobs depend on European investment in the US, including 2.9 million Americans directly employed by European-owned companies. In fact, 12.5 percent of US manufacturing jobs are supported by European investment. US exports to Europe support 1.3 million jobs. Two-way trade between the US and Europe reached $544 billion in 1996, as Europe purchased more than $135 billion worth of US manufactured goods. Cross investment between the US and Europe is more than $776 billion, which is split almost evenly between US investment in Europe and European investment in the US.

Europe is the largest foreign investor in 41 of 50 US states and the number one or number two export market for 44 states. Just to cite one example, Mr. Chairman, your home state of Illinois sold $6.3 billion of goods to Europe in 1997. European investment in Illinois supports more than 132,000 jobs. The Council will soon release its annual survey of trade and investment between the US and Europe, which includes similar figures for each of the 50 states.

Last year this subcommittee held a hearing devoted to US economic relations with Europe for the first time in many, many years. I am extremely pleased that you are holding a hearing again this year, following a number of significant developments in our bilateral trade relationship. At the May 18 US-EU Summit, two landmark agreements were signed that should significantly improve the relationship. First, the US and EU reached agreement on disciplines for expropriated property and secondary boycotts. Hopefully, this agreement will allow the US and EU to settle their dispute over US sanctions, including the Helms-Burton Act and the Iran and

Libya Sanctions Act (ILSA). Second, the US and EU agreed to establish a framework, the Transatlantic Economic Partnership (TEP), for bilateral trade negotiations and improved cooperation on multilateral issues. Under the TEP the US and EU hope to negotiate important agreements to increase trade in goods and services and to reduce costs for business through the elimination of regulatory barriers.

Perhaps the most remarkable aspect of our trade and investment relationship with Europe is that it is balanced, free of the long-term deficits that have characterized our relationship with Asian countries in particular. Today, economic relations between the US and Europe are stronger than they have ever been. Trade and investment continues to grow. Longstanding disputes are being addressed. There is more cooperation than ever before in the World Trade Organization and other multilateral fora. And the TEP demonstrates that governments on both sides of the Atlantic are committed to a positive agenda to increase trade and investment for our mutual benefit.

Obviously, we have many points of friction, but that is inevitable in an economic relationship of this size. The Council hopes that while we try to manage the disputes, we do not let them characterize the relationship. For too long, problems in agriculture held up progress on other trade issues. Even now disputes over the EU banana regime, hormone ban, and EU approval of genetically modified food products have soured relations between the governments. Various US sanctions measures -- the Helms-Burton law in particular -- have become major problems, threatening to disrupt US-EU cooperation in the WTO and endangering other trade initiatives.

TRANSATLANTIC ECONOMIC PARTNERSHIP

The EABC serves its member companies by encouraging US-European cooperation to improve the global marketplace. Therefore, we strongly support the TEP initiative announced in May. The EABC and its members caution, however, that these efforts should not detract from ongoing work in other fora. The US and EU have correctly tried to structure the TEP so that it will be supportive of ongoing and future negotiations in the World Trade Organization. The EABC, a strong supporter of the WTO, expects that US-EU coordination in order to promote WTO work in agriculture, services and other sectors will be a substantial benefit resulting from the TEP.

The US and the EU should also be careful to ensure that the TEP does not undermine the Transatlantic Business Dialogue. Where the TEP can add political support to implement TABD recommendations, these two initiatives will be mutually reinforcing. In fact, our expectation is that the US and EU will use TABD recommendations as the basis for their negotiating objectives

in relevant areas of the TEP. Governments should not, however, shift attention away from TABD recommendations just because they do not coincide with work under the TEP.

The EABC hopes that the US and EU will begin negotiations under the TEP as soon as possible. Increased cooperation on multilateral issues will be most useful if it has a positive impact on new WTO negotiations to be launched in 1999 and 2000. Many bilateral aspects of the TEP could be concluded in a short time, which would build support for the process within the business community.

The EABC has made a number of recommendations about what should be included in the TEP. Today I will mention the regulatory issues, which are likely to form a major part of the TEP. I have attached our complete recommendations for the record. Regulatory barriers continue to be the most substantial impediment to US-EU trade. Therefore, the EABC encourages the US and EU to address these barriers both through horizontal efforts to improve regulatory cooperation and through new agreements in individual sectors. In particular, new mutual recognition agreements (MRAs) on fasteners and veterinary biologics would reduce costs for companies in those sectors and also maintain the momentum generated by the conclusion of MRAs in six other sectors. The US and EU should also support existing multilateral efforts to reduce standards barriers, such as the effort to harmonize auto standards in Working Party 29.

The TEP also offers an important opportunity for the US and EU to develop a framework for improved regulatory cooperation. The EABC supports the recommendation of the TABD that governments improve transparency and coordination as regulations are being developed in order to harmonize standards as much as possible.

SANCTIONS

The proliferation of economic sanctions in the US continues to strain the US-EU relationship. The Council opposes the use of unilateral economic sanctions, especially when they are extraterritorial in nature, because they cause numerous problems for companies that operate internationally. Economic sanctions, while rarely having any of their desired impact in influencing other countries' policies, mainly restrict the activities of multinational companies, to the detriment of US workers, US exports, and investment in the US.

The Clinton Administration and the European Commission have reached an agreement on expropriated property and secondary boycotts that is meant to defuse the dispute over Helms-

Burton and ILSA. While this agreement is not a final resolution of the dispute, it is an important step toward that goal. The EABC strongly urges Congress to amend Helms-Burton so that the President can waive Title IV, which requires that executive visas be denied for companies investing in expropriated US property in Cuba. Congress' cooperation on this matter would allow the US and EU to continue their cooperation in addressing the issue of illegal expropriation without using ineffective, unilateral sanctions.

The EABC also strongly recommends that Congress abandon all efforts to remove waiver authorities from Helms-Burton and ILSA. Doing so would not only cause the collapse of the May 18 US-EU agreement, but it would cause new problems for US companies and foreign companies operating in the US, all without bringing about any change in Cuba, Iran or Libya.

The Council also is opposed to the Freedom from Religious Persecution Act, H.R. 2431, and its Senate counterpart, S. 1868. This legislation would impose economic sanctions against countries that persecute religious groups. Like other unilateral sanctions measures, this legislation has the potential to hurt the competitiveness of US companies without achieving its aims. The Council strongly believes that the best way to address human rights violations, such as religious persecution, is through engagement.

Finally, the EABC recommends that Congress enact the Crane-Hamilton-Lugar bill to reform the process of considering new economic sanctions. This bill would provide for a more deliberative and disciplined approach for policymakers considering economic sanctions proposals. The bill strives to maximize US foreign policy flexibility, calling for all future sanctions measures to include Presidential waivers for national interest, sunset provisions, protections for contract sanctity, and mandates that a cost analysis be made of any sanctions bill before it is passed.

Sanctions measures by state and local governments are also an increasingly important problem in the US-EU relationship. The latest examples of this trend are a number of measures targeting Switzerland, which may be hit by sanctions in New York State, New York City, New Jersey, and California because it has not agreed with Jewish groups on an appropriate settlement over its role in assets stolen by the Nazis in World War II. The Clinton Administration has warned against imposing sanctions in the Swiss case, but it needs to do more to stem the tide of state and local sanctions. The Administration's own ability to conduct foreign policy is threatened when each state, city and county feels the need to set its own foreign policy and to take actions against foreign governments it finds objectionable. Congress also should oppose efforts by state and

local governments to enact sanctions measures and maintain its own role in the conduct of foreign policy.

WORLD TRADE ORGANIZATION

Both the US and EU should improve their support of the WTO, which has brought great benefits on both sides of the Atlantic through trade liberalization and better management of trade disputes. Governments should make every effort to implement dispute settlement panel reports so that disputes can be settled in a timely manner and so that other countries can be convinced to implement judgements against their laws.

The current dispute over the US Foreign Sales Corporation (FSC) law has the potential to become a major problem in the US-EU relationship. The EU has asked for a WTO dispute settlement panel to determine whether the FSC violates rules on export subsidies, and the US has threatened to bring a WTO case against similar measures in several EU member states. The EABC hopes that the US and EU can resolve this dispute without going through the WTO process, which could result in a protracted and disruptive dispute.

ON-LINE PRIVACY

The EABC is working actively to improve the protection of consumer privacy online. We are a member of Online Privacy Alliance (OPA), the largest cross-industry coalition of companies and associations dedicated to this purpose. The US and Europe are taking different approaches to protecting privacy that stem largely from different legislative and historical backgrounds. The EU privacy directive, slated to go into effect this October, requires government authorities in each EU Member State to regulate online privacy practices. It also requires the Member States to shut off data flows from Europe to third countries in cases where the personal data of EU citizens is not protected "adequately."

The EABC has entered into a dialogue with European officials to explain industry efforts in the US to protect privacy through self-regulatory regimes that are backed by the authority of the Federal Trade Commission and the state attorneys general. We are encouraged by the European Commission's interest in this dialogue and willingness to work with the Administration to address US-EU differences. Based on these efforts, we are cautiously optimistic that this issue can be addressed without a disruption in trade that neither side wants.

TELECOMMUNICATIONS

The WTO Agreement on Basic Telecommunications Services will offer important new opportunities for both US and EU companies. It is in the interest of both governments to ensure that the agreement is faithfully implemented in the US, Europe and third countries. The US and EU should focus in particular on the three basic regulatory principles of the agreement: establishment of an independent regulator; transparent and non-discriminatory licensing requirements; and clear time frames, definitions and negotiating principles for interconnection. The US and EU should also undertake reform of the international accounting rate system in a way that is cost-oriented, transparent and non-discriminatory.

BIOTECHNOLOGY

The EABC has been a strong advocate of the need to improve transatlantic trade relations in biotechnology products and has been an active participant in the TABD agricultural-biotechnology working group. The US and EU should make every effort to implement the recommendations of the TABD in this area. The current dispute over the EU's failure to approve some genetically modified corn, which is blocking all US corn exports to the EU, demonstrates the need for timely, predictable and science-based regulatory processes. To make regulatory processes more transparent and predictable, with the ultimate goal of compatible US-EU regulatory requirements, the US and EU should act on the following points:

- The US and EU authorities should reach agreement on a clear "pathway" for the respective regulatory decisions and provide this to all affected parties.
- The US and EU authorities should agree on a common data set for risk assessments and regulatory decisions. The US and EU industry participants agree to simultaneous submission of regulatory requests for all products which will enter transatlantic trade.
- The US and EU authorities should develop estimated regulatory approval timelines for respective US/EU approvals to be used as guidance for commercial decisions by industry participants.
- The US and EU authorities should reach agreement on the use of the concept of "substantial equivalence" applied to food safety evaluations.
- EU authorities are encouraged to clarify the role and process for involvement of the EU Scientific Committees in regulatory decision making.
- US and EU authorities should agree on an appropriate regulatory process for products that are already clearly characterized.

- Industry and governments are encouraged to work together to enhance public knowledge about modified crops and food products.
- US and EU authorities should work to harmonize the safety assessment of the developing feed approval regulations.

TAXATION

The Council and a number of its member companies are active in the TABD's working group on taxation issues. The group has already issued a list of recommendations to the US and European governments to improve the tax systems on both sides of the Atlantic. A top priority for the TABD group is the establishment of an arbitration mechanism for transfer pricing disputes. The Council will continue to advance the working group's agenda and work toward new recommendations this year in the lead-up to the November TABD summit in Charlotte.

CONCLUSION

Thank you once again, Mr. Chairman and Members of the Subcommittee, for the opportunity to testify today. I would be happy to answer any questions.

Chairman CRANE. Thank you, Mr. Berry.

And our final witness, Ms. Sophos.

STATEMENT OF MARY C. SOPHOS, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, GROCERY MANUFACTURERS OF AMERICA, INC.

Ms. SOPHOS. Thank you, Mr. Chairman, for the opportunity to testify before the subcommittee. My name is Mary Sophos, and I am the senior vice president of government affairs of the Grocery Manufacturers of America. GMA is the world's largest association of food, beverage, and consumer product companies with U.S. sales of more than $430 billion. GMA members employ more than 2.5 million workers in all 50 States. We believe the Transatlantic Economic Partnership announced earlier this year, offers a excellent opportunity to reduce regulatory barriers between the United States and the European Union as well as provide a foundation from our comprehensive reductions in both tariff and non-tariff trade barriers in the next WTO round.

GMA has initiated discussions among interested associations and corporations in the processed food and consumer product sector in response to the administration's request for comments to a system identifying specific issues for the TEP agenda.

We plan to engage actively in the TEP process along with our European counterparts, CIAA and initially have identified three key areas for discussion. First, in the area of biotechnology, U.S. negotiators should focus on two key issues, establishing a clear methodology and a predictable timeline for approvals of biotech products. Several GMA members are pioneers in the area of biotechnology and have experienced significant problems in obtaining timely approvals for products in the EU. As a starting point, U.S. negotiators should look to the work of the Transatlantic Business Dialogue. GMA agrees completely with the TABD Working Group on biotechnology, but U.S. efforts should focus on the making the relevant U.S. and EU regulatory processes transparent, predictable, and compatible. My written testimony provides additional details.

Second, U.S. negotiators should work to eliminate barriers for food additive approvals. U.S. products exported to the EU frequently must be reformulated to comply with European food additive regulations which are quite restrictive. We would recommend an approach similar to that being suggested by the TABD for biotechnology.

Third, eco-labels continue to pose a non-tariff trade barrier to manufacturers seeking to import into the EU and its members countries. Labels like those currently being awarded in the EU are generally not based on sound science but are awarded on subjective criteria developed by local stakeholders. As such, they generally reflect local cultural value and environmental concerns and discriminate against international competition. The USTR has continually acknowledged the discriminatory nature of the EU program by placing it in its 1997 and 1998 national trade estimate reports. The EU has promised bilateral discussions on this topic but they have yet to occur.

GMA hopes that the U.S. will take up other issues with the EU during TEP talks such as metric-only labeling requirements, packaging issues involving extended producer responsibility; product formulation requirements and nutritional claims.

Turning to the question of specific WTO complaints involving the U.S. and the EU, I would like to reaffirm GMA's view that overall the dispute settlement process established under the WTO works quite well. With respect to the two U.S.–EU disputes involving food products, specifically bananas and beef hormones, GMA is pleased that the WTO dispute panel found in favor of the U.S., and expect the EU to implement its recommendations within the 15-month time period established through WTO arbitration. Moreover, it is important to remember that safeguards have been built into the dispute settlement process in the event the U.S. is dissatisfied with the remedy proposed by the EU, and we encourage the U.S. to use them if necessary.

Mr. Chairman, the TEP is a valuable process which GMA strongly endorses, first, to provide the forum for removing regulatory impediments in areas of highest interest to industry. Second, like the early liberalization process within APEC, the TEP can help build momentum leading up to multi-lateral negotiations such as the 1999 agriculture round. Mr. Chairman, I appreciate the opportunity to appear before you and would welcome any questions you might have.

[The prepared statement follows:]

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Testimony of

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Senior Vice President, Government Affairs

GROCERY MANUFACTURERS OF AMERICA, INC.

before the

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

on

THE TRANSATLANTIC ECONOMIC PARTNERSHIP

July 28, 1998

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before the Subcommittee to discuss the Transatlantic Economic Partnership or TEP. My name is Mary Sophos and I am the Senior Vice President of Government Affairs at the Grocery Manufacturers of America.

GMA is the world's largest association of food, beverage and consumer product companies. With U.S. sales of more than $430 billion, GMA members employ more than 2.5 million workers in all 50 states. The association also leads efforts to increase productivity and efficiency in the food industry.

We believe the Transatlantic Economic Partnership announced earlier this year offers an excellent opportunity to reduce regulatory barriers between the United States and the European Union, as well as provide a foundation for more comprehensive reductions in both tariff and non-tariff trade barriers in the next WTO round.

GMA has initiated discussions among interested associations and corporations in the processed food and consumer products sector in response to the Administration's request for comments to assist in defining the scope of the TEP agenda.

Establishment of an open and transparent, market-based international trading system increasingly has become a priority for GMA and its member companies. To help facilitate dialogue and reforms, GMA and its sister organizations around the world have formed the International Alliance of Food Products Associations.

GMA is also an active member of the US Council for International Business' (USCIB's) Food and Agriculture Working Group which has developed a white paper titled "An Open and Efficient Food System." The white paper addresses the key objectives and elements of an open and efficient food system, and I would like to submit a copy for the record.

Globalization of the world economy and industry has accelerated since the early 1980's. It is being driven by international trade and investment and the integration of the world's financial markets, spurred further by rapid advances in transportation, telecommunications, and information technology. Its causes are many and complex, but its effects are clear. Globalization is a major contributor to world economic growth, prosperity, and higher living standards.

Globalization has come to the agro-food sector as well. Globalization has resulted in greater opportunities to export and import agricultural products from an expanding list of countries. Trade in agricultural products has climbed steadily, and trade in processed products has been especially robust. Despite these favorable trends, government intervention in the agro-food sector is still intrusive. New efforts to reduce government intervention and liberalize agricultural trade are necessary to expand the benefits of globalizations in the food and agricultural sector to a growing and increasingly demanding world population.

The TEP offers an excellent opportunity to reduce tariff and non-tariff barriers between the United States and the European Union. We strongly recommend that several areas, in particular, be addressed in the context of TEP discussions.

Biotechnology

In regard to biotechnology, we believe that the TEP efforts should mirror the substantial efforts of the Transatlantic Business Dialogue. Specific recommendations are as follows:

1) The US and EU authorities should reach agreement on a clear "pathway" for the respective regulatory decisions and provide this to all affected parties and assure that transparency, as a pathway, is used in practice.
2) US and EU authorities should agree on a common data set for risk assessments and for regulatory decisions.
3) US and EU authorities should develop estimated regulatory approval timelines for respective US/EU approvals to be used as guidance for commercial decisions by industry participants.
4) US and EU authorities should reach agreement on the use of the concept of "substantial equivalence" applied to food safety evaluations.
5) EU authorities are encouraged to clarify the role and process for involvement of the EU Scientific Committees in regulatory decision making.
6) US and EU authorities should agree on an appropriate regulatory process for products that are already clearly characterized.
7) Governments should be encouraged to work with industry to enhance public knowledge about modified crops and food products.
8) US and EU authorities should work to harmonize the safety assessment of the developing feed approval regulations.

In the short term, the TEP effort should focus on making the relevant US and EU regulatory processes transparent, predictable, and compatible.

Transparency can be addressed by making the regulatory process clear to all interested parties, including applicants, other industries, and the public. This should include documenting procedures, data requirements, timelines and public involvement opportunities for all to see, understand, and use.

Predictability can be addressed by clearly spelling out requirements and timelines for action for both applicants and regulators and committing to meet those timelines assuming all requirements are satisfied. This would involve obligations for applicants as well as regulators.

Compatibility can be addressed by working toward the mutual sharing of data and risk assessments, so that applicants can prepare a common data package for all approvals and so that

regulators are making decisions based on the same data. Compatibility does not necessarily mean mutual acceptance of regulatory decisions, or even strict harmonization of decision making. It does mean that companies operating in the transatlantic market will operate under consistent technical data requirements and risk assessment methodologies. It also means that regulators would independently issue decisions in similar timeframes based on the same data set. This will greatly facilitate data sharing and future steps toward harmonization.

Metric Only Labeling

The United States is still transitioning to the metric system and currently requires both metric and inch/pound units of measurement on product labels. Most internationally competitive multinational companies therefore apply dual dimensions and redistribute inventory including raw materials and finished products on a global scale in response to market demand. The impact of metric–only labeling in the EU would be that product prepared for the US or EU market could no longer be re-deployed to the opposite continent without changes to packaging, labeling, and product information – all at substantial cost to the manufacturer.

Recognizing the globalization of markets that has occurred since the 1979 Directive was promulgated to include the metric-only provision, the European Commission services (DGIII) proposed an amendment that would enable a 10 year delay of metric-only labeling until January 1, 2010. Ten years was chosen because of an earlier precedent and the concern that a longer period would not be politically acceptable in the European Parliament. The proposed amendment has been forwarded to Commissioner Bangemann's Cabinet for his approval. There are indications that Mr. Bangemann will approve an extension but is considering even less than 10 years. The 10-year extension should be approved.

Eco-labeling

On March 23, 1992, the EC approved an EU-wide eco-labeling scheme. The scheme is a voluntary program which permits a manufacturer to obtain an eco-label for a product when its production and life-cycle meets general and specific criteria established for that particular product.

Eco-labels like those currently being awarded in the EU are generally not based on sound-science, but are awarded on subjective criteria developed by local stakeholders. As such, they generally reflect local cultural values and environmental concerns and discriminate against international competition. While the consumer product industry does not oppose providing consumers with environmental information, seal-type approaches, like those embraced by the EU and several of its member states, are known to cause trade distortions. For the purposes of these comments, we will refer to objectionable labels as eco-seals.

The USTR acknowledged the discriminatory nature of the EU program by placing it in its 1997 "301 Report" stating that, "while improvements in the transparency of procedures and opportunity for foreign participation in the EU's program have been reported, concerns remain that the EU program favors European industry, thus leading to trade concerns."

Historically, products sold by large international companies have generally offered consumers better value, relative to those offered by local companies, when both cost and performance are taken into consideration. The heavy promotions of eco-seals, especially by retailers in Scandinavia, provide an advantage to local formulators by narrowing the performance and economic differences between products. The resulting market impact occurs in two key areas:

> Innovation and Performance: In general, international companies have greater resources to do research and development than domestic manufacturers, giving their products an over-all performance advantage. Eco-seals reduce this innovation advantage by constraining new technologies to only those that meet limited eco-seal requirements. Thus, inventions and innovations that can improve performance are discouraged.
>
> Economy of Scale: Economy of scale generally enables international manufacturers to hold down costs. However, in order to meet criteria for seals available in Sweden, most international companies have been "forced" to maintain two formulas in Europe; one for the majority of the continent and one for Scandinavia/Sweden. Maintaining dual formulas adds complexity and cost to the manufacturing process. Domestic manufacturers do not have to bear these added costs.

Despite the fact that many detergents in Sweden carry the seal, eco-labeling authorities and others have failed to publish any evidence that the seals have improved the environment. Further, consumers do not appear to have gained any real product benefits from purchasing detergents with eco-seals because of their higher production costs, and lower performance.

Seal-type approaches to eco-labeling are misleading to consumers, since they are generally awarded for only one or two environmental attributes, but are perceived by consumers to denote overall environmental preferability. Countries should commit to using national legal regulatory authorities relating to false advertising to ensure that seal-type labels are truthful, based on appropriate scientific information, and not misleading to consumers. Further, "participation" in these programs should include the right to appeal to independent national false advertising authorities on the grounds that the seal is not truthful, not based on sound-science, or misleading to consumers.

Extended Producer Responsibility

In 1991, the German legislature approved a Packaging Ordinance requiring manufacturers or retailers to take back their packaging or ensure that 1) 80 percent of it is collected rather than thrown away, and 2) 80 percent of the amount collected is recycled or reused. Several European countries have since followed Germany's example, and in 1994 the European Commission adopting a packaging directive endorsing the concept of "manufacturers responsibility" (94/62/EC). EU member states as well as those countries aspiring to EU membership now will begin to adopt solid waste management programs embodying the manufacturers' responsibility philosophy to be consistent with the tenor of the EU's Packaging Directive.

Waste management programs embodying manufacturers' responsibility present significant opportunities for technical trade barriers to arise. Following are just some examples:

- *De Facto Product Standards* -- Unilateral bans on specific materials (e.g., brominated flame-retardants in electronic goods); Mandated process and production methods (PPMs) (e.g., recycling rates in paper manufacturing).
- *Labeling Requirements* -- Labeling of transport packaging (e.g., requirements differ in Portugal from those in Germany); Recyclability labeling (e.g., requirements in EU proposal differ from those under consideration in ISO 14000).
- *Fees* -- Producer Responsibility Management fees differ (e.g., fee to participate in EPR/EPR-like programs differs in Germany, France, Belgium, etc.).
- *Low-Volume Product/Packaging* -- Difficulty in managing low-volume materials imported from abroad (e.g., jute coffee bags from Brazil, wool bale strapping from Australia).

In October 1996, the President's Council on Sustainable Development held a workshop on the issue and emerged with a consensus around the concept of "shared responsibility." Shared responsibility shifts the focus of responsibility from manufacturers alone to all stakeholders. In many areas, solid waste management programs that embody shared responsibility have achieved results approaching to, and in some cases surpassing the results of mandated manufacturing responsibility programs.

To encourage the use of voluntary cooperative programs and to ensure potential technical barriers to trade are analyzed prior to any waste management program is adopted and implemented, the industry supports the use of the Organization for Economic Cooperation and Development's (OECD) five criteria for evaluating the adoption of manufacturers responsibility programs, which are as follows: 1.) Environmental Effectiveness; 2.) Economic Efficiency; 3.) Innovative Advancement; 4.) Political Acceptability; and 5.) Ease of Administration. Representatives of the food, beverage and consumer products industry have participated in the ongoing OECD dialogue on the issue, and are working closely with the U.S. Environmental Protection Agency to host the next OECD workshop on the issue (December 1998/Washington, DC) as well.

Product Formulation

It is often necessary to manufacture separate product formulations for trade between the U.S. and the EU. Alleviating this burden is a necessity. To accomplish this goal would require broad acceptance of food ingredients as well as standards of identity. I would suggest three areas, in particular, where regulators should focus:

1) Reduction in product compositional standards of identity to the greatest extent possible.
2) Where compositional standards of identity are needed, harmonization of EU member states' requirements should occur to the greatest extent possible.
3) An increased use of Codex Alimentarius to establish product standards of identity where existing standards present trade impediments.

Nutritional Claims

Transatlantic trade is also complicated by a lack of harmonization of nutritional and health benefit claims manufacturers provide on product labels to communicate information to consumers. Therefore, efforts must also focus on moving toward equivalent labeling systems in order to facilitate trade.

Food Additive Approvals

U.S. products exported to the EU frequently must be reformulated to comply with European food additive regulations. The EU takes a very restrictive approach towards regulating food additives. Only those food additives on a limited list of approved additives may be used in the European Union. To minimize transatlantic trade disruptions it is essential for the US and EU to agree upon:

1) The US and EU authorities should reach agreement on a clear "pathway" for the respective regulatory decisions and provide this to all affected parties, and ensure that transparency, as a pathway, is used in practice.
2) US and EU authorities should agree on a common data set for risk assessments and of regulatory decisions.
3) US and EU authorities should develop estimated regulatory approval timelines for respective US/EU approvals to be used as guidance for commercial decisions by industry participants.
4) EU authorities are encouraged to clarify the role and process for involvement of the EU Scientific Committees in regulatory decision making.

Turning to the question of specific WTO complaints involving the US and the EU, I would first like to reaffirm GMA's view that overall the dispute settlement system established under the WTO works quite well. With respect to the two US-EU disputes involving food products, specifically the bananas and hormones cases, GMA is pleased that the panel found in favor of the US, and expects the EU to implement the panel recommendations within the 15-month time period established through WTO arbitration. Moreover, it is important to remember that safeguards have been built into the dispute settlement process in the event the US and EU disagree as to whether the measures taken by the EU in fact comply with the panel recommendations. First, in such circumstances the US can and should exercise its right under Article 21.5 of the WTO Dispute Settlement Understanding to refer the compliance issue to a panel. Where possible, the original panel will be reconvened and will complete its review within 90 days. Second, should the measures adopted by the EU fail to comply with the panel's recommendations, the US can retaliate appropriately.

Mr. Chairman, the TEP is a valuable process, which GMA strongly endorses. First, it provides a forum for removing regulatory impediments in areas of highest interest to industry. Second, like the early liberalization process within APEC (on which we testified before this Subcommittee in May) the TEP can help build momentum leading in to upcoming multi-lateral negotiations like the 1999 Agricultural Round, which GMA members consider to be of the highest importance. Of course, the U.S. will be an ineffective negotiator without fast track negotiating authority. Fast track is the key that starts the engine. Without it, the United States will be virtually stalled when negotiations begin next year.

Mr. Chairman, I appreciate the opportunity to appear before you in this capacity and will be happy to answer any questions that you or your colleagues may have.

Chairman CRANE. Thank you, Ms. Sophos. My first question is to you, Mr. LoVoi. Did the leaders of TABD have any concerns over how the TEP initiative was conceived and is now operating?

Mr. LOVOI. Two parts to your question. The conception, there was some concern. There was—when the European Commission initially proposed the new Transatlantic Marketplace Agreement, there was—and I mention it in my statement—our concern that we didn't want the theoretical to get in the way of the practical. We were a little bit concerned it was too theoretical. TABD is very, very practical in its biases. We're pleased with the TEP proposal as it stands right now.

The second part of our question, its operation, it's too early to tell. You know, it's very much being born as we speak, so we'll reserve judgment on that.

Chairman CRANE. Ms. Jasinowski, we didn't ask you to testify, but I'd like to put a question to you. I understand Goodyear Tire is serving as Chair of the Standards and Regulatory Working Group of the TABD. Could you tell us a little bit about this work and its importance to U.S.–EU trade?

Ms. JASINOWSKI. Thank you, Mr. Chairman. Goodyear's CEO, Sam Gibara is the principal for Working Group I, which is also the Standards and Regulatory Working Group. There was a lot of dialogue among the members that were here and under Secretary Aaron over this important work. We like to think of ourselves as the "French truffle" of trade, often overlooked but extremely valuable. And let me give you an example of that. We ran some numbers, Mr. Chairman, with respect to the U.S. exports to the EU of the members states on this subcommittee and of the $128 billion worth of the U.S. exports to Europe in 1996, $61.5 billion of U.S. exports are represented on this Subcommittee, among the States and local communities. So, obviously, it's to the advantage of businesses and communities in the United States to reduce the costs, the redundant costs in the standard setting practice, to our exports, to make them more competitive abroad. Some studies have shown that up to 15 percent of additional costs is added to U.S. exports by redundant testing. Now, I want to quickly add that it isn't a question of whether businesses either here or in Europe should be regulated. We concur that businesses should be regulated in terms of meeting the conditions of health, safety, and environmental protection. The question is, how to regulate most efficiently and that is what the working group is all about. We have 16 active sectors in Working Group I, including aerospace, automotives, transportation services, automotive parts including tires, pharmaceuticals, and agribiotech, so it's an extremely active working group and our work is important. Thank you, Mr. Chairman, for the opportunity of giving you a brief overview of our work.

Chairman CRANE. Thank you. And the next question, I'd like to put to Ms. Frost. How ambitious is the TEP initiative and would you characterize it as broad-trade strategy or is it limited to seeking the resolution of a few trade problems?

Ms. FROST. It's broader than seeking the resolution of a few discreet problems and it is potentially ambitious. But its language on many topics is distressingly vague, especially when compared with the earlier initiative proposed by Sir Leon Britain in March of this

year. I share the desire of my fellow witness from the TABD for concrete commitments, and it is in that area that I find the TEP somewhat too vague.

For example, earlier this year, the Britain initiative proposed zero industrial tariffs by 2010; that's pretty concrete. The TEP says, by contrast, that they will explore the feasibility of their progressive elimination on a timetable to be agreed. Politically speaking, that's as far as they could go. I don't intend to criticize the negotiators. What I'm calling for, in effect, is a high-level political commitment on both sides, so that negotiators can go further than this rather vague language in the follow-on action plan.

I think the TEP does reflect a strategic commitment to the WTO. I'm just looking for a few more details.

Chairman CRANE. Mr. Berry, you warn in your testimony that the U.S. and the EU should be careful to ensure that TEP doesn't undermine the TABD. Can you explain where there's a danger that this might happen.

Mr. BERRY. What I would be referring to is essentially what Mr. LoVoi mentioned is that there are, particularly in the regulatory area, some very concrete proposals. I think they're driven by some very practical interests in getting issues resolved, and I think the TEP put in certain situations, perhaps could be used as a way of postponing action because of some larger goal. Now, the way it is actually set up over the proposal that Ellen mentioned that Sir Leon first came out with. Now, he had envisioned a huge package where success in one area might be contingent upon success in another area which is not the way the TABD works, and that's the kind of thing that we were concerned about; that progress in one area not be held up because they want to get something in another area before.

Chairman CRANE. Mr. Sophos, what issues has TABD focused on that were out of the TEP initiative between government?

Ms. SOPHOS. Well, from a food perspective, the TABD has been engaged in the biotechnology efforts for some time. However, TABD doesn't really engage in any of the other food areas. So, we were very pleased to see a rather more expansive agenda in the TEP for agriculture and has engaged in trying to enumerate some of those area beyond what traditionally have been the focus of the TABD discussion.

Chairman CRANE. And a final question for the entire panel: What does the TABD propose in the way of resolving the serious dispute with the EU over extraterritorial trade sanctions? Anyone want to volunteer?

Mr. LOVOI. Yes, I'd be happy to, Mr. Chairman. The sanctions issues has been under discussion for some time within the TABD. The European business partners, obviously, are less concerned as our U.S. partners. Generally, the view is the Lugar-Hamilton approach and others, as well, of approaches is the wisest, and the TABD has encouraged Congress to look at that as a possible resolution.

Chairman CRANE. I've been told that we have unilaterally imposed more sanctions in the last 4 years than we have—well, half of all the sanctions in the previous 80 years have occurred in the last 4 years, and, unfortunately, it's one of those God, motherhood,

and apple pie initiatives, but people don't stop to think of what the repercussions might be.

Mr. BERRY. Mr. Chairman, if I could add, actually, the first set of recommendations which came out at the TABD meeting in Seville had a unanimous position shared by European and American representatives there opposing unilateral extraterritorial sanctions. So, there has been a consistent policy at some point to the objection of the U.S. who were embarrassed and found it difficult to address, but there has been a real strong position from the very beginning from the TABD.

Chairman CRANE. Anyone else want to speak to the question? Well, if not, let me express my appreciation to you all. I'm sorry for the chaos here today, but we're grateful for your appearance and we look forward to ongoing communication with you all. Please don't ever hesitate to let us know what's the latest input from your perspective. And with that, I will permit this panel to disappear.

Our next panel is Robert Harness, director, government affairs, Monsanto Company; Kyd Brenner, vice president, Corn Refiners Association; Jeremy Preiss, chief international trade counsel, United Technologies corporation, and finally, Kevin Kelley, senior vice president, external affairs, Qualcomm Incorporated.

And let me welcome our final panel and please try and conform to our general guidelines of oral presentations of five minutes or less. All printed statements will be made as part of the permanent record.

We shall proceed first with Mr. Harness.

STATEMENT OF ROBERT L. HARNESS, DIRECTOR, GOVERNMENT AFFAIRS, MONSANTO CO.

Mr. HARNESS. Thank you, Mr. Chairman. My name is Robert Harness. I'm director of government affairs for Monsanto Company. We applaud your interest in trade issues, particularly for holding this hearing focused on the European Union.

As you know, over the next 50 years the world's population is going to grow significantly with most of the growth in developing countries where many of the world's most fragile natural resources exist. Food production over this same period of time will need to triple.

Biotechnology offers the potential to gain tremendous agricultural productivity and to enhance nutrition with environmentally sustainable farming practices.

We're committed to making the technology broadly available to all farmers. But meeting the increased global food demand requires a trade policy which enables all agricultural interests to succeed. In our effort to help meet the world's food needs using the best agricultural technology, U.S. agriculture could be derailed by trade barriers.

Clearly, unfortunately, there are nations using non-tariff, non-science based-barriers to trade, to slow down trade and agricultural commodities and foods that have been developed through biotechnology. If these trade barriers are allowed to proliferate, the result will be a very chilling effect on the biotech industry and on U.S. agriculture.

So, turning to the specific problems that we've faced in the EU, there are three general areas of concern. They are: one, the operation of the EU regulatory approval biotech products versus more than 30 in the United States.

The European regulatory process had not produced a single product approval in well over a year. On March 18, the European commission completed the approval of three corn products and one oil seed rape product, however, two of the approvals had not yet received the final administrative approval required to complete the effort that would come from the French government.

This is after over 2.5 years of really painstaking process and multiple scientific reviews. The result has been a significant trade interruption. The pending corn approvals are a good example of the problems companies face in Europe. U.S. and EU industry leaders have urged the European commission to make the biotechnology product approval process more predictable and transparent, such as the process we currently experience in the United States.

Through the Transatlantic business dialog, which you've heard about through the last panel, there has been an effort to reduce trade barriers in this area. A number of specific recommendations were made, including four dealing specifically with the regulatory process.

First, the clarity and consistency be incorporated into the regulatory programs and that specific guidance be issued; second, that a common road map for regulatory approvals be adopted; third, that product data requirements be harmonized between the two sides, and fourth, that a common time-line for decisionmaking be used.

The second trade issue is product labeling, which is a matter of ongoing debate in Europe and one which has significant potential to impact trade. In the United States, food labels are used to inform the public of nutritional and safety differences in food they eat. Foods produced through biotechnology are not singled out as a specific category for labeling.

The policy debate in Europe is based on the use of a food label to inform consumers of the presence of "a product of" biotechnology, regardless of whether the food is different from a safety or nutritional standpoint.

We fully support the science-based approach to food labeling used by the U.S. FDA. While we recognize that the labeling programs can be used to provide information to consumers, such information and process must not be allowed to create non-science based segregation requirements in commodity crop markets that will lead to trade disruptions and significant cost increases for consumers.

The third and final point is the public awareness and confidence in biotechnology. Broad acceptance of biotechnology requires that consumers be given relevant and accurate information about the foods they eat. Public confidence in the regulatory system is also important in gaining acceptance of biotechnology. In the end, gaining broader public acceptance naturally means less chance of trade issues, and industry and government must work together on this important effort.

So, in conclusion, Mr. Chairman and members of the committee, we appreciate your interest in reducing trade barriers around the

globe. As you meet with your European colleagues or discuss these matters here in the United States, I urge you to raise these issues. It's important to seek meaningful changes in the EU regulatory system to make it operate successfully and to seek ways to build public awareness and confidence in agricultural biotechnology.

In terms of the upcoming WTO round focusing on agriculture, we ask the U.S. to address the issue of biotechnology to achieve a greater degree of transparency and harmonization in every nation's regulatory regime.

Thank you very much, Mr. Chairman. I appreciate the opportunity to be here.

[The prepared statement follows:]

Statement of Robert L. Harness
Director, Government Affairs for Monsanto Company
before the House Committee on Ways and Means
Subcommittee on Trade
July 28, 1998

Mr. Chairman my name is Robert Harness. I am the Director for Government Affairs for the Monsanto Company. Monsanto applauds your interest in trade issues and compliments the leadership of the Committee on holding this particular hearing that is focused on the European Union (EU).

As you know, over the next 50 years the world's population is expected to grow significantly. Most all of this population growth will be in developing countries where many of the world's most fragile natural resources exist. Food production will need to triple over this time period.

Biotechnology offers the potential to gain tremendous agricultural productivity and enhance nutrition with environmentally sustainable farming practices.

Already we are offering farmers new tools. We are gratified that farmers have adopted Monsanto technology so quickly. It's a testament to two things: 1) that the technology really works and 2) that farmers understand that technology is what will keep them competitive in the global marketplace. We are committed to making this technology broadly available to all farmers, in the varieties they want, from the seed companies they trust.

But meeting the increased global food demand requires a trade policy which enables all agricultural interests to meet the challenges we face. In its effort to help meet the world's food needs, United States agriculture could be derailed by trade barriers. What is worrisome is that even after the last global trade agreement which reduced many trade barriers, countries are using other means to impede trade.

Clearly there are nations using non-tariff barriers to trade, that are not scientifically-based, to slow-down trade in agricultural commodities and foods that have been developed through biotechnology. If this situation is not addressed and non-tariff trade barriers are allowed to proliferate, such barriers will have a chilling effect on the biotech industry. Nobody wins in this situation. We cannot let this happen.

Turning to the specific trade problems Monsanto has faced in the EU, there are three general areas of concern. They are: (1) the operation of the EU approval process for products of agricultural biotechnology, (2) the labeling of products produced through this technology, and (3)the public acceptance of biotechnology, which may ultimately be the most difficult trade issue of all.

I will begin first with the EU approval process. Without question, the operation of the relevant EU regulatory systems dealing with agricultural biotechnology is causing significant problems. The numbers tell the story. The regulatory system in Europe has approved just nine agriculture biotech products. The European regulatory process had not produced a single product approval in well over a year. On March 18 the European Commission completed the process of approving three corn products and one oilseed rape product; however, two of these approvals are not yet complete and it appears that the French Government continues to delay the final administrative approval of these products.

The pending corn product approvals in Europe are a good example of the problems companies face in Europe. Worse yet, the approval process continues to change. Late last year the European Commission sent the corn product dossiers through yet another technical evaluation, causing a three month delay. Both EU and US industry leaders have urged the European Commission to make the biotechnology product approval process more predictable and transparent, as we currently experience with the USDA, FDA, and EPA approval processes in the U.S.

Through the TransAtlantic Business Dialog (TABD), a three year old US-EU Government/Industry effort to reduce trade barriers, industry has made a number detailed recommendations:

1) that clarity and consistency be incorporated into the regulatory programs,
2) that a common "road map" for regulatory approvals be adopted,
3) that data requirements used for review and approval of products be harmonized,
4) that common timelines for decision making be used to the maximum extent possible.

The goal of all of these recommendations is to reduce trade barriers by having compatible, predictable and transparent regulatory approval programs on both sides of the Atlantic.

The second trade issue is product labeling which is a matter of ongoing debate in Europe and one which has significant potential to impact trade. In the United States, food labels are used to inform consumers of nutritional and safety differences in foods they eat. Foods produced through biotechnology are not singled out as a specific category for labeling. The policy debate in Europe is based on the use of the food label to inform consumers of the presence of a "product of" biotechnology, regardless of whether the food is different from a safety or nutritional standpoint.

Monsanto fully supports the science-based approach to food labeling used by the US FDA. While we recognize that local labeling programs can be used to provide information to consumers, as is the case in Europe, such "information" and process labeling must not be allowed to create non-

science based segregation requirements in commodity crop markets that will lead to trade disruption and significant cost increases for consumers.

A true "free trade" market would create the opportunity for product offerings which meet specific consumer needs without dictating those conditions and costs unfairly to all consumers. It is very important that labeling programs be science-based and non-discriminatory and not impose trans-boundary trade barriers.

The third and the final point is public awareness and confidence in biotechnology. Broad acceptance of biotechnology requires that consumers be given relevant and accurate information about the foods they eat. Public confidence in the regulatory system is also important in gaining acceptance of biotechnology. In the end, gaining broader public acceptance naturally means less chance of trade issues.

We are committed to providing consumers with information about our products and technologies, but public addeptance of biotechnology must be built on an effective, science based regulatory system.

Conclusion

In sum, Mr. Chairman and distinguished Members of this Committee, Monsanto appreciates your interest in reducing all of trade barriers around the globe. As you meet with your European colleagues, I urge you to raise the issues I have outlined in my testimony. It is important to engage in an useful dialogue to seek meaningful change in the EU regulatory system to make it operate successfully and to seek ways to build public awareness and confidence in agricultural biotechnology. In terms of the upcoming WTO round focusing on agriculture, we ask the U.S. to address the issues of biotechnology to achieve a greater degree of transparency and harmonization in every nation's regulatory regimes.

Thank you, Mr. Chairman and I would be happy to answer any questions you and others on the Committee may have.

Chairman CRANE. Thank you, Mr. Harness.

Mr. Brenner.

STATEMENT OF KYD D. BRENNER, VICE PRESIDENT, CORN REFINERS ASSOCIATION, INC. ON BEHALF OF THE CSC BIOTECHNOLOGY COMMITTEE

Mr. BRENNER. Thank you, Mr. Chairman. I'm Kyd Brenner, vice president of the Corn Refiners Association. I'm here today on behalf of the CSC Biotechnology Committee which is comprised of the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the National Cotton Council, the National Oilseed Processors Association, and the U.S. Grains Council.

These groups share a common concern about the trade impact of differences in worldwide regulatory processes for the approval of biotechnology products. To date, the most serious trade problems we have encountered have been in the European Union.

We are here today to express our support for the Transatlantic Economic Partnership, which we see as an excellent opportunity to address these problems.

America's farmers and processors have rapidly adopted the new technology of transgenic crops, and this year, 25 to 30 percent of U.S. corn, cotton, and soybeans, will come from transgenic varieties. The U.S. has an effective and efficient regulatory system that enjoys the trust of consumers. This is not the case in the European Union. The EU approval process for new biotech products is lengthy, non-transparent, and unpredictable.

I'd like to emphasize that the regulatory process is the source of many of the problems more than the substance of the regulations. In the United States, regulatory approval can be achieved in about a year. Some products have been in the EU pipeline for well over two years and are still not fully approved. This disparity in time frames creates trade problems. Crops approved and planted in the U.S. can't be exported to Europe until they receive EU approval. However, it is not feasible, on any large scale, to segregate crops in bulk in commodity handling and transportation systems. Therefore, our Europeans markets remain at risk as long as the approval processes are on entirely separate tracks.

This is exactly the problem U.S. corn growers encountered this year. U.S. growers stand to lose sales of about $200 million because of the delay in regulatory processes in Europe. Repetition of these problems year after year will only exacerbate the problem, jeopardizing nearly $4 billion in U.S. soy, corn, and cotton exports.

The TEP can provide a vehicle for some long-term solutions for this problem, and we agree that biotechnology should be a high priority item on its agenda. The important ingredient, in our belief, for progress on these issues is political will. Regulatory officials in the U.S. and Europe have been discussing these issues for years. However, regulatory officials cannot resolve the issues if the political will to find a solution is lacking.

If the cooperation demonstrated at the May summit is extended to discussions on biotechnology under the TEP, we believe the process can be substantially improved without undermining legitimate national objectives of protecting public health and safety.

While harmonization of world processes would be a long-term goal and would help to eliminate many problems, we have no illusions that harmonization can be achieved quickly. Given the short time frame envisioned for the TEP, we think the greatest benefit would come from rapid agreement on several points.

First, a documented commitment to work toward harmonization in biotechnology based on principles of sound science, transparency, predictability, and timeliness.

Second, development of a common and publicly available tracking system for products in the approval process would be immensely helpful for producers and processors who are not the actual applicants in the biotechnology regulatory system.

And last, an early warning system to let commercial partners know if there are any unexpected delays in the regulatory process, including a reasonable expectation of how long it should take a product to move through the approval system. Agreement on these points would certainly not solve our problems, but would help build confidence among the interested parties.

Mr. Chairman, we believe the TEP does offer an excellent opportunity progress on biotechnology regulatory development, and we are certainly prepared to support the initiative in any way we can. Thank you.

[The prepared statement follows:]

Statement of Kyd D. Brenner
Before The
Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
July 28, 1997

Mr. Chairman and Members of the Committee, my name is Kyd D. Brenner. I am vice president of the Corn Refiners Association, Inc., and appear before you on behalf of the CSC Biotech Committee. The CSC Biotech Committee is comprised of the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the National Cotton Council, the National Oilseed Processors Association, and the U.S. Grains Council.

These groups have joined together because of their common concern about the potential trade impact of the regulatory processes for the approval of biotechnology products in many countries that are important markets for U.S. bulk commodities and processed products. We have already experienced significant trade disruptions in exports of U.S. agricultural products as a result of the failure of regulatory processes. As more biotechnology products are commercialized and more countries adopt conflicting regulations, the risk for our exports increases. To date, the most serious trade problems we have encountered have been in the European Union (EU).

We appear today to discuss our concerns about obstacles to trade in agricultural biotechnology products and to support the U.S.-EU Transatlantic Economic Partnership (TEP), which we see as an excellent opportunity to address these pressing problems. We

congratulate the leadership in Washington and Brussels for moving away from confrontation and towards solutions to this enormously complex and costly problem.

America's farmers have rapidly adopted the new technology of transgenic crops. Commodities derived from biotechnology were planted commercially in the United States for the first time in 1995. This year, approximately 25 percent of the corn acreage, 30 percent of the soybean acreage, and 30 percent of the cotton acreage are devoted to genetically modified varieties. Given the speed at which new products are being developed, we expect growth in the commercial use of transgenic varieties to continue.

One of the reasons the United States is the world leader in the development and commercialization of agricultural biotechnology products is that we have an effective and efficient regulatory system that enjoys the trust of consumers and the general public. Unfortunately, this is not the case in many other regions of the world, including the EU. The EU approval process for new biotech products is lengthy, non-transparent, and unpredictable.

I want to emphasize that the regulatory process is the source of the problem more than the substance of the regulations. In the United States the regulatory approval process for a new product can be completed in about a year to a year and a half. Some products have been in the EU system for well over 2 years and are still not fully approved. This disparity in time frames creates trade problems. Crops approved and planted in the United States can't be exported to Europe until they have received the EU's approval. However, it is not feasible on any large scale to segregate transgenic from non-transgenic crops in the bulk commodity handling and transportation system. Therefore, our European markets remain at risk as long as U.S. and European approval processes are on entirely separate tracks.

This is exactly the problem U.S. corn exports encountered this year. Sales of about $200 million in U.S. corn have been jeopardized by unnecessary delays in the EU approval process for three corn varieties, two of which still have not received final approval.

Repetition of these problems year after year will further harm U.S. agricultural exports and the incomes of producers, processors, and exporters, but that is exactly the risk we face if we do not find a long-term solution. The EU is an important market for U.S. agricultural exports. In 1997, the U.S. exported $2.7 billion of soybeans and soybean products, $1 billion of corn and corn products, and $100 million of cotton and cotton products to the EU. We cannot afford to let problems created by regulatory processes shut us out of the EU or any other market around the world.

The TEP process provides a way to begin working toward a long-term solution and, hopefully, to mitigate the negative impact of the regulatory approval process in the short-term. Biotechnology has to be a high-priority action item on the TEP agenda.

We are encouraged that biotechnology regulatory issues were specifically mentioned when the TEP was announced at the U.S.-EU Summit in May. In our view, the most important ingredient for progress on these issues is political will. Regulatory officials in the United States and Europe have been discussing these issues for years. However, regulatory officials cannot resolve the issues if the political will to find a solution is lacking.

If the political cooperation that was demonstrated at the U.S.-EU Summit is extended to the discussions on biotechnology under the TEP, we believe the regulatory process can be substantially improved without undermining legitimate national objectives of protecting public health and safety.

While harmonization of U.S. and EU approval processes would help to eliminate

many of the problems we have encountered, we have no illusions that harmonization can be achieved quickly. Given the short time frame envisaged for the TEP process, we think the greatest benefit would come from reaching agreement on certain points that would demonstrate the political will to move toward harmonization of our regulatory processes.

We would propose an agenda for the TEP discussions on biotechnology regulations that includes the following points:

For the long-term:

1. As a first step, a commitment to work toward harmonization based on certain principles would help guide discussions in the right direction. These principles are sound science, transparency, predictability, and timeliness.

For the shorter-term:

2. Improve transparency through information sharing. A common, publicly available, tracking system for products in the approval process would be immensely helpful for those such as producers and processors who are not directly involved in the process.
3. Improve predictability with an early warning system. There should be a reasonable expectation of how long it should take a product to move through the approval system. If a product encounters problems, an early warning system could help avoid potential trade problems.

Agreement on these points would certainly not solve all of our problems, but it would help to build confidence among the interested parties on both sides of the Atlantic and move us toward our goal of eventual harmonization.

Mr. Chairman, the producers, processors, and exporters of America's agricultural products do not have a direct role in the regulatory process for biotechnology products, but we have a huge stake in making sure the regulatory process works smoothly and does not create trade problems. We believe the Transatlantic Economic Partnership offers an excellent opportunity to begin seriously addressing our problems. The primary objective for the TEP process should be to achieve a political consensus to improve and eventually harmonize our regulatory processes and to support regulatory officials in achieving these objectives. We are prepared to support this initiative in any way the Administration wishes.

Thank you. I would be pleased to answer any questions.

Chairman CRANE. Thank you.

Our next witness is Mr. Preiss.

STATEMENT OF JEREMY O. PREISS, CHIEF INTERNATIONAL TRADE COUNSEL, UNITED TECHNOLOGIES CORP., ON BEHALF OF THE NATIONAL FOREIGN TRADE COUNCIL AND FOREIGN SALES CORPORATION COALITION

Mr. PREISS. Thank you, Mr. Chairman. I appreciate the opportunity to testify here today. My name is Jeremy Preiss, and I'm the chief international trade counsel for United Technologies. I'm here today representing United Technologies, the National Foreign Trade Council and the FSC Coalition, an umbrella group of large and small companies seriously concerned about the European Union's WTO challenge to the foreign sales corporation, or FSC, tax provisions.

In earlier testimony today, we heard how the Transatlantic Economic Partnership's proposed trade liberalization program will create many economic benefits. The goals of the TEP are no doubt laudable, and it's undeniable that greater trade and investment liberalization will yield economic gains for both the United States and European Union. But the good will and cooperative spirit accompanying the TEP initiative are at odds with the EU's pursuit of a misguided WTO challenge to the FSC tax provisions.

The companies I represent here today have a difficult time reconciling the forward-looking goals of the Transatlantic Economic Partnership with the EU's unwarranted attack on the FSC. Because the EU's WTO challenge distorts the FSC tax provisions, I believe it's important to review briefly what the FSC is and what it is not.

First, as all of you know, the FSC program was drafted and enacted by Congress in 1984 expressly to conform to a detailed GATT ruling that articulated the proper relationship between different systems of taxation and international trade rules. The FSC replaced the Domestic International Sales Corporation or DISC, which, along with the tax practices of three European countries, had previously been found to be a prohibited export subsidy under GATT rules.

Despite the great care that Congress and other U.S. officials took to ensure that the FSC was, and still is, consistent with applicable trade rules, the EU has decided after more than 13 years to challenge the program. Curiously, it has taken the EU considerable time to acquire the view that the FSC is inconsistent with the GATT and WTO rules. And, at the same time, the EU has not shown how their commercial interests have been disadvantaged by the FSC.

The intent of the FSC and the DISC before it is to give U.S. exporters tax treatment comparable to the treatment provided to their foreign competitors who benefit from European territorial-style tax systems. The territorial tax system generally exempts all income earned outside the country from income tax, and all exports from value-added, and other consumption taxes.

In contrast, the U.S. worldwide tax system generally taxes all the income of U.S. companies, regardless of where it is earned.

The EU would have the WTO believe that the FSC is an unfair subsidy. This is simply untrue. In fact, the FSC merely applies the same principle of territorial income taxation long enjoyed by EU companies to U.S. exporters who choose to establish a qualifying foreign sales corporation outside the United States. And by permitting U.S. exporters to exempt a portion of their export-related income from taxation, the FSC neutralizes some, though not all, of the tax advantages that European companies receive under their territorial tax systems. In short, the FSC attempts to level the tax playing field on which U.S. exporters and foreign exporters compete.

Before I go any further, I'd like to underscore an obvious, yet very important point. The U.S. companies concerned about the EU's challenge to the FSC are not taking issue with the WTO, an institution we strongly support. Rather, we're taking issue with the EU's actions. The WTO did not, on its own initiative, seek to adjudicate this dispute. Rather, it's the EU that has sought to shoehorn a highly complicated, highly technical tax matter into the dispute settlement process of a multilateral trade organization.

In doing so, the EU has ignored more appropriate fora where tax issues such as this have traditionally been handled. The EU's challenge to the FSC has the potential to bog down the WTO in the technicalities of tax policy. And the EU precedent may spur additional WTO challenges to other countries' tax policies. Indeed, the tax policies of many member States of the EU are vulnerable to the same trade arguments and theories the EU is now advancing against the FSC. The U.S. trade representative has identified at least five such States: Belgium, France, Greece, Ireland, and the Netherlands.

I think that we can all agree that making the review of tax policy a regular part of the WTO's diet would be neither good for the WTO, nor tax policy. It's a result we're working hard to avoid, in conjunction with the office of USTR.

In sum, the EU's challenge to the FSC is deeply flawed and could produce unintended, adverse consequences for both the WTO and for tax policy. And, to paraphrase recent comments by Ambassador Barshefsky, the EU's challenge cannot help but significantly detract from joint U.S.–EU efforts to explore greater cooperation in the trade and economics spheres.

Thank you again for the opportunity to speak here today and I'd be happy to answer any questions you may have.

[The prepared statement follows:]

WRITTEN STATEMENT FOR THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS
July 28, 1998

THE EU CHALLENGE TO THE FOREIGN SALES CORPORATION

Jeremy O. Preiss
Chief International Trade Counsel
United Technologies Corporation

Mr. Chairman, Members of the Committee: Thank you for giving me the opportunity to speak here today. My name is Jeremy Preiss, from United Technologies Corporation (UTC), and I am here on behalf of UTC, the National Foreign Trade Council,[1] and the FSC Coalition, which represents hundreds of American companies -- large and small -- that are seriously concerned about the European Union's World Trade Organization (WTO) challenge to the U.S. foreign sales corporation tax structure. Today I would like to offer a few observations on the background of the dispute and on its potential impact on the new Transatlantic Economic Partnership (TEP).

We have heard today many of the potential benefits of the broad trade liberalization program to be launched under the TEP. As Chairman Crane has noted, however, the outcome of several ongoing WTO disputes between the U.S. and the EU may be central to advancing the TEP's ambitious agenda. In particular, it is the view of our coalition that the EU's recent challenge to the foreign sales provisions (the "FSC") is a potential roadblock to further trade liberalization between the U.S. and the EU.

The FSC has operated for 13 years and has been utilized widely, by both U.S. companies and affiliates of EU companies. Only now, as other issues have escalated, has the EU lodged a formal challenge under the GATT and WTO agreements. There are several reasons why this action, launched at the same time that the TEP is being touted by the EU as a new stage in trade relations between the U.S. and the EU, raises concerns.

First, the FSC was specifically designed to conform with GATT requirements. The statute creating the FSC structure was enacted by Congress in 1984. It was designed specifically to respond to European concerns about the domestic international sales corporation, or "DISC," structure that Congress had enacted in 1971. Both provisions were designed to neutralize some of the tax advantages for exporters inherent in European territorial-type tax systems, which generally exempt all income earned outside the country from income tax and all exports from value-added and other consumption taxes.

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[1] The National Foreign Trade Council, Inc. (NFTC) is an association of businesses with some 550 members, founded in 1914. It is the oldest and largest U.S. association of businesses devoted to international trade matters. Its membership consists primarily of U.S. firms engaged in all aspects of international business, trade, and investment. Most of the largest U.S. manufacturing companies and most of the 50 largest U.S. banks are Council members. Council members account for at least 70% of all U.S. non-agricultural exports and 70% of U.S. private foreign investment.

In the 1970s, a GATT dispute settlement panel ruled that the DISC, along with tax practices of three European countries, conflicted with GATT limits on government export subsidies. Following the panel's decisions, the GATT issued an Understanding in 1981 that defined some of the limits on what countries could and could not do to encourage exports through their tax systems. The FSC structure was drafted specifically to comply with the terms of that GATT Understanding. At the time of enactment, therefore, Congress and the Administration believed that the FSC complied with international trade standards established by the GATT. We believe today that the FSC regime continues to comply with those standards as set out in the WTO agreements.

Second, the EU's challenge opens the door to examining a range of tax practices and policies, particularly in countries whose tax systems have the comparative effect of indirectly subsidizing exports. Pursuing the line of inquiry the EU has raised invites reconsideration of the status quo. For example, current rules governing border tax adjustments effectively subsidize exports from countries, like many in Europe, that raise substantial revenues through consumption taxes such as a VAT because the exemption of exports from those consumption taxes is specifically allowed by the WTO's subsidy disciplines, while the exemption of exports from income taxes is open to attack as a prohibited subsidy. One cannot therefore fairly question a limited provision like the FSC without calling into question the far more significant systematic incentives that the territorial tax systems of some leading European countries confer on their corporate taxpayers.

Third, the EU challenge fundamentally misunderstands the purpose and effect of the FSC. Congress enacted both the DISC and the FSC in part to begin leveling the playing field between the U.S. income tax system, which asserts tax jurisdiction over its companies' worldwide income, and the more export-friendly territorial systems. The FSC is not a provision designed to confer a tax benefit on U.S. exporters that is not enjoyed by their competitors abroad; to the contrary, the FSC is designed to ameliorate -- in quite small measure -- a significant tax advantage that is enjoyed by companies exporting from countries with territorial tax systems.

The basic difference between a worldwide system and a territorial system is that a country with a territorial system does not tax most income earned by its residents outside the country, while a country with a worldwide system generally taxes all income earned by its residents, whatever its geographical source. For example, a company resident in a country like France, which has a territorial tax system, could potentially set up a sales branch outside French territory and avoid being taxed by France because the income of that branch has been earned outside the country. Meanwhile, a U.S. company that sets up a sales branch outside the U.S. would be fully taxed on its income by the U.S., and would thus be at a significant competitive disadvantage. By choosing not to tax some of the U.S. company's income, the FSC regime partially reduces that disparity.

Fourth, Congress could easily modify the FSC to eliminate any arguable GATT issues but to increase the tax benefit that it confers. The EU's objection to the FSC is essentially limited to two features: the effect of the administrative pricing rules and the domestic content requirement. Although we believe that those aspects of the FSC comply fully with the applicable

WTO rules, we note that Congress could find ways to modify those features and other elements of the FSC structure in a way that would remove the EU's stated concerns and at the same time would increase the tax benefit to U.S. exporters. Such action would further narrow the structural advantages enjoyed by countries using territorial systems.

Finally, I would like to stress that the U.S. companies concerned about this challenge are not taking issue with the WTO's actions, but with the EU's. The WTO did not seek this dispute and has merely acted according to its procedures in responding to the European requests for dispute settlement. It is the EU that has chosen to bring a highly technical dispute about tax policy to a trade organization.

Thank you again for the opportunity to speak here today. If you have any questions about this issue from the perspective of concerned American companies, I would be happy to answer them.

Chairman CRANE. Thank you, Mr. Preiss.
Mr. Kelley.

STATEMENT OF KEVIN KELLEY, SENIOR VICE PRESIDENT, EXTERNAL AFFAIRS, QUALCOMM INC., SAN DIEGO, CA

Mr. KELLEY. Thank you, Mr. Chairman. My name is Kevin Kelly and I am Senior Vice President for External Affairs of Qualcomm Incorporated. Based in San Diego, Qualcomm is a leader in digital wireless telecommunications and the chief developer of Code Division Multiple Access—CDMA—the world's fastest growing wireless technology. On behalf of Qualcomm, I would like to thank you for providing me with this opportunity to testify before you today regarding the Transatlantic Economic Partnership.

Qualcomm applauds the Administration for its role in forming the TEP and forging closer ties with the European Union. We support the goals outlined in the joint statement announcing the TEP, especially those designed to reduce technical barriers to trade and open markets to new services for the benefit of consumers and enterprises.

We would suggest that the wireless communications sector is a good place for the U.S. and the EU to begin this process. Why is this sector so important? Currently, over 200 million wireless phones are in use around the world, and that number is expected to exceed 1 billion by the year 2005. As this industry expands, more companies, more employees, more investment, will be needed to keep pace with this demand.

In that sector, however, the EU, for years, has closed its market to all but one wireless technology, one that happens to be manufactured mainly by large European concerns. Europe's exclusionary industrial policy has created an impossible environment for developers of alternative wireless technologies now wishing to compete in the European market.

Now, the EU is on the verge of passing legislation that would perpetuate its exclusionary policy by barring competition from alternative U.S. technologies for the next generation of wireless communications. As a starting point, we believe that the administration's ability to work with the EU to overcome this flagrant of protectionism will signal whether the U.S. and the EU are truly committed to an economic partnership. Specifically, the administration needs to take immediate steps to encourage the EU not to pass the pending legislation.

The pending decision would adopt an exclusionary wireless standard set by the European Telecommunications Standards Institute, ETSI. ETSI's next generation wireless standard is based on Qualcomm's CDMA technology. ETSI's acceptance of CDMA technology is a testament to the CDMA's superior capabilities or other standards, including those now used exclusively in Europe.

Qualcomm supports, and actually prefers, the idea of a single CDMA standard for 3(G), and is willing to accept technical alterations that improve its capabilities as long as the standard is compatible with current CDMA systems. The ETSI standard, however, adopts technical features that offer no substantial improvements and appears to be specifically designed to make it incompatible with both current and next generation CDMA systems.

In other words, the legislation would mandate use of CDMA technology, while simultaneously barring CDMA's developers from effectively participating in the European market. Obviously, the pending legislation and its underlying policy of protectionism are directly at odds with the stated goals and objectives of TEP, and if implemented, raise serious questions as to the Europeans' willingness to forge a meaningful economic partnership with the U.S.

The ETSI process and the EU-proposed legislation raise serious questions about the EU's compliance with its obligations under current bilateral and multilateral trade agreements, let alone its commitment to the TEP. The EU has an obligation under the Technical Barriers to Trade Agreement to ensure that no standard is set or any regulation passed that would create an unnecessary obligation to trade.

ETSI's adoption of a standard that lacks technical or economic advantages over a competing standard and, unlike the alternative, is incompatible with most existing standards, is an action that creates an unnecessary barrier to trade in violation of the TBT. Even more troubling is the EU's active consideration of legislation to mandate the standard for the entire community, again in contravention of its obligations under the TBT.

Mr. Chairman, if the EU is not willing to adhere to the agreed-to principles laid out by the WTO, what are we to think about the EU's commitment to the TEP? If the TEP is to mean anything, then the EU must immediately reverse its course regarding the pending legislation and work with the U.S. to allow fair consideration and open competition among existing technologies. If the TEP is to be a success, it must alter the status quo, end protectionism, encourage competition. Only then, will Europe and the United States be true economic partners.

Once again, thank you for the opportunity to testify.

[The prepared statement follows:]

Testimony of Kevin Kelley

Senior Vice President for External Affairs,

QUALCOMM Incorporated

Before the House Subcommittee on Trade

House Ways and Means Committee

July 28, 1998

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Testimony of Kevin Kelley
Senior Vice President for External Affairs, QUALCOMM Incorporated
Before the House Subcommittee on Trade of the House Ways and Means Committee
July 28, 1998

Chairman Crane, Congressman Matsui, members of the Subcommittee, my name is Kevin Kelley and I am Senior Vice President for External Affairs for QUALCOMM Incorporated. Founded and headquartered in San Diego, California, QUALCOMM is a leader in digital wireless telecommunications and the chief developer of Code Division Multiple Access (CDMA), the world's fastest growing wireless technology.

On behalf of QUALCOMM, I would like to thank you for providing me with the opportunity to testify before you today regarding the Transatlantic Economic Partnership (TEP).

SUMMARY:

QUALCOMM applauds the Administration for its role in forming the TEP and forging closer ties with the European Union (EU). We support the goals outlined in the joint statement announcing the TEP, especially those designed to reduce technical barriers to trade and open markets to new services for the benefit of consumers and enterprises.

We would suggest that the wireless communications sector is a good place for the US and EU to begin this process. In that sector, the EU for years has closed its markets to all but one wireless technology, one that happens to be manufactured by large European concerns. Europe's exclusionary industrial policy has created an impossible environment for developers of alternative wireless technologies wishing to compete in the European market.

Now the EU is on the verge of passing legislation that would perpetuate its exclusionary policy by barring competition from alternative US technologies for the next generation of wireless communications. As a starting point, we believe that the Administration's ability to work with the EU to overcome this flagrant act of protectionism will signal whether the US and the EU are truly committed to an economic partnership. Specifically, the Administration needs to take immediate steps to encourage the EU not to pass the pending legislation.

The pending EU decision would adopt an exclusionary wireless standard set by the European Telecommunications Standards Institute (ETSI) for the next generation (known as third-generation or 3G) of wireless service. ETSI's next generation wireless standard is based on QUALCOMM's CDMA technology, the very technology that powers many wireless systems in the US and around the world. ETSI's acceptance of CDMA technology is a testament to the technology's superior capabilities over other standards, including those used exclusively in Europe. QUALCOMM supports, and actually prefers, the idea of a single CDMA standard for 3G, and is willing to accept technical alterations that improve its capabilities as long as the standard is compatible with current CDMA systems. The ETSI standard, however, adopts technical features that offer no substantial improvements and appear specifically designed to make it incompatible with both current and next generation CDMA systems. In other words, the legislation would mandate use of CDMA technology while simultaneously barring CDMA's

developers, providers, and consumers from effectively participating in the European market. Obviously, the pending legislation and its underlying policy of protectionism are directly at odds with the stated goals and objectives of the TEP, and if allowed to be implemented, raise serious questions as to the Europeans' willingness to forge a meaningful "economic partnership" with the US.

Why is this issue important? Today more than one-half of the world's population has never made a phone call. Wireless communications offer an immediate and economical solution for developing countries that want their citizens to have access to the basic communications we take for granted in the United States. Currently over 200 million wireless phones are in use around the world and that number is expected to exceed 1 billion by 2005. This is an exciting field filled with endless potential. Hundreds of companies employ thousands of people to provide the services offered to today's consumers. As this industry expands, more companies, more employees, more investment will be needed to keep pace with demand. If Europe is allowed to corner the marketplace by creating an artificial monopoly for the next generation of wireless communications, innovators, consumers and US companies will be the losers.

It is important to note how QUALCOMM came to find itself in this unpleasant position.

During Europe's third generation standard setting process QUALCOMM attempted to participate in ETSI and work with the Europeans to develop a standard that would not strand existing technologies. Unfortunately what we encountered was a system devised and controlled by European companies who have no interest in allowing competition into their protected market. The ETSI process is such that only European companies may participate, and the number of votes a company has is based on its revenue in Europe. QUALCOMM was forced to form a European subsidiary just to participate in the process. Of course since CDMA was never standardized in Europe, QUALCOMM has no European revenues. Consequently, our subsidiary has only one vote. In contrast, our two major competitors, who happen to be the chief backers of Europe's exclusionary standard, control large blocks of votes – as many as 68 in some instances. Executives of those same competitors chaired the committees and working groups that considered the various technical recommendations for 3G. This, coupled with the fact that it takes 71% of the vote to pass a standard, and approximately 12% of the members control 72% of the vote, it is not surprising that QUALCOMM's recommendations fell on deaf ears.

More important, however, the ETSI process and the EU's proposed legislation raise serious questions about the EU's compliance with its obligations under current bilateral and multilateral trade agreements, let alone its commitment to the TEP. The EU has an obligation under the Technical Barriers to Trade Agreement (TBT) to ensure that no standard is set or any regulation passed that would create an unnecessary obstacle to trade. ETSI's adoption of a standard that lacks technical or economic advantages over a competing standard and, unlike the alternative, is incompatible with most existing standards, is an action that creates an unnecessary barrier to trade in violation of the TBT. Even more troubling is the EU's active consideration of legislation to mandate the standard for the entire community, again in contravention of its obligations under the TBT.

Mr. Chairman if the EU is not even willing to adhere to the agreed-to principles laid out by the WTO, what are we to think about the EU's commitment to the TEP? If the TEP is to mean anything, then the EU must immediately reverse its course regarding the pending legislation, and work with the US to allow fair consideration and open competition among existing technologies, including cdmaOne and GSM. They should also work cooperatively with the US toward a converged 3G standard that is fair and beneficial for operators and consumers worldwide. If the TEP is to be a success, it must alter the status quo, end protectionism and encourage competition. Only then will Europe and the United States be true economic partners.

OVERVIEW:

QUALCOMM is the chief developer of Code Division Multiple Access (CDMA) technology, a wireless technology serving as the basis for a new generation of digital wireless services. CDMA technology supports cellular systems, personal communications services (PCS), and wireless local loop systems. CDMA is also the basis for cdmaOne, an American invention, and the fastest growing digital wireless standard in the world. Less than three years after its first commercial deployment in Hong Kong, cdmaOne is the dominant digital technology in the United States, Korea and Mexico, and has been deployed throughout Asia, Latin America, Africa, Russia and Eastern Europe, with commercial launches in Japan and Australia later this year.

Noticeably absent from the preceding list is the European Union (EU) or any of its individual member states. The reason for this is that the EU's standard-setting regime for wireless technology bars products based upon competing wireless technologies from participating in the Western European market. Even more troubling is that efforts are underway to continue Europe's exclusionary practice in the next generation of wireless technology, known as third-generation wireless or 3G. If this effort is successful, it will seriously harm the marketability of QUALCOMM's wireless technology around the globe.

HISTORICAL PERSPECTIVE

Around the world, standards are developed by wireless manufacturers, operators and, in countries other than the United States, government regulators. In addition to ETSI , other major standards bodies include the Association of Radio Industries and Businesses (ARIB) in Japan, the Telecommunications Industry Association (TIA) and Committee TI/PI in the United States, and the TTA in South Korea. The International Telecommunication Union (ITU) is an international body that also sets standards, but frequently attempts to coordinate the standards decisions of these regional and national groups. The ITU is currently reviewing submissions to create a standard for the next generation of wireless technology in a process known as IMT-2000. A 3G standard is expected from the ITU in 1999.

European Wireless Development:

In 1982, the European Conference of Posts and Telecommunications (CEPT) administrations formed a committee known as the Groupe Speciale Mobile (GSM) to develop a second-generation pan-European cellular system. The main reason for the CEPT action was that its member countries were using a number of incompatible analog cellular standards and it wanted to develop a single standard to facilitate pan-European roaming. Innovative technologies that offered significant technical benefits, such as CDMA, were rejected because the European planners concluded that such systems were not mature enough to meet the planned 1991 target date for GSM. The operators from the CEPT countries signed a Memorandum of Understanding, later called the GSM MoU, in which they all agreed to deploy the new GSM standard in the same frequencies to facilitate roaming between European countries. In 1989, CEPT transferred

the GSM committee to ETSI. ETSI completed the specifications of the system in the late 1980s and commercial service was initiated in 1992.

Once Europe had its common cellular standard, the game changed from devising legitimate technical standards to creating an exclusionary industrial policy that would enable European manufacturers to market GSM around the world from their protected home market. The system was renamed Global System for Mobile Communications, and the nature of the GSM MoU was expanded to include all operators "committed to building and implementing GSM-based systems and government regulators/administrations which issue commercial mobile telecommunications licenses." The scope and objectives of the GSM MoU were also broadened to promote GSM as a standard around the world.

More significantly, the EU embarked on a policy of denying GSM's competitors entry into the European market. Nowhere was this policy more evident than in the emerging PCS marketplace. When the various European governments began allocating spectrum for PCS, each had the opportunity to allow the new operators to offer service using any available technology, including CDMA. Instead the EU mandated that new operators use the existing GSM technology to prevent competition from non-European technology providers.

US Wireless Development:

By contrast, the United States has welcomed competition between all digital standards. In fact, rather than disapprove Europe's GSM standard to protect the US market, TIA standardized GSM in a few short months. The only consideration was to give the new PCS service providers a wide choice among available standards and then let the market decide. Today, American consumers benefit from a choice between digital systems including cdmaOne, GSM and a third digital option, TDMA, and the long available analog technology known as AMPS. This open market system has allowed competition to thrive and promoted the type of innovation that allowed the US to submit four standards to the ITU for consideration in the IMT-2000 process.

THIRD-GENERATION STANDARDS

As I stated previously, regional groups work through the ITU toward a converged world third-generation wireless standard. Two of the goals of IMT-2000 are high data transfer rates and global roaming. Unfortunately, as the rest of the world moves towards a converged standard, ETSI and the EC are once again are insisting on a single standard for Europe known as W-CDMA – a standard that is incompatible with the networks running competing standards like cdmaOne and TDMA. This means that only operators of GSM systems will have a clear path to the third generation. All other wireless providers would be stranded and either have to scrap existing networks, or expend considerable capital to offer their customers W-CDMA services.

ETSI's choice of a single exclusionary standard is significant for two reasons. First, the European Council of Ministers and the European Parliament are considering an EU-drafted Decision that would effectively convert the W-CDMA standard into a mandatory technical regulation. Wireless systems not in compliance with the standard would not be licensed. This

would lock products based on US technology out of the market as a matter of EU law. Second, the United States has decided to submit four 3G standards to the ITU, including the QUALCOMM supported CDMA standard known as cdma2000, and W-CDMA. ETSI's members, working with European policy makers, clearly hope to exploit America's open market by maintaining their protected home market while enjoying the right to compete openly in the United States.

Needless to say, these actions have profound consequences for purchasing decisions being made today. With Europe standing behind a single exclusionary standard, and the US currently accommodating multiple standards, countries and operators may decide to deploy only W-CDMA in order to follow the "path of least resistance" and invest in those technologies that are absolute mandates in major world markets.

TRADE IMPLICATIONS

Article 4 of the World Trade Organization (WTO) Agreement on Technical Barriers to Trade ("TBT Agreement") obligates the EU to ensure that its standards-setting organizations, such as ETSI, do not prepare, adopt or apply standards "with a view to, or with the effect of, creating unnecessary obstacles to international trade." Similarly, Article 2.2 of the TBT Agreement requires the EU to ensure that its technical regulations be no more trade-restrictive than necessary to fulfil a legitimate objective.

We believe that ETSI's support of a single W-CDMA standard, and its refusal to consider cdma2000 for third-generation service, in fact violates the TBT Agreement.

The critical point with respect to the TBT Agreement is that the standard adopted by ETSI creates an obstacle to trade in cdmaOne and cdma2000-based equipment by not allowing them to compete in the European market. The trade barrier is also completely unjustified because cdma2000 offers superior performance relative to wireless systems based on W-CDMA, and greater compatibility with existing systems.

The technological differences proposed by the backers of W-CDMA offer no significant benefits to European wireless operators or consumers relative to cdma2000 and, in fact, compromise W-CDMA performance relative to cdma2000 in several areas. Cdma2000 provides for greater call clarity, high data rate transmission, fewer dropped calls, global roaming, and greater voice quality as compared to W-CDMA. Also, cdma2000 would meet the performance goals outlined by the ITU in its IMT-2000 proceeding; these goals are the primary criteria guiding standards efforts in the third generation. Moreover, QUALCOMM has equal claims to intellectual property in W-CDMA and cdma2000, which means that there is no economic justification based on intellectual property for choosing one standard over the other.

More importantly, W-CDMA is actually a more restrictive choice than cdma2000 because it is incompatible with existing systems that utilize the IS-41 network. The IS-41 network is the backbone of most US wireless systems including not only cdmaOne, but also TDMA and AMPS systems (GSM operators utilize a network known as GSM-MAP).

Cdma2000, by contrast, offers evolution paths for all systems on all networks as an interim step on the road to third generation service.

ANTI-COMPETITIVE ASPECTS OF THE ETSI PROCESS

Despite the clear advantages of cdma2000, our efforts to have the cdma2000 standard considered during the ETSI process met with overwhelming resistance. The reasons for this resistance were not technological, but rather were economic. Unlike the Telecommunications Industry Association here in the US, where any company can join and each company has an equal vote, membership in ETSI is limited to European-based companies and votes are weighted based on the member's revenues. As a result, the ETSI process is dominated by a handful of large European manufacturers and operators. For example, Ericsson directly controls more than 65 votes while a US company like QUALCOMM – who had to form a European subsidiary just to participate -- has only one vote. The weighted voting process also means that while it takes 71% of the votes to pass a standard, approximately 12% of the members control over 71% of the vote. Likewise it takes only 29% of the votes to block a standard, and fewer than 5% of the members control over 29% of the vote. If these rules applied in the House of Representatives, approximately 20 members would have the power to kill any bill.

In addition, ETSI's committee and working group Chairs and Vice-Chairs wield enormous power in the standard setting process. It is significant that all of QUALCOMM's contributions to the third-generation process were reviewed by a committee with a Chairman from Ericsson and a Secretary from Nokia – two European-based companies that currently utilize GSM and back the W-CDMA standard exclusively for 3G. Not surprisingly, QUALCOMM's contributions to ETSI on third-generation were tabled or voted down by the group's largely European membership. By contrast, when the GSM operators and manufacturers sought a standard for GSM in the US PCS frequency bands, it was granted to them in approximately three months.

CURRENT STATUS

Faced with a protectionist European industrial policy and ETSI's nonobjective standard setting process, QUALCOMM has been forced to fall back on its intellectual property rights to protect its current customers and its position in the next generation of wireless technology. W-CDMA is based on the CDMA air interface, and QUALCOMM holds "essential" IPR for this standard. QUALCOMM holds more than 130 patents relative to CDMA, and has approximately 400 patent applications pending around the world. Before any W-CDMA system can be manufactured and commercially deployed, QUALCOMM must agree to license its IPR. QUALCOMM, however, will not license our IPR for use in a third-generation standard that is designed to exclude QUALCOMM and other cdmaOne operators and manufacturers from the marketplace. QUALCOMM has asked that all parties agree to three principals: 1) that similar proposals, such as cdma2000 and W-CDMA, be converged into single worldwide standard; 2) that any converged standard accommodate both GSM-Map and IS-41 networks, the two dominant networks in the world; and 3) that the standard be an evolution of current generation

CDMA unless it can be clearly proven that changes would result in benefits both in performance and cost efficiency.

We are also concerned by reports that the United Kingdom and other European states are planning spectrum auctions for third-generation service as early as May of next year. These same reports suggest that only carriers providing W-CDMA service will be allowed to participate in the auctions. Should these states award licenses to operators deploying W-CDMA without our agreement to license our IPR, we believe this would violate the EU's trade and intellectual property obligations.

CONCLUSION

The European approach to standard setting and the regulation of wireless communications is in clear conflict with the objectives outlined in the joint statement announcing the TEP. Quite simply, the EU has failed to demonstrate any inclination to operate in this field as a partner of the United States. The problem created by ETSI's decision to support a single W-CDMA standard for third-generation wireless telecommunications requires immediate action, and QUALCOMM will continue to pursue such action through all means available to it. More generally, however, the ETSI process raises serious long-term concerns, and in light of the agenda for bilateral action proposed under the TEP, we request that the USTR and other relevant US agencies use the implementation of the TEP as an opportunity to raise these issues with the EU and its Member States.

QUALCOMM believes that all parties can and should work together toward a converged third-generation standard that treats existing investments fairly and provides significant benefits for operators and consumers. QUALCOMM takes its obligations as a corporate citizen in this global market very seriously. Our senior management is willing to devote its personal time and attention to finding a sound solution for the introduction of a third-generation standard that will benefit everyone. We welcome discussions with both companies and governments involved in the process. The obstacles to this goal are not insurmountable, but our common task will be easier if the European Union and European manufacturers reconsider the philosophies that have restricted their markets to competition and limited consumer choice.

Mr. Chairman, thank you again for affording me the opportunity to testify. I would be happy to answer any questions you or other committee members may have.

Chairman CRANE. Thank you, Mr. Kelley.

Mr. Harness, what are your concerns about non-science based segregation and labeling requirements?

Mr. HARNESS. Well, I think the primary concern, Mr. Chairman, is that any kind of labeling proposal should be science-based. It shouldn't create any kind of arbitrary distinction that would require segregation without a basis for segregating and differentiating.

The concern would be that if a non-science based approach forced segregation, first of all, it probably isn't possible in the U.S. system for commodity products. Secondly, if it were to be made possible, it would be extremely expensive and the cost would be past the relative system and our technological advantages in agriculture would be lost in terms of the economic efficiencies that would be eaten up by such a costly process.

So, in some, the cost and feasibility of such a non-science based approach would bother me a lot.

Chairman CRANE. Mr. Brenner, is the goal of associating a greater degree of transparency and harmonization of regulations related to biotechnology products better addressed in bilateral negotiations with the EU or with the WTO agricultural talks?

Mr. BRENNER. Mr. Chairman, I think, it's something that I think should be addressed in both forums. We have a current and very serious problem with the EU and we have an opportunity to address that in a short-term fashion before the WTO process fully gets into gear on the technical side.

Certainly, we're not pre-judging where this issue is going to end up in the WTO. There are a number of different avenues they may follow there. But, perhaps we could get some early sign using the TEP process of things which were achievable, not just with the EU, but around the world.

Chairman CRANE. Mr. Preiss, it seems to me that Europe's challenge to the FSC tax structure is a violation of a longstanding understanding we've had with the Europeans going back to 1984, when we changed the DISC tax arrangements specifically to respond to their trade concerns. Why did Europe wait 13 years to challenge the FSC?

Mr. PREISS. It's difficult, Mr. Chairman, to say what exactly is running through the mind of a EU policymaker. But the fact that the EU has waited 13, almost 14, years after the FSC was put in place to challenge the program does invite the very question you have asked and certainly invites speculation as to whether there might be ulterior motives behind their challenge.

One ulterior motive that has been advanced that is that the EU is frustrated with having recently lost two high profile WTO cases to the United States, both of which were discussed earlier today—the bananas case and the beef hormones case. With the challenge to the FSC, therefore, the EU is trying to even the score with the United States at the WTO or, at least, be more proactive in litigating at the WTO instead of constantly being on the defense.

Chairman CRANE. Mr. Kelley, as international standards become increasingly critical on world trade, many observers worry that European standards entities are more and more dominating in controlling international standards-setting bodies, and that this will

put U.S. exporters at a distinct disadvantage. In your opinion, what should the U.S. Government do to address European domination in the international standards area?

Mr. KELLEY. Well, Mr. Chairman, I think that is exactly the issue we're talking about the third generation standard. What the U.S. Government should do is exactly what it started to do regarding this issue. Just raise the consciousness of the European regulators and let them know that we are aware of what they're doing and we're not going to stand for it.

Another thing that they should consider doing is being stronger advocates of U.S. standards in these international markets, and make sure that these foreign markets are open to U.S. standards.

A perfect example of that is what's going on in China, now with the existing second-generation standards. The Europeans have done a wonderful job of selling their standard into China. We are trying to get the administration to open the Chinese market to our technology, and we're having some success. But we need to continue to encourage the United States to make sure they advocate U.S. standards abroad.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Yes, thanks, Mr. Chairman.

Very briefly, Mr. Kelley, in terms of the Transatlantic Economic Partnership—really, the question is, what are you doing? And also, what are you doing with USTR? So that's number one. Can I go through the questions first?

As far as Mr. Preiss is concerned, I agree with you that the FSC, eliminating arguable GATT issues, but to increase the tax benefit that it defers, I think you are absolutely right on there. Mr. Harness my impression is that the European community—and I've only really taken soundings with the English and the Germans—are worried about Monsanto because you have such a strong competitive edge. You've put so much research, you've done such a great job in this area, that you may be setting the standards for everyone there. You may want to comment about that.

As far as Mr. Brenner is concerned, you talked about the EU approval process for biotech products, it's a non-transparent and unpredictable, but we had the Under Secretary of Commerce here and he felt that things were moving along pretty well, and that there was much more exposure and sun light involved here. You might like to comment briefly on those.

Anyone—Mr. Brenner.

Mr. BRENNER. We'll do this in reverse order. Yes, not to contradict the Under Secretary, I believe the process itself on paper, and the way products move through it, is still quite unpredictable. Certainly, in the last year we have had a number of changes in the process and deviations as products were moving through. I would certainly agree we may be turning a corner. There are certainly people in the commission and in many of the member States who fully recognize that the process they have been using is not functioning, and they're sincerely committed to try to make a better process. They do have some procedural reforms underway, which will take some years to complete.

So, I think, working with those people to recognize the problems through the TEP, among other things, is a way of helping to ensure

we are turning a corner there. I feel were right at the edge of it, we're not around it yet.

Mr. HOUGHTON. Thank you.

Mr. HARNESS. Well, certainly there can be no doubt that agricultural biotechnology has been controversial in Europe and we, Monsanto, have been in the middle of that controversy. We're not trying to set the standards for anyone except to meet the standard that we think is the most important, and that is to provide technology that will help produce food for everyone on the planet.

We do think the technology has enormous benefits for the future. The initial products are aimed at the farmer. Subsequent products are going to have—not just by Monsanto, but by other companies as well—are going to have consumer benefits, nutritional enhancements, and other benefits that really are going to, I think, be significant for people around the world.

So, just about every new technology has its challenges, some in the technology area alone, some with public acceptance, and I think that's what we're experiencing here.

Mr. HOUGHTON. I guess the only thing I was saying is that my impression is that it's sort of an emotional issue. And that, rather than going at it from a governmental or legalistic standpoint, there is an awful lot of personal contact in reducing the perceived threat.

I think you're in a wonderful position. You've done a great job. You've got a fabulous company. But, there is that concept that you are going to sort of overwhelm the market.

Mr. HARNESS. I don't think we've done as good a job on that in terms of reducing the public concerns. And I think it's an effort that really requires a partnership between us and the food companies that bring the food to the consumer with the governments themselves; the food companies are doing a lot on this. We're doing things. I don't think we've reached the public in Europe with all of the right messages in all of the right ways yet, but that certainly is a priority for us.

Mr. HOUGHTON. Good. Thank you.

Mr. PREISS. I appreciate your statement of support for the FSC, Mr. Congressman. I also was heartened by Ambassador Barshefsky's earlier testimony where she said that USTR and would vigorously defending the FSC at the WTO. My hope, of course, is that, ultimately, we will not have a final WTO adjudication of the FSC, I hope that the Europeans will come to understand that pursuing this challenge at the WTO is not a prudent course of action and, therefore, they will ultimately relent. But it is important to know, however, that we have our allies on this committee and in Congress generally.

Thank you.

Mr. HOUGHTON. Thank you. Mr. Kelley.

Mr. KELLEY. I guess your question, you asked what are we doing with the USTR? We are doing a number of things——

Mr. HOUGHTON. And also on your own.

Mr. KELLEY. Certainly on our own. With regard to the USTR, the international standards setting process in telecommunications is a complex one. The first thing that we have to do is to make sure that everybody understands the process and how various companies such as our are able to participate in that process. In par-

ticular, with respect to the ETSI process in Europe, we tried to participate, first, as a U.S. company and were told we could not participate because we are a U.S. company and ETSI was only available to European companies. That is in direct contrast to the standards setting bodies in the United States where anyone can participate. So, we were forced to open a European subsidiary just to participate in that process. The European companies do not have to do that to participate in the United States. So, getting this kind of process into the USTR is certainly something that we are doing.

Second of all, we're trying to suggest methods to them that they can suggest to their European counterparts that can open this process and make more open and free, like the U.S. process. And we're doing this not only with the USTR, we're doing it with the Commerce Department, the State Department, the Federal Communications Commission.

In addition, as I mentioned, we have opened an office in Europe. We are participating as much as we are being allowed to in the standards setting process over in Europe, and we continue to expand these efforts. We're also doing this in Asia and South America.

Mr. HOUGHTON. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. Well, I want to thank our panelists again, and apologize to you for the disruptive kind of day it's been, and reassure everyone that the official record will remain open, Mr. Kelley, for anyone's contribution for two weeks.

With that, the committee stands adjourned.

[Whereupon, at 2:10 p.m., the hearing adjourned subject to the call of the Chair.]

[Submissions for the record follows:]

STATEMENT

TO THE

HOUSE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

REGARDING THE

TRANSATLANTIC ECONOMIC PARTNERSHIP (TEP)

ON BEHALF OF

AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION
AMERICAN FOREST & PAPER ASSOCIATION
THE FERTILIZER INSTITUTE
MANUFACTURING JEWELERS AND SILVERSMITHS OF AMERICA, INC.
RUBBER MANUFACTURERS ASSOCIATION
TOY MANUFACTURERS OF AMERICA

AUGUST 11, 1998

The eighteen member economies of the Asia Pacific Economic Cooperation (APEC) forum have targeted fifteen industry sectors for early sectoral liberalization. An agreement on the first nine sectors (environmental goods and services, energy, medical equipment, telecommunications, fish and fish products, forest products, toys, chemicals, gems and jewelry) is to be finalized by APEC Leaders in November, 1998. APEC Leaders will also endorse workplans and timetables for the remaining six sectors (oilseeds, food, fertilizers, automotive, civil aircraft and rubber) at the same November meetings.

Agreement to liberalize trade in the Asia-Pacific region could provide the impetus for a series of sectoral agreements with Europe, many of which can be implemented within the boundaries of the Administration's existing tariff cutting authority. The Transatlantic Economic Partnership (TEP) mechanism should provide additional energy to this process. We therefore recommend that the U.S. use expedited trade liberalization in APEC to encourage the European Union to agree to similar liberalization in these sectors as "early fruit" of the TEP discussions.

The APEC sectoral liberalization initiative represents an important opportunity to expand global trade for a significant segment of the U.S. economy. Gaining European participation in APEC early trade liberalization agreements through the Transatlantic Economic Partnership may represent the most realistic available option for achieving specific results in the industrial tariff area within the 2000 time frame -- particularly if WTO members ultimately decide against a new comprehensive round of negotiations comparable to the Uruguay Round because it takes too long to get such broad international agreement.

ACCJ VIEWPOINT

HOUSING PRODUCTS AND BUILDING MATERIALS

BACKGROUND AND ISSUES

The Japanese housing market, measured in annual housing starts, has consistently been one of the top markets in the world. Total housing starts for 1997 numbered 1.38 million. To supply that market, the U.S. enjoys many competitive advantages in building materials, including lower costs for raw materials, manufacturing, energy and transportation. Greater imports of U.S. residential building materials will benefit Japanese consumers by providing an increased variety of high-quality, value-added products at lower costs, and assist the Government of Japan in achieving one its top priority reform objectives, namely, reducing housing costs.

The housing and wood products trade relationship between Japan and the U.S. realized landmark developments in 1996 and 1997. In 1994 and 1995 the U.S. Government named Japan to the Super 301 Watchlist for its failure to implement market access commitments agreed to in the 1991 Wood Agreement. Sufficient progress has been made since 1995 to have warranted the U.S. industry's request for Japan's removal from the Super 301 Watchlist in September 1996. At the Denver Summit in June 1997, the U.S. and Japan included housing as one of the four main sectoral groups (telecommunications, housing, medical devices/pharmaceuticals, financial services) of the U.S. - Japan Enhanced Initiative on Deregulation and Competition Policy. Significant progress has been made in 1996 and 1997 in several key areas:

- Commitment to recognize U.S. grademarks for dimensional lumber, thereby eliminating the requirement for retesting under Japan Agricultural Standard (JAS) for use in the 2x4 market. Virtually all U.S. visually graded lumber gradestamps were recognized by the Ministry of Construction in January 1997, and further mutual recognition was granted to U.S. machine stress rated lumber in February 1998. The only outstanding application submitted by American Lumber Standards Committee affiliated lumber agencies for Mutual Recognition is for finger-jointed lumber.

- Approval of three story, multi-family wood frame construction in quasi-fire protection zones (suburban areas) was granted in August 1997 under the Article 38 special exemption process of the Building Standard Law.

- Accelerated establishment of performance-based codes and standards.

- Commitment to provide data concerning manufacturing subsidies to the Japanese domestic forest products industry.

- Implementation of an across-the-board 3.9% tariff on appropriate structural glue-laminated timber imported into Japan that conforms to JAS standards. Previously,

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small dimension structural glue-laminated timbers imported into Japan were often assessed at a higher tariff (13% - 20%).

- Recognition of Oriented Strand Board (OSB) was extended to Shin-Kabe wall applications in post and beam type construction.

- Continuation of the Wood Products Subcommittee of the U.S.-Japan Trade Committee, the Building Experts Committee and the JAS Technical Committee without limitations on the agenda. These committees have an important role in furthering the joint objectives in the wood products sector.

- Expeditious processing of foreign skilled construction worker visas for smooth technology transfer.

- Eliminating scaffolding requirements, or permitting the use of movable scaffolding, or no scaffolding in 2x4 construction of two stories or less.

- Expediting the acceptance and recognition of foreign building materials, including plumbing fixtures, without having to be retested in Japan.

- Simplifying, expediting and education on the approval processes for the use of new or innovative building materials and construction methods in Japan under Article 38 of the Building Standard Law, as agreed to in the June 1990 U.S. - Japan Wood Products Trade Agreement.

- Permitting the use of U.S. standard nails, U.S. nailing guns, other metal connectors and fasteners, and nailing patterns and pitch intervals.

- Declassifying U.S. pneumatic nail guns as fire arms clearing the way for their marketplace use.

Progress in many areas, as described above, represents a significant achievement for the U.S. housing industry trade policy efforts in Japan and demonstrates the value of the industry and government approach of combining marketing, technical exchanges, and trade policy in its Japan program. While the progress which has been made in the areas of standards, regulations and mutual recognition should be applauded, it remains to be seen whether the Government of Japan will fully implement these changes.

RECOMMENDATIONS

The ACCJ encourages complete deregulation in this sector to allow significant increases in U.S. exports to Japan and to contribute significantly to the goal of lowering the cost of

housing in Japan. Japanese tariffs on value-added wood products continue to impede free trade with Japan and increase the cost of U.S. products in the market. The ACCJ recommends that the Government of Japan (GOJ), in order to meet its goal of cutting housing costs 30% by the year 2000 and to improve market access for imported building products in Japan, increase acceptance of foreign building materials and construction methods by:

1. Expediting and expanding the recognition of foreign testing laboratories and evaluation bodies for building materials and construction methods.

2. Expediting the acceptance of foreign test data on an equivalency basis with Government of Japan codes and standards such as those of the Building Standard Law and Government Housing Loan Corporation (GHLC) standards.

3. Ensuring that deregulation programs improve access to the distribution system for imported building materials.

4. Expediting the proposed uniform building inspection system, together with a national evaluation system to insure even quality control of the nation's housing stock.

5. Increasing the transparency and speed of the processes for obtaining Japanese Agricultural Standard (JAS) certification and significantly reducing routine reporting requirements.

6. Revising the requirements (including Fire Marshall restrictions) for four-story wood frame construction in non-fire protection zones, interior wood finishes, wood doors and windows, exterior siding, and roofing materials to reflect advances in technology and changes in construction practices.

7. Lowering maximum output restrictions (in BTUs) of gas appliances such as fireplaces and barbecues so that U.S. appliances, with their greater capacity and lower prices have increased market access.

8. Encouraging greater recognition by GOJ that housing is a leading sector in the economy. To that end encourage housing-specific stimulus measures and back Judanren's (Federation of Housing Organizations) suggestions which propose mortgage interest deductions and other actions to kick-start the housing sector.

9. Encouraging measures which increase sales of existing homes.

10. Japanese tariffs on value-added wood products import continue to distort access to the market. Despite progress on non-tariff barriers as outlined above, the U.S. wood products industry has continued to urge Japan to eliminate all tariffs on wood products. The Japanese market for wood products cannot be judged to be truly open until all wood products tariffs are eliminated.

(Housing Industry Subcommittee; not for use after 4/99)

ACCJ VIEWPOINT

APPROVAL OF DIFFERENTIATED PRODUCTS AND RATES WITHIN THE STANDARD PROCESSING PERIOD OF 90 DAYS

BACKGROUND

The 1994 US-Japan Insurance Framework Agreement includes the provision that the Ministry of Finance ("MOF") will give *"medium to small and foreign insurers ... sufficient opportunity 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."* This provision was given specificity in the 1996 Supplementary Measures ("Agreement") and is a criteria for judging MOF compliance with the Agreement. A reasonable period was defined as two-and-a-half years and would commence July 1, 1998, but only if MOF approved applications for differentiated products or rates within the standard processing period of 90 days.

The ACCJ has evaluated the approval process and found that some progress has been made in approving differentiated products, such as non-smoker life insurance. However, MOF still engages companies in lengthy "pre-screening" discussions, for the majority of product applications. Pre-screening of applications renders the 90 day review period pro forma because accepted applications are predestined for approval. Only when these negotiations are complete and all issues resolved to MOF's satisfaction, will MOF formally accept an application, after which it is approved in a matter of days. In those instances when MOF accepts an application when submitted the first time, the sheer volume of work still required in the approval process has prohibited the examiners from completing the application review within the prescribed processing period of 90 days.

Apart from the Agreement, a standard processing period is outlined in MOF ministerial notification and is defined as 90 days for product approvals. The vague ministerial notification provides great leeway for extension of the processing period while companies add, revise or correct a product application. The notification also creates an exception to its 90 day standard period based on conditions within MOF. MOF is attempting to claim compliance with the Agreement by referring to its ability to "stop the clock" on the running of the 90 days period in its own notification.

The ACCJ has concluded that MOF is unable to meet the 90 day processing period in the Agreement. This is supported by the Government's own policy statement that recommends streamlining the approval process that was endorsed by the Cabinet on March 31, 1998. Until such time as MOF streamlines the approval process, or dramatically increases its level of staffing for these functions, it will be impossible for applications to be processed within the standard processing period of 90 days required by the Agreement. The ACCJ therefore recommends that the two-and-a-half year clock not begin July 1, 1998, but instead be delayed until a new streamlined approval process is introduced.

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ISSUES

Product Approvals Exceed the Standard Processing Period of 90 Days.
MOF examiners are conscientious and hardworking, but examinations often result in arbitrary rulings by inexperienced staff with little time in the job before rotation. There are numerous reasons for delay, most of which do not relate to correcting, revising or adding to the product application. These reasons include:

- Examiners are often too busy to meet and appointments are delayed or canceled;
- The examiners are not qualified actuaries with accumulated experience, so time is spent educating the examiners, particularly if a product is new to Japan;
- Delays are even longer after the annual MOF staff rotation;
- Product changes are often requested by MOF to encourage more uniformity in the market, not because of an inherent design problem.

Even if consideration is given for the time required to make "legitimate" revisions to a product application, the standard processing period of 90 days is still being exceeded.

Substantial Deregulation has not Occurred in the Primary Life and Non-Life Sectors. As long as companies cannot introduce products in a timely manner, they do not have the flexibility to differentiate on the basis of product, price and distribution. As a result, substantial deregulation will not have occurred and the two-and-a-half-year-clock should not begin from July 1, 1998. Foreign companies are actively attempting to introduce new and innovative products, pricing and distribution to the insurance market. However, at this time, the approval process is still far too onerous to introduce differentiated products to the market. Just because a policy or benefit is different is not a reason for MOF anguish, rejection or prolonged examination. Differentiation is the essence of innovation.

RECOMMENDATIONS

MOF is engaging in after-the-fact re-definition of the standard 90 day processing period to claim it is in compliance with the criteria in the Agreement. Furthermore, it appears that compliance with the agreement is in the hands of MOF examiners. The ACCJ recommends implementation of the following measures, before it can be determined that MOF has complied with the Agreement.

- Senior level MOF officials (i.e., Director General) need to be engaged in actively monitoring the approval process on an ongoing basis;
- These officials need to provide a statement of policy and operating guidelines for the approval process;
- MOF examiners should be required to maintain a log to record meeting dates and the time required for each product approval, commencing from the start of presentation of the new product to MOF, regardless of any arbitrary distinctions between informal and formal review. This actual information should be reported to MOF senior officials and US Government representatives;

- There need to be official determinations on when the approval process can be extended beyond 90 days and reasons provided; prolongation should only be in extreme, rare occasions, not on a case-by-case basis;

- As per its commitment in the Agreement, MOF must act *"to achieve broad primary sector deregulation and will take immediate steps to increase the number of staff in charge of processing applications."*

The ACCJ also urges MOF to introduce, as soon as possible, proposals to relax the regulations for approving products that were called for by the Three-Year Deregulation Promotion Plan and were approved by the Cabinet on March 31, 1998. These proposals should include measures for liberalization of the approval process. Fundamentally, the industry should be supervised through prudential measures and not though the micro management of the approval process, especially if there are limited MOF resources available.

(Insurance Subcommittee; For use from 5/98 to 5/99)

ACCJ VIEWPOINT

TRANSPARENT LICENSING AND SUPERVISORY PRACTICES

BACKGROUND AND ISSUES

The ACCJ has for many years pressed for increased transparency and the elimination of anomalies in the Japanese regulatory process which sometimes result from the application of the undocumented and non-transparent system of "administrative guidance" to regulate Japan's financial markets. In that connection, the ACCJ welcomed the Government of Japan's recent enactment of the Administrative Procedure Act and its statements of intention to bring greater transparency to Japan's administrative procedures. However, the ACCJ believes that the continuation of the existing system of "administrative guidance" will make it increasingly difficult for the Government of Japan to implement the financial reform proposals announced by Prime Minister Ryutaro Hashimoto on November 11, 1996. The ACCJ is issuing this Viewpoint in order to clarify its views as to the essential elements of a regulatory system which will be perceived as ensuring procedural transparency and equal treatment of licensees.

RECOMMENDATIONS

The ACCJ urges the Government of Japan to consider implementation of the following "10 Principles of Transparent Licensing and Supervision" in the regulatory reform process which will accompany Japan's "Big Bang" reforms:

(i) Public Benefit Purpose. No licensing requirement should be imposed on a party unless the requirement is rationally related to some public good and such public good is expressly identified and explained in the relevant legislation or rule making proceeding.

(ii) Public Comment. Except in emergency conditions or where national security concerns exist, no new regulation should be adopted or imposed on licensees without such regulation being made available for public comment (by way of public hearings or opportunity for written comment) for a reasonable period.

(iii) Public Hearings and Review. All formal and informal hearings by regulatory authorities and/or any government sponsored (funded) advisory organs and councils concerning the issuance of new regulations (or changes to existing regulations) should be open to the public or, where such public proceedings are not feasible, transcripts of such proceedings should be made available to the public upon request.

(iv) Access to Internal Supervisory Manuals. Except where national security, public health or safety, or licensee confidentiality considerations are involved, members of the public should be furnished reasonable access, upon request (and at reasonable cost), to the principal internal manuals, memoranda, instructions and similar documentation used

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by Japanese government officials in carrying out their prescribed duties so as to ensure that licensees may fully understand the standard to which they are to be held.

(v) Public Inspection. All non-confidential applications for licenses should be available for inspection and duplication by any member of the public at reasonable times and cost.

(vi) Review Limited to Disclosed Criteria. All regulations or related explanatory materials governing the consideration and issuance of licenses should be reduced to writing and made available to potential applicants upon request. No license should be denied to a licensee on the basis of any factor not identified in such written regulations or explanations.

(vii) Prompt Review. No application for a license made in good faith may be refused filing for action by the relevant regulator and action should be taken on all applications received within a reasonable period.

(viii) Written Explanation of Denials. Any total or partial denial of any application for a license should be accompanied by a statement of explanation from the relevant regulatory authority detailing the manner in which the applicant has failed to satisfy the requirements of the regulations governing the issuance of these licenses.

(ix) Appeals. License applicants should be afforded meaningful access to administrative or judicial appeal of a license denial (or failure to act on an application) without prejudice (whether formal or informal) to the ability of the licensee to file additional or supplementary applications for licenses.

(x) Relationship of Licensees and Regulators. Care should be taken through appropriate measures to ensure that the relationship between regulatory authorities and licensees is maintained at arm's length and is not subject to influences unrelated to the protection of the public interests which the licensing process is intended to protect.

The ACCJ hopes that the legislation implementing the Big Bang reforms will include elements intended to address the above concerns, that the Japanese financial system will thereby become more transparent to the international financial community, and that Tokyo in turn will achieve its full potential as a major international financial center.

(Banking and Securities Committee; not for use after 10/98)

ACCJ VIEWPOINT

REFORM OF RATING ORGANIZATIONS

BACKGROUND

The 1996 Supplementary Measures ("Measures") to the 1994 US-Japan Insurance Framework Agreement include statements that the Ministry of Finance ("MOF") *"has decided to take actions to undertake fundamental reform of the rating organization system, with a view toward achieving maximum liberalization through elimination of obligations for members of a rating organization to use rates calculated by the rating organization"* and further that the Government of Japan *"intends to submit to the Diet as early as possible in 1998 legislation which will achieve these objectives"*.

Amendments to the Law Concerning Non-Life Insurance Rating Organization ("RO Law") as well as of the Insurance Business Law to reform the rating organization system were submitted to the Diet on March 10, 1998, and are slated for approval by June 18, 1998, the end of the current Diet session. When adopted, the revised RO Law will go into effect on July 1, 1998.

Under the proposed revisions to the RO Law, the obligation of members of the Non-Life Rating Organization and the Automobile Insurance Rating Organizations (the "ROs") to adhere to standard, total premium rates calculated by the ROs will be substantially reduced. With two exceptions, the ROs will calculate only pure premium rates[1] for referential use by the ROs' members for all the fire, personal accident and automobile insurance lines covered by the two ROs. The two exceptions are compulsory automobile liability insurance ("CALI") and household earthquake insurance, which are government-mandated programs.

The Anti-Monopoly Law exemption for the ROs' activities will be abolished for all but the standard, total premium rates applicable to CALI and household earthquake insurance. Member companies will be expected to calculate their own premium rates for all other lines based on the pure premium rates calculated by the ROs and their own calculation of their expenses and profit margin. These changes, if fully implemented, are a substantial step in the direction of deregulation.

Cabinet orders and ministerial ordinances to supplement the RO Law are now being finalized by MOF. Revisions to the current articles of incorporation and internal regulations also must be drafted to reflect the proposed reform. The ROs started discussions with member companies in October 1997 on the new organizational structure and the scope and mode of operation for the reformed RO. Those discussions are on-going.

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[1] Pure premium rates are the actual cost of claims, and are only one element of the total premium rate. Other elements include expenses (administrative and acquisition costs) and a profit margin.

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ISSUES

Ministerial Ordinances
JNLIA has recommended, and MOF has included in its Ministerial Ordinances, an expansion of classes of business for which the RO will calculate pure premium rates. In addition to fire, personal accident and automobile insurance, the draft Ordinances include medical expense and nursing care insurance. Both of these lines of insurance cross into life insurance. Furthermore, until such time as it is clear that the reforms envisioned in the RO Law will in fact be reflected in the articles of incorporation and internal regulations, the classes of insurance should remain unchanged.

Lack of transparency
Although the bill pending before the Diet will eliminate the obligation for members of an RO to use the standard tariff rates calculated by the RO in most instances, the law itself contains only a general outline and is short on details. Until such time as the cabinet orders and ministerial ordinances under the RO Law are promulgated and the content of the articles of incorporation and internal regulations of the RO are determined, it cannot be known whether restrictions and practices established in those documents will nullify or dilute to the point of irrelevance the reforms contained in the revised RO Law.

Expense data
The stated role of the RO is to calculate referential pure premium rates for various property, personal accident and automobile lines of insurance, other than CALI and household earthquake insurance. Nevertheless, the two ROs propose to collect expense data from their members, perform statistical analyses of that data and provide the resulting information to the members. Providing members with information on their competitors' costs of doing business will restrain, rather than promote, competition and create uniformity. This is contrary to the stated goal of introducing competition and dismantling premium uniformity.

Directors
Both ROs propose the same configuration of directors: six directors from the member companies and 15 outside directors. The directors from non-members are said to represent the public interest and will likely be selected from candidates proposed by the ROs. The need for directors that represent the public interest no longer exists because the duty to abide by the standard, total premium rates was eliminated, except for CALI and household earthquake insurance. The Compulsory Automobile Liability Insurance Council and the Insurance Council (which will be integrated into the Financial Business Council) are in a better position to represent the public interest in this regard. The presence of a considerable majority of directors not from insurance companies will have the effect of making the ROs less responsive to the needs of the industry. The ROs should be operated to advance the interests of the companies that they serve and not be a means of controlling the industry in the manner determined by the ROs through directors selected by the ROs.

(Insurance Subcommittee; For use from 6/98 to 6/99)

Quasi-Government Organization

In discussions with member companies regarding the ROs proposed new organizational structure and scope and mode of operation, it is clear that the ROs still consider themselves quasi-government organizations with little accountability to their member companies. Recommendations from foreign members to combine the ROs into one organization and streamline its operations have been ignored. As long as the ROs are not market-driven service providers, they will continue to hamper industry efforts to innovate and differentiate themselves in the market.

RECOMMENDATIONS

- The draft Ministerial Ordinances should be revised and medical expense insurance and nursing care insurance deleted as lines of business for which the ROs will calculate pure premium rates.

- Certification that the RO Law has been fundamentally reformed should be delayed until such time as the current debate about the functions and the scope of the activities of the ROs is concluded. Until then it cannot be confirmed that fundamental reform has been carried through in the cabinet orders and ministerial ordinances and the RO's articles of incorporation and internal regulations.

- The collection of expense data intended by the ROs is included in their proposed new articles of incorporation. As the articles of incorporation of the ROs are subject to the prior approval of the Financial Supervisory Agency ("Agency"), the ACCJ recommends that the Agency not allow collection of expense data as this is likely to restrain competition.

- The number of directors is also included in the provisions of the ROs' articles of incorporation. The ACCJ recommends restructuring the configuration of the directors by the Agency. The non-member directors should be eliminated or their numbers substantially reduced.

- The ACCJ recommends that the two ROs be combined into one and duplicate administrative functions eliminated. Additionally, the RO should charge member companies only for basic services (calculation of pure premium rates) with all other services charged on a usage basis.

Statement of the American Council of Life Insurance

TRANS-ATLANTIC ECONOMIC PARTNERSHIP INITIATIVE

OPPORTUNITY AREAS FOR INSURANCE

The Trans-Atlantic Economic Partnership (TEP), a United States - European Union initiative, outlines a three pronged approach to market opening:

- Achieving near-term market access gains for goods, services, and agricultural products
- Promoting of multilateral and bilateral trade liberalization through the World Trade Organization (WTO) and other international institutions for the reduction or elimination of barriers that hinder the flow of goods, services and capital
- Expanding and deepening the transatlantic relationship between representatives of non-governmental, parliamentary, and governmental organizations on trade and investment issues

The ACLI strongly supports financial services trade expansion between the United States and European Union, and fully supports efforts to expand cooperation between the United States and European governments, insurance regulators, and insurance and reinsurance companies and national/regional insurance associations. The enhanced liberalization of global insurance markets will bring greater financial security, stability and prosperity to both markets and individual consumers. The TEP can provide a enhanced agenda for multilateral negotiations such as the World Trade Organization's Financial Services Negotiations.

In response to USTR's inquiry of issues the industry considers opportunity areas for these negotiations we have received three primary areas of comment from member companies: U.S./E.U. market access, national treatment, and regulatory transparency improvements; bilateral structural improvements in regulation; and U.S./E.U. cooperation in setting an ambitious principles-based agenda for the next round of WTO Financial Services negotiations. Specifics of the three areas are as follows:

I. **MARKET ACCESS, NATIONAL TREATMENT, TRANSPARENCY IMPROVEMENTS**

US companies still experience many problems when establishing and operating in the European Union. ACLI is currently undertaking a survey of our member companies and will provide the specific details of discrimination to USTR for discussion with the E.U. negotiators.

Problems range from transparency issues regarding acquiring national companies in France, to problems of branching from one E.U. member country to another as provided in the 3rd Life Insurance Directive. Many problems could be addressed by the 3rd generation of insurance directives if they were reasonably implemented and complied with in letter and spirit. One objective of the TEP should be to force the immediate and total implementation of the relevant E.U. Directives in a bilateral context with dispute resolution and penalties.

Conversely ACLI looks forward to supporting U.S. state regulators through the National Association of Insurance Commissioners as they work to prioritize and eliminate all archaic rules that discriminate against European companies operating in the U.S.

II. BILATERAL STRUCTURAL IMPROVEMENTS IN REGULATION

Harmonization and convergence of European supplementary pension schemes in a number of essential areas in order to guarantee the effective and congenial exercise of fundamental freedoms laid down in the 1985 Treaty of Rome agreement without distortion of competition between European and American service providers including allowing investment in other currencies up to 100% (currently 80% in local currency requirements).

Additionally, removal of obligations to invest a minimum percentage in specific categories of assets, restrictions on localizing assets in the EU and matching requirements which exceed what is justified from a prudential point of view should be abolished.

Free movement of capital–which has a direct influence on cross-frontier freedom of financial engagement–must enable operators to benefit, in the interests of employers and of workers (reduction of the related financial costs for occupational pensions), from investment opportunities which are more appropriate to the underlying pension liabilities without being subject to restrictions other than those imposed, without discrimination between the various operators, for clearly defined prudential reasons of general good.

Adoption of favorable legislative or regulatory modifications in the public and private pension/insurance tax field. Lower taxes on life insurance contracts and life insurance companies including fewer restrictions on the deductibility of taxable income, and support for measures that provide greater favorable tax treatment for employers who establish supplemental pension schemes for their workers. Proposed reforms should encourage citizens to offset through individual or group forms of savings and benefits, the forecasted large gaps in public pensions.

Requiring the scheduling of all taxation (national and subnational) of life insurance, pensions, long term care, disability income and retirement security products.

III. COOPERATION IN SETTING A PRINCIPLES BASED AGENDA FOR NEXT WTO NEGOTIATIONS

ACLI strongly supports efforts by the U.S. and E.U. governments to work together to promote multilateral and bilateral trade liberalization through the World Trade Organization (WTO) and other international institutions for the reduction or elimination of barriers that hinder the flow of goods, services and capital.

Specific to insurance ACLI is working with both U.S. and E.U. insurance industry to develop an agenda of *pro-competitive insurance regulatory reform* that can be adopted and advocated jointly between our two governments as the basis for negotiations for the year 2000 WTO negotiations.

Possible areas specific to the life insurance, pension, disability income, and long term care industries will be provided to USTR shortly, that include guiding principals such as: the removal of all registration and local deposit requirements for reinsurers meeting an adequate standard of solvency; local reserving recognition for foreign reinsurance meeting a adequate solvency standard; reform of tax treatment of private pensions; freedom of contract form for reinsurers; and improvements in the area of national treatment and transparency.

STATEMENT

OF THE

AMERICAN FOREST & PAPER ASSOCIATION

ON THE

TRANSATLANTIC ECONOMIC PARTNERSHIP

TO THE

HOUSE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

AUGUST 11, 1998

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America's Forest & Paper People—Improving Tomorrow's Environment Today

On behalf of the members of the American Forest & Paper Association, we are pleased to provide comments on the U.S.-EU Transatlantic Economic Partnership (TEP), including specific recommendations regarding areas for negotiation and cooperation.

AF&PA is the national trade association of the forest, pulp, paper, paperboard and wood products industry. The vital national industry which we represent accounts for 8% of total U.S. manufacturing output. Employing approximately 1.4 million people, the forest and paper industry ranks among the top 10 manufacturing employers in 46 states.

AF&PA and its member companies support expanded U.S.-EU economic and trade relations on an equitable basis. Representatives of our industry have been active participants in the Transatlantic Business Dialogue (TABD), and believe that the achievements in that forum provide a solid basis for continued progress in the TEP. The early elimination of European tariffs on wood and paper products is the principal objective of the U.S. forest products industry, but we are also seeking the removal of regulatory impediments and other technical barriers to trade.

TARIFFS

Paper Products:

The EU is the world's second largest producer and consumer of paper products, after the U.S. However, European tariffs on paper products (3.6-7.2%) are much higher than in the U.S. (0-1.8%).

EU producers operate world-class, state of the art paper mills. In 1997, the EU exported approximately 9 million metric tons of paper (valued at more than $8 billion), of which 1.8 metric tons ($2.1 billion) was shipped to the U.S. market, where most paper products enter duty free.

Europe is a major market for U.S. pulp and paper exports, amounting to $2.7 billion in 1997. When that total is broken down by product lines, however, it is clear that tariff barriers significantly restrict the U.S. industry's ability to sell the highest value-added products.

- $1.2 billion, or 44% of total U.S. exports to Europe, was wood pulp -- the raw material for papermaking -- which enters the EU duty free.

- $388 million was kraft linerboard -- used in the manufacture of corrugated shipping containers. European corrugated box makers require the strength characteristics provided by U.S. virgin fiber based kraft linerboard because of insufficient supply in Europe.

- Only $400 million, representing 15% of total exports of pulp and paper products to Europe, was high value-added printing/writing papers, bleached paperboard, and special industrial paper -- product categories where EU tariffs are especially high.

Wood Products:

The EU is a key and growing market for U.S. solid wood products exports: in 1997, U.S. sales amounted to $1.4 billion, an increase of 17% from 1996. The EU is also a major competitor: with the accession of Sweden, Finland and Austria, the EU is now more than 70% self-sufficient in wood supply, up from 40% before the enlargement. Moreover, the competitive strength of the European wood industry will continue to grow as the EU expands eastward to include countries with strong and sheltered domestic wood industries.

EU tariffs on most value-added wood products range from 4-10%, inappropriately high given the EU wood industry's high level of development and international competitiveness. In addition, duty free access for imports into the EU from Eastern European wood producers continues to put U.S. manufacturers at a competitive disadvantage.

In addition to tariffs of over 7%, delivery of softwood plywood is heavily influenced by the EU duty free tariff quota system (currently bound at 650,000 cubic meters per year), which requires European importers to allocate valuable warehouse space to compensate for an artificial demand cycle generated as the quota is filled at the beginning of each year. Costly additional documentation and record keeping are also required.

- **As a first step, the U.S. should seek immediate, significant expansion of the softwood plywood quota to permit greater duty free entry of U.S. softwood plywood exports, with the optimum solution of zero tariffs on all wood products.**

TEP Tariff Negotiations:

In the Uruguay Round, the U.S. sought total elimination of wood and paper tariffs in five years. However, the final agreement reached by the U.S., the EU, Canada, Japan, New Zealand, South Korea, Hong Kong and Singapore was to eliminate paper tariffs in ten years and to reduce wood tariffs by just one-third.

The eighteen member economies of the Asia Pacific Economic Cooperation (APEC) forum are currently nearing the conclusion of negotiations for the early liberalization of trade in forest products and fourteen other sectors. In the forest products sector, this would entail the elimination of tariffs on paper products by 2000 for Uruguay Round zero-for-zero participants (such as the EU); developed countries (such as the EU) would eliminate tariffs on wood products by 2002.

Agreement to eliminate tariffs in the Asia-Pacific region could provide the impetus for a series of sectoral zero-for-zero agreements with Europe--many of which can be implemented within the boundaries of the Administration's existing tariff cutting authority--and the TEP mechanism should provide additional energy to this process. In particular, we have recommended that the U.S. use expedited removal of forest products tariffs in the APEC forum to encourage the EU to agree to tariff elimination in our sector as "early fruit" of the TEP discussions.

The APEC tariff initiative represents an important opportunity for the European paper industry. Europe currently exports an estimated $2.5 billion in paper products to Asian markets. By agreeing to eliminate paper tariffs by the year 2000, European paper producers stand to gain tariff-free access to the world's fastest growing markets. Conversely, waiting for the initiation of a new WTO Round of multilateral trade negotiations would mean a delay of several years in opening up Asian markets. By 2004, when EU tariffs on paper products will be reduced to zero, the EU will have nothing to trade in this sector.

Elimination of wood tariffs can be expected to stimulate the European wood industry and open additional European markets for wood to compete against non-wood materials such as masonry and steel. In addition, tariff elimination on a multilateral basis would stimulate exports and employment in Europe. Finally, zero tariffs on all wood products, regardless of source, will level the playing field with other competitors, some of which already enjoy duty free treatment, and decrease the cost of wood inputs for European end-user industries--construction, furniture, housing, materials handling--enhancing their ability to compete internationally. The EU supported inclusion of wood products in the zero-for-zero package in early Uruguay Round negotiations and had the support of the wood products trade in Europe.

European end-user industries--ranging from newspaper and magazine publishers to timber trades--are already on record as strongly supporting the early elimination of tariffs on forest products.

- **Early European adherence to the APEC EVSL agreements in the nine priority sectors, and forest products in particular, should be a top U.S. priority in the TEP**. Gaining European participation in APEC/EVSL agreements through the TEP may represent the most realistic available option for achieving specific results in the industrial tariff area within the 2000 time frame described for the TEP--particularly if WTO members ultimately decide against a new comprehensive round of negotiations comparable to the Uruguay Round because it takes too long to get such broad international agreement.

Preferential tariff agreements with new countries coming into the EU could undercut WTO commitments and any future WTO agreements with these countries. Through the free trade and customs union agreements already entered into by the EU and a number of the former Soviet bloc countries, the EU will continue to influence the countries which hope to join the EU, thereby ensuring that tariff agreements in the EU accession negotiations are more advantageous than MFN offers made in the simultaneous WTO accession negotiations.

- **The U.S. and the EU should work closely together on WTO accession agreements by new and/or prospective EU member countries to ensure that U.S. suppliers receive equitable tariff treatment in these markets.**

REGULATORY IMPEDIMENTS TO TRADE

AF&PA also supports the TEP goal of reducing regulatory and technical barriers. Of particular concern to the U.S. forest products industry are the potential market impacts of the EU ecolabelling scheme, European packaging regulations, EU metric-only labelling directive, and the EU construction directive.

EU Ecolabelling of Paper Products:

The current EU ecolabelling program -- and the criteria used to evaluate paper products specifically -- disadvantages U.S. suppliers. The inherently discriminatory approach now built into this program threatens $2.7 billion in pulp and paper exports to Europe should the scheme be expanded to other paper products. The ecolabelling criteria developed for copying, converted and tissue paper products focus on the raw material aspects of paper manufacturing. These include forestry and processing requirements based on European or national conditions and regulations. The criteria do not accommodate comparable approaches to environmentally responsible pulp and paper production in non-European regions.

U.S. domestic pulp and paper manufacturers, as a prerequisite for doing business, already meet EPA and other U.S. standards which are among the most stringent in the world. To compete effectively in Europe, they should not also be required to adapt their manufacturing processes to conform to the EU's subjective determinations regarding environmentally preferable production methods or undergo ecolabelling certification procedures which may duplicate or conflict with existing U.S. regulatory requirements.

For the past several years, the EU ecolabel has been identified in the National Trade Estimates (NTE) Report as a potential trade barrier which might warrant government action. The process through which the criteria for tissue and copying paper were developed are not consistent with the EU's WTO obligations in areas such as transparency and the avoidance of unnecessary obstacles to trade. At the same time, there has been substantial European industry support for changes in the EU ecolabel regime which would eliminate trade distortions and bring it into WTO conformance, as recorded in the attached position paper developed by the TABD.

- The TEP work plan for reducing regulatory barriers should include resumption of bilateral discussions between the EU and the U.S. to ensure that the EU ecolabelling scheme does not create trade barriers which place U.S. suppliers at an unfair disadvantage. **Specifically, the U.S. should seek a commitment that the EU ecolabel scheme will be revised to ensure that criteria accommodate**

comparable/equivalent approaches to providing environmental information about products; and that the EU scheme will be made more transparent and provide for meaningful participation in criteria development by non-European interests. AF&PA recommends that TEP discussions about transparency and regulatory cooperation include dialogue with affected countries, industries and sectors.

EU Packaging Directive:

The EU Packaging and Packaging Waste Directive entered into force on December 31, 1994, and is still being implemented at the member-state level. Although the directive is preferable to the patchwork of regulations previously in existence in member states, EU marking requirements for indicating recyclability and/or reusability could lead to economic and trade distortions and disruptions. To the extent that EU marking requirements differ from marks widely used in the U.S.--and, more significantly, from standards being developed by the International Standards Organization (ISO)--packaging, marketing and distribution operations will become more complicated and costly for both U.S. and European firms, without achieving significant environmental benefit.

- **TEP discussions of regulatory impediments should address the trade impacts of packaging requirements, stressing the importance of mutual recognition and equivalency, and the need for compliance with international standards.**

EU Metric-Only Labelling:

As of January 1, 2000, only metric labelling will be allowed on products sold within the European Union. This metric-only requirement will add significantly to the costs of packaging and will also involve costly, segregated inventory systems for many U.S. manufacturers. The TEP process should ensure that U.S. exporters are allowed to continue using dual-measurement labelling.

- **The U.S. should seek a commitment from the EU that its metric labelling directive will be revised or delayed to ensure that metric-only requirements do not impede transatlantic trade.**

EU Construction Directive:

The EU has been developing construction standards in a process which is not open to foreign participation. Additionally, the EU has used the standards developed as part of this closed process to push the international standards community to adopt EU standards. EU-developed standards are designed to be favorable to EU-produced products and in some cases unfairly discriminate against U.S. species and products. Many of the European standards that

were drafted under CEN (the European standards organization) are now being submitted for wholesale adoption by ISO where EU member states, each having a separate vote, dominate.

- **The U.S. should demand greater transparency in the European Standards writing process as part of its commitment to the TEP.**

The American Forest & Paper Association appreciates this opportunity to provide our views on this important subject, and would be pleased to provide any additional information which the Subcommittee might find helpful.

Attachment

WRITTEN SUBMISSION FOR THE RECORD OF

WILLIAM W. BURRINGTON
DIRECTOR, LAW AND GLOBAL PUBLIC POLICY
ASSOCIATE GENERAL COUNSEL
AMERICA ONLINE, INC.

TO

THE SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON TRADE RELATIONS WITH EUROPE
AND THE NEW TRANSATLANTIC ECONOMIC PARTNERSHIP

August 11, 1998

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AOL appreciates the opportunity to provide this written submission for the record to the Subcommittee on Trade as part of its consideration of U.S.-EU trade relations, with particular reference to the Transatlantic Economic Partnership (TEP). AOL supports the overall TEP initiative as a way to strengthen bilateral trade and investment relations between the United States and Europe and to improve transatlantic cooperation on a number of economic issues being discussed in various multilateral institutions.

About AOL

Founded in 1985, America Online is the world's leader in branded interactive services and content. Through its three product groups, AOL Interactive Services, CompuServe Interactive Services, and AOL Studios, AOL provides interactive Internet access services to more than 20 million households around the world; ICQ has more than 6 million active users, 60 percent of them from overseas; AOL also operates the world's largest online shopping mall and serves as the world's leading creator of original interactive content. In just the past five years, AOL has grown from approximately 250 employees and $30 million in annual revenues to more than 10,000 employees and $2.2 billion in annual sales.

Reflective of the nature of the Internet itself, AOL is and must be a global service provider. While its headquarters remain firmly established in the United States, AOL operates services in Canada, the United Kingdom, France, Germany and Japan and provides services in Austria, Switzerland and Sweden. In Europe, AOL and CompuServe services are provided through a joint venture between AOL and Bertelsmann AG.

AOL's efforts to expand its services in the European market were rewarded in early 1998, when AOL surpassed the one million member mark. Plans are currently underway to provide AOL services in Australia and Hong Kong as well as to explore new markets in Asia, Latin America, the Indian subcontinent and other areas of the world. Recent Commerce Department estimates suggest that more than one billion people worldwide will be online, through AOL or other service providers, by the year 2005.

AOL's Approach to Transatlantic and International E-Commerce Issues

Given its continuing and projected future growth in Europe and other international markets, AOL has a deep interest in ensuring that its ability to do business in these overseas markets is not hindered by artificial or unnecessary obstacles to trade and investment in the provision of Internet and interactive services. For this reason, AOL was pleased that the Clinton Administration issued in July 1997 a policy document entitled, "A Framework for Global

Electronic Commerce," which articulated the Administration's vision for the emergence of the global information infrastructure as a vibrant global marketplace. AOL agrees with the fundamental principles espoused by the Clinton Administration in this policy document. These principles include:

- Private sector leadership to provide the innovation, expanded services, broader participation and lower prices necessary to make the Internet flourish.

- Reliance on self-regulation as the primary method of Internet governance with any necessary government activity aimed at supporting and enforcing a predictable, minimalist, consistent and simple legal environment for e-commerce on a global basis.

In addition, AOL believes that the growth of a seamless and frictionless global electronic commerce marketplace depends on a borderless system of international trade. In order to ensure that national boundaries are not drawn in cyberspace, the United States must be vigilant in discouraging anti-competitive regulations by foreign governments.

In pursuing its commitments to the international community and marketplace, AOL is highly aware of and sensitive to the complex and divergent perspectives various cultures bring to bear with respect to this new and powerful medium of communication and commerce. AOL is dedicated to responding to these various concerns by, among other things, providing users with the information and technological tools they need to shield vulnerable users such as children from inappropriate content and to protect users' privacy and security interests. By ensuring that its products and services address these and other concerns, AOL is working to further its ultimate goal of increasing consumer confidence in and use of the medium.

The Growth of E-Commerce at Home and Abroad

Governments' willingness to forego the strict regulatory approaches of the past is already being rewarded by the rapid expansion of e-commerce. According to Ira Magaziner, senior advisor to President Clinton, "over the past three years, over one-third of the real growth of the U.S. economy has been driven by the information technology industry. . . ." More than seven million people are employed in information technology industries in the U.S., earning rates that are nearly double the average wage in the private sector. With the expansion of the infrastructure to support the Internet and the ever-increasing penetration of personal computers around the world, substantial gains and profits in e-commerce are now available. The White House estimates that business-to-business electronic commerce in the U.S. alone will increase from

last year's total of $6 billion to over $300 billion by the year 2002. Worldwide potential is even greater.

The vast potential of e-commerce is being realized by businesses and consumers as time- and resource-intensive functions and transactions are increasingly being conducted online. Companies such as GE and Walmart, for example, have realized cost savings in the realm of 30 to 40 percent by conducting their purchasing and customer relations functions on the Internet. Recent statistics also reveal a dramatic increase in consumer purchases of tickets and physical items online and a growing reliance on the Internet for banking and other personal and business transactions via the Internet at a fraction of the cost and faster than similar transactions in the off-line world. These estimates indicate, for example, that online financial services will increase from $1.2 billion in revenues in 1997 to $5 billion in 2001 with similarly impressive gains in revenues from online ticket event sales, entertainment, apparel and footwear, books and music. The greatest growth is anticipated to occur in the travel industry where $654 million in revenues in 1997 are expected to soar to $7.4 billion by 2001.

AOL's Assessment of Recent International Initiatives on E-Commerce

Since the issuance of its policy framework, the Administration, with growing bipartisan support from the Congress, has done a substantial amount of work to ensure that government involvement facilitates rather than inhibits the growth of global e-commerce. Its efforts to support an industry-led, market-driven Internet have led the way for the adoption of similar principles by governments and international organizations around the world and the development of work programs and initiatives to implement these principles to support the growth of e-commerce.

AOL applauds and supports the enormous amount of international work done by the Administration on electronic commerce since the issuance of its policy document one year ago. AOL is particularly pleased with the progress made by the Administration on global electronic commerce in the context of the U.S.-EU Joint Statement on Electronic Commerce of December 5, 1997; the U.S.-Japan Joint Statement on Electronic Commerce of May 15, 1998; the APEC Leaders' Declaration on Electronic Commerce of November 25, 1997; the April 1998 agreement by Western Hemisphere Heads of State to form a joint government-private sector group on electronic commerce as part of the negotiation of the Free Trade Agreement of the Americas; and the May 1998 decisions by WTO Trade Ministers to continue the practice of not imposing customs duties on electronic transmissions pending further review and to initiate a comprehensive work program in the WTO on electronic commerce. AOL also supports the work being done on electronic commerce by the Administration in the Organization for Economic Cooperation and Development (OECD).

Electronic Commerce and Transatlantic Trade Relations

AOL supports and encourages U.S.-EU cooperation on e-commerce through the Transatlantic Economic Partnership (TEP), the Transatlantic Business Dialogue (TABD) and other organizations, such as the OECD and the WTO. AOL believes that the TEP, as a government-to-government trade-oriented forum, should be used to discuss and coordinate U.S.-EU positions on trade-related electronic commerce. AOL has recommended to the U.S. government that the TEP be used to consider, and to reach an agreed approach on, at least the following items:

- How best to promote bilateral and multilateral development of electronic commerce and the Internet;
- Ensuring most-favored-nation and national treatment for foreign providers of Internet and interactive services;
- Ensuring on a permanent basis that no new customs duties will be imposed on electronic commerce;
- Achieving full implementation of the WTO basic telecommunications agreement, increasing the number of signatories to it, and strengthening its provisions as they relate to electronic commerce;
- Ensuring progressive liberalization of basic telecommunications services in a manner that encourages both facilities-based and non facilities-based competition in that sector;
- Achieving full and balanced implementation of the WIPO treaties, including provisions dealing with the liabilities of Internet service providers to encourage the development of electronic commerce on the Internet, and their future incorporation into TRIPS;
- Using electronic commerce to facilitate international trade in all goods and services;
- Promoting electronic commerce with developing countries; and
- Using upcoming negotiations in the WTO General Agreement on Trade in Services beginning in 2000 to prevent or to eliminate obstacles globally to electronic commerce.

The TABD is a business-to-business endeavor whose priorities include an industry-led effort, with close collaboration with governments, to achieve a more transparent, non-discriminatory and obstacle-free environment for trade and investment in information technologies and services. The TABD also is working to encourage the adoption of, and governmental reliance on, self-regulatory mechanisms and voluntary sectoral codes of conduct to protect consumer's privacy. Specifically, the TABD seeks to foster mutual recognition of culturally different but adequate privacy regimes that satisfy consumers' needs and expectations.

Other priority issues with respect to electronic commerce for the TABD include: identification of appropriate models and approaches to achieve global interoperability and legal recognition of electronic signatures and electronic contracts to support online commercial and personal transactions; encouragement of governments to permit businesses and users to select the strength and type of encryption products necessary for their particular security needs; promotion of tax neutrality and non-discrimination in connection with e-commerce; a duty-free environment for electronic transmissions; robust competition through full liberalization of the telecom sector and non-discriminatory access to bandwidth at market-driven rates; and adequate protection for intellectual property rights. Newly identified TABD priorities include Internet domain names and structure; content issues; commercial communications; and information infrastructure assurance.

AOL and other business leaders recently participated in a CEO roundtable convened by EU Commissioner Martin Bangemann to identify and begin to address the most significant obstacles to global communications and e-commerce. The roundtable participants agreed that additional communication and improved cooperation between industry, governments and international organizations was necessary to avoid a patchwork approach to critical issues including taxation, tariffs, encryption, signature authentication, data protection and liability. The creation of a formal structure to continue this particularly productive Global Business Dialogue on the Internet is now underway to foster an ongoing dialogue and forge a consensus on key e-commerce policy issues among leading companies in Asia, Europe, North America and the developing world. The Dialogue will report its findings to governments by mid-1999 at an industry-organized conference.

While the United States and the European Union disagree on a number of important areas affecting e-commerce, they have nevertheless engaged in a constructive transatlantic dialogue aimed at the creation of a new paradigm for relationships between governments and emerging technologies in order to avoid the burdensome regulatory cycles applied to technological innovations in the past. AOL believes that this bilateral dialogue, along with the existing cooperative mechanisms, has the potential to address and resolve critical issues on which the U.S. and EU disagree before they cause serious trade disruption.

An example of such an issue is the interpretation and application of the European Union's Directive on Data Protection, which is to go into effect on October 25 of this year. This directive could possibly lead to US-EU trade friction that would not only undermine the basic e-commerce principle of free flow of data across borders but significantly impact public confidence in the electronic marketplace. AOL has every hope and reason to believe that governments on both sides of the Atlantic will use all available tools and mechanisms and the

growing precedent for collaborative problem-solving on cyberspace issues to reach a mutually acceptable resolution of this important issue.

AOL Concerns About Encryption

AOL is concerned that its ability to expand e-commerce with Europe and other countries is being compromised by government intervention in the area of encryption. While the global marketplace is demanding the use of high-level encryption technology to ensure the integrity of electronic commerce transactions worldwide, U.S. encryption export restrictions are preventing our nation's companies from using high-level security technology. Of course, AOL understands and wants to try to address the concerns expressed by law enforcement regarding the use of high level encryption by bad actors. Nevertheless, these restrictions are placing the United States at a competitive disadvantage in the transatlantic and global marketplace. AOL encourages Congress to swiftly approve legislation that would liberalize these restrictions and recommends that it seriously consider the "private doorbell" proposal recently put forward by several U.S. industry participants.

Creation of New Global Internet Alliance

Led by AOL and others, the Internet industry is currently exploring the creation of a new Global Internet Alliance to provide the structure, framework and accountability necessary to support a workable and effective self-regulatory approach based on best industry practices and codes of conduct. It is believed that this Alliance could serve as a major contact point with the industry for the Congress, government agencies, the EU and other governments, consumer groups, civil libertarians, the press and others. Through its broad and representative membership, the Alliance could effectively respond to concerns and challenges articulated by these various groups and bodies as e-commerce continues to grow and creates new challenges with increasingly larger numbers of stakeholders. The Alliance would also serve the much-needed function of providing public education and outreach to enable more people -- individuals, small businesses, industry, and governments -- to reap the multiple benefits of e-commerce.

Conclusion

AOL believes that a healthy transatlantic trade and investment relationship will contribute to the growth of electronic commerce. At the same time, the growth of electronic commerce will contribute to the growth of transatlantic trade and investment. However, the realization of the full potential of e-commerce is dependent upon government support for an industry-led, market-driven global marketplace with primary reliance on industry self-regulation and technological innovation to build consumer confidence in the

medium and to broaden participation in the market. AOL believes that the role of governments on both sides of the Atlantic and globally is to provide a clear, consistent, predictable, and technology-neutral environment for e-commerce that avoids the erection of legal or regulatory barriers and promotes interoperability, widespread access, and robust competition. AOL respectfully asks for the Subcommittee's support for these objectives.

BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

HEARING ON
TRADE RELATIONS WITH EUROPE AND THE NEW
TRANSATLANTIC ECONOMIC PARTNERSHIP
JULY 28, 1998

WRITTEN SUBMISSION OF THE
CALIFORNIA CLING PEACH GROWERS ADVISORY BOARD

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Submitted: August 11, 1998

BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

HEARING ON
TRADE RELATIONS WITH EUROPE AND THE NEW
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JULY 28, 1998

WRITTEN SUBMISSION OF THE
CALIFORNIA CLING PEACH GROWERS ADVISORY BOARD

I. Introduction

The following written statement is submitted on behalf of the California Cling Peach Growers Advisory Board and the industry's Trade Policy Task Force in connection with the House Ways and Means Trade Subcommittee's July 28, 1998 hearing on trade relations with Europe and the new Transatlantic Economic Partnership (TEP), including unresolved disputes with the European Union (EU) and prospects for the 1999 agriculture negotiations. Specifically, the comments address our industry's protracted dispute with Europe over illegal and trade-distorting EU canned fruit subsidies and the need for decisive U.S. government action that will bring a satisfactory end to this unacceptably prolonged dispute.

The California Cling Peach Growers Advisory Board is a non-profit quasi-governmental association representing all 750 cling peach producers and 5 cling peach processors in the State of California. Virtually all of the United States' production of cling peaches is found in California. Over ninety-five percent of that production is used for processing, the primary product being canned peaches. California canned peaches are sold domestically, their largest single market, and to export markets in the Pacific Rim, Canada, and elsewhere. The Board's primary role is to assist the U.S. industry in the development of these domestic and export markets. The industry's Task Force has assumed the special role of assisting the Board in addressing the industry's long-standing dispute with Europe.

The California cling peach industry has the unfortunate distinction of having the longest-standing Section 301 case now pending before the U.S. government. The case concerns illegal EU canned peach subsidies. Despite nearly two decades of seeking relief from the EU's excessive and irrational canned peach regime in both formal and informal trade

settings, California cling peach growers and processors have yet to receive relief. Not only has there been no relief, EU aid over this period to its canned peach industry has actually increased.

Because past bilateral and multilateral efforts, including a GATT action and a bilateral agreement, have been unable to resolve this long-standing dispute with the EU, the California cling peach industry is skeptical that a new round of WTO multilateral trade negotiations in agriculture in 1999 will deliver anything positive to U.S. canned peach producers and processors. Unless there is closure on current trade disputes, the United States may well be put in the compromising position of negotiating away U.S. tariffs in exchange for solutions to prior disputes that our trading partners were obliged to resolve long ago. The TEP likewise offers no resolution and in fact may even hinder progress on reforming EU canned fruit subsidies. That is because the agreement encompasses only a narrow area of agriculture -- namely biotech and sanitary and phytosanitary issues -- leaving many of the most difficult agricultural trade disputes with Europe, including our industry's dispute over EU canned peach subsidies, unresolved.

II. The European Union Continues to Subsidize its Canned Peach Producers and Cause Significant Trade Distortions Despite the Explicit Terms of a GATT Panel Decision and Bilateral U.S.-EU Canned Fruit Accord.

Seventeen years ago, California canned peach producers and the United States government sought to stop the EU from disrupting the global market for canned peaches by challenging EU canned peach subsidies in GATT dispute settlement. The United States won the case. The GATT panel found that EU peach processing subsidies "nullified and impaired" tariff concessions granted by the EU on canned fruit products. Following that victory, a U.S.-EU bilateral Canned Fruit Accord (CFA) was negotiated in 1985, under which the EU committed to discontinue subsidies to EU canned peach processors. U.S. canned peach producers believed that with the bilateral agreement in place, EU trade disruption would cease. This has not happened. To the contrary, EU trade disruption in the peach sector has become far worse. The California industry and U.S. government have developed irrefutable evidence that the bilateral agreement has failed to discipline EU canned peach subsidies and that the EU regime is causing a significant erosion of the U.S. industry's competitive position.

A. EU Subsidies to Its Canned Peach Sector Exceed on an Annual Basis the U.S. Industry's Total Farm-Gate Value.

Based on EU Commission data, Europe is subsidizing its canned peach producers with between *$161 million and $213 million annually*, an annual funding level that greatly exceeds the total farm-gate value of California cling peaches and far exceeds the level of funding going to every single U.S. farm sector. Data compiled with the assistance of the U.S. Department of Agriculture show that the bilateral agreement has not reduced EU aid levels as intended. Despite specific EU aid commitments given to the United States under the CFA, EU aid levels

have regularly exceeded those committed levels in violation of that agreement in each of the last five years for which data are available by an aggregate amount of $64 million.

In addition, the EU has circumvented the agreement by offering a new form of subsidy -- withdrawal aid -- which is not disciplined by the CFA. Withdrawal aid has been so substantial that EU peach growers have made money by growing for withdrawal, dumping their excess peaches in waste pits, and collecting the EU payment. In Greece, where the excesses have been the greatest, Greek growers in normal production years have dumped up to 66% of their annual production, or between 300,000 to 600,000 metric tons of peaches annually, in withdrawal pits.

B. <u>The Excesses in EU Aid Have Led to Chronic EU Overproduction and Exports, Chronic EU Price Undercutting, and Global Displacement of U.S. Canned Peaches.</u>

Numerous USDA-prepared charts, copies of which are attached, demonstrate that the U.S. industry has to a growing extent been seriously harmed and prejudiced by EU canned fruit subsidy excesses and violations. Data likewise show that the U.S. industry has suffered a deterioration of its competitive relationship with the EU, despite the recommendation of the 1984 Canned Fruit GATT panel that that relationship be restored to pre-subsidy conditions. Moreover, Greece has been able to dominate the global canned peach market even with weather-reduced crops the last two seasons largely because the EU's withdrawal system has encouraged Greek growers to overproduce and maintain nearly double the acreage needed for annual canned peach production.

The EU data show that since the bilateral agreement was struck:

- EU canned peach production and exports are substantially up, consistent with the upward trend in increasing EU subsidy levels. Canned peach production in Greece, the biggest player, has nearly doubled in the last 10 years, from 198,000 metric tons in 1987 to 330,000 metric tons in 1996. Estimates for Greek canned peach production this year are only 10% below maximum production level even with a weather-reduced crop.

- EU cling peach fresh production has grown even more, from 170,000 metric tons in 1986 to 750,000 metric tons in 1996, a direct result of withdrawal aid. Greek growers have so many peaches in the ground that in normal production years they are dumping them in waste pits the size of football fields and are being paid market prices by the EU to do so.

- The world market share of Greece and other EU canned peach producers is also increasing. Today, the EU accounts for roughly 70% of total world canned peach exports.

- With excessive EU aid creating chronic overproduction, the Greeks have been able to significantly undercut California canned peach prices in all world markets by margins of 50% or more.

- As a result, both California canned peach exports to all export markets (most notably Japan and Canada) and California domestic sales have been displaced. California exports to the EU market -- once our industry's largest export outlet -- are now nonexistent.

The evidence is unmistakably clear that as EU aid levels have risen, so too has Greece's export dominance, with corresponding harm to the U.S. industry.

III. Bilateral and Multilateral Efforts to Correct the Problem Have Failed to Achieve Reforms.

The EU has resisted all efforts by the U.S. government and by other non-EU peach producing countries to correct its canned fruit practices. Numerous U.S. bilateral interventions, of which there have been dozens (many at very high levels), more formal trade remedy proceedings under Section 301, a "successful" GATT dispute settlement action, and several rounds of threatened Section 301 retaliation have yet to provide relief. Import relief actions taken by Argentina, Australia, Brazil, Mexico and New Zealand against subsidized low-priced peach exports, an intervention in February 1997 involving six producing countries, and a protest by fourteen WTO-Member countries, including the United States, in the WTO Committee on Agriculture (CoA) in June of this year have likewise not moved the EU to address the problem.

The EU's long-awaited fruit and vegetable reforms of the Common Agricultural Policy (CAP) are also not the answer. Reform measures are being made slowly over a six year phase-in period, during which aid levels remain significant, and harm to the U.S. industry continues. CAP reform also covers only one part of the EU canned peach regime -- withdrawal aid -- and does not discipline the processor aid/ minimum grower price (MGP) scheme or sugar rebate program, nor does it expand on the EU's inadequate grubbing-up program for cling peaches. Finally, CAP reform does not address the canned fruit regime's pervasive fraud and abuse, which the EU Commission itself has documented. EU Auditors' Reports in 1989 and again in 1995 document fraud and overpayments in both the processor aid and withdrawal subsidy premiums. Despite these admissions, the EU has ignored numerous U.S. government requests for evidence that steps are being taken to correct program abuses.

IV. A High-Priority U.S. Government Strategy is Needed for Resolving the Trade Disruption Being Caused by EU Canned Peach Subsidies.

Almost every other non-EU canned peach producing country has taken successful import relief actions against the Greeks and other EU canned peach producing countries to protect their domestic industries.

Over the last year and a half, the industry has worked hard to make its case to USTR and others in the Administration that the EU regime is irrational and in violation of our bilateral agreement. Ambassador Barshefsy has personally acknowledged that the EU regime is an "inequity" and that

> "the Commission is again providing excessive financial aid to the point where the EU's share of the world market continues to increase while that of the market oriented producers continues to decrease."

USTR has pledged to our industry and to many in Congress that they will work hard to fix the problem. We are counting on that commitment to find a solution. We have explored with the U.S. government WTO dispute settlement, Section 301, and other remedial avenues, including other WTO venues before which to take our concerns. The U.S. government recently joined thirteen other affected countries in protesting the EU canned fruit regime in the WTO Committee on Agriculture (CoA). Although the EU was unresponsive, we are hopeful that the good offices of the Chairman of the WTO Committee on Agriculture and the continued protests of thirteen other WTO-member countries in addition to the United States will create the pressure and leverage needed to force EU reforms. U.S. government officials have promised to make high-level interventions with EU officials in Brussels as a follow-up to the CoA meeting to explore specific reforms and increase bilateral pressure. If this approach fails to produce concrete relief, another more targeted, forceful strategy will need to be pursued.

At this juncture, before undue energies are applied to the 1999 exercise, we are in urgent need of a decisive U.S. government strategy for delivering relief in the context of the present. We ask the Subcommittee's help in encouraging this.

V. U.S. Agriculture Sectors Need Assurances that Current Trade Agreements are Being Honored Before Attention is Turned to a New Multilateral Trade Round.

The direction the U.S.-EU canned fruit dispute takes will have important implications well beyond the canned fruit sector. Not only is the U.S.-EU canned fruit dispute instructive on how the multilateral trading system and our own U.S. trade laws have been unable to correct inequities with our trading partners, it also helps demonstrate how the EU, the U.S. government's most frequent adversary on agricultural issues, continues to increase its protection for domestic industries despite Uruguay Round reform.

The United States should be able to secure relief for an aggrieved U.S. industry under compelling circumstances, like ours, that include --

- a favorable GATT ruling and a bilateral agreement,
- irrefutable evidence that an established agreement is not working and that the regime has led to destructive trade consequences for the California industry,
- acknowledgement by the Administration that the EU's regime is an "inequity" that needs to be corrected, and
- recognition even by the EU Commission that the system needs reform and is fraught with fraud and abuse.

If the present system will not deliver relief under these conditions, its effectiveness must be questioned. Moreover, if the present system is ineffectual at its foundation, refinements to that system in 1999 are of equally questionable value.

VI. Conclusion

The California cling peach industry needs evidence that existing trade agreements work before it will endorse the U.S. government venturing forward in pursuit of new multilateral agreements for agriculture. As the EU canned fruit dispute demonstrates, new agreements will be of dubious consequence if existing ones are not being honored. The U.S.-EU Transatlantic Economic Partnership Agreement offers no relief for our industry since it covers only technical and biotech agricultural issues, unrelated to the EU's illegal subsidy practices.

We ask the Subcommittee for its help in sending the message that past agreements must be fixed and in urging that a high-priority U.S. government strategy be pursued to reverse the ongoing harm being caused to our industry from EU canned peach subsidies before attention turns to a new multilateral round of negotiations in agriculture.

Attachments (charts)

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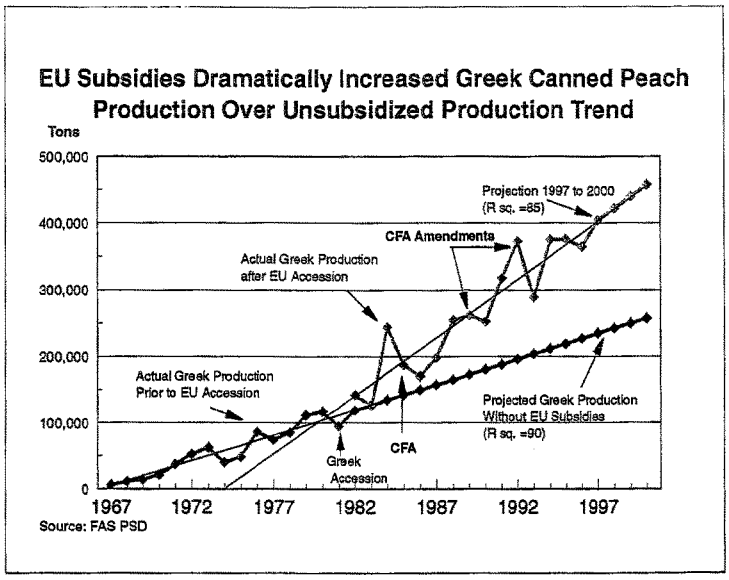
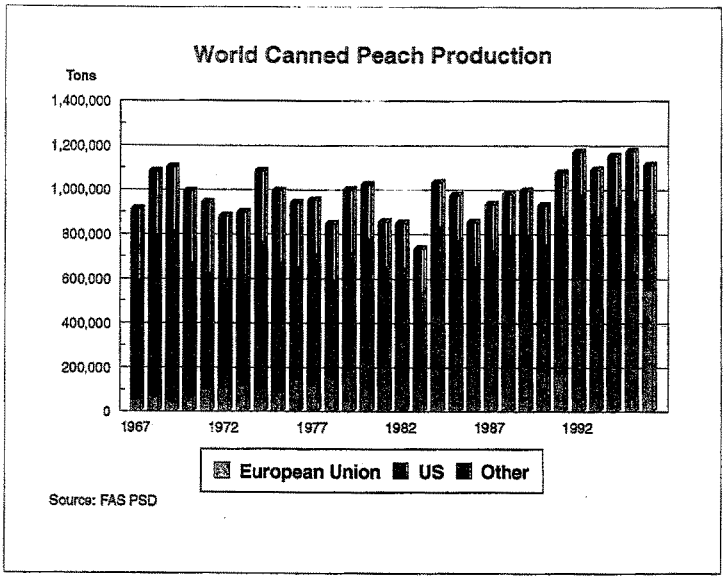
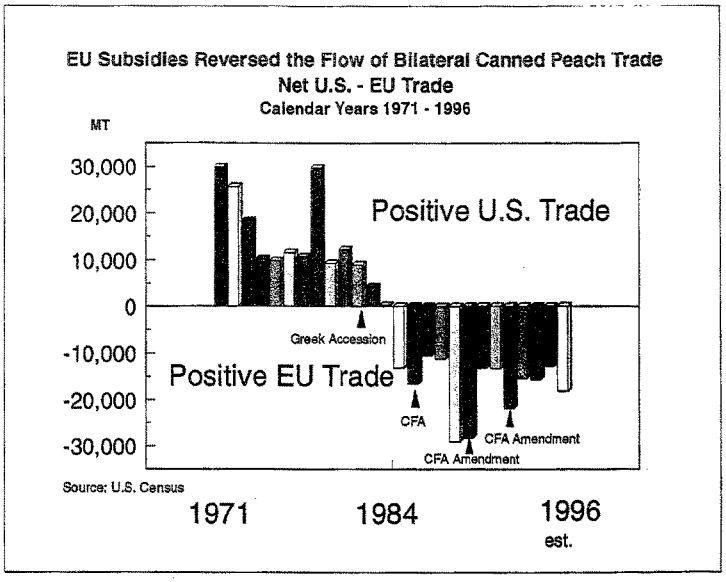


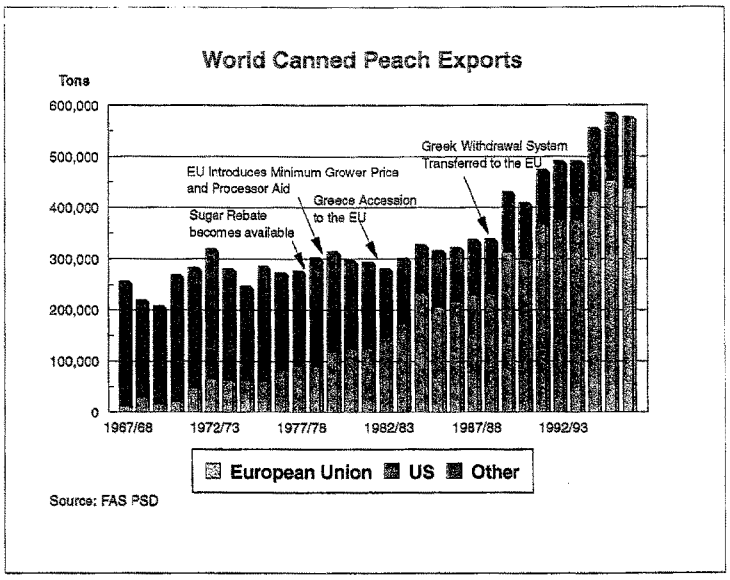
- Since accession to the EU, Greek cling peach producers and canners have received substantial subsidies.
- The average subsidy, for just the processing aid and withdrawal payments, for the years 1989 through 1994, was 320 ecu ($379) for each ton packed.
- In spite of the theoretical limitations imposed by the Canned Fruit Agreement (CFA), excessive subsidies have boosted production beyond market demand.



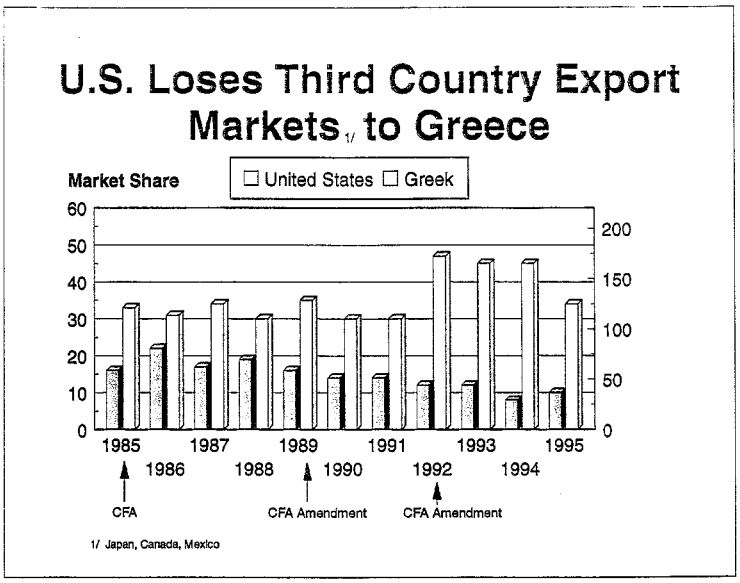
- Over the last 30 years world canned peach production has remained fairly constant. The average canned pack is around 936,000 tons, but has fluctuated as much as 25 percent from this figure due to weather affected fresh peach production.
- What is notable is the growth in the EU's share of production compared to the rest of the world's.
- From 1978 to 1983 the EU's share jumped from 12 to 42 percent and now accounts for almost 50 percent of world production.



- Excessive EU expenditures to support peach production and processing have reversed the U.S. - EU trade position.
- Ever expanding Greek exports have eliminated the U.S. presence in the EU and have reduced U.S. domestic sales.

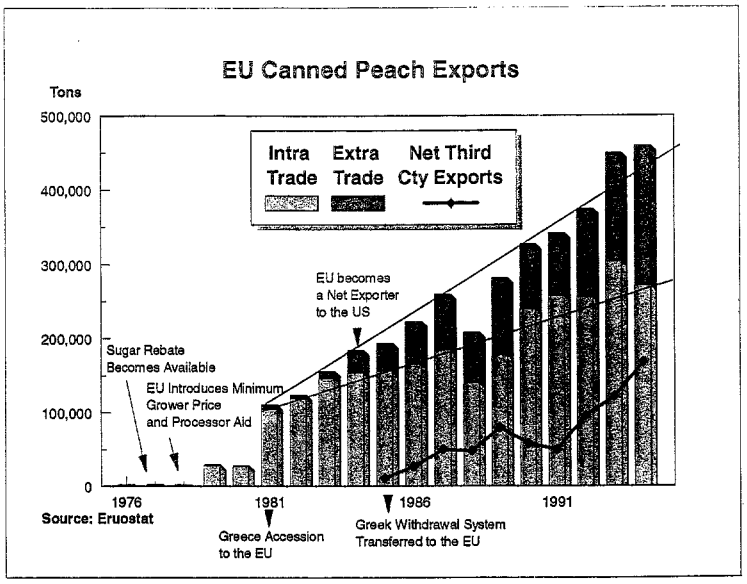


- In spite of relatively flat world production, world exports have increased well over 100 percent.
- World shipments have increased over 309,000 tons but the EU's shipments increased over 425,000 tons.
- U.S. and other suppliers, once competitive in world trade can not hope to capture third country markets and must stave off EU subsidized exports into their domestic markets through anti-dumping and countervailing duty actions.



- The excessive expenditures have led to rampant Greek exports harming U.S. market share in third country markets.
- Since 1984, canned peach imports, by leading countries, have increased over 180 percent. The U.S. market share has fallen while Greece's has increased.
- The canned fruit agreement has not corrected this situation.

- There is a direct correlation between the level of EU subsidies and the volume of Greek exports of canned peaches.
- Greece exports over 95% of its canned peach pack.
- Neither the canned fruit agreement (CFA) nor any of its subsequent amendments have controlled either excessive expenditure or unbridled, subsidized Greek exports.



- As the growth of intra EU trade declines as the EU reaches a level of full comsumption.
- Exports to third countries increase and become more important to EU producers.

WRITTEN STATEMENT OF
CHIQUITA BRANDS INTERNATIONAL

BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

HEARING: TRADE RELATIONS WITH EUROPE AND THE NEW TRANSATLANTIC ECONOMIC PARTNERSHIP
JULY 28, 1998

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August 11, 1998

WRITTEN STATEMENT OF
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HEARING: TRADE RELATIONS WITH EUROPE AND THE NEW TRANSATLANTIC ECONOMIC PARTNERSHIP
JULY 28, 1998

The following comments are submitted on behalf of Chiquita Brands International for inclusion in the written record of the Subcommittee's July 28, 1998, hearing on U.S. trade relations with Europe and the new Transatlantic Economic Partnership (TEP), including progress in the resolution of pending dispute settlement proceedings with the EU in the WTO and prospects for the 1999 WTO agriculture negotiations. The comments give emphasis to the experiences of Chiquita with the WTO system, particularly in connection with the WTO dispute settlement case against the EU's banana regime. The lessons derived from the WTO *Banana Case* are important to understanding the nature of agricultural trade barriers that still exist post-Uruguay Round, the shortcomings of the WTO dispute settlement process, and the types of systemic improvements that will need to be sought in the next round of WTO negotiations scheduled to begin in 1999.

I. The WTO *Banana Case* Has Contributed Significantly to Our Understanding of the WTO System and How it Relates to Agriculture.

There is no agricultural policy anywhere in the globe that has been more heavily litigated in GATT and WTO dispute settlement than the EU's import regime on bananas. It has been exhaustively reviewed and condemned by two GATT panels, one WTO panel, and the new WTO Appellate Body. The legal violations found, numbering close to twenty, are more numerous than those found in any other GATT/WTO case in the 50-year history of the GATT/WTO. The rulings cover a wide spectrum of GATT and GATS disciplines and establish landmark principles in the area of agriculture and services.

Hence, while bananas may not represent a substantial U.S. farm sector, the WTO *Banana Case* has significantly contributed to the United States' understanding of the WTO system, including as it relates to agriculture. The case is instructive not only as to the nature

of agricultural restrictions post-Uruguay Round now being practiced in Europe and condemned under the WTO, but also as to EU conduct in the dispute settlement system, and to the efficacy and timeliness of that system for reducing barriers to trade in agriculture. Because of its broad coverage, the case offers an important perspective on the WTO system and the reforms the U.S. government should seek in the 1999 WTO exercise to improve upon existing remedial protections for U.S. agricultural interests.

II. As the *Banana Case* Demonstrates, the Uruguay Round Did Not in All Cases Lead to Market Access Gains for Agriculture.

The EU banana policy itself is a lesson on, among other things, the imperfections of Uruguay Round agricultural "tariffication." Although "tariffication" was intended to reduce the historic protectionist border measures of WTO member countries, "tariffication" reform has far from guaranteed transparency or market expansion. To the contrary, in the case of bananas, it led to a licensing and quota regime considerably more discriminatory and non-transparent than many of the non-tariff barriers prohibited by the Uruguay Round. Even gauged against historical EU restrictions, the illegalities of the present banana policy go far beyond traditional EU protection for farmers to include protection as well for EU middlemen throughout the distribution chain.

The EU banana policy is, thus, highly visible proof (within a growing body of evidence) that EU protectionism post-Uruguay Round has not shrunk, but rather broadened into new areas of illegal activity. Because it remains to be seen whether the WTO system will have the requisite resolve to condemn and remove these new forms of agricultural restrictions, understanding the nature and implications of these new trade barriers is central to setting goals and identifying areas of improvement for the next round of WTO negotiations in agriculture.

III. The *Banana Case* is Evidence that the WTO Dispute Settlement System Has Significant Shortcomings That Need Attention and Correction.

The *Banana Case* perhaps most importantly has helped to identify two principle shortcomings in the WTO dispute settlement system. The first shortcoming in need of immediate attention relates to the EU's questionable commitment to the dispute settlement system. A second shortcoming, which should be a primary focus of the 1999 exercise, concerns the dispute settlement system's less-than-prompt timetable and structure for relief.

A. It Remains to Be Seen Whether Key Countries Like the EU Will Comply With WTO Rulings.

During the Uruguay Round, the United States gave up its authority to act unilaterally against unfair trading practices under Section 301 in favor of a new, so-called "fool-proof" WTO dispute settlement system. The test of whether the new dispute settlement system will live up to this claim lies in the extent to which WTO member countries are willing to implement fully and on a timely basis the WTO rulings rendered against them. No matter how

far-reaching WTO procedural and substantive disciplines may appear on paper, they have no meaning if countries, like the EU, refuse to abide by them.

The *Banana Case* is the first successful WTO *legal* challenge against EU agricultural policy and, as such, has become the first decisive test of EU willingness to abide by its WTO obligations in the area of agriculture. Indications out of Europe on this issue to date are far from promising.

Initially, the United States and other complaining parties were hopeful that promises from European officials to abide by their WTO obligations in the *Banana Case* meant that the EU would adopt a WTO-consistent regime. If there were ever an easy agricultural case in which the EU could come into WTO compliance, it would be this one. A substantial majority of EU Member States, including Germany, Denmark and Belgium, favor banana reform. To USTR's great credit, all of the many WTO rulings rendered against the banana regime are clear and comprehensive. There are more WTO rulings against this policy than ever before rendered in the history of the GATT and WTO. Virtually all of the rulings have been thoroughly litigated, including before the Appellate Body, leaving no room for misinterpretation. Moreover, there are five other WTO Members besides the United States pushing for reform, many of them with special considerations as developing countries. It is reasonable to assume that under these favorable circumstances, the EU would feel bound to proceed in good faith to implement its WTO obligations. This is particularly so since the *Banana Case* represents the first instance in which the EU is being called upon to come into compliance with a WTO panel and Appellate Body ruling.

The EU's conduct so far, more than 10 months after the Appellate Body confirmed the WTO panel's rulings, indicates that its intentions are otherwise. The EU Commission responded to the WTO banana ruling by proposing in January a new banana regime that would *increase* discrimination and protectionism in the sector, not decrease it. Under the new regime every one of the many measures condemned by the WTO would be maintained and even expanded under the name of WTO "reform." The complaining parties have outlined and objected to the many illegalities of the reform proposal in a "G-6 Views" paper and in a Joint Statement to the WTO Dispute Settlement Body. Ambassador Barshefsky has accurately described the new arrangement as "more WTO-inconsistent than the regime that was just ruled to be WTO-inconsistent." In mid-June, Ambassador Barshefsky and Secretary Glickman wrote to all 15 EU trade and agriculture ministers warning that adoption of the new, proposed WTO-inconsistent banana regime could lead to U.S. retaliation. The EU, however, ignored these warnings and at the June 23-25 EU Agriculture Council meeting, the 15 EU countries adopted the new WTO-inconsistent banana regime, which is scheduled to take effect on January 1, 1999.

This kind of EU response is reminiscent of the "bad old days" under the old GATT system, when the EU routinely ignored panel rulings in the area of agriculture, rendering the dispute settlement system ineffective. It was that obstructionist EU behavior that first led to the push for Uruguay Round reform and a promise at the conclusion of that Round that the

problem of blocking panel reports would be cured. Today, as the EU shows its old colors by working to obstruct the *Banana Case*, all of the old pre-WTO concerns regarding EU bad faith and inadequate multilateral commitment to panel rulings resurface. As the *Journal of Commerce* has recently noted,

> "The U.S.-European Union spat over preferential banana imports to Europe has gone beyond a mere flagrant violation of international trading rules. The EU's refusal to obey a World Trade Organization order to scrap the banana policy is putting the entire trading system in peril."

Perhaps more than with any other issue, the question of whether rulings will be properly implemented by our key trading partners, in particular the EU, is central to an assessment of whether the WTO will be effective in reducing barriers to trade in agriculture and key to determining what changes must be sought in future trade negotiations. As we learned in the GATT days, it matters little how specific and comprehensive the WTO substantive disciplines are in the area of agriculture if our principal trading partners do not have the requisite resolve in the first instance to abide by those disciplines. Thus, before we can turn to the visionary task of defining new substantive agricultural areas for negotiation in 1999, our most immediate priority must be to reassure ourselves through actual dispute settlement successes that the EU and our other major agricultural partners have a present intention to fully honor existing WTO obligations.

Because the EU Council's adoption of a new WTO-illegal banana arrangement shows no intention on the part of the EU to honor its WTO obligations, if the system is to work, the EU will need to be forced into full compliance through recourse to established WTO procedures. The WTO provides for two procedures in the event of non-compliance: compliance arbitration and WTO-authorized retaliation. These procedures have never before been invoked under the WTO. By letter dated July 30, 1998, the EU has made clear its intention to obstruct the use of these two procedures in order to try to avoid full compliance by January 1, 1999 and deprive the United States of its WTO right to retaliate.

That being the case, decisive steps toward WTO retaliation must be taken now, before January 1, not just for the sake of the *Banana Case*, but for the entire system. If the U.S. and other complaining parties relent in this first case in which EU resolve is being tested, it will pave the way for EU non-compliance in all other cases down the line, destroying the entire system.

There is a general consensus that the United States will not be able to reverse the EU's present course, stop implementation of the new illegal EU regime, or ensure WTO-conformity by the end of the EU's "reasonable period of time" *(i.e.*, by January 1, 1999) unless the United States issues before the end of the year a specific retaliation list that would go into effect after January 1 if the EU is not in compliance. Under Section 301 of the Trade Act of 1974, as amended, if a foreign country, like the EU, fails to implement a WTO ruling, the U.S. government is *required* to take retaliatory action no later than 30 days after the expiration

of that country's "reasonable period of time." The Subcommittee is encouraged to lend its strongest possible support to these efforts. Until the U.S. government can show a well-established track record of WTO dispute settlement successes against our most frequent adversary in the area of agriculture, the EU, the U.S. agricultural community is not likely to view the WTO system as a viable, effective tool for removing barriers to trade. Wide-spread cynicism respecting the WTO system will almost certainly mean diminished support for the 1999 exercise.

B. The Dispute Settlement System With Its Long Timetable and Tolerance for Delays, Favors The Offending Parties, Not The Injured Parties.

If the dispute settlement system proves capable of ensuring WTO-member compliance with panel and Appellate Body rulings, the system must still be fixed to hasten the process of relief. In key ways, the process of relief now functions to the advantage of the offending parties, not the injured ones.

The *Banana Case* is again illustrative. WTO consultations in that case began in October of 1995. Dispute settlement procedures have actively been underway since then. Even with aggressive litigation on the part of USTR and the other complainant governments, full WTO compliance, assuming it occurs, will not be in place until January of 1999 -- more than three years after the dispute settlement proceedings first began. If retaliation procedures are necessary, that timetable may require further extensions, at a minimum by several months.

Throughout this several-year dispute settlement period, damages to U.S. commercial interests have greatly compounded. Conversely, unfair commercial advantages for EU multinational banana firms have skyrocketed. Both the injuries suffered and advantages gained are irreversible. If WTO-compliance is achieved after several years of litigation, it will deliver relief solely on a going-forward basis. The system does not make allowances for restitution or back damages. The injured parties are never made whole. Hence, irrespective of how healthy those injured parties might be at the outset, once a foreign government subjects them to substantial market losses, and corrective action is not forthcoming for multiple years (such that all losses in the interim must be absorbed), those injured parties in virtually all instances will find it hard to survive.

Unfortunately, certain offending parties (and in particular the EU) know well that by forcing the procedures into the slowest possible timetable (in our case, over three years), they will suffer no adverse multilateral or commercial consequences. To the contrary, they properly figure that their domestic interests will enjoy nothing but up-side commercial gains as the WTO timetable drags on. Thus, in our case, the EU knew that even if it lost on appeal, EU commercial interests would ultimately be served by the time delays associated with appealing *19 findings of law*, most of which appellate claims were frivolous and contrary to well-established GATT and WTO rulings. Whatever the legal costs to the EU of that and other delays associated with resisting compliance, those costs have been dwarfed by the multi-millions of dollars in additional unfair commercial benefits irreversibly accruing to EU

interests. Although the WTO dispute settlement timetable was intended to quicken relief for aggrieved parties relative to prior GATT procedures by establishing definite time limits, in practice, the system has proven to be far less wedded to the promise of assuring aggrieved parties timely relief.

The timetable and relief structure, if left unaltered, will prove to be not just a systemic inequity. It will be a disincentive for American agriculture, most of which is comprised of relatively small sectors, to activate dispute settlement relief.

One partial solution well-suited for discussion in the 1999 exercise may be to shorten the dispute settlement timetable, particularly as it relates to the recommended 15-month "reasonable period of time" for implementing panel and Appellate Body rulings. When you string end-to-end the stages involved in the new dispute settlement procedures, the process is substantially longer than most sectors understood would be the case. While three or more years may not be the norm in dispute settlement, it is nevertheless a timetable that falls within WTO rules and one that is entirely too long for U.S. farm sectors or others in need of timely corrective action.

The other component of the solution, requiring more in the way of innovative thought, would be to insert into the process improved disincentives for delay and obstruction. One option might be to impose additional relief obligations for undue delays associated with coming into compliance. Another option might be to clarify that retaliation can be taken on the basis of aggregate injury suffered from the moment the offending policy goes into effect, an approach that may improve the system's incentive to come into early compliance. Unless corrective measures of this or some other sort are taken to shorten the process and better encourage prompt compliance, agricultural sectors and firms suffering dire injury from unlawful foreign barriers may not survive long enough to receive the relief finally granted. Given this dubious outlook, it is critical that reforms to shorten the compliance time frame and increase pressures for quick compliance be seriously considered during the upcoming round of multilateral negotiations to begin next year in 1999.

IV. Conclusion

With the effective loss of Section 301, WTO dispute settlement is essentially the only remedial tool available to American agriculture (and other U.S. sectors of trade) for reducing foreign barriers to trade. The U.S. government and U.S. agricultural sectors have no choice but to make the system work. By establishing a highly visible model for strict WTO-compliance in the *Banana Case*, and by insisting on that same standard in the *Beef Hormones Case* and other key agricultural cases to come, we will be giving the system the broad-based credibility it needs as we move into the 1999 "next round" exercise. If rules to accelerate the dispute settlement timetable for securing compliance can be negotiated, the system can be made more effective and accessible for all U.S. farm sectors, large and small, in need of trade remedy assistance.

Chiquita looks forward to working closely with the Subcommittee and the Administration to ensure that the *Banana Case* is concluded in a way that delivers meaningful, WTO-consistent relief and validates the WTO dispute settlement system.

Statement
on
E.U. Challenge to U.S. Foreign Sales Corporation Tax Structure
before the
Subcommittee on Trade
of the
House Committee on Ways and Means
As part of the hearing on
Trade Relations with Europe and the New Transatlantic
Economic Partnership
on
July 28, 1998

on behalf of the
COALITION TO DEFEND THE FSC [1]

August 11, 1998

On behalf of the Coalition to Defend the FSC, we offer these comments on the European Union's (E.U.) challenge of the U.S. Foreign Sales Corporation (FSC) tax structure. The membership of the Coalition consists of 28 multinational businesses from all over the United States, representing a broad range of industries and representing large and smaller exporters. The members of the Coalition are BMC Software; Case Corporation; CP Clare Corporation; EG&G, Inc.; Georgia Pacific Corp.; Hadco Corporation; Herr-Voss Industries, Inc.; Hershey Food Corp.; Hutchinson Technology; IMI Group Inc.; JELD-WEN Inc.; Long Prairie Packing Inc.; Microsoft; MTS Systems Corporation; Ocean Spray Cranberries; Oracle Corporation; Quaker Fabric Corp.; Research Inc.; Scientific-Atlanta, Inc.; Simonds Industries Inc.; AB SKF (SKF USA Inc.); Smithfield Foods; Snap-On Incorporated; Technitrol, Inc.; Tracor Inc.; Unocal Corporation; Vollrath Company; and York International Corporation. Collectively, we represent over 230,000 jobs in the U.S. and over 360,000 jobs worldwide.

The Subcommittee has received testimony about the importance of trade with Europe and benefits from expanding that trade through initiatives like the Transatlantic Economic Partnership. However, we are concerned that pending disputes in the World Trade Organization (WTO) over tax practices pose a potential roadblock to expanding trade with Europe. In particular, we are concerned that the E.U.'s challenge of the FSC structure is harmful to trade relations and cooperation with Europe and initiatives that aim to expand trade.

The current FSC rules, and the DISC rules that they replaced, were enacted to offset a competitive disadvantage faced by U.S. exporters because the U.S. tax system is not as generous to exports as are the tax systems of our trading partners. These concerns still exist today.

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[1] This statement was prepared by Arthur Andersen on behalf of the Coalition to Defend the FSC.

Members of the Coalition to Defend the FSC are concerned with the E.U.'s sudden challenge of the FSC rules more than 13 years after these rules were enacted into law. We believe this exercise is unproductive since, as the U.S. Trade Representative asserts[2], there is no commercial harm to the E.U. as a result of the FSC rules. Furthermore, we believe that the uncertainty created by this challenge is harmful to both U.S.-owned and foreign-owned businesses[3] that use the FSC rules. Finally, we believe that this unproductive and unjustifiable challenge of the FSC rules could harm U.S. and E.U. trade relations.

I. BACKGROUND

In November 1997, the E.U. requested consultations with the United States to discuss allegations that the U.S. FSC tax rules are inconsistent with the General Agreement on Tariffs and Trade (GATT) and the WTO Subsidies Agreement. Following a series of consultations, the E.U., at the July 23 meeting of the WTO's Dispute Settlement Body, made a request for a WTO dispute settlement panel to investigate the claim that the U.S. FSC tax rules violate U.S. obligations under WTO Agreements.

Congress enacted the FSC tax rules as part of the Deficit Reduction Act of 1984 (P.L. 98-369) as a replacement for the Domestic International Sales Corporation (DISC) rules, after the DISC was found in 1981 to be in violation of the export subsidy rules under the GATT. Congress drafted the FSC rules to be compatible with U.S. international trade obligations.

The DISC, which the FSC replaced, was enacted in 1971 to address the imbalance in tax treatment faced by U.S.-based exporters because the U.S. tax system is not as favorable to U.S. exporters as are the tax systems of many of our trading partners. Specifically, the U.S. imposes tax on worldwide income, whereas the tax systems of many of our trading partners impose tax only on income earned within their borders. Thus, under a territorial tax system, like the French system for example, the foreign portion of income earned on the sale of goods exported from the country of manufacture for sale in Japan would not be subject to tax by the home country. However, the U.S. would tax income earned on the sale of a U.S. export to Japan. Thus, the U.S. worldwide tax system imposes an extra layer of tax on the U.S. product sold in Japan, compared to, for example, the French product, which may place U.S. exporters at a competitive disadvantage.[4] In addition, many of our trading partners support their governments in part through revenues collected from a value-added tax (VAT), as well as from revenues collected from income taxes. A VAT is generally rebated on exports. The French VAT, for example, is rebated on the export of goods to non-E.U. countries. Thus, in the above example, a product exported from France would not bear a portion of the cost of supporting the

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[2] USTR Press Release, U.S. Trade Representative Charlene Barshefsky Reacts to European Attack on U.S. Tax Law, No. 98-67, July 2, 1998.

[3] The FSC rules are used by U.S. exporters that are foreign-owned, as well as U.S. exporters that are U.S.-owned. The Coalition to Defend the FSC includes in its membership the U.S. subsidiaries of two European headquartered companies.

[4] The U.S. tax system allows U.S. multinationals a credit for taxes paid to foreign jurisdictions to offset the impact of double taxation where the income is taxed in both the U.S. and foreign jurisdictions. However, if the foreign country imposes a lower rate of tax than the U.S., the U.S. will collect tax on the difference between the U.S. and foreign tax rate, whereas a country with a territorial tax system will exempt all such income from home country tax.

French government associated with a VAT. On the other hand, the U.S. tax system does not provide for a rebate of taxes borne by exports. Thus, the cost of a U.S. export sold in Japan will include a portion of the corporate income tax and payroll taxes imposed on the U.S. exporter. The legislative history of the DISC reflects an intent by Congress to remove tax disadvantages that might have encouraged U.S. multinationals to manufacture overseas products for the export market rather than in the United States, but to avoid granting undue tax advantages to DISCs.[5]

In 1972, the European Community challenged the DISC as providing an illegal export subsidy. The U.S. in turn challenged the export tax practices of various European tax systems. In 1976, a GATT panel determined that the DISC and the territorial tax systems of France, Belgium, and the Netherlands all had some characteristics of an illegal export subsidy.

In 1981, the GATT Council issued an Understanding that further defined the appropriate principles for countries to follow in reconciling tax and trade rules in regard to foreign source income of exporting firms. The 1981 Understanding provides that, "GATT signatories need not tax export income generated by economic processes outside their territorial limits, as long as arm's length pricing principles are observed in transactions between related parties. The understanding also states that the GATT does not prohibit the adoption of measures to avoid the double taxation of foreign source income."[6] The 1981 Understanding of the GATT Council is now also reflected in the WTO Subsidies Agreement.

Congress, being sensitive to the need to replace the DISC with a GATT compatible alternative, drafted the 1984 FSC statute to conform to the principles set forth in the 1981 GATT Council Understanding. In light of these rules, the FSC provisions of the Code provide that to qualify as a FSC the corporation must have a foreign presence, it must have economic substance, and the activities that give rise to export income must be performed by the foreign sales corporation outside the U.S. customs territory.[7] In addition, the income of a FSC must be determined in accordance with arm's-length transfer pricing principles. These rules were not challenged for over 13 years.

III. THE FSC RULES ARE GATT LEGAL

Congressional concern when enacting the FSC rules focused on enacting a tax structure that compensated companies for the disadvantages of the U.S. tax system, while at the same time maintaining compliance with U.S. obligations under the GATT.

A. FSC Rules Require that Export Income is Generated by Economic Processes Outside the U.S. Territorial Limits

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[5] Joint Committee on Taxation, *Replacement of Domestic International Sales Corporations (DISCs) Description of S. 1804 (Foreign Sales Corporation Act)* (JCS-61-83), November 17, 1983.
[6] Department of the Treasury, The Operation and Effect of the Domestic International Sales Corporation Legislation, 1981 Annual Report, July 1983.
[7] Sections 922 and 924 and the regulations issued thereunder. All references are to the Internal Revenue Code of 1986, as amended.

The 1981 GATT Council Decision provided, in part, that GATT signatories are not required to tax export income attributable to economic processes located outside their territorial limits. Therefore, excluding this income from tax would not violate the principles of GATT. The FSC rules conform to this principle. The Senate Finance Committee Report accompanying the adoption of the FSC provisions states, "[i]n light of these rules, the bill provides that a FSC must have a foreign presence, it must have economic substance, and the activities that relate to the export income must be performed by the FSC outside the U.S. customs territory."[8]

The statute and regulations governing the qualification and operation of a FSC require that economic processes take place outside the United States.[9] To qualify, a FSC must meet the following requirements:

- Be created or organized outside the U.S. customs territory;
- Be located and managed outside the United States;
- Maintain a set of permanent books outside the United States; and
- Incur a minimum level of direct costs outside the United States. These direct costs include advertising, sales promotion, and order processing, etc.

Congress was mindful when enacting the FSC rules in 1984 of the requirements needed to conform to GATT and drafted the current FSC rules to qualify within the perameters of the 1981 Decision. The FSC rules are consistent with the GATT principles.

B. Arm's Length Pricing is Required Under FSC Rules

The 1981 GATT Council Understanding also required that arm's-length pricing be observed when pricing goods in transactions between exporting enterprises and related foreign buyers.

The FSC provisions enacted in 1984 explicitly establish that the income of the foreign sales corporation must be determined according to transfer prices using either actual prices for sales between unrelated, independent parties or, if the sales are between related parties, formula prices which comply with GATT's principle regarding arm's-length pricing.[10]

To accomplish this, the FSC rules require that sales made through a FSC to related parties either meet the requirements of section 482 of the Internal Revenue Code (relating to the allocation of income and deductions) or administrative transfer pricing rules designed to approximate arm's-length pricing.

Taxable income may be based upon a transfer price that allows the FSC to derive taxable income attributable to the sale in an amount which does not exceed the greatest of:

(1) 1.83 percent of the foreign trading gross receipts derived from the sale of the property;
(2) 23 percent of the combined taxable income of the FSC and the related person; or
(3) Taxable income based upon the actual sales price, but subject to rules in section 482.

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[8] Deficit Reduction Act of 1984, Senate Report No. 169 (Vol. 1), 98th Cong., 2nd Sess. (1984).
[9] Section 924 and the regulations thereunder.
[10] Section 925 and the regulations thereunder.

The first two pricing rules are termed the administrative transfer pricing rules for related parties. These rules establish the maximum allowable taxable income from an export transaction between a FSC and a related supplier.

In order to qualify to use these rules, a FSC must meet certain requirements. The use of the administrative transfer pricing rules is conditioned on the performance of substantial economic functions. The FSC or its agent must perform all of the activities relating to:

(i) Advertising and sales promotion; processing customer orders and arranging delivery of the export property; transportation from the time of acquisition by the FSC to the delivery to the customer; invoicing and receiving payment; assuming credit risk; and

(ii) Sales activities -- solicitation (other than advertising), negotiation, and making of the contract for the sale.

The administrative transfer pricing rules limit the amount of income that a FSC can earn on export transactions of related parties and require the FSC to perform substantial economic functions that justify the use of administrative pricing formulae which approximate the arm's length price that would be derived under section 482. Thus, the FSC rules ensure that transactions between exporting enterprises and related foreign buyers are arm's length as required by GATT.

IV. ECONOMIC EFFECTS OF THE FSC RULES

In the 1970s and again in 1984, the Congress was concerned about American competitiveness and felt that legislation was needed to offset the competitive disadvantages that the U.S. tax system places on exports. The FSC, like the DISC, was enacted to offset a competitive disadvantage faced by U.S. exporters vis-à-vis our trading partners whose tax systems are more favorable for exports.

According to the most recent report of the Department of the Treasury on the operation and effect of the FSC tax rules, which covered the period from July 1992 to June 1993, the overall economic impact of the FSC has been positive.[11] Overall, the FSC program was estimated by Treasury to have increased U.S. exports by about $1.5 billion in 1992, or about .3 percent of the roughly $500 billion of all U.S. exports. Thus, the value of the FSC lies not so much in its effect on export growth, but in its role as an offset to tax-based commercial advantages provided under other taxation systems. This role is important to maintaining production and economic activity in the United States.[12]

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[11] This report was issued in November of 1997.

[12] In the legislative history of the DISC, Congress expressed concern that because of the U.S. tax system provided incentives for U.S. companies to produce their products overseas. One of the purposes of the DISC was to remove a disadvantage of U.S. companies engaged in export activities through domestic corporations. House Report No. 533, 92nd Cong., 1st Sess., 58 (1971).

The E.U. has provided no evidence that the FSC causes commercial injury to E.U. firms. The E.U. is complaining about a tax structure, the FSC, which is far less generous than the European territorial tax systems that exempt exports from taxation completely.

The continued pursuit of a claim against the FSC structure opens the door for a review of the tax practices of some of the E.U. member countries. In fact, the U.S. has filed claims against the tax systems of five European countries, including Belgium, France, Greece, Ireland, and the Netherlands, which the U.S. believes violates the WTO Subsidies Agreement. However, the WTO, a trade organization, is not an ideal forum for objective review of the tax practices of individual nations. Tax experts not trade officials should oversee a review of the comparative operations of these systems, if a review is deemed to be appropriate.

In an era of increased global trade, it would be a step backward in our effort to promote world trade to weaken or remove the FSC tax provisions.

V. CONCLUSION

The FSC rules are consistent with the principles expressed by the GATT Council and the WTO Subsidies Agreement. In their decision to replace the DISC provision of the Code with the FSC rules, the United States Congress was aware of and complied with, the letter and the spirit of the 1981 Understanding expressed by the GATT Council. The foreign presence, management, and economic processes requirements as well as the pricing requirements, reflect a system where income is generated by economic processes outside U.S. territorial limits in accordance with arm's length pricing principles. The E.U.'s challenge of the FSC rules, 13 years after their enactment, should not be allowed to continue.

It is extremely dangerous to interfere with worldwide tax regimes as a means of resolving trade disputes. The E.U.'s current WTO challenge of the FSC rules will provide no possible benefit to international trade. On the contrary, continued pursuit of the pending claims against the FSC and the European tax systems is harmful to future trade relations and economic cooperation between the United States and the European Union.

While the issue is still being addressed in the administrative councils of the World Trade Organization, it is important that Congress be aware of and maintain an interest in the E.U.'s claims against the FSC rules as it considers and develops U.S.-European trade policy.

Sophia Antipolis, 18 August 1998

The Honourable Philip M. Crane
Subcommittee on Trade
Committee on Ways & Means
US House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515,
United States

Open Letter to Chairman Philip M. Crane

Dear Chairman Crane,

In the July 28 hearings of the Subcommittee on Trade of the House Committee on Ways and Means, relating to the Trade Relations with Europe and the New Transatlantic Economic Partnership, the name of the European Telecommunications Standards Institute (ETSI) was repeatedly mentioned but ETSI was not invited to testify. It is my duty to set the record straight on a number of items that are leading to confusion in the marketplace and that are misrepresentations of ETSI, its activities and its intentions.

Incorrect claim number 1: ***"ETSI's adoption of a standard that lacks technical or economic advantages over competing standards and, unlike the alternative, is incompatible with most existing standards, is an action that creates an unnecessary barrier to trade, in violation of the TBT"***

On January 21, 1996, ETSI notified its acceptance of the World Trade Organization Agreement on Technical Barriers to Trade Code of Good Practice. This means that ETSI endorses and applies the principles of

- Non-discrimination
- Transparency
- Harmonization
- Avoidance of unnecessary obstacles to trade

ETSI is an autonomous, independent, non-profit organization under French law. As such it has been officially recognized by the European Union as one of the three European Standards Bodies.

The technical orientations pursued in ETSI are predominantly decided by market representatives. A small number of ETSI outputs are used for regulation of the European internal market to control scarce resources. These tools are called Technical Bases for Regulation (TBRs) and are elaborated in full respect with the World Trade Organization's General Agreement on Trade and Services.

ETSI supports the role of the ITU for global standards. Therefore it participates actively in the work leading towards the ITU's initiative on the IMT-2000 family concept and collaborates with other standards bodies from around the world (i.e. ACIF (Australia), TSACC (Canada), ARIB (Japan), TTC (Japan), TTA (Korea), T1 (US), TIA (US), and ITU (International)) in the GSC/RAST. UMTS is the ETSI contribution to this work and is a 3rd generation evolution from the existing set of GSM standards.

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(However, it should be noted that in order to provide as much flexibility as possible in the definition of the new air interface, no backwards compatibility with GSM radio has been required in UTRA.)

It may be noted that the Committee on Technical Barriers to Trade, in its first triennial review of the Agreement meetings (held throughout 1997) agreed to exchange views on the concept of "unnecessary barriers to trade" as given in the paragraph E of the Code, for it is subject to multiple interpretations and distortions (see § 5 regarding IPRs).

Incorrect claim number 2: ***"The EU for years has closed its markets to all but one wireless technology, one that happens to be manufactured by large European concerns...(the EU) embarked on a policy of denying GSM's competitors entry into the European market".***

Europe is made up of more than 40 countries and each country has a heritage of a large number of different rules and regulations. The EU has had as one of its primary aims the creation of a single market where these rules and regulations are harmonized.

In the case of technical systems like communications, standards are the main means of achieving this harmonization. This is recognised on both sides of the Atlantic. Just as the US government recognizes the importance for itself, to encourage long-term growth for enterprises and promote efficiency and economic competition through harmonization of standards (cf OMB A-119), so does Europe.

It should be noted that major North American manufacturers (e.g. Lucent, Nortel, Motorola) are members of ETSI via their European affiliates, and contribute actively to the development of GSM standards. In a similar way, major Japanese manufacturers participate in the development of GSM as do GSM network operators from all over the world.

For GSM standards, the major part of the registered essential Intellectual Property Rights emanate from US companies. This information is openly available on the ETSI web-site and contained in an ETSI Technical Report (ETR 314).

Incorrect claim number 3: ***"Once Europe had its common cellular standard, the game changed from devising legitimate technical standards to create an exclusionary industrial policy that would enable European manufacturers to market GSM around the world from their protected home market."***

GSM was first developed within the CEPT (Conférence Européenne des Postes et Telecommunications) in the early 80's to allow pan-European roaming and services for public networks in an increasingly integrated European Community.

One of the main drivers for the development of GSM was the forecasted shortage of capacity in existing analogue systems. The principle aim was to develop an advanced, future proof system, which would allow high volume production at low cost and with international roaming possibilities.
CDMA technology was thoroughly studied and tested but was not selected since it had inferior performance compared with the GSM TDMA technology.

Being an indisputable commercial success (over 100 million users as of today in 128 countries), the market dynamics, and these dynamics only, can explain why GSM has spread so widely around the world. This is a very good example of market determination, which was made possible by the choice of a unique standard that automatically created a strong home market. Moreover, GSM is a good example where standardization led to a more competitive market where consumers benefit from the liberty of choice and where liberalization was achieved.

From the very beginning of the GSM standardization within ETSI, interested parties were invited to participate in the standardization process leading to international contributions and recognition of

technologies available world-wide. ETSI pursues this philosophy allowing for continuous improvement of the GSM standards.

Incorrect claim number 4: ***"Anti-competitive aspects of the ETSI process"***

ETSI is a voluntary standards body which works by consensus, and which plans, develops, establishes standards using agreed-upon procedures, which meet the criteria of:

- Openness
- Balance of interest
- Due process
- Consensus
- An appeals process

ETSI's membership is drawn from 47 countries coming from all five continents, and includes manufacturers (53%), operators (16%), private service providers (15%), Administrations (9%), and users (5%). In total, over 500 organizations participate in ETSI's work (see list of ETSI members in annex 1).

ETSI is open to influence from all of its members. Technical work is driven by work items. Each work item must be supported by at least 4 members. The standardization programme is completely open and can be consulted on the ETSI Web site. Members contribute to the elaboration of standards by providing inputs to the work of technical bodies. No member is favoured or excluded from taking part in this work.

Since the ETSI General Assembly held in April 1997, Qualcomm Israel LTD is ETSI associate member. Since then, Qualcomm has the right to submit its technology according to article 1.6.2 through the work item procedure.

During the ETSI General Assembly held in November 1997, Qualcomm Europe SARL was accepted as a full member. During the ETSI General Assembly held on March 26-27 1998, Qualcomm Inc. applied to become an associate member. This new membership was accepted by ETSI but Qualcomm Inc withdrew on April 15, 1998.

Contributions to the ordinary account by members is addressed in Annex 2 of ETSI Directives. Article 5 of Annex 2 of ETSI Rules of Procedure provides that "the class of contribution shall be determined according to the latest or available figure of its telecommunication related turnover or its equivalent". Because ETSI is an open organization and accepts membership from all the participants in the telecommunications field it relies on organizations' declarations of their telecommunications related turnover, indifferent on whether this declaration is made on a European or global basis.
It is important to note that it is each member that must self-declare its telecommunications related turnover.

Although work is driven in principle by consensus, votes can and do take place within a fair and democratic process. When these votes pertain to the development of ETSI standards and Technical Specifications all members have the same right to vote according to the same rules. No difference is made whether a member organization comes from a European base or from another region of the world. Voting weights are attributed in proportion to the members' declaration of its own telecommunications turnover. Furthermore, it is still possible to apply the "one member-one vote" mechanism if all parties involved agree to do so.

The objective to select a single standard and the process to define the radio technology was agreed unanimously in the SMG#21 Plenary in February 1997. The basic parameters of W-CDMA were agreed unanimously in the SMG#24bis Plenary in January 1998 which was attended by 316 delegates (see list of participants in Annex 2). The solution, called UTRA (UMTS Terrestrial Radio Access), draws on both W-CDMA and TD-CDMA technologies. The more detailed definition for submission to

the ITU was agreed unanimously in the SMG#26 Plenary in June 1998. All these decisions were supported by Qualcomm Europe SARL, which as mentioned previously is an ETSI member. All involved major US manufacturers were represented in these Plenary meetings.

GSM has brought about a pan-European service with roaming extended to different countries and this has led not only to an end of the fragmented market and incompatible systems but also to an increased level of competition amongst the network operators and manufacturers of terminals (including outwards suppliers) as well as cheaper communications. It is desirable that competitive advanced technology further enhances the level of service and degree of interoperability at the world level. The competition in third generation standards will be world-wide. ETSI welcomes this competition.

Incorrect claim number 5: ***"Faced with a protectionist European industrial policy and ETSI's non-objective standard setting process, Qualcomm has been forced to fall back on its IPRs to protect its current customers and its position in the next generation of wireless technology"***

ETSI acknowledges that Qualcomm holds CDMA IPRs. In this context the following observation is particularly relevant:

> *"With respect to proprietary status, AMPS, NA-TDMA, GSM and IS-41 are essentially in the public domain. In the case of CDMA, Qualcomm holds strong intellectual property rights, which it asserts through licensing agreements with an array of equipment vendors...*
> *...(the growing number of telecommunications standards) covered in part by IPRs has played a major role in the transformation of standards organizations from forums of experts seeking consensus on technical issues into battlegrounds for the assertion of competing commercial interests".*
> ("Standards for personal communications in Europe and the United States", David J. Goodman, Harvard University, April 1996)

ETSI Rules of Procedure (Annex 6, the ETSI Intellectual Property Rights policy) establish that "when an essential IPR relating to a particular standard is brought to the attention of ETSI, the Director General of ETSI shall immediately request the owner to give within three months an undertaking in writing that it is prepared to grant irrevocable licenses on fair, reasonable and non-discriminatory terms and conditions(...). This is the tribute ETSI members pay to non-discrimination, transparency, harmonization and avoidance of unnecessary obstacles to trade.

On August 6, Qualcomm notified to ETSI that "(Qualcomm) is not prepared to grant licenses for the proposed W-CDMA standard in accordance with the terms of Clause 6.1 of the ETSI interim IPR policy". The development of the third generation standards within ETSI will thus progress according to this decision and ETSI's Rules of Procedure.

✦✦✦

About Getting Authoritative Information about ETSI and its Working Methods:

We invite you to look at our Statutes, Rules of Procedure and much more on **http://www.etsi.org**

Yours sincerely,

K.H. Rosenbrock

Karl Heinz Rosenbrock
ETSI Director General

ANNEX 1: ETSI members

FULL MEMBERS ADMINISTRATIONS

FEDERAL MINISTRY FOR SCIENCE	AT
INSTITUTE FOR STANDARDIZATION	BA
IBPT	BE
CPT	BG
OFCOM	CH
CYPRUS TELECOMM. AUTHORITY	CY
MINISTRY OF TRANSPORT & COM.	CZ
BMWI	DE
NATIONAL TELECOM AGENCY	DK
INSPECTION OF TELECOM. ESTONIA	EE
MINISTERIO DE FOMENTO	ES
TELECOM. ADMIN. CENTRE	FI
MINISTERE DE L'INTERIEUR	FR
SECRÉTARIAT D' ETAT INDUSTRIE	FR
STNA	FR
BABT	GB
DTI	GB
MARITIME AND COASTGUARD AGENCY	GB
OFFICE OF TELECOMMUNICATIONS	GB
THE HOME OFFICE	GB
UK CIVIL AVIATION AUTHORITY	GB
MINISTRY OF TRANSPORT	GR
MINISTRY OF MARITIME AFFAIRS	HR
MINISTRY OF TRANSPORT.	HU
MSZT	HU
DEPARTMENT OF TRANSPORT	IE
TELECOM ICELAND LTD	IS
MINISTERO DELLE COMUNICAZIONI	IT
LITHUANIAN STANDARDS BOARD	LT
MINISTERE DES COMMUNICATIONS	LU
DEPT. OF WIRELESS TELEGRAPHY	MT
TELECOMMS AND POSTS DEPT.	NL
PT	NO
MINISTRY OF POST AND TELECOMMS	PL
NATIONAL RADIOCOMMS. AGENCY	PL
ICP	PT
IRS	RO
STATE COMMITTEE FOR COM.& INFO	RU
ITS	SE
NATIONAL POST & TELECOM	SE
SMIS	SI
MINISTRY OF POSTS & TEL.	SK
GENERAL DIR. OF RADIOCOMMS.	TR
TÜRK TELEKOM	TR
UNDIZ	UA
URTRI	UA

FULL MEMBERS MANUFACTURERS

DATENTECHNIK AG	AT
FEEI	AT
ÖFEG	AT
ALCATEL BELL	BE
DIALOGIC TELECOM EUROPE	BE
EACEM	BE
ETIC	BE
FABRIMETAL	BE
PIONEER ELECTRONIC EUROCENTER	BE
SAIT SYSTEMS S.A.	BE
SIEMENS ATEA NV	BE
TELINDUS	BE
TELXON CORPORATION	BE
UNIDEN EUROPE NV/SA	BE
XIRCOM EUROPE N.V.	BE
ASCOM AG	CH
CHECKPOINT ACTRON AG	CH
EPPA	CH
PRO TELECOM	CH
TESLA TELEKOMUNIKACE LTD	CZ
ALCATEL SEL AG	DE
ANALOG DEVICES	DE
ATM COMPUTER GMBH	DE
CCS	DE
DEBIS SYSTEMHAUS GEI	DE
DETEWE-DEUTSCHE TELEPHONWERKE	DE
DOSCH & AMAND GMBH & CO KG	DE
DSC COMMUNICATIONS GMBH	DE
ERICSSON EUROLAB	DE
GIESECKE & DEVRIENT GMBH	DE
GLOBESPAN SEMICONDUCTOR	DE
GRUNDIG AG	DE
HAGENUK TELECOM GMBH	DE
HARTING KGAA	DE
HUBER + SUHNER MRS GMBH	DE
IBM DEUTSCHLAND INFORMATIONSYS	DE
IBM EUROPE	DE
KE KOMMUNIKATIONS-ELEKTRONIK G	DE
KRONE	DE
LUCENT TECHNOLOGIES	DE
LUCENT TECHNOLOGIES BCSM GMBH	DE
MATRA COM. CELLULAR TERMINALS	DE
MIKOM GMBH	DE
MITSUBISHI GMBH	DE
MOTOROLA GMBH	DE
MURATA EUROPE MANAGEMENT GMBH	DE
NATIONAL SEMICONDUCTOR GMBH	DE
NEC ELECTRONICS (EUROPE) GMBH	DE
NETRO GMBH	DE
NOKIA TELECOMMUNICATIONS GMBH	DE
NORTEL DASA NETWORK SYSTEMS	DE
ODS	DE
OKI ELECTRIC EUROPE GMBH	DE
ORGA KARTENSYSTEME GMBH	DE
PANASONIC DEUTSCHLAND GMBH	DE
PHILIPS GMBH	DE
QUANTE AG	DE
RFS HANNOVER	DE

RICOH EUROPE B.V.	DE
ROBERT BOSCH GMBH	DE
ROHDE & SCHWARZ GMBH & CO.KG	DE
SIEMENS AG	DE
SONY INTERNATIONAL (EUROPE)	DE
STABO ELEKTRONIK GMBH & CO KG	DE
TDK GMBH	DE
TELES AG	DE
TEMIC	DE
TEXAS INSTRUMENTS	DE
TOSHIBA EUROPE GMBH	DE
UNISYS DEUTSCHLAND GMBH	DE
VACUUMSCHMELZE GMBH	DE
WANDEL & GOLTERMANN GMBH & CO.	DE
WAVETEK GMBH	DE
WINTER WERTDRUCK GMBH	DE
BOSCH TELECOM DANMARK A/S	DK
DSC COMMUNICATIONS A/S	DK
EI - ELEKTRONIKINDUSTRIEN	DK
EUROCOM INDUSTRIES A/S	DK
MOTOROLA A/S	DK
NIROS TELECOMMUNICATION A/S	DK
RTX TELECOM A/S	DK
THRANE & THRANE A/S	DK
ALCATEL ESPANA SA	ES
ANIEL	ES
CABLES DE COMUNICACIONES SA	ES
ERICSSON SA	ES
INDRA DTD S.A.	ES
MATRA RADIO SYSTEMS S.A.	ES
BENEFON OY	FI
MIRATEL OY	FI
NOKIA CORPORATION	FI
SETEC OY	FI
TECNOMEN OY	FI
TELLABS OY	FI
3COM	FR
ACACIA	FR
ALCATEL FRANCE	FR
ARNOULD	FR
ASCEND COMMUNICATIONS	FR
ATRAL	FR
BULL S.A.	FR
CANON CRF	FR
CHAMELEON NETWORK SYSTEMS	FR
CLEMESSY	FR
COMPAGNIE FINANCIERE ALCATEL	FR
CP8 OBERTHUR	FR
CS TELECOM	FR
DASSAULT ELECTRONIQUE	FR
DE LA RUE CARTES & SYSTEMES	FR
DIGITAL FRANCE	FR
ETELM	FR
GEMPLUS CARD INTERNATIONAL	FR
GITEP	FR
HEWLETT-PACKARD FRANCE	FR
IBM FRANCE	FR
LANDIS & GYR COMMUNICATIONS SA	FR
LEVEL ONE COM. EUROPE	FR

MATRA COMMUNICATION	FR
MET	FR
MICROSOFT EUROPE SARL	FR
MITSUBISHI ELECTRIC	FR
MORS	FR
MOTOROLA S.A.	FR
NATURAL MICROSYSTEMS EUROPE	FR
NORTEL EUROPE SA	FR
OCTEL COMMUNICATIONS SA	FR
PARADYNE INTERNATIONAL	FR
PHILIPS E.G.P.	FR
QUALCOMM EUROPE S.A.R.L.	FR
ROCKWELL SEMICONDUCTOR SYSTEMS	FR
SAGEM GROUP	FR
SCHLUMBERGER INDUSTRIES	FR
SHARP MANUFACTURING FRANCE S.A	FR
STMICROELECTRONICS	FR
SYCEP	FR
TEXAS INSTRUMENTS FRANCE	FR
THOMSON SA	FR
TRT LUCENT TECHNOLOGIES	FR
VLSI TECHNOLOGY	FR
ADC MICROCELLULAR SYSTEMS LTD	GB
ADHERENT SYSTEMS LIMITED	GB
ADVANCED MICRO DEVICES (UK)	GB
AERIAL FACILITIES LTD	GB
AIRSPAN COMMUNICATIONS LTD	GB
ANDREW AG	GB
ASCOM TELECOMMUNICATIONS LTD	GB
BROADBAND TECHNOLOGIES INC.	GB
CLEARTONE TELECOMS PLC	GB
CONSULTRONICS EUROPE LTD	GB
CONVEY LIMITED	GB
DATABEAM EUROPE LTD	GB
DIGITAL MICROWAVE CORPORATION	GB
DSC COMMUNICATIONS LTD	GB
ERICSSON OMC LTD	GB
EUROPACABLE	GB
FEI	GB
FUJITSU MICROELECTRONICS LTD	GB
FUJITSU TELECOM. LTD	GB
GEC MARCONI RESEARCH CENTRE	GB
GEC PLESSEY SEMICONDUCTORS LTD	GB
GLENAYRE ELECTRONICS (UK) LTD	GB
GPT LIMITED	GB
GRANGER TELECOMMUNICATION	GB
HARRIS COMMUNICATION	GB
HARRIS SEMICONDUCTOR LTD	GB
HAYES MICROCOMPUTER PRODUCTS	GB
HEWLETT-PACKARD LTD	GB
HITACHI EUROPE LTD	GB
HUGHES NETWORK SYSTEMS LTD	GB
IBM UNITED KINGDOM LTD	GB
ICOM (C.E.P.) LTD	GB
IFR LTD	GB
INTEL CORPORATION (UK) LTD	GB
LOCKHEED MARTIN INTERNATIONAL	GB
LSI LOGIC EUROPE PLC	GB
LUCENT TECHNOLOGIES N. S. UK	GB

MATSUSHITA COMMUNICATION	GB
MAXON SYSTEMS INC.	GB
MITEL TELECOM LTD	GB
MOTOROLA LTD	GB
MULTITONE ELECTRONICS PLC	GB
NEC (UK) LTD	GB
NEC TECHNOLOGIES (UK) LTD	GB
NEWBRIDGE NETWORKS LTD	GB
NOKIA MOBILE PHONES LTD	GB
NORTEL (EUROPE)	GB
PANASONIC EUROPE	GB
PANASONIC MOBILE COMMUNICATION	GB
PIRELLI GENERAL PLC	GB
PLANTRONICS LTD	GB
PRECISION METAL LTD	GB
PSOE	GB
RACAL-DATACOM LTD	GB
SAMSUNG ELECTRONICS	GB
SECURICOR COMMUNICATIONS LTD	GB
SEMA GROUP TELECOMS	GB
SIMOCO INTERNATIONAL LTD	GB
SONY BPE	GB
SYMBIONICS LTD	GB
SYMBOL TECHNOLOGIES EUROPE	GB
TAIT MOBILE RADIO LTD	GB
TEKTRONIX UK LTD	GB
TELSPEC EUROPE LIMITED	GB
VTECH COMMUNICATIONS LTD	GB
WESTELL EUROPE	GB
XEROX LTD	GB
INTRACOM SA	GR
LOGICA ALDISCON	IE
SENSORMATIC	IE
TELLABS LTD	IE
ALCATEL DIAL FACE SPA	IT
ALCATEL ITALIA SPA	IT
ANIE	IT
ATMEL	IT
CTE INTERNATIONAL	IT
ELETTRONICA INDUSTRIALE SPA	IT
ERICSSON TELECOMUNICAZIONI	IT
IBM ITALIA S.P.A.	IT
INCARD SPA	IT
INFOSTRADA	IT
ITALTEL S.P.A.	IT
MARCONI SPA	IT
OTE SPA	IT
PIRELLI CAVI E SISTEMI S.P.A.	IT
PLLB ELETTRONICA SPA	IT
SIAE MICROELETTRONICA SPA	IT
TELITAL S.P.A.	IT
ACER PERIPHERALS HOLLAND B.V.	NL
AMP HOLLAND BV	NL
CMG	NL
ERICSSON TELECOMMUNICATIE BV	NL
ESPA	NL
ESTAFETTE BV	NL
INTERMEC INTERNATIONAL INC.	NL
INTERWAVE COM. INTERN. B.V.	NL
KENWOOD ELECTRONICS EUROPE BV	NL
LUCENT TECHNOLOGIES EMEA B.V.	NL
NEDAP	NL
PHILIPS COMMUNICATION SYSTEMS	NL
PHILIPS CONSUMER ELECTRONICS	NL
SIMAC TECHNIEK N.V.	NL
SITEL SIERRA BV	NL
ALCATEL STK AS	NO
NERA AS	NO
ALLGON AB	SE
AVITEC AB	SE
ERICSSON L.M.	SE
IBM SVENSKA AB	SE
MTB	SE
NET INSIGHT AB	SE
RADIO DESIGN AB	SE
SECTRA AB	SE
TELELOGIC AB	SE
TIMESPACE RADIO AB	SE
ALCATEL-TELETAS AS	TR
ASELSAN	TR
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BVB	DE
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CONDAT DV DE	
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IDACOM ELECTRONICS GMBH	DE
IOT INTEGRIERTE OPTIK	DE
KOKUSAI ELECTRIC EUROPE GMBH	DE
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SYSTEMS INTERNATIONAL	
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UK OFFSHORE OPERATORS ASS.	
UNIVERSITY OF BRISTOL	
COMPUTER PRODUCTS	
TEKMAR SISTEMI SRL	
ACT	
YAESU EUROPE BV	
MOESARC TECHNOLOGY.AS	
JSC KB IMPULS	
AMS MANAGEMENT SYSTEMS	

COUNSELLORS

CEC

EFTA

Annex 2

Participants in SMG24bis (Paris, January '98), where the UTRA decision on the radio interface for UMTS was made by consensus (multiple entries indicate number of participants from same company)

AEG MOBILE COMMUNICATION GmbH
AIRTEL MOVIL SA
AIRTOUCH EUROPE
ALCATEL
ALCATEL
ALCATEL
ALCATEL BELL
ALCATEL BELL
ALCATEL CIT
ALCATEL CIT
ALCATEL CIT
ALCATEL CIT
ALCATEL ESPANA SA
ALCATEL MOBILE COMMUNICATION
ALCATEL SEL
ALCATEL SEL AG
ALCATEL TELECOM
ALCATEL TELECOM
ALLGON AB SWEDEN
ANALOG DEVICES
ARIB
ARIB
ARIB (NEC)
ART
ASCOM
ASCOM SYSTEC
ASSOCIATION OF RADIO INDUSTRIES / ARIB
ATMEL
BELGACOM MOBILE
BELGACOM MOBILE
BELLSOUTH MOBILITY DCS
BOSCH TELECOM
BOSCH TELECOM DANMARK A/S
BOSCH TELECOM GmbH
BOSCH TELECOM GmbH
BOSCH TELECOM GmbH
BOUYGUES TELECOM
BRITISH TELECOM
BZT
CANON RESEARCH CENTRE FRANCE
CELLNET
COMFORT INC / CONFERENCE INTERPRETER
Conference Interpreter
COSMOTE S.A.
CSEM
CSEM
DAKFCBNF e.v.
DANSK MOBILTELEFON A/S
DDI CORPORATION
DEFENSE RESEARCH AGENCY
DETEMOBIL GMBH
DeTeMobil GmbH
DeTeWe AGH Co.
DEUTSCHE TELEKOM AG
DEUTSCHE TELEKOM AG
DIRECCION GENERAL TELECOM
DTI
E-PLUS MOBILFUNK GmbH
ECTEL TMS
ELSACOM SpA
ERICSSON
ERICSSON
ERICSSON (CHINA) COMPANY LTD.
ERICSSON AG
ERICSSON EUROLAB DEUTSCHLAND
ERICSSON EUROLAB DEUTSCHLAND GmbH
ERICSSON MOBILE COMMUNICATIONS
ERICSSON MOBILE COMMUNICATIONS AB
ERICSSON OMC LTD
ERICSSON RADIO SYSTEMS
ERICSSON RADIO SYSTEMS AB
ERICSSON RADIO SYSTEMS AB
ERICSSON RADIO SYSTEMS AB
ERICSSON RADIO SYSTEMS AB
ERICSSON RADIO SYSTEMS AB
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ETSI
ETSI
ETSI/Directorate
ETSI/PT SMG
ETSI/PT SMG
ETSI/PT SMG
ETSI/PT SMG
ETSI/PT SMG
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ETSI/SMS Dept
ETSI/TC SMG CHAIRMAN
EUROPEAN COMMISSION
FEEI
FRANCE TELECOM
FRANCE TELECOM
FRANCE TELECOM
FRANCE TELECOM / CNET
FRANCE TELECOM MOBILES
FRANCE TELECOM MOBILES
FUJITSU EUROPE TELECOM
FUJITSU EUROPE TELECOM
FUJITSU EUROPE TELECOM R & D CENTER
GPT
GSM MoU ASSOCIATION
HAGENUK TELECOM (CETELCO)
HARRIS SEMICONDUCTOR
HELLENIC TELECOMMUNICATIONS ORGANIZATION
HEWLETT PACKARD LTD
HITACHI EUROPE LTD
HITACHI EUROPE LTD
IBM FRANCE
IBM GERMANY
ICO GLOBAL COMMUNICATIONS
INTRACOM SA
ISKRATEL
ITALTEL
ITALTEL
ITALTEL
ITALTEL SPA
ITALTEL SpA
ITS
KENWOOD ELECTRONICS TECHNOLOGIES
KPN/PTT TELECOM
LUCENT TECHNOLOGIES
LUCENT TECHNOLOGIES
LUCENT TECHNOLOGIES
LUCENT TECHNOLOGIES
LUCENT TECHNOLOGIES Emea B.V
MANNESMANN MOBILFUNK
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MARCONI INSTRUMENTS LTD
MATAV
MATRA RADIO SYSTEMS SA
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MATSUSHITA COMMUNICATION INDUSTRIAL UK
MET COMMUNICATION
MET COMMUNICATION
MET COMMUNICATION
MET COMMUNICATION
MET COMMUNICATION
MET COMMUNICATION
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MET COMMUNICATION
MET COMMUNICATION
MET COMMUNICATION
MET COMMUTATION
MET COMMUTATION
MET COMMUTATION
MINISTERO DELLE COMUNICAZIONI
MINISTERO P.T.
MINISTRY OF TRANSPORT AND PUBLIC WORKS
MITSUBISHI ELECTRIC
MITSUBISHI ELECTRIC
MITSUBISHI ELECTRIC
MITSUBISHI ELECTRIC
MITSUBISHI ELECTRIC ITE
MOBILKOM AUSTRIA AG
MOBITEL AD
MOTOROLA
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NOKIA TELECOMMUNICATIONS
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NOKIA TELECOMMUNICATIONS OY
NORTEL
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NORTEL
NORTEL MATRA CELLULAR
NTT DO CO MO
NTT DO CO MO
NTT DO CO MO
NTT DOCOMO
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ROHDE & SCHWARZ
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SCIENTIFIC CONSULTING
SECRETARIAT D' ETAT A l'INDUSTRIE
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TELESYSTEM INTERNATIONAL WIRELESS
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TRT LUCENT TECHNOLOGIES
UMTS FORUM
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VODAFONE LTD
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Chief of Staff
Committee on Ways and Means
US House of Representatives
1102 Longworth House Office Building
Washington, DC 20515
Reference: Committee hearing on Tuesday, July 28, 1998

RE: STATEMENT ON TRADE RELATIONS WITH EUROPE AND THE TRANSATLANTIC ECONOMIC PARTNERSHIP (TEP) INITIATIVE

On behalf of JBC International, I would like to thank the Ways & Means Committee for the opportunity to comment on trade relations with Europe and the new Transatlantic Economic Partnership (TEP). The private sector appreciates the chance to address the issues that may have significant impact on international trade.

JBC International provides strategic advice and lobbying services to clients interested in international trade issues. JBC is based in Washington, DC and has clients ranging from associations to multinational corporations. JBC covers a wide variety of global trade topics, including standards, technical barriers to trade, intellectual property rights, electronic commerce/automation, tariffs, and classification issues as they related to agricultural and manufactured products.

ELECTRONIC COMMERCE – PRIVACY REGULATIONS

JBC International is the coordinating organization for the International Electronic Trade Steering Committee, which is a group of private sector representatives dedicated to the automation of trade related transactions via Internet platform. The members represent a wide variety of industries including express carriers, transportation associations, high-tech corporations, manufacturing companies, and brokerage firms. These companies are active players in international trade and are experienced in the electronic transmission of data. One of the major projects of the Steering Committee is to provide assistance to the US Customs Service in the development and implementation of the Automated Commercial Environment (ACE). We believe that Internet applications are essential to effectively compete in the global market of the future. The opportunities available through this medium are innumerable and the US government should stand firm in their position of a market-driven, tax-free approach to electronic transactions.

There are several points that the Steering Committee believes are essential to the discussion of the regulation of electronic commerce.

- It is infeasible to tax or assess duties on electronic transactions.
- Work programs, whether through the WTO or bilaterally, should eliminate local, national, and regional barriers that inhibit the free flow of electronic commerce.
- The government should allow the private sector to freely develop and maintain the electronic environment.
- The US government should develop a mechanism that will provide for the authentication of signatures (digital signatures), the sanctity of contracts, and other related issues that arise in business conducted electronically. The Uniform Commercial Code (UCC) provides an excellent framework for adaptation to electronic transactions.

Further, in reference to the issue of privacy, the EU Directive on Data Protection presents some concerns from the US industry perspective. The EU approach to the assurance of privacy protection focuses on protecting European citizens without regard for business-to-business transactions that occur via electronic commerce. This approach lacks a balance between the protection of individual rights and the free flow of information. The Directive stipulates that the transmission of data will be prohibited unless the receiving country exhibits "adequate" data protection. Under the current definition of "adequate" data protection, which is unclear even among EU countries, only about 10 countries will qualify. The US is not among this group of qualified countries. This regulation has the potential to disrupt international trade flows and hinder global communication networks.

The US advocates a voluntary self-regulation system, under which businesses are responsible for developing their own privacy rules. Creating a Self-Regulating Organization (SRO) accompanied by operating standards in the US may be a viable option. For example, creating an organization like the National Association of Securities Dealers (NASD) is one way of implementing the concept of self-regulation with government oversight (the SEC, in the case of the NASD). A statute could be drafted to create the SRO, the fees for participants, and corresponding standards for privacy protection. The organization would be primarily responsible for monitoring and regulating privacy protection measures while the government agency would be necessary in cases of non-compliance. Hopefully this option will assure the EU that the US is implementing "adequate" data protection in accordance with the EU Directive.

In addition, we encourage the continued development of projects like the International Trade Prototype (ITP) proposed by the US Customs Service and Her Majesty's Customs and Excise of the United Kingdom. The ITP promotes seamless transactions of data that conform to internationally agreed upon standards. This system preserves the responsibilities of foreign governments as

they relate to targeting and compliance measurement while promoting harmonized and simplified messages and procedures. We also applaud the US participation in the G-7 efforts to define and limit the data elements required for international electronic transmissions. We support efforts like the G-7 and ITP that strive for more efficient means of global trade facilitation.

The Steering Committee believes that the US-EU Agreement on Global Electronic Commerce is an excellent starting point for negotiations. The commitment by both parties to include the private sector in the development of a suitable legal and commercial environment for business via Internet is encouraging. We encourage the US to continue to ensure that the Transatlantic Economic Partnership negotiations continue on this positive path.

TECHNICAL BARRIERS TO TRADE

According to the Department of Commerce, standards affect at least $150 billion in US exports and act as barriers to trade. For this discussion, standards refer to requirements for the fitness of a product for a certain use, standards for operating a device, or process standards. Under the World Trade Organization (WTO), Agreement on Technical Barriers to Trade (TBT), signatories decided to use internationally agreed upon standards as often as possible. As a result, the Geneva-based International Organization for Standardization (ISO) has become a key organization in standards development. According to Congresswoman Connie Morella (Chairwoman, House Subcommittee on Technology), "ISO by its location, rules and heritage is often seen by US manufacturers as more friendly to the interests of its European Union (EU) members than those of the EU's trading partners." European nations have maintained a consistent standards-setting strategy with emphasis on influencing the content of international standards to their benefit.

Latin American countries that are currently writing their own standards are basing their requirements on European standards rather than US standards. The reason is that European standards developers are financially supported by the government and can provide copies to Latin American standards developers free of charge. Similar US organizations are operating at a disadvantage because they receive no funding from the government. Selling US standards to foreign developers is a means of recovering the costs involved in their creation.

Although companies must purchase standards, no matter what country develops them, this issue is significant to global trade. Companies will experience the impact when exporting to Latin American countries whose standards are based on the European principles that are inconsistent and incompatible with US standards.

As a result of the incompatibility of US and EU regulations and certification requirements, goods imported into the EU are often subjected to

"dual standards." This practice requires that the products comply with EU and stated country of origin requirements. Dual standards for imported goods are not only significant to US companies but also products from around the world. This process is costly and cumbersome to businesses.

We must be careful not to enter into agreements that reinforce the general EU preferences for regulation and state institutions over entrepreneurship and free markets. Standards, certification and other technical barriers to trade tend to obviate or constrain market possibilities. To address this problem, in a bilateral context, we support the MRA approach that has been endorsed by the TABD.

TARIFFS

The US and the EU should cooperate closely to develop an agenda for the 1999 WTO Ministerial, which reaffirms continued improvements to market access and trade liberalization as the priority mission of the WTO. Continued work on tariff reductions in agreed-upon sectors should be based on the ITA model. Any bilateral work on tariff reduction should not hinder progress on existing tariff initiatives. For example, APEC is working on early voluntary liberalization in 15 sectors, nine of which are scheduled for completion by June 1999.

TRADE FACILITATION

On the multilateral level, the US and the EU should join forces to focus on the WTO mandate to simplify customs procedures. To strengthen WTO involvement in this issue, the US and EU should encourage a revised Kyoto Convention. Bilateral efforts should accelerate progress on the recommendations from the TABD.

AGRICULTURE

In the area of food and agricultural trade and services, there are a number of specific sectors where the US and the EU can work closely together to further our mutual objectives, bilaterally and multilaterally. In preparation for the next round of agricultural negotiations in 2000, there should be informal consultations between US and the EU authorities to try to move the next legislative proposals towards compatibility so that the proper basis will be laid for liberalization commitments (export subsidies, support programs, etc.) in the negotiations.

Work needs to be intensified on simplifying and clarifying sanitary and phytosanitary regulations to ensure food safety while removing unnecessary barriers to trade. A move toward convergence or harmonization of regulations should be adopted where possible. MRAs are the preferred method where this is not feasible.

The BSE, beef hormone, and soybean cases have demonstrated that governments must do a better job in educating their publics to the realities of new scientific developments in the rapidly evolving fields of genetics and biotechnology. Instead of trying to deal with these developments through dispute settlement, the US and EU should engage in joint pro-active programs to anticipate problems. Public and private sector collaboration is essential to satisfy consumer demands about food safety and quality and to minimize the risk of proliferating barriers to the free flow of food and agricultural products.

CONCLUSION

I would like to thank the Committee again for this opportunity to submit a written statement concerning the variety of issues to be addressed under the auspices of the Transatlantic Economic Partnership (TEP). The TEP is an excellent opportunity to enhance the developments of the TABD initiatives to further liberalize trade, to eliminate barriers to trade, and to resolve conflicts arising between the US and EU. Thank you for your continued work on these issues.

Sincerely,

James Clawson

House Committee On Ways & Means

Subcommittee On Trade

Hearing On

TRADE RELATIONS WITH EUROPE AND THE

NEW TRANSATLANTIC ECONOMIC PARTNERSHIP

Statement For The Record

of

Robert E. Lighthizer

Border Tax Adjustments As An Issue In U.S.-EU Trade

Statement of Robert E. Lighthizer[1]

I appreciate this opportunity to address a major inequity in the rules governing trade between the United States and the Member States of the European Union. That inequity is found in the rules of the General Agreement on Tariffs and Trade (now administered by the World Trade Organization) that permit "Border Tax Adjustments" for European exports and imports, and that do not permit similar tax breaks for U.S. exporters. Consistently for over 25 years, the Congress has made the redress of this inequity a major U.S. negotiating objective; yet the inequity is still entrenched in the GATT rules and enjoyed by our European trading partners, to our detriment.

In essence, the GATT rules permit border tax adjustments for "indirect taxes" such as sales or value-added taxes, but not for "direct taxes" such as corporate or individual income taxes. This means that EU Member States, which rely heavily on indirect "value-added" taxes, are allowed to rebate VAT taxes to their exporters and to assess VAT-equivalent taxes against imports. No similar adjustments are permitted for direct or income taxes, on which the United States mainly relies. This results in quadruple discrimination:

(1) U.S. exports must bear the full burden of U.S. corporate income taxes.

(2) Exports from EU countries do not bear the burden of European value-added taxes.

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[1] Robert E. Lighthizer, a former Deputy U.S. Trade Representative, is a partner in the Washington, D.C. office of Skadden, Arps, Slate, Meagher & Flom LLP. This statement represents the views of Mr. Lighthizer and does not necessarily represent the views of clients of Mr. Lighthizer or his law firm.

(3) U.S. exports must pay value-added taxes when imported and sold in the EU.

(4) European exports do not pay U.S. income taxes when imported and sold in the United States.

Academic economists will tell you that this discrimination does not matter—that exchange rate adjustments will, over time, even out the advantages enjoyed by individual European exporters, and the disadvantages suffered by specific U.S. companies, in the short run. These economists have never had to compete in a business. The current VAT rate for manufactured goods in France is 20.6%. In the United Kingdom, the rate is 17.5%, and in Germany, it is 16%. This means that an English company can bid to sell airplane engines to Boeing knowing that they will get a 16% rebate on the engines they export, while a U.S. company must bid to sell engines to Airbus knowing that it will pay a tax of 20.6% on its exports to France. The same dynamics help Siemens compete with Hewlett-Packard, and Michelin compete with Goodyear. The list could go on and on. No businessperson, who must compete in the marketplace, will tell you that the Border Tax inequity doesn't matter. This has been stated repeatedly by representatives of business in testimony to this Committee.[2]

The root causes of the Border Tax inequity can be traced directly to the original GATT rules adopted in 1947. Scattered throughout those rules are provisions that (1) permit the rebate of "indirect" taxes, on the theory that they are borne by goods that are exported; (2) prohibit, as export subsidies, similar rebates of "direct" or income taxes; and (3) permit countries to assess against imports taxes equivalent to the indirect taxes charged within the importing country. The drafters of the GATT probably neither understood nor cared what the competitive consequences of those provisions would be. In comparison to the high tariffs then in existence, Border Tax adjustments probably seemed inconsequential. Moreover, indirect tax

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[2] See *e.g.*, "The Impact of Fundamental Tax Reform," Testimony of David G. Amboy, July 18, 1996. Some other countries, in addition to those of the EU, benefit from the Border Tax Inequity. Japan, for example, has a "consumption tax" of 5% on all products, which is rebated for exports.

rates were generally low and few countries had comprehensive indirect taxes. The United States, moreover, had emerged from World War II as the dominant economic force in the Free World and was running large trade surpluses. The issue was not how to preserve the U.S. trade position, but how to rehabilitate the economies and trade positions of other countries.

But in 1967 Western Europe, then progressively unifying into a common market under the Treaty of Rome, took major steps to harmonize European taxes through a "value added tax" system, which would also take advantage of the Border Tax inequity permitted under the GATT. The effect was to exacerbate the balance of payments deficit of the United States, and that effect is still being felt today.

Since then, eight successive U.S. Administrations have tried to get the Border Tax inequity changed. Since the early 1970s the Congress, led by this Committee and the Senate Finance Committee, has repeatedly urged U.S. negotiators to resolve the BTA inequity.

These efforts began with the Kennedy Administration, in 1963, and they were continued by President Johnson, who stated in his 1968 Balance of Payments Address:

> American commerce is at a disadvantage because of the tax systems of some of our trading partners. Some nations give across-the-board tax rebates on exports which leave their ports and impose special border tax charges on our goods entering their country.

By 1971, frustration over our inability to change the BTA inequity led President Nixon to propose, and the Congress to enact, the "DISC" legislation which neutralized part of the BTA inequity by providing—to a small degree—similar benefits to U.S. exporters. In reporting the DISC legislation, this Committee said:

> [o]ther major trading nations encourage foreign trade by domestic producers in one form or another. Where value added taxes or multistage sales taxes are used to any appreciable extent, the practice is to refund taxes paid by the exporter at the time of export and to impose these taxes on importers. . . . Both to provide an inducement for increasing exports and as a means of

> removing discrimination against those who export through U.S. corporations, your committee's bill provides a deferral of tax where corporations meeting certain conditions—called Domestic International Sales Corporations—are used.[3]

And in the Trade Act of 1974, which established U.S. trade negotiating priorities for the rest of that decade, the Congress listed as a major negotiating objective:

> The revision of GATT articles with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct rather than indirect taxes for revenue needs.[4]

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[3] Report of the Committee on Ways and Means to accompany H.R. 10947, House Report No. 93-533, 92d Cong., 1st Sess., at 58; Report of the Committee on Finance to accompany H.R. 10947, Senate Report No. 92-437, 92d Cong., 1st Sess., at 90 (1971).

[4] Section 121(a)(5) of the Trade Act of 1974. In almost identical language, both the House Committee on Ways and Means and the Senate Committee on Finance, in reporting on the Trade Act of 1974, directed the Executive Branch to use the negotiating authority delegated by that Act to bring about a revision of the international rules on use of tax devices to subsidize exports:

> The Committee also believes that GATT provisions on tax adjustments in international trade should be revised to assure that they will be trade neutral. Present provisions permit adjustments on traded goods for certain indirect taxes but not for direct taxes. The Committee expects that the President will seek such modification of present rules as would remove any disadvantage to countries like the United States relying primarily on direct taxes and put all countries on an equal footing.

Senate Report No. 93-1298, Nov. 26, 1974, pp. 83-87. See also House Report No. 93-571, 93rd Cong., 1st Sess., page 27.

Similarly, the Omnibus Trade and Competitiveness Act of 1988, which was signed by President Reagan, listed as an "Overall and Principal Trade Negotiating Objectives of the United States:"

> Border Taxes.—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantages to countries relying primarily for revenue on direct taxes rather than indirect taxes.[5]

As recently as October 1997, the House of Representatives, in H.R. 2629, and the Senate in S. 1269 (the "Reciprocal Trade Agreements Act of 1997"), declared that:

> "[t]he principle negotiating objective of the United States regarding border taxes is, within the WTO, to obtain a revision of the treatment of border adjustments for internal taxes in order to redress the disadvantage to countries that rely primarily on direct taxes rather than indirect taxes for revenue."

The economic justification behind the distinction between direct and indirect taxes rests upon the assumption that producers shift indirect taxes, but not direct taxes, forward as a component of price. In other words, it was assumed that direct taxes are entirely absorbed by the producer, with no effect on prices to the consumer, while indirect taxes are fully absorbed by the consumer, with no effect on the producer's profits. If the theory is correct, then GATT's Border Tax mechanism levels effective tax rates, allowing both imported and domestically produced goods to compete on equal terms.

Modern economic thinking suggests, however, that the GATT distinction is artificial. Economists now generally agree that, both for indirect taxes and for

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[5] Section 1101(b)(16) of the Omnibus Trade and Competitiveness Act of 1988.

direct taxes, some of the burden is shifted forward (*i.e.*, borne by the product) and some is not.[6]

Other economists have argued that flexible exchange rates will neutralize any advantage to European exporters conferred by the Border Tax inequity. Floating exchange rates have, however, been in operation since the mid-1970s, and the balance-of-trade record of the past 25 years demonstrates the invalidity of this argument. The value of the U.S. dollar is determined by factors other than our persistent trade deficits.

The Border Tax inequity unfairly punishes exporters in direct tax jurisdictions in two ways. First, if direct taxes are shifted forward to the consumer, disallowing the Border Tax adjustment may place the exporter's goods at a disadvantage in the export market because the good's price still retains a direct tax component and is consequently more expensive than goods in the foreign market. Second, if indirect taxes are partially absorbed by the producer, the Border Tax adjustment may constitute a subsidy by allowing a rebate greater than the amount of tax passed forward to the consumer, rendering the foreign firm's goods cheaper in the international market.[7] This phenomenon places the United States at a distinct disadvantage, because it has made a policy decision to rely principally for its revenue on progressive income taxes rather than an indirect VAT. The existing rules discriminate against the U.S. because: (1) U.S. exports must bear the burden of U.S. direct income taxes in addition to indirect value-added taxes imposed by the importing country; and (2) U.S. domestic producers must bear U.S. income taxes and still compete with foreign imports bearing neither foreign indirect nor U.S. direct taxes. These encumbrances no doubt substantially contribute to the ever increasing U.S. trade deficit.

In summary, the Border Tax inequity discriminates against countries, such as the United States, that rely heavily on direct taxes; and it discriminates in favor of countries, such as EU Member States, that rely heavily or indirect taxes. This discrimination was written into the GATT in 1947, with little or no anticipation of the consequences. There is no serious economic justification for this discrimina-

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6 See Christopher Deal, "The GATT and VAT: Whether VAT Exporters Enjoy a Tax Advantage Under the GATT," 17 Loy. L.A. Int'l & Comp. L.J. 649, 653 (1995).

7 Bob Hamilton and John Whalley, "Border Tax Adjustments And U.S. Trade," Journal of International Economics (1986).

tion. For the past 35 years, the United States has tried to correct this imbalance, and the EU has led the effort to retain it. The debate scarcely even pays lip service to fairness or economic theory; it is more a matter of one group refusing, for obvious political reasons, to compromise an advantage it gained, inadvertently, when the GATT was being formed. The FSC, and its predecessor, the DISC, are examples of U.S. laws that were enacted to neutralize some of the advantages enjoyed by the EU and others under the GATT rules on Border Tax Adjustments.

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WRITTEN COMMENTS BY

UNDERWRITERS LABORATORIES INC.

BEFORE

SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS

Hearing Date July 28, 1998

Subject: Trade relations with Europe and the New Transatlantic Economic Partnership

A not-for-profit organization
dedicated to public safety and
committed to quality service

The following is Underwriters Laboratories Inc.'s written statement for consideration by the Ways and Means Subcommittee on Trade concerning trade relations with Europe and the Transatlantic Economic Partnership (TEP).

Underwriters Laboratories Inc. (UL) is an independent, not-for-profit, private-sector conformity assessment body and standards development organization with over 100 years of experience in achieving its primary mission of testing for public safety. UL's safety programs and services have essentially been the backbone of the U.S. Safety System, and the familiar "UL in a Circle" is truly the "American Mark of Safety" for products produced throughout the world and sold in the United States.

UL has long recognized the global challenge of continuing to provide a high level of safety for Americans while reducing any perceived trade restrictions applicable to products that must meet safety requirements. UL is committed to maintaining a high level of public safety for America and the world's economies and providing global market access to suppliers of goods and services through meaningful and thorough conformity assessment. UL firmly believes both these objectives must be the focus of any trade liberalization. In most cases, UL has found that national treatment and cooperative agreements between international certification organizations achieve the desired results most expeditiously and effectively.

The fundamental goal of trade liberalization as related to perceived technical barriers to trade is the acceptance of conformity assessments conducted in the supplier's home market(s) by authorities in the export market(s). The key to successful trade liberalization is establishing confidence among diverse authorities who must accept these conformity assessments. If this confidence can be established, suppliers may be able to more easily export their products because authorities are confident that applicable regulatory requirements are met <u>and</u> public safety is protected.

Building confidence of acceptance authorities can be a difficult task, and costs to establish this confidence can be high. There are mechanisms that can provide benefits to exporters by attempting to meet the confidence needs of regulatory authorities in other countries. These are:

National Treatment - Under National Treatment, bodies in one country are authorized to provide conformity assessments on terms no less favorable than domestic bodies. Foreign conformity assessment bodies are required to work directly with domestic authorities to earn acceptance. The investment foreign conformity assessment bodies must make to achieve acceptance in other country(ies) is considered in light of the trade benefits the conformity assessment body can deliver to suppliers. National Treatment allows market forces to determine the timing and extent of foreign conformity assessment body participation in domestic regulation enforcement.

Cooperative Agreements Between Accreditors, Certification Bodies, and Testing Laboratories - It is evident to any global certification organization that cooperative agreements remain one of the most effective and expeditious ways to achieve the intended goal. Cooperative agreements can be formed between bodies in different countries so the work from one body can be accepted by a body in a different country. The foreign conformity assessment body can then provide the foreign authority the appropriate assurance the foreign regulation has been fulfilled. Conformity assessment bodies enter into such agreements based on demands from the suppliers they serve, which means market forces drive these types of agreements.

Mutual Recognition Agreements (MRAs) - MRAs are supposed to establish government mechanisms by which foreign conformity assessment bodies can be accepted as competent by domestic authorities. These government mechanisms are not driven by market forces. While some governments may say they are willing to accept conformity assessment bodies more quickly when another government is overseeing their work, experience to date indicates that satisfying the confidence needs of the regulatory authorities is very difficult.

No single mechanism can meet the needs of all suppliers or acceptance authorities. The suppliers of products and services are not served by a single process to allow conformity assessment bodies to test and certify to the regulations of foreign economies.

Only the market is capable of sorting out which mechanism is appropriate for a given sector and supplier seeking to export to a specific collection of markets. New mechanisms that facilitate trade, provide regulatory confidence and protect public safety should be considered as they are developed and proven effective to meet the needs of suppliers and acceptance authorities.

Further, UL suggests the following specific goals as the U.S. participates in TEP activities:

- Seek commitments to clearly document current conformity assessment processes used for regulatory compliance purposes;

- Seek commitments to provide national treatment for foreign conformity assessments related to regulatory compliance; and,

- Seek commitments to allow domestic bodies to utilize cooperative agreements with foreign bodies for conformity assessments related to regulatory compliance.

Agreements that encompass only government-to-government approaches ignore the powerful market drivers available to facilitate trade, provide regulatory confidence and maintain public safety. UL believes that national treatment and cooperative agreements between international certification organizations will achieve the desired results most expeditiously and effectively.

Government-to government agreements typically require extensive negotiations that are costly to the government agencies involved and may actually delay supplier's market access for exported goods and services during the negotiation process and transition/confidence building phase that normally precedes the operational phase of these agreements. These costs and delays can be reduced by utilization of national treatment or agreements between certification organizations.

The U.S. should pursue all effective avenues to expanded trade, but the emphasis must always remain on the protection of public safety on a global scale. Thank you for the opportunity to comment. If you have any questions or would like to discuss this in greater detail, please contact me.

Sincerely,

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c:	B. Harris	UL
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STATEMENT
on the
TRANSATLANTIC ECONOMIC PARTNERSHIP
before the
SUBCOMITTEE ON TRADE
of the
HOUSE COMMITTEE ON WAYS AND MEANS

By
Willard A. Workman
U.S. Chamber of Commerce
July 28, 1998

INTRODUCTION

The U.S. Chamber ("Chamber") commends the Subcommittee on Trade on its efforts to take stock of the New Transatlantic Economic Partnership (TEP) that was launched at the May 18, 1998 EU-U.S. Summit. By initiating the TEP, government leaders on both sides of the Atlantic have committed themselves to strengthening the World Trade Organization (WTO) and reducing barriers to trade. The Chamber supports trade liberalization and looks towards TEP to advance these objectives. The U.S. and EU share the largest two-way trade and investment relationship in the world, with over $1 trillion[1] in trade representing 30% of world trade and 60% of the industrialized world's GDP.[2] Total U.S. exports to the EU in 1997 were $140.8 billion,[3] second only to NAFTA. Over 3 million jobs have been created on both sides of the Atlantic thanks to this trading relationship. TEP should build on this already vibrant commercial relationship.

In addition to endorsing TEP, the Chamber actively supports the Transatlantic Business Dialogue (TABD) through the participation of CEOs from the Chamber Board, members of the policy committee and the Chamber staff. TABD is a results-oriented, business-led process whereby American and European business and government leaders can work together to improve the U.S. and EU marketplace. TEP could add an important dimension in improving multilateral and bilateral trade to strengthen trade and economic links. The Chamber believes that these two activities could become mutually reinforcing. If the TEP succeeds in removing barriers to transatlantic trade, it will have made an important contribution to accelerating the achievements of TABD.

The following principles should guide the statement to the Committee:

- Agreements should be progressive and implemented "as concluded," and not held hostage to the completion of the entire final package of agreements.

- Negotiators should target specific barriers to trade that would bring concrete benefits to businesses and consumers, including removal of tariffs, reduction of discriminatory regulations, further liberalization of specific sectors, removal of impediments to agricultural trade, and liberalization of public procurement markets. Free and fair competition in key infrastructure markets is undermined by discriminatory governments' public procurement policies. The current system in the EU does not adequately provide for fair public procurement.

- Negotiations should be comprehensive and address barriers to agricultural trade and protection of "cultural industries."

- TEP should accelerate the implementation of recommendations adopted in the Transatlantic Business Dialogue.

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[1] Business Week, July 27, 1998, p. 29.
[2] Delegation of the European Commission in the U.S., Washington, D.C. April 1996.
[3] International Trade Administration, U.S. Department of Commerce.

- The EU and U.S. should, wherever possible, extend the agreements reached bilaterally to the multilateral trading system.

- The Chamber strongly recommends consideration of additional multilateral sectoral liberalization initiatives, along the lines of the 1997 Information Technology Agreement. For example, both the U.S and the EU have undertaken regional trade liberalization negotiations in the energy sector. We call for the U.S and the EU to consider cooperating on an energy sector trade liberalization strategy within the WTO.

A number of multilateral and bilateral issues are emerging that affect the U.S.- EU trading relationship and global trade. The following are specific issues that should be addressed jointly by the U.S. and EU.

Multilateral Relations

Support of WTO

The elimination of protectionism and a strong dispute settlement mechanism are important in creating a free and open global trading system. TEP should focus on opening markets and providing global business opportunities for U.S. industries. At the same time, TEP should strive to maintain the integrity of the WTO, through the prompt implementation and enforcement of existing commitments. It is vitally important that in the process of negotiations in new areas, enforcement of existing decisions be maintained. In this context, we are concerned that the integrity of the WTO process has not always been respected. In reference to this, recent debates on bananas, beef hormones, and the EU's request to re-open the Foreign Sales Corporations issue have demonstrated that the EU has often been reluctant to abide by decisions that have already been made within the framework of the WTO. The EU and U.S. should work together to advance the goals of the WTO and its multilateral objectives while adhering to agreements made in the past. The Chamber supports close cooperation between the EU and the U.S. in pursuit of these objectives.

Tariff Liberalization

The Chamber supports cooperation with the EU to come to an immediate conclusion on trade liberalization. This agreement should build on the APEC sectoral trade liberalization initiatives. These initiatives identified nine sectors – forest products (paper and wood), fish and fish products, toys, gems and jewelry, chemicals, medical equipment and instruments, environmental goods and services, energy and telecommunications, as priorities for early tariff liberalization with a view that implementation will begin in 1999. An additional six sectors - oilseeds, food, fertilizer, autos, natural and synthetic rubber, and civil aircraft were also identified for future action. The Chamber supports immediate and reciprocal elimination of tariff and non-tariff barriers in these fifteen sectors which represent significant U.S.-EU trade value.

Enforcement of TRIPS

A coordinated EU-U.S. strategy is key to ensuring proper and timely implementation and enforcement of TRIPS obligations. Particular focus should be on developing countries' implementation of their TRIPS obligations no later than January 1, 2000. TRIPS compliance needs to be monitored in the EU and U.S., and in third countries. The TRIPS agreement provides a sound basis for strong intellectual property rights and is not yet fully implemented by all signatories of TRIPS. The Chamber supports the adoption of a common position on the respect for and further improvement of intellectual property rights, and supports an agreement on standards for intellectual property protection.

Support of MAI

The Chamber continues to support the ambitious liberalization of investment rules. We support efforts to restart negotiations and bring to a successful conclusion the Multilateral Agreement on Investment (MAI) in the OECD.

New Member Accession

The Chamber supports cooperation with the EU on applications for WTO membership, especially from China and Russia. New applicants must adhere to the full WTO principles of international trade, including the Telecom Basic Services Agreement. The Chamber will support accession of new members only after they have committed to a date for full liberalization of specific key industries, and to opening their markets and distribution networks to foreign suppliers.

BILATERAL ACTION

Mutual Recognition Agreements (MRAs)

The Chamber supports the principle of "approved once, accepted everywhere," as a guideline for regulatory cooperation between the EU and the U.S. Redundant certification and testing increase the cost of exports to the EU by 15%[4], and can mean lost business opportunities, presenting an onerous burden to small- and medium-sized businesses.

Removal of barriers to trade and investment will improve benefits to consumers and expand service opportunities for small and medium-sized businesses. The Chamber will continue to encourage streamlining of technical requirements, and standards and regulations in fora such as the TABD. We support timely implementation of MRAs as an approach to achieve internationally-accepted standards, and reduce costs for businesses, especially small- and medium-sized businesses. The Chamber supports the mutual recognition of testing and approval procedures for equivalent requirements, and encourages a high degree of transparency between all interested parties.

Electronic Commerce

The Chamber supports cooperation between the EU and the U.S. on electronic commerce, and advocates an industry-led, market driven, private sector approach to the regulation of electronic commerce. Trade barriers should be reduced, private investment in the industry should be encouraged, and market access and non-discriminatory treatment for network content and information service providers should be upheld. We will also focus our efforts on reducing barriers to trade in electronic commerce. The Chamber supports continuing the duty-free treatment of electronic commerce.

Food Safety and Biotechnology

The Chamber supports regulatory cooperation on important trade issues of food safety, biotechnology and labeling, including EU metric-only labeling. We will strengthen our regulatory cooperation in setting standards in the use of natural and synthetic growth hormones, and on implementation of sanitary and phytosanitary measures agreed upon during the Uruguay Round. Closer cooperation and consultation are required to ensure that ecolabeling schemes and packaging requirements do not create obstacles to trade.

[4] TABD Response to the USTR Federal Register notice, July 6, 1998.

Labeling

The Chamber further supports transparency and openness in labeling and marking products. One hundred per cent of beef exports to the EU must be labeled by January 1, 2000, yet the EU system of labeling will not be identified until July 1999. This lack of transparency would prevent the U.S. from receiving the information in a timely manner and will effectively shut them out of the beef market. This transparency problem should be addressed and the EU should allow adequate non-EU participation in labeling regulations, which include very product-specific qualifications.[5]

The EU's recyclability/reusability markings differ substantially from those used in the U.S. and developed by ISO. Not only are they different, but the EU will not accept U.S. markings on products within the EU. For example, this would require U.S. firms to build 2 dies for bottles, containers, etc. The EU is reviewing this issue in light of an eventual ISO agreement. The Chamber supports conformance with the ISO marking standards and believes that non-EU marking systems should be recognized until such time as the new international standard is implemented. [6]

Labor and Environment

The U.S. should seek to cooperate with other countries in developing reasonable multilateral labor and strengthening environmental protection standards. These important issues should not, however, be addressed in commercial negotiations, whose purpose is to remove barriers to global trade and investment. The use of trade sanctions to enforce labor or environmental agreements seriously disrupts the global trading system.

Resolution of FSC

The Chamber strongly supports the Foreign Sales Corporation (FSC) provisions that reflect the 1984 change in U.S. tax law that was made at the EU's request. The European Commission has recently asked the WTO to establish a panel to hear the EU complaint that the FSC provisions of the U.S. International Revenue Code are an export subsidy that violates WTO agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures. The theory the EU is using to attack the FSC in WTO can be used to attack tax provisions in all 15 EU member states. Tax policy questions should be resolved under the longstanding international procedures under tax treaties or in tax policy fora, such as the Fiscal Affairs Committee of the OECD, not in WTO litigation. Furthermore, we believe that no changes in the FSC are currently needed to comply with the WTO.

Deepening the Transatlantic Dialogue

The Chamber believes that the TEP holds promise in improving the U.S.-EU trading relationship, and in reinforcing the work of the TABD. The Chamber supports extending the transatlantic dialogue through the practical approach taken in the TABD, greater transparency in the work of international trade bodies, and the facilitation of closer association in the activities of the WTO in business and by other interested non-governmental constituencies.

The Action Plan stipulated in TEP is necessary in achieving specific multilateral and bilateral actions, and any necessary steps and negotiations for early implementation of this Plan is an important element in extending the transatlantic dialogue. We look forward to seeing the Action Plan called for at the EU-U.S. Summit.

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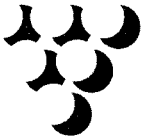
[5] Country Reports on Economic Policy and Trade Practices, April 1998, p 86.
[6] Ibid, page 87

CONCLUSION

We commend the Sub-Committee's leadership and initiative on holding these hearings. Working together we can build on the success of the transatlantic dialogues that have taken place and move forward in tackling important bilateral trade issues that directly impact American industries.



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August 11, 1998

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Reference: Committee hearing on Tuesday, July 28, 1998

RE: STATEMENT ON TRADE RELATIONS WITH EUROPE AND THE TRANSATLANTIC ECONOMIC PARTNERSHIP (TEP) INITIATIVE

On behalf of Wine Institute and the American Vintners Association, I would like to thank the Ways & Means Committee for the opportunity to comment on trade relations with Europe and the new Transatlantic Economic Partnership (TEP). We support this government initiative to remove barriers and increase trade. As discussed in these comments, there are a number of barriers to wine trade that should be removed.

Wine Institute is the association of nearly 450 California wineries and related businesses interested in advocating state, federal and international public policies that enhance trade in the wine industry. The American Vintners Association represents over 500 wineries in 43 states. These two associations represent wineries that produce more than 98 percent of all US wines. Wine Institute has helped develop the market for wine in 20 countries throughout the world, resulting in dramatic growth for US wine exports over the last decade. In 1997, US wines were shipped to 164 countries.

WINE INDUSTRY CONCERNS

The European Union (EU) represents the largest US wine export market, along with the greatest potential for further market growth. In 1997, the US exported over $201 million worth of wine to the fifteen member nations of the EU. Sales to the world's largest wine market expanded by 36 percent, while the volume of wine exports increased by 30 percent. As of 1997, US wine sales to the EU have been increasing for ten consecutive years.

In order to guarantee the sustained growth for US wine sales, it is important to encourage the reduction of trade barriers and other EU policies (i.e. subsidies, non-tariff barriers) that are detrimental to US wine exports and to the international wine market. While US wine exports are growing, the industry and the US government must continue to work to reduce the barriers to trade in the EU. We hope that the TEP will encourage more open market access so that continued economic growth is possible for both sides of the Atlantic.

TRADE BARRIERS

Standards

Wine imports enter more freely in the US than in Europe. In theory, the EU regulations are based on certain commercial criteria including quality, alcohol content, processing aids, labeling, and other elements. Many of these criteria are plainly discriminatory against imports and others are not even considered compatible with World Trade Organization (WTO) standards. Under the WTO Sanitary and Phytosanitary Agreement, import restrictions must have a proven scientific basis to restrict access to consumers. The EU effectively imposes a dual standard on imported wines; the imports must comply with the EU-established practices, standards, and regulations in addition to those of the stated country of origin.

Tariffs

Wine exports from the EU to the US face some of the lowest tariffs in the world. The EU maintains tariff rates on wine that are significantly higher than US tariffs on imported wine. EU tariffs on wine range from 11.4 cents per liter to 37 cents per liter. At the same time, US tariffs range from 6.5 cents per liter to 26.5 cents per liter. In 1994 the US agreed to reduce its tariff on wine by 36 percent over six years. The EU agreed to reduce its tariffs by only 10 percent with no actual reduction in the first three years. In addition, each EU country imposes its own taxes on wine in the form of excise taxes and Value Added Taxes (VATs). Although the EU is attempting to harmonize its excise taxes and VATs, these, along with additional taxes and handling charges assessed by individual countries, make it difficult and expensive to import wine into many EU countries. The high EU tariff makes US wines less competitive in the EU market, while EU wines enter the US market with little encumbrance.

Labeling Regulations

The EU maintains strict labeling requirements and has made little effort to harmonize regulations with the US or the rest of the world. Although the labeling requirements are supposed to be the same for all EU member countries, local customs officials interpret and enforce these requirements subjectively making labeling requirements quite expensive for US producers wishing to export to the EU.

Marketing Regulations

The EU imposes marketing restrictions on wine imports. For example, the EU has heavily legislated quality terms such as "reserve" preventing US producers from using such terms on their labels, and thus making US wine less competitive in the marketplace. The EU has also prevented the use of the term "table wine" from appearing on non-EU wine. This restriction makes it difficult for US wine producers to market their wine as an everyday type of wine, the largest consumption category for wine.

Oenological Practices and Phytosanitary Barriers

In the US, it is sufficient that an imported wine meet the winemaking and phytosanitary requirements in its country of origin as long as there is no health or safety issue. In the EU, wine imports must be accompanied by separate, specific documentation certifying that the EU requirements and the home country requirements have been met; this is in addition to standard customs entry documentation.

Lack of Transparency

US producers cannot directly approach the EU about wine regulations. It can only ask a US government agency to make a request to the EU Commission. The EU effectively forces US producers to deal with at least two bureaucracies in order to address a regulatory issue. Most EU regulations are universal within the EU. Once adopted, regulations supersede existing member state rules and usually go into effect almost immediately. However, the EU Council can also issue directives, which are different from regulations in that they establish minimum universal standards, instructing each member country to enact its own legislation to implement the directive at hand. This means that in certain cases, individual EU members may have different regulations, and thus it would have to be approached separately.

Subsidies

Despite the fact that EU wine industry is the largest and most successful in the world, the EU Commission continues to provide support for domestic wine production and export sales. In 1998, the Commission's budget for the wine industry increased by 30 percent to over $1.4 billion dollars. In addition, individual member states, specifically France, Italy, and Spain, continue to provide millions of dollars more for their individual wine industries. The continued high level of subsidization for the EU wine industry remains a serious obstacle to fair international competition.

INDUSTRY BILATERAL RELATIONS

This past year brought a new level of cooperation between the US and EU wine producers. Wine industry representatives had the opportunity to meet a number of times in 1997. These meetings were very successful, producing a greater understanding between the industries and a coalescence of ideas. This relationship culminated in Barcelona in January of

1998. There, the industries created a joint-statement by which they called upon their respective governments to negotiate a mutual-recognition agreement (MRA) which would provide a mechanism for the recognition of each other's winemaking practices.

The development of this MRA is an important concept for the US wine industry. The US industry is arguably the most advanced and technologically innovative in the world. Each year, researchers are discovering new methods of winemaking and the European Commission is slow to recognize these new winemaking practices. Consequently, the EU restricts the amount of US wine that can be imported simply by failing to recognize the validity of the methods by which it was made.

CONCLUSION

The US wine industry is pleased that the TEP and the US government support the concept of the MRA. Industry representatives from the EU are encouraging their member governments and the Commission to support the wine MRA. We are now at an historic stage whereby we can establish a mutually beneficial relationship. The MRA is the first step toward the goal of free and fair trade on both sides of the Atlantic.

I would like to thank the Committee again for this opportunity to submit a written statement concerning the variety of issues to be addressed under the auspices of the Transatlantic Economic Partnership (TEP). The TEP is an excellent opportunity to enhance the developments of the TABD initiatives to further liberalize trade, to eliminate barriers to trade, and to resolve conflicts between the US and EU. Thank you for your continued work on these issues.

Sincerely,

Robert P. Koch