PROTOCOL TO THE MTN CUSTOMS VALUATION AGREEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

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PROTOCOL TO THE MTN CUSTOMS VALUATION AGREEMENT

WEDNESDAY, APRIL 2, 1980

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
Washington, D.C.

The subcommittee met at 10 a.m. in room 2221, Dirksen Senate Office Building, Senator Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senator Ribicoff.

[The press release announcing this hearing follows:]

[Press Release]

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
March 21, 1980.

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE SETS HEARING/CONSULTATION ON PROTOCOL TO THE CUSTOMS VALUATION AGREEMENT

The Honorable Abraham Ribicoff (D., Ct.), Chairman of the Subcommittee on International Trade of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing/consultation on Wednesday, April 2, 1980, on the Protocol to the Multilateral Trade Negotiations' (MTN) Customs Valuation Agreement; notice of the Protocol was submitted by the President to the Congress on January 21, 1980. The Subcommittee will receive testimony from interested persons and consult with officials of the Office of the U.S. Trade Representative and others on the Protocol and implementation of the Protocol in U.S. law.

The hearing will begin at 10:00 A.M., in Room 2221 of the Dirksen Senate Office Building.

A Customs Valuation Agreement was achieved in the MTN and signed by most of the developed countries participating in the negotiations, e.g., the United States, the European Communities, Japan, Canada, and the Nordics, and by some of the developing countries. This Agreement was approved and implemented by the Congress in the Trade Agreements Act of 1979. The Agreement establishes common international rules for the valuation of imported goods for the assessment of those customs duties which are levied on an ad valorem basis.

Under section 102 of the Trade Act of 1974, the president has negotiated a Protocol amending the Customs Valuation Agreement. Under the terms of the Trade Act of 1974, the Protocol must be approved and implemented by the Congress pursuant to the same provisions which applied to the Customs Valuation Agreement. Under these provisions, the President must give the Congress 90 calendar days notice of his intention to sign the Protocol prior to signing it and submitting an unamendable bill to Congress to implement the Protocol. The purpose of this 90-day notice is to permit consultations between the Congress and the President on the terms of any agreement submitted, and its implementation. This is the purpose of the April 2, 1980, hearing/consultation. After submission of the implementing bill, the Congress has 90 working days to approve or disapprove it.

The President submitted his notice of intention to enter into the Protocol to the Customs Valuation Agreement on January 21, 1980. The Protocol would make one amendment to the Customs Valuation Agreement and further contains some

common understandings and some acknowledgments of possible reservations to be taken by developing countries.

The amendment made by the Protocol requires the deletion of the third-party test for related party transactions now contained in Article 1.2(b)(iv) of the Agreement. Accordingly, related parties would no longer use the price of identical goods from third countries as a means to justify their own transaction values.

Common understandings contained in the Protocol essentially restate certain provisions of the Customs Valuation Agreement. There is acknowledgment that certain developing countries have expressed concern that there may be problems in the application of transaction value insofar as it relates to importations into their countries by sole agents, sole distributors, and sole concessionaires, and therefore it is agreed that if such problems arise in practice, a study of this question would be made. Parties to the Protocol also agree that Customs administrators may need to make inquiries concerning the truth or accuracy of any statement, document, or declaration presented to them for customs valuations purposes, and that they have a right to expect the full cooperation of importers in these inquiries. The final common understanding is that the price actually paid or payable under transaction value includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

The Protocol also covers reservations which may be made by developing countries upon signature to the Agreement. These include reservations permitting: A request for an extension of the five-year period for delay in application of the provisions of the Agreement by developing countries, with the parties to the Agreement giving sympathetic consideration to such a request in cases where the developing country can show good cause; a retention of officially established minimum values on a limited and transitional basis subject to agreement of parties to the Agreement; a limitation by a developing country of the right of an importer to choose between constructive and deductive methods of valuation under Article 4 of the Agreement to those situations where the Customs authorities in the developing country agree to the choice; and the application by a developing country of the deductive method of Article 5.2 of the Agreement whether or not the importer requests the application of such method.

Requests to testify.—Chairman Ribicoff stated that witnesses desiring to testify during this hearing must make their requests to testify in writing to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Monday, March 31, 1980. Witnesses will be notified as soon as possible after this date as to whether they are scheduled to appear. If for some reason the witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance.

Consolidated testimony.—Chairman Ribicoff also stated that the Subcommittee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. Chairman Ribicoff urged very strongly that all witnesses exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.—Chairman Ribicoff observed that the Legislative Reorganization Act of 1946, as amended, and the rules of the Committee require witnesses appearing before the Committees of Congress to file in advance written statements of their proposed testimony and to limit oral presentations to brief summaries of their arguments.

Chairman Ribicoff stated that in light of this statute and the rules, and in view of the large number of witnesses who are likely to desire to appear before the Subcommittee in the limited time available for the hearing, all witnesses who are scheduled to testify must comply with the following rules:

1. All witnesses must include with their written statements a one-page summary of the principal points included in the statement.
2. The written statements must be type on letter-size (not legal size) paper and at least 100 copies must be delivered to Room 2227, Dirksen Senate Office Building not later than noon of the last business day before the witness is scheduled to appear.
3. Witnesses are not to read their written statements to the Subcommittee, but are to confine their oral presentations to a summary of the points included in the statement.
4. No more than five minutes will be allowed for the oral summary.

Witnesses who fail to comply with these rules will forfeit their privilege to testify.

Written statements.—Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be submitted to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Friday, April 18, 1980.

Senator RIBICOFF. The committee will be in order. Today we are meeting to consult with the administration about and hear testimony concerning the administration's announced intention to enter into a protocol to the MTN Customs Valuation Agreement. The agreement was signed last year and approved by the Congress in the Trade Agreements Act of 1979. That act also implemented the Customs Valuation Agreement.

The protocol would make one minor change regarding valuing related-party imports for purposes of assessing duties, contains several understandings regarding interpretation of the agreement and several possible reservations which could be made by less developed countries in appropriate circumstances.

Before the protocol can enter into force it must be approved by the Congress under the procedures provided for in sections 102 and 151 of the Trade Act of 1974.

Our first witnesses are an administration panel consisting of Mr. Mike Hathaway and Mr. John O'Loughlin. Gentlemen, would you proceed?

STATEMENT OF C. MICHAEL HATHAWAY, ASSISTANT GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE, AND JOHN B. O'LOUGHLIN, DIRECTOR, OFFICE OF TRADE OPERATIONS, U.S. CUSTOMS SERVICE, ACCOMPANIED BY THOMAS O'CONNELL, OFFICE OF U.S. TRADE REPRESENTATIVE, INTERNATIONAL ECONOMIST: DAVID SHARK, OFFICE OF U.S. TRADE REPRESENTATIVE, INTERNATIONAL ECONOMIST; AND WILLIAM S. MERKIN, OFFICE OF U.S. TRADE REPRESENTATIVE, INTERNATIONAL ECONOMIST

Mr. HATHAWAY. Mr. Chairman, as the subcommittee is aware, on January 16 the President notified the Speaker of the House and the President of the Senate of his intention under the Trade Act of 1974 to enter into agreement on the Customs Valuation Protocol that would amend the MTN Customs Valuation Agreement. I am appearing before you today to consult with the subcommittee regarding the content of the protocol and the reasons for its negotiation and to discuss several technical amendments we hope to attach to it.

We believe the protocol can be approved by the Congress in sufficient time to allow us to implement it along with the basic valuation agreement on July 1, 1980, as was authorized under the Trade Agreements Act of 1979.

During the negotiation of the Customs Valuation Agreement, several developing countries expressed their dissatisfaction with a large number of points in the text of that agreement. This dissatisfaction was strong enough to motivate the developing countries to circulate an alternative test of the Customs Valuation Agreement. A series of consultations were held between the developed and developing countries with a view to eliminating the differences in the texts.

We were very close to completing these negotiations at the time we submitted to the Congress the text of the basic Customs Valuation Agreement together with the other nontariff barrier codes for approval.

Negotiations with developing countries continued through the fall of 1979. Progress on the protocol to the Customs Valuation Agreement was such at the end of 1979 that the developing countries withdrew from circulation their alternative text of the Valuation Agreement and indicated their willingness to consider for acceptance the basic Customs Valuation Agreement together with the protocol.

We believe that the Protocol, as negotiated with both developed and developing countries, meets the concerns of the developing countries while preserving the integrity of the basic agreement.

Senator RIBICOFF. What was the basic difference between the two—I mean, what was bothering the developing countries?

Mr. HATHAWAY. The developing countries were concerned with the difficulty their customs administrations would have in enforcing certain provisions and in policing certain provisions of the Customs Valuation Agreement itself.

Senator RIBICOFF. For example?

Mr. HATHAWAY. The only one which would specifically require a change in U.S. law as approved last year would be the elimination of a related party test. As you recall, the Customs Valuation Agreement will now be based upon a transaction value, and there are several provisions in the code that will allow related parties to establish a transaction value. One of those would have allowed related parties to use sales from unrelated parties from third countries to the importing countries to establish a transaction value, and some of the developing countries were concerned that their customs officials would not have the resources to check the validity of that third country sale.

It was, I have to say, a very minor change because we had already limited the scope of that test in the negotiations. But it is something that was of some concern to them. There are other provisions in the protocol that will not require changes in U.S. law that are also of concern to the developing countries. One of those would allow developing countries to prefer a deductive method valuation as opposed to the cost of production method. The agreement and U.S. law provide that an importer has the right to select the order of the basic methods of valuation and use a cost of production method first, as opposed to a deductive method.

Developing countries feel that a cost of production method would be very difficult to administer. They would like to have the option, which we have granted them in the protocol, of not granting this reversing of the order. That is something which will enable them to agree to the Customs Valuation code.

In the absence of that provision, and some others, we would not have been able to bring the developing countries into the Customs Valuation Protocol. I think those two points were instrumental in getting to the point where at least four of the major developing countries are in a position to accept the Customs Valuation Protocol. Those countries are Argentina, Brazil, India, and Korea.

As I've already stated in response to your question, the two major points of concern with the protocol are the elimination of the related party test for third country transactions, and the order of applying the cost of production method of valuation. Mr. O'Loughlin could comment further on the impact that the former change will have for U.S. Customs administration. You have another witness today who will be able to explain how much of an effect these changes will have on U.S. exports to developing countries and other countries.

Our assessment is, frankly, it was a small price to pay for developing country participation.

Senator RIBICOFF. In most situations like this there have been general agreement between our basic trading partners and ourselves, and I hear that the U.S. International Trade Commission, the U.S. Customs Service, everyone seems to be agreed that this is a proper way to handle it.

Mr. HATHAWAY. Everyone is in complete agreement. Part of the reason we are confident it will go through is that the same advisers who dealt with us during the trade negotiations and, as you know, enabled the Customs Valuation Agreement to receive overwhelming support along with the other MTN agreements, worked with us on the protocol. We worked very closely with our industrial and labor advisers and with the other people in the private sector, as well as our trading partners.

All the other parties to the Valuation Agreement, the European Communities, Canada, Japan, the Nordic countries and others, will be able also to accept this Customs Valuation Protocol.

Senator RIBICOFF. I have not read the testimony of Mr. Elliott, representing the various private companies, the joint industry group, but are they on the same wavelength as you on this?

Mr. HATHAWAY. It is my understanding they are on the same wavelength. Their assessment is, as I understand it, that the protocol represents a reasonable concession in order to get developing country participation.

Senator RIBICOFF. You see nothing here to hinder American industry at all?

Mr. HATHAWAY. We see nothing of a significant disadvantage to American industry in this. Not being able to select a cost of production basis valuation as a preference to a deductive method will be of some slight disadvantage—well, not a disadvantage, but it will be less preferred by some U.S. exporters.

But without having developing countries in the Valuation Agreement, they would face a much worse time with uplifts or minimum values or something else.

So, the long and the short of it is, being able to reverse the order of these two methods, and being able to eliminate one test on third country related party sales, would be on the whole much more beneficial to our export interests than not having developing countries participate in the agreement.

Senator RIBICOFF. What percentage of our international trade is affected by this? Is there any way to estimate that?

Mr. HATHAWAY. There really is no way to estimate. Of course a major portion of our trade will be with countries who will be parties to the Customs Valuation Agreement and being able to

include the major developing countries in the agreement will give us a very large benefit to our trade.

For example, in Brazil I think we have our 8th largest trading partner, ranking 16th in receiving our exports. A substantial amount of our export trade goes to India, Korea, and Argentina. So we will get benefits from those countries. In addition we have other countries.

Now that we have what amounts to the leaders of the developing countries in the context of the Customs Valuation negotiations in the agreement as a result of this Protocol, we should have a good chance of getting more developing countries to participate.

Senator RIBICOFF. I think we understand it. Your entire statement will go into the record as if read, together with the various documents you have submitted.

[The material referred to follows:]

TESTIMONY OF C. MICHAEL HATHAWAY, ASSISTANT GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. Chairman and Members of the Subcommittee, as the Subcommittee is aware, on January 16 the President notified the Speaker of the House and the President of the Senate of his intention, under the Trade Act of 1974, to enter into agreement on a Customs Valuation Protocol that would amend the MTN Customs Valuation Agreement. I am appearing before you today to consult with the Subcommittee regarding the content of the Protocol and the reasons for its negotiation and to discuss several technical amendments we hope to attach to it. We hope that the Protocol can be approved in sufficient time to allow us to implement it along with the basic valuation agreement on July 1, 1980.

During the negotiation of the Customs Valuation Agreement, several developing countries expressed their dissatisfaction with a large number of points in the text of that agreement. This dissatisfaction was strong enough to motivate the developing countries to circulate an alternative text of the Customs Valuation Agreement in 1979. A series of consultations were held between the developed and developing countries with a view to eliminating the differences in the texts.

We were very close to completing these negotiations at the time we submitted the text of the basic Customs Valuation Agreement to the Congress together with the other nontariff barrier codes for approval.

Negotiations with developing countries continued through the fall of 1979. Progress on the Protocol to the Customs Valuation Agreement was such at the end of 1979 that the developing countries withdrew from circulation their alternative text of the Valuation Agreement and indicated their willingness to consider for acceptance the basic Customs Valuation Agreement together with the Protocol.

We believe that the Protocol, as negotiated with both developed and developing countries, meets the concerns of the developing countries while preserving the integrity of the basic Agreement. The developed countries have indicated a willingness to accept the Protocol in order to assure meaningful participation by the developing countries in the Customs Valuation Agreement. A number of developing countries have already indicated their willingness to sign the Customs Valuation Agreement provided the developed countries accept the Protocol. We have clear indications from four major developing countries (Argentina, Brazil, India, and the Republic of Korea) that they will sign the Customs Valuation Agreement if the Protocol is accepted by the developed countries. Other developing countries have expressed an interest in adhering at a later date.

In brief, the Protocol consists of eight points: one is a minor change in the Customs Valuation Agreement, two facilitate existing procedures for developing countries, and the remainder are essentially points of clarification. We have prepared and circulated to Members of the Subcommittee and staff a paper that details each of the points in the Protocol and the background of the negotiations on each point. I will be pleased to answer any questions that the Subcommittee may have on any of the points in the Protocol. However, the Protocol contains just one change to the basic Customs Valuation Agreement that will necessitate a change in the new valuation law contained in Title II of the Trade Agreements Act of 1979.

That change amends the Customs Valuation Agreement by eliminating one of the four tests under the Agreement by which related parties can establish a transaction

value for customs purposes. Specifically, the use of the transaction value for unrelated parties' sales of identical goods from third countries will be eliminated. This amendment will have little impact on the Customs Valuation Agreement but will greatly facilitate acceptance of that Agreement by a significant number of developing countries. All of the developed countries that participated in the negotiation of the Agreement support this amendment.

I don't mean to downplay the significance of the Protocol, but I firmly believe it is a small price to pay for participation by leading developing countries. The related party test we are giving up would be difficult for developing countries to administer. We believe that our concession to the developing countries in agreeing to be Protocol is worthwhile because it should result in meaningful participation by the developing countries in the Customs Valuation Agreement. With the countries we now know will join the Agreement we have a solid base of support that should expand.

I would like to turn now to the technical amendments we propose to attach to the implementing legislation for the Protocol. I would simply like to point out that these amendments result from consultations with several of our trading partners and staff of the U.S. International Trade Commission and the U.S. Customs Service. We have made every effort to inform U.S. industry representatives and interested Congressional staffs of these proposed changes. Basically, these changes will make technical corrections in three sections of the Trade Agreements Act of 1979, and thereby substantially reduce the potential for confusion in Customs' administration of the Act. Several of these changes will ensure that current rates of duty will not be increased on several "non-competitive" chemicals when the revised nomenclature contained in Section 223 of the Act enters into force. In short, Mr. Chairman, they represent what we would have done had the Trade Agreements Act of 1979 had the luxury of several months of technical review. Once again, we had reviewed these changes with domestic industries concerned and believe they cause no problems.

I have submitted for the record a more detailed explanation of these technical amendments.

I would be pleased to answer any questions that you may have concerning the Protocol or the technical amendments attached to it.

Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade—March 31, 1980

During the negotiation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, commonly referred to as the Customs Valuation Agreement, a number of developing countries expressed their dissatisfaction with a large number of points in the text of that agreement. This dissatisfaction was strong enough to motivate the developing countries to circulate an alternative text of the Customs Valuation Agreement at the time of the initialing of the MTN agreements in Geneva in April 1979. A series of consultations were held between the developed and developing countries with a view to eliminating the differences in the texts. The result of those consultations was development of the Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT document MTN/NTM/W/229/Rev. 1/Add. 1). With the agreement on the Protocol, the developing countries withdrew their alternative text of the valuation agreement and indicated their willingness to consider the Valuation Agreement drafted largely by the developed countries.

We believe that the Protocol, as negotiated with both developed and developing countries, meets the concerns of the developing countries without damaging the integrity of the Agreement. In brief, the Protocol consists of eight points: one is a change in the Agreement, two are procedural easements for developing countries, and the remainder are essentially points of clarification. The developed countries have indicated a willingness to accept the Protocol if this will result in meaningful participation by the developing countries in the Valuation Agreement. On their part, the developing countries have indicated their willingness to sign the Valuation Agreement provided the developed countries accept the Protocol. We have clear indications from four major developing countries (Argentina, Brazil, India, and the Republic of Korea) that they will sign the Agreement if the Protocol is accepted by the developed countries, while other developing countries have expressed an interest in adhering at a later date.

The following is a point-by-point analysis of the Protocol:

"Point 1. Agree to deletion of the provision of Article 1.2(b)(iv) of the agreement:"

The first point of the Protocol would require amendment of section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201 of the Trade Agreements Act of 1979, by deleting section 402(b)(2)(B)(iii). This provision requires

customs officials to accept a transaction value between a related buyer and seller if the importer demonstrates that the transaction value of the imported merchandise closely approximates the transaction value of identical imported goods from a third country.

The developing countries strongly objected to the inclusion of this provision in the Agreement on the grounds that it conceivably could be used by multinational companies in developed countries to get customs authorities to accept a price between related parties as the basis for transaction value which otherwise would be too low to be acceptable. Under Article 1.2(b)(iv) of the Agreement, the multinational company could justify its price by comparing it to the price of identical merchandise imported from a developing country even though the developing country might be a lower priced producer. Therefore, the multinational company could use an artifically low transfer price in order to pay a lower duty, and thus would become more competitive with lower cost imports from developing countries.

Although it is our belief that in the actual market place the problems envisaged by the developing countries are unlikely to arise, in theory their concerns may have some merit. We find this change acceptable because in our view the test is narrowly constructed and could only be used in very few cases. In addition, there are other provisions in the Agreement to assure equitable treatment for related parties.

"Point 2. Recognize that the five-year delay in the application of the provision of the Agreement by developing countries provided for in Article 21.1 may, in practice, be insufficient for certain developing countries. In such cases a developing country Party to the Agreement may request before the end of the period referred to in Article 21.1 an extension of such period, it being understood that the Parties to the Agreement will give sympathetic consideration to such a request in cases where the developing country in question can show good cause;"

A number of developing countries were concerned that they might be unable to implement the Agreement within five years from the date of acceptance as provided for in Article 21.1 of the Agreement. Furthermore, they were concerned that because the Agreement specifically indicated a five-year period for application, a developing country would not be able to receive an extension should circumstances warrant.

In our view, five years should be sufficient for most countries to implement the Agreement. However, if, after a good faith effort, a developing country found itself technically incapable of applying the Agreement, a reservation to provide additional time could be considered under the Agreement as presently drafted without inclusion of the Protocol.

The result of the discussions between the developed and the developing countries was Point Two of the Protocol which clarifies the reservation provision of the Agreement. Point Two allows a developing country to request an extension of the five-year period and provides that other signatories to the Agreement will give sympathetic consideration to such a request if good cause can be shown. it should be noted that this provision does not commit the United States or any other signatory to an extension should one be requested. Such an extension can be granted only if no signatory objects.

"Point 3. Recognize that developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Parties to the Agreement;"

Several developing countries presently employ officially established minimum values for customs purposes and wished to maintain them through a reservation. It was our belief that such a reservation would be incompatible with the Agreement. Nevertheless, the developing countries expressed concern that to eliminate such practices all at once could seriously injure their trade regimes.

To deal with this concern, Point Three of the Protocol was agreed upon to clarify the reservation provision of the Agreement. Point Three provides that developing countries which use officially established minimum values may request a reservation to maintain such a system, on a limited and transitional basis, pending their total elimination. Point Three does not commit other signatories to the Agreement to accept the reservation should one be requested. Such a reservation can only be granted if no signatory objects.

In accepting Point Three of the Protocol, the Administration has not undertaken to accept the concept of minimum values. We have made it clear to the developing countries that the United States will not agree to the use of this reservation unless it meets the criteria of being strictly limited in the number of tariff lines involved and that they will be phased out over a short period of time.

"Point 4. Recognize that developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make reservation to Article 4 in the following terms:

'The Government of ——— reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6.'

If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;"

From the outset of the valuation negotiations, the developing countries and, in fact, many developed countries, were opposed to the inclusion of a "computed value" provision in the Agreement. The developing countries were particularly concerned that such a provision would be too administratively burdensome and technically complex for their customs authorities. Their view was that the use of the "computed value" method of valuation involves very sophisticated accounting techniques and would be a severe financial and administrative burden because of the need to verify information in foreign countries.

The developing countries originally were not willing to accept a "computed value" provision whatsoever. Eventually, they agreed that they could apply the "computed value" method once the time delays provided for in Article [illegible] 2 of the Agreement had expired but only if it were done in such a way so that they would not be forced to use that valuation method when other methods provided for in the Agreement were available.

Under Article 4 of the Agreement, importers are given the ability to reverse the order of application of Articles 5 and 6 of the Agreement ("deductive value" and "computed value"). The developing countries objected to this provision because it forces them to use a "computed value" when a "deductive value" may be useable.

The developing countries sought, and we agreed to, the right not to reverse the order of application of Articles 5 and 6 of the Agreement unless they agree to the request. By agreeing to the Protocol, all signatories accept the "computed value" method of valuation as provided for in Article 6, but they retain the right not to agree to requests to reverse the order of application of Articles 5 and 6. At the same time, the reservation does not prevent the customs administration in the developing country from agreeing to a request for reversal of Articles 5 and 6. This reservation, as is the case with all reservations included in the Agreement, is subject to periodic review by the committee of signatories with a view to ending such reservations when they are no longer necessary.

"Point 5. Recognize that developing countries may wish to make a reservation with respect to Article 5.2 of the agreement in the following terms:

"The Government of ——— reserves the right to provide that Article 5.2 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.

"If developing countries make such a reservation, the Parties to the Agreement shall consent to it under Article 23 of the Agreement;"

Under Article 5.2 of the Agreement, customs authorities are permitted to base "deductive value" on the price of goods which have been further processed after importation but before resale, provided that the importer so requests. The developing countries were concerned that they would have to use the "computed value" method of valuation even though the "deductive value" method of Article 5.2 could be used, since Article 5.2 can only be used at the discretion of the importer.

We agreed to Point Five of the Protocol, which allows developing countries to apply Article 5.2 in the absence of a request from the importer, for two reasons. First, even with the reservation, the developing countries will be accepting all valuation methods provided for in the Agreement, and the "computed value" method in particular. We consider the acceptance by the developing countries of the "computed value" method as especially important because a large portion of our trade with the developing countries is between related parties where the incidence of use of this fallback method of valuation is highest. Secondly, Point Five merely allows a reservation. This reservation, as is the case with all reservations included in the Agreement, is subject to periodic review by the committee of signatories, with a view to ending such reservations when they are no longer necessary.

"Point 6. Recognize that certain developing countries have expressed concern that there may be problems in the implementation of Article I of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. The Parties to the Agreement agree that, if such problems arise in practice in developing countries applying the Agreement, a study of this

question shall be made, at the request of such countries, with a view to finding appropriate solutions;"

The developing countries were very concerned that the Agreement will require them to accept prices between exporters and sole agents, sole distributors, and sole concessionaires. The developing countries were particularly concerned that this would result in reduced customs revenues since they previously treated these sales as transactions between related parties whereas under the Agreement these transactions, in most cases, will not be treated as such. It was agreed that if such problems arose after the developing countries implemented the Agreement, a study would be undertaken of these problems.

"Point 7. Agree that Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. They further agree that the Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. They recognize that Parties to the Agreement, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries;"

Some developing countries were concerned that under the Agreement, customs authorities might be forced to accept fraudulent information. It was our belief that Article 17 of the Agreement makes it clear that this is not the case; however, the developing countries were not satisfied. As a result, Point Seven of the Protocol was agreed to, which clarified Article 17 further with changing the substance of the Agreement in any way.

"Point 8. Agree that the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller."

The developing countries were concerned that under the language of the Agreement, a number of costs and charges, which they believed should legitimately be included in transaction value, could no be included. As a practical matter, it was our view that, in many cases, the items in question would be included under Article I. As a result, we agreed to Point Eight of the Protocol, which clarified this point without changing the substance of the Agreement in any way.

SECTION . AMENDMENTS TO SECTION 223(d)(2) OF THE TRADE AGREEMENTS ACT OF 1979

Section 223(d)(2) of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 205-235) is amended as follows:

(1) By striking the article description for item 403.61 and inserting the following new article description in lieu thereof:

"5-Chloro-2-nitroanisole; 6-Chloro-3-nitro-p-diemethoxy benzene; Dimethyl diphenyl ether; 4-Ethylguaiacol; and 2-(α-Hydroxyethoxy)phenol".

(2)(a) By striking the article description for item 404.32 and inserting the following new article description in lieu thereof:

"Naphthalic anyhdride; Phthalic acid; and 4-Sulfo-1, 8-naphthalic anhydride"; and

(b) by striking item 403.76 and inserting the following new items 403.74 and 403.76 in lieu thereof:

"Aldehydes, aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols, and other single or complex oxygen-function aldehydes; cyclic polymers of aldehydes and paraformaldehyde:

403.74	Terephthalaldehyde	1.7 cents per pound +11.6 percent ad valorem.	7 cents per pound +37 percent ad valorem
403.76	Other	1.7 cents per pound +12.9 percent ad valorem.	7 cents per pound +41 percent ad valorem"

(3) By striking "3-(N-Ethylanilino)propionic acid, methyl ester;", "1-(p-Nitrophenyl)-2-amino-1,3-propane diol;", and "Toluidine carbonate;" from item 404.84, and by inserting "3-(N-Ethylanilino)propionic acid, methyl ester;" immediately after "4-Dimethylaminobenzaldehyde;", "1-(p-Nitrophenyl)-2-amino-1,3-propanediol;" immediately after "2-Methyl-p-anisidine [$NH_2=1$];", and "; and Toluidine carbonate" immediately after "L-Phenylalanine" in item 404.92.

(4) By striking "p-Aminobenzoylamino-naphthalene sulfonic acid;" and "Aminophenol, substituted;" from item 404.84, and by inserting "p-Amino-

benzoylaminonaphthalenesulfonic acid;" immediately after "p-Aminobenzoic acid isooctyl-amide;" and "2-(m-Hydroxyanilino)acetamide;" immediately after "Gentisamide;" in item 405.28.

(5) By striking "p-Acetaminobenzaldehyde;" and "Nitra acid amide (1-amino-9,10-dihydro-N-(3-methoxypropyl)-4-nitro-9,10-dioxo-2-anthramide); and" from item 404.92, and by inserting "p-Acetaminobenzaldehyde;" immediately before "p-Acetanisidide;" and "Nitra acid amide (1-amino-9,10-dihydro-N-(3-methoxypropyl)-4-nitro-9,10-dioxo-2-anthramide)" immediately after "N-(7-Hydroxy-1-naphthyl)acetamide;" in item 405.28.

(6) By striking "2-Amino-5-nitrobenzonitrile;" from item 405.56.

(7)(a) By striking "4-Chloro-1-methylpiperidine hydrochloride;", "1,4-Dimethyl-6-hydroxy-3-cyanpyridone-2;", "o-Ethylpyrazolone;", "Iminopyrazole-3-sulfonic acid;", and "3-Quinuclidinol;" from item 406.36;

(b) by inserting "3-(5-Amino-3-methyl-1-H-pyrazol-1-yl)benzenesulfonic acid;" immediately after "aminomethylphenylpyrazole (Phenylmethylamino-pyrazole);" and by inserting "1-(o-Ethylphenyl)-3-methyl-2-pyrazolin-5-one;" immediately after "6-Ethoxy-2-benzothiazolethiol;" in item 406.36; and

(c) by inserting in numerical sequence the following new item:

"406.73	4-Chloro-1-methylpiperidine hydrochloride, 1,4-Dimethyl-6-hydroxy-3-cyanopyridone-2; Di(2,2,6,6-tetramethyl-4-hydroxypiperidine)sebacate, and 3-Quinuclidinol.	1.7 cents per pound + 12.4 percent ad valorem	7 cents per pound + 39.5 percent ad valorem".

(8) By inserting "4-[[4,6-Bis(octylthio)-1,3,5-triazine-2-yl]amino[-2,6-di-tert-butyl-phenol;" immediately after "3-Amino-1-(2,4,6-trichloro-phenyl)-5-pyrazolone;" in item 406.36.

(9) By inserting in numerical sequence the following new items:

"405.85	4,4'-Diphenyl-bis-phosphonous acid, di-(2'2",4'4"-di-tertbutyl)phenyl ester	1.7 cents per pound + 12.5 percent ad valorem	7 cents per pound + 40 percent ad valorem", and
"406.82	Dehydrolinalool, Dimethylsuccinoyl succinate, and Isophytol.	1.7 cents per pound + 12.5 percent ad valorem	7 cents per pound + 40 percent ad valorem".

(10) By striking item 407.15 and inserting the following new items in lieu thereof:
"Other:

407.14	Mixtures of 1,3,6 Naphthalenetri-sulfonic acid and 1,3,7 Naphthalene-trisulfonic acid	1.7 cents per pound + 12.5 percent ad valorem	7 cents per pound + 40 percent ad valorem.
407.16	Other	1.7 cents per pound + 13.6 percent ad valorem but not less than the highest rate applicable to any component material	7 cents per pound + 43.5 percent ad valorem, but not less than the highest rate applicable to any component material"

(11)(a) By striking subpart C headnote 6, and by redesignating subpart C head notes 7 through 12 as headnotes 6 through 11, respectively;

(b) by striking item 408.52; and

(c) by striking the article description for item 413.50 and inserting "Paints and enamel paints, and stains" in lieu thereof.

(12) By striking "2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate (Bendiocarb);" from item 408.21 and inserting it immediately before "and" in item 408.24.

(13)(a) By striking "1,2-Benzisothiazolin-3-one;" from item 408.24; and

(b) by striking item 408.32 and inserting the following new items 408.31 and 408.32 in lieu thereof:
"Other:

408.31	1,2-Benzisothiazolin-3-one	1.7 cents per pound + 12.8 percent ad valorem	7 cents per pound + 41 percent ad valorem.
408.32	Other	1.7 cents per pound + 12.5 percent ad valorem.	7 cents per pound + 40 percent ad valorem.

(14)(a) By striking items 411.36, 411.40 and the superior heading thereto, and inserting the following new item in lieu thereof:

"411.40	Papaverine and its salts	1.7 cents per pound + 28.9 percent ad valorem.	7 cents per pound + 104 percent ad valorem; and

(b) by inserting "Ethaverine hydrochloride;" immediately after "Ergonovine maleate;" in item 411.44.

(15) By inserting "Clemastine hydrogen fumarate;" immediately before "Diphenhydramine" in item 411.52.

SEC. . AMENDMENT TO SECTION 852 OF THE TRADE AGREEMENTS ACT OF 1979.

Section 852 of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 292) is amended by striking the following:

"So much of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States as follows headnote 1 is amended to read as follows:"

and by inserting the following in lieu thereof:

"Subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States is amended to read as follows:

Subpart D headnote:

1. The rates of duty provided for the products enumerated in this subpart shall be assessed on a proof gallon basis (i.e., the rates shown indicate the amount of duty which shall be collected on each gallon of an imported product at 100 proof). The amount of duty which shall be collected for each gallon of a product which is imported at more than or less than 100 proof shall bear the same ratio to the applicable rate of duty as the proof of the imported product bears to 100 proof.".

SEC. . AMENDMENT TO SECTION 1107(a) OF THE TRADE AGREEMENTS ACT OF 1979

Section 1107(a) of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 313) is amended by striking subsection (1) and by inserting the following new subsection (1) in lieu thereof:

"(1) by inserting "and" after "subpart E,", and by striking "headnote 4" and inserting "headnote 3" in lieu thereof, in headnote 3(a)(i), and".

AN EXPLANATION OF THE PROPOSED LEGISLATIVE AMENDMENTS TO THE TRADE AGREEMENTS ACT OF 1979

1. Item (1) of the proposed legislation amends article description 403.61 by striking "nitrochlorohydroquinone, dimethylester" and inserting in its place "6-chloro-3-nitro-p-dimethoxybenzene". The latter name is a more chemically specific description than the former name. This change entails no change in the tariff rate or concession rate for this item.

2(a) Item (2) (a) of the proposed legislation amends article description 404.32 by deleting "terephthalaldehyde" from the list of enumerated items covered by this article description because it is not a poloycarboxylic acid.

2(b) Item (2) (b) of the proposed legislation inserts "terephthalaldehyde" under its proper superior heading in the TSUS and assigns a separate tariff line thereby maintaining its negotiated base rate.

3. Item (3) of the proposed legislation amends article description 404.84 by deleting three items from the list of enumerated items covered by this article description. These items are not amines but rather amines with oxygen functions.

Article description 404.92 is amended by adding the three items referenced above to the list of enumerated items covered by this article description. This change entails a minor decrease in the base rates for these three items from 1.7¢ per lb. + 12.4 percent ad val. for item 404.84 to 1.7¢ per lb. +12.2 percent ad val. for item 404.92 and no change in their respective offer rates of 5.8 percent ad val.

4. Item (4) of the proposed legislation amends article description 404.84 by deleting two items from the list of enumerated products covered by this article description. These items are not amines but amides.

Article description 405.28 is amended by adding the above two items to the list of enumerated items covered by this article description. The chemical name "2-(m-Hydroxyanilino)-acetamide" is added to item 405.28 in lieu of the less specific

chemical name "aminophenol, substituted". The transfer of these two items involves no change in their respective base rates or offer rates.

5. Item (5) of the proposed legislation amends article description 404.92 by deleting two items from the list of enumerated items covered by this article description. These items are not amines with oxygen functions but rather amides.

Article description 405.28 is amended by adding the above two items to the list of enumerated products covered by this article description. This transfer entails a minor increase in the base rates for these two items from 1.7¢ per lb. +12.2 percent ad val. for item 404.92 to 1.7¢ per lb. + 12.4 percent ad val. for item 405.28, and no change in their respective offer rates of 5.8 percent ad val.

6. Item (6) of the proposed legislation amends article description 405.56 by striking "2-amino-5-benzonitrile" from the list of enumerated products covered by this article description. This deletion eliminates a duplicate entry appearing under this article description. This item will continue to appear under 405.56 as "2-cyano-4-nitroaniline."

7(b) Item (7) (a) of the proposed legislation amends article description 406.36 by deleting 5 items from the list of enumerated products covered by this article description. These items are not benzenoid heterocyclic compounds in a strict Customs sense and as such should not be enumerated under this item number.

7(b) Item (7) (b) of the proposed legislation inserts the more appropriate chemical name "3-(5-Amino-3-methy-1-H-pyrazol-1-yl) benzenesulfonic acid" in item 406.36 in lieu of the less specific chemical name "Iminopyrazol-3-sulfonic acid" and the more appropriate chemical name "1-(o-Ethylphenyl)-3-methyl-2-pyrazolin-5-one" is inserted in item no. 406.36 in lieu of the less specific chemical name "o-Ethylpyrazolone." These amendments entail no change in converted base rates or negotiated concession rates.

7(c) Item (7)(c) of the proposed legislation creates traiff item no. 406.73 under the superior heading "all other products. . ." and 3 of the items referenced in 7(a) are transferred into and enumerated under this new tariff provision. This change entails no change in either the base rates or offer rates for these items. The erroneous chemical name "1,4-dimethyl-6-hydroxy-3-cyanpyridone-2" is replaced by the correct chemical name "1,4-dimethyl-6-hydroxy-3-cyanopyridone-2".

In addition to the above 5 changes, 1 item "Di (2,2,6,6-tetramethyl-4-hydroxypiperidine) sebacate" is enumerated under 406.73.

8. Item (8) of the proposed legislation amends article description 406.36 by adding one item to the list of products enumerated thereunder.

9. Item (9) of the proposed legislation creates tariff no. 405.85 with a base rate at the nominal rate of duty, and creates tariff item no. 406.82 which enumerates 3 items thereunder establishing base rates at the existing nominal rates of duty. No offer will be made on these tariff items.

10. Item (10) of the proposed legislaation deletes item no. 407.15 and creates item nos. 407.14 and 407.16 in its place. The creation of ex-out 407.14 resolves a technical misunderstanding between the European Community and the USITC concerning the notification of this item pursuant to Section 225. No offer will be made on this item.

11. Amendments 11(a), 11(b) and 11(c) of the proposed legislation correct a technical deficiency in the TSUS. Headnote 1 of chapter 9 of schedule 4 of the TSUS specifies that varnishes described in chapter 9 and also in chapter 1 are to be classified in chapter 9. The term "lacquers" is construed by Customs to be a subset of the broader term "varnishes". This headnote notwithstanding, the term "varnish" erroneously appears in item nos. 408.52 and 413.50 of subpart C of chapter 1, and the term "lacquers" erroneously appears in item no. 408.52 of the same subpart.

11(a) Item (11)(a) of the proposed legislation amends the headnotes to subpart C of part 1 of schedule 4 of the TSUS by striking headnote 6 (defining varnishes) from this subpart.

11(b) Item (11)(b) of the proposed legislation deletes item no. 408.52 "varnishes and lacquers" from the TSUS because of the superseding headnote to chapter 9 of schedule 4.

11(c) Item (11)(c) of the proposed legislation amends item no. 413.50 by deleting the term "varnishes" from this article description.

Imported varnishes (as defined in the TSUS) should properly enter the United States through item nos. 474.40, 474.42, 474.44, or 474.46.

12. Item (12) of the proposed legislation amends article description 408.21 by deleting "2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate" from the list of enumerated items covered by this article description and inserting it in item no. 408.24. This item is an insecticide and not a herbicide. As a consequence of this change, the base rate of duty for this item is increased from 1.7¢ per lb.+12.6 percent ad val. for

item 408.21 to 1.7¢ per lb. + 12.8 percent ad val., and the offer rate is increased slightly from 6.8 percent to 6.9 percent.

13(a) Item (13)(a) of the proposed legislation amends article description 408.24 by deleting this item from the list of enumerated products covered by this article description because this item is a bactericide and not an insecticide.

13(b) Item (13)(b) of the proposed legislation eliminates article description 408.32 and creates item nos. 408.31 and 408.32 in its place. In essence, this simply creates a separate tariff line for "1,2-Benzisothiazolin-3-one" with no change in either the base rate or offer rate for this item.

14. Amendments (14)(a) and (14)(b) of the proposed legislation transfer "Ethaverine hydrochloride" from item no. 411.36 to its proper classification in item no. 411.44 where it will be enumerated among other items covered by this article description. This transfer entails a minor increase in the base rate of duty for this item from 1.7¢ per lb. + 13.5 percent ad val. to 1.7¢ per lb. + 13.9 percent ad val., and a slight increase in the offer rate from 6.9 percent ad val. to 7.0 percent ad val.

15. Item (15) of the proposed legislation inserts "clemastine hydrogen fumarate" into article description 411.52.

The amendment to section 852 of the Trade Agreements Act of 1979 would delete headnote 1 to subpart D, part 12 of schedule 1 of the TSUS and substitute a new headnote 1 in lieu thereof. Section 852 was intended to change the method of duty assessment for alcoholic beverages from a wine gallon to a proof gallon basis. While section 852 modified all of the rates of duty to a proof gallon basis, headnote 1 to the affected subpart (which provides for the wine gallon method of duty assessment) was inadvertently left in subpart 1 unchanged. This has resulted in an unintended conflict. The proposed amendment would eliminate this conflict by modifying headnote 1 to provide for duty assessment on a proof gallon basis.

The amendment to section 1107(a) of the Trade Agreements Act of 1979 would make a conforming change to general headnote 3(a)(i) of the TSUS. Section 1107(g)(2) redesignates headnote 4 to subpart A, part 7, schedule 7 of the TSUS as headnote 3. Since this headnote is referred to in general headnote 3(a)(i), a conforming change should have been made to that headnote.

Senator RIBICOFF. I have no further questions. Thank you, gentlemen.

Mr. Elliott?

STATEMENT OF DAVID J. ELLIOTT, MANAGER, CUSTOMS AND INTERNATIONAL TRADE AFFAIRS, PROCTOR & GAMBLE CO., ON BEHALF OF THE JOINT INDUSTRY GROUP

Mr. ELLIOTT. Mr. Chairman, with your permission I will file my full statement for the record and summarize for you.

Senator RIBICOFF. Without objection the full statement goes in the record as if read.

[The statement follows:]

STATEMENT OF THE JOINT INDUSTRY GROUP

Good morning. My name is David J. Elliott, Manager of Customs and International Trade Affairs for the Proctor & Gamble Company. I am appearing here today on behalf of the Joint Industry Group, an ad hoc coalition interested in the subject of Customs valuation from both the exporting and importing points of view.

The Joint Industry Group is here representing the following associations and the businesses they represent:

1. The Air Transport Association of America, which represents nearly all scheduled airlines of the United States.
2. The American Electronics Association, which has over 900 high technology and electronics companies as members. Those companies are mostly small to medium in size, with two-thirds employing less than 200 employees.
3. The American Importers Association, representing over 1,100 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.
4. The American Paper Institute, a national trade association of the pulp, paper and paperboard industry. Its members produce more than 90 percent of the nation's output of these products. The U.S. paper industry operates in all States of the Union, employing over 700,000 people.

5. The American Retail Federation, an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000,000 employees.

6. The Chamber of Commerce of the United States, representing 90,000 companies and 4,000 state and local Chambers of Commerce.

7. The Cigar Association of the United States, which includes nearly all U.S. cigar sales and major cigar tobacco leaf dealers.

8. The Computer & Business Equipment Manufacturers Association, including over forty members with 1,000,000 employees and $35 billion in worldwide revenues. Members range from the smallest to the largest in the industry.

9. The Counsel of American-Flag Ship Operators, which represents the interests of the American liner industry.

10. The Electronic Industries Association, its 287 member companies, which range in size from some of the very largest American businesses to manufacturers in the $25-50 million annual sales range, have plants in every State in the Union.

11. The Foreign Trade Association of Southern California, which represent 450 firms in Southern California in the import-export trade.

12. The Imported Hardwood Products Association, an international association of 250 importers, suppliers and allied industry members. Members handle 75 percent of all imported hardwood products and range in size from small private businesses to the largest in the industry.

13. The Motor Vehicle Manufacturers Association, whose eleven members produce 99 percent of all U.S.-made motor vehicles.

14. The National Committee on International Trade Documentation, which includes many of the major U.S. industrial and service companies.

15. The National Customs Brokers and Forwarders Association of America, consists of about 400 licensed customs brokers and forwarders and 23 affiliated associations throughout the U.S., whose members are also brokers or forwarders in various cities.

16. The Scientific Apparatus Makers Association, manufacturers and distributors of scientific, industrial and medical instrumentation and related equipment.

17. The U.S. Council of the International Chamber of Commerce, a business policy-making organization which represents and serves the interests of several hundred multi-national corporations before relevant national and international authorities.

The Joint Industry Group is interested in the Customs Valuation Agreement because on a day-to-day basis, current customs valuation procedures used throughout the world often create a major non-tariff barrier to international trade. They can be a particular problem in the developing countries. We believe those problems can be minimized if a uniform system is used world-wide.

We would very much like to see the developing countries participate in the Valuation Agreement. This will not only remove a serious non-tariff barrier, but also be a step towards more efficient resource allocation in these countries. Consequently, we have been most interested in the Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, both while it was being negotiated and its approval and implementation by the U.S. Congress.

The Joint Industry Group supports the Protocol and respectfully recommends, Mr. Chairman, that it be approved and implemented by the Congress. We further suggest that this action be taken alone and without other changes to the Trade Agreements Act of 1979, excepting only technical changes necessary to correct any deficiencies in that Act that may have been identified relative to the Agreement implement Article VII of the GATT. At this point, the Joint Industry Group is unaware of any such changes that need to be made.

At this point, Mr. Chairman, we would like to comment briefly on the various elements in the Protocol.

1. Deletion of the provision of Article 12(b)(iv). This provision is one of the alternative tests of the acceptability as customs value of a price between related parties. It reads as follows:

"the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related."

This provision was enacted into Section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1402) as 402.(b)(2)(B)(iii) in the following form:

"(iii) the transaction value determined under this subsection in sales to unrelated parties of merchandise, for exportation to the United States, that is identical in all

respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced;"

The JIG believed, as the Agreement was being negotiated, that this provision is a commercially, economically and administratively appropriate means of determining customs value in certain related party transactions. Nevertheless, we do not believe that it is an important means of doing so, since it would undoubtedly only be used in rare cases. Therefore, its deletion from the Agreement and from U.S. law is certainly acceptable to the Joint Industry Group as a means of encouraging developing country participation.

2. Article 21.1 provides the developing countries with five years for implementation from the date of their participation in the Agreement. This provision in the Protocol requests sympathetic consideration to requests for extensions if a country can show "good cause" therefor. The Joint Industry Group supports such sympathetic consideration where a country has made a good faith effort to implement the Agreement on time, but for grounds beyond its reasonable expectation or control is unable to do so. Simply failing to take adequate and appropriate action to be ready to implement should not be considered "good cause". We respectfully suggest, Mr. Chairman, that the committee consider providing such guidance to the United States Trade Representative in the legislative history to the Act approving and implementing this Protocol.

3. Minimum customs values are one of the least desirable features of current customs valuation systems. They are often set at levels well above prices in the marketplace and have a significant multiplying effect on rates of duty. Their elimination, therefore, can have an impact on local producers who may heretofore have been removed from the competition of the international marketplace. Consequently, there is a basis for developing countries retaining them "on a limited and transitional basis". Nevertheless, we here also respectfully suggest that legislative history guide our negotiators to accept the minimum possible retentions for the shortest possible transition periods.

4. The Agreement provides the importer almost always in related party situations the option of reversing the last to reverse two steps in the hierarchy of valuation approaches and to have valuation determined, in essence on the basis of his production costs in the producing country rather than upon his re-sale price less importing and distribution costs in the importing country. This provision in the Protocol would limit this right in less developed countries by making it subject to approval of the local customs authorities.

The Joint Industry Group continues to believe that this option is an appropriate element in the Agreement and will provide exporters with greater uniformity and certainty in valuation. We also believe that the internal taxing authorities in the exporting country, whose economic interest lies in the same direction as the customs authorities in the importing country, will effectively control potential abuse. Nonetheless, we recognize the concerns of the developing countries and their relatively limited technical resources. Therefore, we are prepared to accept this exception to the basic rule for developing countries. We note that Article 21 already provides developing countries with an additional 3 years to implement computed value—a total of eight years from participation in the Agreement. Consequently, we believe that customs authorities should only refuse to approve optionality in rare and unusual cases.

5. The Agreement provides that the resale price of goods that have been processed after importation may, under certain circumstances, be used as the starting point for calculating customs value. The costs of the processing and of the importing and distribution costs are then deducted so that the re-sale price is, in effect, adjusted back to the border. The Agreement and U.S. law permit this approach only with the importer's agreement. The Protocol would permit this approach to be used by the developing countries only, and still subject to all the other limitations, without this agreement. For the same reasons, we are willing to accept provision 4, The Joint Industry Group is also prepared to accept this provision.

6. The Joint Industry Group agrees to this provision, which specifies that if problems arise in using the prices paid by sole agents, sole distributors and sole concessionaires as the basis for customs valuation, then a study will be made of this question with a view to finding appropriate solutions. We do not anticipate many problems arising since we believe the related party provision (Article 15.4) should provide adequate protection.

7. The Joint Industry Group agrees that customs authorities have the right to expect the cooperation of importers in investigations aimed at verifying elements of value declared or presented to customs.

8. The Joint Industry Group agrees that "the price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller". We read this provision as doing no more than re-stating Article 1.1 and the Note thereto.

Mr. Chairman, we appreciate the opportunity to present our views and respectfully recommend that the Protocol be approved and implemented by the United States Congress. Thank you.

Mr. ELLIOTT. My name is David Elliott. I am manager of customs and international trade affairs for Proctor & Gamble. Today I represent the Joint Industry Group, a coalition of 17 business associations broadly representative of U.S. exporting and importing interests.

Senator RIBICOFF. I am just curious. It would seem that this Joint Industries Group basically represents the bulk of American interests involved in international trade, does it not?

Mr. ELLIOTT. I believe so, sir. This group has a particular interest in the customs valuation agreement. Day and day out customs valuation procedures are probably the major nontariff trade barrier.

Senator RIBICOFF. Tell me how and why.

Mr. ELLIOTT. The unusual uplifts imposed by certain countries where they will take a price and increase it by 10, 25, 50 percent and then assess duties, or by using minimum prices which have nothing to do with commercial reality.

Senator RIBICOFF. That is for imports they bring into the country?

Mr. ELLIOTT. Our exports are occasionally affected. In our own old law there were technical complexities which resulted in our getting seriously surprised about what customs value is to be because words like "freely offered" or "fairly reflect market value" change definitions every few years as the courts read them differently. Canada's fair market value system again results in prices which have nothing to do with commercial reality being used to assess duties.

Senator RIBICOFF. You think what we have here in the valuation agreement, then, is a realistic and accurate indication of what the market value really is of most exports and imports?

Mr. ELLIOTT. We believe what a willing buyer and a willing seller will pay is the realistic market value for that item at that time and place, and the transaction price is the point of departure in the new agreement, with protections for situations where there are unusual restrictions on the goods or unusual relationships, or the prices are between related parties.

Most of the words in the agreement are to protect against those situations where maybe there is not a willing buyer and a willing seller.

Senator RIBICOFF. I am curious. With your collective experience in this group, with which countries do you have the most difficulty?

Mr. ELLIOTT. The less-developing countries are the greatest source of problems in these areas. This is why we have been particularly interested in the negotiation of this protocol and have consulted closely with our negotiators on what we hope they would accomplish and we are pleased with the results.

Senator RIBICOFF. Why do you have the difficulty? Isn't it to their mutual advantage to have trade between themselves and other sections of the world? Their income can't be that great from imports, can it; the customs valuation tax as compared against doing business?

Mr. ELLIOTT. They have had an historic concern about prices that have shown in the documents, particularly between related parties not being in fact a correct or true price, to be a rip-off price. And I think this is why they have wanted, for example in the protocol, to eliminate the option of the related party exporter saying I want my manufacturing costs used as the starting point for valuation rather than my selling price in your country less my costs in your country.

And this optionality feature is removed if a developing country wants to do so. We think that is a small price to pay to get the developing countries into the agreement.

Senator RIBICOFF. You may proceed.

Mr. ELLIOTT. A few short comments, a couple of items in the protocol, if I may. First, the removal from U.S. law of one of these alternative tests for the acceptability of a price between related parties represent few problems. We anticipate this provision would only rarely apply and its deletion will have little impact on either importers or the Customs Service.

Second, we do have some concerns about countries which may try to obtain extensions of the permissible 5-year implementation delay due to dilatory tactics. Therefore, we respectfully suggest that the committee consider providing guidance and legislative history to future U.S. Trade Representatives, this guidance to indicate that such delays should only be acceptable where a developing country has to take adequate steps to implement on time but is unable to do so for reasons beyond its control.

We also respectfully suggest that the committee consider including legislative history guidance which would encourage future U.S. Trade Representatives to accept only the fewest possible retentions of these minimum customs values and for the shortest possible transition periods. As we noted, this kind of artificial valuation is perhaps the single most unfortunate aspect of some developing countries' valuation systems. Minimum customs values can at times represent a doubling or even a greater multiple of the effective rate of duty.

Third, there are two provisions in the protocol which permit developing countries to limit the use of computed value. While we are aware of the concerns of the developing countries, since it is a basis of value which is determined in a country other than their own and therefore more difficult to police, we are also aware that this is the preferred system by the highly expert U.S. Customs Service, and it is a well established practice.

Further, we note that developing countries have an additional 3 years to implement computed value over the 5-year implementation delay provided in the protocol. Therefore, we suggest that the U.S. Trade Negotiator not be overly generous if he finds these provisions being taken too much advantage of.

Finally, we suggest the committee consider including in its record an interpretation of provision 8 to the protocol that it does

no more than restate article 1.1 of the agreement and the note thereto. Any other interpretation could create administrative conflicts and problems down the road.

In conclusion, we urge the U.S. Congress to approve and implement this protocol, and further we appreciate this opportunity to present our views to you.

Thank you.

Senator RIBICOFF. I am curious, Mr. Elliott. What do you estimate concerning the amount of exports of your own company, Proctor & Gamble? Do you do a big export business?

Mr. ELLIOTT. Our export business has been relatively small but is growing at a rapid rate. It increased by 50 percent in terms of dollars in our last fiscal year. I don't know that we can maintain that percentage rate but the dollar rate should continue for a few years.

Senator RIBICOFF. Why are you suddenly able to increase your export business? Is it the will of the company that they want to be in the export market? Is it a bigger market? What are the conditions that have caused you to increase it?

Mr. ELLIOTT. Proctor & Gamble is a consumer product company. As you know, traditionally these kinds of products involve what I would call modest investments compared with say heavy industry. Freight, distribution costs, the cost of heavy inventories and long pipelines mean that you normally have to produce in a market for that market. So most of our foreign business has to be produced in the countries in which we sell.

However, some of our newer product lines, particularly in the household paper products area—Pampers disposable diapers and this type of thing—have much higher capital investment needs and therefore it is easier for us to reach foreign market from a U.S. production base, and it is this kind of product area where most of our export growth is coming.

Senator RIBICOFF. From your own personal experience, are there impediments that you see in American law, rules, or regulations which impede our export business?

Mr. ELLIOTT. Unlike the capital goods business, which does face I understand quite serious export disincentives of one sort or another, they do not seem to impinge upon us in the same way.

Our concerns relative to ability to export effectively relate more to the whole competitiveness of the U.S. economy vis-a-vis the rest of the world than to specific problems, such as Ex-Im Bank financing or these kinds of problems.

Senator RIBICOFF. Your company doesn't have those problems?

Mr. ELLIOTT. No.

Senator RIBICOFF. You have no financing problems? The amounts aren't that large?

Mr. ELLIOTT. It would be I think unwise for foreign countries to use long-term Ex-Im Bank financing approaches for products which are used within 30 days in the home.

Senator RIBICOFF. In a company like yours, do you have independent agents or your own factory representatives in most of the countries with which you do business?

Mr. ELLIOTT. In the larger countries we have our own local operations, a small-scale mirror image of what we do in the United

States. In smaller developing countries we work on joint ventures or sometimes sales agencies.

Senator RIBICOFF. Thank you very much. The committee will stand adjourned.

[Whereupon, at 10:20 a.m., the committee was adjourned.]

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT OF JOHN A. CASEY, PRESIDENT, WORK GLOVE MANUFACTURERS ASSOCIATION

SUMMARY

The Work Glove Manufacturers Association is seriously concerned that the implementation of the Protocol to the Multilateral Trade Negotiations' Customs Valuation Agreement, the implementation of the Agreement, and the resultant tariff cuts on certain work gloves, will adversely affect work glove producers and workers in the United States.

MTN tariff cuts covered by the Customs Valuation Agreement include a 60 percent tariff reduction on work gloves of coated and partially coated fabrics and dipped supported gloves (TSUS item 705.86, "Other Gloves of Rubber or Plastic") from the current ad valorem rate of 35 percent to only 14 percent. This reduction is unacceptable and inconsistent with the import impact on this industry. These gloves have been excluded from the Generalized System of Preferences (GSP) because of their import sensitively, yet a 60 percent reduction was nevertheless offered during the MTN, although not yet proclaimed by the President. Moreover, developing countries account for virtually all imports of these types of gloves—countries which made virtually no concessions in the recently-concluded trade negotiations and are not signatories of the Customs Valuation Agreement. It is our contention that only signatories of the code should be accorded the reduced tariffs dictated by the Agreement.

The U.S. work glove industry has sustained significant import injury in recent years, with import penetration in the U.S. work glove industry reaching 37 percent in 1979. Imports of coated and partially coated and dipped supported gloves under TSUS item 705.86 have increased substantially in recent years, at a tariff rate of 35 percent. This trend in increased imports is certain to accelerate as a result of a 60 percent tariff reduction, thereby aggravating the industry's already serious import problem.

Our members request that this subcommittee require, in the Protocol, that only those countries which sign the Agreement be granted proposed tariff reductions.

I am John A. Casey, President of the Work Glove Manufacturers Association, a trade association whose members account for the great bulk of the domestic output of work gloves. I am also General Manager of the Granet Division, INCO Safety Products Company, a manufacturer of work gloves. The domestic work glove industry is concerned that the implementation of the Protocol to the Customs Valuation Agreement of the Multilateral Trade Negotiations and the implementation of the Agreement will aggravate the import injury suffered by the work glove industry.

A 60 percent tariff reduction on imports of work gloves of coated and partially coated fabrics and dipped supported work gloves, which enter under TSUS item 705.86, is included in the Customs Valuation Agreement. The manufacturers of work gloves strongly believe that considering the import competition and resultant import injury experienced by this industry in recent years, this tariff reduction is excessive and is a threat to the viability of the domestic industry and the jobs of our workers. The current duty of 35 percent ad valorem on imports of these gloves should not be reduced. Yet, if the reduction occurs, it is imperative—and only fair—that only signatories of the Customs Valuation Agreement be accorded the benefits of tariff reduction. The major supplying countries of dipped supported and coated work gloves are not parties to the Customs Valuation Agreement and, therefore, should not benefit by any duty cuts.

The U.S. work glove industry

Firms in the work glove industry are mostly small to medium size establishments. These firms are largely scattered throughout the southern, northeastern, and north central regions of the United States. Production is fairly labor intensive, with salary and wages accounting for almost 40 percent of the value of industry shipments.

The work glove industry has, on two separate occasions, sought import relief under the provisions of the Trade Act of 1974 and been denied by the U.S. Interna-

tional Trade Commission. In 1975, a petition filed under the "escape clause" (Section 201) provision of the Trade Act covering all work gloves was rejected by the ITC. In December 1977, the industry again petitioned the ITC under Section 406 claiming disruption of the cotton work glove market as a result of increased imports from the People's Republic of China. That petition was denied as well.

Despite the negative ITC decisions, it is clear that the work glove industry has felt the impact of increasing imports in the last five years. Although cotton work gloves are covered under the Multifiber Arrangement (MFA), other gloves do not benefit from any restraints on imports. Imports of all work gloves have increased absolutely and relative to domestic shipments and apparent consumption from 1975 through 1979.

Employment in the glove industry, according to Census data, increased from 14,800 workers in 1975 to 16,400 in 1977, but remained significantly below the 1974 level of 19,300 workers. No more recent official data are available.

Imports of all work gloves more than doubled between 1975 and 1978, while penetration increased from 23 percent to 33 percent. Imports increased by 21 percent in 1979, as import penetration continued to increase to an estimated record-high 37 percent.

No industry can long endure such high import penetration rates, and the work glove industry is no exception. If the Protocol to the Customs Valuation Agreement is implemented as is, and the tariffs on certain work gloves are reduced as planned, the viability of this U.S. industry and the jobs of our workers will be further threatened.

Imports of "other gloves of rubber or plastic," TSUS item 705.86, have increased substantially at a tariff rate of 35 percent

Tariff item 705.86 covers imports of "other gloves of rubber of plastic" which includes dipped supported gloves and gloves of coated or partially coated fabrics. Such imports increased by 244 percent from 1975 to 1979, from 149 thousand dozen in 1975 to 513 thousand dozen in 1979, as shown in Table 1 attached to my statement. During this period U.S. shipments of these gloves increased at a moderate rate, while the rapid increase in imports resulted in increasing import penetration into the U.S. market. This large increase in imports was accomplished at a tariff rate of 35 percent before any tariff reductions.

The sources of these glove imports are the developing countries. Virtually all U.S. imports come from developing countries, particularly Barbados, Hong Kong, Taiwan and the Philippines. Barbados is the largest single country supplier, accounting for 70 percent of the volume, and 66 percent of the value, of imports in 1979. Imports from Barbados have more than tripled volume since 1974.

Such large increases in imported work gloves from these sources is directed related to the high degree of labor intensity of work glove production. Developing countries have the distinct advantage of a lower cost of production because of exceedingly low wage levels, which allows imports to undersell U.S.-produced work gloves in the U.S. market.

The import sensitivity of dipped supported and coated or partially coated gloves is evident in their exclusion from the Generalized System of Preferencs (GSP) which accords duty-free treatment to non-import sensitive products from developing countries. Thus, it was a shock when a tariff reduction of 60 percent, from 35 percent ad valorem to only 14 percent, was negotiated as a result of the MTNs.

What is particularly appalling about this duty cut is the fact that these developing countries, which are the major suppliers of other rubber of plastic gloves, made virtually no concessions in the recently concluded trade negotiations. Moreover, these countries are not signatories of the Customs Valuation Agreement.

While imports of these gloves have increased rapidly, the current 35 percent duty at least represents some form of deterrent to imports, which otherwise might have increased at even more rapid and injurious rates. Furthermore, the trend in increased imports is certain to accelerate as a result of the 60 percent tariff cut, thus threatening to further erode the U.S. work glove market. U.S. producers cannot afford any further threat to their already diminished market share.

Conclusion: Only those countries which have signed the customs valuation agreement should be accorded its benefits

There appears to be no justification for the reduction in the tariff on dipped supported and coated gloves from the current ad valorem rate of 35 percent to only 14 percent, as negotiated. The U.S. work gloves industry, as a whole, is clearly an import sensitive sector. Any further increases in imports of these gloves pose a threat to the industry and its workers. The import sensitivity of the product itself is evidenced by its exclusion from the Generalized System of Preferences. Nonetheless,

the 60 percent cut in the duty on TSUS item 705.86 has been offered as part of the MTN, although not yet proclaimed by the President.

The major sources of these imports are developing countries which have not signed the Customs Valuation Agreement. It is important that this Subcommittee consider the negative effects of the implementation of the Protocol to the Customs Valuation Agreement and the resultant reduction in the tariff rates on certain work gloves. An amendment to the Protocol of the Customs Valuation Agreement must be made which requires that only those countries which have signed the Customs Valuation agreement be accorded its benefits. Such an amendment is the only equitable solution.

TABLE 1.—U.S. GENERAL IMPORTS OF "OTHER GLOVES OF RUBBER OR PLASTIC," TSUS ITEM 705.86, BY COUNTRY, 1975-79

[In thousands]

	1975		1976		1977		1978		1979	
	Dozen	Amount	Dozen	Amount	Dozen	Amount	Dozen	Amount	Dozen	Amount
Barbados	16	$45	18	$55	115	$490	244	$1,514	357	$2,370
Hong Kong	8	50	45	246	63	242	83	416	73	430
Japan	4	37	1	4	(¹)	5	2	7	1	3
Korea	(¹)	(¹)	7	57	12	114	76	107	16	41
Mexico	5	50	(¹)	1	0	0	0	0	0	0
Philippines	36	454	19	240	29	379	13	182	16	238
Taiwan	34	215	35	281	38	379	47	339	20	217
Other	46	131	9	56	24	142	2	19	30	295
Total	149	982	134	940	281	1,751	467	2,584	513	3,594

¹ Included in other.

Source U.S. Department of Commerce

STATEMENT OF JEROME O. HENDRICKSON, PRESIDENT, THE VALVE MANUFACTURERS ASSOCIATION, MCLEAN, VIRGINIA

Mr. Chairman, I am Jerome O. Hendrickson, President of The Valve Manufacturers Association (VMA), a national trade organization with headquarters at Suite 711, 6845 Elm Street, McLean, Virginia 22101.

The Valve Manufacturers Association includes 72 manufacturers accounting for over 75 percent of the total United States industrial valve production. We are an industry primarily composed of small and medium-sized businesses.

VMA supports the passage of S. 1435, The Capital Cost Recovery Act. This legislation would provide a more rapid recovery of capital investment in productive assets, and will streamline the depreciation of plant and capital equipment.

S. 1435 would replace existing depreciation schedules for business plant, equipment, and rolling stock, and substitute in its place a simplified system of depreciation for such assets by separating an asset's depreciation lifetime from its useful lifetime.

The Bill has been referred to as the "10-5-3" proposal, providing a ten-year write-off for a limited investment in cars and light trucks.

Last year, the United States industrial valve industry recorded annual sales of $2.2 billion and employed over 50,000 people. It is estimated that an equal number are employed in supplying and supporting companies. In 1978, the valve industry had a return of 5.3 percent on sales and an 8.9 percent return on net worth.

One of the most serious problems facing our members today is that of capital formation. Currently annual industry capital expenditures are $104 million, or 5.2 percent of sales. Since outside sources of capital are scarce, and those that are available are at record interest rates, growth must be financed internally to a large extent. One way to facilitate this type of activity is by creating a capital cost recovery system which is fair, simple, and competitive with domestic and international competition.

The current tax law is not equitable. It measures the capital recovery period by the asset's useful lifetime, requiring our industry to write off the original cost of its plant and equipment, on the average, over a period of twelve years.

The need for effective capital cost recovery, however, extends well beyond our industry alone. The concept of "useful life" and the asset depreciation range (ADR) work to inhibit investment and capital formation in the nation as a whole. A continued low level of investment in this country has resulted in sagging productivity, sluggish production, and faltering competitiveness in world markets.

The Capital Cost Recovery Act is designed to encourage real economic growth by stimulating investment in better, more efficient plant and equipment. By restructuring the method of depreciation to one which places emphasis on capital recovery instead of "useful life", this legislation, if enacted, will stimulate sorely needed capital investment and make the United States more competitive in world markets.

The Bill would also permit United States companies to "catch-up" with the more rapid depreciation rates already permitted in many other industrial nations.

Accordingly, we of The Valve Manufacturers Association urge the Congress to act quickly to approve the Capital Cost Recovery Act. By encouraging further investment in modern plant and equipment, it will provide major benefits to the U.S. economy and our industry in terms of productivity, employment, and growth.