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TRADE AND THE ENVIRONMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

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ON

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TRADE AND THE ENVIRONMENT

FRIDAY, OCTOBER 25, 1991

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

The hearing was convened, pursuant to notice, at 10:07 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Also present: Senator Grassley.

[The press release announcing the hearing follows:]

[Press Release No. H-48, Oct. 22, 1991]

SUBCOMMITTEE HEARING PLANNED ON TRADE POLICY AND ENVIRONMENT; BAUCUS INTERESTED IN EFFECT ON GATT, OTHER AGREEMENTS

WASHINGTON, DC—Senator Max Baucus, Chairman of the Senate Finance Subcommittee on International Trade, Tuesday announced a hearing on how trade policy may affect the environment.

The hearing will be at *10 a.m., Friday, October 25, 1991* in Room SD-215 of the Dirksen Senate Office Building.

"There is an increasing convergence between trade policy and environmental policy. As the debate on the extension of fast-track negotiating authority made clear, trade and environment concerns can no longer be kept completely separate," said Baucus (D., Montana).

"The purpose of this hearing is to explore ways to manage this convergence. Particular attention will be given to the concept of changing international trade agreements—especially the General Agreement on Tariffs and Trade—to reflect environmental concerns," Baucus said.

Baucus said one focus of the hearing will be the International Pollution Deterrence Act of 1991, introduced by Senator David Boren (D., Oklahoma). The bill would treat the absence of effective pollution controls as a subsidy subject to countervailing duties under U.S. trade law.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN OF THE SUBCOMMITTEE

Senator BAUCUS. The hearing will come to order. I am holding this hearing today because I feel very strongly about promoting two important policy objectives—(1) protecting the global environment; and (2) protecting American competitiveness in the global market place.

It is critical that we increase our efforts to protect the global environment. The most powerful images in the recent debate over extension of fast track trade negotiating authority were those of the environmental pollution at some of the Maquiladora plants on the United States-Mexican border. Pictures of waste water being dumped directly into rivers and fields of poorly buried drums of

hazard waste—these made a deep impression on me and other Senators.

I was also struck by the images of dolphins being killed by the hundreds in Taiwanese drift nets and the endangered sea turtles in Japan being seared to death so that their shells could be made into eyeglass frames.

These images drive home the point of protecting the environment as a global responsibility. Pollution produced in one country does not stop at its borders. It does little good for the United States to protect endangered species if other nations continue to slaughter them.

Unfortunately, our unilateral efforts to protect the environment, both through higher domestic standards and through unilateral trade actions, have serious costs. We have long realized that environmental protect may have economic impacts. We have only recently realized that those impacts do not stop at our borders.

As became clear in the recent debate over the United States-Mexican FTA, different levels of environmental protection around the world have significant impact on America's economic competitiveness in world markets. Trade policy is a valuable tool for stimulating environmental awareness abroad. But trade sanctions can prompt resentment towards the United States, especially in developing countries, and can spark serious trade disputes.

One of the central challenges we face in upcoming international trade negotiations is forging environmentally sound trade agreements, agreements that protect the environment while protecting U.S. commercial interests. Including environmental issues in trade negotiations is the latest stage in a natural progression. As the economies of the world grow more and more interdependent, the scope of trade negotiations must expand. Originally trade negotiations focused upon tariffs. But gradually we began to realize that nontariff barriers, like quotas and import licenses, were just as important. Later we came to realize that other issues, such as subsidy and pricing, also needed to be addressed to ensure a level playing field. And now we have begun to address still other issues in the negotiations, such as protection of intellectual property and antitrust policy.

The inclusion of these new issues has helped to open markets around the world and expand trade. It is now time to add environmental protection to the growing list of issues to be addressed in trade negotiations. If one nation chooses not to impose adequate environmental protection requirements it artificially lowers the cost of doing business in that nation—at the expense of the environment.

In addition to harming the environment, inadequate environmental protection creates a competitive advantage vis-a-vis the nations that do not protect the environment. That advantage can translate into trade gains and unfairly attract additional investment.

Trade policy is one of the few levers that the United States can use to push other nations to protect the environment. There is great pressure to employ trade sanctions to achieve environmental objectives. In light of this trend, environmental issues can no longer be neatly separated from trade issues.

It is gratifying that environmental issues are being addressed in our free trade negotiations with Mexico and with Canada. But the same logic that led us to include environmental issues in these negotiations applies worldwide. It is time for the world's trading compact, the General Agreement on Tariffs and Trade or the GATT, to be expanded to address environmental concerns.

Ideally an international agreement could be negotiated to set adequate environmental standards worldwide. But such an agreement is likely to be years away. In the interim I believe a GATT environmental code, largely modeled on the current subsidies code, should be negotiated.

Many specific details of such a code must be left to negotiations, but it should include the following: First, each nation should be allowed to set its own environmental protection standards. Second, if imported products or the process used to produce those products does not meet the nation's environmental standards, then duties can be applied to the imported product, provided that three criteria are met.

First of all, the environmental protection standards applied must have a sound, scientific basis. Second, the same standards must be applied to all competitive domestic production. And finally, the imported products must be causing economic injury to competitive domestic production.

The offsetting duties should be set at a level sufficient to offset any economic advantage gained by producing the product under less stringent environmental protection regulations. A GATT dispute settlement body, similar to that established under the subsidies code, should settle disputes regarding the operation of the environmental code; and nations would be allowed to ban or otherwise restrict goods of imports produced in a manner that violates internationally recognized norms, for example tuna taken by drift net fishing.

Such a code would have three compelling advantages. First, it would help to level the playing field for U.S. businesses that are forced to meet higher environmental standards than their foreign competitors. Environmental protection would no longer necessarily have a negative impact on the competitiveness of U.S. business.

Second, the code would encourage nations to adopt sound environment protection. Much of the economic advantage to maintaining lax environmental standards would be eliminated. And the incentive of avoiding duties would prod nations towards adopting better environmental regimes.

Third, these changes would correct an obvious deficiency in the GATT, demonstrated by the recent dispute settlement panel ruling in the Mexican tuna case. In this case the dispute settlement panel ruled that restrictions the United States imposed on imports of tuna from Mexico, because Mexican tuna fishermen continue to slaughter dolphins, violated the GATT.

The dispute settlement panel's decision may accurately reflect the current provisions of the GATT, but this is an argument for changing the GATT, not for ending our efforts to protect dolphins.

The new GATT code I have outlined would set a reasonable standard that allows nations to promote legitimate environmental objectives. Obviously, such a provision must be carefully drafted to

ensure that such an exemption does not become a guise for protectionism. But such an exemption nevertheless must be made.

Obviously the concept of environment code is at a very early stage of development. The concept is not sufficiently developed to be included in the Uruguay Round of the present GATT negotiations. Instead it should be the single topic of the next round of the GATT, a round that I hope becomes known as the "green round" for its environmental focus.

One of the central problems we will face negotiating such an environmental code will be convincing developing nations to participate. In some developing countries there is great skepticism about environmental protection. It is argued that developed countries grew by exploiting the environment. Therefore, developing countries should be allowed to follow the same path.

I understand this position. But the earth cannot continue to sustain pollution and degradation. Past harm done to the environment does not justify further harm done by the developing world.

I am encouraged by the recent decision by the GATT council to revive the GATT working group on trade and the environment. I take it as a sign that GATT members recognize the common problem of ensuring that future growth takes place in an environmentally sound manner. I hope that the developed world and the developing world can work together cooperatively to solve this common problem.

We do not now have all the answers on the specifics of an environmental code, but it is time to begin discussion. Toward that end I invite further comments on the concept of an environmental code from business, labor, the environmental community, and academia. I hope that this concept will soon be sufficiently refined to begin international negotiations.

Unfortunately, if our trading partners are unwilling to negotiate, it may at some point be necessary for the United States to explore unilateral changes in its countervailing duty law to establish a system of environmental duties. But I hope that we can avoid going down this road. The nations of the world have a common problem. They should forge a common solution.

But not all changes in the U.S. trading policy to affect environmental awareness require international negotiations. The United States should consider placing environmental conditions on the trade benefits that it voluntarily extends to other nations under the Caribbean Basin Initiative and the generalized system of preferences, known as a GSP.

The conditions might include requiring that products imported into the United States under CBI and GSP be produced in an environmentally sound manner. So as not to undermine the program's economic development goals, these environmental conditions should be phased in.

The most highly developed recipients should be required to meet the conditions first. The least developed should be allowed substantially more time or perhaps be exempted entirely.

Both the CBI and the GSP have successfully promoted economic development in the developing world. Now it is time to see that they promote ecologically sound economic development.

We must recognize that trade policy has environmental as well as economic dimension. In future trade negotiations we must address this environmental dimension forthrightly. I believe that the concepts outlined will move us in that direction. We must continue to use trade policy for growth in the United States and the world, but we should also ensure that growth, both here and abroad, takes place in an environmentally sensitive manner.

I look forward to the comments of our distinguished witnesses as well as the distinguished Senator from Iowa who I will now turn to if he has a statement he wishes to make.

Senator Grassley?

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. Thank you, Mr. Chairman. Today's hearing to determine if there is a linkage between environmental protection and economic growth is both a timely and a relevant subject for a committee to be addressing. In a paper that I received in March from the U.S. Council for International Business, very relevant statement in one of the six fundamental principals for the integration of trade and the environment, was made, which I think sets a whole tone for this hearing.

That statement in effect said, "Economic growth is necessary to improve general social welfare and to provide the conditions and resources to enhance environmental protection. Open trade is indispensable to economic growth and, therefore, a necessary element for enhanced environmental protection. In fact, economic growth, open trade and environmental protection are complimentary objectives that are compatible."

Now as you know, Mr. Chairman, a wide range of national environmental policies involving measures such as product standards, anti-pollution subsidies, recycling laws and export bans impact greatly on trade and on our competitiveness. As a result we as policymakers must, and do have a responsibility to balance free trade and environmental objectives in this hemisphere or wherever we can around the world.

It is important that we design and monitor environmental regulations so that they do not turn into a back door for protectionism.

Mr. Chairman, I conclude by saying that we should not lose sight in this whole debate of developing an export market for pollution control technologies in this country due to the rising national and international environmental standards as we debate this issue.

Lastly, we need to fully comprehend the fact that countries, at different stages of their development, will make different choices between economic growth and environmental risk based on action that we take in the United States.

So I thank you, Mr. Chairman, for today's opportunity to hear these witnesses and look forward to hearing what they have to offer to the debate.

Senator BAUCUS. Thank you, Senator. I appreciate your participation.

Our first panel consists of Prof. Barry Kellman, from DePaul University College of Law in Chicago; second, Mr. Lynn Greenwalt,

vice president of International Affairs, Department for the National Wildlife Federation; third, Hon. Michael Smith, who is president of SJS Advanced Strategies; and Mr. Justin Ward, senior resources specialist, for the Natural Resources Defense Council.

I would like to first remind the witnesses, and all witnesses in all panels, that your full statements will be automatically included in the record, but I would like each witness to also confine himself to 5 minutes. If the light is green, keep talking; when it's yellow think about winding down; when it's red, wind down. Okay?

We will begin first with Professor Kellman.

STATEMENT PROFESSOR BARRY KELLMAN, DEPAUL UNIVERSITY COLLEGE OF LAW, CHICAGO, IL

Professor KELLMAN. Mr. Chairman, it is indeed an honor to be here this morning to speak on an issue of such growing national importance. I have two brief points to make here this morning.

First, I believe it is imperative that this government take steps to prevent or stop the flood of jobs and production out from this country—a flood that is at least in part the result of pressure to comply with strict environmental standards.

Second, the actions that we take must be in accord with principles of law that are the foundation of international economic relations. I believe that we must turn our attention first to GATT. GATT must recognize that when one nation chooses not to impose adequate environmental protection requirements, the cost of doing business in that nation is artificially lowered at the expense of the environment.

In addition to harming the environment, this creates a competitive advantage vis-a-vis nations that do protect the environment.

Specifically, I would like to recommend the following proposal. GATT should permit a nation to impose countervailing duties or other import sanctions on products if the exporting nation has failed to protect the environment by permitting the use of a process to produce that product which violates international environmental standards.

This proposal has two compelling advantages. First, it would help level the playing field for U.S. businesses that are forced to meet higher environmental standards than their foreign competitors. Second, it would encourage nations to adopt sound environmental protection and take away the economic advantage of lax environmental standards.

Now there are some proposals which have urged the imposition of duties or sanctions on imports produced by methods that fall short of American environmental standards. I oppose these suggestions for three reasons.

First, while I believe it is altogether right for the United States to actively participate in the imposition of strict environmental standards, I think that to impose our standards upon producers in foreign countries would be an impermissible intrusion upon their right of self-determination.

Second, there is the problem of determinacy that I think must confound any effort to hold foreign producers to the performance of U.S. standards. The process of devising countervailing duties for

failure to comply with U.S. environmental standards would have to be done on a case-by-case basis. In fairness, it would be far more efficient to develop coherent international standards that can be enforced and monitored on a rational basis.

Third is the objection that environmental concerns should not be used as a cover or pretext for policies that are essentially protectionist. To base the imposition of duties or sanctions on failure to comply with U.S. standards establishes a domestic trade barrier that will be viewed by other nations as a restriction of free trade and invites retaliation.

It is necessary at this time to encourage with all of the power at the disposal of the U.S. Government the development of international environmental law.

In that regard, I would like to make a number of specific suggestions. First, I believe that within the GATT negotiations the United States should advocate that the so-called escape clause, which allows for separate negotiations of bilateral and multilateral trade agreements, be clarified to allow the United States and others to specifically include environmental protection requirements.

Second, I believe that this government should begin to inventory the international norms and work with the international organizations, specifically the United Nations, in order to develop new norms. The United States would then be able to rely on those norms to implement trade sanctions for violations.

Furthermore, I think the United States should become more actively involved in the International Law Commission, which is now developing standards of international, criminal and civil, state responsibility for hazardous, intentional and nonintentional violations of international environmental norms.

Furthermore, we should pursue the inclusion of a provision in the GATT to permit trade sanctions for environmental violations that are recognized by international environmental norms.

Accordingly, I think there should be a specific understanding in those negotiations that States not be entitled to impose sanctions for violations of their own domestic environmental norms.

And finally, I believe that this Congress should pass legislation declaring that international environmental standards when violated would incur trade sanctions. In that context an office should be established to implement regulations to implement national legislation, to monitor violations, and to refer violations for adjudication in accord with GATT requirements and U.S. trade law.

Thank you very much.

Senator BAUCUS. Thank you very much, Professor.

[The prepared statement of Professor Kellman appears in the appendix.]

STATEMENT OF LYNN GREENWALT, VICE PRESIDENT, INTERNATIONAL AFFAIRS DEPARTMENT, NATIONAL WILDLIFE FEDERATION, WASHINGTON, DC

Mr. GREENWALT. Thank you, Mr. Chairman. It is indeed an honor to be here. My name is Lynn Greenwalt and I am a vice president of the National Wildlife Federation.

We believe that trade has the potential to have a profound impact on the environment. That has been demonstrated amply in the Maquiladora process in Mexico.

We believe also that trade agreements can have a positive affect on the environment and it is to that end that we seek to have these negotiations directed. They should be a positive influence, clearly. Well-developed trade agreements, hold the important promise of improving economic conditions in the nation's involved. Some people hold that improving conditions will enable these nations to give greater attention to environmental matters. This may be good theory but it is not always revealed in practice, as the Maquiladora affair illustrates.

Negotiations aimed at achieving sustainable development, accompanied by carefully considered decisions about environmental impacts, good or bad, constitute what we characterize as responsible trade and trade negotiations, which we support.

Two events, one of which has just occurred, and the second which will begin within a matter of hours, will give us some idea of how environmental concerns can and perhaps will be involved in trade negotiations.

The first of these events is that the draft of an environmental review for the NAFTA was made available a little more than a week ago. Our initial review shows it to be positive in some ways, but on the whole lacks the breadth and specificity to help negotiators very much.

However, it will not become a final review until December 31 and there is time for adjustment. Incidentally, I have added a more detailed critique to my formal statement and we will augment that by the end of November for the assistance of the committee.

The second pivotable event is the ministerial meeting to be held in Zacatecas beginning tomorrow, this weekend. This meeting will set the tone for the continuing negotiations and should begin to focus the negotiations on an agenda more precise than was done for the recent similar meeting in Seattle. We see Zacatecas as the place where the environment will become a functional part of the negotiations.

We are concerned in particular about whether the administration will make environmental concerns a part of the NAFTA negotiations or will recommend simply that they be dealt with in a parallel effort. This has not been clarified and there have been some mixed signals recently. Zacatecas may reveal these details. For that reason is of paramount importance to the process.

One of the considerations we have advanced, Mr. Chairman, is a checklist to consider in terms of how well the negotiations are going, how adequately the environment is being considered in them. I have outlined this checklist in some detail in my written statement. I will not belabor that point here in the interest of time.

One of the things I want to talk about is a matter, for example, of making the whole of the negotiation progress a little more democratic, and let me hasten to say in the sense of a small "d".

The administration has consulted with the Congress and with nongovernmental organizations on environmental matters and has had public hearings on the issue. This process must be continued.

The best way to guarantee its continuation, in my judgment, is to make the process an integral part of trade negotiations of all kinds.

Mr. Chairman, you have suggested a new approach to the vexing problem of dealing with the complexities of GATT and its impact on the environment. This is very much to the point and extraordinarily timely. We have to harken back only to the recent tuna/dolphin ruling to find a vivid example of how poorly GATT is able to deal with environmental dilemmas.

In general, your approach of using the GATT subsidies code as a model has much to recommend it and we urge further development along these lines and would like to participate as the opportunity arises. However, we suggest two matters for consideration, at least at the outset.

First, the proposal is almost entirely punitive. This works to the disadvantage of developing nations and we suggest taking into account the financial and technological constraints often preventing developing countries from embracing high environmental standards. And again, perhaps the Maquiladora affair is illustrative of this problem.

Second, the proposal must be integrated into and be a part of a general environmental reform of GATT, as you suggested this morning. Recent events, including the reconvening of the GATT Working Group on Environment seems to indicate in advance of an opportunity for such reform.

However, time is important since it is vital that these reforms be considered or the intent to make these reforms be considered during the present or Uruguay Round of the GATT negotiations. Given the problems inherent with the current negotiations it may be some time before a new round, a "green round," is reinitiated and it seems to me it would be appropriate and entirely possible to require a part of the Uruguay Round to include a commitment as to time and substance of a review of environment reform.

Mr. Chairman, that concludes my comments and I will be delighted to answer any questions you may have.

Senator BAUCUS. Thank you very much, Mr. Greenwalt.

[The prepared statement of Mr. Greenwalt appears in the appendix.]

Senator BAUCUS. Mr. Ward?

STATEMENT OF JUSTIN WARD, SENIOR RESOURCES SPECIALIST, NATURAL RESOURCES DEFENSE COUNCIL, WASHINGTON, DC

Mr. WARD. Thank you, Mr. Chairman. I am here representing the Natural Resources Defense Council, which is a national environmental organization with more than 165,000 members. We have a strong interest and involvement in international environmental policy, including international trade negotiations.

I would like to begin by saying that this hearing could not be more timely. The environmental interest demonstrated by this subcommittee and other Congressional panels recently should send a powerful message to our trade negotiators in GATT as well as at this weekend's ministerial meeting on the North American Free Trade Agreement in Zacatecas, Mexico.

With greater integration of the world's economies, the time has come to update outmoded trade regimes, specifically to include safeguards for the environment, natural resources and public and occupational health. The United States, we believe, should take the lead in this endeavor, and we should seize opportunities for environmental reforms in all relevant international forums, including the North American Free Trade Agreement, the Organization for Economic Cooperation and Development, and the upcoming United Nations Conference on Environment and Development.

Perhaps of most immediate concern, it is critical that the environmental interest be protected in the Uruguay Round of GATT. Recent news accounts suggest that the round could come to an end this year, depending on the contracting parties' response to the proposal that the GATT Director General is supposed to introduce early next month.

Our written statement highlights the recent, highly publicized "Dolphin" decision in which a GATT dispute panel ruled against the U.S. embargo on tuna imports from Mexico. This case illustrates in very dramatic fashion how the current GATT instrument and its procedures treat natural resource protection as having, in effect, second class status to overriding free trade objectives. We would urge strong Congressional oversight to ensure that the panel ruling does not lead to weakening of our dolphin protection laws.

Of equal concern, agreements reached in the Uruguay Round must not leave the door open for future outcomes like the dolphin/tuna decision. It is critical in this regard that GATT and other trade agreements fully protect national, State, and local environmental standards against international preemption or weakening assault as nontariff trade barriers.

I want to emphasize here that we share your view that environmental standards should not be used as disguised trade restrictions. These issues are presented in the Uruguay Round negotiations over the GATT agreements concerning sanitary and phyto-sanitary standards, as well as technical barriers to trade.

In particular, GATT provisions must not invite second guessing by international trade bodies of whether national policy decisions are "necessary," within GATT's narrow construction of that term, to achieve defined environmental objectives.

Also, in light of the dolphin/tuna panel's extraordinarily narrow interpretation of GATT's exceptions, it will be necessary to clarify the so-called Article XX provisions to insulate national laws and international treaties designed to protect the world's atmosphere, oceans, plant and wildlife species, forests and other resources of global significance.

As it stands, the dolphin ruling sets potentially harmful precedent for measures that employ trade restrictions to discourage drift net fishing practices, use of ozone-depleting chemicals, and other environmentally damaging activities. Another urgent priority, once again illustrated by the dolphin decision, is to remove the extreme secrecy that surrounds trade dispute settlement procedures.

It is simply unacceptable for Members of Congress and citizens to be denied access to international trade deliberations on issues affecting the broad public interest. Any new dispute resolution procedures that may be created under pending trade agreements must

prescribe involvement by environmental experts and be open to public participation.

In disputes involving environmental policy choices made in the face of scientific uncertainty, the burden of proof must be on the challenging party to demonstrate obvious protectionist intent or a total lack of scientific justification.

We strongly support your notion of negotiations toward a GATT environmental code that would seek to eliminate competitive advantages from differing environmental standards and enforcement around the world. Such a code is needed to put environmental issues on an equal plane with existing GATT disciplines.

At present the world trading system makes no attempt to mitigate environmental dumping subsidies that penalize the areas with strict pollution controls and conservation measures. We believe this concept can and should be pursued in a way that improves environmental and economic conditions in both developed and developing countries.

I would note here that the existing subsidies code recognizes the role of subsidies in economic development in developing countries.

We believe the NAFTA negotiations, which are still in their early stages, present an opportunity to put the notion of an environmental code into practice.

I would note in closing that the administration's record to date does not inspire great confidence for an environmentally sound NAFTA agreement. I do not mean to be harsh or premature in this assessment. But we have been following the negotiations closely and have been disappointed, for example, by what we consider to be a very weak draft plan issued by EPA on the United States-Mexico environmental border region. I would also note that the administration to this point has steadfastly refused any agreement to link enforcement provisions directly to the trade agreement itself.

We will be submitting detailed comments on the recently issued environmental review of NAFTA to the Office of the U.S. Trade Representative. Thank you again for the opportunity to testify and I will be happy to answer questions on our statement.

Senator BAUCUS. Thank you very much, Mr. Ward.

[The prepared statement of Mr. Ward appears in the appendix.]

Senator BAUCUS. Mr. Smith.

STATEMENT OF HON. MICHAEL SMITH, PRESIDENT, SJS ADVANCED STRATEGIES, WASHINGTON, DC

Mr. SMITH. Thank you, Mr. Chairman. It is good of you to invite me to appear as a member of this panel. While I have no formal remarks this morning I do have a few bullets which I hope will contribute to the debate. And as a preface let me say that I believe I was the first U.S. trade policy official to bring before the Economic Policy Council the prospect that the environment would within this decade become a trade issue.

My presentation then in 1987 involved the CFC issue and was viewed with skepticism. I think there are fewer skeptics today. At least I hope there are. Now my bullets.

First, no single trade issue for this decade is as complex as the environment. Yes, the environment is inter alia a trade issue. In my view it will be the trade issue of the 1990's.

Second, trade is an environmental issue. The environmentalists will have to take into account the trade side if they hope to advance politically the environmental cause and the same applies to the trade community. The concerns of the environmentalists will have to be taken into account.

Three, despite efforts to separate the issues trade in the environment are already linked and they will over the remainder of this decade become even more closely linked, whether the Congress, the administration, the business community, the environmentalists or the foreigners like it or not.

Four, there is a real danger that the fringe elements in both camps will gain control over the debate to the detriment of both our trading and environmental interests.

Five, there is an equal danger that the debate will become emotionalized with the Congress being the biggest threat, if you will pardon my frankness. The environment is a solid political winner and too many legislators are jumping on the band wagon with no questions asked. You, sir, have been exception to that trend.

Six, such emotionalism could lead to the passage of plain, lousy legislation.

Seven, what is needed now and urgently is a rational discussion of the issue to determine where there is convergence and where there is divergence.

Eight, the debate must, and I repeat must, mandate cost and benefit analysis. Trade impact statements on proposed environmental legislation must be mandated and the same applies in reverse. In either case the cost benefit analysis science may be inexact, but we ought to have some idea of the cost involved to our trading interests when we pass environmental laws and the same would apply for trade agreements.

Nine, we should be examining now what existing multi-lateral institutions such as the GATT, OECD, UNDP, et cetera, can and cannot do to help bridge the gaps between current or proposed trade and environment disciplines and what these institutions should and should not do.

Ten, both sides must recognize that there will have to be compromises.

Eleven, the Federal Government has an absolute obligation to educate and inform the American people on what the choices and costs are in pursuing an environmental objective in terms of our trade position and conversely in pursuing a trade objective in terms of our environmental position.

Twelfth, the United States cannot and should not bear the environmental burden alone. We should not sacrifice our trade interest while the foreigners do nothing.

Thirteen, at the same time we must ask ourselves honestly whether we seek to impose our environmental standards on the world, a sort of environmental imperialism, or whether we are willing to negotiate multilateral understandings which may be lower than our norms or wishes. In this regard the question of Federal versus State laws and standards must be resolved.

Fourteen, the administration and the Congress must make a policy decision on the difficult question of environmental subsidies and their possible impact on trade. Will these subsidies be subject our CVD laws?

Fifteen, we must proceed with all deliberate speed into this debate. There is an environmental crisis out there which cannot be wished away. At the same time we must be equally alert to our trade crisis and not play casual havoc with those interests. To paraphrase Einstein, Congress should not roll dice.

Finally, Mr. Chairman, may I commend you for initiating this hearing this morning. As a trade guru I can think of no single issue in our international trade policy as important or as pressing as the environment. We are all, I hope, environmentalists. I hope equally we all are traders.

Thank you.

Senator BAUCUS. Thank you, Mr. Smith, for that very sound statement.

[The prepared statement of Mr. Smith appears in the appendix.]

Senator BAUCUS. Let me begin with you then. Those are very salient points. They are thoughtful. Where do we operationally begin?

In your judgment do we begin to attempt to negotiate an environmental code in the GATT? Is it appropriate to try to push for some environmental provisions in the Uruguay Round, perhaps an exception to the prohibition that presently exists in the GATT which keeps countries from banning products like in the tuna/dolphin case. Where do we begin?

Mr. SMITH. Well, Senator, I would suggest that we do not start in the Uruguay Round. I think if we try to interject this issue as a formal issue, if you will, a 16th work group, it will delay the conclusion of the Uruguay Round for months if not years.

Where I would start is within the OECD and the GATT simultaneously. I think that the GATT should begin immediately in looking at what existing disciplines can be used to sanction, if you will, environmental disciplines as they impact upon trade; and equally, which disciplines cannot be used.

I do believe that it is quite possible that the GATT is going to have to be amended. But I would caution you, as I think you well know, amending the GATT is not an easy thing to do. Therefore, we have to look at this issue in the GATT with the recognition that formal amendments to GATT laws are very, very difficult. Indeed, maybe impossible.

The OECD traditionally has been the place where innovations that ultimately resulted in the GATT first started. The aircraft code and subsidies, et cetera, et cetera.

The problem about the OECD is it is, if you will, a rich man's club. It does not have developing country members in it. That is why I think simultaneously we need to use both the GATT and the OECD.

Senator BAUCUS. Are there any current mechanisms in the GATT that are effective at all?

Mr. SMITH. Are there any what?

Senator BAUCUS. Current mechanisms in the GATT that are effective in any meaningful sense of the term?

Mr. SMITH. I think what has complicated the answer to that question, sir, is the tuna case. With all due deference to my fellow panelists, it is clear that the panelists were going to make a narrow interpretation. Because otherwise, they would have gotten into uncharted waters which would have been very, very difficult.

I can legally agree, if you will, with the GATT panel case decision. I do not morally. I do not like it. I do not think any of us like that decision.

Senator BAUCUS. But as a trade lawyer do you think that that is the probable result?

Mr. SMITH. Well I am not a trade lawyer; I'm a trade guru.

Senator BAUCUS. Trade guru. [Laughter.]

That is better yet.

Mr. SMITH. That is better yet; that is right.

I think what the panel did was in the absence of any sense from the members of the GATT they ruled narrowly. Had they had a sense that amongst the players of the game that Article XX could have been interpreted, if you will, more liberally, they might have done that.

My point I am trying to make is that current disciplines may or may not mandate a ruling in a certain way. I do not fault the panel for ruling the way they did from a legal GATT point of view, as a GATTologist, if you will.

But nonetheless it has caused, if you will, those in the environmental field to be all the more suspicious or negative toward the GATT and I think that is unfortunate.

Senator BAUCUS. But the probabilities of a different really Article XX or remote?

Mr. SMITH. Remote without the beginning now, not 3 years from now, not 5 years from now, not with the launching of the green round, which there will be a launching. But the beginning now of people saying, as our other panelists have said, that these things must be joined together.

Until that time the GATT panelists would seem to me to have no other alternative but to rule fairly narrowly. That is just my belief.

Senator BAUCUS. What leverage do we have with the OECD?

Mr. SMITH. The OECD in the first place, Senator, has got a very large staff as you know, a lot of expertise. They have traditionally been the place where a lot of trade ideas have been sown, if you will, for then refinement by the GATT. They used to say the ideas were shipped from Paris to Geneva.

The OECD presumably can bring some expertise to this matter fairly quickly. They certainly know all about the GATT and vice versa. But it is important this time around not to have just the ideas emanating from the OECD. Because we are not talking just about, if you will, the developed countries. This is a crucial developing country issue as well.

Therefore, they have to be brought into this debate. UNCTAD is not the place to bring in. UNCTAD in my view is known as the "funny farm" and that is not the place to do it.

Senator BAUCUS. Where is the place?

Mr. SMITH. The GATT, because this is a trade issue. It is also another issue. It has other aspects to it. I am sure it is a cultural issue and a moral issue and an intellectual issue. But it is in the

context that you have presented it today and in your statement, it is a trade issue. The only forum where there can be in my view a rational discussion of this is the GATT.

But I point out that the OECD can be useful in its own way for generating and being, if you will, a generation center for ideas.

Senator BAUCUS. I want to go on and ask some questions of some other panelists. But before I get to them, what about the charge that it takes the GATT too long? You know, people say the GATT is the gentlemen's agreement to talk and talk and nothing ever happens.

Mr. SMITH. Well that is one of the prices you pay or the risks you take in going into a multilateral sort of dimension. What's the alternative, Senator? Is it to be unilateral?

Then I think we have all the problems that you and other panelists have recognized about unilateral measures. It may make us feel good in the short term, but it may not be very helpful in the long term in advancing either our trade or environmental interest.

The second thing is, I think the administration by its motions, its actions, that this is a priority trade issue, that the environment is a priority trade issue. The United States has always led in the GATT. The world looks to the United States to lead in the GATT. While these things will not be easy or short-term solutions easily found, in my view, the United States has to take the lead and it may take 2 or 3 years. But what is the alternative, sir?

Senator BAUCUS. Mr. Ward, what is the alternative, besides the GATT?

Mr. WARD. Well, that is, I think, our serious concern. I would agree with Mr. Smith that OECD is an important forum that we should be pursuing for positive reform on trade and the environment and in that regard we have been encouraged by indications of leadership on the part of the U.S. administration and in particular some officials at EPA. We understand that there is now a process in motion with an eye toward achieving a policy declaration from the OECD by the middle of next year, which is a very swift sort of process in these kinds of international forums.

As we indicated in our statement, we think that negotiations toward a GATT environmental code are desirable as a long-term proposition. However, we would strongly urge that we not give up on the Uruguay Round with respect to environmental protections.

Now I recognize that it is very difficult, as Mr. Smith indicated, to achieve anything in that 100 nation context, let alone something that is newly introduced on the agenda. I would point out, however, that some of the principles on environmental concerns that we have raised in our testimony are not strictly new concepts. They are ones that we have brought to the attention of our negotiating team over the course of the last several years.

Also it is important to remember that the dolphin/tuna case is a late breaking and in some respects a surprise development that introduces new concerns that we do not think should be ignored, even at this eleventh hour.

Senator BAUCUS. Mr. Kellman, do you agree with the GATT panel ruling on a legal basis?

Professor KELLMAN. I have to be in accord with what Mr. Smith said. I understand it as a lawyer. I have taken a narrow approach

to these issues. The current state of the GATT, I will not say I agree with it, I would say I understand it and it points out the need for change. I object to it as Mr. Smith suggested. On a moral or environmental ground I object to it strongly, but I think that the panel was driven to that decision given the current state of the law.

Senator BAUCUS. Well if that is the case, is there some way to change that result or change that precedent without going to the GATT?

Professor KELLMAN. I would not say without going to the GATT. But in addition to going to the GATT, I believe first, we can implement stricter environmental protections in our bilateral and multilateral negotiations.

Obviously, we are intensely involved in trade negotiations with Mexico. We can do that on a bilateral level.

Second, I think we should take a very rigorous approach with the International Law Commission in the development of international environmental norms. If we do that, if there was a norm that said you cannot use parse seine fishing techniques and you cannot kill thousands of dolphins while going after yellow fish tuna, then there would be a basis in GATT for saying that an import sanction to implement that regulation would be legal.

Senator BAUCUS. Do you agree with Mr. Smith that we should not attempt to comprehensively address these changes in the Uruguay Round?

Professor KELLMAN. I would have to defer that question to someone who knows the operations of GATT better than I do. As far as the timing question I am not sure I could give you a sophisticated opinion.

Senator BAUCUS. I would like to just generally get into the subsidies code kind of an approach and particularly the question of sound science. I note, Mr. Ward, that you have a problem with that standard, that you think it might be too strict, too rigid.

Mr. Smith points out the need for an objective compromise between trade and environmental concerns. I think you want a more subjective standard than sound science. Could you tell me what your problem is with a sound science standard?

Mr. WARD. I want to be clear that we fully support the inclusion of scientific standards and considerations in environmental policy making. Our concern here, and I am not sure that there is a difference of viewpoint, is that in the absence of scientific certainty, something that is rarely obtained in practice, that "sound science" not override all other considerations, or more importantly that international trade bodies not be given license to make determinations of whether the U.S. Congress or other national legislatures gave the proper weight to scientific considerations in making determinations about laws and regulations.

Senator BAUCUS. So you do favor an objective, scientific standard?

Mr. WARD. Yes.

Senator BAUCUS. That can be determined?

Mr. WARD. Right.

Senator BAUCUS. All right. I think Mr. Smith does as well.

Mr. SMITH. May I just add one thing, sir? In your statement of September 17 when you talk about a GATT environmental code model under the current subsidies code, if I may be so bold, I would question your third criteria that the imported product must be causing economic injury to competitive domestic production.

I do not see how on the one hand you can argue that we should be taking a measure for environmental purposes and then argue that you have to determine that it is causing injury. I think that those are contradictory. If imported products used to produce these parts do not meet the importing nation's environmental standards, then whether or not they cause injury in the classic sense, in my view, could be at least argued as irrelevant.

Now that is hard for a GATTologist to say, the abdication of an injury test. But I think you are mixing apples and oranges here a little bit.

Senator BAUCUS. Mr. Greenwalt, could you expand a little more on the progress of the NAFTA negotiations from your point of view? What concerns do you have?

Mr. GREENWALT. Well I hasten to say from the perspective of the integration of environment and trade issues, it was a thing that as far as I can tell was hardly considered just a few years ago. There have been remarkable steps forward. As I suggested in my testimony, whether or not those steps fall on solid ground or on a morass depends on some things that are going to, as one example, begin tomorrow.

We have profound commitments as we see them from the administration, almost none of which has yet been tested, except for the development of the environmental review, which has some failings as far as we are concerned.

The administration has made it a point to add environmental representation to some of the advisory committees and the president of my organization is one of something like 35 members of the advisory committee on investments.

This is a representation in the sense of his being there, but in terms of balance that is fairly marginal, 1 out of 33, 6 out of maybe 1,000 individuals involved in these things all told.

It is a step in the right direction, clearly. Mr. Chairman, I will not presume to make any judgments at this juncture about how well the administration is doing until the weekend is over and we begin to assess this. As a matter of fact, one of my staff is in Zacatecas for that purpose. I am so in messed, if that is the term, as an "environmental junkie" to see this move as rapidly as it has, as quickly and as pervasively as it has. I want to see what happens after this weekend.

Senator BAUCUS. Mr. Smith, how do we encourage compliance in developed countries. I am interested in your general thoughts as to which incentives, the kinds of incentives and disincentives, you think are appropriate. Which carrots, which sticks? What should be the general approach?

Mr. SMITH. I think, Senator, the key question in bringing the development countries along is going to center on the question of technology transfer, to put it in a nutshell. Without a willingness of both developed country governments and developed country businesses to provide technology transfer at shall we say less than

monopolistic prices the developing countries will not be brought on board.

If on the other hand technology is made available to them at reasonable cost, and it can be shown, if you will, that acting responsibly from an environmental point of view can also be economically profitable then I think that is to be commended.

The classic case is CFC's. If the substitute for CFC's is held with the possibility of it being transferred in some acceptable way, obviously to compensate the developers and not to be too high for the developed countries, then I think that can be worked out. But I think technology transfer is key.

Senator BAUCUS. That is a very interesting point. I think you are probably correct. What about CBI and GSP? Are you saying you would not condition CBI or GSP?

Mr. SMITH. We end up being, and I think Professor Kellman said, we end up being the judge in that case. I am a little nervous about that, how we would be the judge.

Senator BAUCUS. Mr. Kellman or any of you, do you have a reaction to that answer?

Professor KELLMAN. I do not have a problem with that. That does not strike me as so problematic. It seems to me that once we are into something more specific than worldwide, than the GATT, then to impose standards through that process does not bother me so much.

Senator BAUCUS. What about Mr. Smith's point? I do not want to have to paraphrase him. It is like a "elitism" or an "environmental imperialism," I think is the phrase he used.

Professor KELLMAN. Well I do not see that if it is done through a process of bilateral or multilateral negotiations, even if we are imposing our interests, it is essentially through an agreement process.

My problem is, as a matter of law enforcement, using countervailing duties to impose our standards on imports coming into the United States. We are not talking about an agreement then, then we are talking about an adjudication on a case-by-case basis.

Mr. SMITH. I think related to that, Senator, what is a really tricky issue is the relationship between Federal Government, State and local governments—Mr. Ward said that we should not do anything which precludes the State and local communities from their environmental laws.

If you were a foreigner trying to adapt your export of a product to let's say Federal laws, which different from State and local laws, I think it is only understandable they get confused. I think this is going to be a very difficult issue for you, your committee and this Congress to determine whose standards apply.

Senator BAUCUS. What about that, Mr. Ward? If you are another country, you know, the shoe were on the other foot? Don't they have a point?

Mr. WARD. I am not sure a record has been established that this has been a serious problem or a serious obstacle to the free-flow of goods and services. On this point I think it is important to note that it has been the position, most recently of the U.S. administration, that we not pursue in the GATT or North American negotiations anything that would go beyond the existing GATT text in terms of preemption of State or local standards. That is something

that we hope the United States will continue to adhere to. Because we do not see any imperative to change that.

Senator BAUCUS. Let me just generally ask a question of the four of you a different way. I believe that we should not put all our eggs in one basket. Generally in trade matters we should pursue multilateral, bilateral, as well as unilateral solutions. Sometimes they help each other.

Now in this case what unilateral actions can be taken to prod the GATT, to force people to think and move so we are not just talking, that we are acting to address this in a sound, solid way.

Mr. SMITH. You could do one thing. I am not recommending it. Somebody could launch a 301 on environment and see what happens in the GATT.

Senator BAUCUS. What do you think would happen?

Mr. SMITH. I think right now you would probably get shot down. But it would stimulate a debate, as you can imagine, Senator.

Senator BAUCUS. Should we amend our 1988 Trade Act to change Section 301 and make something like this specifically actionable?

Mr. SMITH. It may sound great at first blush. But you have to think about for every action there is a reaction and other countries could do the same for us, witness the hormone problem and all that sort of stuff, ALAR and all that. We have to be careful here. This is not an easy area.

I do not know, if you want to catch the GATT's attention, that is one way to catch the GATT's attention. I guarantee you that.

Mr. GREENWALT. Mr. Chairman, I would like to make a couple of observations that are related to this. First of all, I want you to understand clearly that the National Wildlife Federation and I personally are in favor of sound science. Sound science as a concept is perhaps highlighted by the fact of the alternative is some kind of a guess, and no one wants that, clearly.

Sound science is important and I think should be retained as an idea. I want to say as well that we agree with Mr. Smith's observation about the third criteria in the code. There can be environmental mischief afoot without there having been economic injury to the domestic competition. I think that is important to keep in mind.

Finally, none of this happens in a vacuum. Lots of things are going on in the world. As Ambassador Smith suggested, the involvement of emerging nations may require a good deal of initiative on our part as a practical matter to bring them along, and bringing them along is important. We did not get where we are on the environmental side by accident.

It has been the culmination, if not the conspiracy of, events over a long period of time and is garnering a great deal of attention. Parallel with what is going on with GATT and NAFTA and these considerations, of course, is an accelerating interest in a event called UNCED, the United Nations Conference on Environment and Development, which brings to the fore a lot of action, expression, movement and expectation on the part of emerging nations.

This will culminate in June next year in Brazil, and is likely to focus the world's attention on things like what the United States does in terms of relieving environmental problems. It also for the first time involves development and those who carry develop-

ment—traders, transnational corporations. It is not just "rakes and seeds" as development. It is big-time development.

So there is at once a pressure and an opportunity to begin to make changes. I want to point out the painfully obvious: none of it is simple. But it must be done. I think that one of the pledges that should come to you from all of us is that we want to work together to get this done.

I would like to spend some time with Ambassador Smith talking about some of these things because he has a point of view and a perspective and an interest in expediency that appeals to me. Maybe we ought to have a forum of that kind so that an environmentalist can talk to a trade guru.

Senator BAUCUS. Thank you very much, Mr. Greenwalt. There are a lot of questions we do not have time to get into. But I very much appreciate your testimony and coming here to kind of pique our interest and to prod us along in this area. You have been very helpful and very stimulating. Thank you very much, all of you.

Senator BAUCUS. Our next panel is Mr. Jack Sheehan, legislative director of the United Steelworkers; also Mr. Robert Morris, senior vice president of the U.S. Council on International Business.

Mr. Sheehan, you are first. Go ahead.

STATEMENT OF JACK SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA, WASHINGTON, DC

Mr. SHEEHAN. Thank you, Senator. I am Jack Sheehan from the Steelworkers Union.

Since the commencement of the Uruguay Round, international attention has been placed upon the global nature of industrial development. Trade is not just international in the sense that it reflects export/import policies of national economies, but it is indeed becoming global in the sense of a one-world market or at least a few regional markets.

The North American Free Trade Agreement is one expression of that trend. National economic policy is no longer the exclusive force in a country's domestic activity. Paralleling globalism in trade relations, there is also an awareness that environmental policy can no longer be exclusively national in scope. Transborder emissions are not amenable to national pollution control measures and the linkage to trade flows becomes evident when certain national economic standards can create an economic burden to the domestic producers subject to the regulations when other nations chose not to impose comparable regulations.

The linkage to trade policy was explicitly raised with reference to the fast track debate and the rule which will be applied to the ratification of the Mexican Free Trade Agreement.

Previous GATT negotiations tangentially treated the relationship by raising the issue as to whether national environmental standards were in fact nontariff barriers. We are now on the threshold, I think, of a more positive definition of the relationship to trade policy. Not only because of the environmental consequences but also because of the economic consequences for the failing to do so.

An essential characteristic of that linkage are the trade sanctions which can be applied where environmentally unsound prod-

ucts or processes are involved in foreign corners. The use of trade embargoes for other national and international objectives has demonstrated that trade restrictions have been successfully implemented as useful tools to induce compliance with stated diplomatic objectives.

The use of trade sanctions either on the GATT or NAFTA is an appropriate and increasingly necessary expansion of that linkage. The administration, on May 1, in response to the Congress with regard to the issues raised over the NAFTA indicated "that Mexico and the United States are committed to a cooperative program which will encourage, sustain economic growth and environmental protection in both countries." The two are complimentary and must be pursued together, so the statement indicated.

An explicit linkage with trade treaties, either GATT or NAFTA, would accelerate that pursuit and ensure complimentary progress through trade-related enforcement mechanisms.

Now with regard to the economic consequences, at the outset it is important to disabuse those trade professionals or as Mike Smith called them, GATTologists, who may have a tendency to view environmental requirements as obstacles to trade.

The recent Mexican dolphin/tuna decision, while maybe perhaps very legal, does point out the fact that it is now treated as a trade obstacle.

Furthermore, there have been efforts at previous GATT sessions to harmonize environmental standards at the lowest denomination level, and to consider more stringent standards as being trade barriers.

Senator, yourself on the floor on September 17, quite rightly indicated that it is going to take a long time to develop a GATT environmental code and you were just discussing that. But the point we would like to make here is quick fixes at harmonization levels must be avoided as any kind of interim measures, even though we may be waiting to develop an international code.

Nevertheless the need to negotiate a GATT environmental code remains paramount, especially where broad ecology damage is caused by multinational sources, as in the case of the CFC's and the warming trend. Recalcitrant nations through trade sanctions should be deprived of any economic advantage to be gained by noncompliance with such standards.

Indeed, developing countries, Senator, desperate for a source of wealth and job creation should not be made victims my multinational corporations which push for governmental policies designed to promote a regulation-free environment as an inducement for their plant location and industrial development.

Let me drop a little bit here to the economic consequences. Workers are constantly confronted with the contention that there are adverse economic impacts to environmental regulations. In bolder terms, we are faced with environmental blackmail. Workers have attempted to resist the option of your job or your health.

However, as industrial activity expands beyond national borders and comparative advantage presumably dictates the flow of trade profits, it is too easy for industrial sources to oppose a further environmental improvement in the name of competition.

As a matter of fact, as the control requirements move beyond being identified with very broad environmental goals as in the 1970 Trade Act, and are designed to achieve specific health based objectives as your toxic ones, the legitimacy of the competition concern is very much in place.

Unfortunately the bell rung and I did just want to make a brief reference to the fact that we already have in law a number of precedents. Both in the 301 which I heard Mike talk about. Senator Lautenberg introduced that as an amendment to the Clean Air Act. We also have the protection of internationally recognized labor standards under a GSP and OPEC and the CBI.

At that point I should close.

Senator BAUCUS. Thank you very much, Mr. Sheehan.

[The prepared statement of Mr. Sheehan appears in the appendix.]

Senator BAUCUS. Mr. Morris?

STATEMENT OF ROBERT J. MORRIS, SENIOR VICE PRESIDENT, U.S. COUNCIL ON INTERNATIONAL BUSINESS, WASHINGTON, DC

Mr. MORRIS. Thank you, Mr. Chairman. I am here representing the U.S. Council for International Business.

The U.S. Council has been developing recommendations for dealing with the relationship between trade and environmental policies for over a year. The proximate cause of this exercise was the occasion of the second World Industry Conference on Environmental Management, otherwise known as WICEM II, which was due to be held this April in Rotterdam.

The conference was organized by the International Chamber of Commerce in which the U.S. Council is the voice of American business, and was scheduled to discuss these relationships and American business representatives had been asked to lead the discussion.

The U.S. Council created a joint trade and environment working group of our members, which developed a set of basic principles which they believe should govern the approach governments should take on this issue. Those principles were discussed and broadly endorsed at a WICEM preparatory committee meeting held last February in Switzerland.

In March the U.S. Council released its first comprehensive statement on this matter. It included the WICEM preparatory committee's principles and elaborated on some of the institutional implications which I would like to discuss a little later.

Copies of this statement were sent to all the concerned U.S. Government agencies and to all members of Congress, as Senator Grassley was kind enough to acknowledge in his opening statement.

Following the discussion at the Rotterdam meeting the U.S. Council, which also represents American business in the Business and Industry Advisory Committee of the OECD, took the lead in stimulating an endorsement of these principles by that committee to last June's annual meeting of the OECD at ministerial level.

Finally, during the summer the ICC developed a more formal statement of its views, which were subsequently endorsed by the ICC's Executive Board earlier this month. I have attached a copy of

that statement to my own statement and I hope that also will be part of the record.

I go into this history, Mr. Chairman, mainly to emphasize that largely because of the leadership shown by American business there is now a broad-based consensus within the international business community about the general principles which should guide policies as governments move to clarify and develop the rules which apply to international trade and national and international efforts designed to protect the environment.

While that consensus has not yet been extended to cover recommendations about specific new rules or about how inconsistencies or conflicts between international environment agreements and existing GATT rules should be reconciled, it does establish a framework within which we believe government policy should evolve.

My written statement outlines some of those principles we believe should constitute that framework and I would be pleased to elaborate on them during the question and answer period.

However, let me devote the rest of my time, if I may, to some institutional observations and I will start with the GATT. First of all, as was brought out in the earlier panel, the U.S. Council, and I think we can speak broadly for all of American business at this point, would not favor lodging the responsibility for enforcement of any international environmental agreements, at least as regards the trade policy aspects of those agreements, anywhere but in the GATT.

We would also not like to see a new institution created which would duplicate the GATT mandate. We believe, however, that it is important to build upon the crucial importance of GATT's role as a multilateral discipline that prevents national implementation of a variety of policies from creating economic and trade distortions. In that regard the application of current GATT disciplines to environmental regulation needs to be reexamined and clarified and we very much support that activity.

Secondly, we do also see a very significant role for the OECD in this exercise. One of the previous panelists referred to the fact that the OECD is examining these issues with the objective of coming up with new suggestions for governments as to how they might apply these principles, and in fact agreeing on these principles all over again.

Pursuant to the ministerial meeting of last June, the OECD created a group of experts on trade and environmental issues which has begun a series of meetings. I was privileged to be one of two private sector members that sat in on the first of those meetings last September.

I can report to you, Mr. Chairman, that I believe there was a broad-based consensus among all of the countries that participated in that meeting on the urgency of dealing with these problems, and on coming up with an appropriate set of policies to recommend to ministers at the time of their meeting next year and we found that to be very helpful.

I think that the OECD is a good instrument to use for the purpose of developing a consensus among at least the developed country governments as to what should be done, and particularly to make some recommendations about the GATT. But it is also true

that the GATT must be the final resting place in any new rules and principles which are developed in this area.

I would like to make some observations about your suggestion for a code, what its function should be, whether or not countervailing duties are an appropriate device for making adjustments and I will leave any of those for the question and answer period.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Morris appears in the appendix.]

Senator BAUCUS. Well that is a good lead in. What are your comments? What are your observations?

Mr. MORRIS. Well first on a mechanical issue—actually, I should make all of this subject to one major caveat. The U.S. Council, and indeed any other business organization as far as I know, have not yet taken a position on either specific new rules which we would like to see or on your proposal in particular, although we have convened again our working group that I mentioned. One of its tasks will indeed be to examine your proposal in some detail. We hope to have some views to offer you shortly.

But on the question of the code or a code approach, I would just note that the reason that GATT has done codes in the past has been precisely because not all countries could agree to a particular set of proposals. And that while it may be easy enough for the developed countries to eventually reach an agreement on the kinds of principles and indeed perhaps even rules that ought to obtain in this area, as others have pointed out in the previous panel, it really is very much in the interest of all of us that developing countries also be brought on board and they can choose to exempt themselves from the code.

Therefore, I think it may be more useful to think in terms of how do you reinterpret or if necessary amend existing GATT rules. Although Mike Smith was correct in pointing out that this is a laborious process, nevertheless I think it is the way in which you have to go eventually if you are to get all of the countries that matter on board and applying the same kinds of rules.

In the meantime, I think it is appropriate and, indeed, perhaps essential that the OECD countries reach an agreement as to what they will do among themselves; and indeed there already are a couple of areas in which the OECD countries are moving to implement certain commitments among themselves.

For example, in the context of the Basel Convention on the shipment of hazardous waste, there is an OECD effort going on now to define what constitutes waste for the purposes of recycling and recovery purposes that would then form the basis of a multilateral agreement among those countries. That is foreseen as a possibility in the Basel Convention.

Senator BAUCUS. What about Mike Smith's concern that the OECD is a rich man's club and it does not really address developing country's concerns?

Mr. MORRIS. Well I think it can. I mean there are vehicles by which the OECD can engage in consultation with developing countries, both to convey the benefit of its own usually very high quality analysis of the problems, but also to get a dialogue going.

This has, indeed, occurred in several other areas up to now and I do not see any reason why it should not be carried forward in this area.

Senator BAUCUS. There are example of conventions where the developing countries' concerns were also addressed.

Mr. MORRIS. Yes.

Senator BAUCUS. Can we wait to amend the GATT? That is going to take years. Let's be honest about it. That is going to take, I don't know, 5, 8, 10 years at least.

Mr. MORRIS. I think that Mike in a sense was right or at least was steering you in the right direction when he suggested that what really is necessary here is a consensus among all of the countries that matter, and certainly the developing countries do matter, as to what the appropriate trade and environmental regime should be.

Now it is all very well and good to say it is going to take time to develop that consensus, but that consensus is going to take time in any case. What we have to do is devise ways in which we can accelerate the process by which that consensus is reached.

Senator BAUCUS. But don't we have a greater stake in this than other countries because ostensibly our environmental standards are higher?

Mr. MORRIS. In some respects they are.

Senator BAUCUS. It means that other countries may not be as anxious to move as quickly as we.

Mr. MORRIS. That may also be true. I also accept the fact that Congress is intent upon making those laws stick and will favor unilateral action if necessary. As you pointed out in your opening statement, unilateral action does involve costs, and those costs will be born in one form or another, not by foreigners, but by us.

So therefore we have a very strong interest in getting this thing moving quickly. Which incidentally is why I emphasized that in the context of the International Chamber of Commerce we are developing that kind of a consensus at least among the world business community. I hope that that will be a first step toward the kind of consensus that I think we need to develop among our governments.

Senator BAUCUS. Are there any unilateral options that you find intriguing?

Mr. MORRIS. Not very many, because most of them involve——

Senator BAUCUS. Are there any?

Mr. MORRIS. Well offhand, I cannot think of any, no.

Senator BAUCUS. Well I have to be honest with you. I think we ought to find some.

Mr. MORRIS. I doubtless think that you will. That is why I am interested in making the multilateral process work as well and as quickly as I possibly can.

Senator BAUCUS. Well what incentives do we offer? What attractive features can we come up with to encourage other countries to, if you will, come along?

Mr. MORRIS. Well I think the Montreal protocol outlined a couple of the approaches that we need to employ. On the one hand it offered technical assistance to countries as a means of converting their industries that are heavy users of CFC's. It also offered finan-

cial incentives for them to convert at as rapid a pace as possible. I think those are features that we could use successfully.

Incidentally, you might also consider those as features that could be used as sanctions, as alternatives to always going first to trade sanctions.

For example, if enough of the countries agree that this is a vital issue and a terribly important objective to pursue, then why shouldn't they concert their positions, for example, in the World Bank and insist that countries live up to a particular standard on a particular issue as a price of getting new loans.

I mean we unilaterally make that a condition for our vote on World Bank loans as regards human rights and there is no reason at all why a group of countries should not be able to use that. I frankly think that is a better approach generally than the use of trade sanctions, which normally end up hurting your own consumers and industries more than they do the foreigners.

Senator BAUCUS. Aren't those sanctions thought have more teeth? Don't they have more bite?

Mr. MORRIS. Again, Senator, I am afraid that I am of that school which believes that the country which stops imports and protects itself from competition is more damaged and certainly its consumers are more damaged than the country who exports to it, because that country can always find another market.

Senator BAUCUS. I may not have heard you. Then what levers do you think are more appropriate, more effective?

Mr. MORRIS. Well if you want to have something that directly impacts on the country who is not cooperating in the environment area, as you do now when you believe that human rights have been violated, then work it so that they do not get loans from the World Bank or some of the regional banks. Because there you have a blocking majority. You can stop those loans from going.

Now that impacts directly on that country, rather than on us, which a trade sanction inevitably does.

Senator BAUCUS. Mr. Sheehan, would the approach that I am suggesting help a lot of the working men and women in this country who are concerned about jobs moving to other countries because our country has higher environmental standards than others?

Mr. SHEEHAN. Senator, I am sort of stirred by a lot of the debate that is just going on right now. I will give you a quick answer to indicate yes that I think it would.

But let me back up a little bit to indicate that I think we are confronted with now the necessity of pursuing both unilateral and multilateral action. I do not think it is either one or the other. I think it is both. Certainly the multilateral action which is your suggestion is going to take a long time as you say.

Let me just differentiate for a moment about multilateral action. It seems to me that we need to have this linkage into GATT, which is a multilateral level, to develop a multilateral global environmental code. There is no doubt about it. The essential ingredient of using GATT is that we have a mechanism for enforcement. We are able at a multilateral level to use trade sanctions.

I think though the other issue with regard to GATT and on that sense a multilateral issue is that we must make sure that GATT

does not use its current mechanisms vis-a-vis what we have just seen in the dolphin/tuna decision, use the multilateral forum to stop certain domestic standards.

I think that is most important and I think we should be able to move rather rapidly to foreclose that kind of an action by that multilateral body. Whether we could get them into promulgating the international environmental standards that takes time.

Now the third one that I just wanted to make reference to here, Senator, which is more from a union point of view relates to your question. I do think that we need at this point to use unilateral action, not only to protect our own domestic standards that we are developing here. Because if there is an economic disadvantage to pursuing them, either you here in the Congress will begin to retreat or our companies will shut down and go overseas.

So I think at that point the trade relation mechanism is that it is either unfair trade practice, amenable under a CBD operation or it could be an unreasonable trade practice under Section 301 of our trade laws. So that we could use the unilateral action to promote that cause. Maybe that is the only thing we have immediately available.

Senator BAUCUS. What's wrong with that, Mr. Morris? Why not, you know, an approach again along the lines I have outlined which is a subsidies code approach and it is similar to the suggestion of Senator Boren, which puts 301 aside for a second?

Mr. MORRIS. Yes.

The problem with CVD's is that there is a terrible problem of how do you calculate what would be the margin of subsidy. You cannot use, for example, the costs incurred to meet environmental standards as a surrogate for that because the cost to a particular producer of control technology does not necessarily correlate with the effectiveness of that technology in meeting with environmental performance standards.

Senator BAUCUS. But do you agree with the premise, that is the assumption that lower environmental standards lower the cost of doing business and confer a competitive advantage?

Mr. MORRIS. If it is, it is probably a very small cost. Let me get into that in a moment. But more to the point of CVD's, first of all applying CVD's on imports from countries which allegedly do not have as high a standard as you do is really more designed to disrupt trade than it is to promote environmental objectives in foreign countries.

I am afraid that if you start down this road, well why not do it in relation to virtually everything in which countries have different regulatory or fiscal policy preferences or whatever it may be. I mean you could have compensating duties to reflect the fact that they have different social legislation, they have different tax policies. Where do you stop?

Senator BAUCUS. No, the underlying commonality here is competitiveness. That is the reason for the subsidies code, that some other country is unfair. It has created a trade barrier because it is subsidizing a competitor.

Mr. MORRIS. Sure.

Senator BAUCUS. The same analysis would apply directly here.

Mr. MORRIS. There you can measure what the subsidy is. I mean it is fairly clear, even though it is somewhat complicated.

Senator BAUCUS. But aside from the measurement difficulties. If, in fact, lower environmental standards are a cost to doing business in the United States.

Mr. MORRIS. All right. Well let me take that as the case in point.

Senator BAUCUS. Isn't it a competitive disadvantage to those States?

Mr. MORRIS. If you could demonstrate that it really was a problem, then I think a lot of our members probably would have a fairly sympathetic response. But I am not sure it is.

Senator BAUCUS. It is your view that lower environmental standards are not a competitive cost in the United States.

Mr. MORRIS. Look, let's take what evidence we have and there, admittedly, is not very much here. But, for example, let me cite to you the conclusion which is drawn based on some analysis at least in the draft review of the United States-Mexico environmental issues which the government released last week, and which has already been referred to.

It suggested first of all that pollution abatement costs make up only a small share of costs for most industries, averaging only 1.1 percent of value added for all industries; 86 percent of industries have an abatement cost of less than 2 percent. It goes on. Now I will not bore you with the other statistics.

Senator BAUCUS. No, I understand.

Mr. MORRIS. But the point is there just really is not much evidence that this is a significant problem.

Senator BAUCUS. Some would say that that report was not in inventory or an investigation, it was rather just a position paper.

Mr. MORRIS. Well that may be, but unfortunately as a member of the public all I have to go upon is what my government tells me.

Senator BAUCUS. That report would not withstand very much scrutiny, believe me.

Mr. Sheehan?

Mr. SHEEHAN. Senator, just a quick comment. We have trade laws on subsidies and we really hope that subsidies are not being offered by foreign governments to engage in trade. Now the fact that to a large extent many of our trading partners are not using subsidies does not mean we get rid of the subsidy code because we only have a few amount of subsidies.

We have just a certain amount of subsidies engaged in trade. I would like to indicate that if, indeed, the adverse impact of the lack of environmental standards are minimal that does not necessarily mean that we ought not to have a code, subsidy type code, to counteract where they are impacting on trade.

Senator BAUCUS. I do not think you have a disagreement with Mr. Morris on that point. The question is, do lower environmental standards overseas adversely affect American jobs. That is the question.

Mr. SHEEHAN. Well, two things. I just want to make reference to the fact, and it is anecdotal, I was just recently overseas at an environmental conference when the German minister of the environment flat out said that as far as she was concerned the impact of stronger standards in Germany has an international impact and it

can only go so far because the rest of the world may not be going as far as maybe environmentalists want them to do.

In this Congress we constantly hear the comment that they do have an impact. Now as far as impacting on jobs, Senator, if indeed there is an economic advantage in our market place because our producers are required to hold to a higher standard, if that margin is enough either to cause them to shut down or to go overseas, that has a direct impact both on the production and upon the jobs in the country.

I think we need to lay the axe to that issue straight away. Now there are some reports that indicate that it has been a disadvantage to workers and to companies in this country. How expansive it is, is of course debatable.

But the comment I made in my statement here, Senator, is that as our environmental laws now are coming down off of generalized principles of environmental protection we are coming down into issues of risk-related standards based on 1 in 10,000. We are talking about specific air toxics. We are talking about specific issues

Those standards are going to get tighter and tighter and to that extent we ought to make sure that we are not being vulnerable to competition inside our own border, let alone trying to promote this elsewhere.

Senator BAUCUS. Okay. I appreciate it.

Could you provide any studies or reports that you are aware of for the record that indicate that other countries' lower environmental standards do have an adverse impact on American jobs? Whatever evidence you have. I would then ask Mr. Morris to do the same to buttress his point of view.

Mr. MORRIS. Well it is sort of like proving a negative, but I mean if I come across something I would be delighted.

Senator BAUCUS. It is a basic question we are addressing here. We are trying to find the answer to it. So whatever you have we would appreciate.

Mr. MORRIS. Could I make one clarification, please, Senator?

Senator BAUCUS. Briefly.

Mr. MORRIS. That is that the U.S. Council and American business generally strongly endorses the polluter pays principle and believes that that really needs to be enforced effectively. In other words we would very much oppose the idea that other governments should subsidize through public money the particular industry's efforts to clean up its pollution or whatever it may be on the grounds that that generally does create an anticompetitive situation and it also prohibits or effectively postpones the necessary internalization of costs which we believe is an important object to achieve.

Senator BAUCUS. What is your answer to the assertion by developing countries that we developed countries went through a "natural evolution" where we polluted in earlier stages, and now that we are more developed we pollute less. Their argument is that we are now applying a double standard because we are not allowing them to go through the same evolution? What is your answer to that assertion?

Mr. MORRIS. Well I think there is a certain amount of educational process we have to go through. But I would also point out that I am aware of some studies that unfortunately are still in the OECD

mechanism. I was made aware of them in this meeting that I went to. They suggest that, first of all, countries which adopt higher environmental protection standards over time actually develop much more competitive industries as a result of that, too. So that is one very important point.

Senator BAUCUS. Did you tell that to the American auto industry?

Mr. MORRIS. Even the auto industry I think would recognize that that is true.

Senator BAUCUS. Do you tell them that?

Mr. MORRIS. Pardon me?

Senator BAUCUS. Do you tell them that?

Mr. MORRIS. If they ask I would.

Well, put it this way, let's say that there are studies out there which do show that and it is important.

Senator BAUCUS. I agree. It is a point I often make. I just was curious.

Mr. SHEEHAN. Senator, another comment on the developing countries. They felt we had our time and now it is their time. I would like to turn that around a little bit just to say——

Senator BAUCUS. If you could quickly, Jack. Senator Boren is here and I want to give him a chance to ask questions.

Mr. SHEEHAN. Turn that around to say that developing countries should not be made victims of companies that are going to settle in there only on the base that they do not have environmental standards. In other words, developing countries time has come; they ought to have a share of the pie and our corporations ought to know that they have to bring the best over there.

Otherwise, they cannot engage in international trade affecting both the developing country's state of health and their environment and the host country to whom the exports are being directed.

Senator BAUCUS. I appreciate that. I was in Mexico City in August and I attended a meeting with President Salinas and with the Trade Minister and with their economics minister. Mexico is very aware of that point.

Mr. MORRIS. They do not want it.

Senator BAUCUS. Thank you very much.

Senator Boren?

Senator BOREN. I was listening with interest to what both of you said. I am very concerned that we not have a practice of economic colonialism where we take advantage of the desperation that some developing countries have for any kind of job in the shortrun. Even though it could cause immense social and economic health problems and all the rest of it in the long run.

We are just now beginning to realize the full costs in our own country of the laxity of our standards in earlier periods of time, whether it is hazardous waste problems or a lot of other problems. I think it would be a terrible thing for us knowing the desperation of people in other countries to have jobs immediately to practice this kind of economic colonialism.

I am a little puzzled by one of Mr. Morris' arguments I have to say. That well if we impose higher environmental costs in this country in the shortrun that that is going to make industries more competitive in the long run, those areas that have higher environ-

mental standards. Is that just the argument that if we posed any higher costs on them, whether it is wage or whether it is other standards or environmental or for health care costs or anything else that since they are so desperate, since they cannot compete anymore with these higher costs, that they have to become more cost efficient?

I mean it is a rather odd argument, I must say, and one that I cannot find very logical.

Mr. MORRIS. Well if you will permit me, Senator, the theory behind it is that if you are a heavy polluter at the present time that is probably an indication that you are involved in a lot of waste of the resources that you are using. And as you begin to control the use of those resources in a better way so that you get more out of the inputs that you are using, then that improves your economics and your efficiency over time.

Maybe not immediately because it is costly to convert the technology and the capital, but over time it is a distinct advantage.

Senator BOREN. I mean I certainly understand. I can see that argument. I can also understand why it is desirable. I am not arguing it is not desirable. But the problem is that in the long term we will all be broke. We had a saying about that in Oklahoma when all the banks were failing and so on. People said, well, yes, if you could hang on for 50 years this will all sort itself out. We will have an adjustment in the market of real estate values and all that, and in the long run it will all be fine.

But the only problem is, in the long run by the time the long run gets around none of them are still in business. It seems to me, it is kind of like saying, well if you tie a few weights on people they will learn to swim more vigorously. But the trouble is they may sink while they are learning how to swim.

So to me it just does not make any sense to say that you should not do all that you can, both for the sake of the environment, because after all environment is international in scope. It does not know any borders. Air crosses borders; water crosses borders; the ozone layer is impacted by pollutants whether they come from this country or across a national border. It does not seem to me to make any sense at all to say that we are justified even in the short run, and knowing the desperation that some countries have for jobs in the shortrun, not to try to do all that we can to equalize the production costs here and now in the immediate future so that we do not have these dislocations, so that maybe we will all be around and still in business in the long run, these companies that are trying to do what is responsible.

Mr. MORRIS. Well a lot of companies are, in fact, doing what is responsible. For example, there is something out there called the "Business Charter for Sustainable Development," which invites companies to subscribe to 16 particular principles about how they will organize their production process, their manufacturing and so on to be consistent with the economic theory which I just outlined, which is to improve their efficiency and their use of resources.

So, therefore, this is not just a theoretical proposition. This is something that actually means something to businesses. They are doing something about it. I think that that is something that we all need to encourage.

Senator BOREN. I do, too. But why shouldn't we help them along a little bit if they do not voluntarily comply, by saying, you know, if you want access to our markets on a full and equal basis with our own domestic producers who are meeting these standards at a very high cost, and in some industries it is a terrible high cost, I think worth the cost, because we know the costs of not doing it in terms of health care a lot other problems.

I, just like Senator Baucus, have been in Mexico City, also having been in Eastern Europe and the Soviet Union in the past few months. I came back. If there is anything that makes you an environmentalist go to some of those areas of the world that are having those problems and you come back more vigorous in your feeling than ever.

But why shouldn't we, instead of leaving this to chance in sort of a code of good behavior that some companies will adopt and some will not, why shouldn't we put in place a mechanism, as long as it is a reasonable mechanism, that gives countries time and also helps them meet their environmental problems? As I have proposed under the bill I have introduced, why shouldn't we?

Why should we leave this to chance? Why should we be so sure that the market is voluntary operation? It is going to work for public spirited people, but for people who do not care anything but about the short-term dollar, the short-term profit, not the long-term, but the short-term and there are some people in industry that get in and out. We have had some of those unfortunately in our own country where they go in and they were bad polluters and then they got out and some of them did not even have bonds that were worth anything.

We have seen that in strip miners. We have seen it in a lot of others. And they leave the public and the reasonable parts of the business who are meeting the standards left to pay the bill. Why should we leave this to chance? Why shouldn't we put some teeth into this?

Mr. MORRIS. Well as I said earlier, you can make the same argument about differences in, for example, labor legislation, fiscal policy, virtually anything.

Senator BOREN. Taxes and so on.

Mr. MORRIS. Sure.

Senator BOREN. And we should be doing that.

Mr. MORRIS. Where do you stop? At some stage you have to draw the line and say, look, where do I put the importance of being able to trade within that whole spectrum. This is not a new debate. It has been going on for at least a century. I was reminded the other day that Bismarck made several proposals along those lines back in the 1870's when he felt that other countries were not measuring up to German labor standards and labor practices.

I am afraid that any time you start to do that sort of thing you are inevitably going to have much more of an impact on trade than you are on either the improvement of the environment or on the improvement of labor standards or whatever it may be. I am sure Jack would have a different view of that.

But the point is that is my view. I think it is widely shared in industry. And if we do go down that road I am just afraid that it will be at the cost of a lot of very important American interests,

not least our interest as both exporters and importers and as consumers.

I am just fearful of making that kind of a jump into an area where it is not as clearly defined as, for example, a known specific subsidy that you can put your finger on. I think the polluter pays principle as one that does need to be strengthened. But when you talk about things as vague as standards and regulations and differences thereof you are getting into a real morass.

Mr. SHEEHAN. Senator, right quickly, I think the theory that he is making reference to surely could work. We can induce greater productivity in our corporations because of cost factors. But we are not living in a closed society any longer. In a closed economic society, okay. Well then you take your knocks and you do your thing.

But the society is opening up. It is global and there is leakage there if you wish and the others are not following the same regime.

Secondly, I must say, Senator, that we can no longer have the luxury of thinking of our policies in departmentalized basic. I cannot say well I am only going to be thinking of trade policy and anything that interaffects with the free flow of trade is to be abhorred. We have to integrate our policies.

The biggest thing they are talking about in the environmental community is they are talking about sustainable development. You have to have your developmental policies that bring in your consideration and protection of natural resources. All we are saying here, I think, is we are on the threshold because to integrate our trade policy with our economic policy with our domestic environment——

Senator BOREN. Our health policy, our educational policy, our environmental policy.

Mr. SHEEHAN. The time is over with, we can no longer be departmentalized.

Senator BOREN. You are absolutely right. I think, in fact, the gravest threat to our National security and our well being of the next generation right now is that we are not changing our thinking rapidly enough to coincide with the fact that we are in this global environment.

We sit on this committee and Senator Baucus has been a leader in this effort, and I compliment him for it time and time again. I am trying to internationalize our thinking, not just about the pollution control efforts but we have talked about ax policy.

You cannot sit here and write American tax policy in a vacuum without knowing what saving and investment incentives and costs of capital are, because of the differences in the tax code in other countries. You cannot write our educational policy in this country. We are only 8 percent of our college students are studying a foreign language; and 100 percent in Europe are going to study two foreign languages by the year 2000 and say we are equipping ourselves.

I do not think we can do it in the environmental area either or at health care or many other. We just simply have to no longer take a parochial, provincial view. I think you are absolutely right. I certainly favor free trade to the maximum extent possible. But it is but one element of what must be an integrated economic policy

with a level playing field. I think your comments are right and I hope that our colleagues will heed them.

Thank you very much, Mr. Chairman.

Mr. MORRIS. Thank you very much, Senator.

Senator BAUCUS. And thank you both, Mr. Sheehan and Mr. Morris.

We will now turn to our last panel which includes Dr. Joseph LaDou from the University of California at San Francisco; from Mr. James Hermesdorf, president and chief executive office of Teepak from Danville, IL; Mr. Scott Bush, visiting fellow for the environmental policy, Center for Strategic and International Studies in Washington, DC; and Dr. Manik Roy, pollution prevention specialist, from the Environmental Defense Fund.

Before you begin, I would like to turn to Senator Boren for comment.

OPENING STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. I apologize. The Chairman and I have been taking turns somewhat today. We have had some meetings on the Civil Rights bill and other legislation going on. I am sorry that I was detained from getting here earlier. But I want to thank all the witnesses, those that have come before and those that are appearing for us now.

I know all of you have made real sacrifices to be here. I know Mr. Hermesdorf was due to be in Eastern Europe and feels so strongly about this issue that he has changed his plans to be here and others of you have made changes in your plans. I really do appreciate that.

I will put my full statement into the record. We have already had some discussion and interchange with the last panel about the global nature now of the economic environment in which we are dealing, the fact that health hazards and environmental problems know no national boundaries, the fact that imposing cost burdens on one country can encourage the flight of industries across national borders into areas where they can produce with lower environmental standards and it could have the ironic affect that as we improve our own environmental standards in our country, less there is some mechanism of balancing the standards out internationally, you could ultimately have enough shift of production in the areas of the world of low standards that the total amount of pollutants and emissions into the air, for example, or into the water could actually increase on a worldwide basis, all from our trying to do what is right within the boundaries of our own country.

So we are into an international situation, very serious environmental problems that must be confronted on a world wide basis, on a cooperative basis.

As you know, I have introduced in April of this year S. 984, which I entitled the International Pollution Deterrence Act of 1991. I am urging Congress to recognize the unfair economic advantage that many foreign manufacturers now enjoy as a result of their failure to enact and enforce adequate environmental regulations.

The EPA recently completed a study that indicates that U.S. expenditures on environmental protection have increased to approximately $100 billion per year, representing 1.5 to 1.7 percent of the U.S. gross national product; and that this will probably increase to 3 percent of the gross national product within this decade.

No other nation in the world, at least according to our best estimates, spends a greater percentage of their GNP on environmental protection. I am certainly not criticizing that. I think it is a sound investment; and I think in the long run it is an investment that pays many dividends, as I say in terms of reduced health care costs and many, many other aspects.

But unfortunately, as the cost of new pollution control regulations mount the ability for American companies to devote capital to research and development of new pollution control technology has been declining. If we in Congress are going to continue to look for ways to improve international environmental standards we must also look for ways to help American companies finance the research and development of the technology that will enable us to reach these goals.

So in addition to money for research and development revenues from the countervailing duty that I have proposed, some of the revenues would go for research and development for our companies here at home. I have also proposed that some of the revenues would go toward helping the developing nations by equipping them with American pollution control equipment.

This would help poorer nations which depend on manufacturing for economic advancements such as Mexico to establish and enforce public health standards by helping them get the equipment that they will need to raise their standards. I see this is all mutually beneficial.

We avoid the kind of environmental colonialism that I mentioned in my questioning earlier of having companies solely interested in the bottom line and the short-term movement that here is the world desperate for these jobs but with very low environmental standards, creating long-term problems, costly long-term problems for these countries.

We help them by giving them an incentive to increase their environmental standards. We help them by using some of the funds if any countervailing duties did have to be imposed to supply them with American produced pollution control equipment which I might add would also create jobs in this country in those industries; and we would help our own industries at the same time with other proceeds that are going for research and development here at home.

So I would like to see some of the several issues addressed as we discuss this bill and other actions recently taken, such as Senator Bentsen and Senator Baucus' request that of the Office of Technology Assessment to study our Nation's position in selling pollution control equipment and services overseas.

I think we want to see what we can do to spur and develop American pre-eminence in this field. It is something that we should do as a matter of service to the international community, but also something that can be an important addition to our own economic strength here at home.

I would also like to see the GATT working group on trade in the environment up and running and more emphasis in the GATT negotiations placed on this issue. I know Chairman Baucus has really been pushing that and trying to get more attention in the GATT negotiations focused on this problem.

So I think we do have a problem. I appreciate these witnesses being here with us today to discuss this legislative proposal, the general problem that we are facing and I look forward to hearing your testimony.

I again want to express my appreciation to you for on short notice, in some cases, changing your schedules to be here with us today.

Senator BAUCUS. Thank you very much, Senator.

[The prepared statement of Senator Boren appears in the appendix.]

Senator BAUCUS. Mr. LaDou?

STATEMENT OF JOSEPH LaDOU, M.D., UNIVERSITY OF CALIFORNIA, SAN FRANCISCO, CA

Dr. LADOU. Thank you, Senator.

The industrialized nations of the world have exported vast quantities of hazardous waste in numerous hazardous industries to third world countries. Foreign companies and investors have provided 60 percent of all industrial investment in developing countries over the past decade. For many nations such investment is the primary source of new jobs.

These activities have created a critical situation in much of the third world. What has brought about this threat to worker health and to the world's environment? Three conditions are primarily responsible—(1) the increasing restrictions in fines and in industrialized nations related to the manufacture of industrialized products; (2) the high cost and difficulty of handling and disposing of hazardous wastes at home; and (3) the lower cost of labor in third world countries and the lack of regulation protecting workers and the environment.

Developing countries for the most part have few enforceable regulations. They are concerned with overwhelming problems of unemployment, malnutrition and infectious diseases, often to the exclusion of environmental hazards. Newly industrialized countries are eager for financial benefits that foreign companies and foreign investors bring them. But with those benefits comes social and econological problems.

Unfortunately, most industrialized nations, including the United States, do not have environmental laws with provisions that apply abroad. Consequently cities in areas favored by migrating industry are faced with severe air pollution, inadequate sewage treatment and water purification, and rampant dumping of toxic waste on or in the ground or in waterways.

All residents are affected by the deteriorating environment in the third world. But workers in the rapidly expanding industries have additional serious concerns. They have flooded into these areas seeking jobs promised by the foreign companies. When they arrive they find that housing is inadequate and nonexistent. They

and their families must live in huts, sleeping on the ground, without safe water, in places far removed from medical care.

In most third world countries workers have limited education, skills and training. They are overseen by employers with limited financial resources who are primarily concerned with low cost production. The work place may be unsafe, older buildings with machinery lacking safety devices.

In many countries workers have never been given protective clothing, safety glasses, respiratory or hearing protection. Inspections by health and safety agencies, if they exist, are rare because of long travel distances and limited personnel and funds.

Consequently worker fatality rates are much higher in newly industrialized countries than in the developed nations. And work place injuries occur with rates common to the developed nations during the early years of the Industrial Revolution. In this regard, the Industrial Revolution is taking place all over again, only in many more countries with vastly larger populations.

Foreign companies entering a third world country generally accept the lower levels of safety and health standards of the host country if such even exists. Consequently work incurred injuries and illnesses are much more frequent in these countries than they are in industrialized nations.

Despite the difficulties encountered in the work place the flow of workers will increase in developing countries as the number of young workers swells from 2 billion to 3.5 billion by the year 2025. Competition for jobs will also exacerbate and as a result worker demands for improved working conditions very likely will not be voiced.

The incidents of environmental and occupational disease world wide is higher than it has ever been in recorded history. The United Nations estimates that 6 million new cases of occupational disease occur each year, most of them in third world countries.

In China, for example, 1 million people have silicosis from occupational exposure to dust. Although Silicosis is rare in industrialized countries and is entirely preventable it is the most occupational disease in China with the world's largest population.

In some third world countries asbestosis is the major occupational disease among miners, construction workers and asbestos workers. Yet the Canadian asbestos industry promotes the use of asbestos in developing countries where the demand for low-cost building materials outweighs health concerns.

The Canadian Government has supported its industry by sending free samples of asbestos to any country where future manufacturing of aspectors products is a possibility. Lead poisoning is of epidemic proportions in developing countries. In Malaysia, for example, the blood lead levels in many lead acid battery workers is three times higher than allowed in U.S. workers.

The manufacture and use of pesticides is increasing rapidly in third world countries. They are often manufactured by foreign companies or local companies financed by foreign interests.

Pesticides, such as DDT and DDCP, which were banned in most developed nations, are widely sold and used without restrictions in the third world. A partial result of widespread misuse of pesticides in the third world is a reported 3 million poisonings in Southeast

Asia alone and 200,000 deaths, many of which local governments falsely attribute to suicide.

Unfortunately foreign companies can manufacture any hazardous products as long as they are not forbidden by the host country.

Senator BAUCUS. I am going to have to ask you to wind down and conclude.

Dr. LADOU. All right.

Without question the further export of hazardous waste and environmentally outmoded industry industrial plants must be stopped, but such a program will require international cooperation.

Thank you, Senator.

Senator BAUCUS. Thank you. We will get into a Q&A a little later. Thank you very much, Dr. LaDou.

[The prepared statement of Dr. LaDou appears in the appendix.]

Senator BAUCUS. Mr. Hermesdorf?

STATEMENT OF JAMES E. HERMESDORF, PRESIDENT AND CHIEF EXECUTIVE OFFICER, TEEPAK, INC., DANVILLE, IL

Mr. HERMESDORF. Yes, thank you, Senator. Teepak is a fully integrated manufacturer and distributor of edible and inedible synthetic casings and packaging used in the manufacture and distribution of meat, poultry, fish and cheese.

Our company employs approximately 2100 people worldwide and has two major plants in the United States and one in Belgium. We provide a highly competitive package of wages, health benefits and retirement benefits to all our employees and their families.

We manufacture an edible artificial sausage casing from cellulose derived from highly refined wood pulp. These products are manufactured using a modified, complex viscose process that was originally developed to produce cellophane and subsequently rayon. As in most processes involving large scale chemical reactions, employee safety, health, and environmental concerns are of utmost importance.

As a responsible employer and corporate citizen these issues receive significant attention in regard to our strategic plans and our operating philosophy. In fact, our number one objective for the last 6 years has been to assure the safety, health and well-being of our employees and of the communities in which we operate.

A significant portion of our research, capital and operating efforts and expenditures are directed to fulfillment of this objective. Our Danville plant, for instance, incurs annual operating costs to controlling air, water and ground pollution that totalled $7 6 million in 1990. In a modernization of our Danville facility we incurred $7 million for investments in air scrubbers and ventilation systems and an additional $4 million in asbestos abatement.

Very high levels of capital investment in pollution prevention continue. During a 3-year period from 1988 through 1990 the capital expended in Danville for pollution control totalled $4.94 million.

In anticipation of increasingly stringent future ecology based restrictions on American industry, Teepak in 1986 initiated research and development projects to define recovery technology that in-

creased the efficiency of air affluent scrubbing. This work anticipated the Clean Air Act of 1990.

Since 1985 Teepak has adopted the principals of the quality process as espoused by enlightened teachers such as Phil Crosby, Edward Deming and J.M. Juran.

In 1987 we realized that the philosophy and attitudes we were trying to install with regard to safety in the environment were the same as those in regard to quality. At that point we combined the two into the Teepak safety and quality process. We are now pursuing continuous improvement in regard to these objectives with a goal of achieving excellence and unparallel accomplishment compared to others in our industry and to American business in general.

In 1990 our Atlanta location was awarded merit status in the OSHA Voluntary Protection Program, one of only 71 work sites in the entire United States to be so honored.

I have cited these awards to show you that we are serious in our commitment to safety and quality and that our efforts rate well in regard to business in general. Six years ago Teepak made a lifelong commitment to emphasize safety and environmental responsibility in our facilities. This is still our primary commitment.

We have stated unequivocally to all our employees that if we cannot do something safely and in an environmentally sound way we will not do it at all regardless of the affect on our results or even our security as a business.

We now face competition from foreign companies and emerging economies who do not adhere to such high standards. We find it both morally and ethically impossible to adopt a similar competitive philosophy that treats both human life and the environment as economic variables that are sacrificed to achieve low costs and super competitive positions.

If you add this to the other advantages that these competitors enjoy—low wages, little or no medical or retirement protection for their employees, and significant export subsidies or tax relief measures—you come up with a frightening equation. I am the first to admit that American management and American industry can do a better job than they are doing today.

But no amount of management creativity or ingenuity, nor increase in worker productivity can overcome the sum of all these economic disadvantages. The United States is a highly developed nation with advanced concepts about what constitutes the responsibility of business to our society.

My international experience tells me that America is a leader in the world in this respect. As managers who have been brought up and educated in such an environment we accept our responsibility to society and all the added costs of doing business that they entail.

Even if we were eventually forced to relocate our manufacturing operations to third world countries, I feel we would be unable to achieve the economies that our foreign competitors enjoy because we would be morally compelled to install our own high standards in regard to safety, the environment and worker welfare.

Having to compete in the United States in a totally free market atmosphere with companies and countries who have yet to develop such standards is inherently unfair. It puts us into a game where

the unevenness of the rules almost assure that we cannot win or even hold our own.

The Boren bill, S. 984, allows a transition period for the underdeveloped countries to catch up to the United States in regard to fundamental issues of safety and environment. Having been educated at the University of Chicago I have retained a belief in free markets as the ultimate allocators of scarce resources. But the sheer discrepancy in today's world between our advanced social agenda and those of nations who are preoccupied with issues of rampant poverty and transformation from agrarian societies is just too big to overcome without some assistance in the shortrun.

If American business is not provided with some relief in this regard I can predict with certainty there will be a rapidly increasing loss of manufacturing jobs to these countries.

Senator BAUCUS. Thank you very much, sir.

[The prepared statement of Mr. Hermesdorf appears in the appendix.]

Senator BAUCUS. Next, Mr. Bush.

Mr. BUSH. Yes, sir.

STATEMENT OF F. SCOTT BUSH, VISITING FELLOW, ENVIRONMENTAL POLICY, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, DC

Mr. BUSH. It is a distinct honor to be here today. I think it is very important that you are having these hearings. There has been much talk, and often much confusion, about the relationship between the trade and environmental issues. From what I have seen today these hearings are serving to help focus on the elements of a more constructive dialogue.

I want to be frank at the outset, I am a believer in the free and open international trading system. It is necessary for the economic as well as the environmental well being of the global environment.

Our exports have more than doubled over the last 10 years and are currently running between 12 and 13 percent of our GNP. That is almost double from 20 years ago. Thus, whatever we do in the environmental area, we have to assure that an expanding international trade sector is maintained.

I believe that we as a developed nation have both a moral as well as a practical obligation to assist developing countries to develop economically in under that that they may better address their economic and their environmental needs.

We must take particular care not to unwittingly restrict international trade and cut off the flow of capital needed for the long-term sustainable development in the Third World.

I believe that the concept involved in Senator Boren's bill provides an innovative approach to deal with international environmental issues. One which in my view is much more effective than some of the "commanded and control" regulatory approaches often put forward.

It would use market forces to help achieve environmental goals. It is much more effective than outright bans, quotas and other trade restricting efforts that are prevalent in the world today and which are perhaps becoming prevalent in the environmental area.

However, I think that an international GATT goal of environmental standards is even a more effective way of achieving such goals. We heard earlier today a lot of discussion about the ongoing GATT and the OECD processes. These involve looking at a varity of issues, such as harmonization of standard, internalization of environmental costs, North/South issues, and the subject of Senator Boren's bill, indirect subsidies or economic advantage due to differing environmental standards.

Hopefully these processes will be helpful in discussing the more important examples of problems and in enunciating some principles which might be applied in addressing resulting trade distortions in a way that I hope would not negatively impact trade flows.

I hope that this committee and the Congress will work closely with the administration in defining the most important trade and environmental linkages and not to take any unilateral action which might result in increased tensions in the international trading system.

It was mentioned earlier today the difficulty of identifying subsidies resulting from differing environmental standards. This is an infinitely more complex area than taking a look at the subsidies and I think we have to, in this country, establish a process to identify the most important direct environmental costs, particular industries in this country incur which are not incurred by competitors overseas.

This would give us a better understanding of the problem, its relationship to the international trading system and what we might do about it in a multilateral context. As was mentioned by the first panel, it is important that environmentalists, industry and government, both Congress and the Executive, should participate in such an endeavor.

I would also hope that the United States would push that in the GATT process that we take a look at subsidies that as are being addressed in Senator Boren's bill.

I would like to address briefly the issue of countervailing duties and what one might do with the proceeds thereof. I think the concept of recycling the proceeds to developing nations by providing American pollution control equipment or providing funds for pollution control R&D in this country makes practical as well as good political sense..

However, I would like to suggest for the committee's consideration an alternative which may be more politically palatable to those nations whose exporting firms could be subject to the duties. Specifically, the duties could be phased in to allow time for changes in environmental laws or to allow adequate time to make the needed pollution control investments. Or alternatively, proceeds could be put in escrow for the purpose of purchasing U.S. technology, to assist importing firms to make such changes.

This would serve to more directly provide a solution to the environmental problem or problems which may result in the duty while addressing the argument that any such duty is mainly protectionist in nature.

With respect to the bills proposal for a pollution control index, this is an extremely complicated area. As noted previously, the Office of Technology Assessment is undertaking an 18 month study

and the World Bank is doing a study. However, there are very difficult scientific issues, lack of data issues, and in fact methodological issues in trying to come up with such an index.

I would suggest given the uncertain state of the art in this area, rather than preparation of index per se I think there should be an effort to draw together the current information from available studies to give us a better idea of how to proceed in this area. Some studies from the OECD might be very useful.

I think we might find countervailing duties being used first in the context of the global climate frame work convention. We did a study earlier this year trying to assess some of the economic costs that might be involved with some of the mitigation policies being suggested.

If I may just take 30 seconds.

Senator BAUCUS. You got it.

Mr. BUSH. The staff of the European Committee is suggesting a carbon tax equivalent to $10 a barrel of oil. One of the issues involved in a carbon tax is that energy intensive industries may move overseas. The idea of a countervailing duty might be very useful in order to protect against that. However, in this instance it may be the U.S. industries who export to Europe who may be the ones who are subject to such a countervailing tax.

I would be glad to answer any questions you might have, gentlemen.

Senator BAUCUS. Thank you very much, Mr. Bush.

[The prepared statement of Mr. Bush appears in the appendix.]

Senator BAUCUS. Next, Dr. Roy.

STATEMENT OF MANIK ROY, PH.D., POLLUTION PREVENTION SPECIALIST, ENVIRONMENTAL DEFENSE FUND, WASHINGTON, DC

Dr. ROY. Thank you, Mr. Chairman and Senator Boren. I am Manik Roy, pollution prevention specialist with the Environmental Defense Fund. Nothing is more corrosive to the environmental protection debate than the argument that environmental protection costs jobs.

I am stunned to hear the gentleman on the previous panel argue that environmental protection does not hamper business competitiveness. I heard the opposite argument all the time from the business community.

Admittedly, as illustrated by the environmental devastation we see not only in Europe but around the world, the environment versus economy argument is generally based on a short-sided understanding of economy. There is one respect, however, in which the jobs versus economy argument merit special attention.

When good corporate citizens, the public spirited companies that you were referring to earlier, companies doing their best to produce goods and services without destroying our fragile environment are out competed by companies less concerned with the help of their neighbors in the environment.

To level the playing field between two such firms operating in the United States we have to strictly enforce high environmental standards across all industry in all States. By the same token, to

level the playing field between competing firms operating in different sovereign nations we need the type of approach exemplified by Senator Boren's International Pollution Deterrence Act of 1991.

The more we learn about the destruction of the stratospheric ozone layer, global climate change, acid rain, the global transport of toxic chemicals, the less it is possible to believe that the consequences of any environmental decision can be confined within political boundaries. Indeed, the countervailable subsidy embodied in a nation's lack of serious pollution control is underwritten not only by that nation's citizens but by all of us worldwide who bear the external cost of the pollution.

Allow me to make a few specific observations if I can beat the bell to do this. Allow me to make a few specific observations on the Boren bill. First, it is good to define the countervailable subsidy as the cost which would have to be incurred by the foreign firm to comply with U.S. environmental standards. We hope this definition would be reflected in implementation.

While EDF reflects the complexities of implementing such a law we should be careful in choosing methods of measuring the difference between compliance costs as a previous speaker was suggesting. In particular, if we based our analysis on the differences in black letter law and regulation we could be suspectable to two types of error.

On the one hand in countries in which the black letter law is far more ambitious than its enforcement, and the Soviet Union comes to mind, we could be greatly overestimating pollution control costs. On the other hand, there are firms around the world surpassing their nation's environmental standards and it would be unwise and a shame to penalize these good corporate citizens.

Similarly, there are provincial and municipal governments enforcing stricter standards than their national counterparts and their efforts too should be recognized and not penalized.

My second point is that whatever method we use to measure the differential cost of environmental protection requirements it might be better to have an international independent body to do the measuring than say the U.S. Environmental Protection Agency or any agency that is reportable to one of the stakeholders, that is solely reportable to one of the stakeholders.

While such an effort might be more complicated to establish, it might also have more credibility and therefore more enforceability. The two are clearly related. It might also give those companies with higher standards than the United States an opportunity to raise our aspirations as well.

Finally, EDF urges that the revenue attributable to the countervailable duties assessed under this Act be directed more toward pollution prevention or source reduction as defined in the Pollution Prevention Act of 1990, rather than to end of pipe pollution control.

Congress and EPA have both stated their preference for pollution prevention over end of pipe recycling, treatment and disposal. In addition, international bodies such as the United Nations Industrial Development Organization have discussed pollution prevention as their top preference and as a key to environmentally sustainable industrial development.

Senator Baucus, in your authorization bill you give toxics use and source reduction the highest priority. Mr. Morrison on the previous panel gave a very strong endorsement to pollution prevention as something that actually improves competitiveness and EDF hopes this preference will be reflected in the Act as well.

Thank you.

Senator BAUCUS. Thank you very much. I agree with you.

[The prepared statement of Mr. Roy appears in the appendix.]

Senator BAUCUS. A basic question I would like to ask Mr. Hermesdorf is the degree to which lower foreign environmental standards or controls themselves explain the competitive differential.

There are many, many components that go into the cost of doing business in addition to the environmental standards.

So my question to you really is the degree to which environmental standard differentials affect the competitiveness of your business. How you measure that and how you quantify that particular component.

Mr. HERMESDORF. Well I can answer for our industry and our industry is a chemical industry and one that uses chemicals that have to be very carefully handled and worked with. So we have both issues of exposure which have to be dealt with within the plant and we have issues of emissions, water, air and ground emissions.

So in our industry I think the number is very high. For instance, the number I quoted you for our Danville plant, the pollution control numbers represent something like 10 to 15 to 20 percent of our total profits per year.

Senator BAUCUS. I understand the costs in the United States. I am trying to ask the same question with respect to other countries.

Mr. HERMESDORF. Quite frankly, we refused to buy a business in Spain 12 years ago because of the ecological issues involved. Because we felt the cost of bringing that business up to our standards was so high that we would be better off not to do it.

Senator BAUCUS. But my question really goes to your competitors who are not as moral as you.

Mr. HERMESDORF. Right. Okay.

Senator BAUCUS. That is——

Mr. HERMESDORF. They have different standards. I would not like to depict them as immoral.

Senator BAUCUS. Okay.

Mr. HERMESDORF. They just have different standards they live by.

Senator BAUCUS. Let me ask the same question differently. If you were to go to Spain, for example, what other costs would you incur, in addition to infrastructure, permits, language, social, et cetera? Because there are many costs of doing business in addition to environmental compliance.

Mr. HERMESDORF. There are, but those costs in comparison to running a business in the United States are all very low. The few problems that you would have with language with cross border shipments, et cetera, are minuscule compared to the total savings that you can achieve in a country like Spain by not complying with U.S. standards, wage rates, taxes and all these other things.

Senator BAUCUS. What about political instability? Some countries' political structures is less stable. That is a cost.

Mr. HERMESDORF. That is a cost. You can get insurance for that, believe it or not, very easily through OPIC and several other places.

Senator BAUCUS. I am trying to focus on the one aspect that we are dealing with this morning. That is, environmental cost differentials. Is there any guidance you can give to me to further elucidate how much of that——

Mr. HERMESDORF. I would say that in our industry at least—let's say a foreign competitor could enjoy as much as a 50 percent cost advantage over us and of that 50 percent 20 percent of that advantage would be because of noncompliance with U.S. pollution standards. So a significant part of his ability to sell similar products to ours in the United States at a much lower price 10 to 20 percent of that would be related to lack of pollution compliance needs.

Senator BAUCUS. Doctor, you painted a very dismal portrait of the working conditions in some parts of the world. That in and of itself is tragic, but much of that explains a competitive advantage to companies operating there?

Dr. LADOU. Many countries engage in toxic manufacture where it is no longer even feasible in developed countries. I spent a month this past year in Shinyung, China working with a lead smelter which would not be allowed to operate in most developed countries and is operating at great economic advantage in China which pays no environmental cost and essentially has nothing comparable to our worker's compensation system.

So one thing that you should bear in mind when you ask about environmental costs to companies they presume that worker's compensation exists around the world. It, too, is an environmental cost, which is not shouldered by most developing countries, manufacturers.

Senator BAUCUS. Should that be actionable, differences in worker's compensation?

Dr. LADOU. Yes, indeed.

And by the way, when you were reminded by the former speaker that Bismarck had commented on all of this in the 1880's, let me remind you that Bismarck's interest in this area led to worker's compensation law, which is the Bismarck principle all over Europe and America today.

Senator BAUCUS. Mr. Bush, are you aware of any studies documenting the degree to which there is this competitive differential?

Mr. BUSH. I really am not, sir. This is an effort which should be undertaken. I think that perhaps it is a dialogue that could be done with business, industry and the environmental community meeting periodically to review current studies and try to identify the nature of these problems. I would also hope that the United States would put this on the agenda in OECD, that they should do some analyses, also.

Senator BAUCUS. Just one final question for anyone who wants to take a crack at it. The approach Senator Boren suggests is very good and very meritorious. It does raise the question of GATT legality. There are many who say it will have a hard time meeting

that test because there are no current exceptions in the GATT which address environmental differentials here.

Any comments on that?

Mr. BUSH. I would take a stab at what was heard in the first panel—unfortunately Senator Boren was not here then. To start with the OECD and GATT should proceed on parallel tracks to take a look at the issue, and at least establish the principles that we should be talking about. Once you establish the principles then you can get down to some of the mechanics to address some of the differences that we are talking about.

Senator BAUCUS. But the point is that the GATT would have to be amended

Mr. BUSH. I believe that is true.

Senator BAUCUS. That is correct. Thank you.

Senator Boren?

Senator BOREN. Thank you very much, Senator Baucus. I do understand that problem and I think it is right to get them to go focus on it, OECD to focus on it, and also the statistical problems, the problems of measurement that you focused on. I do want to insert into the record testimony by Dr. Clifford Russell of Vanderbilt University which discusses some of the problems he faced in trying to determine environmental standards of European countries trying to develop some kind of index.

But I think your suggestion that we proceed on two tracks, focus on this issue, have GATT focus on this issue as well is a very good one. Also your comments about the transition period and the escrowing of the money. I think these are excellent, constructive suggestions and I appreciate them very much.

[The testimony appears in the appendix.]

Senator BOREN. Let me ask Dr. LaDou, I think the time ran out before you had an opportunity to make any comment specifically about our bill, about S. 984, and I wonder if you do have specific thoughts about the legislation.

Dr. LADOU. Well I have often been surprised that government has given so few incentives for the development of environmental technology. One of the attractive features about your bill, Senator, is that it will place an incentive for development of environmental technology for American industry and additionally provide an opportunity for poor countries to finance the purchase of these items.

They are desperately needed all over the world and development of new, low cost, environmentally sound manufacturing processes is quite needed as well.

Senator BOREN. Thank you very much.

Dr. Roy, I certainly appreciated the attention that EDF has paid to our legislation since it was introduced back in April. It has been very helpful to us and the suggestions that have been given.

I know that there is concern about the statement included in the Stockholm Agreement which I believe I am quoting it accurately when I said, "Each country has the right to exploit their own resources within their own borders."

It concerns me because it appears to ignore the problem of transborder nature of pollution and environmental problems. Is it your opinion that we must find some kind of international environmen-

tal standards and that we need to see to modify or at least broaden the understanding of what this Stockhold statement means?

Dr. ROY. The idea that pollution stays within political boundaries is of course absurd. The more we find out about almost any pollution problem the more we find out how absurd it is.

Without now being able to specifically address how we would do it, I think it would be very important to come up with some sort of international environmental standards. I do not see how we can get away from it.

Senator BOREN. Mr. Hermesdorf, the thing you talked about, and I am very impressed as Senator Baucus obviously with the standards that your own company meets. It really is an example for others to follow. I might tell you also that it has not only been from the management of your company that we have had interest expressed in this legislation. We have also heard from scores of your employees who have been interested enough to write and talk about their feelings about this issue which we have appreciated.

Do you think if we can find a way to make the playing field more level in terms of access to our own market being tied to meeting minimal, acceptable environmental standards, do you think it would create more willingness and a more openminded attitude on the part of American companies to go even further in terms of making decisions themselves to further improve and increase their environmental standards and improve the work environment?

Mr. HERMESDORF. I absolutely believe it would. No businessman by nature desires to be a polluter. I think business would love to have a situation where our government and agencies like the EPA begin to partner with business rather than to treat business as adversaries. I think one of the things that has been a problem for a long time is that business not only has to deal with the issues of environment, but it also has to deal with the issue that it is the fundamental source of wealth in our country and it is the fundamental employer of the resources, the human resources.

You do not want to be in trade-off positions when it relates to things like the environment. You really want to be able to do it all. And in order to do it all, we cannot do it alone.

Senator BOREN. Thank you very much. Again, I want to thank all the panel and thank you also for the suggestions you have made in terms of improving our legislation.

As I indicated, when I introduced it it was as much a concept as anything else and hopefully could be used as a vehicle to draw attention to the question and the appropriate international forums and the trade negotiations and elsewhere, hopefully moving us toward developing a statistical base which I think is very important if we are going to deal with this problem in the long run.

I was certainly open to suggestions and looking at transition periods and other devices to make this workable and to make sure it was not too burdensome and that it did not strike at the principal of free trade while really trying to provide some incentives.

All of you have been extremely helpful in terms of the suggestions you have given to us, and I just want to again express my appreciation to you.

Senator BAUCUS. I thank you very much. I also want to thank Senator Boren for his bill. There are other bills too and they are

all obviously efforts to try to target in on this central problem. I want to thank you, Senator, for your contribution and to thank the other witnesses as well.

Mr. Hermesdorf, I thank you for traveling your travel plans.

Mr. HERMESDORF. Thank you.

Senator BAUCUS. We will let you go. Thank you very much. The hearing is adjourned.

[Whereupon, the hearing was adjourned at 12:23 p.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF SENATOR DAVID L. BOREN

Protection, preservation and enhancement of the environment is a major U.S. national priority. Congress has actively fostered this goal through landmark legislation, most recently, the Clean Air Act Amendments of 1990. A crucial question we have not adequately addressed however is how our nation's environmental policy is interrelated to other important policy questions, such as competitiveness and trade policy. As the ongoing negotiations for a North American Free Trade Agreement with Mexico and Canada have proven, policy questions cannot be made in a vacuum without regard for the many areas which they will impact.

I wish to thank all of the witnesses who appear before the committee today for helping us discern the many ways in which environmental policy affects trade policy and vice versa. I am glad to see the Senate Finance Committee addressing these important issues and I thank Senator Baucus for the consistent attention he has devoted to these concerns.

In order for our nation to continue to advance our own environmental standards, the United States must be a leader in calling on our global trading partners to act as well. Congress must take any and all steps available to us which will encourage other nations to join us in enacting *international* environmental standards.

Our nation's business leaders and environmental leaders can and should work together to support the common goal of equalizing other nation's environmental policies with our own. In the past several months, as I have worked to promote these ideas, I have been encouraged by the degree to which I have been supported in these efforts by both the business and environmental communities as well as the academic community.

There is a popular slogan often used to encourage citizens to recognize the important role of the individual in protecting the environment. That slogan is "THINK GLOBALLY, ACT LOCALLY." While we cannot ignore the need for every individual and every local community to act in an environmentally responsible way, Congress cannot ignore the need for international action to combat the transborder nature of pollution. If we do not think internationally in setting environmental policy, we will not be doing enough to combat such problems as acid rain, global warming, water pollution, and the many other dangers to our planet which know no border. Meanwhile, American business and industry will be at a disadvantage in the marketplace as a result of our commitment to higher environmental standards than those of our trading partners.

Congress can no longer ignore the urgent need to address our nation's competitive position in the world marketplace. America's waning competitiveness has been an issue of importance to me not only as a member of the Senate Finance Committee but also as Chairman of the Senate Intelligence Committee. I am convinced that economic leadership in the world is vital to our national security. The bills I have worked most vigorously on behalf of this year all address the issue of American competitiveness, from the National Security Education Act to the Aid for Trade Act, as well as the International Pollution Deterrence Act.

The issue of competitiveness is inherent in this bill and these hearings today. Professor Michael Porter at the Harvard Business School noted in April in *Scientific American,* "The resurgence of concern for the environment should be viewed not with alarm but as an important step in regaining America's preeminence in environmental technology. Professor Porter goes on to state that, "The Environmental

Protection Agency must see its mandate as stimulating investment and innovation, not just setting limits."

One of the issues I would like to see addressed as a result of the discussions about this bill and other actions recently taken, such as Senator Bentsen and Senator Baucus' request to the Office of Technology Assessment to study our nation's position in selling pollution control equipment and services overseas, is the issue of what can be done to spur and develop American preeminence in the field of pollution control technology, equipment and services.

Another issue I would like to see receive more attention as a result of these hearings is the need to get the revived GATT working group on trade and the environment up and running. While I applaud the announcement made earlier this month that the working group would be revived, it concerns me that no meetings have yet occurred. It is my hope that this working group will be just that—a *working* group not just a political gesture.

I think the widespread support for the issues raised by this bill reflect the shared belief that everyone wants the United States to remain competitive in the world marketplace, while at the same time, we believe new environmental safeguards are necessary to assure the quality of life for future generations which we often take for granted. These two goals, increased international competitiveness for American manufacturers and increased environmental regulations, need not be mutually exclusive. But unless the United States acts to make environmental standards global rather than unilateral, neither goal will be reached.

Manufacturers in the United States have recognized and supported the need for environmental legislation, but they have also faced the harsh reality that such legislation can be costly and may place an American company at an extreme disadvantage in the world marketplace. With the bill that I introduced in April of this year, S. 984, "The International Pollution Deterrence Act of 1991," I am calling on Congress to recognize the unfair economic advantage many foreign manufacturers now enjoy as a result of their failure to enact and enforce adequate environmental and public health standards.

The apparent lack of meaningful pollution restraints outside our borders cannot be ignored by the United States, especially as we examine the possible consequences of new trading partnerships with less environmentally safe countries. If we fail or refuse to consider the environmental consequences of our trade policy, we can inadvertently create incentives to pollute which harms citizens of other countries and ultimately, ourselves. The International Pollution Deterrence Act of 1991 is designed to address this omission.

The International Pollution Deterrence Act makes a country's failure to impose and enforce meaningful pollution controls on its industries a countervailable domestic subsidy under U.S. law. It establishes an export fund to assist exports of U.S. pollution control equipment. The Act also requires the Administrator of the Environmental Protection Agency to compile and update, on a yearly basis, the level of pollution control in the areas of air, water, hazardous wastes and solid wastes attuned by our major trading partners.

A number of significant factors have created the need for this legislation. We have become painfully aware of the transborder nature of pollution. It not only affects the citizens of other countries who are being asked, in many instances, to sacrifice their health and that of their children to a one dimensional pursuit of economic growth—we have only to look as far as Eastern Europe to see the destructive consequences of such policies—but it also has a far more global impact.

Failure to enact adequate safeguards in one nation affects all nations. As we have become painfully aware, pollution problems such as acid rain and the potential problems of global warming know no national boundaries. The United States has acted and is continuing to act in a meaningful way to uphold our responsibilities to the world's environment and to international public health concerns. But our nation's businesses should not be outdone by foreign manufacturers as a result of American companies efforts to act in an environmentally responsible way.

The increasing globalization of the world economy has meant that strictly regulating pollution within our borders, while maintaining the largest and most open market in the world, can impair our competitiveness and provide unfair advantages to foreign competitors subject to less stringent or effective pollution control. Cheaper foreign goods carry a hidden price tag if they are produced free of meaningful environmental regulation. If we promote public health hazards in other countries by short-sighted policies, we benefit no one in the long run. We cannot afford to conduct our trade policy in an environmental vacuum.

It is unwise economic policy and unfair public policy for the United States to say to American companies that we need stronger environmental laws in the United

States so now we are going to make you pay more in your costs of production to meet these standards but we, as consumers, will turn elsewhere to purchase manufactured goods at the cheapest price even if that means turning our backs on our American companies and turning our backs on our environmental and public health standards.

The Environmental Protection Agency recently completed a study which indicates that U.S. expenditures on environmental protection have increased to approximately $100 billion per year, representing 1.5 to 1.7 percent of the U.S. gross national product and will rise to about 3 percent of GNP within ten years. And what Congress must recognize when we consider how our economic and trade policy should include consideration of environmental policy is that the environmental costs resulting from such legislation as the Clean Air Act are not paid for, by and large, by the government. According to the EPA report, in 1987 private businesses paid 63 percent of the pollution control bill, while the Federal government was only responsible for 11 percent of the total costs. Local governments are paying almost 23 percent of these costs and state governments are paying 3.5 percent. No other nation in the world spends a greater percentage of their GNP on environmental protection than the United States, according to recent studies.

Through GATT and other trade partnerships, the United States has worked diligently to uphold and enforce fair trading practices. Within the rules established by GATT and within the rules of international courts, there is a clear recognition of the legal ramifications when a government allows its industry to avoid the paying the costs of production, including the environmental and public health costs associated with the costs of production. A recent article in the Spring, 1988 *Houston Journal of International Law* substantiates:

> In order for the failure of a government to act to constitute a countervailable subsidy, there must first be an affirmative duty placed upon the government which it is failing to assume. In the case of industrial environmental controls, this duty has been affirmatively established in international law by agreements resulting from international conventions , by customary/normative principles, and by moral and social obligations. Violations of this minimum international environmental standard have occurred. As a result, industries in these counties have benefited at the expense of those industries in countries which have employed controls meeting the minimum standard. U.S. plaintiffs can demonstrate that, indeed, a "specific industry" has been benefited through a comparison of that industry with others, and benefited by showing that the industry, if it met minimum international environmental standards, would be required to expend substantial resources to comply. Thus, potential U.S. plaintiffs in affected industries are entitled to have a duty assessed against the offending industries equal to the competitive advantage obtained by failure to employ adequate environmental controls, not just the amount of expense foreborne by regulatory avoidance.

This bill recognizes tat a country's failure to require and enforce meaningful pollution controls constitutes a subsidy no different, but more dangerous, than practices such as cash grants to money losing state enterprises, which have long been actionable under U.S. law. By making such absence countervailable, we allow U.S. companies to level the playing field by removing the cost advantage derived from freedom to pollute. By using the proceeds from such cases to finance pollution control equipment from the United States to our poorer trading partners, we provide the poorer nations with major assistance in attaining meaningful pollution control while stimulating the U.S. export of pollution control equipment. Not only will we be addressing unfair trading practices, but we will also be taking the even more positive step of helping our trading partners establish adequate public health standards while simultaneously invigorating trade markets for environmental goods.

We can no longer stand idly by while some U.S. manufacturers, such as the U.S. carbon and steel alloy industry, spends as much as 250 percent more on environmental controls as a percentage of gross domestic product than do other countries. The steel industry has made a commitment to meeting new standards in controlling toxic air pollutants, among others, but these new standards are adding $15 per ton to the cost of steel. When you consider that price in the context of competitive pricing in the world steel market, you understand the clear disadvantage' American steel companies face when other nations avoid protecting public health. Anyone who has ever visited the steel plants in Taiwan, as just one example, is struck by the blackness of the air their workers breathe every day. Since these workers actually

live at the steel plant in Taiwan, they are breathing this dangerous air 24 hours a day for 365 days out of the year.

I see the unfair advantage enjoyed by nations exploiting the environment and public health for economic gain when I look at many industries important to my own state of Oklahoma, such as the costs paid disproportionately by U.S. steel companies, the oil and gas industry, auto part manufacturers and the chemical manufacturers, including pesticide and petrochemical companies. Chemical companies such as duPont/Conoco are spending as much as $2 billion a year to meet environmental regulations and these percentages are growing. A recent report on the costs of environmental action in the United States by the Center for Strategic and International Study concludes that these costs to the United States include adverse economic consequences with respect to industrial production, economic growth and investment, interest rates, international competitiveness, the U.S. balance of trade, and the federal deficit.

Unfortunately, as the costs of new pollution control regulations mount, the ability for American companies to devote capital to research and development of new pollution control technology declines. In 1988 for example, while real spending for regulation and monitoring for pollution abatement control increased by 8.4 percent, and overall costs for pollution control averaged a 3 percent increase, real spending for research and development increased 0.4 percent. If we in Congress are going to continue to look for ways to improve international environmental standards, we must also look for ways to help American companies finance the research and development of the technology that will enable us to reach those goals. In return, we will be working to place the United States in the forefront of this important and growing field.

In addition to money for research and development, revenues from this countervailing duty will go towards helping developing nations by equipping them with American pollution control equipment. We will help poorer nations which depend on manufacturing for economic advancement, such as Mexico, establish and enforce public health standards by helping them get the equipment they will need to raise their standards.

We cannot and should not finalize a Free Trade Agreement with Mexico until we have established a way to ensure that the people of Mexico will not be endangered by further environmental exploitation. The only way to ensure this is to send a clear signal to companies around the world that avoidance of public health responsibilities will not lead to economic gain and that American companies will not be penalized because they are meeting their environmental obligations.

I recently visited Mexico City and met with many officials. I was greatly impressed by the action taken by the Salinas government over the past few years to improve the economic and social conditions in Mexico. Enormous progress has been made, including in the area of the environment. But if we allow companies to take advantage of the still existing disparities between Mexico's environmental standards and those of the United States it will amount to nothing short of environmental colonialism.

As Chairman Bentsen noted at a Finance Committee hearing on the Mexico Free Trade Agreement earlier this year, living in Mexico City and breathing that air is the health equivalent of smoking two and a half packs of cigarettes a day. The most alarming statistic I have seen yet was in an article in April in a Mexican newspaper which reported that in 1989 alone over 95,000 children under the age of 5 died in Mexico City as a result of respiratory illnesses associated with the high level of pollution.

Not only does the United States has a responsibility in the Free Trade Agreement to protect Mexican workers from exploitation, but we also have a responsibility to the health of our own citizens. As I have said before, pollution does not stop at an imaginary border line. Articles in *The Wall Street Journal, The Journal of Commerce, The New York Times,* and in newspapers around the country have all documented, the United States is suffering as a direct consequence of companies which have located on the Mexican border to enjoy lower labor costs and lower environmental costs without paying tariffs into the United States. The maquiladora factories, according to *The New York Times,* have led to such public health emergencies in the United States as the Nogales Wash coming into Arizona from Mexico, which is bringing toxic industrial pollutants and untreated sewage into the Arizona water stream. A public health emergency was in force on the Arizona side for months because the incidence of hepatitis has climbed to 20 times the national average as a result of the Mexican pollution crisis.

Experience has shown that economic incentives are the best means of convincing our trading partners that we will not ignore dangerous and inadequately regulated

manufacturing policy in other parts of the world. This bill will strengthen efforts underway now in the United Nations and GATT to achieve consensus of world wide pollution controls. This bill will help to allay fears of the possible environmental consequences of a North American Free Trade Agreement. Most importantly, it takes steps to protect our citizens and industries and the health of citizens from our major trading partner nations now, before more damage is done at an increasing cost to the United States and to the world.

Attachments.

SUMMARY OF INTERNATIONAL POLLUTION DETERRENCE ACT OF 1991

SENATOR DAVID L. BOREN

COUNTERVAILING DUTIES

• Amends countervailing duty provisions of United States trade law to establish that the failure to impose and enforce effective pollution controls and environmental safeguards constitutes the bestowal of a subsidy and is subject to countervailing duty law.

• The countervailing duty (CVD) laws are designed to offset any unfair competitive advantage foreign producers may derive from subsidies bestowed upon them by a foreign government.

• The amount of the subsidy derived from the absence of effective pollution controls and environmental safeguards shall consist of the cost which would have to be incurred by the manufacturer or producer of the foreign articles of merchandise to comply with environmental standards imposed on U.S. producers of the same class or kind of merchandise.

POLLUTION CONTROL EQUIPMENT EXPORT FUND

• Fifty percent of revenue gained though countervailing duties assessed as a result of the Pollution Deterrence Act will be appropriated for the establishment of a "Pollution Control Equipment Export Fund." Monies from the fund will be distributed by the Agency for International Development (AID) to assist purchases of U.S. pollution control equipment by developing countries.

POLLUTION CONTROL RESEARCH & DEVELOPMENT FUND

• The other fifty percent of revenue gained through countervailing duties assessed as a result of the Act will be appropriated for the establishment of a "Pollution Control Research & Development Fund." Monies from the fund will be distributed by the Environmental Protection Agency (EPA) to provide assistance for U.S. companies in the research and development of pollution control technology and equipment.

• INTERNATIONAL POLLUTION CONTROL INDEX

• Requires EPA to prepare, within 120 days of enactment of the bill and yearly thereafter, a pollution control index for each of the fifty top U.S. trading partners, based on yearly exports to the United States. The index will measure each country's attainment of pollution control standards in the areas of air, water, hazardous waste and solid waste in comparison to U.S. standards in those same areas.

INTERNATIONAL POLLUTION DETERRENCE ACT OF 1991

Section 1. Short Title.

This act may be cited as the "International Pollution Deterrence Act of 1991."

Section 2. Findings.

The Congress finds that—

(1) global environmental pollution problems pose an increasing threat to the health and well-being of citizens of every country in the world;

(2) the United States has made protection and restoration of the environment a priority, and U.S. industry, municipalities, and states have all expended significant amounts of capital complying with existing pollution control laws and regulations and will be required to commit further significant amounts of capital to comply with the provisions of the Clean Air Act and future environmental legislation;

(3) the Environmental Protection Agency recently completed a study which indicates that U.S. expenditures on environmental protection have increased to

approximately $100 billion per year, representing 1.5-1.7 percent of the U.S. gross national product and will rise to about 3 percent of GNP within ten years;

(4) solely by its own efforts, however, the United States cannot halt the continuing and, in many cases, irreversible damage to the world's ecosystems caused by other countries' failure to shoulder their part of the burden of protecting the global environment;

(5) moreover, U.S. industry cannot reasonably be expected to incur increasing capital costs of compliance with environmental controls while its foreign competitors enjoy a substantial and widening competitive advantage as a result of remaining unfettered by pollution control obligations;

(6) the significant and serious competitive advantage enjoyed by our foreign competitors from cost savings derived from the absence of effective pollution controls results in cheaper foreign imports which capture U.S. market share and injure U.S. industries;

(7) the failure of a government to impose effective environmental controls on production and manufacturing facilities within its borders should be recognized for what it is—a significant and unfair subsidy which must be addressed now in order to halt irreversible damage to the world environment and provide real economic incentives to effective pollution control abroad.

Section 3. Countervailing Duties.

(a) 19 U.S.C. 1303 (a) is amended by inserting the following new sentences at the end of paragraph (1):

"The failure to impose and enforce effective pollution controls and environmental safeguards shall constitute the bestowal of a bounty or grant within the meaning of this section. The amount of the bounty or grant derived from the absence of effective pollution controls and environmental safeguards shall consist of the cost which would have to be incurred by the manufacturer or producer of the foreign articles or merchandise to comply with environmental standards imposed on U.S. producers of the same class or kind of merchandise."

(b) 19 U.S.C. 1677 (5) is amended by inserting the following new subsection (C) immediately after subsection (B):

"(C) The failure to impose and enforce effective pollution controls and environmental safeguards on the production or manufacture of any class or kind of merchandise. The amount of the subsidy derived from the absence of effective pollution controls and environmental safeguards shall consist of the cost which would have to be incurred by the manufacturer of producer of the foreign articles of merchandise to comply with environmental standards imposed on U.S. producers of the same class or kind of merchandise."

Section 4. Pollution Funds.

19 U.S.C. 1671e is amended by adding the following new paragraph (c) immediately following subsection (b):

"(c) COUNTERVAILING DUTIES ATTRIBUTABLE TO LACK OF EFFECTIVE POLLUTION CONTROLS. Fifty percent of the revenue attributable to any countervailing duties assessed pursuant to this section on foreign merchandise as a result of lack of effective pollution controls and environmental safeguards shall be appropriated to a "Pollution Control Export Fund" established by subsection (d) and administered by the Agency for International Development." Fifty percent of such revenue shall be appropriated to the "Pollution Control Research & Development Fund" established by subsection (e) and administered by the Environmental Protection Agency."

22 U.S.C. 2151p is amended by adding the following new subsection (d) immediately after subsection (c):

"(d) ASSISTANCE TO DEVELOPING COUNTRIES: The Administrator of the Agency for International Development shall establish a "Pollution Control Equipment Fund" to be administered under this section using revenues derived from countervailing duties attributable to lack of effective pollution controls imposed on imported goods as provided in 19 U.S.C. 1671e(c) and any funds appropriated from time to time by Congress. The Fund shall be used to assist purchases of U.S. pollution control equipment by developing countries."

Section 814 of the Clean Air Act Amendments of 1990 is amended by adding the following at the end thereof:

"The Administrator of the Environmental Protection Agency shall establish a "Pollution Control Research & Development Fund" using revenues derived from countervailing duties attributable to lack of effective pollution controls as provided in 19 U.S.C. 1671e(c) and any funds appropriated from time to time by Congress. The Fund shall be available to the Administrator, as he shall by regulation pre-

scribe, to provide assistance for U.S. companies in the research and development of pollution control technology and equipment."

Section 5. International Pollution Control Index.

Section 8002 of the Solid Waste Disposal Act (42 U.S.C. 6982) is amended by adding the following new subsections at the end thereof:

"(t) The Administrator shall prepare, within 120 days of the enactment of this section and yearly thereafter, a pollution control index for each of the top fifty countries identified by the Office of Trade and Investment of the Department of Commerce based on the value of exports to the U.S. from that country's attainment of pollution control standards in the areas of air, water, hazardous waste and solid waste as compared to the United States. The purpose of this index is to measure the level of compliance within each country with standards comparable to or greater than those in the United States. The Administrator shall analyze, in particular, the level of technology employed and actual costs incurred for pollution control in the major export sectors of each country in formulating the index."

Statement of Clifford S. Russell
Professor of Economics and of Public Policy
Vanderbilt University, Nashville

Over the past two years I have worked on two projects aimed at preparing comparative descriptions of specific environmental policies in Europe and in the United States. The first of these involved the design and use of surcharges tied to the strength of industrial wastewater discharged to sewers. The second was a study of monitoring and enforcement, especially of compliance with permits governing point sources of air and water pollution.

In the course of both projects I did the usual sort of library search for data and references in the university library here at Vanderbilt. In addition, I contacted friends and professional acquaintances in Europe. Indeed, by far my best source of information was a friend who is managing director of a major environmental consulting firm in London, a firm that does a substantial amount of work every year for the European Economic Community and some for organizations who want to know more about the details of EEC policy.

Given this potentially excellent--and certainly willing--source, it is particularly striking that the key summary table of the monitoring and enforcement paper (attached) displayed such pervasive ignorance of the details of the policy of European countries. (Monitoring and enforcement are not policy areas in which the community has much to say. The policies to be monitored and enforced may have a certain degree of European uniformity, but the details of making sure the desired things happen is very much in the hands of individual nations or subnational units such as the German Lander.)

A second attached table shows how a German national with similar interest to mine was able to flesh out my framework. In the process it illustrates what I believe to be one of two major problems facing U.S. scholars or agency people who want to understand the details of European environmental policy and achievement. That is simply the language problem. The person who provided these details also provided me with some supporting sources--all in German, not too surprisingly. The second problem that I suspect exists but cannot illustrate or, indeed, "prove", is the pervasive tradition of government secrecy in Europe. The openness of our system surprises Europeans, who are not used to their governments revealing much of anything willingly. (In England and Wales, for example, the regional Water Authorities, which before privatization were responsible for water supply and ambient water quality protection, managed to keep the performance of their own treatment plants secret for about a decade after this information was declared "open" by law.)

Taken together, these problems seem to imply that if the U.S. is serious about wanting to know what is going on in European environmental policy it will be necessary to organize country-by-country studies within each of which the language barrier has been breached through the inclusion of native (or at least very fluent) speakers.

	Frequency of Visits	Visits Surprise or Prearranged	Definition of Compliance	Penalty for Noncompliance
Water Pollution Control	Not available	Unclear	$0.2 \sum_{i=1}^{5} x_i \leq EL$ [a]	First Violation: $EL^{new} = EL + 0.5(x_i^{max} - EL)$ Consecutive Violations: $EL^{new} = x_i^{max}$
Air Pollution Control				
– Discontinuous Monitoring				
Inspections of Control Equipment	Once a year [b]	Surprise [b]	Unclear	Unclear
Metering of Emissions	Every 3 years	Prearranged	$x_i \leq EL$, $i \in \{1,2,3\}$	Unclear
– Continuous Monitoring	Once a year (Inspection of monitoring equipment)	Prearranged (Inspection of monitoring equipment)	· all daily averages within year $\leq$ EL · 97% of 1/2–hourly averages within year $\leq$ 1.2 EL · all 1/2–hourly averages within year $\leq$ 2.0 EL	Unclear

Notes: a) x_i = measured values, EL = emission limit. In case of effluent charge, EL provides the quantity base for determination of charge. EL's are usually instantaneous concentrations. Exeption: Annual volume flow of effluent.
b) Practice in the State of Northrhine–Westfalia.

Table 1: Summary information on the german monitoring and enforcement system

Nations	Probability of a Visit on Any Day	Visits Surprise or Prearranged	Definition of Violations	Penalties available
Belgium	0.008	Surprise	Not available	Criminal penalties available Fines: 500 BF; doubled for 2nd violation in 2 years Other: Equipment shutdown
France	0.008	Unclear	Not available	Fines: Unspecified limits Other: Operator suspension
Germany[a]	0.01–0.03[b]	Unclear	See Discussant's paper following	Criminal penalties available Fines: Up to 100,000 DM Other: Suspension of operation
Italy	0.003	Prearranged	Not available	Criminal penalties available Fines: Up to 2 million IL Other: Suspension of operation
Spain	0.003	Unclear	Not available	Fines: Up to 500,000 SP or up to 10 times damage Other: Facility closure
United Kingdom	0.01–0.03[b]	In past: mostly prearranged[b,c] in future: potential surprise[b]	In past: at discretion of inspector In future: rigid, numerical[b]	Criminal penalties available Fines: Unspecified limits Other: Expenses of mitigation and restoration
United States	0.002–0.008[d]	Roughly half of visits are announced[e]	Generally numerical, with over correction for measurement error	Criminal penalties available Fines: Up to $ 50,000 per day and administrative penalties (latter based on costs avoided) other : Expenses of mitigation and restoration in some cases

Table 2: Summary information on six national monitoring and enforcement systems
(Sources and notes of this table are listed on the next page)

PREPARED STATEMENT OF SCOTT BUSH

I am Scott Bush, Visiting Fellow, Environmental Affairs, with the Center for Strategic and International Studies, Washington, D.C. It's a distinct honor to appear before the Subcommittee today to address on of the most important emerging issues before the United States and the world community today --the relationship between trade and environmental issues. I would like to address some of the broader issues relating to these issues and discuss S. 984 in this context.

For those of you who don't know CSIS, we are a public policy research institute of almost 30 years standing whose mission is to advance the understanding of emerging world issues in the areas of international security, politics and economics. We attempt to do so by providing a strategic perspective to decisionmakers that is integrative in nature, comprehensive in scope, anticipatory in its timing and nonpartisan in its approach.

I do not represent CSIS here today, which as an institution takes no position on political or legislative issues. The views I will share with you today are my own, based upon my thinking and work over the past three years I've been with CSIS, my work with the Environmental Protection Agency, and as an observer of international issues, and professionally as a Foreign Service Officer with the State Department and as an official with the Department of Energy.

As Associate Administrator for Policy in the Federal Energy Administration in the mid-1970s and latter Assistant Administrator for Regulatory Policy in the Economic Regulatory Administration of the Department of Energy, I dealt with a variety of legislative and programmatic initiatives concerning crude oil, petroleum products, natural gas, coals and energy conservation measures. I spend much effort dealing with the international competitive implications of our energy policies from the mid-1970s to the early 1980s. Prior to that time I worked with the Cost of Living Council, which implemented wage and prices control program in the early 1970s, which many of you may remember was brought about by international economic pressure. Prior to coming to CSIS I was the Director of Policy and Analysis in EPA's surface water program, where I had the opportunity to dealt with a variety of economic and policy issues as they relate to protecting our nation's water resources.

I came to CSIS in early 1989 because I was convinced that environmental issues are primarily of international concern and that all too often we lose sight to the global environmental "forest" for the more immediate issues of environmental concern (the "trees"). The truly revolutionary events we've seen over the past 2 years -- the break-up of the Soviet Empire and the general acceptance that democracy and market approaches to economic issues are the most effective way to meet the needs of the world community -- have only reinforced my view that international environmental issues are becoming an important aspect of our national security. Historically, we have defined our national security in military, political, and economic contexts. It is becoming increasingly clear that Environmental issues impact our national security since they can directly affect the economic and the political stability of the world community.

Over the last few years we in CSIS have been following the debate on global climate change, one of the major emerging environmental issues which could have significant economic, competitive and environmental implications for the United States and the global community. Earlier this year we issued a collaborative study, "The Economic Effect of Alternative Climate Change Policies," which modeled the economic and emissions effects of two distinct climate control scenarios made up of policy options suggested by congressional bills and policy studies.

Although the economic analysis was limited to domestic policy options, the study acknowledges the importance of ongoing international attempts to reach agreement on climate change policy and addresses the political and economic implications of implementing domestic policies prior to any international agreement. We found that a comprehensive response strategy could be a costly undertaking, running as high as $55

billion annually, and that significant emissions reductions would be difficult to achieve. The study was designed to assist policymakers in drawing conclusions betwen the potential long-term economic and environemtnal risks posed by climate change and the near-term economic implications of policy actions. Some of the approaches suggested at this hearing have potential application to Global Climate Change policy, which I will address later in my testimony.

I commend the committee for holding these hearings at this time, for their has been much talk -- and often much confusion -- about the relationship between trade and environmental issues. I hope these hearings will serve to focus on the elements of a more constructive dialogue on these issues. In my view, environmental policy unfortunately has become an unnecessarily contentious issue in our society, often reflected in the debates within Congress and between Congress and executive branch. The link between trade and environment issues is being studied by the Trade and Environment Committee of EPA's National Advisory Council for Environmental Policy and Technology. It is looking at the trade/environmental relationship in the context of the Western Hemisphere (the North American Free Trade Agreement), the GATT and the OECD. Moreover, it is likely that trade issues will be discussed at the United Nations Conference on the Environment and Development (UNCED) in Brazil next June as it attempts to better define a global environmental agenda for the remainder of this Century.

Let me be frank at the outset: I believe that a free and open international trading system not only is essential for the economic well-being of the United States, but also to the well-being of the global environment. Over the past 10 years, our exports have grown from $220 billion to almost $400 billion per year. Exports currently represent between 12 and 13 percent of our Gross National Product (GNP), having almost doubled from 7 percent 20 years ago. Thus, an expanding international trade sector is an essential component of our economic well being.

Protection of the global environment comes from an awareness by societies that such protection is based on both practical as well as an ethical considerations. Environmental awareness is directly related to the wealth that societies attain, which provides them the education and resources to deal effectively with environmental concerns. It does not entirely come from regulations (although they are part of the answer), as we can observe looking at the environmental degradation in the Soviet Union and Eastern Europe. One only has to travel in the poorer countries of the globe to know that environmental problems are directly related to the wealth of a society.

Thus, we as a developed nation have a moral as well as a practical obligation to assist developing countries to develop economically so that they may better address their economic development and environmental needs. We must take particular care not to unwittingly restrict international trade and cut-off the flow of capital needed for their long term sustainable development.

I've been asked to comment on S.984, the International Pollution Deterrence Act, under which goods produced abroad under environmental standards less strict than those here would be subject to a countervailing duty equal to the cost not so incurred. The proceeds of any such duty would be used to finance the sale of American pollution control equipment (administered by AID) and the Pollution Control Research and Development Fund (administered by EPA) to assist US firms in developing pollution control technologies. It also would require EPA to prepare and update yearly an pollution control index for our top 50 trading partners, comparing their attainment of air, water and solid waste pollution control standards with our own.

I believe that the concept provides an innovative approach to deal with environmental issues, which in my view is more effective than the "command and control" regulatory approaches often put forward. It is an approach which would use a market forces to help achieve environmental goals. It is much more effective that the outright bans, quotas and other trade restricting efforts which are prevalent in the world today and which are being considered in the environmental area.

However, if not handled carefully this approach has the potential for causing increased conflict in the international trade arena as nations and firms might attempt to use environmental concerns to gain a competitive advantage. Therefore, I would like to address the international context and some of the concepts involved in such a "countervailing duty approach" and how they might impact S. 984.

Relationship to the GATT and OECD Processes

The General Agreement on Tariffs and Trade (GATT) has decided to activate the Working Group on the Environment, which has as never met. In addition, I understand that the OECD has asked each member nation to identify the most important instances where trade polices have resulted in distortions in environmental area. From this list it will then select the 4-6 most important issues; both the OECD staff and member states will prepare analyses which will be discussed at the OECD ministerial meeting next spring. It is likely that the results of this process will feed into both the GATT working group on the environment and the UNCED process.

While it is expected that many of the issues studied will involve trade distorting direct subsidies which have long term negative environmental consequences, others may involve harmonization of standards, internalization of environmental costs, North - South issues, and indirect subsidies or economic advantages due to differing environmental standards which are the subject of today's hearing. I suggest that the Committee should keep abreast of these process and may wish to suggest to the Administration that consideration be given the type of indirect economic advantages which might arise from inadequate environmental laws.

Moreover, I think that it is important to the international trading system that we will be able to complete the current Uruguay round of negotiations before we enter into the more complex issue of the relationship of trade and the environment, including the issue of how differing national levels of environmental protection may distort trade flows. Hopefully, the OECD and GATT processes will be very helpful in discussing the most important examples and enunciating the principles which might apply in addressing resulting trade distortions in a way that would not negatively impact trade flows. I would hope that this committee and the Congress would work closely with the Administration in defining the most important trade and environmental linkages and not take any unilateral action which might result in increased tensions to the international trading system.

Difficulty in Identifying Subsidies Resulting form Differing Environmental Standards.

The linkages between environmental standards to potential competitive advantage are very complicated and not clear cut. Environment standards are one of many factors that affect competition. Other include the cost of capital and labor, differing levels of technology and productivity, etc. Under the current GATT rules and procedures it is extremely difficult, time consuming and expensive procedure to prove a competitive advantage derived from direct subsidies or "dumping." To do so for more indirect impact of environmental expenses not incurred would be even more difficult, and if not handled carefully, could result in a field day for lawyers, economists and accountants, and result in much confusion and unnecessary conflict.

I do not have the expertise to answer these questions, but I do believe that we should have a better understanding of the extent of the problem before we take engage in unilateral action. What I suggest might be useful is to identify possible examples, drawing upon the OECD and GATT studies, as well as experience industries and individual firms may have in this country and abroad. I think we should attempt to establish a process to identify the most important direct environmental costs particular industries in this country incur which are not incurred by competitors overseas. This would give us a better understanding of the nature and extent of the problem, its relationship to the international trading system, and what we might do about in a

multilateral context. It is important that environmentalists, industry and the government (Congress and the Executive) should participate in such an endeavor.

A Threshold Level Before Any Countervailing Duty May Apply

In order to protect against frivolous and non-substantive claims of unwarranted subsidies due to differing environmental standards, I suggest that careful consideration to given to a threshold or de minimis level which would have to be exceeded before any countervailing duty might be assessed or perhaps before any process could be initiated. This would serve to preclude the process being potentially used to assert non-substantive claims and possibly being used as a trade protection measure in this country (or inadvertently result in retaliatory measures in other countries).

Relationship to the Global Climate Framework Convention.

It is likely that an Framework Convention on Global Climate Change will be signed next June at the Brazil UNCED meeting. While it is unclear whether the convention will contain so-called "targets and timetables" for reducing greenhouses gases, one of the main mitigation policies being discussed and analyzed internationally is a carbon tax which would be assessed on fossil fuels. It would provide an incentive too use less polluting carbon emitting fossil fuels and non-carbon dioxide producing alternative fuels, induce energy conservation, and possibly provide a source of funds to help developing countries develop in an environmentally acceptable manner ("sustainable development"). The staff of the European Community is proposing a carbon tax of about $75 per ton ($10 a barrel of oil) to be phased in over a 10 year period, which would a significant impact on the cost of production in some industries if not offset by lowering other taxes.

One of the major difficulties of such an approach is that if not adopted by all nations of the world, depending on the level of the tax, it could result in fuel intensive industries moving off-shore to take advantage of lower energy costs, with no resulting decrease of global carbon dioxide emissions and perhaps more global pollution because of lax environmental controls elsewhere. One way to address these potential trade and environmental distortions of such a tax would be to assess a countervailing duty on imported products which have a high energy content equal to the amount of the carbon tax which a nation chooses not to assess.

This is a relatively straight forward example of how a countervailing duty might work, one much less complicated than that envisaged in the bill. I would suggest that such approach should be discussed both in the International Negotiating Committee drafting the framework convention, as well as the GATT. However, I would point out that if the EC were to implement a significant carbon tax without reducing other taxes on energy intensive industries, US exports to them might be subject to such a tax on exports to the EC. I give this as an example of the difficult nature of the concepts we are dealing with here and that US firms might not necessarily benefit, depending on the levels of environmental protection (and policies designed to achieve those goals) adopted by individual nations.

Use of Countervailing Duties

I believe that the concept of "recycling" the proceeds of such duties to developing nations by providing American pollution control equipment or providing funds for pollution control R&D makes good practical as well as good political sense. However, I would suggest an alternative which may be more politically palatable to those nations whose exporting firms could be subject to such duties. Specifically, duties could be phased in to allow time for changes in environmental laws and/or to allow adequate time to make needed pollution control investments, or alternatively proceeds could be put in escrow for the purpose of purchasing US technology to assist importing firms to make these changes. This would serve to more directly provide a solution to the environmental problem(s) which resulted in the duty, while addressing the argument that any such duty is mainly of a protectionist nature.

Pollution Control Index

There is no doubt that a pollution control index or some measure that would give us a better understanding of the relative degree of protection nations give to protecting the environment. And to my knowledge no such comparison exists. I understand that the Office of Technology Assessment is undertaking an 18 month study relating to the competitive implications of trade and environmental policies. And the International Finance Corporation of the World Bank is also studying the impact of environmental regulations on competitiveness. However, this is a very difficult issue to grab hold of, due to the lack of data (particularly outside of the OECD countries), the scientific uncertainties in making such comparisons (such as the degree of risk involved), and most important, an agreed upon methodology for making such comparisons. For example, how much emphasis should be placed on protecting human health versus protecting the ecological and natural resource base of a nation.

Given the uncertain state of the art in this area, rather than the preparation of an index per se, I think that an effort to draw together information from currently available studies would give us a better understanding of how to proceed. This should not be the exclusive purview of EPA, but should involve a broader range of government agencies and non-governmental organizations, perhaps headed by the National Academy of Sciences. I will defer to the specialists in this field, but I venture to suggest that at least among the developed nations the United States may not have the most stringent environmental standards in all areas, which leads me to my last point.

The International Trading Environment

We must be very careful that anything we do in this area may not be turned against us by other nations who are looking for reasons protect their own industries and export markets. There are no agreed upon standards for such a process and no dispute resolution mechanism -- which reflects the fact that many countries do not think that there is a problem of a significant enough of a nature than warrants such a mechanism. This leads me back to my first point: we need a better understanding of the nature of the problem before we take action, and we need a multilateral approach to establish principles, adequate rules and procedures so that differing environmental standards are not used for protectionist purposes.

Thank you for the opportunity to share my thoughts with you. Again, I commend you for holding these hearings and I will be glad to answer any questions which you might wish to pose.

PREPARED STATEMENT OF LYNN GREENWALT

My name is Lynn Greenwalt, and I am the Vice President for International Affairs at the National Wildlife Federation. The Federation is the nation's largest conservation-education organization with over 5.3 million members and supporters.

I would like to thank Chairman Baucus and the Senate Finance Subcommittee on International Trade for providing the opportunity to testify today regarding environmental issues related to international trade agreements.

At the outset, let me add that the Federation approaches the issue of trade and environment concerns from the position that trade is not all good, nor is it all bad. What is critical are the ends to which trade negotiations are directed. If trade negotiations are undertaken in the pursuit of sustainable development, then these negotiations deserve our support.

If, on the other hand, trade negotiations are pursued without any understanding or meaningful concern as to their social and environmental impact, they will inhibit sustainable development, and we cannot be expected to support them. In fact, many of our colleagues in the developing countries are quite skeptical that current negotiations to liberalize trade can be undertaken with social and environmental concerns in mind. All too often, previous negotiations have occurred without regard for social and environmental concerns and done nothing more than perpetuate the cycle of underdevelopment and natural resource degradation in these countries.

Obviously that is a situation we would all like to avoid, and we can do so by urging negotiators to pursue *responsible* trade, where environmental and social concerns, and values, are considered integral to, rather than apart from, trade negotiations. These agreements will be the key to our success, or signal our failure, to deal effectively with the world's environmental concerns and the need for sustainable development.

INTRODUCTION

The North American Free Trade Agreement (NAFTA) negotiations represent the first time in history that environmental issues are being formally included in international trade policy discussions. While this is a step in the right direction it still remains to be seen whether the final product will be a trade agreement that promotes rather than inhibits sustainable development.

The majority of my testimony will discuss the progress of the Bush Administration to integrate environmental concerns into the NAFTA. I will give particular attention to the recently released environmental review of the proposed agreement and discuss the necessary role of Congress in articulating to the Administration specific expectations for the agreement, and of monitoring negotiations carefully.

We must also keep our eyes on the current Uruguay round of the General Agreement on Tariffs and Trade (GATT). The recent tuna-dolphin case highlights the failure of GATT to account for environmental values and has sparked a movement toward GATT reform. It is critical that *something* happen within the Uruguay round to ensure that the important issues associated with the link between trade and the environment are not put off until the next round of the GATT. In the second section of my testimony I will discuss the specific proposal of an environmental code put forth by Chairman Baucus and the general need for action within the GATT.

I. THE INTEGRATION OF ENVIRONMENTAL CONCERNS INTO THE NAFTA

A. An evaluation of the Bush Administration's efforts so far

The Bush Administration is about to enter into the next phase of NAFTA Negotiations with Canada and Mexico. Up until now discussions have been focused on logistics such as the number of negotiating groups and their terms of reference. At the minister's meeting this coming weekend in Zacatecas, Mexico, however, Ambassador Hills and her Mexican and Canadian counterparts will begin to address specific negotiating objectives and set down a framework for discussions that will guide the negotiations through the rest of the year. It is a good time, therefore, to evaluate the efforts, to date, of the Administration to fulfill their commitments to consider the environment in the NAFTA, and lay down some specific expectations for the next phase of the negotiations.

The Federation's decision to endorse fast-track was predicated on a belief that the Administration had made some meaningful commitments to deal with environmental issues related to the NAFTA in their May 1, 1991, action plan. These commitments were further clarified in a May 17, 1991, letter from EPA Administrator Reilly to Senator Tim Wirth.

One of the most important commitments made by the Administration was "to complete a review of U.S.-Mexico environmental issues, with a particular emphasis on possible environmental effects of the NAFTA. " The first draft of that report was released on Thursday, October 17, 1991.

The document is positive in some respects, but, in its present form, lacks the breadth and specificity necessary to chart the course for negotiators on trade-related environmental issues. In some areas, such as the discussion of standards, the review suggests that the U.S. might be adopting a negotiating position more to our liking. In other areas, such as investment, it appears that the Administration may be ignoring our major concerns. However, it is important to realize that this is a draft plan, and a final review will not be issued until December 31, 1991.

I have attached a more thorough critique of the review to my testimony, but suffice it to say that before the final review comes out Congress should urge the Administration to expand the scope of their environmental concerns, particularly with regard to investment, and provide more specific instructions to negotiators.

The Border Environmental Plan proposed by EPA, and its Mexican counterpart, SFDUE, has come under a great deal of criticism from groups situated near the border. Their criticisms center on the institutional and funding issues left unaddressed by the plan, and the fact that even into the future there is still a wealth of planning, and a dearth of action, suggested by the document. We share the concerns expressed by our colleagues along the border, particular with the failure of linkage between the Border Plan and the NAFTA itself.

Another of the Administration's commitments is to maintain U.S. environmental standards, at national and subnational levels, through the negotiating process. To date, we have no reason, to believe this commitment will not be honored in NAFTA negotiations. However, the response of the U.S. government to the recent GATT ruling on the tuna-dolphin dispute will speak volumes as to how they intend to deal with differential standards throughout the course of NAFTA negotiations.

It is heartening to note that the U.S. successfully urged the Mexican government to remove this issue from the October 8 meeting of the GATT contracting parties. At the same time, the ruling still stands and can be resuscitated at any future convocation of the contracting parties. One would hope that the U.S. would assure the NAFTA is crafted to avoid the kind of illogic evidenced in the tuna-dolphin ruling. Any move by the U.S. to amend U.S. legislation to conform with the GATT ruling should be viewed as a signal that the Administration is moving in the opposite direction, both in terms of GATT and the NAFTA.

Our most basic concern, a generic concern, is whether the Administration will regard trade as having an environmental dimension and, thus, be integrated into the negotiations, or as issues apart from trade, meant to be dealt with in separate agreements which may not be integrated into the final trade accord. The question was never really resolved during the May debate on fast-track. Some in the Administration felt that environmental concerns should be dealt with in a parallel fashion, with no linkage to what is occurring in the ongoing NAFTA negotiations, with the exception of some unavoidable issues, such as those relating to standards. Others seemed to understand that a commitment to deal with environmental issues related to trade meant dealing with them in the actual negotiations.

Our position is that separate but equal treatment of environmental issues will not result in a successfully negotiated trade agreement. We hope that the Administration will move toward adoption of an integrated approach, and look forward to seeing this reflected in the environmental review and the minister's meeting Zacatecas, Mexico.

B. Checklist for a successful NAFTA

Having discussed the Administration's efforts so far to integrate environmental concerns into the NAFTA, we must now consider what the final NAFTA should look like in terms of the environment so that we can begin to articulate our specific expectations to the Administration early on in the negotiating process. The checklist that follows may be of some assistance in this endeavor. It highlights some of the ways in which we believe negotiators should address environmental issues in the NAFTA.

Today's hearing should advance the process of outlining for negotiators the specific results within these areas that we, and Congress, should expect from the NAFTA negotiations.

As the negotiations proceed, this checklist will need to be refined and, in some cases, enlarged. However, for the purpose of framing today's discussion, we argue that the following items are essential to a successful agreement:

Investment

It is possible that economic growth created in Mexico by the NAFTA will provide that country the resources to deal more effectively with their environmental problems, but this is not guaranteed. The NAFTA should include a mechanism to recapture some of the benefits of free trade investment for the environment. One proposal, currently being developed by the Environmental Defense Fund's Texas office, would direct a portion of existing duties on border trade to environmental protection and impact prevention measures. Other compensatory financing mechanisms, as simple as requiring a given percentage of new investment to be set aside for environmental protection and infrastructure development, are available.

In addition to compensatory financing for environmental protection, it is also important to negotiate environmental criteria that apply to trade-induced investment. Examples of such criteria include enhanced quality and public availability of environmental impact assessments for new investment projects, and a requirement for companies to disclose to governmental authorities, workers, consumers, and members of 'the community information about the properties and production processes of chemical substances and their comparative risks. Investors wishing to situate facilities in Mexico should agree to minimize the amount and toxicity of hazardous materials used in production processes and discarded as waste and, finally, investors should be required to install and demonstrate their use of the "best available" technology.

Standards

It is a given that some of the most important environmental issues will be resolved as part of the negotiations on standards. Negotiators should ensure that language in the agreement guarantees the right of local, state or national governments to maintain the highest environmental or consumer protection laws they deem appropriate. The right of each to pursue a progressive regulatory program should also be guaranteed in the final language of the agreement.

The recent GATT ruling on the tuna-dolphin dispute suggests that global commons issues also will have to be discussed as part of the NAFTA negotiations on standards. Explicit recognition of the legitimacy of *bona fide* measures to protect the global commons should be accomplished by including in the NAFTA an improved version of GATT Articles XX(b) and XX(g).

Enforcement

The NAFTA must incorporate strong enforcement mechanisms to ensure that trace-related environmental agreements are adhered to. This is accepted as common practice in trade measures dealing with allowable and prohibited trade subsidies, and serves as the rationale for the establishment of countervailing duties in certain areas and under certain circumstances. If, as we expect, the contracting parties agree to environmental provisions included in the NAFTA, it would be foolhardy to ignore the need for effective enforcement measures.

Thus, the NAFTA should produce a set of allowable trade sanctions that can be employed in the event that certain trade-related environmental agreements are not carried out effectively. Proper enforcement may also require the creation of a new institution charged solely with monitoring the fulfillment of environmental provisions in the agreement.

Border Environmental Plan linkage

The NAFTA will promote throughout Mexico the kind of liberalized trade and investment that has occurred on the border. It is critical, therefore, that the provisions identified in the border environmental plan as necessary for the protection of the environment be linked to the trade agreement.

This can happen in a variety of ways. First, the Border Environmental Plan (BEP) called for by the U.S. and Mexico must include mechanisms by which its effectiveness can be clearly demonstrated to Congress prior to Congressional approval of the NAFTA.

Second, provisions within the BEP which address industrialization, resource depletion and other environmental impacts, and which are applicable to the interior of Mexico and/or the U.S., should be integrated into the NAFTA.

Finally, if the NAFTA works as planned, it will result in an accelerated pace of economic activity between the U.S. and Mexico. It is both practical and appropriate, therefore, to tax a portion of this activity to help pay for actions envisioned by the BEP. At the very least, funding of what are intended to be measures to mitigate the environmental damage associated with free trade activity along the border should be discussed in the NAFTA negotiations themselves.

Dispute resolution

The NAFTA will undoubtedly contain language on dispute resolution, and, keeping in mind the recent GATT ruling on the tuna-dolphin issue, we urge Congress 'to assure that dispute resolution mechanisms promote rather than inhibit environmental protection. This can be accomplished best by assuring some form of intervention by citizens, non-governmental organizations, and members of Congress in dispute resolution proceedings. Dispute resolution panels should also include environmental experts where environmental and conservation measures are being challenged. (It should be noted here that the Administration addressed these two issues in their environmental review.)

In addition, the NAFTA should guarantee and establish mechanisms for full and open disclosure of dispute panel rulings and proceedings. As noted above with regard to standards, dispute resolution should be based on the principle that national, state and local governments retain the right to set the highest possible *bona fide* environmental standards they deem appropriate. Rules established for dispute resolution should also guarantee that trade provisions will not compromise or preempt this country's international treaty obligations for protection of the global environment. Finally, the rules should place the burden of proof on those challenging a particular environmental measure, rather than vice-versa.

Energy

In an effort to prevent the NAFTA from undermining the formulation of an effective energy policy here at home, we expect any discussions of increased fossil fuel extraction to be accompanied by discussions of energy conservation measures. Further, any discussion that results in greater exploration and production within Mexico should be accompanied by an environmental impact statement available to the Mexican public, and to our own EPA.

Democratizing the process

The process by which trade agreements are negotiated and administered must be opened to greater public participation. The Administration, to its credit, has consulted with Congress and non governmental organizations more than ever before on environmental matters, and also provided for public comment on the NAFTA, including the environmental concerns related to the agreement, in a series of public hearings. It is critical, however, that these and other efforts to "open up the process," be institutionalized during the actual negotiations, and be required also of the countries with whom we wish to enter into this trade agreement.

II. THE ENVIRONMENTAL CODE

The NAFTA has been a forum in which to deal with the link between trade and the environment. Given the Administration's specific May 1, 1991 commitments with respect to the environment, it has been fairly easy to monitor progress in, and articulate expectations for, the agreement. The GATT is much more complicated, and yet the recent tuna-dolphin ruling exhibited the inability of the GATT, in its present form, to deal effectively with environmental concerns. It is appropriate, then, to discuss Senator Baucus's proposal for an environmental code within GATT as a way to advance the thinking 'in this important area.

We would like to begin by congratulating the Chairman for developing a new approach to this issue. Clearly, the problem that his proposal is designed to address is an important one, and we applaud the Senator's statement that, " . . . it is time to add environmental protection to the growing list of issues to be addressed in trade negotiations." Indeed, the hallmark of trade policy in the 1990's is that it embraces an increasingly wide range of issues, such as trade related investment measures, intellectual property law changes,, and services. As Senator Baucus indicated in his floor statement on the environmental code, environmental protection is "only the latest stage in a natural progression."

In more specific terms, the environmental code proposal, as we understand it, attacks one of the underlying causes of environmental degradation, and that is the failure of current economic systems to foster the internalization of the costs of environmental degradation. Trade theory suggests that liberalized trade will result in a more efficient allocation of resources, but in practice this process rarely works as planned. Trade distortions and market imperfections are more likely characteristics of the international trading system than the efficient allocation of resources envisioned by trade theorists.

Governmental subsidies, which reward and encourage economic practices that run counter to an efficient allocation of natural resources, are a prime example of how market imperfections and trade distortions are created. The particular concern of

environmentalists is that many of these subsidies promote environmental degradation. Within trade circles, the concern is that these subsidies bestow a competitive trade advantage on those receiving the subsidies.

The Baucus proposal for an environmental code, based on the GATT subsidies code, addresses both concerns, and should be developed further. There are, however, two issues related to the proposal that we would like to note at this time.

The first is our concern that the proposal is almost entirely punitive in nature. Its emphasis is on trade sanctions as the incentive for countries to meet and enforce higher environmental standards, and eliminate subsidies that promote environmental degradation. In reality, those provisions will present a disproportionate burden on developing countries where financial and technical constraints are often, though not always, important factors in determining the adoption and enforcement of higher environmental standards. In keeping with GATT provisions providing for special attention to the needs of developing countries, we would like to see provisions added to the Baucus proposal that would address the financial and technical constraints preventing developing countries from adopting higher environmental standards.

Second, for the Baucus proposal to be effective it must be integrated into the nascent movement toward environmental reform of the GATT. On one hand, deliberations underway at the Organization of Economic Cooperation and Development (OECD) and the reconvening 0f the GATT Working Group on Environment suggest that environmental reform of the GATT, which could include a proposal along the lines proposed by Senator Baucus, is possible. Unfortunately, it now appears likely that the Uruguay Round of GATT will be concluded in the very near future and, if there is no explicit mention of the need for environmental reform of that institution, environmental changes will most likely await the convening of the next round of GATT negotiations which, given the difficulty of the Uruguay Round, could be years away.

In order for due consideration of proposals such as that raised by Senator Baucus regarding the environmental code, and to assure that the work of the OECD and the GATT Working Group on Trade and Environment are not shunted aside until the next round of GATT negotiations, we urge the Congress, as one of its conditions for approval of the Uruguay Round implementing legislation, to insist on an explicit agreement of the contracting parties to a work plan on dealing with environmental reform. This should be a part of the Uruguay Round. The agreement should establish the terms of reference for environmental reform of the GATT, it should establish timetables by which this work will be accomplished, and it should outline the participation of other United Nations agencies, such as the U.N. Conference on Trade and Development (UNCTAD), and the U.N. Environment Programme (UNEP). Finally, public participation in the deliberations surrounding GATT reform should be guaranteed.

Without this type of explicit acknowledgement in the Uruguay Round that environmental reform cannot await the next round of GATT negotiations, proposals such as that put forth by Senator Baucus will not receive the attention they merit.

Thank you again, Mr. Chairman, for the opportunity to be here today. I would be happy to answer any questions at this time.

Attachment.

NATIONAL WILDLIFE FEDERATION

INITIAL RESPONSE TO THE DRAFT ENVIRONMENTAL REVIEW, OCTOBER 23, 1991

Contact: Ted Stimpson, Trade and Environment Specialist (797-6603); Stewart Hudson, Legislative Representative (797-6602); National Wildlife Federation

As part of its May 1, 1991 Action Plan, the Administration promised "to complete a review of U.S. Mexico environmental issues, with a particular emphasis on possible environmental effects of the NAFTA." The first draft of that report was released on Thursday October 17, 1991.

The review sheds new light on the Administration's true intentions with respect to NAFTA-related environmental concerns. The following are some initial observations about the scope and effectiveness of this review.

Scope—The basic message of the review seems to be that the NAFTA will encourage investment in areas other than the border with the U.S. and in that regard will minimize the environmental impact of economic activities in that area. Unfortunately, what the report does not go into in any detail is what the environmental impact of investment in other areas of Mexico will be. The suggestion is that the

environmental impact of investment in other areas of Mexico, outside of Mexico City and the border, will be better absorbed. Yet, the review does not demonstrate the reality of this assertion, and certainly fails to identify the measures necessary to insure that the environmental impact of economic activities in this decentralized fashion can be mitigated.

Alternatives—The review does discuss alternatives, and the "no-go" option of not having a trade agreement. They have made a creative use of analyzing the no-go option, and suggest that the environment of Mexico would be *worse off* if the trade agreement is not adopted. Without going into the details of that, it is our impression that the range of alternatives proposed in the review should be expanded, and particularly in relation to investment.

Investment—Most of what the review has to say about investment revolves around the claim that investment will flow to Mexico to take advantage of Mexico's less restrictive environmental standards. This is an important item to be discussed, but it fails to address a more important issue revolving around investment, and this relates to measures that might be taken to ameliorate the environmental impact of investment that flows to Mexico *for whatever reason.* In this regard, the recommendations made to negotiators in the area of investment do not include suggestions for compensatory financing to build infrastructure, nor do they include the suggestion that environmental criteria related to investment should be negotiated.

Dispute resolution—The Administration is moving in the right direction on dispute resolution, as the review asks for environmental experts to be added to dispute resolution panels, they envision the filing of amicus briefs, and expand the requisite connection to "sound science" to also include a societal definitions of allowable risk. At the same time, we still take issue with the burden of proof in environmental and trade disputes being placed on the defender of standards, and not on the challenger.

Water—The emphasis on water is on water quality, and leads to suggestions for greater treatment of wastewater. There is an understanding that water quantity is also important, and there are even sections in the review that touch on the impact on wildlife of depleted water sources. Nevertheless, we would like to see more attention paid to the issue of water use on both sides of the border.

Border inspection—Beyond assuring that tainted products will not be allowed in our borders, the review glosses over the impact of increased burdens placed on monitoring products passing over the border. Greater attention should be placed on how to accommodate the surge in products flowing across the border.

Energy—The review contains some provocative ideas about the relationship of energy issues to the trade agreement, and makes the argument that increased trade in natural gas and electricity will lead Mexican production *in the border* away from a reliance on more damaging fossil fuels.

Instructions to negotiators—The review should be used to chart the course for U.S. negotiators on trade-related environmental issues. The instructions given to negotiators based on the information contained in the review are vague and non-specific in nature. The review should not only identify the negotiating group that will be dealing with a specific environmental issue but it should give specific examples of how they might accomplish a given objective. This is especially true in the area of investment.

Mexican and Canadian reviews—Congress should insist that as a condition of the NAFTA negotiations both Canada and Mexico complete a study of the environmental effects of the NAFTA *with meaningful public participation in its development and comment period.* Despite the assertions by the Bush Administration that these studies are in progress a member of the National Wildlife Federation staff is presently in Mexico City, meeting with Mexican environmental groups, and reports that no one knows anything about the Mexican environmental review.

CONCLUSION

We believe that the environmental study is a mixed bag. In some areas, such as the discussion of standards, the review suggests that the U.S. might be adopting a negotiating position more to our liking. In other areas, such as investment, it appears that the Administration may be ignoring our major concerns. What is critical is to realize that this is a draft plan, and a final review will be issued by December 31, 1991. Congress should urge the Administration to expand the scope of their environmental concerns, particularly with regard to investment, and develop more specific goals for U.S. negotiators. We expect to see this new approach reflected in the Zacatecas ministers meeting and all other meetings occurring prior to the release of the final environmental review. Moreover, we would expect to see the Mexican government's review reflect a similar concern for environmental issues, and we urge the Mexican government to more fully involve their own citizens in this process.

(The National Wildlife Federation will be preparing more specific comments on the review to the United States Trade Representatives office (USTR) by the end of November.)

PREPARED STATEMENT OF JAMES E. HERMESDORF

My name is James E. Hermesort. I have been employed by Teepak, Inc. for 26 years beginning in 1966 as a field sales representative and holding positions of increasing responsibility in marketing, operations and general management throughout my career. I served as the General Manager of our European operations for two years while residing in Holland and Belgium from 1976 to 1978. I was named President and Chief Operating Officer of Teepak in February of 1987.

Teepak is a fully integrated manufacturer and distributor of edible and inedible synthetic casings and packaging used in the manufacture and distribution of meat, poultry, fish and cheese. Our company employs approximately 2,100 people worldwide and has two major plants in the United States and one in Belgium representing 926,000 square feet of manufacturing, warehousing and office space. Teepak also has leased customer service/warehouse facilities in the United States, Canada and Europe. The company services customers in 65 countries throughout the world and achieves an annual sales volume of approximately $300 million.

Teepak was founded in 1933 and had its sole operations in Chicago until 1957 when it moved its manufacturing operations to the site of its present plant in Danville, Illinois. This facility also houses the corporate Research, Development and Engineering group and the corporate MIS group. The Danville workforce currently numbers 266 professional and supervisory people and 504 hourly workers. These workers are represented by Local 686 of the United Food and Commercial Workers (UFCW). In addition, Teepak employs 60 people at its worldwide headquarters in Westchester, Illinois bringing its total Illinois workforce to 830.

Our other major U.S. manufacturing facility is in Sandy Run, South Carolina. Here we employ a total of 284 people. We also have two other facilities in Summerville, S.C. that employ 126 people making our total employment in South Carolina 410 people. Other Teepak facilities in the U.S. employ an additional 207 people bringing our total employment in the U.S. to 1,447 people. We provide a highly competitive package of wages, health benefits and retirement benefits to all our employees and their families.

Teepak manufactures inedible, artificial sausage casings from cellulose derived from highly refined wood pulp. We produce edible, collagen casings using the corium layer of selected beef hides. In addition, we extrude, laminate and convert plastic materials for use in tubular casing, vacuum bags, barrier bags and vacuum films. Finally, we manufacture a line of stuffing equipment for use in meat processing and sausage manufacture. We have the most complete line of products in our industry.

Teepak's cellulose casing lines represent approximately 70% of both our U.S. sales volume and our worldwide sales volume. These products are manufactured using a modified, complex viscose process that was originally developed to produce cellophane and subsequently rayon. As in most processes involving large scale chemical reactions, employee safety, health and environmental concerns are of utmost importance. As a responsible employer and corporate citizen, these issues receive significant attention in regard to our strategic plans and our operating philosophy. In fact, our number one objective for the last six years has been to assure the safety, health and well being of our employees and of the communities in which we operate. A significant portion of our research, capital and operating efforts and expenditures are directed to fulfillment of this objective.

In regard to cellulose manufacture at our Danville facility, Teepak was an industry innovator in the installation of Hydrogen Sulfide scrubbers having 95% plus efficiency in recovery and odor control of stack emissions. Danville incurs annual operating costs related to controlling air, water and ground pollution that totalled $1.6 million in 1990.

In 1987, Teepak experienced a major fire at its Danville facility. The extensive rebuilding required gave us the opportunity to modernize our pollution and emission control systems. The investment in air scrubbers and ventilation system exceeded $7 million. An additional $4 million was spent in asbestos abatement. Very high levels of capital investment in pollution prevention continues. In 1990, Teepak spent $1.4 million or 32% of the entire capital budget for the Danville plant on pollution control system and devices. During the three year period from 1988 through 1990, the capital expended in Danville for pollution control totalled $4.94 million.

In anticipation of increasingly stringent future ecology based restrictions on American industry, Teepak, in 1986, initiated Research and Development projects to define recovery technology that increased the efficiency of air effluent scrubbing. This work anticipated the Clean Air Act of 1990.

As an extension of these efforts, Teepak has jointly supported, along with the Hazardous Waste Research and Information Center of Illinois and Illinois Challenge Grant Program, research for further environmental control through high tech work at Argonne National Laboratories. Other projects include chemical recovery and reuse systems and since 1987, a search for a production process based on an alternative chemical process. We have already invested $1.8 million in this research and recent efforts have expanded to include a worldwide search for technology which might be available under license.

Since 1985, Teepak has adopted the principles of the Quality Process as espoused by enlightened teachers such as Phil Crosby, Edward Deming and J. M. Juran. In 1987, we realized that the philosophy and attitudes we were trying to install in regard to safety and the environment were the same as those in regard to quality. At that point, we combined the two into what is now known as the Teepak Safety and Quality Process. We are pursuing continuous improvement in regard to these objectives with a goal of achieving excellence and unparalleled accomplishment compared to others in our industry and to American business in general.

In 1990, our Atlanta location was awarded merit status in the OHSA Voluntary Protection Program (VPP), one of only 71 work sites in the entire United States to be so honored. In 1991, both our Danville and Kansas City locations have progressed to the point of having completed the initial inspections to achieve the same status with encouraging results. Our European operation was the first Belgian plant to receive the International Loss Control Institute (ILCI) award of Three Golden Stars recognizing it as uniquely meeting the top international standard for safety performance. In addition, the plant also was the first in Belgium to receive the ISO-9002 award which signifies the top international rating in regard to quality systems.

I have cited these awards to show you that we are serious in our commitment to safety and quality and that our efforts rate well in regard to business in general. Six years ago when Teepak made a lifelong commitment to emphasize safety and environmental responsibility in all our facilities, we were not thinking of winning awards, but in creating a safe environment in which our people can work and live. This is still our primary commitment. We have stated unequivocally, to all our employees, that if we can't do something safely and in an environmentally sound way, we will not do it at all—regardless of the effect on our results or even our security as a business.

We now face competition from foreign companies in emerging economies who do not adhere to such high standards. We find it both morally and ethically impossible to adopt a similar, competitive philosophy that treats both human life and the environment as economic variables that are sacrificed to achieve low costs and super competitive positions. If you add to this the other advantages that these same competitors enjoy—low wages, little or no medical or retirement protection for their employees and significant export subsidies and tax relief measures; you come up with a frightening equation. I am the first to admit that American management and American industry can do a better job than they are doing today, but, no amount of management creativity and ingenuity nor increase in worker productivity can overcome the sum of all these economic advantages.

The United States is a highly developed nation with advanced concepts about what constitutes the responsibility of business to our society. My international experience tells me that America is a leader in the world in this respect. As managers who have been brought up and educated in such an environment, we accept our responsibility to society and all the added costs of doing business that they entail. Even if we were eventually forced to relocate our manufacturing operations to third world countries, I feel we would be unable to achieve the economies that our foreign competitors enjoy because we would be morally compelled to install our own high standards in regard to safety, the environment and worker welfare. Having to compete in the United States in a totally "free market" atmosphere with companies/countries who have yet to develop such standards is inherently unfair—it puts us into a game where the unevenness of the rules almost assure that we cannot win or even hold our own.

The Boren Bill S. 984, the International Pollution Deterrence Act allows a transition period for the underdeveloped countries to catch up to the U.S. in regard to fundamental issues of safety and environment. Having been educated at the University of Chicago (MBA, 1976), I have retained a belief in free markets as the ultimate allocators of scarce resources. The sheer discrepancy in today's world between our

advanced social agenda and those of nations who are preoccupied with issues of rampant poverty and transformation from agrarian societies is just too big to overcome without some assistance in the short run. If American business is not provided with some relief in this regard, I can predict with certainty that there will be a rapidly increasing loss of manufacturing jobs to these countries. These jobs will be competed away or simply relocated by American managers who can no longer compete—using American labor under American rules—with a low cost producer from an emerging economy.

Teepak and American business in general have been responsible in regard to safety and environmental issues. The Clean Air Act of 1990 debate certainly raised the issue of interdependency of nations in regard to a clean "public household." With these issues in the forefront of our thinking, it seems prudent to consider rules and regulations that recognize that U.S. industry is a worldwide leader in the "pollution prevention" battle and a bearer of it attendant high cost.

The Boren Bill, I believe, does this by creating the necessary countervailing duties on imports into the U.S. to match those costs incurred in operating environmentally responsible facilities. Such facilities do not exist at the sites of some of our foreign competitors. This approach not only seems fair but serves two secondary purposes as well:

(1) Foreign competitors are encouraged to install environmental protection equipment, thereby encouraging protection for all of the world's inhabitants.

(2) Income from duties will support further research and development for yet a cleaner environment.

Without the Boren bill, the costs of being ecologically responsible will place all American business at a distinct economic disadvantage. The ultimate cost of this disadvantage will be borne by the millions of American workers who now depend on the manufacturing sector for their livelihoods. In our small industry, over 3,000 jobs are at risk in Illinois alone. What our society is going to do with all of these people is a question that we must face up to as a nation. A service economy cannot possibly support this nation's able and willing workforce nor our ambitious social agenda. American workers are becoming highly efficient, high quality producers of manufactured goods but they cannot be expected to overcome the huge expenditures necessary to comply with the desirable yet stringent environmental standards we have set for ourselves as a nation.

I encourage you to consider the benefits of this legislation and I thank you for the opportunity to present this information.

PREPARED STATEMENT OF BARRY KELLMAN

I have two points to make here this morning. First, we must stop the flood of industrial production and jobs out from this country—a flood that is, at least in part, the result of pressure to comply with strict environmental regulations. Second, the actions we take must be in accord with principles of law that are the foundation of international economic relations.

Environmental policy is now global policy, including a complex and important set of multilateral obligations. Furthermore, environmental protection has significant economic impacts and these impacts do not stop at our borders. For these reasons, we must consider what are the links between America's competitiveness in the world marketplace and its environmental protection rules.

Consider that in the last three years, at least 40 Southern California furniture makers have relocated or made plans to open plants in the Tijuana area. Furniture-industry employment in that region has shrunk from 85,000 workers in 1987 to 55,000 today. Furniture manufacturers were compelled to collect and then burn or filter hydrocarbons by installing from two to eighteen sprayer chambers that cost $250,000 each and $50,000 a year to operate.

Undoubtedly, the strict new standards of Title III of the New Clean Air Act Amendments concerning toxic pollution will only serve to amplify such expatriation. Thousands of small and previously unregulated companies such as paint shops, auto body shops, small manufacturing plants, and even some commercial bakeries will be regulated. The costs of compliance will be substantial. An educated guess might be that costs for technological controls on hazardous air pollutants will be between $6-10 billion per year. The costs of the permitting process, above and beyond the capital costs of installing controlling technology are also substantial—estimates of the costs just to obtain and monitor permit compliance may reach as

high as $20,000 per plant per year, or over $3 billion in aggregate costs for the 150,000 affected businesses.

As a result, it has been predicted that over the next five years, half of California's 120,000 metal-finishing jobs will be lost to Mexico. Other industries that generate large amounts of toxic garbage—metal plating, chemicals, plastics, fiberglass and electronics—are also migrating. By fleeing U.S. environmental regulations, these producers escape both the obligation to install expensive technology to prevent pollution, and they avoid any liability for improperly disposing of their hazardous substances.

But one result of this migration is the growing environmental price being paid in regions where these firm re-locate. Countries that spend little on things like sewage systems, water treatment plants, and enforcement of environmental and occupational safety can offer tax rates dramatically lower than those in the industrialized world. Foreign-based manufacturers move in, polluting waterways and endangering workers. Yet the host government can't afford remedies because of the low tax rate.

According to the AMA, the border region of Mexico contains close to 2,000 plants that pump nearly $3.5 billion in foreign exchange into the Mexican economy has produced "a virtual cesspool and breeding ground for infections disease. Uncontrolled air and water pollution is rapidly deteriorating and seriously affecting health and future economic vitality on both sides of the border.

According to a U.S. News survey of current conditions: indiscriminate dumping or long-term storage of industrial garbage and hazardous wastes is trashing the landscape and poisoning the water and soil; a slumgullion of chemical-laced industrial waste water and raw sewage pumped into canals and rivers is causing widespread gastrointestinal illness, hepatitis and other long-term health problems including a suspected increase in mortality from cancers; massive discharges of toxic fumes have occurred in chemical plants and other factors—in the Matamoros Reynosa region alone, seven major accidents since 1986 have sent more than 350 people to hospitals and forced thousands to flee their homes.

The public health threat from these solid wastes is migrating into the United States and creating serious water-borne health problems north of the border. In Tijuana, toxic effluent from the industrial park at Otay Mesa mixes with 12 million gallons of raw sewage discharged daily into the Tijuana River. The river then flows north before emptying into the Pacific Ocean at Imperial Beach, Calif., south of San Diego. Similarly, the New River flows north out of Mexicali, containing some 100 different industrial chemicals and 15 viruses capable of causing outbreaks of polio, dysentery, cholera, typhoid, meningitis and hepatitis.

Up to 30 million gallons of untreated sewage flow out of Nogales each day into Arizona's Santa Cruz River. An underground plume of carcinogenic solvents—including lead, chromium, manganese, cadmium, arsenic and mercury has badly polluted an aquifer that provides drinking water for thousands. The plume has migrated 10 miles beneath the border, forcing the closing of at least 12 wells on the U.S. side. Near the Texas border, more than 100 million gallons of raw sewage laced with solvents, heavy metals and pesticides empty each day into the Rio Grande.

The problem of transboundary air pollution may be even worse as hazardous pesticides and other toxic chemicals are transported by prevailing winds for literally hundreds of miles resulting in pollution of lakes and other sources of drinking water.

Something must be done.

The first direction our attention must take is the GATT. It is now appropriate that we examine the potential trade implications of environmentally motivated import and export restrictions, the use of economic instruments (taxes and subsidies) and international conventions. A cardinal principle of the GATT is that it should not interfere with the right of every sovereign nation to control its own natural resources and, accordingly, to pursue its own domestic environmental policy. But trade negotiations have increasingly broadened to include wide-ranging discussions of subsidies and pricing, protection of intellectual property and antitrust policy. Now it is time to add environmental protection to the growing list of issues addressed in trade negotiations.

The GATT must recognize that if one nation chooses not to impose adequate environmental protection requirements, it artificially lowers the cost of doing business in that nation at the expense of the environment. In addition to harming the environment, this creates a competitive advantage vis-a-vis nations that do protect the environment. This advantage can translate into trade gains and attract additional investment and provides a powerful disincentive to compliance for producers situated in strictly regulating nations.

The use of trade restrictions may be a necessary complement for effective environmental policies so long as clear guidelines establish when such restrictions are appropriate taking into account the particular concerns of developing countries.

Specifically, GATT should permit any nation to impose countervailing duties or other import sanctions on products if the exporting nation failed to fulfill its duty to protect the environment by permitting the process used to produce those products to violate international environmental standards. The nation imposing such duty or sanction should have the burden to establish that indeed the productive process violated an international environmental standard which generated a competitive advantage for the imported product over domestic competition.

In the case of industrial environmental controls, this duty must be affirmatively established in international law by international agreements or conventions. Where industries in these countries have benefited at the expense of competitors in countries that have employed controls meeting the minimum standard, affected persons should be able to petition for imposition of a duty or sanction in the amount equal to what would be required to comply with minimum international environmental standards.

This proposal has two compelling advantages. First, it would help to level the playing field for U.S. businesses that are forced to meet higher environmental standards than their foreign competitors. Environmental protection would no longer have an negative competitive impact on U.S. business. Some U.S. manufacturers spend as much as 250% more on environmental controls as a percentage of gross domestic product than their competitors in other countries. The steel industry's commitment to meet the' new standards to control toxic air pollutants add $15/ton to the cost of steel putting it at a clear disadvantage when facing the steel produced in other nations.

Second, this would encourage nations to adopt sound environmental protection. Much of the economic advantage to maintain lax environmental standards would be gone. And the incentive of avoiding duties would prod nations toward adopting better environmental protection regimes. Furthermore, these changes would correct an obvious deficiency in the GATT demonstrated by the recent dispute settlement panel ruling in the Mexican tuna case.

We should all be concerned with the polls that indicate widespread economic anxiety about incomes, about the future of our opportunities. And we are all aware of widespread environmental anxiety—about the changing climate and the rampant destruction of rainforests and wildlife. I sense that many Americans would agree that something is not quite right, that other countries are not doing their part to protect this planet and then grabbing larger market shares by taking advantage of their lowered costs.

This anxiety has generated numerous proposals, two of which I think should be rejected. First, some have argued that rigorous American environmental standards distort trade and make U.S. companies less competitive with companies who manufacture in other nations with lower environmental standards. The answer, therefore, is to lower U.S. environmental standards. I adamantly oppose this idea for it weakens our resolve to preserve our natural resources and the health of its people, both now and in the future.

At the other extreme, some have argued in favor of imposing American environmental standards onto other nations by levying duties or imposing sanctions on imports whose production would not have been permitted under domestic environmental laws but which violate no international norm. I oppose this proposed solution for three reasons. The first concerns the legitimacy of such sanctions under principles of international law to which the United States has a profound commitment. While it is altogether right that the United States actively participate in the imposition of strict international environmental standards, to impose our standards on producers in foreign nations is an impermissible assertion of requirements upon people who have not participated in their selection. The goals that I want to achieve are important, but they do not justify this intrusion on self-determination.

The second concerns the problem of determinacy that must confound any effort to hold the performance of foreign producers to U.S. standards. To determine as a matter of domestic law what level of emissions complies with BAT or BACT as opposed to NSPS or LAER, depending upon where the facility is located, is itself a daunting task—to extend that to apply to foreign jurisdictions smacks of impossibility. Furthermore, the process of devising countervailing duties for failure to comply with U.S. environmental standards must be done on a case-by-case basis as applications from disgruntled domestic producers are processed—in fairness, it will be far more efficient to develop coherent international standards that can be assessed and monitored on a rational basis.

Third and perhaps most important concerns the objection that environmental concerns not be used as a cover for policies that are essentially protectionist. To base the imposition of duties or sanctions on failure to comply with U.S. standards establishes a domestic trade barrier that will be viewed by other nations as a restriction of free trade and invites retaliation. It is necessary at this time to encourage, with all of the power at the disposal of the United States government, the development of international environmental law. It is a homily but a true one that from the perspective of environmental protection, this is one shared planet. If the permission to impose sanctions is based on the promulgation of international regulations, that will demonstrate that, indeed, such regulations can be meaningfully enforced once promulgated.

An important caveat is that there is nothing in the proposal offered here which should limit the United States in its bi-lateral trade negotiations from attempting to extract agreement to comply with rigorous environmental standards. The GATT permits such agreements to contain trade restrictions which are mutually acceptable even they would be inappropriate for the GATT itself. The point here is that in the absence of explicitly-negotiated environmental regulations, the United States should impose import duties and sanctions only for violation of an international norm.

In conclusion, the increasing globalization of the world economy has meant that strictly regulating pollution within our borders, while maintaining the largest and most open market in the world, can impair our competitiveness and provide unfair advantages to foreign competitors subject to less stringent or effective pollution control Cheaper foreign goods carry a hidden price tag if they are produced free of meaningful environmental regulation. It is unwise and unfair for the United States to say to American companies that we need stronger environmental laws so now we are going to increase your costs of production to meet those standards but we, as consumers, will turn elsewhere to purchase manufactured goods at the cheapest price even if that means we turn our backs on environmental standards. If we promote public health hazards in other countries by short-sighted policies, we benefit no one in the long run.

PREPARED STATEMENT OF JOSEPH LADOU

The industrialized nations of the world have exported vast quantities of hazardous waste and numerous hazardous industries to Third World countries. The United Nations Environment Programme (UNEP) and the Organization for Economic Co-operation and Development (OECD) estimate that as much as 20 percent of global industrial waste is transported to other countries. This relatively new social problem represents at least 30 million tons of waste per year (Boyle, 1990). Foreign companies and investors have provided 60 percent of all industrial investment in developing countries over the past decade (United Nations, 1988). For many nations, such investment is the primary source of new jobs.

These activities have created a critical situation in much of the Third World. What has brought about this threat to worker health and to the world's environment? Three conditions are primarily responsible:

1. The increasing restrictions and fines in industrialized nations related to the manufacture of hazardous products.
2. The high cost and difficulty of handling and disposing of hazardous wastes at home.
3. The lower cost of labor in Third World countries and the lack of regulations protecting workers and the environment.

Developing countries, for the most part, have few enforceable regulations. They are concerned with overwhelming problems of unemployment, malnutrition, and infectious diseases, often to the exclusion of environmental hazards. Newly industrialized countries are eager for the financial benefits that foreign companies and foreign investors bring them. But with those benefits come social and ecological problems. Unfortunately, most industrialized nations including the United States do not have environmental laws with provisions that apply abroad (Neff, 1990).

Consequently, Third World cities in areas favored by migrating industry are faced with severe air pollution, inadequate sewage treatment and water purification, and rampant dumping of toxic wastes on or in the ground or in waterways. All residents are affected by the deteriorating environment in the Third World, but workers in the rapidly expanding industries have additional serious concerns. They have flooded into these areas seeking jobs promised by the foreign companies. When they

arrive, they find that housing is inadequate or nonexistent, and they and their families must live in huts, sleeping on the ground, without safe water, in places far removed from medical care (LaDou, 1991).

In most Third World countries, workers have limited education, skills, and training. They are overseen by employers with limited financial resources who are primarily concerned with low-cost production. The workplace may be unsafe, older buildings, with machinery lacking safety devices. In many countries, workers have never been given protective clothing, safety glasses, respiratory or hearing protection. Inspections by health and safety agencies—if they exist—are rare because of long travel distances and limited personnel and funds. Consequently, worker fatality rates are much higher in newly industrialized countries than in the developed nations, and workplace injuries occur with rates common to the developed nations during the early years of the Industrial Revolution (Rantanen, 1990). In this regard, the Industrial Revolution is taking place all over again, but with much larger populations of workers and in many more countries.

An estimated 30 percent of the urban population of developing countries make up what is called the "informal sector" of workers engaged in building or self-employed carpentry, domestic service, selling crafts to tourists, prostitution, and a variety of criminal activities such as smuggling and drug sales (Mendes, 1990). To this number must be added the large numbers of children subjected to daily labor all over the world. Even the home in developing countries can be the site of industrial activities from crafts production to electronics assembly. Organization of labor is unlikely with this group of workers who are often very young or very old. Government programs of workers' compensation for injuries and illnesses seldom exist for the informal sector.

Foreign companies entering a Third World country generally accept the lower levels of safety and health standards of the host country—if such even exist. Consequently, work-incurred injuries and illnesses are much more frequent in these countries than they are in industrialized nations (Jeyaratnam, 1990) Despite the difficulties encountered in the workplace, the flow of workers will increase in developing countries as the number of young workers swells from 2 billion to 3.5 billion by the year 2025 (The Economist, 1990). Competition for jobs will also exacerbate, and as a result, worker demands for improved working conditions very likely will not be voiced.

The incidence of environmental and occupational disease worldwide is higher than it has ever been in recorded history. The United Nations estimates that six million cases of occupational disease occur each year, most of them in Third World countries.

In China, for example, one million people have silicosis from occupational exposure to dust. Although silicosis is rare in industrialized countries and is entirely preventable, it is the most common occupational disease in China which has the world's largest population. In some Third World countries, asbestosis is the major occupational disease among miners, construction workers, and asbestos workers. Yet, the Canadian asbestos industry promotes the use of asbestos in developing countries where the demand for low-cost building materials outweighs health concerns (Dahl, 1989). The Canadian government has supported its industry by sending free samples of asbestos to any country where future manufacturing of asbestos products is a possibility. Lead poisoning is of epidemic proportions in many developing countries. In Malaysia, for example, the blood lead levels in many lead-acid battery workers is three times higher than allowed in U.S. workers (Khor, 1990). Lead in the air of Ahmedabad, India is sufficient to cause an increase of 12–28 ug/dL in blood lead depending on the time of year. Air levels are much higher in Columbia, Sri Lanka (Ponnambalam and Jayamanne, 1983). Blood lead levels in an urban area of Pakistan ranged from 52–102 ug/dL (Rehman et al., 1988). Most developing countries still rely on lead pipes to convey drinking water. Lead is also a problem in unlabelled cosmetics and other consumer goods, and some traditional medicines contain high levels of lead (Behari et al., 1983).

The manufacture and use of pesticides is increasing rapidly in Third World countries. They are often manufactured by foreign-owned companies or local companies financed by foreign interests. Pesticides, such as DDT and DBCP, which are banned in most developed nations, are widely sold and used without restrictions in the Third World. When health hazards cause the removal of a pesticide from the U.S. market, it often increases its export to developing countries. For example, the insecticides chlordane and heptachlor were banned for agricultural uses in the U.S. in the 1970's. Yet between 1987 and 1989, the U.S. manufacturer produced and exported nearly 5 million pounds of the insecticides to some 25 countries (Jamall and Davis, 1991). A partial result of widespread misuse of pesticides in the Third World

is a reported three million poisonings in southeast Asia alone and 200,000 deaths, many of which local governments often attribute to suicide (Jeyaratnam, 1991). Unfortunately, foreign companies can manufacture any hazardous products as long as they are not forbidden by the host country.

Without question, the further export of hazardous waste and environmentally outmoded industrial plants must be stopped. But such a program will require international cooperation.

Fortunately, some international environmental organizations are already at work toward achieving this goal. The United Nations Environment Programme has been working with a number of countries (1) to discourage the export of hazardous materials to less developed nations and (2) to introduce plant-siting requirements for hazardous industries wherever possible. UNEP is developing centers to provide information on hazardous materials worldwide (UNEP, 1987). The World Health Organization and the International Labour Office are providing information and assistance to Third World countries concerning occupational health and safety (Kogi, 1990). But the difficulty is that most such organizations have severely limited budgets that hamper program development and limit their ability to fund research in environmental health and efforts at worker education. The World Medical Association ought to be involved in support of WHO/ILO activities, and all medical associations should be increasing their commitments to environmental goals and organizations.

Efforts are also being made to control corporate behavior. Toward this end, the following have attempted to provide a framework for ethical behavior: (1) The OECD Guidelines for Multinational Enterprises, (2) The U.N. Code of Conduct on Transnational Corporations, and (3) the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO, 1984; Jeyaratnam, 1990; UNCTC, 1988).

A very forceful message must be sent to most industries and nations. This need is evidenced by the failure to achieve widespread international support for the findings of the Basel Convention on Transboundary Movements of Hazardous Wastes and Their Disposal (UNEP, 1989). The new trade initiative introduced by Senator David Boren of Oklahoma is just such a message. Under the International Pollution Deterence Act of 1991, S. 984, goods produced abroad under environmental standards less strict than those in the U.S., would be subject to "countervailing duty" when imported into this country. The duty would be equal to the amount saved by foreign firms because of their smaller environmental regulatory and enforcement burden, and would be used to foster development of new environmental technologies and to finance their introduction into developing countries and other trading partners. The legislation is a thoughtful step toward equitable manufacturing and trading policies throughout the world, and may well serve as an impetus to other developed nations to help their trading partners develop better environmental controls and to enforce stricter environmental standards.

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PREPARED STATEMENT OF ROBERT J. MORRIS

The U.S. Council for International Business began developing recommendations for dealing with the relationship between trade and environmental policies about one year ago. The proximate cause was the occasion of the Second World Industry Conference on Environmental Management (WICEM II) which was to be held in April of this year in Rotterdam. The conference, organized by the International Chamber of Commerce (ICC) in which the U.S. Council is the voice of American business, was scheduled to discuss these relationships, and American business representatives had been asked to lead the discussion.

The U.S. Council created a joint Trade and Environment working group which developed a set of basic principles which our members believed should govern the approach governments should take on this issue. Those principles were discussed and broadly endorsed at a WICEM preparatory committee meeting held last February in Switzerland. In March, the U.S. Council released its first comprehensive statement on this matter. It included the WICEM Preparatory Committee's principles and elaborated on some of the institutional implications. Copies of this statement were sent to concerned U.S. government agencies and to all members of Congress. Following the discussion at the Rotterdam meeting of WICEM, the U.S. Council which also represents American business in the Business and Industry Advisory Committee of the OECD, took the lead in stimulating an endorsement of the principles by that Committee to last June's annual meeting of OECD at Ministerial level. Finally, during the summer, the ICC developed a more formal statement of its views which were subsequently endorsed by the ICC's Executive Board earlier this month. (A copy is attached to this statement)

I go into this history, Mr. Chairman, mainly to emphasize that, largely because of the leadership shown by American business, there is now a broad-based consensus within the international business community about the general principles which should guide policies as governments move to clarify and develop the rules which apply to international trade and national and international efforts designed to protect the environment. While that consensus has not yet been extended to cover recommendations about specific new rules, or about how inconsistencies or conflicts between international environment agreements and existing GATT rules should be reconciled, it does establish a framework within which we believe government policies should evolve.

For example, the principles emphasize such basic concepts such as:

—That environmental protection policies should seek to minimize distortions of international trade and investment flows and should not be used simply to protect domestic industries from international competition.
—That standards and regulations should be based on sound science and periodically reviewed and updated to take account of new knowledge.

—That, wherever possible, environmental protection policies should rely on market-oriented measures, including an open international trading system, in order to be least disruptive and, often, to assure maximum effectiveness.
—That mechanisms should be developed to resolve international disputes in a timely fashion in order that people engaged in international business will have clear guidance about how rules will be applied and enforced.

The U.S. Council Working Group is continuing to develop more specific recommendations as to how to implement these and other basic principles. For example, the group is currently examining proposals—including those which you made last month Mr. Chairman—about how GATT rules might be elaborated or adapted to deal more effectively with trade and environment relationships.

While the GATT role needs to be strengthened to deal better with trade-related aspects of environmental policies, the GATT is not, at least at present, the appropriate institution for enforcement action which goes beyond trade actions. By the same token, we would not favor transferring the function of enforcing the trade-related aspects of environmental agreements away from the GATT. We believe it is important to build upon the crucial importance of GATT's role as a multilateral discipline that prevents national implementation of a variety of policies from creating economic distortions. In this regard, the application of its disciplines (such as Article III, Article XX, the Standards and Subsidies codes and the use of Articles XXII and XXIII dispute settlement mechanisms) to environmental regulation needs to be reexamined and clarified.

While we have not yet developed detailed recommendations, let me simply stress the importance we attach to the need to observe such fundamental GATT principles as transparency of regulations, national treatment and non-discrimination. We believe that policies should incorporate performance standards whenever possible rather than prescriptive process requirements, and that international agreements providing for harmonization of national standards should include common procedures for measuring conformity and checking enforcement.

The OECD is also an important actor for reconciling environmental policies of the developed countries with the need to minimize distortion of trade and investment flows. It should develop and reexamine guidelines for this purpose such as the relationship between the polluter pays principle and the use of general subsidies to clean up polluting industries, and it should continue work to develop standards, e.g., for toxic chemicals. The OECD could make a valuable contribution by exploring ways to clarify the GATT role for policing trade distortions stemming from environmental regulation. The OECD and the GATT can also help meet the need for more analyses of the impact of proposed international environmental regulations on trade and growth. Communications of OECD analysis and information to, and consultations with, LDCs is another important task.

We look forward to working with both the Congress and Executive agencies as we move forward on this project and we in the U.S. Council will continue our efforts to develop a fuller international business consensus on these critical issues.

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COMMISSION ON INTERNATIONAL TRADE POLICY

ICC STATEMENT

INTERNATIONAL TRADE AND THE ENVIRONMENT: PRINCIPLES FOR POLICY AND IMPLEMENTATION

Statement
adopted by the 67th Session of the ICC Executive Board
(Paris, 1 October 1991)

The role of business in ensuring environmentally-sound growth is pivotal. The worldwide business community recognises that the achievement of sustainable development depends in large measure upon its ability to provide the managerial, technical and financial resources necessary to meet today's environmental challenges. To this end the International Chamber of Commerce has already produced its own Environmental Guidelines for World Industry and, more recently, the Business Charter for Sustainable Development comprising 16 principles for improving environmental management.

The linkages between environmental policy and international trade policy are featuring ever more prominently on the agenda of intergovernmental discussions. The ICC offers the following principles to guide international as well as national policies as an initial contribution to that debate, while continuing to pursue its examination of this major sub-area of environmental policy.

1. NEED FOR SUSTAINABLE GROWTH AND OPEN TRADE

Economic growth is necessary to improve general social welfare, and to provide the conditions and resources to enhance environmental protection. International trade ensures the most efficient use of resources, is indispensable to economic growth, and therefore a necessary element in enhanced environmental protection. Economic growth, opening of markets, and environmental protection are complementary and compatible objectives. Environmental regulations, and measures that have as their justification environmental protection, should be devised to minimise distortions of international trade and investment flows and to avoid the creation of trade barriers. The relationship between the provisions of the GATT and those of legally-binding international conventions on the environment which have trade implications must be clarified to resolve conflict while observing GATT principles. Trade sanctions to enforce environmental objectives should be avoided. Where they prove unavoidable, their use must be consequent upon internationally-agreed procedures and subject to multilateral authorisation and supervision within existing international institutions.

2. GLOBAL APPROACH

Environmental measures affecting the global commons should be addressed on an international basis and grounded in sound science, taking into account their impact on trade and economic growth, in addition to their effectiveness in resolving environmental problems.

International conventions which provide a global framework for the development of national standards are particularly important for global environmental issues. Governments should undertake to inform and consult each other about measures which have as their justification environmental protection and which may cause distortions of international trade and investment flows. Governments should also consult with their domestic business groups in the course of designing such measures. Harmonisation of national standards and environmental measures should be the goal in order to minimise distortions to international trade and investment. However, harmonisation may not always be immediately attainable or practicable and in such circumstances the objective should be to establish essential requirements with accompanying measures that would be subject to the principle of mutual recognition. Regional problems may in certain circumstances require further close co-operation (including harmonisation of requirements), e.g., for avoiding transboundary pollution and for any other measures necessary for the protection of health and the environment.

3. SAME STANDARDS BUT DIFFERENT TIMESCALES

As with the Montreal Protocol on substances harmful to the ozone layer, international agreements should apply the same environmental standards to all countries - and at an appropriately high level. However, because of varying levels of national development, the harmonisation of standards may require different timescales for some countries than for others.

4. DEFINING ROLES

Governments, intergovernmental organisations and the private sector all have major responsibilities in meeting the environmental challenge, and the distinct role of each should be clearly elaborated. Governments should select the priority areas for international action to protect the environment and negotiate binding and effective international conventions in accordance with the principles specified in this statement. Governments should also encourage private sector initiatives to achieve environmental objectives, and as a partial alternative to regulation. Often the private sector is already engaged in related activities on a volunatry basis, and this should be supported. The OECD Guiding Principles (1972) should be re-endorsed, with such revisions as may be necessary, to preserve open markets and to minimise uneven effects on corporations through the application of such concepts as the "polluter pays principle". Governments should promote co-operation and co-ordination on trade and environmental issues at national level and among intergovernmental organisations such as GATT, OECD, UNEP, IMF and the World Bank.

5. KEY POLICY GUIDELINES

The following guidelines should govern internationally-agreed policies to protect the environment:

(i) Standards and regulations for environmental protection should be based on sound science and adequate understanding of environmental conditions, while at the same time recognising the non-attainability of certainty and its risks resulting from both premature and delayed actions The key lies in finding the appropriate balance between risk, effectiveness, and social and economic costs. Standards and regulations should also be reassessed periodically to incorporate advances in scientific knowledge and to monitor their effectiveness.

(ii) Policies should incorporate performance standards whenever possible rather than prescriptive process requirements (i.e., specification of technologies and materials) which reduce flexibility.

(iii) Environmental policies should rely on market-oriented measures that encourage innovation in the private and public sectors to find the most cost-effective ways to achieve agreed environmental goals. Policies should be examined for their effectiveness over the entire cycle of product life and use without introducing new trade distortions.

(iv) In some circumstances, the reduction of pollution beyond a certain level will not be practical or even desirable in view of the costs involved.

(v) Policies and regulations should be transparent and should not become non-tariff trade barriers. Business should be given adequate notice and opportunity to comment on proposed changes.

(vi) International conventions on the environment should include agreement on common procedures for measuring and checking conformity and for enforcement.

(vii) National enforcement of standards and regulations should be administered in a non-discriminatory fashion. It should accord with the GATT principles of most-favoured-nation treatment, national treatment and transparency.

(viii) Mechanisms should be developed to resolve international disputes arising from environmental regulations and measures which may affect trade and investment flows. The role of GATT should be clarified and strengthened, and GATT rules should be observed.

PREPARED STATEMENT OF SENATOR BOB PACKWOOD

Mr. Chairman, I want to thank you for holding this hearing on the convergence of international trade and environmental issues. This Committee held a similar hearing focusing on trade and the environment more than one year ago. Since that time, these issues have received even greater recognition in international negotiations, in our international rule-making institutions, and in the public debate.

But that recognition and heightened attention should not cause us to forget that we are still at an early stage of a lengthy process. During that process, we should not assume that trade and responsible stewardship of the environment are inherently at odds. International cooperation is the key to ensuring that trade and environmental protection will coexist peacefully.

I am hopeful that the North American Free Trade Agreement negotiations will set an example in the area of cooperation on environmental issues in the course of developing greater opportunities for trade. I am somewhat encouraged by the early results of the environmental program which the President committed to pursue in parallel to the NAFTA negotiations. The recently-released "Review of U.S.-Mexico Environmental Issues" demonstrates a commitment on both sides of the border to a realistic assessment of the environmental problems, and to realistic solutions.

I want to say, Mr. Chairman, that I find little that is heartening in another recent development in the area of trade and environment. I refer specifically to the recent General Agreement on Tariffs and Trade (GATT) panel finding that U.S. restrictions on imports of tuna under the Marine Mammal Protection Act are inconsistent with U.S. GATT obligations. As I stated in a letter to the President, cosigned by 62 members of the Senatel the U.S. position that the import restrictions were designed to protect animal life and to conserve exhaustible natural resources was correct. In that letter, I urged the President to work with our trading partners to ensure that the GATT will fully recognize legitimate environmental and natural resource conservation measures. At this time, the adverse GATT panel finding causes me deep concern.

As I stated earlier, these developments serve to remind us that we are still at an early stage of a lengthy process. We will work tirelessly toward ensuring that legitimate environmental protection and resource conservation can coexist alongside the vigorous pursuit of a free and open international trade system. That is our goal at the end of this process, and this hearing is one of many important steps we will take along the way.

PREPARED STATEMENT OF MANIK ROY

Thank you Senator Baucus and members of the Finance Subcommittee on International Trade, for the opportunity to provide comments concerning the "International Pollution Deterrence Act of 1991." I am Manik Roy, Pollution Prevention Specialist of the Environmental Defense Fund in Washington, D.C. EDF, a national non-profit environmental organization with over 200,000 members, links science, economics, and law to create innovative, economically viable solutions to environmental problems.

Nothing is more corrosive to the environmental protection debate than the argument that environmental protection costs jobs. As is illustrated by the environmental devastation we see not only in Eastern Europe, but around the world, the "environment vs. economy" argument is generally based on a short-sighted understanding of economy.

There is one respect, however, in which the "jobs vs. environment" argument merits special attention: when good corporate citizens -- companies doing their best to produce goods and services without destroying our fragile environment -- are out-competed by companies less concerned with the health of their neighbors and the environment. To level the playing field between two such firms operating in the United States, we have to strictly enforce high environmental standards across all industry, in all states.

By the same token, to level the playing field between competing firms operating in different sovereign nations, we need the type of approach exemplified by the "International Pollution Deterrence Act of 1991."

The more we learn about the destruction of the stratospheric ozone layer, global climate change, acid rain, the global transport of toxic chemicals, the less it is possible to believe that the consequences of any environmental decision can be confined within political boundaries. Indeed, the countervailable subsidy embodied in a nation's lack of serious pollution control is underwritten not only by that nation's citizens, but by

all of us worldwide who bear the external cost of the pollution.

Allow me to make a few specific observations on the "International Pollution Deterrence Act of 1991."

First, it is good that the bill defines the countervailable subsidy as the cost which would have to be incurred by the foreign firm to comply with U.S. environmental standards. We hope this definition is reflected in implementation. While EDF is respectful of the complexities of implementing such a law, we should be careful in choosing methods of measuring the difference between compliance costs. In particular, if we base our analysis on the differences in black-letter law and regulation, we could be susceptible to two types of serious error.

On one hand, in countries in which the black-letter law is far more ambitious than its enforcement -- the former Soviet Union being a notable example -- we could be greatly overestimating pollution control costs.

On the other hand, there are firms around the world surpassing their countries' environmental protection requirements. It would be unwise and a shame to penalize these good corporate citizens. Similarly, there are provincial and municipal governments enforcing stricter standards than their national counterparts, and their efforts too should be recognized and not penalized.

My second point is that, whatever method we use to measure the differential costs of environmental protection requirements, it might be better to have an independent international body do the measuring rather than, say, the U.S. Environmental Protection Agency, or any other organization under the sole control of a stakeholder nation. While such an effort may be more complicated to establish than that envisioned by this bill, it might also have more credibility and therefore more enforceability. It might also give those countries with higher standards than the U.S. an opportunity to raise <u>our</u> aspirations.

Finally, EDF urges that the revenue attributable to the countervailable duties assessed under this Act be directed more to "pollution prevention"

(or "source reduction" as defined by the Pollution Prevention Act of 1990) rather than to end-of-pipe pollution control. Congress and EPA have both stated their preference for pollution prevention over end-of-pipe recycling, treatment, and disposal. In addition, international bodies such as the United Nations Industrial Development Organization have discussed pollution prevention as their top preference and as the key to Environmentally-Sustainable Industrial Development. EDF hopes that this preference will be reflected as well in this Act.

PREPARED STATEMENT OF JOHN J. SHEEHAN

Since the commencement of the Uruguay Round, international attention has been placed upon the global-nature of industrial development. Trade is not just international in the sense that it reflects the export/import policies of national economies, but is indeed becoming global in the sense of one world market—or at least a few regional markets. The North American Free Trade Agreement is one expression of this trend. National economic policy is no longer the exclusive force in a country's domestic economic activity.

Parallelling globalism in trade relationships, there is also the awareness that environmental policy can no longer be exclusively national in scope. Trans-border emissions are not amenable to national pollution control measures and the linkage to trade flows becomes evident when certain national environmental standards can create an economic burden to the producers subjected to the regulations when other nations choose not to impose comparable requirements.

The linkage to trade policy was explicitly raised with reference to the "fast track" rule which is to be applied to the ratification of the forthcoming Mexican Free Trade Agreement. Previous GATT negotiations tangentially treated the relationship by raising the issue as to whether national environmental standards were in fact nontariff barriers. We are now on the threshold of a more positive definition of the relationship to trade policy not only because of the environmental consequences, but also because of the economic consequences for a failure to do so. An essential characteristic of that linkage are the trade sanctions which can be applied where environmentally unsound products or processes are involved in foreign commerce.

The use of *trade embargoes* for other national/international objectives has demonstrated that trade restrictions have been successfully implemented as a useful tool to induce compliance with stated diplomatic objectives. The use of *trade sanctions,* either under a GATT code on environmentalism, or a nation's trade laws, is an appropriate and, increasingly, necessary expansion of the linkage. The Administration's May 1, 1991 response to the Congress with regard to the issues raised over NAFTA indicated:

> "Mexico and the United States are committed to a cooperative program that will encourage sustained economic growth and environmental protection in both countries . . . *the two are complementary and must be pursued together.*" (Emphasis added).

An explicit linkage with trade treaties, either GATT or NAFTA, would accelerate the pursuit and ensure complementary progress through a trade-related enforcement mechanism.

ENVIRONMENTAL CONSEQUENCES

At the outset, it is important to disabuse those trade professionals who may have a tendency to view environmental requirements as obstacles to trade. The recent Mexican dolphin/tuna decision rendered by a GATT dispute settlement panel is a case in point. Furthermore, there have been efforts to harmonize environmental standards at the lowest denomination level and to consider more stringent stand-

ards as being trade barriers. Senator Baucus' September 17 floor statement quite rightly indicated that the development of a GATT Environmental Code "is likely to be decades away." Quick fixes at harmonization levels must be avoided as interim measures. Nevertheless, the need to negotiate a GATT environmental code remains paramount, especially where broad ecology damage is caused by multinational sources, as in the case of CFCs and the warming trend. Recalcitrant nations, through trade sanctions, should be deprived of any economic advantages to be gained by non-compliance with such standards.

Indeed, developing countries, desperate for a source of wealth and job creation, should not be made victims by multinational corporations which push for governmental policies, designed to promote a regulation-free environment as an inducement for their plant location and industrial investments. Where plant relocations are involved, both the economic welfare of the dislocated workers and the environmental health of the new workers are threatened.

There is, moreover, a category of ecological requirements which can be effective only if they are promulgated on an international basis and for which trade sanctions can provide a recognizable and acceptable means of enforcement.

ECONOMIC CONSEQUENCES

Workers are constantly confronted with the contention that there are adverse economic impacts to environmental regulations. In bolder terms, we face the threat of environmental blackmail. Workers have attempted to resist the option of "your job or your health" and have maintained:

> "In the long run, the real choice is not jobs or environment. It is both or neither. What kind of jobs will be possible in a world of depleted resources, poisoned water and four air, a world where ozone depletion and greenhouse warming make it difficult even to survive?"
>
> USWA Convention, 1990

However, as industrial activity expands beyond national borders and comparative advantage presumably dictates the flow of trade profits, it is too easy for industrial sources to oppose further environmental improvements in the name of competition. As a matter of fact, as the control requirements move beyond being identified with broad environmental goals and are designed to reach specific health-based objectives (e.g. risk-based standards in air toxics), there is legitimacy to the concern about unfair trade competition.

Addressing that potential should be a key focus as we move to more comprehensive levels of environmental awareness. A nation must be able to protect the public health of its citizens. It is not enough merely to neutralize the potential of future GATT settlement panels which might declare certain eco-requirements as trade barriers. There must also be a response to the potential of unfair competition within our own markets. The scope of U.S. trade laws dealing with unfair trade practices must be expanded to include coverage of unfair environmental competition.

The integration of trade law sanctions has already been established to enforce internationally recognized labor rights. Labor rights provisions have been placed in CBI, GSP, OPIC and Section 301 of the trade law. An integration of environmental means could counteract:

- unfair competition in our own marketplace,
- flight of domestic plants to regulation-free environments overseas,
- environmental blackmail arguments during both the legislative and the rule-making phase in development of environmental standards.

During the debate on the Clean Air Act, Senator Gorton proposed an amendment to allow GATT signatories to impose duties on another country's goods that do not comply with comparable Clean Air standards. Senator Lautenberg proposed to amend Section 301 so as to expand the definition of unreasonable trade practices which burden or restrict U.S. commerce to include "a failure to establish effective natural resource protection and effective pollution abatement and control standards to protect air, water and land."

A recent report by the Environmental and Energy Study Institute, entitled "Partnership for a Sustainable Development," highlighted the need to make GATT an instrument for a more environmentally sensitive world trade system:

> "Governmental institutions responsible for trade negotiations have had neither the mandate nor the expertise needed to address the relationships between trade and sustainable development. Because of GATT's silence regarding environmental objectives, environmental regulations that affect the

ability of foreign firms to penetrate domestic markets, as well as national and international policies aimed at conserving natural resources through trade restrictions or tariff surcharges, are vulnerable to challenge and GATT sanctions."

The NAFTA negotiation provides an opportunity to promote the linkage, especially since we are dealing with contiguous nations intent upon a free flow of trade. If the trade negotiations are unable to develop a NAFTA Environmental Code comparable to the suggestion offered by Senator Baucus for a GATT Environmental Code, perhaps *the enabling legislation could include a unilateral change in the countervailing duty section to establish a system of environmental duties.*

An October 23, 1991 letter from Majority Leader Gephardt and Congressmen Levin, Moody, Pease and Wyden to Ambassador Hills regarding the NAFTA negotiations states:

> "There is a growing understanding that trade and the environment can no longer be treated as separate subjects . . . international trade is not just about tariffs and prices anymore and the treaty [must address) . . . in a serious way the environmental and public health issues raised by the increased investment and trade between the countries, not just in the border zones, but within the entire sovereign boundaries."

As the economics of the world are being integrated into one global market place and as the national environmental policies are either proving to be inadequate in terms of coping with global ecological challenges, or being vulnerable to erosion due to economic trade pressures from less environmentally regulated industrial systems, trade treaties and trade laws must incorporate environmental considerations. The so-called level playing field for trade flows will not remain uneven unless environmental considerations are an integral part of the trading system. Not only will the trade field be uneven, so also will the environmental regime, national and international. The victims will be the environment and fair trade. The trade obstacle which must be removed is the lack of adequate standards. GATT and NAFTA must initiate the linkage.

Attachments.

STATMENT BY JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA, BEFORE THE INTERNATIONAL CONFERENCE ON HEAVY METALS IN THE ENVIRONMENT, TORONTO, CANADA, OCTOBER 31, 1974

A somewhat remarkable body of environmental law has evolved in the United States in the last decade. Aside from the important impact the regulatory development can have within the United States, it could also bring about sizable movement in the fields of international relations and world trade. In discussing the regulatory aspects of heavy metals in the environment, I think it is appropriate to explore some of these international implications.

First, though, I should qualify my opening remark. I label our body of environmental law as remarkable not because it is infallible or all-encompassing, and not because it necessarily is the most advanced set of environmental laws among industrial nations. Certainly we still have much ground to break in, for instance, the area of preventative action with regard to new substances which might prove later to be hazardous. The proposed Toxic Substances Control Act would deal with this aspect of control, yet it has been stalled in the Congress for more than four years.

The broad range of environmental laws that we do have in effect, however, are remarkable in that their evolution did occur rapidly once the progress began, and in that they have indeed left most of the world behind in terms of stringent control requirements. I think it is important to emphasize that, while we did undergo excessive gradualism in the recognition of environmental hazards and in the enactment of effective regulatory statutes to control them, we have, nevertheless, recently been insisting upon a fairly rapid clean-up. Perhaps the penalty for delay in acknowledging the risks is now a more accelerated abatement demand. The regulatory action might almost be characterized as emergency measures in the midst of a crisis. Our tendency to demand instant abatement might explain to some extent the opposition and resistance—on non-scientific grounds—to the declaration or public disclosure that health is being destroyed in our major industrial centers. Industry fears the cost of control technology.

While economic and technological feasibility or cost-benefit analysis unfortunately exercise a heavy influence on the stringency of the, regulatory standards, too often

they intrude themselves into the scientific determinations as to whether risk does in fact exist and to what degree. Unfortunately, by focusing upon the economic considerations, standard-makers may very well make a determination as to what risk may be acceptable. However, a major question still remains will society be told what the degree of the risks are in as precise terms as it may be told what the costs of abatement are?

Historically, protection of workers' health and safety and protection of the general environment has been left essentially as the responsibility of private consciences and, to a limited degree to the local and state governmental bodies. It is not surprising that when left within the confines of the private sector, environmental constraints were simply overpowered by the push for industrial "progress," and in many cases, for higher take-home pay.

But in a relatively short order that traditional approach has been uprooted and replaced. We now have a Federal, public responsibility which provides us with the ability to handle effectively most types of environmental problems. Private and narrow definitions of progress as formulated within management circles can now be overruled by broader, societal or community definitions of progress—definitions in which environmental concerns are given new, albeit although belated, weight.

As in any regulatory program, there is less than total satisfaction with the way in which the environmental programs are being administered. We who are seeking protection feel, of course, that the progress is too slow, and we have had numerous differences on policy decisions. But we also have to take an honest look at our own performance. We in labor, for example, are only now beginning to really develop and recruit the expertise necessary to most effectively participate in the technical, public decision-making for the occupational environment.

The labor movement's traditional orientation in its ordinary activity is to bargain privately, i.e., between the parties, and in a trade-off atmosphere. There is, therefore, considerable sentiment within unions and certainly within management to consider workers' safety and health an issue for collective bargaining—a matter at least of labor-management relationship. Hence, the initial experience of going public, i.e., in considering both community and worker environmental concerns as proper matters for public policy determinations, does a great deal of readjustment and perhaps faith that the process can work even if there are immediate or short range distortions resulting in the shutdown of an obsolete facility or in an increase in the inflationary rate.

Where the distortions are real in terms of unemployment, the United States labor movement has been trying to evolve the concept of environmental adjustment assistance for displaced workers. It is a concept which has already been incorporated in our foreign trade laws. The rationale is founded upon the assumption that if, as a result of a change in society's attitude as expressed in governmental regulations, whether it be in trade policies or environmental policies, and there is caused a layoff of workers, then these workers are entitled to special compensation in addition to benefits derived from the regular unemployment compensation system.

Where the distortions are, however, alleged, we have been trying to insulate workers from the threatened dire consequences of environmental regulations. I am here referring to environmental blackmail which is too often practiced by industrial operators to resist abatement orders. Workers, who are threatened with layoffs, should have a right to demand a public hearing conducted by the environmental agency which would have subpoena powers over company records as to ascertain whether job losses will occur. Because the *threat* of layoffs is far more relevant than the fact of layoffs it is our hope that the anti-environmental blackmail provision will protect workers from being used as a pawn by corporate interests which may be resisting regulations. This mechanism has already been enacted in the water pollution legislation and is currently being considered by Congress for the Clean Air Act.

The scientific and medical communities are similarly beginning now to respond to the new dimension of public decisionmaking. The industrial physicians are starting to move towards a recasting of their own conceptions of where they stand in relation to the employers' interests vs. the employees' and even society's interests. Merely the fact that this scientific conference Is delving into the non-scientific realm of regulation is, I think, a very significant sign. It shows recognition of the fact that those with technical expertise have a responsibility to see to it that their information spurs necessary and adequate public decisions.

Taken together, I believe that these movements assure that the pressures for stringent environmental controls will continue to mount in the coming years.

Environmental control does not come cheaply, however. Stringent abatement requirements mean increased expenditures on the part of business. Finding a location with the least stringent requirements becomes a real and important factor in mana-

gerial decisions. Added then is one more incentive for industrial relocation, and with each relocation comes job loss and economic decline for the community. The relocation and job loss might occur in a dramatic fashion by the actual shutdown and exodus of an existing operation, at which point the community and affected workers are likely to become polarized against the control requirement. Or the relocation might occur more subtly. The expansion of an existing facility or the siting of a new plant might be discouraged because of strong controls in a given area. In this type of situation what is at stake is not existing jobs, but job growth.

We have handled this relocation problem within the United States by approaching the controls from a national basis. The use of uniform national standards avoids the problem of creating among the states artificial incentives or disincentives for economic activity.

The problem, however, is also international in scope. In the world economy of today, two fairly recently developed trends facilitate the international flight of industrial investments. One is the rapid growth of the multinational corporations. The multinationals are structured so as to divert their investments on a global basis to the area of lowest cost and greatest profitability. Social requirements, including environmental controls, which the host country imposes upon its industries are bound to be given careful consideration.

The second trend is the growing urge of the less developed nations to concentrate upon their own rapid economic growth. The more they perceive the need for speed in development, and the more they see that speed as being dependent upon diverting investments away from industrialized countries, the less need they are going to see for environmental control.

Brazil, for instance, has openly and actively campaigned for foreign investment specifically on the basis that they are not concerned about pollution at this point. They may have been more open than others in their efforts, but their feelings are not uncommon.

This situation may be especially true regarding the regulation of heavy metal emissions. These emissions are heavily associated with many of the basic industries, such as ferrous and nonferrous metals, which are often considered essential for a growing industrial base. Therefore, many of the countries undergoing development may be particularly reluctant to require nonproductive investments by these industries.

Undoubtably the ideal solution is to establish and enforce uniform international standards. Logically there should be no other goal—not only for the plant runaway problem but also for the humanitarian, public health needs (assuming the standards would be based on health requirements). To this end, activities such as the International Labor Organization's efforts to develop recommended international standards should be greatly expanded. But realistically, we are a long way off from having ILO standards, or any other international standards being uniformally adopted on any large scale, let alone from having them uniformally enforced. The motivation is simply too unequal among countries. We learned long ago that voluntary compliance could not work as the basis for occupational safety and health protection in the United States. The problems involved with trying to apply voluntary compliance among countries on a world-wide basis are far more complex.

Nevertheless, we must not allow the reluctance of some countries to work as a constraint on others in their environmental control efforts. If one country decides that action is needed to protect public health, it should not be inhibited from taking that action on the basis that other nations might not take similar action. The active nation should not have to face the threat that its control actions will play a role in the flight of its industry to a non-active country.

That type of dilemma resurrects the jobs vs. environment scare tactic—the "smoke means jobs" mentality—that we have finally been overcoming in recent years. We may have to accept the notion of socially acceptable risk in setting compliance time-tables, but foreign trade considerations should not have any weight in the determination of an acceptable risk. To put it the other way around, there ought to be certain minimum prerequisites in the exercise of the right to engage in international trade. Since highly industrialized nations must now begin to regulate their own growth, national interests will demand that the new growth problems, created by domestic societal responsibilities, not be exacerbated by unfair—"unenvironmentat"—foreign competition.

A case in point might be our domestic ferroalloy industry. Regardless of environmental controls, that industry is extremely vulnerable to competition from foreign imports, and the relocation of U.S. production facilities in foreign countries has already begun. Naturally there are great pressures that the abatement requirements on this industry be eased on the basis that stringent requirements will only acceler-

ate its demise. Yet a significant easing of the requirements could have adverse health effects upon the employees of that industry and upon the communities in which they are located.

Somehow we need to find a way to impose the necessary control requirements on an industry in this kind of situation, and yet isolate the adverse effects of those requirements from the industry's status in the world market. In other words, we need to find some way of offsetting the effects that standards have on world commerce without trading away the standards.

It seems to me that we must seriously consider a system for fixing duties on imported items to offset any competitive advantage which foreign products may gain solely because they are made under less rigorous environmental control requirements. In a sense, it would be similar in rationale to the countervailing duty provisions under which we now operate. The failure of a foreign government to require pollution abatement sufficient to protect public health in truth constitutes a subsidy to that industry. As with the countervailing duty3 the environmental duty would be set at a level to negate the effect of that subsidy in undercutting our domestic production. This would protect our domestic industry from harm as a result of the environmental requirements. It would also remove any environmental incentive for some of our industry to relocate and then send the finished product back to the United States as a lower priced import.

Granted it would be a mammoth and difficult job to (1) determine what the official control requirements are in the various countries; (2) rank them according to stringency; (3) establish the monetary impact of the controls on a product-by-product or industry-by-industry basis in each country; and (4) translate the monetary impact into import duties.

It can be done though. As a matter of fact, the cataloging process has already been started to a limited degree through the current round of world trade negotiations. These efforts through GATT (General Agreement on Tariffs and Trade) could be expanded so as to facilitate a duty-setting procedure. Care must be taken, however, to make sure that GATT involvement does not become a platform for somehow negotiating away the standards or resulting in standards at the lowest common denominator.

Care must also be taken in instituting any environmental duty system to assure that the new system will not be viewed as the erection of a nontariff barrier which warrants retaliation. This is especially important with respect to those developing nations which also happen to be resource rich nations. The growth of formal cartels among these resource rich nations, and the possible ability of these cartels to withhold needed resources from consuming nations has added a new dimension to the problem.

Again, however, I think it can be done. During the six-year period beginning in 1969, the major steel producing nations operated under a Voluntary Restraint Agreement in which their exports to the United States were held to predetermined, negotiated levels. If the government were to dedicate the same degree of effort to working environmental duties as it did to work out the Voluntary Restraint Agreement for steel, the difficulties could be overcome.

In the meantime, though, the efforts to develop uniform international standards must be maintained, for that should ultimately be the answer. Included in those efforts should be worker education. Employees in hazardous industries throughout the world should be informed as to the health risks to which they are exposed, and what can be done to abate the risk. As a result, they will hopefully be motivated into becoming a strong force for the development and enforcement of standards on par with accepted international criteria.

The motivation of workers and of the medical and scientific communities in the United States is high enough now, I believe, to keep the momentum moving in the United States towards greater control. Even in the United States, though, we will not be without battles. The President currently is making alleged "over-control" of business a major campaign issue. Maintenance of effort, let along an expansion of effort, is under attack. The over-control argument dovetails with the problems created by a laxity of control in the developing nations.

Nevertheless, the fact that the absence of uniform international standards can be remedied, or at least offset, plus the growing public awareness of environmentally placed health hazards, should permit us to move ahead with the regulatory progress.

There have, of course, been attempts in Congress to weaken the Occupational Safety and Health Act and the general environmental programs. But they have not succeeded. It is far more significant that Congressman Daniels, Chairman of the House Labor Subcommittee from which OSHA came, has introduced legislation to

deal positively with the problem of international plant runaways due to the regulation of hazardous conditions. While his measure does not spell out a final solution, it at least would allow the focus to be placed on proposals such as the environmental duty to offset differing national standards.

The important point is that conferences such as this one must continue to bring academic and public focus on the problem areas in environmental health. We need not be forced into a position of trading *health protection* for what is put forward as *job security.* Job security cannot be obtained by so simple a trade-off. The only job guarantee that can be made is through the achievement of a healthy and dynamic economy. The societal decision to direct the economy in such a way that the production of its goods and services will not make the society itself unhealthy has no bearing on the basic health of the economy itself.

We can make the progress in environmental control in the coming decade just as remarkable as the progress has been in environmental awareness in the past decade.

George F. Becker
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April 17, 1990

Senator Frank R. Lautenberg
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Lautenberg:

USWA expresses support for your amendment to various U.S. trade laws which would condition trade flows upon the adoption and implementation of environmental pollution abatement and control standards established by our trading partners.

Environmental protection is not an advantage which can be pursued only by a few countries. The adverse consequences of pollution are now having global impacts. Even more onerous would be the flight of industrial activity to those countries with a less sensitive concern for environmental degradation.

Additionally, environmental obligation assumed by industry in some countries should not be a burden in international trade where the margin of competition is due to the lack of environmental regulations by our trading partners.

Your legislation addresses this concern by withdrawing trade preference from CBI and GSP countries, which do not have effective environmental regulations in place.

Workers and communities in developing countries, hard pressed for the measures to promote economic development, are also desirous that the need for foreign capital investments not be used as a license to ravage their environment and destroy their health. In many countries people are unaware that new industrial processes release toxic substances into the environment. The amendments introduced by Senator Lautenberg would focus the attention of governments on this problem.

Also using the Section 301 procedure to include lack of environmental standards, your legislation expands the scope of the measures which have trade impacts and which rightfully should be subject to scrutiny as being unfair trade practices. Petitions under a new Section 301 definition, however, do not necessarily involve mandatory actions by the government but will induce consultation with our trading partners over the failure to establish effective environmental standards.

The salutary impact from such a scrutiny will be beneficial to both trade and environmental policies, especially since the later are increasingly more international in character. Your bill will provide an opportunity to challenge the legitimacy of such producers, insensitive to environmental concerns, to engage in international trade. USWA supports this initiative.

Sincerely,

John J. Sheehan
Legislative Director

JJS/lsc

PREPARED STATEMENT OF MIKE SMITH

Mr. Chairman: It was good of you to invite me to appear as a member of this panel. While I have no formal prepared remarks this morning, I do have a few remarks, or bullets, if you like, which I hope will contribute to this morning's debate.

As a preface, let me say that I believe I was the first U.S. trade policy official to bring before the Economic Policy Council the prospect that the environment would within this decade become a trade issue. My presentation then, in 1987, involved the CFC issue and was viewed with skepticism. I think there are fewer skeptics today—at least I hope there are.

Now my "bullets:"

(1) No single trade issue for this decade is as complex as the environment. Yes, the environment is, *inter alia*, a trade issue. It will be the trade issue of the '90s.

(2) Trade is an environmental issue, and environmentalists will have to take into account the trade "side" if they hope to advance politically the environmental "cause," and the same applies for the trade community—the concerns of the environmentalists will have to be taken into account.

(3) Despite efforts to separate the two issues, trade and the environment are *already* linked, and they will over the remainder of this decade become even more closely linked whether the Congress, the Administration, the business community, the environmentalists, or the foreigners like it or not.

(4) There is a real danger that the "fringe" element in both camps—the radicals—will gain control of the debate, to the detriment of *both* our trading and environmental interests.

(5) There is an equal danger that the debate will become emotionalized with the Congress being the biggest threat, if you will pardon my frankness. The "environment" is a solid political "winner," and too many legislators are jumping on the bandwagon with "no questions asked." You, Sir, are a happy exception to that trend.

(6) Such emotionalism could lead to the passage of plain lousy legislation.

(7) What is needed now and urgently is a *rational* discussion of the issue—to determine where there is convergence and where there is divergence.

(8) The debate must—*absolutely must*—mandate cost and benefit analyses. Trade impact statements on proposed environmental legislation must be mandated. And the same applies in reverse. In either case, the cost/benefit analysis science may be inexact, but we ought to have some idea of the costs involved to our trading interests when we pass environmental laws. And the same would apply for trade agreements.

(9) We should be examining *now* what existing multilateral institutions such as GATT, OECD, and UNDP, can and cannot do to help bridge the gaps between current or proposed trade and environment disciplines, and what these institutions should and should not do.

(10) Both "sides" must recognize there will have to be compromises.

(11) The Federal Government has an absolute obligation to educate and inform the American people on what the choices and costs are in pursuing an environmental objective in terms of our trade position and, conversely, in pursuing a trade objective in terms of our environmental position.

(12) The United States cannot and should not bear the environmental burden alone. We should not sacrifice our trade interests while the foreigners do nothing.

(13) At the same time, we must ask ourselves honestly whether we seek to *impose* our environmental standards on the world—a sort of environmental imperialism—or whether we are willing to negotiate multilateral understandings which may be lower than our norms or wishes. In this regard, the question of Federal versus State laws and standards must be resolved.

(14) The Administration and the Congress must make a policy decision on the difficult question of environmental subsidies and their possible impact on trade. Will these subsidies be subject to our CVD laws?

(15) We must proceed with all deliberate speed into this debate. There is an environmental crisis out there which cannot be wished away. At the same time we must be equally alert to our trade crisis and not play casual havoc with those interests. To paraphrase Einstein, Congress should not roll dice.

Finally, Mr. Chairman, may I commend you for initiating this hearing this morning. As a trade "guru," I can think of no single issue in our international trade policy as important or as pressing as the environment. We all are, I hope, environmentalists. I hope, equally we all are traders.

PREPARED STATEMENT OF JUSTIN R. WARD

I. INTRODUCTION

The Natural Resources Defense Council (NRDC) appreciates the opportunity to testify on international trade and the environment.[1] Our organization has been active in the environmental debate surrounding the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA). We commend the International Trade Subcommittee's attention to environmental issues, and applaud Senator Baucus for introducing the concept of a GATT environmental code.[2]

NRDC recognizes the growing integration of the world's economies. However, we believe this country must assert world leadership to update outmoded free trade approaches, specifically to include safeguards for the environment, natural resources, and public and occupational health. For too long, environmental concerns have been treated merely as obstacles to the free flow of goods and services.

The time has come for fundamental change in various international forums. In particular, environmental issues must be central to the NAFTA negotiations, including the ministerial meetings this weekend in Zacatecas, Mexico. Trade policy is also gaining prominence in environmental discussions within the Organization for Economic Cooperation and Development, as well as the upcoming United Nations Conference on Environment and Development.

Perhaps of greatest importance, environmental reform is long overdue in the worldwide trading system administered under GATT. Our testimony recommends specific strategies for positive U.S. leadership in GATT reform.

II. IMPLICATIONS OF THE "DOLPHIN/TUNA" DECISION

Last month, a three-member GATT dispute panel ruled against certain dolphin protection provisions within U.S. law.[3] This

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[1] NRDC is a national, non-profit environmental organization with more than 165,000 members, dedicated to the protection of natural resources, public health and environmental quality in the United States and worldwide. For over 15 years, NRDC has had an active interest in the environmental impacts of U.S. foreign aid, trade policy and investment.

[2] Statement of Senator Max Baucus on Trade and the Environment, September 17, 1991.

[3] Report of the Panel, United States -- Restrictions on Imports of Tuna, GATT Doc. No. DS21/R (September 3, 1991) (hereafter cited in the text as "Panel Report").

ruling has dramatically exposed the serious problems with a 40-year-old GATT instrument that does not even mention the word "environment," and that permits closed international tribunals to render judgments on U.S. environmental statutes. The Bush Administration has not articulated a firm position on this major GATT panel decision. The U.S. response to the ruling will be a defining moment for this country's policy concerning trade and the environment.

A. The GATT Panel Ruling

The U.S. Marine Mammal Protection Act (MMPA)[4] includes, among other features, specific provisions to minimize the incidental killing of dolphins in the eastern tropical Pacific Ocean (ETP).[5] The law establishes a permit system to limit dolphin kills by U.S. tuna fishing boats, and bans the import of tuna from foreign nations unless they can demonstrate comparable regulatory programs and dolphin mortality rates.[6] Under court order pursuant to the import embargo provisions of the MMPA, the United States, in September 1990, banned imports of yellowfin tuna from Mexico, Ecuador, Panama, Vanuatu and Venezuela.[7]

Mexico subsequently challenged the MMPA embargo, as well as the Dolphin Protection Consumer Information Act (DPCIA) and the

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[4] 16 U.S.C. §§ 1361-1407 as amended by P.L. 100-711 at 102 Stat. 4755 (1988) and P.L. 101-627 at 104 Stat. 4467 (1990).

[5] Dolphin in the waters of the ETP typically swim together with schools of yellowfin tuna. Fishing boats often deliberately set their "purse seine" nets on the dolphin in order to capture the tuna they know to be swimming below. Without special precautions, dolphin encircled in the nets are often killed or severely injured.

[6] 16 U.S.C. §§ 1374(h)(2) and 1371(a)(2)(B). Amendments to the MMPA in 1988 established "comparable" takings to be no more than 2.0 times the U.S. average by the end of 1989 and no more than 1.25 times the U.S. average by the end of 1990 and thereafter.

[7] The Executive Branch imposed this ban under Federal Court order (746 F.Supp. 964) but quickly revoked it citing positive findings of "comparability." Upon order of a Federal Appeals Court on April 11, 1991 (929 F.2d. 1449), the current ban was imposed against Mexico, Vanuatu, and Venezuela. The MMPA also requires a ban on tuna imports from "intermediary" nations that import tuna from the embargoed countries. Id. § 1371(a)(2)(C). The United States has accordingly banned imports from Costa Rica, France, Italy, Japan and Panama.

Pelly Amendment,[8] as illegal trade restrictions under GATT. Failing to resolve the matter in bilateral talks with the U.S., Mexico asked GATT's Contracting Parties to establish an ad-hoc panel to resolve the dispute. A three-member panel of trade officials from Hungary, Switzerland and Uruguay heard arguments from the U.S. and Mexico in May and June 1991, and reviewed written comments from thirteen other GATT Contracting Parties.

The panel concluded that the MMPA's tuna embargo provisions violated the GATT's general prohibition of "quantitative" trade restrictions.[9] Article XI of the GATT generally forbids the use of quotas, import and export licenses, and other "quantitative" measures, and allows contracting parties to control imports and exports only through tariffs.

With respect to the "quantitative restrictions" charge, the U.S. defended the MMPA embargo on grounds that it did not favor the U.S. fleet over the Mexican fleet. Article III of the GATT allows countries to apply "internal laws and regulations" to imports so long as they afford treatment to imports "no less favorable than that accorded to like products of national origin." Because the MMPA's embargo provisions were triggered only when dolphin mortality from Mexican tuna fishing exceeded U.S. levels, the U.S. argued that the law satisfied Article III's "national treatment" test for applying internal regulations to imports (Panel Report at page 12).

The Panel, however, concluded that:

> Article III:4. . . obliges the United States to accord treatment to Mexican tuna no less favourable than that accorded to United States tuna, <u>whether or not the incidental taking of dolphins by Mexican vessels corresponds to that of United States vessels</u> (Panel Report at pages 41-42) (emphasis added).

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[8] The DPCIA regulates use of the term "dolphin safe" and prohibits the use of that label on tuna harvested in the ETP through the setting of purse seine nets on dolphin. 16 U.S.C. § 1385. The Pelly Amendment (title 8 of the Fisherman's Protective Act of 1967) authorizes the President to ban imports of other fishery products from a country embargoed under the MMPA six months after the MMPA ban takes effect. 22 U.S.C. § 1978(a).

[9] For an in-depth review of the decision, <u>see</u> E. Christensen, "GATT Nets An Environmental Disaster: A Legal Analysis and Critique of the GATT Panel Ruling on Imports of Mexican Yellowfin Tuna Into the United States" (Community Nutrition Institute, October 11, 1991).

Thus, the panel rejected this country's leading defense of the embargo provision.

Of greatest concern to environmental protection, the GATT panel rejected this country's claim that the tuna embargo should be permitted under GATT's general exceptions to the agreement's trade disciplines. The GATT (Article XX (b) and (g)) provides authority for countries to restrict trade "to protect human, animal, or plant life or health" and "to conserv[e]. . .exhaustible natural resources." Such measures are subject to the requirements that they not constitute "arbitrary or unjustifiable discrimination" between countries or "disguised restrictions" on trade.[10] The U.S. argued that the MMPA is a non-discriminatory, bona fide measure to protect the "life and health" of dolphins, which constitute "exhaustible natural resources."[11]

The panel ruled against the United States' invocation of Article XX. In a precedent-setting move, the panel concluded that Article XX's provisions do not apply to measures designed to protect natural resources outside a country's jurisdiction. The text of Article XX is silent on whether the GATT makes exception for national measures taken in support of extra-jurisdictional objectives. No previous dispute panel had considered this question. The dolphin/tuna panel delivered a very narrow interpretation based upon obscure drafting history of the GATT, and questionable conclusions that a finding for the U.S. would seriously disrupt the functioning of the world trading system.[12]

Another troubling aspect of the ruling is the panel's conclusion that the MMPA's embargo provisions are not "necessary" within the meaning of Article XX because the U.S. has not "exhausted all options reasonably available to it to pursue its dolphin protection objectives through measures consistent with

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[10] Article XX(b) adds a further requirement that health measures be "necessary." Article XX(g) requires that conservation measures be taken "in conjunction with restrictions on domestic production and consumption."

[11] Concerning the specific requirements of Article XX(b), the U.S. argued that the MMPA's embargo was necessary because "no alternative measure. . .could reasonably be expected to achieve the objective of protecting the lives or health of dolphins" (Panel Report at page 17). Concerning the requirements of Article XX(g), the U.S. pointed out that MMPA did in fact restrict domestic "production and consumption" in order to conserve dolphins (Panel Report at page 19).

[12] See E. Christensen, supra note 9.

[GATT]" (Panel Report at page 4).[13] The panel identified "negotiation of international cooperative arrangements" as the most attractive, GATT-consistent, alternative. The panel's conclusion ignores that the U.S., unlike Mexico, is already a member of the Inter-American Tropical Tuna Commission. This international body, however, has failed to end the slaughter of dolphins.

The fate of the MMPA is uncertain in light of the GATT panel ruling. If the ruling is adopted by the full GATT Council, the U.S. would be expected to lift the embargo, or face the prospect of trade retaliation or financial penalties.

More broadly, the dolphin/tuna decision raises serious questions over individual countries' ability to adopt measures to protect natural resources outside territorial boundaries. The ruling sets potentially harmful precedent for national laws and international agreements that employ trade restrictions to promote various global environmental objectives. The United States, for example, recently issued regulations banning imports of fish caught with drift nets on the high seas. Although the United Nations has called on all countries to halt the use of drift nets, U.S. action to enforce that direction could be declared "GATT-illegal" under the reasoning of the dolphin/tuna panel.

The panel's ruling could also have negative implications for trade-related enforcement measures contained in existing treaties designed to conserve natural resources of global importance. Key examples include the Convention on International Trade in Endangered Species and the Montreal Protocol on Substances that Deplete the Ozone Layer.

B. Needed U.S. Actions

As noted above, the Administration has not yet issued a definitive response to the GATT panel report. In recent testimony before Congress, the Office of the U.S. Trade Representative's General Counsel, Joshua Bolten, outlined three general options that the U.S. will have to weigh if Mexico ultimately pursues its GATT complaint. The possibilities include: "1) join a consensus to adopt the panel report; 2) block the consensus necessary to adopt the panel report; [and] 3) seek

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[13] Previous trade dispute panels have ruled against domestic measures after finding them "unnecessary" to protect human, animal and plant life or health because less trade-restrictive measures could theoretically have been taken to achieve the same policy goals. See note 27 below.

to amend the GATT rules in this area."[14] Mr. Bolten said the Administration is studying numerous variations among these options.

We strongly oppose the first alternative. Formal adoption by the GATT Council would reinforce the harmful environmental precedent set by the panel report, and greatly increase political pressures to weaken the Marine Mammal Protection Act. The MMPA, in conjunction with other measures, has been highly successful in curtailing the killing of dolphins by U.S. tuna boats. When the law was enacted in the early 1970s, more than 400,000 dolphins were slaughtered annually by the U.S. tuna fleet.[15] Last year that figure had fallen to 5,100, according to estimates derived by the Earth Island Institute from the National Marine Fisheries Service.[16]

Other nations, unfortunately, have not taken comparable steps to regulate their tuna fleets. Today, foreign boats are responsible for the bulk of dolphin kills in the ETP, estimated at more than 100,000 annually.[17] Until those nations agree to regulate their own fleets effectively, non-discriminatory measures to restrict tuna imports are critical to ending the continuing slaughter of dolphins.

We would support Mr. Bolton's second option in the event the panel report is brought before the GATT Council. To remove any doubt that may surround this country's resolve to defend its marine wildlife protections, the U.S. government should declare a strong commitment to block the panel decision if that becomes necessary.

As discussed later in this testimony, we strongly support the third possible response. Reform of existing GATT rules is necessary to insulate legitimate national measures taken to protect resources of global concern.

In the interim, Congress should strongly resist any attempts to weaken the MMPA in response to the GATT panel's decision. We

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[14] Testimony of Joshua B. Bolten, General Counsel, Office of the U.S. Trade Representative, Before the House Energy and Commerce Subcommittee on Health and the Environment, September 27, 1991.

[15] 55 Federal Register 11921 (March 30, 1990).

[16] Testimony of David Phillips, Earth Island Institute, Before the House Energy and Commerce Subcommittee on Health and the Environment, September 27, 1991.

[17] Id.

are troubled by recent reports that the Administration may attempt to soothe the dispute with Mexico by seeking to attenuate the MMPA's import embargo provisions.[18] Instead, the U.S. should concentrate its efforts on securing multilateral agreement to strengthen dolphin protections, including binding commitments to end the deliberate encirclement of dolphins with purse seine nets.[19]

III. ENVIRONMENTAL SAFEGUARDS FOR TRADE POLICY

The dolphin/tuna case dramatically illustrates the world trading system's inattention to natural resource protection. A GATT "environmental code" is badly needed and long overdue, to ensure that the environment is no longer treated as an afterthought or impediment to the agreement's existing disciplines.[20] The recent decision to revive the GATT working group on trade and the environment gives occasion to begin development of such an instrument.[21]

A comprehensive environmental code could be years in the making under GATT. Meanwhile, the agreement's antiquated provisions could face numerous tests affecting natural resources, health and the environment.

Environmental reform of trade policy should therefore proceed on other, more immediate fronts, as a GATT environmental code takes shape. For instance, a well-crafted environmental article to the NAFTA would benefit the U.S., Mexico and Canada,

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[18] See, e.g., "U.S., Mexico Defuse Tuna Trade Dispute," Journal of Commerce, September 5, 1991, p.1; "Bush Team Feels Heat Over GATT Tuna Ruling," Id., September 30, 1991, p.3.

[19] See The Cousteau Society, "Setting the Record Straight on Dolphin Protection in Mexico," October 2, 1991.

[20] See, R. Stone and E. Hamilton, Global Economics and the Environment: Toward Sustainable Rural Development in the Third World, p. 35 (Council on Foreign Relations/World Resources Institute, 1991).

[21] W. Dullforce, "GATT Revives its Working Group on Environment," Financial Times, Oct. 9, 1991, p. 3. We are concerned by the narrow terms of reference that the GATT has reportedly adopted for the environmental working group. Nothing in the group's initial agenda appears aimed at correcting trade policies that may threaten environmental values. Instead, the agenda suggests a misplaced focus on environmental regulations that are perceived to stand in the way of free trade principles.

and set valuable precedent for subsequent Western Hemisphere negotiations, as well as future rounds of GATT.

Recognizing the advanced stage of the current GATT negotiations, it is nevertheless critical that sound policy choices for the environment be made in the Uruguay Round. As discussed below, GATT reforms in the Uruguay Round and beyond should seek to: protect strong national, state and local standards from international preemption; remove competitive advantages that arise from lax environmental standards or enforcement; exempt legitimate measures to protect resources outside individual countries' territorial boundaries; and open up insular procedures for dispute resolution.

A. Protection of National, State and Local Standards

Any GATT reforms must fully insulate national, state and local environmental standards from preemption or weakening assault as non-tariff trade barriers. The agreement must preserve the ability of contracting parties, as well as states and localities, to adopt measures more stringent than international norms for protection of natural resources, environmental quality, and public and occupational health.

The GATT and other trade agreements should adhere to three basic principles in this regard. First, the agreements must avoid "harmonization" provisions that dictate or encourage adjustment of standards toward an international lowest common denominator. Aspects of the U.S.-Canada Free Trade Agreement direct the two countries to work toward equivalence in various food safety procedures, standards and regulations; the text unfortunately states no presumption that the parties must "harmonize" standards toward levels most protective of public health and the environment.[22]

Similar issues currently surround the GATT agreement on "sanitary and phytosanitary" (S and P) standards. In the Uruguay Round negotiations over the S and P agreement, the U.S. is pressing for worldwide adoption of standards set by the Codex Alimentarius Commission, an international body based in Rome.

Adoption of Codex standards could lead to GATT challenges to certain U.S. food safety provisions, notably the Delaney Clauses of the Food, Drug and Cosmetic Act, which prohibit carcinogenic additives in processed foods, as well as carcinogenic color

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[22] U.S.-Canada Free Trade Agreement, Annex 708.1, Schedules 1-12.

additives in all foods.[23] The Administrator of USDA's Food Safety and Inspection Service has acknowledged:

> [I]f you are taken to task on it in the GATT what would happen is that we would explain the Delaney Clause and the offended country would explain its own standard. We might very well ask GATT to mediate; we may lose on the Delaney Clause. We might have GATT with Codex advice saying the Delaney Clause is a non-tariff trade barrier. If that's the case, then we have a choice. We can pay monetary penalties or we can consider taking that as evidence to change the law or something like that.[24]

This official's assurances that the Delaney provisions would not per se be weakened by adverse GATT outcomes ring hollow, given the Administration's historic opposition to those food safety protections.

Second, a "sound science" test to determine disguised trade barriers must not be used to second-guess policy decisions made to protect public health or the environment in the face of scientific uncertainty. Administration officials have recently pledged that "countries are free to maintain standards...assuming there is some scientific reason or because of the level of risk that a country considers to be acceptable."[25]

Notwithstanding the Administration's assurances, we have serious concerns over certain "bracketed" text still pending in the Uruguay Round concerning S and P standards. The proposed requirement that countries furnish "reasonable scientific justification" for standards that exceed the international baseline could lead to protracted, open-ended disputes about whether a particular government's regulatory actions are "reasonable" where such actions have been taken in the absence of scientific consensus.[26]

We are sensitive to the possibility that health and safety standards could be used as arbitrary trade restrictions. We

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[23] 21 U.S.C. secs. 348(c)(3) and 376(b)(5)(B).

[24] Feature Interview with Dr. Lester M. Crawford, 1 World Food Regulation Review, p. 30 (Bureau of National Affairs, June 1991).

[25] Testimony of J. Bolten, supra note 14. (Emphasis added.)

[26] Negotiating Group on Agriculture: Working Group on Sanitary and Phytosanitary Regulations and Barriers, Draft Text on Sanitary and Phytosanitary Measures, paragraph 10, alternative 2 (Doc. No. MTN.GNG/NG5/WGSP/7, Nov. 20, 1990).

believe, however, that trade agreements must contain strong presumptions in favor of the validity of such standards, and that the burden of proof must be placed on the challenging party to show obvious protectionist intent or total lack of scientific policy justification.

Third, trade agreements must preserve individual nations' flexibility to select among environmental policy options, and should not make trade agreements the venue for determinations of whether particular conservation or public health measures are the preferred or only ways to achieve their defined objectives. As noted above, the dispute panel ruling in the dolphin/tuna case held that the U.S. tuna embargo was not "necessary" within the meaning of the relevant GATT exemptions. In the panel's view, this country failed to pursue less trade-restrictive alternatives to achieve its wildlife conservation objectives. Other recent trade dispute rulings, cited in the dolphin decision, have drawn similarly narrow conclusions.[27]

This issue arises in the Uruguay Round negotiations over revisions to the GATT Agreement on Technical Barriers to Trade, also known as the "Standards Code." A wide range of environmental and consumer protections -- from automobile emission requirements to food nutrition labeling -- would fall under the definition of "technical regulations" contained in the draft text currently under consideration.

The draft text for the Standards Code would require that technical regulations "not be more trade-restrictive than necessary," and that they not create "unnecessary obstacles to international trade."[28] Particularly in the wake of the

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[27] See Thailand -- Restrictions on Importation of and Internal Taxes on Cigarettes, Report of the Panel, Doc. No. DS10/R (Oct. 5, 1990). The GATT panel in this case held that, in order for a measure to be "necessary to protect human ... life or health" under Article XX(b) of GATT, the government enacting such a measure must demonstrate that no GATT-consistent alternatives were available to achieve the objectives of the measure, and that the government chose the least trade-restrictive measure out of a range of possible solutions. Our concern with this decision relates to its construction of the term "necessary" in Article XX rather than to its substantive outcome. See also Canada-U.S. Trade Commission Panel, "In the Matter of Canada's Landing Requirement for Pacific Coast Salmon and Herring," 2TCT 7162, Oct. 16, 1989.

[28] Agreement (1990) on Technical Barriers to Trade, contained in Trade Negotiations Committee, Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, (continued...)

dolphin/tuna decision, we fear this language could circumscribe governments' leeway to protect natural resources without being second-guessed in international trade forums.

B. Removal of Competitive Advantages from Lax Environmental Standards and Enforcement

The existing GATT agreement makes no attempt to mitigate the consequences of uneven pollution controls or conservation measures. This may cause economic injury to countries that hold their industries to high standards of environmental protection, relative to places where lax standards and enforcement foster environmental "dumping." World Wide Fund for Nature analyst Charles Arden-Clarke has noted, "[A]t present, industries which internalize the environmental and resource costs of production to a greater degree than similar industries elsewhere must reflect this in the price of their products, which consequently suffer a competitive disadvantage."[29]

As Clarke observes, however, any attempt to correct this situation would violate existing GATT provisions governing "national treatment on internal taxation and regulation." The dolphin/tuna decision appears to reinforce this conclusion; as noted above, the panel ruling interprets GATT in a way that forecloses countries' ability to differentiate among production practices in administering trade restrictions on imported products.[30]

An alternative approach that merits serious consideration would be to classify "externalized" environmental costs as impermissible subsidies under GATT, NAFTA and other trade agreements. One point of comparison for this kind of linkage may be found in the labor protection requirements that the U.S. attaches to trade benefits under the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). The GSP, for example, allows duty-free access to U.S. markets for certain foreign products, provided the exporting country adheres to internationally recognized worker rights. A similar concept could be extended to internationally recognized environmental norms.

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[28](...continued)
Article 2.2 (Doc. No. MTN.TNC/W/35, Nov. 26, 1990). (Emphasis added.)

[29] C. Arden-Clarke, The General Agreement on Tariffs and Trade, Environmental Protection and Sustainable Development, p. 1 (WWF Discussion Paper, June 1991).

[30] E. Christensen, supra note 9, pp. 8-10.

Any attempt to "internalize" environmental subsidies in trade policy would present challenging questions. Among the issues that would require detailed analysis and negotiation include the following:

* What methods are available for rigorous, consistent and efficient measurement and valuation of environmental "externalities" in the trade context?

* Under what circumstances should countervailing duties be used to offset the competitive advantage from divergent environmental standards and enforcement? When might other types of sanctions be preferable?

* How can environmentally-based trade penalties or incentives be administered to promote, rather than frustrate, sustainable economic development in developing countries? What opportunities exist to channel revenues from environmental tariffs into conservation programs in countries with scarce resources for infrastructure, enforcement, and pollution clean-up?

* What international norms should provide reference points for determination of environmental dumping subsidies? What lessons can be learned, for example, from multinational environmental policy developments within the unification of the European Economic Community?

We urge Congress and the Administration to take the lead in searching exploration of these and related topics, to provide the analytic foundation for environmental reform of the world trading system.

C. Exemptions for Legitimate Domestic Measures to Protect Environmental Resources Outside Territorial Boundaries

Unless over-ruled or superseded, the dolphin/tuna panel ruling will stand as the definitive interpretation of GATT's Article XX exemptions concerning natural resource protection. As noted above, the decision rejected arguments that these exemptions' reach should extend outside national boundaries.

The existing GATT exemptions must be clarified unambiguously to protect conservation measures with extraterritorial effects. The exemptions should pertain to both domestic legislation and international agreements.

In addition, the language of Article XX should be broadened to exempt measures designed to protect "the environment." This would cover resources such as the oceans and the atmosphere that may not fall within the existing agreement's vocabulary affording protection to "human, animal, or plant life or health," and "exhaustible natural resources."

D. Open Procedures for Dispute Settlement

The outcome of the dolphin/tuna case exemplifies how trade dispute resolution has been conducted in secret, without opportunity for public input on the natural resource values at stake. Particularly unfortunate in the dolphin dispute is that the panel did not hear comments from the public, including U.S. citizens' groups who had successfully advocated the tuna embargo. It is impossible to know whether this kind of intervention would have changed the result; nevertheless, it is conceivable that greater comprehension of the MMPA's conservation rationale could have influenced the panel decision toward a more favorable outcome for dolphins, and toward better precedent for other environmental laws.

New dispute settlement procedures that may be created under pending trade agreements must prescribe involvement by environmental experts, and be open to public participation.[31] At present, members of Congress, non-governmental organizations and citizens have little access to trade dispute proceedings, such as those under GATT or the U.S.-Canada Free Trade Agreement. The NAFTA presents an opportunity to correct this anachronism in international trade policy. Any new dispute settlement mechanisms under the North American agreement, as well as GATT, must not undermine the ability of national, state or local authorities to maintain or strengthen environmental standards.

In trade dispute resolution, it is critical that the burden of proof rest with the party challenging a country's actions. In the dolphin/tuna case, the panel seemed to accept the arguments of Mexico and some intervenor countries that the U.S. was obligated to substantiate its marine mammal protection laws as non-discriminatory, bona fide measures, necessary to achieve conservation objectives (See Panel Report at pages 15, 25, 27-

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[31] For a detailed discussion of public participation in international forums affecting the environment, see E.P. Barratt-Brown, "Building a Monitoring and Compliance Regime Under the Montreal Protocol," 16 Yale Journal of International Law, pp. 519-570 (1991). This article examines strengths and weaknesses of international monitoring and compliance regimes in the areas of human rights, labor, nuclear non-proliferation, and protection of the stratospheric ozone layer.

28). This creates a misplaced presumption in dispute proceedings that challenged national measures are, in effect, guilty until proven innocent.[32] Reforms are needed in GATT and other trade agreements to correct this anomaly.

IV. CONCLUSION

Environmental issues have gained unprecedented prominence in international trade policy. With the rising public attention devoted to trade and the environment, it will be increasingly difficult for international negotiators to ignore the natural resource dimensions of their actions.

The challenge ahead will be to overcome the inertia that has precluded positive environmental reforms in the GATT and other trade agreements. In the near term, the NAFTA may provide the best opportunity to craft a trade pact with full attention to environmental values. Bruce Babbitt, the former Arizona Governor and current President of the League of Conservation Voters, has called the North American agreement "the most important international event in the modern history of the environmental movement."[33]

Finally, objective environmental impact assessment must become an integral tool for trade policy and negotiations. It will be necessary in every context to explore whether trade liberalization is compatible with principles of sustainable economic development and environmental protection. This is especially important given the trend toward greater integration among countries with widely divergent economic conditions.

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[32] See Testimony of Ralph Nader before the House Energy and Commerce Subcommittee on Health and the Environment, September 27, 1991.

[33] Interview with Bruce Babbitt, 8 The Environmental Forum, p. 24 (September/October 1991).

COMMUNICATIONS

STATEMENT OF THE U.S. CHAMBER OF COMMERCE

The Chamber appreciates this opportunity to share its views on trade and the environment.

SUMMARY AND INTRODUCTION

Building an open global trading system and encouraging sound management of the global environment should both be high-priority goals on the American national agenda. The U.S. Chamber of Commerce believes it is possible and desirable to reach agreements with other countries that balance a prosperous economy and a healthy environment," to use the words of EPA Administrator William K. Reilly.

It must be recognized, however, that balance between these two important goals will only be achieved through carefully coordinated policies. Much has been made by environmental groups about the possibility that trade agreements could undercut progress in managing the environment. On the other hand, we also run the risk of giving too little national attention to the potential damage that poorly designed measures to protect the environment could do to our international competitiveness and to the health of the global economy. We must remind ourselves that economic growth, both here and abroad, remains the indispensable basis for financing environmental progress.

It is the Chamber's conviction that policies to promote growth in trade and sound environmental management can be harmonized, but only if government, consumers, environmental groups and the business community join together in the search for answers. The Chamber stands ready to participate in such a cooperative effort and recognizes that business has an important role to play. We have already joined the business communities of other countries in endorsing a "Business Charter for Sustainable Development" crafted by the International Chamber of Commerce. This Charter recognizes the role of business as a driving force in meeting environmental challenges and lays out eleven guiding principles for environmental management.

The thorny issues that confront the United States in seeking to reconcile its trade and environmental goals are only beginning to be clarified. No one has the answers yet, and in many cases even the questions are still being formulated. At the international level the search for a solution is only beginning. The industrialized countries who participate in the OECD have just launched a dialogue by creating an experts group on trade and the environment. The more broadly based GATT, which is responsible for administering global trading rules, only recently agreed to begin exploring ways to deal with the interplay between the rules of international trade and the global environment.

This suggests that both the private and public sectors should avoid hasty action. Ill-conceived initiatives could be harmful by leading to the creation of serious new barriers to global trade or by obscuring valuable opportunities for cooperation with trading partners abroad in harmonizing trade and environmental policies.

ISSUES LINKING TRADE AND ENVIRONMENT

The complex linkages between trade and environment can be illustrated by four current issues. A brief analysis of these issues suggests some important considerations that should guide the search for adequate policy solutions.

Issue: NAFTA and the Environment

Efforts to negotiate a North American Free Trade Agreement, a goal which the U.S. Chamber strongly supports, have focused attention on the environmental implications of a free-trade zone. Fears have been expressed that U.S. companies might seek to start operations in Mexico in order to evade more stringent environmental

requirements in the U.S. Others have contended that Mexican competitors subject to less-costly environmental regulations would in some industries put U.S. firms at a competitive disadvantage.

Environmental concerns raised by the creation of a NAFTA need to be addressed, but they should be addressed in negotiations conducted in parallel with the trade talks among the NAFTA partners. The objective should be to create equitable and comparable environmental goals and enforcement policies in all three NAFTA signatories. These objectives can be achieved most effectively through broad-ranging cooperative arrangements that go far beyond the scope of a free trade agreement. As evidenced in the August agreement on Mexican-U.S. cooperation on border environmental issues and the draft Interagency Report, there is intensive activity underway. In our view there is no evidence as yet that either Mexico or the U.S. are attempting to use the NAFTA talks as a means to slow progress towards environmental goals.

Issue: International Regulation of Hazardous Waste Transport

U.S. ratification and implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal are now before both houses of the Congress. The U.S. Chamber has expressed its support for rapid movement to ratify and implement the Convention in testimony before Subcommittees of the House Energy and Commerce and Senate Environment and Public Works Committees.

Of the several bills introduced, only H.R. 2398 provides a framework for continuing trade and the promotion of recycling. Its requirement of bilateral agreements provides stricter controls than required by the Convention and would permit inclusion of notification and waste classification regimes such as are now being concluded by the OECD. The framework of H.R. 2398 anticipates the forthcoming international criteria for environmentally sound management required by the Basel Convention.

In testimony the Chamber emphasized that Basel is as much a convention on trade as it is on the environment. Yet the Convention omits discussio of important trade issues, particularly the need for national treatment. Nor does it specify that the called-for notification system should be within the framework of the international uniform customs declaration system. U.S. implementing legislation should include these points.

It is noteworthy that legislative proposals on Basel Convention implementation have thus far failed to recognize the importance to U.S. trade interests of transborder waste transport. This trade resulted in a positive contribution of $4.8 billion to the U.S. trade balance. Future global measures to protect the global environment will increasingly have major implications for trade. These will need to be explicitly recognized by including provisions to deal with trade-related issues such as national treatment and customs harmonization.

Issue: The Threat of New Barriers to Trade

The growing interplay between environmental measures and trade creates the potential for an explosion of new barriers to trade. Examples of potentially serious trade banners are growing: the Danish beer bottle case, Canada's "green labels," the EC's "Daisy Label," NAFTA and Mexico, the German recyclable auto, and more.

Under the current division of responsibilities among U.S. agencies and departments such as EPA, Agriculture, Commerce and the U.S. Trade Representative, environmentally related trade barriers may fail to be adequately addressed. Arrangements that ensure effective inter-agency action are needed.

Issue: GATT and U.S. Environmental Law

Strongly emotional reactions were elicited by a recent GATT Panel determination that U.S. restrictions on imports of tuna under the Marine Mammal Protection Act are inconsistent with U.S. GATT obligations. The Panel ruling raises fundamental questions about the adequacy of current GATT rules that urgently need to be addressed:

- Should the United States and its trading partners have a free hand to impose restrictions on imports as a means of advancing what may be the individual environmental objectives of a single nation?
- Should environmental goals be subordinated to the goal of maintaining an open global trading system?
- How can the United States prevent environmental-protection measures from becoming a new form of protectionism?

• Can the United States develop an international consensus on the changes needed to make GATT rules consistent with U.S. environmental objectives?

Finding the answers to difficult questions like these will be complex and time-consuming. In order to achieve an international consensus, numerous options will need to be explored, ranging from relatively modest changes in the provisions of GATT to the negotiation of a comprehensive new GATT Code on Trade and the Environment. Each of these options will need to be carefully evaluated in terms of their desirability and feasibility.

The U.S. Chamber has reached no specific conclusions yet on the shape of a trade regime that balances the imperatives of open trade and adequate protection of the environment. Nevertheless, there are important considerations that should be taken into account in the search for solutions. Certainly we should resist the temptation to resort unilaterally to import restrictions and other trade measures as a means to enforce U.S. environmental standards around the world without carefully examining the trade consequences. Here again we must recognize that the economic growth generated by expanding trade is indispensable to giving countries the means to afford environmental-protection initiatives. In the nation's understandable eagerness to adapt trading rules to urgent environmental protection needs, careful evaluation must be made of the alternate routes to achieving that goal. Various unilateral, bilateral and multilateral options should be systematically weighed. For example, would proposals to negotiate a GATT environmental code modeled on the current subsidies code in fact attract the participation of those countries which the United States most wants to include? Furthermore, is the current subsides code with all of its shortcomings a desirable model?

On the other hand, if it is proposed that the U.S. adopt trade legislation which seeks to impose adequate environmental standards on the rest of the world through the application of unilateral U.S. trade sanctions, the likely effectiveness of such sanctions and the potential costs to our trading interests will need to be evaluated carefully.

Recommendations

In conclusion, the twin goals of expanding trade and sound environmental management can be achieved, but only through coordinated policies and a cooperative effort among the major elements of American society. In the search for answers the U.S. Chamber recommends the following guidelines:

• Trade expansion and environmental protection should be pursued as closely interrelated national priorities. Effective policy coordination will be essential to minimize conflicts.

• GATT trade rules should be adapted to permit sound environmental management while providing disciplines that prevent environmental measures from being utilized as a new form of protectionism. However, this review should take place after the GATT Uruguay Round is terminated.

• Mexican-U.S. environmental negotiations conducted in parallel with NAFTA can ensure that U.S. environmental-protection goals are achieved.

• The economically important U.S. trade in secondary materials should be preserved through rapid U.S. ratification and implementation of the Basel Convention Implementing legislation should include commitments to national treatment and customs harmonization.

• The U.S. Government should closely monitor the growing number of environmental labelling and packaging requirements in foreign markets to determine if they are being used as barriers to trade and take corrective action where needed.

• The trade implications of future global environmental agreements should be examined and addressed through coordinated U.S. government action encompassing the legitimate concerns of U.S. business, workers, and environmental groups.

STATEMENT OF THE VISKASE CORP.

Viskase Corporation submits this statement in support of Senate Bill 984. This bill properly reflects the priority that the United States attaches to protection and restoration of the environment. it also, appropriately, addresses the unfair competitive advantage that selected foreign competitors enjoy due to the absence of adequate local safety and environmental requirements and/or lack of enforcement of such requirements.

Viskase Corporation is the world's leading producer of cellulosic casings used to prepare and package processed meat products. The company is also a major domes-

tic producer of specialty films manufactured for the packaging and preservation of poultry, fresh and processed meats and cheese.

Viskase is dedicated to producing only the highest quality products backed by technical support services that promote the growth and development of our country's food industry. We employ approximately 2,500 Americans and operate eight domestic manufacturing facilities in eight states:

- Aurora, OH
- Centerville, IA
- Chicago, IL
- Huntsville, AL
- Kentland, IN
- Loudon, TN
- Osceola, AR
- Pauls Valley, OK

Viskase Corporation's continued success rests in our continued ability to invest in our future by introducing products that out-perform those of the competition and by maintaining an operational environment assured to protect the safety of our employees and the communities in which we live and work. Representing American industry as a worldwide leader, Viskase makes every effort in terms of commitment, capital, time and technology to assure that we are in compliance with the wide spectrum of regulatory standards affecting the environment and the health and safety of our employees, customers and neighbors.

POSITION

Viskase Corporation joins the Committee in recognizing the fact that the United States has made protection and restoration of the environment a very high priority. Like the committee, we also recognize the fact that American industries, including Viskase Corporation, as well as municipalities and states have expended a significant amount of capital in order to comply with existing pollution control laws and regulations.

Viskase further recognizes that significant amounts of additional capital will be required to achieve compliance with the provisions of the Clean Air Act and future environmental legislation.

In short, Viskase Corporation, along with other U.S. industries, invests significant resources in order to comply with our country's exhaustive environmental regulations. These regulations comprise approximately ten thousand pages in the *Code of Federal Regulations* and also include seventeen major federal environmental statutes, plus all of the State and local environmental laws and regulations which parallel and often exceed federal requirements.

Clearly, the cost of compliance must be reflected in the pricing of our products. These products must then compete in a worldwide economy where foreign competitors, most notably from Spain and Mexico, not only benefit from a wage advantage, but also, in effect, are subsidized by their governments' failure to effect and enforce adequate environmental regulations. As a result of their lower production costs, foreign competitors are enabled to sell at a significantly lower prices.

Viskase would like to take this opportunity to suggest the S. 984 be extended to include the costs of complying with U.S. health and safety standards, the most stringent in the world. Viskase strongly believes that these health, safety and environmental standards have made the American worker and community the safest and healthiest in the world. For example, U.S. Environmental Protection Agency Administrator, William K. Reilly, recently testified that 144 million Americans now have their waste water treated at secondary levels and that 75% of U.S. stream miles met statutory goals for reducing toxics in 1988, up from 34% in 1974.

Our progress has, however, been costly to American industries. Unless our businesses can be protected against unfair pricing by foreign corporations which are not required to make comparable expenditures, we will lose market share and American job opportunities. Furthermore, as recognized by those who drafted the Bill, failure on the part of foreign governments to impose effective pollution control and workers protection standards must be addressed now in order to eliminate an economic situation that brings economic benefits to those who do not expend resources to protect the environment or human health.

Over the past five years, Viskase has made capital expenditures of 26.1 million dollars in order to comply with environmental and safety regulations. This is a highly significant investment for a medium sized manufacturing company.

Pollution controls employed by Viskase during the recent past include air pollution controls for hydrogen sulfide and particulate emissions; waste water treatment

including neutralization, biological and chemical treatment and clarification systems. Chemical spill prevention and control measures, storm water protection and underground storage tank protection are among the many technologies implemented at Viskase plants to protect the environment.

Operation, maintenance and replacement of these facilities represent a significant economic investment. Consequently, Viskase spends approximately 6 million dollars per year in this area. Engineering and Research and Development expenditures made for environmental protection, in combination with the cost of Corporate Health, Safety & Environmental staffing require in additional 600 thousand dollars. At Viskase, approximately 16 full time professional and 29 hourly and non-exempt employees work to ensure compliance with all environmental and safety/health regulations.

Looking ahead to the Clean Air Act Amendments, Viskase faces potentially devastating costs with the addition of new controls. Depending upon the control requirements ultimately promulgated, new capital costs could far exceed the 26 million dollar expenditure of the last five years. In order to avoid such high-end cost, Viskase is currently investing significant research and development dollars to develop an alternate manufacturing process. However, this is a long term, high-risk, high-cost endeavor that promises no assurance of success. These large research and development costs do not even appear in the Bureau of Census survey of pollution abatement costs.

SUMMARY

Viskase Corporation wishes to continue to maintain our competitive position and to invest in the preservation and restoration of our environment. We firmly believe that the reaching of our goals will be significantly hindered by foreign competitors, particularly those from Spain and Mexico, who do not share our standards and concerns.

Environmental protection is a worldwide responsibility that should be treated as such. In order to encourage the realization of global pollution control obligations and to prevent injury to United States industries, Viskase Corporation fully supports S. 984. It is our hope that the Senate of the United States will employ this legislation in an effort to reduce those competitive advantages enjoyed by foreign competitors in the absence of their own locally established safety and environmental regulations and requirements.

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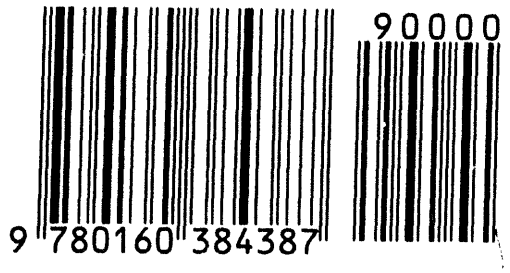

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