S. HRG. 102-1065

TRADE POLICY LEGISLATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

H.R. 5100

JULY 22 AND 29, 1992

OPENING MARKET PROPOSALS, AUTO TRADE, AND CUSTOMS MODERNIZATION

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

62-724—CC WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-040637-4

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TRADE POLICY LEGISLATION

(Market Opening Proposals)

WEDNESDAY, JULY 22, 1992

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:00 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the committee) presiding.

Also present: Senators Moynihan, Baucus, Rockefeller, Daschle, and Grassley.

[The press release announcing the hearing follows:]

[Press Release No. H–38, June 29, 1992]

FINANCE COMMITTEE TO EXAMINE PENDING TRADE BILLS, BENTSEN ESPECIALLY INTERESTED IN MARKET-OPENING MEASURES

WASHINGTON, DC—Senator Lloyd Bentsen, Chairman of the Senate Finance Committee, Monday announced a series of hearings on the state of U.S. trade policy and the merits of pending trade legislation.

The hearings are scheduled for *10 a.m. on Wednesday, July 22, and Wednesday, July 29, 1992* in Room SD–215 of the Dirksen Senate Office Building.

"I've called these hearings to examine the state of U.S. trade policy today and ask what Congress' role should be in pressing our trade policy objectives forward. As Chairman of this Committee, I have worked to make trade policy a number one priority for this country—just as it is for our competitors," Bentsen said.

"The House Ways and Means Committee has approved trade legislation that the full House will probably take up shortly. At the same time, the Administration continues negotiations in the Uruguay Round and on a North American Free Trade Agreement," Bentsen said.

"In these hearings, we will examine more closely some of the proposals that are actively under discussion this year. We will be particularly interested in looking at the pros and cons of different measures designed to open foreign markets to U.S. exporters, such as Super 301."

Bentsen said topics will include various initiatives aimed at opening foreign markets to U.S. exporters, such as Super 301, Special 301, and sectoral trade proposals as well as multilateral and bilateral trade negotiations and proposals to modernize the operations of the U.S. Customs Service.

OPENING STATEMENT OF SENATOR LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. This hearing will come to order. We are very pleased to have Senator Levin here wish us this morning to testify. We look forward to hearing from you.

[The complete opening statement of Senator Bentsen appears on page 6.]

STATEMENT OF HON. CARL LEVIN, A U.S. SENATOR FROM MICHIGAN

Senator LEVIN. Mr. Chairman, Senator Baucus, thank you for holding this hearing this morning on a very critical subject, which is our trade policy. This committee has held a number of hearings on this subject, and I appreciate the opportunity to spend a few minutes with this committee to talk about a bill that Senator Daschle and I have introduced in this area.

Market access, which the heart of the matter, is a critical subject. We can have the best-educated, best-trained work force in the world, with the best technologies, and if we are shut out of foreign markets by discriminatory barriers, it is not going to do much good.

It is appropriate that we spend a lot of time on education and on technology; I am all for it. But that is just half the story. The other question is, will we have access to foreign markets?

American manufacturers are eager to have that access, but we do not have it now. Mr. Chairman, I put it this way. If other countries want to erect barriers to our goods, that is their decision. But if we tolerate it, that is our decision.

We have tolerated it too long; we have talked about it too long; we have negotiated about it too long. We ought to simply stop the pleading, stop the begging, and place equivalent restrictions on the goods of any country that places discriminatory restrictions on our goods.

Equivalent restrictions is the heart of the matter. It is not a radical concept. As a matter of fact, it is what we do every day to defend our diplomats, and this is an element which has not been given much daylight yet.

We have a special office in the State Department, an Office of Foreign Missions, whose purpose is to place equivalent restrictions on governments that place restrictions on our diplomats.

If a foreign government puts a restriction on our diplomat in some foreign country so that that diplomat cannot travel somewhere or has to pay a tax, we have an office in the State Department whose function is to place equivalent restrictions on those countries' diplomats here. And it works: it gets rid of those restrictions in foreign countries on our diplomats.

We give greater protection to our diplomats abroad than we do to our businesses here that are trying to export, and I consider that offensive. We lose jobs to discriminatory barriers because we do not place equivalent restrictions on goods of countries that discriminate against American goods. But when it comes to our diplomats being able to travel in some foreign country, oh, we are right on the ball.

Then we put in effect the equivalent restrictions. If our diplomat cannot travel over there, your diplomat is not going to be able to travel over here. If our diplomat has to pay a tax over there, your diplomat has to pay a tax over here. It has not started any diplomatic war; it has gotten the job done.

Auto parts. Our auto parts, Mr. Chairman, can compete internationally. They do everywhere, except one country, Japan, which has discriminatory barriers against American auto parts. We have a $4 billion trade surplus in auto parts, excluding Japan, where we have a $9 billion trade deficit in auto parts.

So, this is not a matter of quality. Our auto parts compete where they are allowed to compete. Where they face barriers, we have a deficit, and it has cost us jobs. Hundreds of thousands of jobs have been lost because we are unwilling to tell Japan or any other country, we are going to treat you not better than you treat us. Not because we are mad at you, but because that is the only way to do business.

Last year, the administration's own Auto Parts Advisory Committee called on the administration to prepare to self-initiate Section 301 action against Japan's barriers to American auto parts exports. The auto parts industry, in other words, asked the administration to prepare for negotiations under strict guidelines under threat of retaliation.

But, over a year later, the administration has not acted. It has promised, on the other hand, to veto the legislation that just passed the House overwhelmingly to initiate Section 301 action on auto parts.

The administration says it is making progress. It spent 1 year just negotiating the terms of a study—that is it—in the area of auto parts. A year negotiating the terms of a study.

We have heard, since 1970, one president after another talk about progress in the area of trade with Japan, and I will not go through the quotes with this committee; you are very familiar with them. But it is just one president after another using almost the same words, "we are making progress," "we are making progress," "we are making progress."

The Super 301 law tried to require action and produced some results when it was used, but it was abandoned in practice in 1990, the second year that it was in effect. The Trade Representative's 1990 report on Foreign Trade Barriers, a couple hundred pages of foreign trade barriers here, 20 pages of Japanese trade barriers, 12 pages of Canadian trade barriers, 12 pages of EC trade barriers. And, yet, the Trade Representative identified but one country—it continued to identify India as the only country.

In other words, it did not add one country. We have got all the barriers listed here from Japan and other countries, but it did not take any action. So, Super 301, I am afraid, was a good idea. But without strengthening it, it is more often than not a toothless tiger. It is not simply enough, Mr. Chairman, to renew it. That is why Governor Clinton's economic plan calls for a "stronger, sharper Super 301."

The economic plan that we have been reading so much about, and I think most of us have had a chance to read, does not simply call for the renewal of Super 301, but, in the words of that economic plan, calls for the passage of a "stronger, sharper Super 301."

Well, Senator Daschle and I have introduced legislation which takes us in that direction. It is S. 2764. It provides criteria to ensure that the law is used each year that there are major barriers to our products. And the heart of the matter is that it requires equivalent restrictions should the negotiations fail to eliminate identified barriers. And those restrictions could only be waived with the approval of Congress.

This legislation is not intended to bash any country, it is intended to boost America. And it is long past due that we defend American jobs the way every other government defends their jobs.

Again, Mr. Chairman, and members of the Finance Committee, we are grateful for your holding these hearings, for your giving me a chance to express my views on this issue, to briefly outline the Daschle-Levin bill and to express the hope that we do more than simply renew the Super 301 law that was just on the books without much use.

We have got to force this issue on the administration, because they, like previous administrations, simply are unwilling to do for our jobs, our workers, our industries, what we do consistently for our diplomats, which is to place equivalent restrictions on countries that discriminate against American products. Thank you, Mr. Chairman.

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

The CHAIRMAN. Thank you, Senator Levin. That is an interesting analogy. I do not think I have heard that one used before. It is interesting how the State Department can be so inconsistent on that issue. Are there any comments?

Senator BAUCUS. Mr. Chairman?

The CHAIRMAN. Yes, Senator Baucus.

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

Senator BAUCUS. Mr. Chairman, thank you. Senator, I appreciate your very active interest in trade legislation, and I am happy to see the House pass trade legislation because it is important that this Congress this year pass a trade bill that opens markets for American products.

In my view, the House bill, while it is a good bill, still has some problems. And I say problems, because I think that it is important this year to show the American people that Congress is not gridlocked, that Congress is not pursuing politics as usual, but, in fact, Congress is going to get something done that does help America.

By that, I mean it is important for both the House and Senate to pass trade legislation—not to make a political statement; not, in an election year, to try to embarrass either of the two presidential candidates, but, rather, to pass legislation that will be signed by the President so that we can help Americans open markets overseas.

I do believe that President Bush, although he is not enamored with an extension of Super 301 and probably not enamored with the Trade Agreements Compliance Act, will probably reluctantly sign a straight extension of Super 301.

And I think we will be performing a better service to our people in all of our States if we pass legislation that will be signed by the President. It is clear to me that Super 301 has been very helpful to Americans.

Super 301 forced the Brazilians to back off on import licenses. Super 301 forced the Japanese to open up their markets in satellites, super computers, and processed forest products. Just the

threat of Super 301 forced the Koreans, and the Taiwanese to reach agreements with the United States so as to avoid being named under Super 301.

In addition, even though we do not have a Trade Agreements Compliance Act, it is clear that a deal is a deal. And if a country reaches an agreement with the United States, they should live up to it, and we should have legislation that forces them to live up to it.

So, I urge us to pass legislation this year, but also legislation that, in fact, is not a political statement, but rather one that is substantive. I hope that we can work to accomplish that purpose.

Senator LEVIN. Well, I would agree with you. We ought to try to pass legislation which has a significant impact on our trade imbalance and on discriminatory barriers. Where we differ is the degree of impact that Super 301 had.

When you have a 200-page volume of discriminatory barriers that is put out by our own Trade Representative, and not one action was taken in 1990, not one country was named. Japan, which is the biggest offender in this book, was not even named in 1990. It is still a crime to sell American rice in Japan.

Japan still discriminates against American auto parts. Why should we not take 301 action on auto parts? That is the bottom line question for me.

$4 billion surplus in auto parts in the rest of the world but Japan; $9 billion deficit in Japan because of discriminatory barriers. They are listed in here as a discriminatory barrier. But Super 301 was so full of holes that the President simply did not name Japan or any other country in 1990.

They print the book; 200 pages of print here of discriminatory barriers. The book is great. But Super 301 was so full of loopholes that they were able to avoid naming any country in 1990.

Senator BAUCUS. Well, I appreciate that. Their record in 1990 was not as good as the prior year. I would amend extension of Super 301 by including a provision allowing the House Ways and Means and the Senate Finance Committee to petition the administration to commence a Section 301 action. That will help, even under Super 301. That is not in present law. That would be an addition to present law to help address the problem that you have.

Senator LEVIN. Will the President be able to ignore the petition?

Senator BAUCUS. I think politically it would be very difficult to do so.

Senator LEVIN. Well, it may be politically. But will he, under the law, be able to simply ignore it the way he ignored his own 200-page book in 1990?

Senator BAUCUS. Well, it will be much more difficult to ignore a petition by the Congress than when there is no petition by the Congress.

Senator LEVIN. With that pulpit, he does not find it difficult to ignore it at all.

Senator BAUCUS. I guess the real question is, are we going to let perfection be the enemy of the good. Because if we go too far here trying to achieve perfection, then we do not have the good, we do not have anything. And it is just a question of judgment as to how

far we can go to get as good a trade bill as we possibly can that is going to be enacted and signed into law.

The CHAIRMAN. Senator Daschle.

Senator DASCHLE. Mr. Chairman, I want to commend Senator Levin for his diligence and for the tremendous contribution he has made to this debate. As much as I admire and respect the positions taken by Senator Baucus, I would like our legislation to be perfection. I do not think we are even close with that.

The thing that I can recall for the last 10 years having been said over and over by the administration and its predecessor was that, in diplomacy, as well as in military strategy, the three things that are absolutely essential were certainty, consistency, and equivalency.

I have heard that speech made over and over again. You have got to have certainty, you have got to have consistency, and there has got to be some level of equivalency.

Well, that is what Senator Levin and I are saying. If it is important enough for military strategy and international diplomacy, then, for heaven's sake, it ought to be as important in economic strength, when it comes to our international position, and that is really what we are saying with this legislation.

Super 301, I think, has already been considered to be the single most important tool we have. But, frankly, I do not think we used the tool nearly as effectively as we ought to.

Frankly, the question really comes down to this. If we are not going to impress upon the administration the absolute need for certainty, consistency, and equivalency, what is the best means to make that impression?

So, I must say, I appreciate immensely what Senator Levin has said, and the contribution he has made. And I certainly hope that this committee will look very favorably upon some of the recommendations that we are going to be making. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Are there further comments?

Senator BAUCUS. Mr. Chairman, I would like to say that I would like to stay for the rest of this hearing, but the garbage bill is on the floor. [Laughter.]

I have to go manage it, and I hope that we can conclude it today. But I cannot be two places at once, and I very much will follow-up on this hearing and talk to the Senators who are here and work with Senators, because I think it is a very important subject. Thank you.

The CHAIRMAN. Well, I wish you good luck in getting the garbage out of the Senate. [Laughter.]

Thank you very much, Senator. Nice to have you.

Senator LEVIN. Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, COMMITTEE ON FINANCE—[continuing]

The CHAIRMAN. It is interesting to listen to this debate and these comments this morning. I cannot help but remember that the book the Senator was showing describing trade barriers around the

world was the result of the congressional action of this committee, the 1988 Trade Bill.

I cannot help but remember how President Reagan opposed it, and how we had bipartisan support in the Senate and on this committee to bring that law about.

I know there is increased interest in trade and that we are seeing an increase in our trade deficit. About 75 percent of the merchandise trade deficit is attributable to one country, a deficit that appears to be almost intractable.

I have called these hearings because of that increased interest in trade. Two weeks ago, we saw the House of Representatives pass a rather broad bill. What I want to be sure of is this: If we move on it in this committee, that we are making a contribution; that we are moving our cause forward; that we do not complicate our negotiations in the Uruguay Round or the NAFTA. We have to focus on what will do the most good for American companies and workers.

I have been on a couple of panels recently where I have heard chief executives of major American companies say, "I am an international company, we are not nationalist anymore. I can put my headquarters anyplace I want around the world." I understand that this is a reality. But I am also deeply concerned about the lack of allegiance to their country that this implies.

I look at the situation of SEMATECH. We worked to put some seed money in research to help move our country forward. Now I read that two of the major participating companies made a deal with two major Japanese companies. I want to know the details of that agreement. But, as I understand it, the manufacturing will be done in Japan. I do not think the heads of the Japanese companies have lost their nationalist interest.

There is no way this country preserves a middle class and anchors the dreams, hopes, and aspirations of our folks for themselves and their children unless we have good paying jobs here. There is no way those international companies, if they decide to move their headquarters elsewhere, are going to have much of a market left here unless our folks have jobs and can improve their standard of living.

We are engaged in two major trade negotiations. The Uruguay Round seems to be pretty much in a deep freeze because of the intractable position of the Europeans on agricultural subsidies. Negotiations are apparently moving forward on NAFTA. We may have an agreement in the next 30 to 60 days. But we want to be sure that it is a good agreement. I fought hard for negotiating authority, but I would fight just as hard against an agreement that I thought was not a good one and does not result in a net increase in jobs for us.

I think we can get that. If we can give a crowbar to our negotiator, I want to do that. If that means more trade legislation, I want to do that. But if it emphasizes unilateral actions by us that might complicate getting a trade agreement, then that worries me. That is what has to be resolved.

I just made some comments to the National Manufacturing Association regarding the tax bill. I would not propose that we put in that bill a denial of deductibility of salaries over $1 million. I really

do not think that is the way to go. I think the marketplace and boards of directors and stockholders ought to decide that.

I think most chief executive salaries correlate with the performance of companies, although some do not. In some, it is just greed. It goes contrary to what the company has been able to do, or to what that manager has been able to do.

At the same time, the workers' compensation is eroded, where, a dozen years ago, compensation for our manufacturing workers was the highest in the world. Today, we are substantially behind that of the Japanese and the West Germans.

So, our industrial base, which has eroded in the last dozen years from 24 percent of our GNP to something less than 20, has to be a major concern. And it has been the Congress over the last dozen years that has pushed trade legislation to opening up foreign markets to our products.

This is what we are talking about here—preserving the standard of living of our people. In the next 3 weeks, we are going to hear from a number of witnesses, including the administration, on the advisability of trade legislation this year. The topics are going to range all the way from Super 301, which I support and I think has been a plus for us, to modernizing the Customs Service.

I have introduced legislation to try to give us a better base of knowledge about U.S. competitiveness. It creates within the U.S. Government and the International Trade Commission the permanent capability to monitor the performance of our competitor countries, do something in the way of an information base for manufacturing in this country so they can make better judgments about the future, and where their competition is moving.

Today, the primary focus of this hearing is market access. Just what can we do to help open up those markets that have been closed, and denied to our exporters? We will hear from industries that have some experience with market access tools that we have given the administration in the past.

We will also get the perspective of three broad-based business groups on this question. We appreciate having them. Are there any comments that any of the members would like to make before we start with these witnesses? Yes. Thank you. All right, gentlemen.

Our first panel consists of Mr. Jack Valenti, who is the president and chief executive officer of the Motion Picture Export Association of America. We are looking forward to hearing from you, Jack.

Mr. Jameson French, who is the president of Northland Forest Products, and chairman of the American Hardwood Export Council, on behalf of the National Forest Products Association; and Mr. George Scalise, senior vice president and chief administration officer of the National Semiconductor Corp. and chairman of the Public Policy Committee, Semiconductor Industry Association, on behalf of the Semiconductor Industry Association, Sunnyvale, CA. Gentlemen, we are pleased to have you. Mr. Valenti, will you lead off?

STATEMENT OF JACK VALENTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MOTION PICTURE EXPORT ASSOCIATION OF AMERICA, WASHINGTON, DC

Mr. VALENTI. Thank you, Mr. Chairman, members of this panel. Dr. Samuel Johnson, who was a wise, grizzly bear of a philosopher, put it this way: that when a man is about to be hanged, it does tend to concentrate the mind wonderfully, which is why I think the timing of this hearing is quite appropriate. Because in the world of global trade, I can say this, that our mind better damn sure be concentrated.

Otherwise, we are going to be like a fellow approaching the trade gallows, bleeding from a lot of wounds, lurching, stumbling, fumbling around, and still unsure of how the rope got around his neck.

We are at a time now when the face of the American dollar is drawn and shrunken and emaciated. We are at 122 Japanese yen, and fading fast, at 122 Deutsche marks and falling, losing to the British pound 1.95.

Conventional wisdom has it that when the American dollar is weak, exports are strong. Well, the fact is, the latest trade results in May—I do not have to tell members of this panel—showed us with about a $7.4 billion deficit. And not only is the number bad, the trend is worse. In the last 3 months, we have been falling like an unhinged boulder. So much for merely irrelevant conventional wisdom.

We are caught in a vise: exports shrinking, relentless competition from other countries. But, from the standpoint of the U.S. film and television industry, too many countries are tilting their marketplace to their advantage and to our disadvantage. And what happens is, if they are obliterating competition, all we are asking is that the trade bubble stay in the center of the level. That is all we are asking.

And I do not have to remind this panel that American movies, television programs, and home video material are hospitably received in every country in this world wherever citizens of that country have a choice. Unhappily, not so hospitably received by foreign governments.

And I do not have to remind this panel that the U.S. film and television industry is one of this country's few great trade assets, bringing back to this country more than $3.5 billion a year in surplus balance of payments, which is a phrase seldom heard in the corridors of this building.

Now, let me cite to you the dismal catalog of what I call discrimination: lack of national treatment, abandonment of the protection of our intellectual property, and a casual neglect about concern about keeping competition alive abroad.

In the European community where 12 nation states are bound together in a seamless web of unity, we are assaulted by television quotas which are enemies of competition, and whose long-term objective, mark you well, is to force American products to make their films and television programs in Europe.

And if we give in to that, then it is going to be a massive job loss in this country of the creative community. And if we do not give in, we are going to find ourselves exiled from TV and cinema

screens throughout all these 12 countries. Now, that is a fact. I live with that every day.

In a stream of directives that are emerging from Brussels, directives on rental rights, satellites and broadcast quotas, our contractual rights are being mauled and global concepts of national treatment is being abused. And new barriers parading under the concept of reciprocity are crawling out from the shadows.

In Thailand, in Greece, in Italy, in Poland, in Russian, in Taiwan, in Venezuela, in Turkey, in the Dominican Republic—the list is long, and the list is dreary—our movies are being systematically stolen by pirates. The governments in these countries are either unable, unwilling, or uninterested in stopping this thievery.

The negotiations in GATT, as Chairman Bentsen, Senator Levin and Senator Daschle pointed out, and the North American Free Trade Agreement bear very heavily on our future. And I said to the U.S. Trade Representative, who has been most supportive of our aims, that if any accord signed by our government leaves in place or inserts anti-competitive trappings, we are undone.

Now, I could go on, but I have to gulp down a bucketful of Pepto-Bismol to try to stay the course here. So, I am going to conclude by saying, we do not want to quarrel with anybody, we do not want to confront anybody, we do not want to be hostile or threatening.

All we want is the right to compete without artificial parliamentary barriers, hedgerows, planted in our path. All we want is for our valuable property to be protected and not have to stand by helplessly to watch our movies and our home video material methodically stolen by thieves.

Our persuasions, our pleadings, the legalities we offer, the civilities that we honor, have all failed in these countries. We have put our grievances to paper and we have spoken our grievances. But too many governments' ministries and bureaucracies will not read and do not hear, which is precisely why the 301 and the Special 301 are the only weapons we possess that have any force.

Now, what is required now, Mr. Chairman, is the will and the resolve of the Congress and the administration to use these weapons when all else fails, or we will remorselessly, slowly but surely, be cut down in too many of these countries.

Finally, all we ask is that we be accorded in foreign markets the same freedom of movement and the same protection of product that foreign businessmen find so alluring and seductive in ours. Is that asking too much? I am utterly fascinated by what I am saying here, but since the red light is on, I will reluctantly come to a stop. Thank you, sir.

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

The CHAIRMAN. I wish you would speak up a little more. [Laughter.]

Mr. Jameson French, President of Northland Forest Products. Mr. French.

STATEMENT OF JAMESON FRENCH, PRESIDENT, NORTHLAND FOREST PRODUCTS, INC., KINGSTON, NH, AND CHAIRMAN, AMERICAN HARDWOOD EXPORT COUNCIL, ON BEHALF OF THE NATIONAL FOREST PRODUCTS ASSOCIATION, ACCOMPANIED BY STEVE LOVETT, INTERNATIONAL VICE PRESIDENT, NATIONAL FOREST PRODUCTS ASSOCIATION, WASHINGTON, DC

Mr. FRENCH. Thank you. Mr. Valenti is a tough act to follow. I appreciate the opportunity to testify on market access. As the owner of a small company committed to exports, I believe that an aggressive approach to unfair foreign trade practices will invigorate our economy and benefit our country.

The United States' commitment to trade liberalization has been critical to post-war international prosperity. The American public cannot be expected to support this policy indefinitely unless other countries—notably Japan, the EC, and Korea—play the game by the same rules and open their markets as much as the United States has.

Free trade seeks to open markets and increase economic activity. Protectionism closes markets and decreases prosperity. Those who support opening markets with tools such as Super 301 are not protectionists. If we only talk about free trade but do not open markets, protectionists will prevail and our economy and our country will suffer.

Our industry has benefitted greatly from trade liberalization and government efforts to support market access. My written testimony draws on our industry's Super 301 experience. However, I would like to emphasize a few key points from my full report.

Although significant Japanese barriers remain, Super 301 has helped achieve the goal of free and fair trade for the wood products industry, which has meant improved market access in Japan. It helped because cases initiated under Super 301 procedures seem to get more attention here and abroad.

Under normal 301 procedures, businesses desiring to take action against trade barriers are put in an extremely difficult position of having to sue their customers. If the U.S. Government takes the lead by self-initiating 301 cases, industries do not face the same risk.

Although Super 301 should be used only when other alternatives have been exhausted, it helps aggrieved industries because it not only ensures an annual process for evaluating U.S. trade strategy, but also clearly establishes procedures and deadlines so the trade actions are completed in a timely manner.

On the other hand, legislation which seeks to manage levels of trade or distorts, rather then opens, markets could have a negative effect. Therefore, trade deficit percentage triggers and specified forms of retaliation should be avoided.

This industry favors a Super 301 approach that simply extends the provisions of the 1988 Trade Act, thereby moving U.S. trade policy in the direction of aggressive elimination of unfair foreign trade practices.

In addition, my industry supports legislation, such as the Trade Agreement Compliance Act, that encourages the enforcement of trade agreements. Our experience has shown that government

monitoring and intervention has been critical to the full implementation of the wood products agreement.

In my remaining time, I would like to mention two other issues of vital importance to our industry. First, the U.S. forest products industry has become extremely concerned as the North American Free Trade Agreement negotiations move rapidly to a conclusion that Mexican protectionism will prevail in our sector. Our industry hopes to support an agreement, but this may be impossible unless Mexico agrees to open its wood products markets in a timely manner.

Second, my industry urges you to support full funding for the U.S.D.A.'s market promotion program, MPP.

Wood products exports have doubled to $6.4 billion in 1985, creating an additional 68,000 direct and indirect jobs, and increasing tax revenues by more than $200 million annually. MPP, at a very small cost, has been an extremely important component of this success during one of the most severe recessions our industry has ever experienced.

As Chairman of the American Hardwood Export Council and President of a small family business with operations in New Hampshire and Virginia, and I know from personal experience and from my friends and competitors that without strong and growing export markets fueled by the MPP program, hundreds of hardwood products might not have survived this last recession.

Although none of these companies have received benefits for branded promotion, we have greatly benefitted from generic marketing that makes customers worldwide aware of the advantages of American hardwoods. Even the smallest producers, from Vermont to Georgia, benefit from the price and consumption stability resulting from strong export markets stimulated by the MPP.

Mr. Chairman, this concludes my remarks. Thank you very much for the opportunity to testify on the need for improved market access, which has been, and will continue to be vital to our forest products industry.

The CHAIRMAN. Thank you, Mr. French.

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

The CHAIRMAN. Mr. Scalise, we are pleased to have you. Mr. Scalise is the senior vice president and chief administrative officer for the National Semiconductor Corp.

STATEMENT OF GEORGE M. SCALISE, SENIOR VICE PRESIDENT AND CHIEF ADMINISTRATIVE OFFICER, NATIONAL SEMICONDUCTOR CORP., AND CHAIRMAN, PUBLIC POLICY COMMITTEE, SEMICONDUCTOR INDUSTRY ASSOCIATION, ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION, SAN JOSE, CA

Mr. SCALISE. Thank you, Mr. Chairman. First of all, I would like to thank you and the members of the committee for the unanimous support the industry has received relative to the 1991 Semiconductor Trade Agreement.

The letter that was signed by all 21 members, both Democrat and Republican, has gone a long way to keep the spotlight on this issue and deals very well with the lack of access to the Japanese

market that has been a part of this, and the lack of compliance to the United States-Japan Semiconductor Agreement.

I think the semiconductor industry really does illustrate why America needs a strong and effective trade policy. The major reason is that this is an industry that has been targeted by other countries for a number of years.

It has been targeted by the combination of both government and industry in our very major markets. We have dealt with lack of access, closed markets, dumping issues, subsidies, a lot of tools that have had a major impact on our ability to work into those markets and, in fact, to compete in world markets.

As you probably know, semiconductors are the heart of a $750 billion electronics industry worldwide. It is the enabling technology for automotive electronics, consumer electronics, telecommunications, and on down the list.

It is about a $60 billion industry today. It will be a $200 billion industry by the year 2000, and will continue to accelerate very rapidly, taking over a very large portion of not only the sub-systems, but the systems' business.

We have long argued that we ought to have the same access to foreign markets that foreign companies enjoy here. Unfortunately, this has been easier said than done, particularly with respect to Japan. The United States has been trying to open up the Japanese market for over 20 years. We have made a number of efforts, starting in the early 1970's, up through the High-Tech Work Group in the early 1980's. In 1986, following massive dumping of memory chips here in the United States, we filed both a series of dumping cases and a Section 301 case. The 301 finding stated that, yes, in fact, the market has been closed.

As a result of that, we signed the 1986 United States-Japan Semiconductor Agreement. The agreement called for the foreign market share in the Japanese market to reach at least 20 percent by July of 1991. This was a milestone to what would have been a reasonable market share, given the competitiveness of the U.S. semiconductor industry.

We began to make some progress, but only after we applied sanctions. An unfortunate though necessary move. In the early phase of that agreement, we made little or no progress. We finally concluded in 1987 that sanctions were necessary. President Reagan did impose those sanctions. And, as a consequence, the market share moved for the first time from roughly 8 percent or so, up to something approaching 14 percent by about 1990.

Unfortunately, no progress has been made since that time. Foreign market share is stuck at about 14.6 percent as of the first quarter of 1992. That is up about three-tenths of a percent since we signed the extension of that agreement a year ago. This is obviously far short of the 20 percent that had been agreed to as part of this agreement.

On June 4th of this year, the two industries and the government got together and talked about this issue. We developed some emergency measures that should help jump-start the process. However, we have seen the results of that process unfold over the last 45 days and, I am sorry to say, it is unlikely to have much of an impact, based on the data that is before us thus far.

Currently, a U.S. Government inter-agency group is reviewing whether Japan is fully implementing this agreement. We think the answer must be a resounding no. If we continue to let Japan off the hook and look for excuses to do nothing, we will seriously undermine the credibility of the American trade policy. Our trading partners will have no incentive to comply with trade agreements they have entered into if there are no costs associated with violating them. Mr. Chairman, I do not want to imply that nothing has happened, because we have achieved some things. U.S. sales in Japan are at least $1 billion higher than they would have been in the absence of the agreement.

President Bush did express some concern relative to the compliance of the agreement when he met with Prime Minister Miyazawa earlier in the month. U.S. Trade Representative Carla Hills and Deputy USTR Michael Moskow have repeatedly raised the issue with the Japanese Government officials and industry executives, and I think that will be dealt with again next week during the SII talks.

Some Japanese companies have made a good faith effort to purchase more, but a great deal of progress remains to be done if Japan is to be in compliance with this agreement.

I believe the semiconductor industry's experience vividly illustrates the need for trade legislation, such as the Trade Agreements Compliance Act and the Super 301. Some of our economic competitors will only do what is absolutely necessary to defuse the trade pressure.

Passage of the Trade Agreements Compliance Act would help put them on notice that the United States is going to attach as much importance to implementing agreements as it does to signing them. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

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

The CHAIRMAN. Mr. Valenti, do you think 301 is working? Do you think the administration is properly utilizing it?

Mr. VALENTI. The answer is yes, Mr. Chairman. I think Ambassador Hills has been very forthcoming in her support. Now, there are some areas where I have been disappointed, Thailand being one.

The CHAIRMAN. Well, let us get into that issue. What about the House bill and what it provides in that regard? As I understand it, what it would require is reciprocal treatment, in effect. That if we do not make headway with 301 with Thailand—and you are having real problems in intellectual property rights there, as I understand it—that, in effect, what we would do is say that we would not take their film. Does that mean anything to us in this country? Would that be effective?

Mr. VALENTI. Well, no. The Thai films, like fish, do not travel too well, Mr. Chairman.

The CHAIRMAN. That is what I would think.

Mr. VALENTI. I am saying—and I have said this to Ambassador Hills and to members of the administration, as well as to members of the Congress that there comes a time when we have to have the will and resolve to retaliate when a country does not yield to fair

negotiations. And that means you have got to go beyond films and television programs, otherwise it is a hollow threat.

The CHAIRMAN. Well, the House bill, as I understand, talks about reciprocal action, limited to reciprocal products. That just does not seem to be very effective to me.

Mr. VALENTI. Well, Mr. Chairman, frankly, H.R. 5100 is a bill whose entrails I have not examined that much because I do not think it really has any meaning for our industry. For example, in Japan, if you buy a piece of exquisite iron. Japan is our largest market and we really do not have any trade problems in Japan.

As a matter of fact, we are probably one of the few products, Mr. Chairman, that can claim we have 40 percent of the Japanese marketplace. Not many American products can claim that distinction.

So, H.R. 5100 is really not anything that we have taken that much of a stand on, because I do not know that we need any more trade laws, Mr. Chairman. We just need to have the will and the resolve to enforce the ones we have got.

The CHAIRMAN. As I understand the Trade Agreements Compliance Act, it would require USTR to initiate Section 301 investigations when asked to do so by any interested person. Do you not think that is opening the door pretty wide, when you look at the staff of USTR and the limited resources there? Do you really think that is the best use of our negotiators?

Mr. SCALISE. Well, I think the important thing to understand here is, in our experience with 301, we found it to be a relatively efficient process. There is an initial finding that determines whether or not USTR has to go forward with it.

Therefore, if anyone is going to bring a 301 case, they have to develop substantial information that would support the initial step. So, I doubt if it would lead to frivolous activity. I do not think so.

The CHAIRMAN. I am not sure I share your optimism on that. Mr. French, your testimony is a strong endorsement of Super 301. Yet, I notice that the Forest Products Association joined with a number of business and agricultural groups in sending a letter to Chairman Rostenkowski opposing the House trade bill. That bill extends Super 301. Why do you not support it?

Mr. FRENCH. I think that our industry supports several parts of the House bill: the extension of Super 301 and the Trade Agreements Compliance Acts, as well as the Customs modernization.

But there were parts of it with which we were not comfortable, and I guess I would have to say we are not in a position to comment on those other parts because they do not have a lot to do with out industry. Mr. Lovett, from the National Forest Products Association, might like to add to that.

The CHAIRMAN. That would be fine.

Mr. LOVETT. No. I have nothing further to add, sir. That is fine.

The CHAIRMAN. All right. Let me see. Senator Daschle, do you have any questions?

Senator DASCHLE. Thank you, Mr. Chairman. I would like to ask Jack Valenti if he could talk to us about how we should address the problems of piracy in Thailand, Greece, Italy, Poland, Russia, Thailand, Venezuela, Turkey, and the Dominican Republic where, apparently, the problem continues to grow.

If we were not to use 301, what other devices would you suggest in trade policy would be effective in getting the attention of other countries, to get them to agree to comply with fair trade rules?

Mr. VALENTI. Well, I come from an old school in Texas, Senator Daschle. And it says that in a negotiation between two people, if either one of them cannot be caused pain by the other, the negotiation is not going to go too far.

To me, the 301 is a sabre that we keep in a scabbard, but it is there to be used as the ultimate weapon. It is the spur to negotiations. It is the incentive for that country to negotiate with us seriously.

Now, in some countries, there are the generalized system of preferences, GSP's, that we can threaten to withdraw them. And, on a number of occasions, that has helped. But there are not too many countries left with GSP's.

In countries like Russia, where they want us to help them with some kind of loans, I think before we go forward with the kind of sustenance to the new Russian Republic, that is one of the things that has to be done. Now, as a result of signing the trade agreement, Russia is now saying they are going to implement this with a copyright law.

But their elements—first there must be a stern copyright law in place, unambiguous. Then there must be a resolve on the part of that government to enforce those laws. And in many countries, one or the other is always lagging, and that is our problem. But 301 gives us the incentive to go in and say, sit down and talk with us.

And, finally, if we cannot agree, then that is the weapon that has to be used. But if it is not there poised like the sword of Damocles, I do not believe we would ever get anywhere with any of these countries, to be perfectly honest with you.

Senator DASCHLE. Well, I asked the question because of the Chairman's question to you earlier about the degree to which the current USTR has used 301 as a tool to accomplish what you have just described. Your answer to him was that you feel that it has been used adequately.

It seems to me, on one hand, you have described very appropriately and succinctly the problem which exists for your industry in those countries. On the other hand, you describe a reluctance, on the part of the USTR, to more forcefully use the tool that apparently has brought about results in other industries.

Mr. VALENTI. Well, Senator, I can answer you specifically. In Indonesia, the threat of the 301, like a surly shadow over their shoulders, was presented to them. And at the 11th hour, the negotiations concluded, allowing us to enter that home video market, which was the source of the discontent.

In Taiwan, the threat of a 301 caused them to finally relent and say they were going to put in a new copyright law. The same way in Korea, which had unscalable trade walls built 6 years ago. 301 was offered by us, negotiations began.

At the last minute, the trade walls came down and Korea now has gone from an $8 million revenue market to over $100 million revenue market. The threat of a 301 looms very large.

Now, in Greece, in Italy, in the European community itself, at some point our government is going to have to screw its courage

to the sticking place and do something about these countries to bring them in line with the piracy, and, I think, the intrusion on national treatment and our contractual rights. And, as I said, the list is long.

Senator DASCHLE. Let me just ask, in the remaining time I have, if it is true that consistency, certainty and equivalency are laudable goals, and if it is also true that we can calculate the degree do which unfair trade practices are hurting any one of a number of industries in this country, to what degree do you—anyone on the panel—believe that having a mandatory requirement for the utilization of 301 under those circumstances is something that ought to be available in trade policy? Anybody care to address that?

Mr. SCALISE. Well, again, going back to the comment I made a few minutes ago, it is obviously in the interest of an industry to develop the case, in most instances, because they are going to have far more information to work with and they are far better equipped to bring the case forward.

There may be cases that are so broad that they would warrant a self-initiation on the part of the USTR. If that is the case, then certainly we ought to provide that capability so that they could deal with these broader issues. Those are more industry-related. I think it is the responsibility of the industry, to bring the case forward, as SIA did in the mid-1980's, to make the case, and then to go win it. And I think that can work very well.

Senator DASCHLE. Well, I am out of time. I thank you for your answers, and I thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. Backing up a little bit to where we are now. Is there any of you that did not support the fast-track authority when Congress passed it?

Mr. VALENTI. We supported it, sir.

Mr. FRENCH. We supported it.

Mr. SCALISE. We supported it.

Senator GRASSLEY. Let the record show that all the witnesses supported it. Is that also true of the North American Free Trade Agreement?

Mr. VALENTI. We support it, sir.

Senator GRASSLEY. Now, Mr. French spoke about parts of H.R. 5100. Just kind of in a general way—I do not want a long answer on this because I have got more in depth questions—do you generally support H.R. 5100 as currently passed by the House?

Mr. SCALISE. We generally support it. Again, I think we have the same stance as they do in that there are those sections that we are clearly in support of, TACA and the 301. Those sections that are outside of our sector, we have less knowledge of.

Senator GRASSLEY. At least in regard to 301, you do.

Mr. SCALISE. Yes. Very definitely.

Senator GRASSLEY. Mr. Valenti.

Mr. VALENTI. We have examined this, and my experts tell me that there was nothing in there that affected our industry.

Senator GRASSLEY. All right.

Mr. VALENTI. So, we took little action or any kind of debate in it.

Senator GRASSLEY. Mr. French.

Mr. FRENCH. I basically answered that from Senator Bentsen, that we supported those components, but, as with Mr. Valenti, we did not take a strong position on the parts that did not affect our industry.

Senator GRASSLEY. Of the four bills that have been introduced in the Senate on Super 301 and Special 301, do you generally support the approaches, and is there any one you specifically support over others?

Mr. VALENTI. I will state our position. I cannot laud this Finance Committee too highly for the 1988 act. It put into place all the defense mechanisms that I think we need.

And, with a supportive Congress and a supportive administration, there was weaponry aplenty for us to deal in the political cockpit abroad. I can put it very simply. As I say, again, I do not think we need new trade laws, we just need a stern and unyielding implementation at the proper and appropriate moment of the ones we now have in place.

Senator GRASSLEY. I will go on, then, to the next question. I want to, again, refer to a specific part of H.R. 5100, a provision that states that, "If an imported product contains a significant component that is subject to an antidumping duty, then the imported product itself is subject to payment of that duty."

Does anyone agree with this provision in the bill, and if you do not, what impact might this have on a product that you may be importing or exporting in your industry?

Mr. SCALISE. Let me answer that from a semiconductor standpoint, and I think it goes a little bit beyond that. One of the reasons we ended up with a trade agreement in semiconductors in 1986 was to avoid the negative aspects of winning a dumping case and winning a 301 and employing the remedies that are available, thereby creating problems for our customers and the consumers in this country.

Therefore, we decided to go forward with the agreement to increase market access and eliminate dumping. The 1987 sanctions were very carefully constructed to avoid any impact on our customers or the ultimate consumer.

So, I think the issue that you are dealing with here, is whether there are alternate sources that can supply that same product and, therefore, the consumer is not going to be harmed by it. In the absence of that, I think you have to have great care.

Senator GRASSLEY. Mr. French, does that speak for you as well? You started to speak previously.

Mr. FRENCH. I was really just going to say that, again, that part of the bill was not directly related to our industry.

Senator GRASSLEY. Some of you made reference to the granting of MFN to China in your written testimony. I would like to ask each of you, do you support granting China MFN, and is that support conditional or unconditional?

Mr. VALENTI. From my standpoint, Senator, ours is a very simple proposition. We want to protect our property in China from rampant thievery. The Chinese have now enacted, they say, adequate laws to protect our property. We now have a wait-and-see attitude. It matters little to me whether it is MFN or ABC, all I want to do

is make sure when an American movie or home video goes to China it is protected, under whatever rubric you want to call it.

Senator GRASSLEY. Mr. Scalise.

Mr SCALISE. Again, I think that I would take essentially the same position. There are other elements that may come into play that are maybe at cross purposes there, we probably are not in a very good position to deal with one way or another. There are other issues that are outside of our industrial and economic interests, but we want to have the opportunity and the protection that would be appropriate.

Senator GRASSLEY. But you ought to be able to tell me whether or not MFN is important to the prosperity of your industry or not.

Mr. SCALISE. Oh. There is no question about that. There is no question about that.

Senator GRASSLEY. All right.

The CHAIRMAN. Thank you very much.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. Mr. Scalise, I want to ask one question of you, and one question of Mr. Valenti. The Japan Digest is very good reading every day. And today, Mr. Takashi Kitaoaka, who is the new Chairman of the Electronics Industry Association of Japan, says, "Even if we fail to achieve the 20 percent target, it would cause little ruckus, as long as the foreign share does not fall sharply from the current levels."

That is because, he says, the U.S. semiconductor market is now so strong that Japan's failure to achieve the 20 percent foreign market share is unlikely to produce much friction. Number one, I would like you to respond to that. Number two, I would like you to respond to the questions that were raised by our Chairman with respect to the implications for semiconductors point ventures like most of Advanced Micro Devices and Fujitsu.

Several things come to my mind: One, is the fact of semiconductors being produced in Japan, and, second, that much of that employment is probably fairly low wage. But, on the other hand, the implications of that are certainly disturbing, particularly the conveyance of technology developed by SEMATECH, having had U.S. Government participation, et cetera. If you could, answer both of those within, hopefully, 3 minutes.

Mr. SCALISE. All right. On the first issue, I think Mr. Kitaoaka is badly mistaken. He is badly misreading the vigor with which we are moving forward with the inter-agency group to achieve a finding of non-compliance. All of the data points to that. We think that they should come forward with that finding.

In fact, there is a hearing taking place right at this very moment dealing with the issue. We have been working with not only the committee, but the Congress and the other members of the administration on the issue for the last several weeks. So, we are going to continue to press for the 20 percent.

We think it is an appropriate thing to achieve. We think it is only a step on the way to a competitive position that we should enjoy. So, I would suggest that he has made a mistaken assessment of the case.

With regard to the alliances that are being formed, I think it is important to recognize that these alliances are a part of a much

larger issue. They are not something that stand by themselves; they are coming about as a consequence of the strength that the industry enjoys today, whether it is here at home or in international markets. That is certainly being supported by and strengthened by what is taking place at SEMATECH.

If you look at the industry today, roughly 70 percent of the direct labor that goes into the semiconductor business is in this country. About 70 percent of the labor dollar is here in the United States; about 30 percent of it comes from foreign marketplaces.

These alliances, if they are structured properly, are going to enhance the competitiveness of the industry, both within the U.S. market and within foreign markets. They will continue to thrive. They will continue to develop new ones only so long as we are a competitive entity in the business.

If we begin to lose that position, there is really no reason for them to have alliance with us; we bring nothing to the party. And, consequently, we are going to see these things drift away. So, I think they are really a reflection of the strength of the U.S. industry. They will continue to strengthen it. And, as a result, I think that the market share that we enjoy today is beginning to grow once again, incidentally, in part, due to SEMATECH.

Two points on the SEMATECH issue. One, is we are beginning to see a market penetration growth on the part of the U.S. industry worldwide, and we are beginning to see an improvement in the penetration and the market share by the equipment industry in the United States. Those are two things that I think we can largely attribute to SEMATECH. Without SEMATECH, we would have had a larger erosion take place.

Senator ROCKEFELLER. I understand the benefits of SEMATECH. I am trying to get to the matter of production of semiconductors through these alliances in other places and the implications of that.

Mr. SCALISE. Right. In those cases, the ones that have been announced so far, as I understand it, they will probably be located in Japan or in New York.

But, I think it is also likely that once that is done, there is every reason to believe that there can be a second factor that might take place or might be placed here in the United States, or even somewhere else. So, I do not think that it necessarily says that the whole game is going to be played in Japan or somewhere else. That first step, in one case, is there; in one case, it is here. And I think we will find that to be the case in all alliances. What you have got to do is make sense out of an agreement; how is it going to best function in the early stages, and then how do you capitalize on the strength that comes from that, going forward.

Senator ROCKEFELLER. It bears watching, I think you would agree.

Mr. SCALISE. It bears watching.

Senator ROCKEFELLER. And I think the Chairman's concern is valid. I thank you, sir.

The CHAIRMAN. Go ahead.

Senator ROCKEFELLER. A very quick one to Mr. Valenti. Most of the Super 301s have been brought against Asian countries. And, unless I am missing something—which is possible every moment of

every day—we have not done anything against European countries as individual countries, obviously much less the EC.

Now, the broadcast directive, I think, came down in 1989. So, you are talking 3 years. Yet Super 301 is something that could help. I have not seen much action in terms of Europe. Your comments?

Mr. VALENTI. Well, the USTR has notified the European community of the possibility of doing just that. The reason why our Special 301's and 301's have been directed at Asia and all in the piracy and market access is because the problems there were thicker, harder, and meaner, with piracy sometimes at 100 percent. If you could get above 100 percent, it would be there. So, we had to attack the highest priority items that we could.

I will tell you now that, depending on what happens with the rental right directive and the satellite directive, and whether or not other countries follow the lead of France, whose broadcast quota is now at 60 percent, we may very well find ourselves in the next 12 months going to the administration and saying, the time has come to fish or cut bait, to go after some of these major developed countries with whom we have had long relationships, but who are unyielding in their determination to put all sorts of trade spikes in our way.

In Italy, for example, it has to do with piracy. What is happening to the Disney Company in Italy grazes the meaner edges of absurdity. We are determined to do something about it. Italy cannot allow Disney pictures to be pilfered the way they are, and the rest of our companies are following. The answer is, the whole world is one in which we have priority watches going on. We are watchmen on the tower.

Senator ROCKEFELLER. Thank you, Mr. Valenti. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Scalise, let me go back to the question of this recent agreement. I do not have much information concerning it, but the way I read the stories made me wonder why we have SEMATECH.

I have been a strong supporter of SEMATECH. I believe it has made some breakthroughs that have been helpful to us. The question is, then, were those given away? What I read was that the manufacturing in both instances is going to be in Japan.

I am concerned with some of these international chief executives who say, with a great deal of pride, "we are not a national company, we are international." "It does not make any difference where we are headquartered," some of them say. I do not think that is the attitude of the Japanese chief executives. I think they feel very nationalist, still.

And I really want to understand what actually is happening, and why it was necessary to enter into that type of agreement, and whether or not we left the principal manufacturing jobs in this agreement to be done in Japan.

So, I would like to have some executives from each of those two companies advising me, telling me why what they did was not only in the best interest of their company, but their country.

Mr. SCALISE. Well, again, obviously, I cannot speak for the two individual companies. I think your request is a fair one. But one

of the things that we need to understand as we deal with the semiconductor issue today is the investment that is necessary to move to the next level is becoming increasingly burdensome.

We are now talking about investment in the fabrication area in the vicinity of $800 million to get to the next state-of-the-art level. A lot of U.S. companies find that a very difficult hurdle to jump. And, therefore, they are looking for ways to make that next step to further enhance the capability that exists.

Now, I guess there are cases where, when you look at all of the options available, the best one says, we will share in a manufacturing facility for the next phase. That part of it will be there, however, the design will remain here.

The development work will continue here. There are a lot of things that will continue here. A part of the activity will, perhaps, be in Japan in this instance. But there will be a very large spillover that will continue to be here in the United States. I would like to think that there is a balance that works in our favor as a consequence of that, and I think that is true.

The other side of the coin, for which you could probably also build a case, is if you do not make that step, then it is unlikely that some companies will be in the arena for the next generation of technology and products and we will not create a job, whether it is in Japan, or the United States—all of the jobs will go somewhere else. So, there is kind of a balancing here that we have to keep in mind, and it is not one that has an either/or answer to it in all cases. There are a variety of compromises that we are going to have to make. It is not simple.

Let me say one other thing on this particular issue. This has to do with what is known as erasable/programmable read-only memories. There is a new version of it called FLASH, and I will not get into that technology. But, were it not for the trade agreement of 1986, we would not be in the EPROM business in this country anymore. That industry would be dead.

The CHAIRMAN. I understand that. I understand that.

Mr. SCALISE. And that was very important. We are still trying to find ways to maintain our vigor in that. And, apparently, in this instance, the company chose this as the best alternative available to them. Again, I am looking at it generically, as opposed to their specifics.

The CHAIRMAN. I am willing to listen. I want to hear about it.

Senator DASCHLE. Mr. Chairman?

The CHAIRMAN. Yes.

Senator DASCHLE. Could I ask Mr. Scalise a followup question? I ran out of time, and I am a little unclear as to his answer to my question with regard to mandatory use of 301.

His answer, as I understood it, was that it ought to be up to the industry to petition for 301. But, as the Chairman points out, you have a lot of multi-national companies which may, for many reasons, choose not to petition for 301 in a country that is being detrimentally affected for international reasons, number one. Number two, USTR may not affirmatively respond to a 301, even after it an industry petitions.

So, the question still goes back to what we were discussing earlier: are there circumstances, such as the ones I have just de-

scribed, which require that we reconsider the mandatory use of 301 if there are a certain set of criteria, well-developed, by which we could ascertain the degree to which a country is trading unfairly?

Mr. SCALISE. I think the answer to that is probably yes. And the reason that I gave you the answer that I did is that, in our experience, we knew what the issues were. We had developed them over a long period of time, and it was relatively easy for us to bring a case forward that we knew had the substance that would get the support necessary, not only within the USTR, but throughout the whole inter-agency group and the Congress. We had tremendous support out of the Congress for that, as well. But we knew all of the facts supporting our case.

Now, I think, in many instances there is enough evidence that a self-initiation on the part of the administration would be advisable and appropriate. But, I think in most cases, it would be up to the industries involved to be the initiators. I think that is probably the more effective——

Senator DASCHLE. Well, I have no difficulty with that. The only concern I have is a reluctance on the part of the USTR, once that case has been made, and once the evidence is fairly abundantly clear to act on a 301 petition. Where we have a voluntary situation today and an unwillingness to use 301 devices to their best advantage, we have no recourse today, except to put congressional pressure and other kinds of pressure on the USTR to do what the law is designed to do.

Mr. SCALISE. Yes. I think that would be desirable.

Senator DASCHLE. So, that is my reason for clarifying the question.

Mr. SCALISE. But, again, I will say this, that in the instance that we were involved with, once we brought the case to USTR, they became vigorous supporters of it and really drove the process to a satisfactory conclusion.

Senator DASCHLE. I thank you for that. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Is there anything else?

[No response.]

The CHAIRMAN. We have another panel, then. Thank you, gentlemen.

Senator ROCKEFELLER. Mr. Chairman?

The CHAIRMAN. Yes.

Senator ROCKEFELLER. I hate to be a problem, but may I just add one more onto Tom's?

The CHAIRMAN. Yes. Sure.

Senator ROCKEFELLER. And I apologize.

The CHAIRMAN. All right.

Senator ROCKEFELLER. Mr. Scalise, you have raised a very interesting concept. If you do not make enough money, you do not have earnings. If you do not have enough earnings, you cannot do R&D. And then, if you do not have R&D, you are not going to be able to manufacture.

Now, I take it, in response to the Chairman and to Senator Daschle, that what you are saying is that, in a sense, your companies do not have enough money to build the enormous facilities required for manufacturing some of these things. So, therefore, the

temptation of a joint venture overseas is there. And if I interpreted you wrong, so say.

I would come back to you and say, if the Justice Department did not preclude you from joint venturing with, say, your own National Semiconductor, AMD, et cetera, would that be something that you could consider, as opposed to the Japanese?

Mr. SCALISE. That is also a viable solution. And, perhaps, something that needs to be looked at more carefully. Because a part of what we are suggesting here is this whole issue of investment and the economy of scale that flows from that.

If you have two parties, obviously, the chance of getting the economy of scale faster and getting the payback working is much greater. It also offsets some of the investment capability that some of the very large, subsidized foreign competitors have to work with that we do not have.

So, you are trying to find ways to deal with some of these imbalances that are out there in the environment, and this is one way to do it. But if we were to lift some of these restrictions for the same opportunities here in the United States, I think that it could enhance some of that. Yes.

We talked about that at one stage, if you recall. We talked about a U.S. memory company, and it did not go forward for a lot of reasons. But we also talked about SEMATECH one other time before we were able to bring it forward. Maybe the time is right now for us to reconsider on the manufacturing side.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. All right. Thank you, gentlemen. On our next panel, we have Mr. William T. Archey, senior vice president of policy and congressional affairs from the U.S. Chamber of Commerce; Mr. Michael Gadbaw, vice president and senior counsel for international law and policy of General Electric Co.; Mr. Robert McNeill, executive vice chairman of the Emergency Committee for American Trade. Mr. Archey, if you would proceed, please.

STATEMENT OF WILLIAM T. ARCHEY, SENIOR VICE PRESIDENT, POLICY AND CONGRESSIONAL AFFAIRS, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. ARCHEY. Thank you very much, Mr. Chairman. It is a pleasure for me to be here on behalf of the U.S. Chamber of Commerce and to talk about various aspects of trade policy and American competitiveness.

I will briefly just summarize the high points of my written statement, but also note at the front end if I were to come before you 2 years ago on the same topic, I would be talking essentially about how trade policy, if done right, would regain our preeminence in world markets.

I am here today to say that we think that trade policy is extraordinarily important, particularly a focused and assertive trade policy. But we think it is only part of overall policies that will essentially restore America's preeminence in the world marketplace.

Indeed, the chamber has a seven-point program in our National business agenda that seeks to, in fact, increase economic growth and competitiveness of the U.S. economy in seven areas, ranging from changes in the tax structure of the United States, the deficit,

and particularly the spending aspect of that, to how to prepare the work force for the next century. And, last, but not least, trade policy.

I would like to just quickly talk about some of the issues that are on the table in regard to trade policy and take them one by one. One, the North American Free Trade Agreement. The chamber has been very aggressively supportive of that, and remains supportive of it.

We think it should end up becoming a very beneficial agreement for all of the three countries involved. We have not seen all of the details yet, but we remain very optimistic about that. I would note to you, though, that one of the problems that is always inherent in this issue is the question of whether jobs will go south, and whether American business is going to, if there is an agreement, quickly head to Mexico. I do not think the facts show that.

I also think that there is a kind of a mind set about this issue that I hope we are getting a little more sophisticated about, and that is the view that foreign investment by U.S. companies is a zero sum game for U.S. jobs or for the U.S. economy's vitality.

I was looking yesterday and put some numbers together and noted that cumulative U.S. direct investment in Mexico has gone from $13.7 billion in 1987 to $21.5 billion in 1991; about a 50 percent increase, while U.S. exports to Mexico went from $14.6 billion to $33.2 billion; a 125 percent increase.

Our former chairman of the Chamber Board appeared before you, Mr. Chairman, about 2 years ago—Jim Baker, the Chairman of Arvin Industries, a very large auto parts manufacturer—and noted that, in 1981, they had no foreign plants and had 5,400 U.S.-based employees. By the end of the decade, they had 26 foreign plants and 9,300 U.S.-based employees.

The point that Mr. Baker made before here was that they opened three plants in Mexico, doing about $26–$30 million a year in business, but they were exporting $18 million a year to those three plants.

And the other point that he mentions, which I think is one that we do not want to deal with but I think we are going to have to confront, is that is, in some instances now, if you are not producing in the foreign market, you are not going to get the market share from a U.S.-based export base. And, so, in some instances, there is no other choice but to do that. So, we are very much in favor of that.

The Uruguay Round—we still remain strongly in favor of it. We do not agree with a number of the things in the Dunkel text, with particular reference to some of the dumping provisions, and several others.

In terms of overall market access, the chamber was the first national general-purpose association back in 1988 who came out in favor of Super 301. And, in fact, we were the only general-purpose association that recommended specific countries to be on the list of countries to be subject to investigation.

We are also in favor of the Trade Agreements Compliance Act, and we think that it makes sense. But we also think that it makes common sense that a deal is a deal, and nations entering into trade

agreements should be held accountable, and to adhere to the deal that was made.

There is an issue on Customs modernization. We do not know all the details, but, as a former Deputy Commissioner and Acting Commissioner of Customs, anything that modernizes Customs is probably good for the public.

And, finally, I would note on some of the antidumping and countervailing duty issues, we have some real concerns about circumvention and diversion. We endorsed those provisions in the House bill, with one caveat that it could be interpreted that some innocent parties may be subject to dumping actions just because they were supplier to a company that is under a dumping order.

On export enhancement, I would just briefly note that we are strongly in favor of coordination and integration of resources within the executive branch on both export finance and promotion, and applaud you, Mr. Chairman, and other members of this committee, who have exhibited an awful lot of leadership in that area, particularly in terms of the relationships of the AID program and enhancing U.S. exports to capital projects.

My final point I would make to you is that we think very, very strongly that the need for a more focused or refined trade policy still exists. My only other caveat I would make is that is just part of an overall approach to looking at American competitiveness. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

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

The CHAIRMAN. Mr. Gadbaw.

STATEMENT OF R. MICHAEL GADBAW, VICE PRESIDENT AND SENIOR COUNSEL FOR INTERNATIONAL LAW AND POLICY, GENERAL ELECTRIC CO., ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, DC

Mr. GADBAW. Thank you, Mr. Chairman, members of the committee. Let me say at the outset that both NAM and the General Electric Co. believe these are important hearings. We commend you for holding them, and are grateful for the opportunity to explain our views.

It would be hard to overstate the importance of international trade and trading relationships to American manufacturers. In 1991, manufactured goods accounted for 82 percent of U.S. exports, and 81 percent of U.S. imports. We have a long way to go to eliminate the chronic U.S. trade deficit of the 1980's, but we believe we are on the right path.

An even more important consideration is that trade is no longer a drag on the economy, but a source of growth. More than 40 percent of all U.S. real growth since 1987, and all of the real growth over the past 2 years can be attributed to U.S. exports. This, of course, means substantial U.S. jobs, as many as 10 million.

General Electric, itself, has an increasingly important stake in the growth of international markets and the openness of our international trade and investment relationships. In 1991, GE's revenues from international activities grew by 12 percent, to $16 billion, or 35 percent of our total revenues.

Our most important global markets are in Europe and Japan, while our fastest growing markets are in Mexico and South Asia. In 1990, GE sold more to Japan than it purchased, with a net favorable trade balance of $1.4 billion.

Whatever this committee decides to do on trade in the remaining days of this session, it is appropriate to look at what has been done in the House. Therefore, I will concentrate my comments on the provisions of the Trade Expansion Act of 1992, H.R. 5100.

In doing so, we said in our comments on H.R. 5100 that there is no bad time for good ideas, and that there are, indeed, some good ideas in H.R. 5100. Let me look at some of those provisions; both the good, and what we think are the bad.

The Trade Agreements Compliance Act. The NAM strongly supports this provision and we commend the sponsors for their insight and tenacity on behalf of the proposed amendments to U.S. trade law.

As we have explained in testimony on this legislation, if U.S. manufacturers are to bear the burden of proof with respect to foreign barriers to American competitiveness, they are entitled to some assurance that agreements to reduce those barriers will be respected.

On Customs modernization, the NAM supports the Customs Modernization and Informed Compliance Act. For some time, NAM has advocated legislation to modernize U.S. Customs laws and have urged that this job be completed in the current Congress.

Review of foreign trade zone operations in the automotive sector. The NAM supports the proposal for a new report on these operations.

Now, let me turn to the Super 301 extension, which, in some respects, is the most important provision of this bill. Our guess is that this provision, while controversial, nevertheless enjoys strong support in the Congress. Yet, its inclusion in the 1992 trade legislation would, we believe, be a mistake.

The issue for us is not policy where there are market access problems that can and should be addressed under existing provisions of Section 301 and U.S. law. The issues for us are attitude and timing. We are aware of the sentiment, particularly in the House, that deadline after deadline have passed for the Uruguay Round, and, yet, there appears to be no end in sight.

We, however, have a more optimistic view. We strongly expect that the NAFTA negotiations could be effectively concluded soon. If that happens, Mr. Chairman, and, if, as we hope, it is a good agreement, a great deal of credit will belong to you. Without your support for the fast-track process and for the idea of a North American Free Trade Agreement, it would not have been possible.

We also believe that the Uruguay Road can be concluded and that, indeed, the critical deadline is the one included in the Trade Act of 1988. Our concern is that, rather than spur our trading partners to finish these important negotiations, extension of Super 301 at this time would have the opposite effect. It could goad them into scuttling the negotiations and placing the blame for the failure not on European intransigence, but on the Congress of the United States.

I would also note that, with respect to mandated administration actions under 301, the NAM does not support these provisions and does not believe that Congress should get into the game of specifically designating investigations under 301.

Finally, Mr. Chairman, we believe there is no bad time for good ideas. However, we have pending critical negotiations for the NAFTA, for the Uruguay Round, and legislation in the Freedom Support Act which would make an important contribution to the ability of U.S. companies to compete internationally.

Each of these efforts is keyed to congressional actions, both competed and pending, and success in each is essential to the long-term international competitiveness of American firms.

Our plea today is not so much that the Congress act forcefully, but that it act deftly. There are ideas that should become law as soon as possible, yet, if their enactment is possible only in conjunction with poorly-timed, high-risk provisions, it should be postponed. Thank you.

The CHAIRMAN. Thank you.

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

The CHAIRMAN. Mr. McNeill.

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, WASHINGTON, DC

Mr. MCNEILL. Mr. Chairman, it is good to be here, and thank you for having me. We, in ECAT, as with our sister organizations on the panel here, the Chamber and the NAM, pin our major hopes for improved market access on successful conclusion of the Uruguay Round and the NAFTA negotiations.

We particularly welcomed your opening comments as to whether or not passage of some provisions of H.R. 5100 might get in the way of successful conclusion of those two major negotiations.

Looking at H.R. 5100, we believe that most of the provisions in that bill will be considered next year by this committee and your sister committee in the House, in connection with implementing legislation for the hoped-for agreements resulting from the Uruguay Round and the NAFTA negotiations.

Accordingly, we think that a trade bill of the kind incorporating many of the provisions in H.R. 5100 is clearly unnecessary at this time.

Among the provisions in H.R. 5100 that we think could get in the way, or unsettle the possible successful conclusion of the Uruguay Round, are the mandated Section 301 provisions. As with the NAM, and I believe also the Chamber, we are very concerned with Congress mandating the use of Section 301 as proposed in H.R. 5100.

In the case of that bill, the two industries selected for mandated 301 actions are auto parts and rice. It is our judgment that the Uruguay Round, if it is to move, will move because of a break in the impasse on agriculture, and that Japan, together with the European community, will make significant moves to liberalize access to their markets for U.S. agricultural products, including rice.

Therefore, I find it hard to see how a mandated Section 301 would facilitate rice access into the Japanese market.

Similarly auto parts are under very active negotiation with Japan. President Bush, indeed, came back from his trip to Japan with a commitment from Japanese companies to increase their purchases of U.S. auto parts from the current $9 billion level to a $19 billion level by 1993 or 1994.

We really, therefore, question the wisdom of the mandated use of Section 301, particularly in respect to these two areas, as proposed in H.R. 5100.

I am not speaking, here, in a comment I am about to make, on behalf of the auto companies who are members of ECAT, but for the rest of my membership. We are terribly concerned about the automobile provisions of H.R. 5100.

First, the bill would legislate an import quota of 1.65 million Japanese passenger cars into the U.S. market for an indefinite period into the future. This is the level of imports presently allowed into the United States by reason of Japan's voluntary export restraints.

We do not see what benefit a legislated important quota would provide in the U.S. market. On the other hand, we do see a terrific drag on the U.S. position in international negotiations by having the Congress impose a legislated import quota at a time when we are trying to improve market access through the Uruguay Round and the NAFTA negotiations.

I would like to comment on the auto parts provision of H.R. 5100, because it is terribly important. The provision, in effect, would require the U.S. subsidiaries of Japanese auto manufacturers to achieve a 70 percent U.S. content in their automobiles produced in this country for an indefinite period in the future.

One of the very great difficulties here—and it goes back to Mr. Valenti's comment—is that this would be clearly violative of the U.S. obligation to provide national treatment to foreign investors in the United States because that 70 percent content requirement would not be required of any other automobile plant in the United States.

We are thus terribly concerned that, were the United States to legislate such an action at this time violating our National treatment provisions, that that would bode very ill for conclusion of parts of the Uruguay Round where national treatment is an important objective of the United States, such as in services and intellectual property agreements.

We also have problems with the antidumping provisions in H.R. 5100, particularly the anti-circumvention provision.

Before I conclude, Mr. Chairman, I would like to say that a very significant issue in terms of market access for the U.S. business community generally is access to what is going to be a mega-economic power in the very near future, and that is China.

We would not like to see the Congress legislate legislation that could result in the withdrawal of MFN to China, because if that were accomplished, that substantially would remove the U.S. presence in China for a long period in the future and give to our competitors in Asia, Europe and elsewhere a very, very substantial economic advantage in developing the Chinese market. I thank you.

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

The CHAIRMAN. Mr. Archey, your view insofar as moving on the trade bill seems somewhat different from your two other witnesses there. Will you expand on why you think we ought to do one this year?

Mr. ARCHEY. Well, I do agree with Mike that timing is everything. But I think that our view on it is that there is a need to punctuate the fact that the United States is going to defend its legitimate interest in the world marketplace, particularly regarding market access.

And I guess there would be some difference of view of our board versus maybe the other organizations, and this was, in fact, vetted within the board, this question of, if you do something this year, does it harm the Uruguay Round negotiations. And I think the judgment of our board, after a spirited discussion, was that it would not. And that, in fact, there was a need to do something now.

And, to be clear about our position, we agree with ECAT, and I believe NAM about the fact that we do not want any more mandatory anythings regarding 301. We do not favor more mandatory investigations; we do not favor the expansion of the current requirements or the current procedures under that law.

So, I guess the view of some is that we ought to postpone certain aspects, and I think I can understand their point of view. All I am saying is that we did discuss that, and our judgment was that we should not.

The CHAIRMAN. Mr. Gadbaw, I was listening to the gentleman speaking for forest products, and one of the points he made is that, as our companies become more international or global, it is more important for the government itself to take action, rather than the companies, because they will be punished in that other country insofar as the market share and access to that market; that they see us needing to resort more and more to government action in that regard rather than just rely on industry. How would you comment on that?

Mr. GADBAW. Well, I think there is definitely some legitimacy to that point of view. I do not think that I would take it so far as to say that it supports extension of Super 301 at this point. The emphasis that we placed is really on the timing. We recognize that Super 301 has been a useful tool in the past.

We think, though, that the situation right now, both with respect to our trade position with various countries, such as the European community where we enjoy a substantial surplus, and the critical negotiations, do not warrant extension of Super 301.

I agree that a company—and certainly this is true of General Electric—when contemplating a trade action, it is with a tremendous amount of concern about the impact that it would have on our relationships abroad. Frankly, that has not prevented General Electric, even though we have a very complex set of relationships from proceeding and recommending trade action when that action is appropriate.

I think that, in fact, in the scheme of things, that that is an important burden to put on U.S. companies, and, in most circumstances, that is where the initiative should come.

The CHAIRMAN. Mr. McNeill, I certainly agree with you that the Uruguay Round and NAFTA provide us the greatest opportunity in trying to expand our exports and expand our trade. But could not the argument be made that if we move on a trade bill, that would create leverage to try to get the Uruguay Round out of the deep freeze?

Europeans might say, well, here is the United States going on its own since we have not been able to resolve our differences in the Uruguay Round. They are initiating their own actions. They are moving to trading blocks, they are working on NAFTA. And, really, multilateral trade is the better answer and we had better try to make some headway here. How would you respond to that?

Mr. MCNEILL. Mr. Chairman, I would agree. I would agree that, were the U.S. Government lax in its pursuit of U.S. interests in the Uruguay Round that a boost from the Congress of the kind that we are discussing here might, indeed, be useful.

But there is every reason to believe that the administration and Ambassador Hills and her deputies are working diligently and are presenting the United States' view in a very forcible fashion. Our trading partners read the papers and they very well know what is going on at home and in the U.S. Congress.

So, I rather doubt that the passage of a trade bill of the kind that we are talking about here would, in any way, facilitate the conclusion of the Uruguay Round. I rather think the opposite.

If I might, sir, just comment on the question that you addressed to Mr. Gadbaw. It does not take an awful lot of imagination on the part of a company, through its trade association or through others working with the Special Trade Representative, to seek the initiation of a Section 301 action without divulging itself, perhaps, to its overseas customers.

I know in the case of ECAT, when Ed Pratt was our Chairman, he did not hesitate to ask the USTR to invoke Section 301 or to undertake bilateral negotiations for the protection of intellectual property rights in Korea and elsewhere.

My current Chairman who just retired as the chairman of 3–M, that conducts major business in Japan, has in no way been reluctant to express himself publicly against the conduct of Japanese trade policy.

So, I think that, while that is certainly a valid point, I think that there are ways around it.

The CHAIRMAN. Thank you. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. Two questions. The first, Mr. McNeill, to you, and to Mr. Gadbaw, and the second, to you, Mr. McNeill.

You both make the assumption that somehow, if Super 301 is pressed, pushed forward in the Congress, that it somehow has a destabilizing effect on the Uruguay Round, and, therefore, a negative effect.

Why could one not make the argument that, since it is on the books and since the general expectation is that it is going to be continued, if, in fact, we were not to continue it, that that would raise

a much larger question on the part of our negotiating partners. They would say, well, why are they stopping this, what is this? And, hence, it would be a net loss as opposed to going ahead and doing it. I am interested that the NAM and the chamber disagree on this, and I am interested in your thoughts on this.

Mr. MCNEILL. Let me take the first crack and help my friend, Mike, by so doing. I believe that the context of the dispute settlement negotiations in the Uruguay Round would, in a manner, be adversely impacted because there is a feeling that is widely shared among our trading partners that Super 301 represented a degree of unilateralism, if you would, on the part of the United States.

Please understand that I am not speaking on their behalf. I am simply answering your question. I would think, therefore, that were Super 301 to be legislated now, that that could be destabilizing.

More importantly, I think it might be better in terms of legislative action to await the outcome of the dispute settlement negotiation in the Uruguay Round.

When you are looking at the implementing bill for the Uruguay Round, you will not be able to review the dispute settlement provisions and see whether or not Super 301 in that context makes the kind of sense that it might make to you at the moment.

I therefore, see reason to wait and see what happens. Our Ambassador in Geneva continually hears complaints about what the Europeans call the unilateralism involved in the use of Super 301.

Senator ROCKEFELLER. All right. I understand. And I am sorry I am not going to have to time to exercise my question to Mr. Gadbaw. Let me ask one more of you, Mr. McNeill. ECAT represents, for the most part, multi-nationals.

I would be interested in your response to the point that the Chairman raised in his opening comments and has raised since on the implications of joint ventures, in this case, specifically with the Japanese, in terms of capital availability and all of the rest of it. How do you react to his concern; the national obligation as opposed to the shareholder obligation?

Mr. MCNEILL. I can answer that anecdotally, in part, Senator Rockefeller. I do not have intimate or lengthy conversations with the CEO's who are the members of ECAT, but I have from time to time over the years talked with them in private and at public ECAT meetings.

And I have never detected, anything other than the most fervent patriotism and nationalism on their parts. These are people who would like to do business in the United States exclusively and export, were the world of a sort that would allow them to do that.

As managers of companies, they have to look at the welfare of the company, its employees, and its shareholders, often leading to the conclusion that that collective interest requires joint ventures of various sorts. Such ventures are often increasing to gain access to foreign markets. U.S. aircraft manufacturers, for example, have found that in order to sell to Al Italia, or other national airlines, they have to agree to joint ventures where the foreign partner will produce the wing, or foils, or various other parts of the airplanes.

So, joint ventures are a thing of the past, the present and the future, and are being accelerated as the economy becomes more

and more global and international. But given the choice, as I say, just from anecdotal evidence, I would imagine that every CEO of every company that I represent would firmly plant his feet in the soil of this country and do whatever he could to enhance the well-being, both social and economic, of the United States.

Senator ROCKEFELLER. But, ultimately, if corporations had constitutions, so to speak, constitutionally they would have to respond to the shareholder interest, if they had to pick one or the other as opposed to the national interest. Wouldn't they?

Mr. MCNEILL. I am not sure, Senator, that the issue would ever be defined that clearly. So, in the abstract, I could not answer that.

Senator ROCKEFELLER. All right. That is fair enough. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I have no questions, save to thank our witnesses and welcome, once again, our very old dear friend, Bob McNeill.

Mr. MCNEILL. Thank you, Senator.

The CHAIRMAN. Let me say, Mr. McNeill, that that has always been my experience with chief executives until this year, when I was on a couple of panels when I heard a couple of chief executives of major companies really sound off the idea that they were international, not national, companies, and that they could be based anyplace. And the innuendoes concerned me.

I hope that you are right. That has certainly been the case in the past, but for the first time I heard this sort of thing, and that worried me. And it is a problem, as Senator Rockefeller said. You have an obligation to your shareholders to maximize return for them. And certainly companies are becoming more global, and are going to become more so. And we understand that.

Mr. MCNEILL. Yes.

The CHAIRMAN. But where they draw the line——

Mr. MCNEILL. Yes. I, too, share that concern, Senator. But I think that my member companies and their CEO's view themselves as U.S. companies with international operations, and it is the U.S. company that, I am sure, in their minds, is the dominant factor. And, as Americans, I would imagine—not imagine, I know, that they view their obligations to this country and take them very seriously.

The CHAIRMAN. Thank you.

Senator MOYNIHAN. Mr. Chairman, can I make just one remark to your point?

The CHAIRMAN. Yes, Senator Moynihan.

Senator MOYNIHAN. More and more, our CEO's of multi-national companies have multi-national ownership.

The CHAIRMAN. Oh, yes.

Senator MOYNIHAN. And, just for the record, yesterday the last typewriter manufacture in the United States was closed down. And Syracuse, New York was the world producer of typewriters. That is where they all came from a century ago. And it was reduced to a Smith-Corona plant in Cortland, south of Syracuse; the only typewriter manufacturer, the Japanese banging away at them, banging away at them, not very nicely. And yesterday, without any notice

at all, now a British-owned firm, Smith-Corona, announced that all manufacturing would be moved to Mexico.

It was the last typewriter to be made in America. And who do you complain to in those circumstances? I think my point is only to say that as ownership becomes more diffuse you get that kind of response that the Chairman was speaking of.

Mr. MCNEILL. Yes.

The CHAIRMAN. That is a fair statement. I attended a meeting in Europe last month, and I understand that the EC is talking about moving away from domestic content on automobiles, which they have supported in the past. I can remember talking to Mrs. Thatcher about that Nissan plant up in the lake country. I asked, are you going to require domestic content? She said, absolutely; 60 percent.

I talked to Prime Minister Rocard down in Paris. I asked, are you going to accept those cars in the Nissan plant? He said, certainly not. I asked, why? He said, because we want 80 percent domestic content. They finally compromised around 70.

But now instead they have agreed to limit Japanese cars into the European market at 16 percent. And, at the meeting I attended, they said that is a great step toward a free market. And I said, that is interesting.

I said, I do not quite understand it that way. But that is what they are doing. And that is happening to us around the world. The question is how we respond to that sort of thing. Well, gentlemen, thank you very much.

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

[Whereupon, at 12:00 p.m., the hearing was concluded.]

TRADE POLICY LEGISLATION
(Auto Trade and Customs Modernization)

WEDNESDAY, JULY 29, 1992

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan presiding.

Also present: Senators Baucus, Bradley, Daschle, Packwood, Chafee, and Grassley.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. May I just tell our guests that we have been meeting in the back room with Ambassador Hills with respect to the North American Free Trade Agreement. It will take a moment for Senator Packwood to get here. When he does, we will begin our hearing.

[Pause.]

Senator MOYNIHAN. A very good morning. And could we now close the back door.

As I said, we were just having an informal meeting with Ambassador Hills about the North American Free Trade Agreement.

And this leads directly to the subject of this morning's hearing which is on Trade Policy and Legislation: Auto Trade and Customs Modernization.

These are matters that are raised by the legislation sent to us from the House and which is now in this committee and with which we will be dealing with presently.

Senator Packwood, I told the audience that we would hold off this hearing until you had arrived. And here you are.

OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM OREGON

Senator PACKWOOD. Well, this is kind of a beauty and the beast hearing. I like the Customs modernization part. I regard the auto part as the beast part of this from the Nation's standpoint and Oregon's standpoint.

Oregon is the second biggest port of entry for Toyotas, the biggest port of entry for Hyundais, and the biggest port of export for Hondas.

It is an immense business for our port, but apart from that, these limitations on car imports are going to hurt the American

consumer, they are going to raise the price of cars, they are going to do no good for the industry, and it is a step backward.

I had hoped that we would reject all that the House did in this area.

Senator MOYNIHAN. You have not made up your mind yet.

Senator PACKWOOD. I have no strong feelings on the subject. [Laughter.]

Senator MOYNIHAN. I see.

Senator Daschle, good morning, sir.

Senator DASCHLE. Good morning. I have no comments.

Senator MOYNIHAN. Then let us get those beasties up here. [Laughter.]

Mr. Peter Pestillo who is vice president of Corporate Relations and Diversified Businesses of Ford Motor Co., he will be speaking on behalf of the Ford Motor and Chrysler corporations.

Mr. Walter Huizenga. Did I pronounce that correctly?

Mr. HUIZENGA. Yes.

Senator MOYNIHAN. He is the president of the American International Automobile Dealers Association. Mr. Lee Kadrich of the Automotive Parts and Accessories Association. Mr. Steve Beckman, an economist with the international department of the UAW.

Well, we will go forward with you first, sir. Good morning and welcome.

STATEMENT OF PETER J. PESTILLO, VICE PRESIDENT, CORPORATE RELATIONS AND DIVERSIFIED BUSINESSES, FORD MOTOR CO., ON BEHALF OF FORD MOTOR CO. AND THE CHRYSLER CORP., GROSSE POINTE, MI

Mr. PESTILLO. Good morning, Senator. Thank you. I have had better introductions, but these are difficult times. I appreciate the opportunity to be here with you.

Senator, we are pleased that the committee is examining the state of U.S. trade policy and considering what role Congress should take in pressing U.S. trade policy objectives.

A case could be made that existing trade laws are sufficient to resolve present trade imbalances and prevent unfair trading practices.

However, we are convinced that the chronic trade imbalance with Japan represents a serious threat to the United States, to our economy. And we are frustrated with the lack of progress in prying open the Japanese market.

While the total 1991 U.S. trade deficit improved by 35 percent over the previous year, the deficit with Japan actually worsened.

Moreover, based on the latest trade data, Japan's worldwide trade surplus for the first 6 months of the year is more than 50 percent higher. It's higher than the same period last year.

Japan's surplus with the United States is up 17 percent, despite continuing Japanese promises to take actions to reduce the imbalance.

Automotive trade now accounts for about 75 percent of the total United States-Japan trade deficit and has not budged for 6 years for two primary reasons.

First, although vehicle imports from Japan have decreased slightly in recent years, Japanese transplants continue to use sig-

nificant levels of high value-added Japanese components, such as engines and transmissions.

Second, no auto company has made much progress in penetrating the Japanese market. Foreign producers account for 34 percent of the U.S. market and 15 percent of the European market, but all of the other auto manufacturers in the world together have not been able to capture even 3 percent of the Japanese market.

This home market sanctuary has enabled Japanese auto producers to earn an average of more than $8 billion annually over the last 4-year period available.

These profits allow them to subsidize their U.S. operations and increase their U.S. market share, injuring the U.S. auto industry and displacing tens of thousands of workers.

The prospects for meaningful improvement in the United States-Japan trade picture are not encouraging. Europe has successfully negotiated an agreement with Japan that limits Japanese market share in Europe through 1999. And they recently have reduced even further the level of allowable shipments because of Europe's recession.

The European agreement could lead to the United States becoming the dumping ground for Japanese auto makers. They already have the capacity to produce twice as many vehicles as they sell in Japan.

They are expected to add enough capacity to produce an additional million vehicles through transplants in the United States. There is no question that the U.S. auto industry is very much threatened today.

Senator MOYNIHAN. By they, sir, are you referring to the Europeans?

Mr. PESTILLO. To the Japanese transplants here.

Senator MOYNIHAN. To the Japanese transplants, but they as Japanese.

Mr. PESTILLO. Over this next decade, they will add a million units of capacity in the United States.

There is no question that the auto industry in the United States is very much threatened today and such a threat to U.S. manufacturing should be a major concern to all of us.

Manufacturing provides higher quality, better paying jobs, is a critical customer of U.S. basic and high-tech industries, and accounts for virtually all private sector R&D expenditures.

The auto industry alone has more impact on the U.S. economy than any other industry, with cars and truck sales accounting for about 4.5 percent of total gross domestic product.

Ford, GM, and Chrysler directly provide 800,000 U.S. manufacturing jobs and an additional 1 million dealership jobs. Including suppliers, 1 in 7 U.S. jobs is related to the auto industry.

We recognize that we have the major responsibility to ensure our competitive survival. And we believe we have made excellent progress to date.

Eight of the 10 most productive auto plants in North America, including transplants, are Ford plants. One has even been rated the second most productive plant in the world. That is our plant in Atlanta.

The Japanese did get a jump on us in quality in the 1970's, but the quality gap is no longer significant. Recent studies show a less than one-problem-per-car difference among the top 75 models sold in the United States, about half of which were domestic products.

Despite the fears of car price increases, we have kept car price increases to 12 percentage points below inflation and 32 points below the average Japanese increase since 1981. The 1992 Ford Escort, for example, is priced $1,100 below the high-volume Japanese products against which it competes.

Ford spends 2.5 percent of wages on worker retraining. That was more than $300 million last year.

We make vehicles here in America that are judged good enough by two Japanese manufacturers to be badged and sold by them through their dealers here.

And we are making major efforts to compete in Japan. Ford established its own distribution network which sells U.S.-built cars and Ford-badged vehicles built in Japan. Ford is the best selling, foreign name plate in Japan.

We relocated the headquarters of our Asia-Pacific Operations to Tokyo and hired a Japanese national as President of Ford of Japan.

Next year, the Probe will become the first American-built, right-hand-drive Ford vehicle in recent history to be exported to Japan. And a right-hand-drive Taurus will be introduced in the mid-1990's.

We are confident of our ability to compete against anybody in the United States or anywhere else in the world, provided we get fair and equitable treatment. But there are some fundamental externalities working against us.

Unlike the transplants, we cannot hire all new, younger workers without casting out our present mix of older, racially-balanced employees—personnel to whom we have had, for example, pension obligations since 1949.

Unlike the transplants, we cannot build all new factories in rural areas that are subsidized heavily by the local communities and States without closing older, less-efficient plants in urban areas.

Senator MOYNIHAN. Would you just continue? You have a 4-page statement. It is very concise. And we will hear everybody.

Mr. PESTILLO. Thank you, Senator.

If we were to close the older, less-efficient plants in urban areas, it would dislocate lots of people—particularly minorities—and put them on the unemployment roles in areas where jobs already are scarce.

Not only would these actions violate the moral and civic obligations that we have accepted over the years, but they would have serious impacts on the U.S. social fabric.

We support open, fair, and mutually beneficial world trade. Our position on Japan and the discussions we have had with their auto companies are not about protectionism, but about greater trade liberalization.

But given the lack of progress, we support legislation along the lines of the House-passed trade bill to put pressure on the Japanese to do what they need to do to correct trade inequities.

For example, it is clear that the 1988 Super 301 provision got Japan's attention and resulted in progress in several sectors.

We support its extension. We support a 301 investigation of Japanese policies and practices which have a harmful effect on the ability of U.S. auto and parts makers to enter the Japanese market, such as the Japanese distribution system, the keiretsu system, and various Japanese government regulations and testing requirements.

We support subsequent 301 negotiations that address the need to offset any detrimental impact from the EC-Japan auto agreement and to formalize the Japanese commitments made in Tokyo in January.

And we believe there is room for improvement in the anti-dumping laws. We find it inconceivable that after the U.S. Department of Commerce found clear evidence of Japanese dumping of minivans at an average of more than $1,500 per vehicle yet the International Trade Commission was able to find no injury to the U.S. industry.

Legislation also is needed to correct a particularly anti-competitive regulatory inconsistency. Presently, multipurpose vehicles, MPV's, are classified as trucks for emissions, for fuel economy, for VRA, for gas guzzler, and luxury tax purposes, but as cars for tariff purposes.

This inconsistency gives importers the opportunity to manipulate U.S. regulations to get the most favorable treatment in all cases and, not incidentally, to dodge the payment of about $300 million a year in tariff duties.

We hope the House will soon pass a provision correcting this inconsistency as part of a tariff bill. And we hope the Senate will act promptly on this as well.

In summary, it is clear that the U.S. Government cannot afford a hands-off competitive and trade policy. While we prefer negotiation to legislation, it is clear that Japan needs to be put on notice that the U.S. Government will not tolerate the slow pace of progress.

We recommend that the committee promptly approve legislation that would help ensure progress in reducing the United States-Japan trade imbalance, correct inequities in U.S. tariff classifications, and help to open foreign markets for more U.S.-made goods and services.

We prefer to see Japan accept willingly the responsibilities of international economic leadership. However, the chronic, unacceptably large deficit Japan has run with the United States suggests that such responsibility may have to be imposed by legislation.

While we might all wish otherwise, we hope that the Congress will grow as impatient as we are.

Thank you, Senator.

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

Senator MOYNIHAN. We thank you, sir.

Now, shall we hear from the other side. [Laughter.]

STATEMENT OF WALTER E. HUIZENGA, PRESIDENT, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION, ALEXANDRIA, VA

Mr. HUIZENGA. Thank you, Senator. Good morning.

My name is Walter Huizenga. And I am the president of the American International Automobile Dealers Association.

Thank you, Mr. Chairman, for the opportunity to be here today and to testify on trade legislation pending before the Senate Finance Committee.

I am here today on behalf of 10,500 American businesses and their 320,000 American employees selling international nameplate cars and trucks in the United States.

Mr. Chairman, I would like to take a couple of minutes this morning and place the pending legislation into an economic and historical context, if I may.

Today, the domestic auto industry is in its best, overall competitive position in 20 years. Despite the fact that our economy apparently continues to stagnate, the Big Three are earning significant profits. Yesterday, for example, Chrysler announced second quarter profits rose and totaled $178 million.

A recent Business Week cover story reported that the Big Three are in a unique and positive competitive position.

During the first 6 months of this year, their market share has increased, their costs are down, their quality is up, and, as the previous witness just indicated, they have some of the most efficient plants operating in the world today.

Demand for their models is growing in virtually every market segment. Analysts, and even the Big Three themselves, can now predict that they will gain even more market share over the next 3 years. In short, they do not need governmental help.

Secondly, let us look at the historical context of automobile trade legislation. In 1979 when the U.S. Congress considered significant trade restrictions against Japan, the VRA's were imposed.

And the Japanese at that time were gaining significant market share. Virtually all of their automobiles were imported into the United States and contained 100 percent Japanese parts.

Today, almost half of those automobiles are manufactured in the United States. And a growing percentage of those cars contain U.S. parts. For example, Toyota and Honda today manufacture their engines in the United States.

And while I am sure that all of us would like to see an increase in U.S. parts use, the purchase of U.S. parts has grown from virtually nothing 12 years ago to $9 billion now.

And over the next 3 years, the Japanese manufacturers have committed to take those purchases up to $19 billion. That represents a significant change. I think it is important that we recognize the progress that has been made.

Please, do not make any mistake. The situation today is that we are in the middle of a process. And in that process, first we have seen Japanese manufacturing activity shift to the United States.

And now, second, the parts procurement and parts manufacturing activity is shifting to the United States. That cannot happen overnight.

And even if we accept the President's trip to Japan as a benchmark for establishing when and how we are going to develop this process, we are only 5 months into that process

Clearly it is the responsibility of Congress to monitor that progress and examine that progress. But 5 months into that process seems to be pretty early to say we now need legislation.

I would like to focus, if I may, on three parts of the legislation that we believe are particularly onerous, not only to our industry, but to American workers and ultimately to the American consumer.

First, the provisions of H.R. 5100 would cut exports to the United States of Japanese nameplate automobiles and trucks by at least 425,000 cars and trucks a year. That is a significant cut.

And because of that cut, prices will go up. American dealers and their businesses will be forced to close. And thousands of American jobs will be lost in those dealerships.

The quotas will also hurt the American consumer. The Brookings Institution has stated that the voluntary restraints of the 1980's cost American consumers billions of dollars. The quotas mandated by H.R. 5100 would, in effect, be an enormous tax increase on American consumers.

Second, and make no mistake, the 70 percent domestic parts content requirement will cost American jobs. Why? Because only those parts manufactured in a so-called United States manufacturing facility count toward the 70 percent content requirement.

Parts built by the transplants, joint ventures, or any other Japanese owned or controlled companies, such as Firestone, cannot be counted, no matter who makes them or where they are made.

Finally, I would like to focus on the 25 percent tariff. Proposals to impose a 25 percent tariff on minivans and multipurpose passenger vehicles is, in effect, a 1,000 percent increase which would fall directly on the backs of the middle class American consumers.

Senator MOYNIHAN. I will give you three additional minutes, equal time with your colleague.

Mr. HUIZENGA. Fair enough.

The American consumers are purchasing today what is the family wagon of the 1990's. If this proposal is enacted, the Big Three will raise prices. And the American consumer will pay billions of dollars more.

Moreover, the investments of our dealer members and thousands of jobs will be jeopardized. These American jobs and the American consumers will be sacrificed to protect in many instances Canadian jobs.

Half of the minivans sold by Chrysler in the United States are actually manufactured in Canada. So this proposal would impose a significant price increase on American consumers to protect in some measure Canadian jobs.

Finally, we believe that the House provision is a flagrant violation of GATT and undermines the U.S. efforts to reach a successful conclusion of the Uruguay Round of talks.

The House bill specifically targets Japan and attempts to exempt products from all other countries. Therefore, I am not real sure we are concerned about our meeting regulatory uniformity as much as we are targeting a competitor from a particular country.

In conclusion, Mr. Chairman, we believe the process is working. Perhaps, we are not all the way where we would like to be in that process, but it is working.

And we do not believe that now is the time to impose legislation which will cost the American consumer billions of dollars and put the businesses of our members and the jobs of their employees in jeopardy.

And therefore, we would urge the Senate Finance Committee to reject this unneeded legislation.

Thank you.

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

Senator MOYNIHAN. We thank you, sir. I do not know whether the process is working, but this hearing is working. You were exactly in 3 minutes of your time.

Now, next we will hear from Mr. Beckman on behalf of the UAW. Good morning, sir.

STATEMENT OF STEVE BECKMAN, INTERNATIONAL ECONOMIST, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, WASHINGTON, DC

Mr. BECKMAN. Thank you, Senator.

I am pleased to be here this morning to present the views of the UAW.

Senator MOYNIHAN. I think we will want to get you a little closer there. Let me see. Everyone has a microphone. I think if you all moved a little forward.

Mr. HUIZENGA. They gave me two, Senator.

Senator MOYNIHAN. They gave you two. Well, that is just probably the Japanese were behind that. [Laughter.]

Mr. BECKMAN. This is indeed fair. Thank you very much, Senator, for the opportunity to present the views of the UAW this morning on trade policy and specifically on automotive trade policy.

For many years, the trade debate in this country has focused on our trading relationship with Japan. Since the early 1980's when the U.S. worldwide trade deficit began to soar, the U.S. trade imbalance with Japan has been paramount.

A constant in United States-Japan trade has been the massive contribution of trade in automotive products.

This single category which includes vehicles, parts, components, and materials accounted for U.S. trade deficits with Japan of more than $250 billion during the past decade and more than $30 billion last year.

Mr. Chairman, the UAW is convinced that the United States-Japan trade imbalance will not be significantly reduced without substantial reduction of the U.S. deficit in automotive trade.

We are equally convinced that the overall U.S. deficit with Japan will not disappear without concerted efforts by both governments and by private business interests.

Hundreds of thousands of workers have lost their jobs in the domestic auto and auto parts industries because the Japanese auto companies have gained a steadily rising share of the U.S. market and imported parts, materials, and components replaced domestic products. This has had a devastating impact on countless communities across the United States.

The UAW believes it is time for Congress to take the steps necessary to reduce our huge trade imbalance with Japan and to help preserve domestic auto and auto parts industries. We cannot be content with vague promises.

The UAW strongly supports the proposed Trade Enhancement Act of 1992, S. 2145, introduced by Senator Riegle. This legislation would require that the United States-Japan merchandise trade imbalance decline by at least 20 percent each year for 5 years.

Since Japan accounted for two-thirds of the total U.S. deficit in 1991 and an even larger share so far this year, this requirement should have a substantial, positive impact on total U.S. trade.

If the trade imbalance is not reduced by 20 percent in any year, imports of motor vehicles from Japan into the United States would be subjected to restrictions.

The UAW believes that the use of automotive trade sanctions to meet the trade deficit reduction requirements of S. 2145 is appropriate. There is no apparent way to eliminate the overall trade imbalance without substantially eliminating the auto trade deficit.

Senator Baucus has introduced legislation, the proposed Automotive Competitiveness Act of 1992, S. 2395, which would help to preserve a strong domestic automotive industry and reduce our huge trade imbalance with Japan.

This bill would require the Administration to negotiate a trade agreement with Japan limiting imports of Japanese motor vehicles to 3.6 million per year.

The bill would include within the definition of Japanese imports, sales of vehicles by Japanese transplant operations in this country which have less than 70 percent domestic content.

Thus, in addition to restraining the growth of Japanese imports, S. 2395 would encourage the Japanese transplants to increase their domestic content above 70 percent, just as they promised to do in Tokyo in January.

In exchange for providing relief from Japanese imports, the bill would require that domestic auto companies improve the quality of their products and limit executive compensation.

We agree that the Big Three auto makers should improve their competitiveness which would ultimately benefit consumers as the quid pro quo for any trade relief.

In addition, we believe this committee should give favorable consideration to the auto trade amendments sponsored by Representatives Gephardt and Levin, which was adopted by the House of Representatives during consideration of the Trade Expansion Act of 1992, H.R. 5100.

This amendment contains two basic elements. One, it would require the U.S. trade representative to negotiate with Japan for a continuation of the existing voluntary restraint agreement on imports of motor vehicles into this country.

And two, it would require the Administration to monitor whether the Japanese auto companies are complying with the commitments announced by President Bush and Prime Minister Miyazawa last January in Tokyo concerning increased purchases of United States-built auto parts and would make these commitments enforceable under Section 301 of U.S. trade laws.

To dispel any notion that it would somehow hurt Japanese transplant operations in this country, the Gephardt-Levin amendment contains a specific section stating that it may not be construed as terminating or eliminating to any extent the production of motor vehicles by transplant vehicle manufacturers or limiting or reducing jobs of the United States workers at the facilities of such manufacturers.

In addition to supporting the Gephardt-Levin amendment, the UAW supports several other provisions included in H.R. 5100 which passed the House earlier this month. The changes in antidumping and countervailing duty laws would tighten enforcement of these protections against unfair trade.

We also endorse reinstatement of the Super 301 provision that was included in the 1988 Trade Act, but has since expired. It can be a useful element in U.S. trade policy that stands up for U.S. production and employment.

The initiation of a Section 301 case on vehicles and auto parts would demonstrate the continuing existence of a variety of barriers to exports of competitive U.S. products to Japan.

In conclusion, the UAW is convinced that the jobs of hundreds of thousands of UAW members, hundreds of thousands of other American workers, and the health of many communities across the Nation are at stake in the battle to preserve our domestic automotive industry.

Only Congress can provide the industry and its workers with the opportunity to make their appropriate contribution to the economic strength of the country.

Accordingly, the UAW strongly urges this committee to give favorable consideration to the auto trade bills sponsored by Senator Riegle and Senator Baucus, as well as the Gephardt-Levin amendment which was adopted by the House as part of H.R. 5100.

The UAW appreciates having this opportunity. And we look forward to working with the Chairman and all the members of this committee as you consider important trade legislation.

Thank you.

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

Senator MOYNIHAN. Thank you, Mr. Beckman. You are showing an increase in productivity over management. You got your job done in 5 minutes flat. [Laughter.]

Mr. Kadrich?

Mr. Beckman. We have always said we can lead in that area.

Senator MOYNIHAN. Well, you demonstrated impressively so.

Mr. Kadrich, we welcome you, sir.

STATEMENT OF LEE KADRICH, DIRECTOR, GOVERNMENT AFFAIRS AND TRADE, AUTOMOTIVE PARTS AND ACCESSORIES ASSOCIATION, BETHESDA, MD

Mr. KADRICH. Thank you, Mr. Chairman and members.

APAA is pleased to discuss how we might shape trade legislation that provides the policy tools needed to build trade opportunities for world-class parts makers and their workers.

The dismantling of Japan's anti-competitive auto maker-supplier families, or keiretsus, that generally exclude outside competition, is

critical to the continued strength of the American-owned parts industry.

These families form the core of huge industrial and financial combines with cross-shareholding and interlocking directors that resemble 19th century American trusts.

Robert Kearns' book, "Zaibatsu America," includes this observation, ". . . you have to remember an American firm is not competing against a Japanese company as an individual but against a company as a member of a group."

Despite these odds, our industry has a proven 18 percent cost advantage over their Japanese competitors. Yet, USTR reported in 1989 that as "non-family" suppliers, "U.S. parts makers are precluded from both the original equipment and replacement auto parts markets for Japanese vehicles."

The keiretsu system's exports to the United States is costing our Nation a net loss of two jobs and $2 for every transplant-added job and dollar. Japan's unfair trade practices could destroy 50 percent of our industry's 600,000 jobs by the year 2000.

Our industry is competitive today and, if given free markets, can be competitive well into the 21st century. But they cannot compete against predatory, 19th century trust-style capitalism. Nor must U.S. consumers be victimized by noncompetitive Japanese practices.

Japan's car maker dominated aftermarket and its victimization of consumers have become the focus of U.S. negotiators who use it to prove Japanese markets are not competitive and to explain how monopoly profits extracted at home subsidize aggressive pricing in the United States.

In 1991, a DOC/MITI survey of parts pricing revealed prices shockingly higher in Japan than in the United States, Japan's car makers control 75 percent of Japanese aftermarket parts and service, a reverse of the S. competitive U.S. market where thousands of independent outlets offer a wide array of choice to consumers.

Twelve years of high-level market opening initiatives by three Administrations, Congress, and our industry have failed to end unfair Japanese practices.

U.S. firms still have less than 1 percent of Japan's parts market, hold a meager 20 percent share of Japan's U.S.-based assembly operations, and face a projected $22 billion parts trade deficit with Japan by the year 1994.

The 1988 Trade Act's expansion of Section 301 empowered our negotiators to challenge foreign government toleration of anti-competitive systems.

We think it helped to win keiretsu's major billing on the SII agenda. Unfortunately, as was the case with the MOSS process, keiretsu's systematic exclusion of outsiders stands out as the huge, unfinished agenda item.

That is why APAA cannot gamble that the big ticket parts purchase goals—and I would stress that these are goals or targets, but certainly not commitments—that were presented to President Bush in Tokyo will be realized unless this system changes.

Pro-competition legislation including four key elements can help make this presidential initiative different from others.

First, we need a results-oriented mandated Section 301 negotiation and Japanese agreement to eliminate anti-competitive practices. The United States should set goals and timetables and measure progress in terms of sales by long-excluded, non-Japanese owned U.S. firms.

Second, once the first concrete Japanese parts agreement is secured, new trade agreement compliance act provisions and a restored Super 301 are needed as long-term enforcement tools. APAA favors provision for a congressional-initiated Super 301.

Third, we seek extension and enhancement of the Fair Trade in Auto Parts Act, now set to expire in 1993. The Act's market opening mandate is defined to cover both United States and Japan OE and service parts markets. Extension would complement Section 301 market opening in Japan.

We support the Act's extension through 1998 with two important enhancements. First, the Act should name the intended beneficiaries and measure sales progress in terms of long excluded, non-Japanese owned U.S. parts firms.

Second, the Act should require that the Department of Commerce lead an interagency role in coordinating U.S. policies on trust, trade, and taxes with USTR, Treasury, and Justice.

Such concerted, consistent policymaking is needed to underscore U.S. intolerance for unfair practices here or abroad.

And finally, negotiations should be directed to stamp out government-tolerated anti-competitive practices globally.

Thank you, Mr. Chairman.

Senator MOYNIHAN. Sir, you have outperformed even the UAW.

Mr. KADRICH. Some of the estimates, sir, go as high as a 25 percent to 30 percent U.S. supplier cost advantage over the Japanese. So we are a pretty productive industry.

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

Senator MOYNIHAN. Thank you.

Gentlemen, I am just going to take a moment here. I have been 16 years in this committee and I have never said a word about this subject, but it is perhaps time that I did because I have been much involved in the automobile industry when I was young.

And I have a feeling about your situation which is no more than anecdotal, but I think it might help you all to understand it yourselves.

First of all, there is one large reason why we have a problem. In 1945, if you wanted to make an automobile anywhere in the world, you had to make it in Detroit.

There was a little bit of a British industry in the Midlands, but nothing that mattered. And that is bad. In any situation like that, it is always bad for you. You pay for it eventually.

Mancur Olsen has laid out those propositions very eloquently in his books.

But it produced a corporate mentality in Detroit which you just cannot really reproduce. It was arrogant. It comes under the heading of—I do not want to seem disrespectful, but what we call stupid stubborn. You could not get through to them.

Mr. Pestillo, you would not believe who you were talking with.

They will not remember this, but in 1959, a young person, in this case myself and a young medical doctor, we had worked out in the New York administration of Averell Harriman the first rudimentary, but pretty good epidemiological analysis of automobile crashes, injuries, and death. And we went to Detroit.

We said, "We have good news for you. We think we know how we can get at this problem." And it is a real problem, a very large problem at the time. And, "Would you like to hear this good news?" And the answer was, "Beat it."

And I said, "If you do not do this, you will end up being regulated by the Federal Government." "Beat it."

President Johnson signed the bill 7 years to the day when I arrived in Detroit.

I remember going back to Detroit in 1966 as chairman of a Committee on Traffic Safety, Johnson Gardner had established it.

And again, the legislation had already passed, but they did not know what had happened to them and could not comprehend it or us.

They had to do something a little nicer this time so they took us through a tour of the assembly line.

And I had been an Assistant Secretary of Labor under Presidents Kennedy and Johnson. And this man knew it, the plant manager. And so I am walking along, trying to be nice. I saw these fellows down there on the line. That was Mr. Beckman's unit.

And I said, "Boy, they are really working down there, aren't they?" meaning a happy plant, doing their work. And the manager assured me, "Oh, no," he said, "if you knew, that fellow's mind is 20 miles from here, not paying any attention whatever."

He thought I might be thinking they might be overworked.

But the industry could be malevolent. I had left the administration and had gone to a university. And General Motors let it be known that if I was given a permanent position at that university, it would be costly to the university. They would get no more support from General Motors ever.

I had a president who was just serenely indifferent to anything like that, but I had to go down and have lunch with the head of GM and say, "No. You cannot do that to the university. Do not do that to the university. It is not right. They are universities. They are not supposed to be dealt with like that."

He let me pay for lunch. I remember it was in Central Park west. [Laughter.]

Senator MOYNIHAN. And then about 2 years ago, I was visiting a plant in New York State. I will not give any details, but it is a working plant, a good plant. The union is working very closely with management. And they really are turning out high grade parts.

And I remember talking to the manager of the plant. He did not have a New York accent. It could have been a middle western accent. And I asked where he is from. I found out. I said, "You are doing well here." And he said, "Yes."

I asked him a little about his career. He said, "Well, I will tell you." Here he was with the union stewards all around him. He said, "You know, I got my start with this firm." It is a big firm, one of the three.

He said, "My first promotion, the plant manager called me in. He said, 'I like your stuff. You have more grievances filed against you than any other division manager in this plant. And that means you will not take any stuff from those people. So I am promoting you.'"

Well, that corporate culture brings you to this table. It is clearly behind you, but the legacy is still there. And it is going to take—it took two generations to get into it, getting out is harder, but I think you are going to make it.

I have waited 16 years to tell you about that. There it is. [Laughter.]

Senator MOYNIHAN. Senator Packwood?

Senator PACKWOOD. Mr. Chairman, I will follow up just a bit.

I was here in the Congress when we passed the first mileage standards. The industry came and testified against it for two reasons. One, the public did not want a car like that. They knew that. Two, they could not possibly make them sooner than 5 to 10 years.

Senator MOYNIHAN. Never.

Senator PACKWOOD. The fact that somehow in 1942, we managed to go from cars to tanks, almost overnight, and at the end of it, back to cars very quickly. They could not bring themselves to do it engineering-wise.

Senator MOYNIHAN. I have to tell you. I was up in Corning years ago. And I was shown a model of—and it was on display—the first catalytic converter which they had done a beautiful job, from a standing start, in about 18 months.

And they had described to me about a chief executive of one of the Big Three who came through Corning, was shown what they had done, and said "Wow, great," and came down to one of these hearings and said, "It could not be done."

All right. That is enough of beating on them.

Let me ask a question. When we were in the mid-1970's, remember the battle we had about the objection to American businesses going overseas. Why do we allow them to go overseas and defer a foreign source of income?

And by and large, they were not going overseas for the purpose of exporting back here. They were going overseas to be in the market.

But one of the arguments that was made by American business for doing it was it is good for business here and it let them inside a market they were having trouble penetrating otherwise and it led to increased business here because the American businesses overseas bought a lot of their parts from here and their engineering from here, and it built up the base here.

John Young of Hewlett Packard, who is just retiring, said one of the reasons they do not do much manufacturing overseas, other than to be in the market, is that their floor costs—and they meant their floor labor—is only about 6 percent of their cost. So it does not make much difference if they manufacture in Singapore or manufacture here.

Their research, they keep here. Their overhead, they keep here. They have no need to go overseas.

If that is the experience with American businesses when they go overseas, why are we so surprised that it is the experience of Japanese businesses when they come here, that their natural tendency

initially is to keep in touch with the suppliers they had or use their home factories as they are acclimating themselves here?

Is it okay for American businesses to go overseas and do that, but not for Japanese businesses to come here and do it?

Mr. PESTILLO. Well, Senator, if I might comment to Senator Moynihan first. We admit to being prisoners of our history, but I think we are finally mindful of the admonition. We will learn from it. I assure you. And we have gotten better.

Senator MOYNIHAN. Oh, I think you have.

Mr. PESTILLO. We did learn a lot of humility in the 1980's at the very least. And that probably was constructive. At the time, we were not competitive—I think the Girl Scouts were more effective at business than we were. So we have gotten better.

But, Senator, your point, that is not the way we operate. We were in Europe after the first World War. We have always had a position that we would manufacture where we sell.

One of the things that distinguishes us from Hewlett Packard, of course, is that they are able to put high units of value in small units of space. So shipping costs are insignificant to them.

Cars historically had not shipped easily or well. And there were factors in the market that caused us to serve them as well.

So we were in Europe right after World War I. We are the dominant company in Britain even to this day and have a major presence in Europe.

It is significant, however, that no one has a major presence in Japan. It is worthy to look at that. Right after World War II, we had a large piece of land in Yokohama where we intended to build a manufacturing facility. We were absolutely foreclosed from doing so.

Senator PACKWOOD. I want to separate two arguments here. One, I understand the problems of getting into Japan. I think your complaints are justified, but I want to separate that issue from the market here and the penetration here.

Are you surprised that Japan comes here and initially purchases some fair portion of their parts from their original suppliers in Japan or from their own factories in Japan?

Mr. PESTILLO. I guess I am surprised to the extent that that is not the way the Americans operated. We established a presence where we sold and built where we sold.

For example, our European products are 90 plus percent European. So the Japanese behavior in automobiles is quite distinct from other manufacturers' activities. And surely, the Germans have come here with very, very limited volumes.

And despite our prices and the like, we are a capital-intensive business that is very, very volume sensitive. So you want to be able to build great numbers of units in a single place.

But the Japanese behavior has been quite different. It is largely because this is a uniquely free market. We have difficulty convincing our Administration that we are the only open market in the world. And that encourages the Japanese behavior to build and ship from Japan.

Senator PACKWOOD. Let me ask you a further question.

Mr. PESTILLO. Sure.

Senator PACKWOOD. Last night, I was at a fund raiser with your principal lobbyist. He implied that Taurus will exceed Accord this year. He is reasonably confident they will.

He also said, or maybe Mr. Huizenga said that, the domestic is now starting to recapture a larger market share in the United States. Is that correct?

Mr. PESTILLO. Yes, sir, it is. The first point, we are about 10,000 units short of the Accord.

Senator PACKWOOD. But that is mid-year?

Mr. PESTILLO. Yes.

Senator PACKWOOD. And last year, you were 50,000 units short at this time?

Mr. PESTILLO. And finished at 100,000.

Senator PACKWOOD. Yes.

Mr. PESTILLO. So there is a race out there. And we expect to be successful.

Senator PACKWOOD. But if indeed—and I will take my hat off, Pat, to what they have done in the last 5, 10 years.

Senator MOYNIHAN. I had been using your time.

Senator PACKWOOD. They indeed have learned. You have become very competitive. Your manufacturing costs are now equivalent or lower, as I understand it, for some of the cars.

What is the reason you would need protection any longer? It looks like you are finally doing well.

Mr. PESTILLO. Well, see, we are not seeking protection—rather reciprocity. To me it is not natural that the Japan market has only 3 percent foreign participation. There are irregularities there at the very least.

The Japanese are marvelous managers of trade. We are not. And there are only three other markets in the world, Europe, Asia, and here. And the Japanese have affected domination of that.

Senator PACKWOOD. I agree with you on that. I also agree with you on the argument about reciprocity. But domestically, you have turned the corner, it would appear.

You are also going to pick up a greater portion of market share. I suppose that will go up and down from year to year depending upon quality and design, but you have turned the corner.

There is no longer any reason why in this country you cannot be very competitive. That is a different argument from Japan and a closed market. So you should not need any protection in this market.

Mr. PESTILLO. Well, I would rather have Japan's attention than protection. What we are seeking is the opening of both markets. And the frailty of it all is the extent to which they do not open theirs and our market remains open is to diminish our ability to compete over time.

The Japanese have not found the U.S. market profitable, but they have tremendous resources available from a protected Japanese market. That is a great competitive advantage.

Senator PACKWOOD. This is the last comment I have. I would expect that within the next—I will take a guess—7 to 10 years that Japan will ask for a free trade agreement with the United States.

They will look at their manufacturing capacity and say: It is not worth the battle. We will give up on price and we will give up on

some of our protection in exchange for access, not to the U.S. market, but I think it will be a Western Hemisphere market by that time.

At that stage, I assume the auto companies will say: Fine. You give us that and we will not argue anymore about their reciprocal tariffs and quotas and problems.

Mr. PESTILLO. Well, we have not sought tariffs. We have just sought reciprocity.

Senator PACKWOOD. No, I understand this.

Mr. PESTILLO. What you are saying, in effect, is what the Europeans have done. And the Japanese have accommodated that without protest.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator MOYNIHAN. Do you want to say what the Europeans have done to which the Japanese have accommodated?

Mr. PESTILLO. What I would characterize the European-Japanese auto accord is an effective orderly marketing agreement where there are share limitations and recognition by the Japanese that should the European market decline, they will take less participation, if you will, and maintain a balance. In fact that agreement has been adjusted already because of the recession in Europe.

Senator MOYNIHAN. Which you testified to?

Mr. PESTILLO. Yes, sir.

Senator MOYNIHAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Pestillo, I think your statement was a very good summary of the problems. And what I am trying to get at is the degree to which some of the U.S. auto industry and auto parts problems can be solved by market opening provisions on the one hand and VRA-type or other types of efforts on the other.

When I visited Detroit, in your view, Ford and the other three companies, I learned a lot. One is the degree to which Japan, as you pointed out in your statement, sells their units at high prices in a domestic market, reaps gigantic profits, and then uses those profits back here and in Europe to market their cars and to absorb some of their costs in this country.

Second is the Japanese homologation rules which make it more difficult for the United States to sell in Japan, as well as the distribution problems in Japan, but on top of that, the higher, U.S. auto industry pension costs compared with the Japanese, at least with the Japanese transplants here.

And second, the demographics, as you pointed out, that is the American work force with the seniority system is one where it is just easier for a Japanese company that is building a transplant here to hire younger, non-union employees.

Those are different problems, but they are all real problems that face the industry. And I might say that it is my belief that the industry has learned its lesson in the last 10, 20 years, not enough yet.

I tell the Chairman that when I visited Detroit, I took that book, "The Machine That Changed the World," the 5-year MIT study of the auto industry.

And I took all the points in that book and I asked everybody there questions so I could determine for myself the best I could the

degree to which the industry is finally getting its act together and following the lean techniques.

And I think the industry is making a good stab at it. They have a way to go yet, but I think they have made a lot of progress.

Nevertheless, can all those problems basically be solved with very aggressive market opening provisions alone, that is without a quota, without a restraint agreement or not?

It just seems to me that because I guess GM and Ford both have shown profits in the last two quarters, Chrysler, I think, is announcing a profit for the last quarter, and I think, as you say, your domestic sales are increasing and again I think probably because your cars are getting a lot better.

I bought one of your Atlanta cars, by the way. Everything is fine so far.

Why can't these problems be solved with Super 301 and with a mandated auto and auto parts 301? Why can't these problems be solved just with aggressive market opening measures? Why do we also need a restraint agreement at this time?

Mr. PESTILLO. Well, Senator, they can at least be ameliorated by 301 action or aggressive government behavior. I think it requires it.

The Japanese auto industry is effectively an instrument of international economic policy, if you will. It is only derivative to me of the old behavior of having a steel industry to prove that you are a developed Nation.

They have great support from the government and pay great attention to the government. So I think to the extent to which our government is indifferent to trade policy—and I would argue to some extent it has been, at least in auto—we will suffer a disadvantage.

I think there can be significant gains through market openings, but again we need to understand the competitive value of a relatively protected Japanese domestic market vis-a-vis a relatively open United States one.

The capital requirements of the last 6 or 7 years have been tremendous. They have been for design. They have been as well for safety and emissions and the like. They have well exceeded the profits of the three domestic auto companies.

So we are suffering from badly weakened balance sheets. And I think to the extent to which the Japanese continue to have 10 times the share of the U.S. market that other countries' products have of the Japanese market, we will not easily get there.

Senator BAUCUS. But if the Japanese market is truly open, as open as, say, the United States, why will that not be sufficient?

Mr. PESTILLO. Well, time will be a burden. And I think, as well, the Japanese are to some extent doubtful that they will be effective. The best of all products will gather 7 or 8 or 10 percent of the Japanese market quickly.

We are the dominant foreign producer in Japan—accounting for about 1 percent as a practical matter. That is not going to change much.

The transplants have been coming here and by virtue of having come here have a tremendous advantage.

They have about a $10 labor cost advantage over the U.S. companies with comparable labor rates. The reasons are, they are in rural areas where they do not have quite the medical costs we do; they have a younger work force which typically is not so much more productive as less vulnerable to illness and injury; and most significantly, they do not have pensioners.

Chrysler, for example, has more pensioners than active employees. We have barely more active than pensioners. That effectively doubles all the health care and medical costs we have.

Those disadvantages we accept, but they will not change.

Senator BAUCUS. If I could, Mr. Chairman, just briefly ask Mr. Kadrich, why don't you just initiate a petition for a Section 301?

Mr. KADRICH. Well, sir, we did support the Super 301 action back in 1989 and 1990. We fought very hard to get USTR to designate Japan and its anti-competitive practices.

Senator BAUCUS. That was Super 301?

Mr. KADRICH. That was a Super 301. And we met with rejection in that regard.

Senator BAUCUS. Industry was divided at that time as I recall.

Mr. KADRICH. Yes, it was, sir.

Senator BAUCUS. Is industry divided today? What if Super 301 were alive today, would industry be divided or not in urging the United States to self initiate, say, or to identify auto parts as a major trade barrier?

Mr. KADRICH. Well, I think the significant point to note here is that the industry has spoken in a unified voice through the Auto Parts Advisory Committee (APAC) in terms of recommending that the Administration begin the preparation of self-initiated Section 301, specifically to address the Japanese government toleration of these continued anti-competitive practices. This has been a key recommendation of the APAC since 1991.

Senator BAUCUS. I would like for you to tell me if it is accurate or not that the industry is reluctant to support Super 301 for fear of retaliation. Is that correct or not?

Mr. Kadrich, our industry's individual corporate members indeed do fear Japanese retaliation.

Senator BAUCUS. Go ahead.

Mr. KADRICH. Back in the last round of Super 301 determinations, we were being asked by the USTR for specific companies to come forward and speak out on behalf of Super 301 action on unfair Japanese parts trade practices.

I think that was asking far too much of individual companies because of the risks in terms of their future commercial involvement with the Japanese.

Senator BAUCUS. If we had Super 301, the tilt is for the Administration, the government itself to initiate rather than putting onus on the industry itself to ask for the government to initiate.

My point basically is I am trying to find a mechanism where the onus is not so much on the industry where there is legitimate worry of retaliation, rather the onus would be on the government to self initiate actions where there is a major trade problem.

Mr. KADRICH. Well, we think the onus was definitely on the government. And if the Super 301 is restored, as I testified, Senator,

we support the provision of your bill which would allow for Congressionally-initiated Super 301.

We see that really as our safety net because we think we might have at least a second approach should we be forestalled by the administration in getting Super 301.

In terms of the importance of the issue, it was significant that in the 1990 round of Super 301 identification, we not only had our association, but the United Auto Workers, the Chamber of Commerce, NAM, and Chrysler Corp., urging designation of Japan.

There were significant groups speaking out on behalf of the designation of these particular anti-competitive Japanese practices for Super 301 action.

Senator BAUCUS. Thank you, Mr. Chairman.

Senator MOYNIHAN. Senator Packwood,

Senator Grassley very generously gave you the floor.

Senator PACKWOOD. I just have one last question. Then I have to go on the floor to speak on this amendment.

Mr. Pestillo, Mr. Huizenga says that 92 percent of the minivans sold in this country are domestic. Is that right?

Mr. PESTILLO. It is at least 85 percent.

Senator PACKWOOD. Eighty-three on sport utility and 92 percent on minivans.

In your statement you said, "We believe there is room for improvement in the anti-dumping laws. We find it inconceivable that after the U.S. Department of Commerce found clear evidence of Japanese dumping, an average of $1,500 per vehicle, the International Trade Commission found no injury to the U.S. industry."

Isn't the reason they found no injury is that you got 92 percent of the market which is a fair portion of the market?

And even at the $1,500 subsidy, I am familiar with how these two work. With Max, I just went through it with the lumber industry. You have to find subsidy and injury. The ITC could not find any injury when you had 92 percent of the market.

Mr. PESTILLO. Senator, the product, of course, is uniquely an American product. So to have 100 percent of it, would not be novel. So to come toward 10 percent of the market in a relatively short time is dramatic.

But the significance in our view of the ruling was that it lay in a belief that people knew more about the automobile business than the law.

And some of the opinions dealt with the frailty of styling or product quality, things of that kind, which in our view are not germane to the decision. That is why we argued that was an unusual decision at the very least. We intend to appeal it.

Senator PACKWOOD. Thank you, Mr.Chairman. I apologize for having to leave.

Senator MOYNIHAN. Thank you, sir. We are sorry you have to leave.

Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman.

I think I will start with you, Mr. Beckman, if I could. I would like to do so in regard to the summation that you made in your comments about every trade agreement we have had with Japan

since 1983. It was supposed to solve a trade imbalance. And it did not.

And you went on to admonish us that if we are going to get the job done, we have to be more concrete and forceful. I think you probably share the same frustration I have.

It seems like the United States gets about 10 percent of its original negotiation position in an agreement. And that agreement is supposed to be phased in over a 3 or 4-year period of time.

And then I don't think we ever look back at the end of 3 or 4 years, although we recently have on a semiconductor agreement and concluded that we have not gotten 20 percent of market share.

But we do not look back and say: Well, we failed. We failed, not only to what the agreement said, but we failed drastically from where our original position was.

My question to you is, as an adviser to us in your capacity as a witness today is, what do you think are one or two things that we really have to do differently in our agreement process to make sure they are carried out?

Let me say parenthetically here before you answer, I do not think you are saying nor am I saying we have to necessarily have a trade balance with any specific country, including Japan, but we cannot have a tremendous imbalance with one country, like Japan. And it is such a big share of our total trade balance.

Mr. Beckman. I would be happy to answer regarding what we need to do to have successful agreements. And I certainly do share your view that we do not have to have absolutely balanced trade with any individual country, but we certainly do have to have a lot closer balance with Japan, given the history of that imbalance.

But the first thing that is essential for successful negotiations is knowledgeable negotiators, people who have—if not directly themselves—a staff of knowledgeable people who understand the auto industry, who have a continuing relationship with people who are directly involved in the various aspects of the industry's operation and the international trade within that industry.

We have had continual turnover in those types of positions in the U.S. Government. And other countries do not. They have consistent bureaucratic support for an understanding of the industry concerns and constant interaction with the industry regarding their concerns. That is the first thing.

Second, we need to have——

Senator MOYNIHAN. That is called illegal here.

Mr. Beckman. What is illegal here?

Senator MOYNIHAN. Those close relations with the industry.

Mr. Beckman. Well, I do not believe it is illegal to talk to the people in the industry or to the union, but maybe that is illegal. I do not know. I certainly hope not.

Senator MOYNIHAN. I have negotiated trade agreements with the union in one hand and business in the other. You have to be careful. It is the legacy of 19th century economics.

Mr. Beckman. I certainly believe that.

Senator GRASSLEY. What did you say?

Senator MOYNIHAN. Mike Blumenthal and I negotiated the long-term Cotton Textile Agreement for President Kennedy in 1962. We

had the ILG and Amalgamated on one hand and almost Bourbons from North Carolina and South Carolina on the other.

Mr. Beckman. I think there is an appropriate role for the government in understanding, being knowledgeable in the conditions of the industry and being able to understand its role in the U.S. economy and in world trade. And I do not think that necessarily steps over any legal line.

Senator MOYNIHAN. Of course.

Mr. Beckman. Second, we do have to acknowledge at some point in this government that the auto industry is important and that it is important for this government to have a policy, a consistent policy regarding the auto industry and that it has to be followed up.

And if 1 year to the next a negotiated agreement does not meet the criteria of success in that agreement, we actually have people who understand what the impact of that is on the industry itself and how it will affect further development of our domestic industry and employment and production related to it and productivity and all the support industries affected.

So we have to have consistency in valuing the auto industry as well as a variety of other industries in this country in order to ensure that we will be able to successfully negotiate agreements and follow them through.

As others have said, the European community has just negotiated a rather substantial automotive agreement with Japan. They did not do it through legislation. They did it through administrative action. They have the tools necessary for those kinds of activities. And we do not have them.

Senator GRASSLEY. Could I ask Mr. Kadrich a question?

Senator MOYNIHAN. Of course. Please.

Senator GRASSLEY. Thank you.

Mr. Kadrich, you spoke about the foreign trade zones as having unilaterally reduced all of our OMB tariffs on parts from 4 to the 11 percent range down to a 2.5 percent rate applied to finished cars.

Are we, in effect, adding further to our trade deficit as a result of these foreign trade zones? Are the domestic suppliers disadvantaged to a further degree? And are you suggesting that we need to look at the way our foreign trade zones are structured?

Mr. KADRICH. Yes, sir, to all three of those questions. First of all, we feel that FTZ subzones definitely help in increasing our parts trade deficit. We already know that the Japanese through their keiretsu relationships are going to favor the home-based suppliers.

And, indeed, what often is the case is the home-based supplier in Japan is used until such time as that Japanese business relocates in the United States and continues the relationship here.

So, in effect, what we are doing through the foreign trade zone program as it affects Japanese transplant operations is subsidizing these close-knit relationships. Thus, the current program is counter-productive in terms of our trade deficit and counter-productive in terms of our so-called market opening initiatives to open Japanese parts markets and stop anti-competitive practices.

And, yes, indeed, our association has sought the reform of this program. And I think the rules which were issued last fall go a long way towards giving our industry the tools to challenge those

zones where we feel there are unfair advantages being conferred and to the detriment of our industry.

I very much appreciated the fact that H.R. 5100 includes a mandatory review of this program, specifically looking at the net impact of these zones on the United States economy.

We must look at the net impact on the entire economy because clearly, if you put an auto assembly plant in any town, it is a tremendous benefit to that town.

But in terms of national employment impact, if the vast majority of the parts for those assembled vehicles are being shipped in from abroad, the net benefit of that plant is being enjoyed by foreign workers and foreign communities.

Senator GRASSLEY. Mr. Huizenga, my last question, on page 6, you refer to some testimony for estimating by the Citizens for a Sound Economy that the average price increase as a result of the tariff on multi-purpose vehicles would be 37 percent for imports and $1,300 for domestic models.

I do not understand why the $1,300 increase in the domestic MPV's when the tariff would be placed on the imported vehicles.

Mr. HUIZENGA. Okay. What happens in that circumstance is that once a company—and in this case, it would be the Big Three would gain virtually monopoly market share in that market segment, that is to say, the loss of competition.

With the loss of competition, the Brookings Institution found that the prices would go up even for the domestically-produced products.

Senator GRASSLEY. Because of less competition?

Mr. HUIZENGA. Right.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator MOYNIHAN. We thank you, sir. And that is your last question?

Senator GRASSLEY. Yes. Thank you.

Senator MOYNIHAN. Well, this has been a very productive meeting.

This committee is going to want to help the industry and should. And in a lot of situations it seems the fixed and subtle circumstances and relations of the world could change very quickly.

The Japanese, as Senator Packwood said, may be very well looking for a free trade arrangement with us. They have an aging work force. They are facing the same problems of every industrial country which has a surplus of semi-skilled workers. That is true in Germany. It is true in Japan.

The global mobility of capital has changed all those calculations. And we saw some work done by a professor at the Business School of the University of Chicago.

For income distribution in the 1980's in every OECD country that he looked at, he found the income share in the higher levels of education and occupation grew and they shrunk in the lower levels. I mean, it did not matter who was prime minister or president, that happened.

Did you say Pestillo?

Mr. PESTILLO. Yes.

Senator MOYNIHAN. Not Pestillo, you are not a Spaniard. All right. Not to get personal, but you have been so open and so thoughtful in your remarks.

Let me just take a second to say that it was for me really a formidable experience trying to persuade the automobile industries that there was a problem with the morbidity and mortality associated with automobile crashes.

In the 1950's, this was a very large issue on the public agenda. And the epidemiologists, public health people, were working largely just from a transfer of concept and technology from aviation safety.

The Bureau of Aviation and the Federal Aviation Administration had since the 1920's been working on this. And they knew a lot about it. They learned things: elemental seat belts and the idea of a second collision.

When a car hits a tree, nobody gets hurt. It is not until the passenger hits the car that someone gets hurt. And you learned to think that way. And epidemiologists do not swat mosquitos. They drain swamps. They think that way.

And we went out there in 1959, having published some papers. And the reaction was hostility. And then we came in early 1961 to a conference at West Point. I remember laying out a paper called "The Legal Regulation of Automobile Design."

Most of the industries in this country have ended up with government regulations because of safety. It started with the steam boat inspection in the 1840's.

The ICC came about as much as anything else because the railroads would not adopt the Westinghouse air brake. And they said as long as brakemen are cheaper than air brakes, they would continue to use brakemen instead.

And there was an incapacity to believe that it could happen. And there was very little sense of what Washington was like, a very little sense of what other professions were like.

I knew the publisher of the Detroit Press. When the automobile safety legislation of 1966 was going through, they just could not believe that it could happen. And then bang!

And you always find yourself saying: You do not want government regulations. You want to try to avoid it. It is not good for you. Look what happened to the railroads.

And you go into that ICC building on Constitution Avenue. You go in one morning and you come out at the end of the day, you are a year older. [Laughter.]

And then came the things like mileage. "No. You could not do it." Clean air, like I said, engineers and scientists at Corning in New York had developed a catalytic converter, a nice piece of engineering. I mean, from stand to start, they did it in about 18 months.

And a CEO, an executive of one of the Big Three, came through Corning, looked at it, and went right on his way to Washington, and testified before a committee like this, "This could not be done."

All I want to say is that is behind you; the relationship of the work force. And not that anybody does not have a lot to account for, but I wonder if you all would go off for a weekend somewhere and go back over that earlier experience which we ended up with us sort of in the dark, and ask whether there isn't still some lingering disposition of that kind.

I am just saying it is an experience. I doubt if you have ever fully said—they call them action reports in the Navy—what happened?

Mr. PESTILLO. Senator, it is a more than interesting idea. Senator Baucus and I had this conversation when he was in Detroit. And I think it is fairly clear that earlier. We were at least indifferent to the prospect of regulation and hostile to having someone else intrude upon our business.

Senator MOYNIHAN. Yes.

Mr. PESTILLO. I think we are a couple of eras beyond that. The only thing that I would offer you of some substance is that we have the obligation to succeed at 30-mile-an-hour crashes.

At Ford, we test all our vehicles at 35 mph. And we have a corporate determination to qualify at 35 mph that which is required to qualify at 30 mph. Now, the difference is virtually exponential. I mean, that extra 5 miles is materially greater.

Senator MOYNIHAN. Oh, sure.

Mr. PESTILLO. But that is our intention—to exceed whatever legal requirements we have because to us, it makes sense. So I think we have come a great way. We have more to do. And I hope we have the time to do it.

Senator MOYNIHAN. I just mean a general attitude of how you respond to signals from government. I mean, once you get it, great.

I want to leave it there. I do not want to say anything other than how much we admire what you have done and what you are doing.

Mr. Kadrich, Mr. Beckman, Mr. Huizenga, is there anything you would like to say before this court pronounces sentence? [Laughter.]

Mr. Beckman?

Mr. BECKMAN. Mr. Chairman, just in regard to the comment you made earlier about the relationship between trade negotiators and the industry, I would remind you that the larger problem facing the United States is the frequency with which our negotiators leave their government employment and go to work for the foreign companies or the foreign governments with which they were negotiating.

The closeness of their relationship to the U.S. industry or the workers in this country is not in any danger of being too close, but there is some concern that we have expressed often and others have expressed that our negotiators are too close with the people they have been negotiating with.

And that is one of the explanations I think of why our trade negotiations have ended up with so few successes over the longer term rather than announcements of accord which fulfill none of the expectations of the participants.

Senator MOYNIHAN. Well, now, sir, that is in the oldest tradition of Americans judging their government. Will Rogers used to say, "America never lost a war or won a conference." [Laughter.]

I am not going to be anecdotal on that point. I mentioned earlier, the long-term cotton textile agreements. This was the precondition for getting what became the Kennedy round. President Kennedy's Trade Expansion Act of 1962, the only bill he really got through Congress. And that was in the first Congress of his presidency.

And the lines have shifted. The southerners who used to be dependably for free trade are now making textiles and want import quotas and so forth.

We were sent over to get this. The negotiation took about 8 months. We would fly over every weekend, take the red eye and arrive in Geneva a wreck at 4:30 in the morning. And there would be the French waiting for us. They had been skiing all weekend. [Laughter.]

And nothing would happen all morning. They would take us out to a business lunch. And then around 4:30 in the afternoon, when we were just beginning to crash, they would start negotiating. And they were all career elite of the Federal Government.

And Mr. DeGaulle was in power. And he was not doing anything for the United States. The Japanese could not have been more agreeable. And after 8 months, the French offered their final offer. "Here it is. Take it or leave it." Absent that, no offer.

That was Mr. Blumenthal's diplomatic career. It did not make much difference to me that there was not going to be any success. I was with the Labor Department. And Hickman Price was in the Commerce Department.

We went out to a desultory dinner. And nobody was interested in the food. And I said, "Well, what do you say we go back to the office." We had little offices over there. And I said, "Why don't we just take a look at it. Maybe there is something."

And, well, not having any other pleasures in mind, we went back and we looked at and found, "Good God Almighty, the French had offered us more than we had been sent to get." [Laughter.]

They had made a mistake. And Mr. Blumenthal tells this story.

And the next morning, we went in at 9:30. Mr. Blumenthal got the floor and said, "The United States accepts the French offer." And the Japanese went, "Good." And the British said, "Yes. Good show."

And the French said, "What?" "It is too late. We accept your offer." "No, no." "We accept your offer." And that is how Blumenthal became Secretary of the Treasury. [Laughter.]

Thank you very much, gentlemen. We appreciate it.

Mr. PESTILLO. Thank you, Senator.

Mr. HUIZENGA. Thank you, Senator.

Mr. BECKMAN. Thank you, Senator.

Mr. KADRICH. Thank you, Senator.

[Pause.]

Senator MOYNIHAN. I will ask our guests in the back of the room to—we are going to get some light on the subject. We are going to open our drapes. We want to hear from our Commissioner. So if you will be patient.

It takes a lot of shifting of chairs in the back there. And the Japanese journalists are leaving rapidly. I really must ask out of courtesy to Commissioner Banks that persons take their seats.

And now, we go to the second subject of our hearing which is the new Customs proposals which are incorporated in the House bill, a subject of great interest to our government in the first instance and to persons in foreign trade, as well as the rest of us.

We have the great pleasure to have Samuel Banks who is the Assistant Commissioner for Commercial Operations of the Customs Service here to testify on behalf of the Federal executives.

We welcome you, sir. We will put your statement in the record.

And before I do that, I would like to introduce into the record a statement by Senator Hatch who has two questions for you which we would appreciate your answering at your earliest convenience.

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

Senator MOYNIHAN. Good morning, sir. Proceed exactly as you would like.

May I first ask, let us have some sunlight. As I said, it is the best disinfectant.

STATEMENT OF SAMUEL H. BANKS, ASSISTANT COMMISSIONER, COMMERCIAL OPERATIONS, U.S. CUSTOMS SERVICE

Mr. BANKS. I hope we do not need all the disinfectants.

Good morning, Mr. Chairman.

My name is Sam Banks. I am the Assistant Commissioner of Commercial Operations of the U.S. Customs Service. And I sincerely appreciate the opportunity to be here with you today to discuss the Customs modernization and informed compliance legislation.

I do appreciate having my full statement entered into the record. And perhaps I can even abbreviate my abbreviated statement.

Senator MOYNIHAN. If you wish, but that is your choice.

Mr. BANKS. This is probably one of the most critical pieces of legislation in Customs' history. The enactment of the Customs modernization legislation really positions us, to propel us into the 21st century, to be able to take advantage of modern technology.

After 3 long years of discussion and negotiation, the trade community and Customs have finally developed this consensus legislation concerning how we should modernize our procedures and operations.

I am pleased to report that today we really have a very broad spectrum of support with industry, with a whole variety of the international trade community, with domestic industry, including the auto sector, the textile sector, and even the steel sector.

We have the ocean and air and land carriers involved. We have sureties involved. Our employee union has been involved in these discussions.

And we have really finally reached after all this time period a very delicate balance of compromise on almost all the contentious issues surrounding this legislation.

Senator MOYNIHAN. That is good news.

Mr. BANKS. I would caution at the same time that I do not think that everything pleases everybody in this legislation.

Senator MOYNIHAN. That is not news.

Mr. BANKS. No. But it is an amazing accomplishment. It is an amazing coalition at this particular point.

In particular, I would like to thank the Joint Industry Group and its Chairman, Mr. Cross, because they brought an awful lot of leadership to this process as well. And we have also appreciated the support, the effort, and the guidance of this committee and its staff.

The enactment of this legislation is really crucial to all of us, as I said, to really take advantage of modern technology. For the industry, the issue is really competitiveness.

The issue for Customs is a productivity issue. We are trying to deliver better service, faster service, more efficient service, and more effective service. The guiding principle behind our discussions to date have been shared responsibility.

For Customs, the responsibility is to do a better job of informing the trade community of the trade rules and thereby trying to provide the trade community with the certainty it needs in order to be able to conduct its business. This concept is called informed compliance.

On the other hand, the trade community shares responsibility to help us share compliance with the U.S. trade rules. The benefits of this proposed legislation are really exceptional.

It provides tremendous flexibility to importers and to brokers for filing their import declarations. It enables Customs and the trade community to adopt modern business practices, such as consolidating all their import data and their duty payments rather than doing business on a transaction by transaction or a shipment by shipment basis.

It also provides the authority to only require paper when it is absolutely necessary. We really hope we can topple some of this paper dinosaur out there that we are currently living with and are bound to live with.

Senator MOYNIHAN. Yes.

Mr. BANKS. We are also looking at trying to simplify a lot of the operations. And you can go through this. And you will find a lot of arcane requirements on carriers, such as reporting the number of cannon on board their vessels when they arrive that we think it is time to pass by.

Senator MOYNIHAN. Well, I do not agree with that.

Mr. BANKS. I knew that would be a touchy one with you, sir.

This legislation would also provide us the necessary enforcement authority to ensure that we can enforce the trade laws in this new electronic environment.

The facilitation of merchandise in the United States is a top priority for Customs. However, Customs must also manage to ensure that the trade laws are complied with.

That is why there are a few new provisions, new penalty provisions for recordkeeping and some drawback provisions and a requirement in a shared responsibility that the trade community use reasonable care in submitting their information to us.

All in all, this, from our perspective, is good government. This is really the way in which we can work in a partnership together in order to achieve something that will be good for the United States and the entire business community.

I do not think it is any secret that a number of the pieces of trade legislation that are before the Senate are somewhat controversial and some of them are opposed by the administration. However, we would note that the administration clearly supports the Customs modernization legislation.

Customs and the trade community are enthusiastically looking forward to enactment of Customs modernization legislation, and hopefully this year because we really need to get on with business.

Mr. Chairman, I would also be pleased if you could submit this. It is prepared testimony from the Treasury Department from Assistant Secretary Nunez, if that could be entered into the record.

And with that, I conclude my opening remarks and would be pleased to answer any questions.

Senator MOYNIHAN. Well, thank you, sir. And, of course, we will enter the Secretary's statement.

[The prepared statement of Assistant Secretary Nunez appears in the appendix.]

Senator MOYNIHAN. Well, first of all, let us go right back. What is this business about cannon? I got to find out.

Mr. BANKS. That is actually a legislative requirement that goes back to 1789 with the establishment of the Customs Service, that the master of a vessel actually has to report the number of cannon they have on board their vessels when they arrive at a U.S. port.

Senator MOYNIHAN. A ship shows up in New York harbor and the master fills out a form. You are going to get that for this committee, are you not? [Laughter.]

Mr. BANKS. Well, we have not been overly diligent in requiring the form be completed.

Senator MOYNIHAN. You are going to get us the form, aren't you?

Mr. BANKS. If you wish, sir, we will.

Senator MOYNIHAN. It may have been a good idea to get rid of it 2 centuries ago, but perhaps we might reconsider it. In any event, it is wonderful. [Laughter.]

Do something else for this New Yorker. In 1904, the Customs House was opened in New York. It was the grandest building ever built outside of Washington. I think at that time, about half the revenue of the Federal Government came from Customs' duties collected in the port of New York. Could you give us a little historical table about it?

Mr. BANKS. There is no question. Throughout the history of the United States, the Customs Service was and the revenues were the primary support for the entire government, funding a number of the buildings that we have in this lovely city, funding a number of the buildings that are also in New York and other Customs Houses around the Nation.

Today, we collect about $19 billion in revenue, which is a sizable amount of money, but fairly small in comparison to the total receipts for the U.S. Government.

Senator MOYNIHAN. Because we do not look upon you as a revenue source. When internal taxation began in the 1830's and made its way up to the income tax, we more and more dropped off Customs as a source of revenue.

What proportion of Customs services are there just for revenue purposes?

Mr. BANKS. It is probably difficult to split the entire service apart, but I would say that still probably about 75 percent of the Customs Service is dedicated to some sort of commercial activities.

Senator MOYNIHAN. I mean, of the monies we collect, of that $19 billion, what would be the tariffs that just represent a source of

revenue to the Federal Government that have nothing to do with trade implications one way or the other?

Mr. BANKS. Customs' revenues in comparison to the collections?

Senator MOYNIHAN. Yes. As it were. I mean, tariffs for example.

Mr. BANKS. Less than 3 percent.

Senator MOYNIHAN. Very little.

Mr. BANKS. Yes, sir.

Senator MOYNIHAN. Very little. So it is no longer a revenue source for the trade regulating process?

Mr. BANKS. For the most part, that is the direction we are moving. We still return about $18 for every dollar that is spent on us. But it is true, we are much more an agency responsible for the administration of trade laws than we are as a principle revenue source.

Senator MOYNIHAN. Therefore, it is a major interest to you that you get your work done quickly and efficiently for their purposes, since you are primarily serving that. Well, you are serving both the community that is importing and you are looking to see that the trade laws are abided by by that importer.

Mr. BANKS. Our number one customer is the American public and legitimate business. And we do assert ourselves in order to ensure that we do an adequate job of protecting the health, safety, and welfare of the American people and legitimate business.

We do not try to assert ourselves any more than necessary to prevent the free flow of trade. That is the balancing act that we are into every day.

Senator MOYNIHAN. You are also keeping an eye out for deleterious products?

Mr. BANKS. About 400 different laws for 40 other agencies, as well as the Customs Service, yes, sir, everything from endangered species to counterfeit currency, the APA requirements and DOT requirements for safety of automobiles. The list goes on and on and on.

Senator MOYNIHAN. Is it getting out of control for you?

Mr. BANKS. It is a difficult process. And I think that is one of the reasons why we are trying to push towards technology. It is easier in certain ways to at least have the basic information resident in a computerized system and have the import information come in computerized so it can be screened automatically for all of these various requirements.

And this way, we can even assist our officers by pointing up, "Look out for this particular Product Safety Commission requirement." It is just that automation serves as a pointer system to help us remember all of the various laws.

Senator MOYNIHAN. That is nicely said. Of course, you have relations with trading partners. Do you get along with each other?

Mr. BANKS. For the most, we get along with one another, yes.

Senator MOYNIHAN. Where do you not? Is this something we should know?

Mr. BANKS. Well, I mean, there are always difficult issues at times in which we might reach disagreements. I am involved in some of the NAFTA negotiations. Those get tricky at times.

We have done audits of various companies to determine whether or not they are eligible for a tariff preference treatment.

There is a variety of times when we run into difficulties, but for the most part, our relationships are excellent. Our relationship with other Customs services around the world are magnificent, absolutely.

Senator MOYNIHAN. You know that you can come to this committee at any time and tell us the things that you think we ought to know.

What is informed compliance?

Mr. BANKS. Informed compliance is really an effort. And it was almost a demand from the industry. We do a better job of telling them what the trade rules are. There are so many different trade agreements out there today, it is very confusing for certain people to comply.

Senator MOYNIHAN. Yes.

Mr. BANKS. I mean, if they want to completely, honestly comply, it is still very difficult. And so they have asked us can we provide better information for those companies on what are the trade rules? What are the appropriate tariff classifications and duty regulations and admissability requirements for their goods?

And so we are trying to work with them on that. They want more access to information. They want more access to rulings and legal interpretations. And we are trying to provide that to them.

So this really is a shared responsibility. It is a requirement that they live by the rules, but it is a requirement that we better explain the rules to them so that they can operate efficiently.

Senator MOYNIHAN. We could not ask more of a public service. It sounds to me that you are onto something that has to be done here.

And I will not tell you that it is going to be done in the next 30 days. We have about 40 days of this Congress left, but we are onto this thing. And it will happen very considerably sooner when I get that entry from you about the number of cannon on board. [Laughter.]

Commissioner, we thank you very much. It was very gracious of you to come. And we are here to help you and want you to know that you are always formally or informally welcome before this committee.

Mr. BANKS. Mr. Chairman, thank you very much.

Senator MOYNIHAN. Yes, sir.

[The prepared statement of Mr. Banks appear in the appendix.]

Senator MOYNIHAN. Now, we are going to hear from the Commissioner's associates in this matter, the panel: Mr. Aaron Cross who is the public policy director with IBM and chairman of the Joint Industry Group; Mr. Harold Brauner of the National Customs Brokers and Forwarders Association of America; Mr. Brauner is well known to this New York Senator; and Mr. Robert Tobias who is the president of the National Treasury Employees Union.

And Mr. Banks mentioned that the union was involved in putting together this legislation.

So we are very happy to have each of you. And we will just follow our program which is Mr. Cross, you are first. And welcome, sir.

STATEMENT OF AARON W. CROSS, PUBLIC POLICY DIRECTOR, INTERNATIONAL BUSINESS MACHINES CORP., AND CHAIRMAN, JOINT INDUSTRY GROUP, WASHINGTON, DC

Mr. CROSS. Thank you, Mr. Chairman.

I am Aaron Cross, public policy director for IBM. Today, I appear as chairman of the Joint Industry Group, or JIG. I request that my written statement be included in the record.

Our message today is simple. We need Customs reform legislation this year. We endorse H.R. 3935, as it was modified in H.R. 5100.

Yesterday, an industry letter in support of this bill was sent to the members of this committee. I would like to request that it, too be included in the record.

Senator MOYNIHAN. Be included in the record, it surely will. I will include it, sir, if you give me a copy.

Mr. CROSS. I have it right here, sir.

[The prepared statement of Mr. Cross and an industry letter appear in the appendix.]

Mr. CROSS. Since the trade bill's other provisions exceed our charter, we address only Customs modernization. When enacted, we believe it will effect the broadest reforms of U.S. Customs law since 1789.

Senator MOYNIHAN. That is an astonishing statement.

Mr. CROSS. I'm sorry.

Senator MOYNIHAN. That is a large statement.

Mr. CROSS. Yes, sir, I believe it is, but I think it goes beyond just cannon. I think it goes to the very basic approach that Commissioner Hallett and her team——

Senator MOYNIHAN. What are you doing different? Why are you giving me the sense that something is going to be different here?

When I said, "That is a large statement," you said you believe it is. I can tell you I know it is. Not everybody comes before us here and says this is the most important change in this area of statutes since 1789.

Mr. CROSS. I believe that it is true, sir. And I believe some of it has already been discussed in the discussion you had with Mr. Banks. I will just skip ahead into my presentation a little bit to go directly to the question.

As Mr. Banks indicated and you have pressed him on it, the bill introduces a new concept called informed compliance. And we refer to that, along with Customs, as shared responsibility.

The key to this approach are the dissemination of Customs rules and practices and codification of what is now to be called a reasonable care standard.

Senator MOYNIHAN. A reasonable care standard?

Mr. CROSS. A reasonable care standard.

Senator MOYNIHAN. Now, tell this uninformed person what that means.

Mr. CROSS. What that means, Senator, is that when we make entry of merchandise into this country, the law will require that we exercise reasonable care to make sure that what we are reporting is accurate and correct.

There are very many different devices by which this will be done in the legislation. The House report language explains, however,

that if an importer takes advantage of any of several different avenues, such as showing an organized process to refer to the tariff schedules of the United States on classification, that we consult with a recognized and licensed broker, or that we have trained people who are doing these things, or there are a number of other things in the report language, then that would indicate that we are applying and complying with this reasonable care standard.

Senator MOYNIHAN. And do I take it that what we are trying to do here is to get away from a kind of adversarial relationship?

Mr. CROSS. Absolutely.

Senator MOYNIHAN. If we could catch you, we got you?

Mr. CROSS. Absolutely. And I think that is one of the basic messages. And it is referred to in my statement's conclusion. This legislation implies that the historic adversarial relationship between industry and the Customs Service is not going to serve our interests, the United States' interests, as we go into the 21st century.

Senator MOYNIHAN. There is an organizational culture to Customs which is, if they catch you, it was the source of revenue. And smuggling was a form of evading Customs.

And I guess Alexander Hamilton developed the revenue catchers right off, which is to catch you and so forth because they were tax collectors.

Mr. CROSS. Yes, sir. There are remnants of that still within the Customs Service today.

Senator MOYNIHAN. Yes. [Laughter.]

Mr. CROSS. Commissioner Hallett has referred to some of those people as the cowboys of the Customs Service who are still out there with their six guns looking for us.

But I think that when this legislation is enacted that what you will see is that obligations are brought not only to importers in terms of compliance and informed compliance, but also that obligations are placed on the Customs Service in terms of the programs that they administer, not just through better public information, but also giving what I would characterize as a bill of rights to legitimate importers in terms of getting their views across.

Senator MOYNIHAN. It is getting there. And your group, sir, who are you, the Joint Industry Group?

Mr. CROSS. The Joint Industry Group is a coalition of over 100 major importers and exporters plus trade and industry associations, and customs practitioners.

Senator MOYNIHAN. Exporters?

Mr. CROSS. Yes, sir.

Senator MOYNIHAN. And how do they come in?

Mr. CROSS. Well, just take my own company as an example. IBM, as you know, as well as being——

Senator MOYNIHAN. I have heard of you.

Mr. CROSS. We are I believe, as Mr. Banks—and I would have to check this. I think that we are certainly within the top 10 importers in the United States, but we are certainly among the top five exporters in the United States.

We have contributed substantially to the U.S. trade balance over the years, as have a number of the member companies of the Joint Industry Group.

We have never done a survey, but just having done informal surveys on my own with member companies, all that I have talked to so far have indicated that they have been on balance a net exporter, but that the imports are important to their manufacturing capability.

The idea behind the reforms to be introduced here, including the modernization aspects which we really have not discussed yet, is to improve the process so that we can meet these new industry concepts, such as "just in time delivery" for manufacturing.

You want a product delivered to your plant loading dock at the time it is needed so you are not having to spend a lot on costs in terms of inventory control. And this will have a major impact in terms of reducing delays, delays that we have experienced in the past at the ports.

Senator MOYNIHAN. All right. We are in another role. I am Chairman of the Subcommittee on Transportation and Infrastructure. When we found ourselves working on the Transportation Act of last year, there are people who will tell you that we have ships that leave Singapore with a sort of date certain for the truck to arrive in a plant in Illinois. So it has to go through the port of Los Angeles on time in that sequence.

But tell me more about exporters and their role in this. I asked a question.

And maybe I see that the Commissioner has been kind enough to stay.

This committee would like to know, 2 years ago, about 80 percent of American manufactured exports required a license from the Federal Government. It is coming down, but there is a number. Will you get us some of that information?

We go around here complaining, complaining, complaining about exports not being enough, etcetera, and you have to get permission from your government to sell most things abroad.

You are nodding, Mr. Cross?

Mr. CROSS. My other responsibility in IBM is on the export control side of things. And I can tell you that in the computer industry, 100 percent of our exports require some form of license.

Now, that is different from saying that you need an individual piece of paper for each one of those exports. Frankly, over the past 4 or 5 years with all the changes going on in eastern Europe and the former Soviet Union, the licensing burden has gone down.

The problem is that the complexity of getting the licenses for those exports you still need is going up. And that is largely in response to the Saddam Husseins of the world and trying to prevent the proliferation of weapons of mass destruction.

So that becomes a problem that we in the United States as exporters have in terms of our competition with exporters, particularly in the newly industrialized countries in Asia.

Senator MOYNIHAN. Now, this is not the subject of our meeting, but we are going to have another hearing. Will you come and talk to us?

Mr. CROSS. I would be happy to, Senator.

Senator MOYNIHAN. I have been a long time in our government. If ever a scene of the ultimate in entropy that you could imagine,

it would be that committee where they decide that. I mean, it is just a formula for bad government regulation.

I have never heard a Secretary of Commerce discuss it. I do not think that most of them know that it exists. It is like that regulation on cannon. These regulations on exports could go on forever.

If you were to sit down with some people who are good at gaming, how would you, in fact, try to keep something, have, in effect, what you desire in Mesopotamia come about? Would you first of all organize an interdepartmental committee in the Department of Commerce? I do not think so. I want to return to that. If you have any thoughts on it, would you let us know?

Mr. CROSS. Yes, sir.

Senator MOYNIHAN. I mean, if ever there is a self-inflicted—we spend half our time complaining about the Japanese, right? No. Ninety percent of our time complaining about the Japanese. And I have never in 16 years in this committee heard anybody say: But you have to have a license to sell anything abroad, particularly if it is any good.

We can sell all of the shakes and shingles. But no one has ever asked that question. No trade representative has ever brought it up. No Secretary of the Treasury has ever brought it up.

It is the cold war institutional behavior which we have not broken out of. And those patterns could continue for generations. And nobody notices it. And it is a great pattern.

Who is that fellow at MIT who developed the first memory chip? It is his patent. Come on, you are supposed to know that Mr. Cross. Well, he got in systems analysis. Any volunteers?

Mr. CROSS. Somebody was saying Shockley.

Senator MOYNIHAN. No, no. Shockley is transistors and Bell Labs for God's sake. [Laughter.]

No, no, MIT.

Mr. CROSS. Robert Neuss?

Senator MOYNIHAN. No.

Mr. CROSS. Sorry. My crack team is helping me.

Senator MOYNIHAN. Well, he later in the 1960's got interested in operations research and feedback mechanisms and demonstrated the processes by which an organization can really work harder and harder and harder at reaching objectives, but the way it works at it makes it harder and harder and harder to get that objective.

The feedback he demonstrated was through the depth and the despair of the academic housing profession, that if you want more low-income housing in a city, the way to get it is to stop building it.

And this is just completely counter-intuitive, but that happens to you. And I am sure there is more in this than we know.

I seem to be rambling. I am not, if I may say. I mean, how can a country, which requires a government license for all of its real value-added product to leave the country, complain about a trade imbalance? And ask yourself this if the subject ever comes up.

Enough. Sorry.

Could we get a list of the companies that belong to your coalition?

Mr. CROSS. Yes, sir. I would be happy to provide it.

Senator MOYNIHAN. I will put that in the record.

[The list follows:]

JOINT INDUSTRY GROUP MEMBERSHIP LIST

AT&T
Air Courier Conference of America
Air Transport Association
American Association of Exporters & Importers
American Electronics Association
American Iron & Steel Institute
Apple Computer, Inc.
Arent, Fox, Kintner, Plotkin & Kahn
Arthur Andersen & Company
Arthur Cherry Associates
Association of International Automobile Manufacturers, Inc.
Ater Wynne
Baker & Hostetler
Baker & McKensie
Barnes, Richardson & Colburn
British Aerospace
Broker Power, Inc.
Cassidy & Associates
Chemical Manufacturers Association
Computer & Business Equipment Manufacturers Association
Customs Science Services, Inc.
Data General Corporation
Deere & Company
Dewey, Ballantine, Bushby, Palmer & Wood
Dorsey & Whitney
Electronic Industries Association
Federal Express
Foreign Trade Association of South California
Foster International, Inc.
General Electric
General Motors Corporation
Hogan & Hartson
Intel Corporation
International Business Machines Corporation
International Business-Government Counsellors, Inc.
ITT Corporation
JVC Company of America
Katten, Muchin, Zavis & Dombroff
Kilpatrick & Cody
Lis Claiborne
Matsushita Electric Corporation
Mattel, Inc.
McDermott, Will & Emery
Motor Vehicle Manufacturers Association
Motorola
Mudge, Rose, Guthrie, Alexander & Ferdon
National Customs Brokers and Forwarders Association
National Semiconductor Corporation
Neville, Peterson & Williams
Nickerson & Stiner
Northern Telecom, Inc.
Nova Corporation
Pagoda Trading Company
Patton Boggs & Blow
Pier 1 Imports
Powell, Goldstein, Fraser & Murphy
Rode & Qualey
Ross & Hardies
Samsonite Corporation
Sandler, Travis & Rosenberg, P.A.
Sea-Land Service, Inc.
Serko & Simon
Sharretts, Paley, Carter & Blauvelt
Shea & Gardner
Stein, Shostak, Shostak, & O'Hara
The 3M Company
The Procter & Gamble Dest. Company
Thompkins & Davidson
TNT Skypak, Inc.
Trainum, Snowdon, Hyland & Deane, PC
UNISYS
UPS Custom House Brokerage
Warnaco, Inc.
Washington International Insurance Company
Weil, Gotshal & Manges
Wilmer, Cutler & Pickering
Xerox Corporation

July 30, 1992

Mr. CROSS. If I may just take a moment to——

Senator MOYNIHAN. All the time you want, sir. I took part of your time.

Mr. CROSS. I would like to take a moment to compliment Mr. Banks and Commissioner Hallett for their very constructive roles. I think that the era of shared responsibility is already upon us.

The way that we have been able to take two separate pieces of legislation—one first proposed by my group and the other one proposed by the administration—and work to take 75 major points of departure between the two bills and work it down to the point where today we are in absolute agreement on all provisions of this legislation. I think it is a remarkable exercise in good government, as Mr. Banks said.

I would also like to compliment, as he did, a number of other industry and industry people as well, the two gentlemen seated to my left.

These have not been easy discussions as you might expect, but I think everybody came to the table in the spirit of recognizing that we are going to do away with that old adversarial relationship because frankly, when you are talking about the infrastructure needs of the U.S. international trading system, the place to start is in terms of sound Customs programs and enforcement programs.

In the balancing that we have done, for every major benefit that comes from this bill, there is due attention being given to the enforcement and compliance side.

I think what you have here is a bill that will, indeed, as I say, be the most substantive reform we have seen in the Customs Service since 1789.

I would very much like to thank you for giving us this opportunity to appear.

Senator MOYNIHAN. Let us hear from the people at the dock side. Mr. Brauner?

STATEMENT OF HAROLD G. BRAUNER, PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, NEW YORK, NY

Mr. BRAUNER. Mr. Chairman, the National Customs Brokers and Forwarders Association is privileged to appear before you again today.

I am Harold G. Brauner, president of Brauner International Corp. of New York and President of NCBFAA.

Ours is the national trade organization for customs brokers and freight forwarders, members who are represented by our affiliates in areas like Houston, the Columbia River, and New York.

We are an umbrella for a wide range of interests often determined by the geography of trade operations and the unique business practices that evolve in a given region. It is our task on many occasions to draw consensus from points of view that can seem impossibly disparate.

This is what we have attempted with respect to Customs modernization and why we are here today in support of that legislation, as it passed the House within H.R. 5100. The path to this position has not been easy for the association.

And, in fact, Mr. Chairman, your committee has heard us reflect opposition to the bill on the last occasion when we appeared before the committee in the spring.

Senator MOYNIHAN. Yes.

Mr. BRAUNER. We have, however, worked diligently with the Customs Service, the Joint Industry Group, and the House committee to develop a compromise.

We have achieved this goal. And once having reached an agreement, we intend to stick by our word. And we urge passage of the Customs modernization bill in this form.

What were our concerns? First, in retrospect, we felt just because a bill was named Customs modernization did not make it so.

Customs brokers strongly endorse automation. In fact, it was our work with the Customs Service that has brought the Automated Commercial System to a level where it is a model for interactive information flow between the government and the private sector.

In fact, it is a model for how government and industry can cooperatively take on complex challenges and succeed.

No. Mr. Chairman, we have long supported automation, but we do not take every new idea at face value. This is, after all, our environment, the medium in which we conduct our livelihood. A misstep could drive us out of business.

We have long insisted that conversion to a national, remote release system must be carefully implemented.

The process, especially remote filing, must be tested thoroughly and measured by objective criteria by non-participating evaluators.

H.R. 5100 builds in many of the suggestions that we offered throughout the evolution of this legislation. The changes made by the House committee went a long way towards responding to these concerns.

A central concern too was whether Customs would be able to find an alternative to the long-standing system of requiring filing and Customs processing of entries at the very location where the cargo was being physically unloaded and moved inland.

There are many complexities in processing entries and moving cargo, not the least of which are the wide range of possibilities that emerge from an intricate chain of human decisionmaking.

A key issue for us has been how to merge the as-yet-unautomated actions of other Federal regulatory agencies at the port with a fully automated remote filing system.

After all, if an EPA representative must verify compliance with emissions regulations without the tools of automation through the processing of paper work at the port of arrival, how does a broker manage these transactions effectively 2,000 miles away?

Senator MOYNIHAN. Yes.

Mr. BRAUNER. We have come to an agreement on this thorny issue through a rather delicate compromise. Until 1997, paper transactions, including that involving other regulatory agencies, must be filed in the traditional manner at the port where the goods will be cleared by Customs.

After that, when we have had the opportunity to automate these remaining paper transactions to the maximum extent possible, the importer and his broker will decide where they want to file their entry to suit the importer's convenience.

And we have provided the legal framework for brokers to conduct business at that remote port or alternatively, to work with a local broker who serves as a subagent.

Senator MOYNIHAN. Yes.

Mr. BRAUNER. A concern to many customs brokers has been the upheaval that this legislation will cause for their businesses and for their local ports.

In fact, you will continue to hear from these members of our association, who are free to voice their views independent of NCBFAA.

The compromise on the handling of paper transactions, testing of the system, the use of subagents, and the continued emphasis on the role of a licensed customs broker every step of the way have addressed in some measure these concerns.

But this is a compromise which by its nature creates mixed feelings and cannot resolve each element to everyone's satisfaction.

After a great deal of hard work in which everyone conceded some ground, NCBFAA is now able to endorse the Customs modernization portion of H.R. 5100.

And I will be pleased to respond to your questions.

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

Senator MOYNIHAN. Well, sir, you have answered the question and very directly and up front. There are three proposals you mentioned. Do you want to give us a run down on them, the Section 484 which I do not understand at all?

Mr. BRAUNER. There has been a long standing problem for the customs broker in that Section 484 allows the nominal consignee—who could be a person who has no financial interest in the imported merchandise whatever—to choose who the customs broker would be. That is, a carrier or a courier for an airline, could select the broker.

Senator MOYNIHAN. I see.

Mr. BRAUNER. We believe this is detrimental to the proper administration of Customs laws and regulations.

Senator MOYNIHAN. In that sense, you use the term brokers. And your industry has done so for several centuries. What is it that you manage to buy and sell in the sense of brokers?

Mr. BRAUNER. Well, normally, the customs broker does not buy and sell any of the merchandise. The broker is licensed by the U.S. Customs Service to act on behalf of the importer. The broker represents the importer with respect to——

Senator MOYNIHAN. U.S. Customs tariffs and other matters?

Mr. BRAUNER. That is right.

Senator MOYNIHAN. And what you do is you sell to the importer your service in those matters?

Mr. BRAUNER. That is correct. We normally charge a fee to the importer for these services.

Senator MOYNIHAN. Yes. And then there is a second matter where demands for liquidated damages exceed $20,000?

Mr. BRAUNER. Yes. We have found that where a large penalty for an importer or for a broker is in dispute, that is where that exceeds $20,000, to have it remain in the local port where the original case and where the original accusation was made is detrimental to the rights of the party who is being charged.

We believe that, when such an amount of money exceeds $20,000, the controversy should go before an impartial official rather than a Customs official.

Senator MOYNIHAN. And you are working on this?

Mr. BRAUNER. Yes. We have a proposal prepared.

Senator MOYNIHAN. Is that a legislative matter? Would you want legislation?

Mr. BRAUNER. Yes. I think that would require legislation.

Senator MOYNIHAN. We will hear from you.

Mr. BRAUNER. Yes, Senator.

Senator MOYNIHAN. And Mr. Tobias, you will wrap up this interesting morning.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION, WASHINGTON, DC

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

NTEU did, in fact, participate in the development of the Customs Modernization Act. And we support it with one exception. We believe that for the most part, the Act has achieved a balance between facilitation and enforcement. And that is the balance that Mr. Banks was speaking of.

Senator MOYNIHAN. Yes.

Mr. TOBIAS. But we believe that it is very important to have a Customs inspector board ships as they are entering into a port. Currently, that is the law. And the new law would eliminate that requirement and leave it in the hands of the Customs Service to define when and under what circumstances by regulation.

We believe that the presence of a Customs inspector is a deterrent to the invasion of Customs laws and provides information concerning future threat assessments.

We believe that it is important to have someone go on board a ship to examine the manifest, check the markings of the cargo, and to determine the country of origin, visually inspect the ship. check the belongings of the crew, and check the ship's log.

Now, it is not hard to understand why that is important. If you can envision a ship coming into the port of New York, if it is not met by a Customs inspector, it goes into the port of New York.

Under this system, its entry will be cleared in advance and it will begin unlading its ship without the presence of any Customs inspector unless this ship has been targeted for an examination using a threat assessment.

Senator MOYNIHAN. Ships that have crossed through the Panama Canal?

Mr. TOBIAS. Anywhere, from anywhere. They come into the port of New York or the port of San Francisco or the port of Seattle, the port of New Orleans.

Senator MOYNIHAN. What I mean, things like drug shipments?

Mr. TOBIAS. Absolutely. Mr. Chairman, this need is not some abstract concern. My testimony contains several examples, but one occurred in the New York seaport in the spring of 1991 on a vessel, the Bright Eagle, where a customs inspector boarded the ship.

It was not in any way identified as a problem ship. There were some discrepancies in the log. It led the inspector to ask that the ship be searched. And there were two stowaways, unmanifested merchandise, and 385 pounds of cocaine that were discovered on the ship. And that is only one of many seizures in the New York seaport.

Senator MOYNIHAN. Bright Eagle.

Mr. TOBIAS. There are 8 or 10 examples in my testimony of different ships that were, in fact, examined during the boarding process. And it resulted in seizures. Boarding works. Requiring boarding will yield the results.

Right now, GAO has testified that there is currently only a 16 percent relationship between a targeted ship and a violation.

And in contrast, Customs inspectors have at least twice as good a record in identifying problems by merely walking on ships.

And further, there was a test done in the port of New Orleans to determine whether this kind of an approach would work. And what happened was 40 percent of the ships provided inaccurate information.

So we believe, Mr. Chairman, that it is extremely important to require boardings, to require boardings of all ships.

And we suggest that the language of the statute be amended to require that all incoming, commercial vessels be met by a Customs inspector, a requirement that the masters provide a U.S. Customs inspector with a manifest and other requested documentation upon arrival, and a requirement that Customs conduct enough inspections and examinations of arriving vessels to ensure carrier compliance with the laws, rules, and regulations.

Thank you very much, Mr. Chairman.

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

Senator MOYNIHAN. Thank you, sir. I have a question. The manifest is a statement of cargo on board?

Mr. TOBIAS. That is correct.

Senator MOYNIHAN. I can certainly see that case that you make. What about aircraft?

Mr. TOBIAS. Well, it is hard to board an incoming aircraft until they land.

Senator MOYNIHAN. Yes. Do you go aboard aircraft?

Mr. TOBIAS. We do go aboard aircraft. But in this case, what we are talking about with the ships, you can go out into the port, board them before they come in, before they dock, and examine this manifest, look at the ship, and conduct this search. It is really a cursory search.

Senator MOYNIHAN. Do you normally go out with a pilot?

Mr. TOBIAS. Yes. And board the ship. That is correct.

Senator MOYNIHAN. We will want to hear from Mr. Banks and his view on this, if you can give this in writing.

And you, Mr. Brauner and Mr. Cross, we want to hear from you. We would appreciate it.

It sounds good. It sounds like you have done a nice piece of work here. We are pleased and obviously under an obligation to respond. And we will do so.

And we are now on the tax bill on the floor. And I have to get over there and find out what is going on.

But I want to thank you all for your great patience.

Now, just second, just a second. Will people sit down? The Chairman is speaking. The hearing is not over. I am just thanking our witnesses, thanking Commissioner Banks, thanking our staff.

And we look forward to pursuing this matter. Thank you.

[Whereupon, the hearing was concluded at 12:15 p.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF WILLIAM T. ARCHEY

I am William T. Archey, Senior Vice President, Policy and Congressional Affairs, of the U.S. Chamber of Commerce. The Chamber Federation of local and state Chambers of Commerce, business and associations appreciates this opportunity to testify before this committee on U.S. trade policy.

Several years ago, I might have come before you saying that an aggressive, market-opening trade policy should be the principal ingredient of a strategy to regain our preeminence in world markets. But over time, U.S. business has come to recognize that a focused and assertive trade policy is but part of the picture—by itself, it is not sufficient to achieve that objective.

In its 1992 *National Business Agenda*, the Chamber has advanced a forward-looking plan to ensure the continued growth of the U. S. economy well into the new century. The agenda advocates the following: (1) enactment of a four-part economic growth agenda—involving taxation, regulation, spending and infrastructure—which will increase the annual real growth rate of the economy to four percent over the next five years; (2) the development of a highly motivated, trained and productive workforce; (3) improved business-government cooperation in the development and commercialization of new technologies; (4) a strengthened transportation and telecommunications infrastructure that will facilitate improved delivery of goods, services and information; (5) expanded production and more efficient distribution of energy from both traditional and renewable sources; (6) improved access to and success in international markets; and (7) improved government responsiveness, such as through more balanced paperwork and regulatory requirements, reduction of excessive litigation, and improved discipline over Federal spending. These are the basic minimum components of any meaningful strategy to adjust and prepare Americans for effective competition in a post-Cold War world where America's past economic preeminence can no longer be taken for granted, but must be earned.

Still, the success of U.S. companies in international markets should be a top public policy objective of the U.S. government. Toward that end, the Chamber strongly supports U.S. and multilateral measures designed to improve U.S. companies' access to foreign markets, strengthen the international trading system, improve the U.S. export promotion and financing system, and establish a North American Free Trade Agreement (NAFTA) that is beneficial to the interests of U.S. businesses and their workers. The Chamber also supports enactment of several trade policy initiatives embodied in pending trade legislation. More detailed comments on such legislation appear below and in a letter to House Ways and Means Committee Chairman Rostenkowski, which I am submitting for the record.

U.S. TRADE POLICY AND THE CHANGING ECONOMIC ORDER

The United States learned from its experience with the Smoot-Hawley tariffs of the 1930s that protectionism had serious downsides and was ultimately self-defeating as a policy underpinning. For these reasons and others, the United States became the world's leading proponent of multilateral trading rules as stipulated in the General Agreement on Tariffs and Trade (GATT). The GATT itself was formed in the wake of World War II, when the United States stood alone above the rubble and held a commanding position in world economic and trade affairs. At that point in time, over seventy-five percent of the world's gross annual output was generated by the United States. Simply put, the United States could afford to be magnanimous in its dealings with its defeated former adversaries and other nations who had suf-

fered. Moreover, in light of the Cold War, the United States found such behavior to be in its geo-political interest.

In the 1990s, the United States does not enjoy that same commanding position. The United States today produces approximately one-quarter of gross global output. However, it has sustained for four decades the heavy costs of military preparedness in the face of Communism. The combination of increased global economic competition and some other nations' less-than-free-trade approach to commerce means we can no longer afford to be so magnanimous in subordinating our global economic interests.

Over the past several years, regional trading arrangements in various parts of the world have emerged to complement the GATT system. The so-called EC–1992 exercise is perhaps the most widely recognized of these initiatives. However, it is not the only one. The Canada-U.S. Free Trade Agreement, the proposed North American Free Trade Agreement (NAFTA), the European Free Trade Association (EFTA), the Latin American Free Trade Association (LAFTA), the Andean Pact, the Economic Community of West Africa, and the Southern African Development Conference are all examples of efforts to strengthen the position of participating countries in their respective regions so that they might become more competitive both within those regions and worldwide.

THE POLICY RESPONSE

The Chamber believes that U.S. trade policy must assign as priorities Several specific objectives which recognize the changing global economic order. Those objectives include:

- *A North American Free Trade Agreement.* The Chamber views the principle of a NAFTA as an extraordinary opportunity for U.S. business. NAFTA provides a chance for the U.S. to join forces with Canada, its largest trading partner, and Mexico, its fastest-growing export market, to create a $6 trillion marketplace that rivals the EC (EC–12 is $6.3 trillion). The NAFTA has the potential to do all this while remaining complementary to the GATT free-trade framework—GATT rules have permitted free-trade agreements since the accord's inception in 1947. While the Chamber supports the concept of a NAFTA, its actual position will depend on the agreement's content We must conclude a NAFTA that is consistent with the interests of U.S. businesses and their workers. A NAFTA must be comprehensive and address agriculture, investment, services, intellectual property, rules of origin, and tariff and non-tariff barriers. It must also provide for appropriate phase-in periods and temporary safeguards and adjustment assistance, and should be considered part of a domestic economic-recovery plan. It should enhance opportunities for increased trade and investment, thus creating more U.S. jobs, lower prices for consumers, and strengthened competitiveness for American firms at home and abroad Increased growth of the Mexican economy will decrease the incentive for illegal immigration to the United States and will help finance environmental cleanup and maintenance. Because 70 percent of Mexican imports come from the United States, a stronger Mexican economy will add jobs to the U S economy. However, some firms will be negatively affected by surges in imports and additional competition created by a NAFTA. Thus we also support a strong program of temporary safeguards and adjustment assistance for the businesses and workers affected by the agreement.
- *The Uruguay Round of GATT Negotiations.* Overall, the GATT has served U.S. commercial interests very well. It has imposed discipline on a major share of world trade which, fifty years ago, had no discipline. While the Chamber has also expressed numerous reservations about the content of the so-called "Dunkel draft" made public on December 20 of last year, it earnestly welcomes in principle the draft's inclusion of major additional areas of world trade, as well as the goal of a strengthened dispute-settlement mechanism. While the Chamber is aware of the continuing difficulties in concluding a Uruguay Round agreement, it still considers such an agreement to be of priority importance, assuming that the agreement's terms are in the end beneficial on net to U.S. business.
- *Market Access.* Persistent foreign barriers to U.S. exports require that the U.S. exercise maximum effective leverage in seeking to eliminate those barriers. These problems are particularly acute in Asia, but they are by no means limited to Asia. On occasion, such leverage must take the form of reciprocal or other conditional access to the U.S. market. The 1988 Trade Act sought to strengthen those tolls in U.S. trade law which provide leverage. History shows that the judicious application of those tools—including the so-called "Super 301" provisions—can yield results. The Chamber believes that there are two significant

market-opening measures Congress should approve in the near future: renewal of the now-expired Super 301 provisions and enactment of the Trade Agreement Compliance Act (TACA). While much more needs to be done, the record shows that Super 301 was instrumental in achieving at least some progress with the countries identified as priorities under that law, as well as with others who agreed to reforms in order to avoid Super 301 investigation. TACA would require investigation of alleged trade agreement violations upon the request of an interested U.S. company. If such violations were found, action under section 301 would be required, subject to various "waivers" provided for under the 1988 Trade Act. The Chamber Federation also supports TACA for a fairly simple reason: a deal is a deal, and nations who enter into trade agreements should be held accountable if they fail to abide by those agreements. Both Super 301 renewal and TACA have been incorporated into H.R. 5100, the "Trade Expansion Act of 1992," which passed the House of Representatives two weeks ago.

- *Customs modernization.* The Chamber supports Title II of H.R. 5100 as a necessary and desirable measure to bring Customs administrative procedures and requirements into the modern era. This title will conform Customs law to allow for the operation of an electronic data interchange, and streamline enforcement procedures. The efficient operation of Customs is a vital component of moving commerce efficiently, and thus is an essential component of U.S. trade competitiveness. These and other reforms provided for under this title should provide for more efficient movement of cargo and passengers through America's ports, thereby benefiting exporters and importers alike.
- *Antidumping and Countervailing Duties.* The Chamber believes that there is a need to improve access to and application of remedies against dumping and subsidization. At the same time, negotiators at the Uruguay Round must understand the importance of achieving such improvements in an international context. In particular, the Chamber believes that circumvention and diversion tactics used to evade dumping and countervailing duty orders are serious problems requiring an effective and equitable solution. However, some of our members are concerned that pending legislative language in H.R. 5100 concerning circumvention and diversion tactics may lead to dumping orders against non-dumped Parts from foreign companies who are historical suppliers of the company under the dumping order.
- *Export Enhancement.* The export finance and promotion programs of the United States need both better coordination and more resources. Compared to our OECD competitors, we do far less as a nation to encourage more successful international business, especially among smaller and mid-sized firms. U.S. exporters are further disadvantaged by foreign governments' use of development-assistance programs as vehicles for export promotion. On this front, Mr. Chairman, you and other members of this Committee have demonstrated energetic leadership in proposing legislation to require that our A.I.D. programs support capital projects tied to the purchase of U.S. goods and services. In order to increase U.S. exports, we must also strengthen the Export-Import Bank and expand public/private cooperation in export promotion. Enhanced export finance and promotion programs will be particularly important as U.S. firms compete with their increasingly aggressive competitors from Europe and Asia in such emerging markets as the former Soviet Union and the developing world.
- *Foreign Tax Policy.* We must reform the "foreign" provisions of the Internal Revenue Code to improve the competitive position of U.S. industries in world markets. Current tax policies have imposed higher burdens on the international operations of U.S. corporations than those imposed by our foreign trading partners on their multinational corporations. This system has put U.S. multinationals at a distinct disadvantage in competition with foreign multinationals.

CONCLUSION

The challenges posed to this nation in a global economy are enormous. Moreover, our international priorities cannot be viewed in isolation from the rest of our problems. Business and government must do what they can together to provide a climate in which American business can prosper, both domestically and internationally. Given the considerable uncertainty that currently exists concerning the future direction of the GATT, the NAFTA and other trade policy milestones, it is too early to rank-order in terms of usefulness all of the appropriate trade policy options that may or should be available to policy makers. Nonetheless, there are certain general principles the Chamber Federation believes should be codified in law, regardless of these initiatives' outcomes. And finally, no matter how long debate may go on regarding the merits of regional trading blocs, the new GATT round, or trade legisla-

tion, it is the performance of individual firms which matters most in global competition. It may well be that the macro- and micro-economic policies of this country will play a greater role in determining these firms' competitiveness than the most refined and focused trade policy.

ATTACHMENT

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM T. ARCHEY
SENIOR VICE PRESIDENT, POLICY

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5417
FAX 202/463-5302

June 11, 1992

The Honorable Dan Rostenkowski, Chairman
House Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 5100, the Trade Expansion Act of 1992

Dear Mr. Chairman:

You may recall that on May 19, the Chamber wrote the Chairman of the Trade Subcommittee in support of some of the provisions of H.R. 5100 but reserving judgement on others. As of yesterday, the Chamber's Board was able to complete its review of the remaining major provisions of the bill. Overall, the Chamber considers H.R. 5100 to be a positive step for U.S. trade policy and supports those specific provisions on which it is able to comment. As to the major sector-specific provisions (Sections 104, 111, 112 and 403), the Chamber's Board reaffirmed its long-standing policy not to take a position on those specific issues. A more detailed statement of the Chamber's position on H.R. 5100 is enclosed.

While the Chamber includes Section 415 (pertaining to antidumping circumvention and diversion) among those positive provisions, some of our members are concerned that the current language in Section 415 may lead to dumping orders against non-dumped parts historically supplied by a downstream party that is unrelated to the foreign manufacturer of the finished product.

My staff and I would be happy to discuss this bill with you or your staff at your convenience.

Sincerely,

William T. Archey

Enclosure

U.S. Chamber of Commerce

Washington, D.C. 20062-2000

Comments on H.R. 5100
The Trade Expansion Act of 1992
June 10, 1992

The Chamber supports the major provisions of H.R. 5100, which include Sections 101 and 103 ("Super 301" renewal and the Trade Agreement Compliance Act), Title II (Customs modernization) and Sections 411-416 (AD/CVD), with certain clarifications in Section 415 (circumvention/diversion).

However, the conclusive answers to U.S. access to and competitiveness in world markets lie in a combination of domestic and international initiatives which, in many cases, go beyond the scope of trade policy and legislation. Put another way, while a focused and assertive trade policy is a necessary component of an effective competitiveness strategy, by itself it is not sufficient to achieve our trade and competitiveness objectives.

Those provisions in H.R. 5100 of greatest consequence to our members fall into the following categories: (1) "generic" market access; (2) Customs modernization; (3) antidumping and countervailing duties; and (4) sectoral and other provisions.

- "Generic" market access. The principal generic (non-sector-specific) market access provisions are the proposed five-year extension of "Super 301" authority (Section 101) and the "Trade Agreement Compliance Act" (Section 103). The Chamber supports Sections 101 and 103 of H.R. 5100.

- Customs modernization. The Chamber supports Title II of H.R. 5100 as a necessary and desirable measure to bring Customs administrative procedures and requirements into the modern era. Electronic and other automation actions, streamlined enforcement procedures and other reforms should provide for much improved efficiency in Customs processing for exporters and importers alike.

- Antidumping and countervailing duties (AD/CVD). The Chamber believes that there is a need to improve access to and application of remedies against dumping and subsidization. At the same time, negotiators at the Uruguay Round must understand the importance of achieving such improvements in an international context. In particular, the Chamber believes that circumvention and diversion tactics used to evade dumping and countervailing duty orders are serious problems requiring an effective and equitable solution. Consequently, the Chamber supports Sections 411-416 of H.R.5100, with certain clarifications in Section 415 as described below:

  1. Administrative review of AD/CVD determinations (Section 411). The Chamber supports the proposed change in law mandating a tightening of the administrative review period of antidumping/countervailing duty orders to 270 days to ensure the completion of these reviews on a timely basis.

  2. Material Injury (Section 412). The Chamber supports the proposed changes in law expanding the number of factors the International Trade Commission (ITC) must consider to include "contracts with long lead times."

3. Dual Pricing of Inputs (Section 413). The Chamber supports the provision that takes into account dual pricing on inputs and thus directs the U.S. Commerce Department to make no allowance for differences in input costs that are based on whether the end product made from the input is sold in the domestic market or exported.

4. Countervailing and Antidumping Duty Collections (Section 414). The Chamber supports the requirement that U.S. Customs issue an annual report on the amount of AD/CVD duties it collects each year, although measures should be taken to insure adequate protection of proprietary information.

5. Anticircumvention (Section 415). The Chamber believes that circumvention and diversion tactics used to evade dumping and countervailing duty orders are serious problems. Consequently, the Chamber supports this Section which broadens and strengthens the anticircumvention provisions and gives authorities greater discretion in finding and halting circumvention and diversion. However, some companies have expressed concern that dumping orders will be assessed against parts historically supplied by a downstream party which is unrelated to the foreign manufacturer of the finished product. Given this situation, the administering authority must be given adequate discretion to ensure that orders are not unreasonably and unfairly assessed against non-dumped parts supplied by unrelated downstream parties. In every instance, the broader powers permitted authorities must be judiciously implemented.

6. Study on the simplification of initiation of AD/CVD proceedings (Section 416). The Chamber supports a Commerce Department and ITC study on how to make AD/CVD proceedings less costly and more accessible for domestic petitioners.

Sectoral and other provisions. Consistent with long-standing Chamber policy, the Chamber does not as a rule take positions on sectoral issues. The Chamber reiterates its opposition as a matter of general principle to Voluntary Restraint Agreements (VRAs), Orderly Marketing Agreements (OMAs) and other trade restraints that are not a direct consequence of efforts to remedy unfair trade practices, as inimical to the longer-term interests of the U.S. economy. However, the Chamber recognizes that there may be exceptional situations where extenuating factors warrant such an approach. Before considering whether to adopt such an approach, it should first be determined that the consequences of such an approach should be (1) national in character, (2) timely in importance, and (3) general in application and of significance to business and industry. The Chamber does not believe that Sections 104, 111, 112 and 403 meet these tests. We note that on June 9, the House Ways and Means Subcommittee on Trade agreed to remove Section 112 (pertaining to the negotiation of voluntary restraint agreements on cars and light trucks) from H.R. 5100.

The Chamber also reaffirms its position that it does not support legislation mandating initiation of Section 301 investigations. It believes that, as a rule, self-initiation of unfair trade investigations should be left to the United States Trade Representative's (USTR) discretion. Exceptions to that rule include allegations of likely trade agreement violations, and trade liberalization priorities as defined in Section 310 of the 1974 Trade Act ("Super 301").

PREPARED STATEMENT OF SAM BANKS

Mr. Chairman: I am Sam Banks, Assistant Commissioner of Commercial Operations, of the U.S. Customs Service. Thank you for the invitation and opportunity to be here today to discuss Customs modernization initiatives, and specifically, THE "CUSTOMS MODERNIZATION AND INFORMED COMPLIANCE ACT."

This Act is one of the most critical pieces of legislation in Customs history; and the enactment of Customs modernization legislation will propel Customs into the 21st century.

With the guidance of the Subcommittee on Trade, House Ways and Means Committee, Customs and the trade community developed consensus legislation concerning Customs modernizati... I am pleased to report that Customs and the Joint Industry Group reached a consensus on all of the controversial issues including the three issues which had been the most contentious—the new recordkeeping penalty; Customs seizure authority under section 1595a(c); and drawback.

I would like to thank the JIG, and its chairperson, Aaron Cross, as well as all of the other segments of the trade community for making this possible. Other groups involved in the process include importers, exporters, industry, carriers, brokers, sureties, trade associations, and the Union. I also appreciate the efforts and guidance of this Committee.

Enactment of the "Customs Modernization and Informed Compliance Act" is crucial. Customs and the trade community must be able to take advantage of modern technology. For the trade, it is a competitive issue. For Customs, it is a productivity issue.

The guiding principle in our discussions with the trade community is that of "shared responsibility." It consists of two elements. On the one hand, Customs must do a better job of informing the trade community of how Customs does business thereby providing the trade community with the certainty it needs to conduct its business. This concept is a trade term called "Informed Compliance." On the other hand, the trade community must do a better job to assure compliance with U.S. trade rules. Customs calls this concept "Trade Community Compliance."

The benefits of Customs modernization legislation are exceptional:

—It will enable an importer or broker to enter merchandise by transmitting data electronically from its home office to Customs regardless of where the merchandise arrives in the United States. Customs anticipates that it will take approximately three to four years before this total electronic "remote location filing" concept is fully available nationwide to the trade community.

—It will enable Customs and the trade community to adopt modern business practices, such as filing periodic entry summary data and periodic payment of estimated duties, rather than doing business on a transaction-by-transaction basis. Of course, there will be an interest provision to assure that there will be no revenue shortfall.

—It will authorize full electronic processing and permit importers to file with Customs only that data determined to be necessary for a particular transaction. We will win the war against paper.

—In the area of entry and clearance of vessels, the bill will eliminate obsolete provisions, some of which date to the 1790's and allow electronic transmissions of manifests and other data. The bill also clarifies the law relating to drawback procedures.

—The facilitation of merchandise into the United States is a top priority of Customs. However, Customs must manage the risk associated with automation by assuring compliance on the part of the trade community. That is why the new recordkeeping penalty, and the new drawback civil penalty are so very important to us as well as the statutory requirement that importers use "reasonable care" to enter merchandise.

As you know, on May 7, 1992, H.R. 3935, the original Customs modernization bill, was merged into a large trade bill, H.R. 5100, the "Trade Expansion Act of 1992." H.R. 5100 was passed by the full House on July 8, 1992.

It is no secret that H.R. 5100 is very controversial and is strongly opposed by the Administration. At the same time, however, we must note that the Administration clearly supports the customs modernization legislation. The need for this legislation is great. Customs and the trade community are enthusiastically looking forward to enactment of Customs modernization legislation this year.

My staff is available to discuss with you any technical changes that are made to our legislation. Customs appreciates the opportunity to make this presentation.

Attachment.

DISCUSSION OF THE CUSTOMS MODERNIZATION AND INFORMED COMPLIANCE ACT

BACKGROUND

On June 7, 1991, the Administration's proposed "Customs Modernization Act of 1991" was introduced as H.R. 2589. Also, the Joint Industry Group's bill was introduced on June 4, 1991, as H.R. 2512.

Pursuant to the request of the Subcommittee on Trade, House Ways and Means Committee, Customs and Treasury met with the Joint Industry Group (JIG) and other segments of the trade community to resolve as many issues as possible. Much progress was made between Customs and the trade community. I am happy to report that Customs and the JIG reached an understanding on all of the controversial issues. The Subcommittee on Trade, Customs, and the JIG developed consensus legislation based upon the understandings reached.

The "Customs Modernization and Informed Compliance Act," is critically important to the trade community and Customs. The total number of entries of merchandise increased by 58 percent in the past five years. Collections increased from $14.7 billion in 1986 to $19.1 billion in 1990. Neither Customs nor the trade community can continue doing business the old way. The modern way to transact international business is by electronic processing—not by filing paper. Customs wants to eliminate the paper dinosaur.

WHAT ARE CUSTOMS' GOALS

Customs knows that we can not be an impediment to the free flow of commerce. We understand that for the trade community, this is a competitive issue. For Customs, it is a productivity problem.

During the course of the development of the Customs modernization legislation, Customs has sought to accomplish three (3) goals:

1. Pre-resolution of as many issues as possible before merchandise arrives in the United States by using programs such as the binding ruling/preclassification procedures, pre-approval release of merchandise, and the expanded "Pre-Importation Review Program."
2. Facilitation of merchandise upon arrival in the United States with minimal Customs intervention at that time; and
3. Compliance on the part of the trade community assured by Customs' post-entry and post-audit review.

Customs has tried to develop legislation which we believe is both honest and balanced. We have endeavored to review the process of drafting the bill from the Perspective of the national interest, Government's interest, industry's interest, and importers', brokers', carriers'; and sureties' interests. It would be a mission impossible if each and every provision represented the best way of doing business for all parties concerned.

WHAT IS CUSTOMS STRATEGY?

The entire thrust of Customs actions is dedicated to the principle of "shared responsibility." This strategy merges the two potentially conflicting doctrines of "facilitation" and "enforcement" into a coherent public policy that the Customs Service has adopted. This strategy assures the free flow of commerce into, and from, the United States AND assures the compliance on the part of the trade community of Customs laws, regulations, and its rules and interpretations. "Shared Responsibility" consists of two elements: I. "Informed Compliance" and II. "Trade Community Compliance."

I. Informed Compliance is a term that was first used by the trade community. Under informed compliance, the trade community *needs to know* and be able to obtain advice about Customs rules and procedures; and the trade community needs *certainty* that those rules and procedures will not be changed suddenly.

Customs has established numerous outreach programs such as the binding rulings program and pre-importation program, developed extensive interaction between Customs and the trade community, and adopted state of the art technology, such as the electronic bulletin board, to inform the trade community of Customs requirements. Thus, the trade community will know, and be able to obtain, relevant information so that it can comply with its obligations in its dealings with Customs. The trade community will also have the certainty that Customs cannot unilaterally change the playing field.

With an educated trade community, and as many issues as possible resolved *before* the merchandise arrives in the United States, there can be rapid facilitation of the merchandise upon its arrival into the United States with minimal Customs intervention at that time.

II. Trade Community Compliance is a term that was developed by the Customs Service. The facilitation of merchandise into the United States is a top priority of the Customs Service. However, Customs will be receiving less information at entry/entry summary under its modernization legislation. We are examining less than 10 percent of the merchandise entering the country. Therefore, Customs must manage the *RISK*. The trade community must be held responsible for doing its share. Customs must be able to rely on the integrity of the trade community to (1) to act with "reasonable care" in providing Customs with information that the individual importer or exporter believes is true and correct; and (2) retain and produce information, both paper and electronic data, upon Customs demand so that Customs can conduct a post entry or post audit review.

Under the concept of "shared responsibility," Customs must have the ability to assure compliance of the trade community. Customs will rely upon various enforcement measures to assure compliance. These include Customs post entry and post audit reviews, investigations, overseas initiatives, and increased detections of violations through improved statistical methods by using automation and selectivity.

DEVELOPMENT OF H.R. 3935

On November 26, 1991, Congressmen Gibbons, Crane and Pease introduced the Subcommittee's legislation, the "Customs Modernization and Informed Compliance Act" as H.R. 3935.

A hearing before the House Subcommittee on Trade was held on H.R. 3935 on March 10, 1992. Mark-ups were held on April 8, and May 6, 1992. On May 7, 1992, H.R. 3935 was merged as Title II (the "Customs Modernization and Informed Compliance Act") into a large trade bill, H.R. 5100, the "Trade Expansion Act of 1992." H.R. 5100 is very controversial and is strongly opposed by the Administration. At the same time, however, the Administration supports Title II. A hearing on H.R. 5100 was held before the House Subcommittee on Trade on May 13 and 19, 1992. Mark-ups on H.R. 5100 were held on June 3 and June 9, 1992. The Subcommittee reported H.R. 5100 favorably to the House Ways and Means Committee for a mark-up. On June 16, 1992, the House Ways and Means Committee held a mark-uo and reported H.R. 5100 favorably to the full House. On July 8, 1992, the Rouse passed H.R. 5100 by a vote of 280 to 145. A hearing is being held before the Senate Finance Committee today.

WHY IS CUSTOMS MODERNIZATION OF CRITICAL IMPORTANCE TO THE ADMINISTRATION AND THE TRADE COMMUNITY?

Facilitation

1. The Customs Modernization and Informed Compliance Act authorizes full implementation of automation without the need for follow-up legislative approval. It is critically important to the trade community and Customs because we are all being buried in paper. Customs receives 92% of entry summaries electronically, but still receives too much paper because of laws mandating paper filing.

The bill would authorize total electronic processing. It will allow Customs to fundamentally change the way we do business. Customs won't be forced to automate an existing manual process, but we will be able to take maximum advantage of automation to deliver the greatest benefits to American business. Customs will have the full statutory authority to expand automation.

2. Although Customs has made improvements in the way we do business, we are still far short of our goal to modernize our procedures. The current statutory framework is antiquated and excessively detailed, and this hampers Customs modernization efforts. The archaic procedures that Customs must use today waste our resources as well as the resources of the trade community, and undercut the competitiveness of American business. A vessel master is still required to report the number of cannons mounted on the ship. Customs is still required to examine one out of every ten packages in a shipment. This bill provides the flexibility to assure that Customs can change the way we do business without the need to constantly seek changes from Congress.

3. The Customs Modernization and Informed Compliance Act would authorize "remote location filing." Presently, importers are required to file entry/entry summary documents in the district where the merchandise arrives. This results in unnecessary expenses and duplication of efforts for importers and Customs. Remote filing permits the electronic filing of an entry/entry summary from a single location regardless of where the merchandise arrives in the U.S. or where the merchandise is released. Importers and Customs would be free at last from artificial administrative and geographic impediments. Automation can enhance the efficient movement of commerce.

4. This legislation would permit periodic grouping of entry summary filings (known as the "Import Activity Summary Statement") and periodic payment of estimated duties with interest collected or refunded as appropriate. A special electronic "reconciliation" procedure would be established at the importer's option to allow subsequent adjustments such as for assists. This would allow Customs and the trade community to adopt modern business practices, rather than operate as if everyone were in the "dark ages"—on a transaction by transaction basis.

5. This bill would provide Customs with the discretion to determine what information would be required at entry and entry summary, thereby eliminating the mandatory production of some documents and data (e.g., the invoice) that are not always needed. Today, importers are required to provide many documents and much data to Customs which Customs, in turn, is required to accept even though Customs does not review many of those documents. Furthermore, Customs is required to store the documents for eight years. This is nonsense.

6. This legislation would modernize the entry and clearance of vessel statutes, thus revising laws that go back as far as the 1790's, as well as clarify many provisions relating to drawback law.

Compliance

1. Although Customs will still have the statutory responsibility to fix the final classification and appraisement of the merchandise, the importer would be required to complete entry/entry summary by using "reasonable care." The lack of acting with "reasonable care" would satisfy the negligent standard of section 1592. Customs, in turn, would be able to expand its facilitation efforts because of our greater reliance upon accurate trade submissions.

2. Electronic transmissions would be subject to the traditional recordkeeping requirements. Existing penalties for paper violations also would be applicable to electronic transmissions. Electronic transmissions would be admissible into evidence in all administrative and judicial proceedings. Each transmission of data must be certified by the importer of record or agent, one of whom shall be a resident of the U.S. for purposes of receiving service of process, as being true and correct. Such certified transmission would bind the importer in the same manner and to the same extent as a signed document.

Additional parties would be subject to record-keeping requirements; and there would be a new administrative penalty imported upon an importer for failure to produce the records or data demanded by Customs during a post entry or post audit review. Please understand that Customs would not be receiving many of the entry documents or data (e.g., invoice) it now receives at entry and entry summary under H.R. 3935. Customs must be assured that we can conduct post-entry and post-audit reviews. However, this new penalty would be inapplicable to an importer's books and records other than entry documents; and in circumstances in which the importer can produce other evidence to comply with Customs demand. Importers can voluntarily work with Customs to develop proper record-keeping procedures under the new Record-keeping Compliance Program.

3. A new drawback civil penalty, patterned after section 1592, would be established. It would provide for a voluntary drawback compliance program that would be available to drawback claimants and other appropriate parties.

As noted above Customs supports the JIG concept of "Informed Compliance." Customs reached a consensus on the following "Informed Compliance" provisions of the Customs Modernization and Informed Compliance Act.

1. Authorizes Customs to accredit private laboratories and provides Customs with the authority to always independently test the merchandise;
2. Formalizes procedures for Customs detention of merchandise;
3. Formalizes procedures under 19 U.S.C. 1595(c) specifying when merchandise may or may not be seized;
4. Establishes changes and new procedures relating to Customs protest procedures; publication of interpretive rulings; appeals of adverse interpretive rulings; and modification and revocation of prior interpretive rulings;
5. Establishes procedures relating to Customs regulatory audits; and
6. Defines commencement of a formal investigation.

Administrative

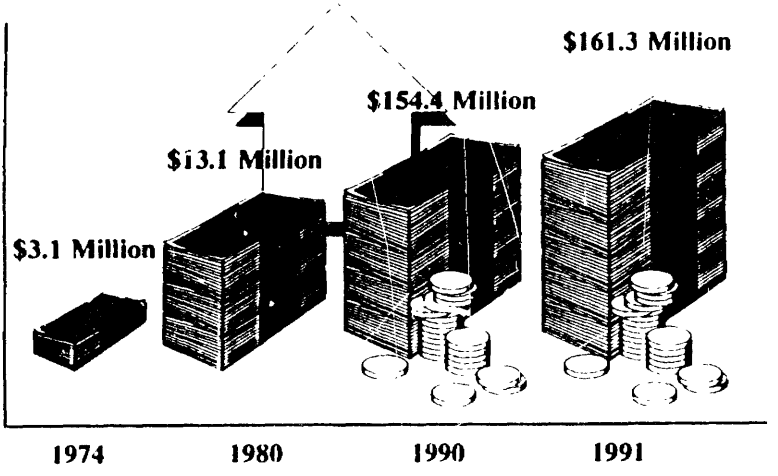
The Customs Modernization and Informed Compliance Act:

1. Provides Customs with the authority to use private collection agencies to recover indebtedness arising under the Customs laws and owed to the United States Government;
2. Requires reimbursement to Customs from the fees collected on behalf of other agencies by Customs to cover its administrative costs;

3. Adjusts the administrative exemptions (gifts, accompanying articles, etc.);
4. Increases the aggregate value for informal shipments to $2,500 and permits facilitation and risk assessments to be considered;
5. Provides summary manifesting procedures for letter and documents shipments; and
6. Permits electronic brokers to use sub-agents after implementation of remote location filing, and clarifies the definition of "Customs business."

My staff is available to discuss with you any technical changes that are made to this legislation.

REVENUE PRODUCED BY REGULATORY AUDITORS



RESPONSES OF SAM BANKS TO QUESTIONS SUBMITTED BY SENATOR BENTSEN

Question No. 1. Customs has been criticized in the past for the inability off its currant electronic systems to accurately identify high risk shipments. What assurances do we have that, as the Service automates even more, your "hit rate" will improve? Does it make sense to move forward with a large-scale automation program before all the bugs are worked out in the current system?

Answer. Customs current electronic systems are effective in targeting high risk shipments. Our current system was developed using criteria, history and random samples and has incrementally improved been over time. Our current system is NOT filled with "bugs." We are, however, investigating the possibility of adding sophisticated statistical selection techniques, in order to refine the identification process and reduce the need for random examinations. ACS is already a large scale, effective, automation effort, and Customs is ready to begin the next step to full automation which passage of this bill will allow.

Question No. 2. A number of customs brokers in Houston have told me that they still have serious problems with the portion of the bill known as "national entry processing." One of the paints they raise is that, as part of the compromises that were struck on this bill, there will be in effect *two* systems far processing entries during a transition period—the old system where documents have to be filed in the port where the merchandise arrives and the new system that allows the information to be filed electronically from anywhere in the United States. What is it going to cost to maintain these two types of systems? What is the total projected cost to the government of the new automated program?

Answer. The remote filing provision of the bill, formerly known as national entry processing, is not a total replacement for current entry and summary processing, but rather an additional option for filers wishing to take advantage of its use. Both the traditional and the remote filing processes will always be available since use of the remote filing option is completely at the discretion of the filer. It is true that there is a sunset provision for full implementation of remote filing until 1997. This was agreed to at the brokers' request in order to allow a transition period to occur. However, the transition period merely extends the amount of time only one choice

for processing is allowed, when any paper document is required in the process. It adds no cost to Customs. Customs is already highly automated and is continually enhancing its Automated Commercial System. The cost to add automated enhancements provided in this bill are estimated at approximately $4 million.

Question No. 3. As I understand it, we will be moving more toward a system in which Customs will be using audits and reviews *after the fact* to check compliance with our customs and trade laws. I am looking forward for some assurance that this type of a system is going to be effective in enforcing our laws. Does Customs have in place now the types of personnel—the programmers and the auditors—that will be needed in a fully automated system? And how will this system *improve* Customs' ability to collect the money that is owed to the government?

Answer. Yes, Customs has the types of personnel needed to handle transactions in a fully automated mode. Customs also is taking every opportunity to prepare itself for this changeover in order to continue to be effective in enforcing our laws. Post transaction audit has been a major program area in Customs since 1974 and will continue to be so with the passage of the Modernization Act.

Presently, the onboard strength of the Office of Regulatory Audit is 357 auditors located in 30 offices around the United States. It is anticipated that this number will increase to an optimum level of 550 auditors. Of the 357 auditors, 42 have been trained to be Computer Audit Specialists (CAS) at the Professional Development Institute at the University of North Texas, Denton, Texas This training provides the CAS with those skills needed to perform automated audits of corporate financial records maintained on micro, mini, and main frame computers. The government auditing standards require these personnel to maintain professional proficiency through continuing education. This requirement ensures that the auditors have the skills to operate effectively and efficiently in a rapidly changing business environment. Customs management is committed to ultimately staffing the Office of Regulatory Audit with 60 Computer Audit Specialists to meet the needs of an automated environment.

Each year, approximately 600 audits are performed nationwide by Customs auditors. For example, in FY 91, $161.3 million additional revenues were generated from these audits.

The major priority audit areas are the national audit program, fraud, and compliance audits with a special emphasis on free trade administration, drawback and user fees. The national audit program focuses resources on complex audits of large multinational corporations many of which are foreign owned. This program has been extremely successful. For every dollar allocated to this initiative the auditors have returned approximately $16.00. In FY 1990 Regulatory Audit showed a cost to perform these national audits at $1,200,413 with a recommended recovery of revenue and penalties reaching $22,505,725. It should be noted that the historical collection rate of national audit revenues and penalty recoveries is 81%. Approximately 15% of Regulatory Audit staff hours are dedicated to this area. It is anticipated that this will increase to 20% over the next two years. Focus on the audit of large multinational companies has led to audit initiatives performed at various foreign located parent companies.

Fraud audits are performed in direct association with the Office of Enforcement's investigative initiatives in the area of criminal and civil fraud violations. Approximately 25% of Regulatory Audit staff hours are dedicated to these types of audits. In FY 90, $4,088,490 was spent on conducting fraud audits. This led to recommended revenues and penalties of $92,342,988. The recommended revenue and penalty historical collection rate for fraud audits is 53%. Please refer to attached chart for overall revenues produced which show a marked increase in our revenue protection since 1974.

RESPONSES OF SAM BANKS TO QUESTIONS SUBMITTED BY SENATOR HATCH

Question. Section 221 of H.R. 5100 would amend 19 U.S.C. 1592 relating to penalties for fraud, gross negligence, and negligence.

Does Customs feel the sections in the bill that deal with fraud and gross negligence (and negligence) are adequately clear to importers so that they may avoid being unfairly accused of these practices?

How much will the Customs Service rely on the definitions for fraud and gross negligence (and negligence) that are defined in specific Customs Directives, but are not specifically contained in the bill?

Answers. It is Customs position that the bill, when read with the legislative history, recent court cases, and the Customs regulations, clearly set forth to importers what their obligations are to avoid being unfairly accused of fraud, gross negligence, and negligence.

Currently, although the definitions of the three levels of culpability are not defined in the statute, the definitions are set forth in the Customs Regulations. The legislative history discusses the obligation of an importer to act with "reasonable care," and that in doing so, the importer can avoid the allegation of wrongdoing under the statute. The legislative history provides illustrations of what may constitute acting in "reasonable care." For example, if an importer were to obtain a binding ruling from Customs, or use a Customs attorney or a Customs broker, there is a presumption that the importer acted properly.

The burden to prove that an importer acted in a fraudulent or grossly negligent manner rests upon Customs. However, to establish negligence, Customs must establish the act or omission constituting the violation; and then the burden shifts to the alleged violator to establish that the act or omission did not occur as a result of negligence. In a recent court case (*U.S. v. Menard, Slip. Op. 92-81, CIT., 1992*, the court noted that an importer has an obligation to make a proper inquiry into the Customs regulations, or face the charge that it failed to exercise due care.

Concerning the second issue, it is important to note that the definitions of the three levels of culpability which are used by Customs in its regulations also appear in the legislative history. The House Ways and Means Committee states in the legislative history that it endorses these "current practice" definitions and "expects their continued use by the Customs Service in the administration of penalty provisions under the Act."

PREPARED STATEMENT OF STEVE BECKMAN

Mr. Chairman, my name is Steve Beckman. I am the International Economist for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). I appear here today on behalf of the 1.4 million active and retired members of the UAW and their families. We appreciate the opportunity to present our views on auto trade policy.

For many years the trade debate in this country has focused on our trading relationship with Japan. Since the early 1980s, when the U.S. worldwide trade deficit began to soar, the U.S. trade imbalance with Japan has been paramount. Some people attributed the dramatic rise in Japan's surplus to the dollar-yen exchange rate; others focused attention on U.S. industry lack of an "export orientation" or of "competitiveness."

Many other political and economic theories have been advanced to explain the persistent U.S.-Japan trade imbalance. But although much has changed in politics and economics during the last decade, the huge U.S. trade deficit with Japan has remained. It has survived wide swings in exchange rates, vigorous U.S. export promotion programs and Japanese import facilitation programs, substantial improvement in U.S. trade accounts with other countries, shifts in macroeconomic policy, bilateral negotiations in specific product areas and on "structural impediments," and numerous changes in U.S. trade laws.

Another constant in U.S.-Japan trade has been the massive contribution of trade in automotive products. This single category of products, which includes vehicles, parts, components and materials, accounted for U.S. trade deficits with Japan amounting to more than $250 billion during the past decade and more than $30 billion last year.

Mr. Chairman, the UAW is convinced that the U.S.-Japan trade imbalance will not be significantly reduced without substantial reduction of the U.S. deficit in automotive trade. We are equally convinced that the overall U.S. deficit with Japan will not disappear without concerted effort by both governments and by private business interests.

During the period of extremely large U.S. trade deficits with Japan, the domestic auto industry has gone through a radical transformation. The changes implemented by companies throughout the industry have produced remarkable improvements in vehicle quality, a wide variety of new models, utilization of advanced technologies in the production and operation of vehicles, compliance with increasingly stringent safety, fuel economy and emissions requirements and numerous other benefits.

But there have been painful, harmful changes as well. Hundreds of thousands of workers have lost their jobs in the domestic auto industry as the Japanese auto companies have captured a steadily rising share of the U.S. market. In addition, thousands of workers in the automotive parts and supplier industries have also seen their jobs disappear as imported parts, materials and components replaced domestic products. This has had a devastating impact on countless communities throughout the United States. The announcement by General Motors in December 1991 that it would be closing 21 plants affecting 74,000 employees, and the February announce-

ment of many of the specific plants affected, were simply the latest in a long series of retrenchments by the domestic auto and auto parts companies.

The U.S. merchandise trade figures for 1991 demonstrate the utter lack of progress in reducing the U.S. trade deficit with Japan. While the total U.S. deficit fell from $102 billion to $65 billion, the deficit with Japan increased from $41 billion in 1990 to $43 billion last year. Further deterioration in the U.S. trade balance with Japan has occurred this year. The deficit for the first five months of 1991 was $16.1 billion; it grew to $18.5 billion in the same months of 1992. Mr. Chairman, the U.S. trade deficit with Japan is clearly moving in the wrong direction and it is imperative that this deterioration in bilateral trade be stopped.

The worsening of the U.S. deficit with Japan in 1991 was especially troubling because of the economic circumstances in which it occurred. With Japan's economy expanding, though slowly, and the U.S. economy in serious recession last year, U.S. exports to Japan should have been growing and imports from Japan shrinking. Instead, the opposite took place and the U.S. deficit widened. Now that the Japanese economy is weakening, U.S. exports have fallen and there is greater pressure in Japan to keep production levels high by increasing exports. This pattern has been observed during past Japanese recessions, and it is visible today. Japan's global trade surplus has increased substantially this year and it is headed even higher.

Unfortunately, President Bush's trip to Japan early this year did nothing to correct our trade imbalance with Japan. Instead of getting enforceable commitments, the President came back with more "promises" from the Japanese government and Japanese auto companies. It is worth noting that every Japanese government trade package announced since 1983 has claimed to have resolved the trade imbalance between the two countries. Unless the U.S. government takes concrete steps to enforce the latest promises, they are likely to be equally ineffective.

The UAW believes it is time for Congress to take those steps necessary to reduce our huge trade imbalance with Japan, and to help preserve strong domestic auto and auto parts industries. We cannot be content any longer with vague promises.

The UAW has been objecting to the huge automotive trade imbalance with Japan since the early 1980s. The Japanese auto companies responded to this criticism by building transplant assembly facilities in this country, and then significantly expanding production at those facilities. But this has come at the expense of sales by the domestic auto companies, not Japanese imports. As a result, the share of the U.S. auto market captured by Japanese auto companies has steadily risen to nearly one-third of the U.S. retail market. At the same time, there has been a corresponding erosion of the domestic auto industry. This has had a devastating impact not only on the workers employed in the domestic auto industry, but also on the entire U.S. economy.

The health of the domestic U.S. automotive industry has a profound impact on the health of the entire U.S. economy and the well-being of American workers. In addition to creating high productivity, high wage jobs directly, the industry is a major customer for other important American industries. Many producers of materials, such as textiles, glass, ceramics, steel, aluminum and others, utilize advanced technologies to be as efficient as their competitors around the world. They depend on the domestic automotive industry as an important customer.

Domestic producers of the most sophisticated industrial equipment also rely on purchases by the domestic auto companies to justify their investments in research and development and innovative products. This is the case for American machine tool producers, for firms specializing in robotics, for computer-assisted design and manufacturing (CAD-CAM) equipment makers, for semiconductor firms and a variety of other companies. The automotive industry, including the traditional producers of materials, parts and supplies, is essential to the further development of the high-technology industries in this country because, whether we like it or not, purchases of this equipment are often made on the basis of national strategies for technology development rather than price, quality and service.

Thus, the continued erosion of the traditional domestic auto and auto parts and suppliers industries will have a devastating impact on other industries and the health of the entire U.S. economy. The jobs of hundreds of thousands of workers in other industries are dependent, either directly or indirectly, on the preservation of a strong domestic automotive industry. We will not be able to "jump start" our economy and enter a vigorous recovery from the recession so long as the domestic automotive industry continues to hemorrhage.

In an effort to deflect criticism over the huge, ongoing automotive trade imbalance, the Japanese automakers have embarked on a vigorous PR campaign designed to convince the media and the public that they are just as "American" as the Big Three domestic automakers. By making exaggerated claims about the domestic content in the vehicles assembled at their transplant facilities, the Japanese auto com-

panies have tried to create the impression that there is no difference between the level of domestic content in their transplant vehicles and vehicles produced by the Big Three domestic automakers. They have also argued that their investments in this country have more than offset any decline in the domestic auto and auto parts companies, thereby resulting in a net plus for the U.S. economy. Nothing could be further from the truth.

Recent studies by the University of Michigan's Office for the Study of Automotive Transportation (OSAT) and the Economic Strategy Institute (FSI) have indicated the extent of the difference between traditional U.S. producers and the Japanese transplants. For example, OSAT found that only half of the parts value for Honda's Ohio-assembled Accord model were domestic. As the transplant that has been in operation the longest, this figure is likely to be among the highest for the transplant assemblers. By way of comparison, Big Three models assembled here have far higher levels of domestically purchased parts. On average, models sold by the Big Three have about 85–90 percent domestic content. Similarly, the ESI study shows that Japanese transplants import about two-thirds of the value of machinery and equipment used in vehicle assembly, while the Big Three buy more than three-quarters of theirs in this country. The General Accounting Office (GAO) has found that, due to this higher level of foreign sourcing, the substitution of Japanese transplant production for traditional domestic producers has resulted in a net job loss for American workers in the auto and related industries. UAW studies have reached similar conclusions but with an even larger negative impact on employment of about 80,000 jobs in 1991.

The fact that the Japanese transplant operations in the U.S. purchase a large proportion of their parts and production machinery from Japan and elsewhere diminishes the chance for other American workers to benefit from these investments. The keiretsu supplier firms that have followed the Japanese assemblers to the U.S also purchase more of their inputs from Japan, so their contribution to the U.S. economy is also smaller than traditional U.S. firms.

Mr. Chairman, because of these factors and their relevance to U.S. employment in well paid manufacturing and related service industries, the UAW draws a distinction between the traditional U.S. automotive industry and the Japanese transplants. We believe it is imperative that the United States adopt tough trade policies to ensure the preservation of a strong domestic automotive industry.

The UAW strongly supports the proposed Trade Enhancement Act of 1992 (S. 2145), introduced by Senator Don Riegle. This legislation would require that the U.S.-Japan merchandise-trade imbalance decline by at least 20 percent each year for five years. This would gradually eliminate the U.S. deficit. Since Japan accounted for two-thirds of the total U.S. deficit in 1991, and an even larger share so far this year, this requirement should have a substantial positive impact on total U.S. trade.

Significantly, the legislation does not specify the method for achieving trade balance. It leaves the needed combination of changes in exports and imports up to the governments and private businesses to determine. Thus, Japan would retain flexibility in how to meet the trade deficit reduction targets. Since auto and auto parts accounted for three fourths of the trade deficit in 1991, as a practical matter Japan would have to reduce its exports of autos and auto parts to the United States, or increase its imports of U.S. built autos and auto parts, in order to meet the targets. But Japan could also help to bring its trade into balance by importing other U.S. goods and services, including agriculture commodities.

However, S. 2145 leaves no doubt as to the importance of meeting these trade deficit reduction targets. If the trade imbalance is not reduced by 20 percent in any one of the years, imports of motor vehicles from Japan into the U.S. would be subjected to restrictions. The number of Japanese imports would be limited to 2,300,000 (which is the number which entered this country in 1990).

Under the proposed legislation, Japanese auto producers would be allowed to increase their U.S. vehicle imports in an amount equal to any increase in exports of U.S. built vehicles to Japan. This reciprocity provision should encourage Japan to open up its automotive market, which up to now has been virtually closed to U.S. producers.

On the other hand, under S. 2145 the number of Japanese imports would have to be reduced by an amount equal to any increase in production by the Japanese transplant assembly facilities. This provision would ensure that additional transplant production will offset imports from Japan, rather than vehicles produced by the Big Three domestic auto companies.

The UAW believes that the use of automotive trade sanctions to meet the trade deficit reduction requirements of S. 2145 is entirely appropriate. As we pointed out earlier, auto trade accounts for about three-quarters of the U.S.-Japan trade imbal-

ance. There is no apparent way to eliminate the overall trade imbalance without substantially eliminating the auto trade deficit. The sanctions in S. 2145 provide a specific method for achieving that result should the U.S. deficit not otherwise narrow.

Senator Baucus has also introduced legislation, the proposed Automotive Competitiveness Act of 1992 (S. 2395), which would help to preserve a strong domestic automotive industry and to reduce our huge trade imbalance with Japan. This bill would require the Administration to negotiate a trade agreement with Japan limiting imports of Japanese motor vehicles to 3,600,000 per year. The bill would include within the definition of Japanese imports sales of vehicles by the Japanese transplant operations in this country which have less than 70 percent domestic content. Thus, in addition to restraining the growth of Japanese imports, S. 2395 would encourage the Japanese transplants to increase their percentage of domestic content above 70 percent (just as they promised to do in Tokyo last January). Japanese transplants with domestic content in excess of 70 percent would not be subjected to any limitations.

In exchange for providing relief from Japanese imports, the Baucus bill would require the domestic auto companies to meet certain standards for improving the quality of their products and limiting executive compensation. The premise underlying these requirements is that the Big Three automakers should be required to improve their competitiveness, which would ultimately benefit consumers, as the pro quo for any trade relief.

The UAW believes that the Baucus bill represents a very positive contribution to the debate on auto trade issues. It recognizes the importance of preserving a strong domestic auto industry, both for the workers employed directly in the industry and for the overall health of the entire U.S. economy. It also recognizes that the continuing high levels of Japanese imports, along with the growth in production of low-domestic content Japanese transplants, are undermining the domestic auto industry. The insistence that the Big Three continue to improve the quality of their vehicles and begin to limit executive compensation certainly seems reasonable from our perspective.

In addition to the bills which have been introduced by Senator Riegle (S. 2145) and Senator Baucus (S. 2395), we believe this Committee should give favorable consideration to the auto trade amendment sponsored by Representatives Gephardt and Levin, which was adopted by the House of Representatives on July 10, 1992 by a vote of 260 to 166 during consideration of the Trade Expansion Act of 1992 (H.R. 5100). This amendment contains two basic requirements:

(1) It would require the U.S. Trade Representative to negotiate with Japan for a continuation of the existing Voluntary Restraint Agreement on imports of Japanese motor vehicles into this country; and

(2) It would require the Administration to monitor whether the Japanese auto companies are complying with the commitments which were announced by President Bush and Prime Minister Miyazawa last January in Tokyo concerning increased purchases of U.S. built auto parts, and would make these commitments enforceable under Section 301 of the U.S. trade laws.

To dispel any notion that the amendment would somehow hurt Japanese transplant operations in this country, the Gephardt-Levin amendment contains a specific section stating that:

"Nothing in this Act may be construed to have the effect of— (1) terminating or limiting to any extent the production of motor vehicles by transplant vehicle manufacturers; or (2) limiting or reducing jobs of United States workers at the facilities of such manufacturers."

Despite the inclusion of this provision, opponents of the Gephardt-Levin amendment have continued to argue that it would somehow harm the Japanese transplants. This is not accurate. In fact, the amendment would actually help to stimulate employment at the transplant facilities and other parts companies in this country.

Opponents of the Gephardt-Levin Amendment have argued that it would somehow place a cap on overall production at the Japanese transplants. This is totally false. As indicated above, the amendment contains a section which specifically provides that there shall not be any limit on Japanese transplant production. The amendment does require the U.S. Trade Representative to negotiate a continuation of the existing VRA on Japanese imports. But this applies only to imports, not to Japanese transplant production. Although the underlying trade bill to which the Gephardt-Levin amendment was attached, H.R. 5100, originally contained a provision that was construed by some as limiting Japanese transplant production, this provision was deleted by the Ways and Means Committee's Trade Subcommittee.

Opponents of the Gephardt-Levin amendment have also argued that it unfairly discriminates against the Japanese transplants because it imposes a 70 percent domestic content standard on their products, but does not impose a similar requirement on the Big Three domestic automakers or other foreign producers (such as BMW) who may begin assembling cars in this country.

However, the amendment simply asks the Japanese transplants to live up to the commitments they made on auto parts during the Tokyo summit in January. This can hardly be considered "discriminatory." After all, the Japanese auto companies would not have made the commitments in the first place if they felt they were unreasonable or unfair.

In any event, the Big Three domestic auto makers already have, on average, about 85–90 percent domestic parts content in the vehicles which they assemble in this country. Thus, as a practical matter they already meet the 70 percent standard set forth by the Japanese companies in Tokyo. Accordingly, there is no need to seek legislation to monitor or enforce compliance by the Big Three with this standard.

Furthermore, many of the persons who are now opposing the Gephardt-Levin amendment also were opposed to the across-the-board domestic content bill considered by Congress in the early 1980s that would have applied to all companies selling vehicles in the U.S. market. Thus, they are being disingenuous when they criticize the Gephardt-Levin bill on the grounds that it is too narrow.

The BMW issue is a total red herring. BMW has simply announced its intention to build an assembly facility in this country. It does not, as of yet, assemble any vehicles in the United States. Even after BMW begins assembly operations, the relatively small volume of output expected is not likely to have any significant impact on auto parts purchases. The across-the-board domestic content bill considered by Congress in the early 80's contained an exemption for low volume producers (such as new, start-up operations like the proposed BMW facility). No one claimed that this was somehow "discriminatory."

Opponents of the Gephardt-Levin amendment have also argued that it represents an attempt by American owned auto parts companies to get more business, and that this will prevent the Japanese transplants from expanding in-house production of auto parts, or from expanding production at Japanese owned parts companies which are located in this country. That fact is, however, that the Japanese auto companies can satisfy the 70 percent domestic content standard set forth in the Tokyo commitments by building more parts in-house at the Japanese transplant facilities, or by purchasing more parts from Japanese affiliated suppliers located in this country. The Japanese automakers are not limited to parts produced by traditional, American owned parts companies.

Thus, the Gephardt-Levin amendment could actually lead to increased production and employment at the Japanese transplants and Japanese owned parts companies in this country, as well as traditional American parts companies. The thrust of the amendment is to ensure that the Japanese live up to their promises to raise the level of U.S. built auto parts in the Japanese transplant vehicles. It does not matter which companies produce those parts, so long as they are built in this country.

Some persons have argued that the Japanese transplants will not be able to meet the 70 percent domestic content standard. As a result, production and employment at those plants will suffer. This ignores the fact that the 70 percent domestic content standard was proposed by the Japanese auto companies themselves. They would not have committed to reach this figure if it was burdensome.

In any event, if a Japanese transplant fails to meet the 70 percent standard, the Gephardt-Levin amendment simply directs the U.S. Trade Representative to determine what actions to take under Section 301 of our trade laws to enforce the auto parts commitments. The amendment specifies that the U.S. Trade Representative shall only take action under section 301 against the "foreign goods or economic sector" involved. Thus, the USTR may not take any action against the Japanese transplants. The amendment also states that the USTR may not take any action against goods produced by parent corporations of Japanese transplants which comply with the auto parts commitments. Thus, for example, the USTR could not take any action against imports of Toyotas, simply because Honda has failed to comply with the auto parts commitments.

In addition to strongly supporting the Gephardt-Levin amendment, the UAW also supports several of the other provisions included in H.R. 5100, which passed the House earlier this month. The changes in anti-dumping and countervailing duty laws would tighten enforcement of these protections against unfair trade. We also endorse reinstatement of the Super 301 provision that was included in the 1988 trade act but has since expired. It can be a useful element in a U.S. trade policy that stands up for U.S. production and employment.

In conclusion, Mr. Chairman, the UAW is convinced that the jobs of hundreds of thousands of UAW members, hundreds of thousands of other American workers and the continued survival of many communities across the nation are at stake in the battle to preserve our domestic automotive industry. Only Congress can provide the industry and its workers with the opportunity to make their appropriate contribution to the economic strength of the country. Accordingly, the UAW strongly urges this Committee to give favorable consideration to the auto trade bills sponsored by Senator Riegle (S. 2145) and by Senator Baucus (S. 2395), as well as the Gephardt-Levin amendment which was adopted by the House as part of the comprehensive trade legislation (H.R. 5100).

The UAW appreciates the opportunity to testify on auto trade policy. We look forward to working with you, Mr. Chairman, and the other Members of this Committee as you consider this critically important issue. Thank you.

PREPARED STATEMENT OF HAROLD G. BRAUNER

Mr. Chairman, the National Customs Brokers and Forwarders Association (NCBFAA) is privileged to appear before you again today. I am Harold G. Brauner, President of Brauner International Corporation of New York and President of NCBFAA. Ours is the national trade organization for customs brokers and freight forwarders, members who are also represented by our affiliates in areas like Houston, the Columbia River and New York. We are an umbrella for a wide range of interests often determined by the geography of trade operations and the unique business practices that evolve in a given region. It is our task on many occasions to draw consensus from points of view that can seem impossibly disparate. This is what we have attempted with respect to Customs Modernization and why we are here today in support of that legislation, as it passed the House within H.R. 5100.

The path to this position has not been easy for the Association and in fact you, Mr. Chairman, have heard us reflect opposition to the bill on the last occasion when I appeared before the Committee in the Spring. We have however worked diligently with the Customs Service, the Joint Industry Group and the House committee to develop a compromise. We achieved this goal and, once having reached an agreement, we intend to stick by our word and we urge passage of the Customs modernization bill in this form.

What were our concerns? First, in retrospect, we felt just because a bill is named "Customs Modernization" did not make it so. Customs brokers strongly endorse automation in fact, it was our work with the Customs Service that has brought the Automated Commercial System (ACS) to a level where it is a model for interactive information flow between the government and the private sector. In fact, it is a model for how government and industry can cooperatively take on complex challenges and succeed. No, Mr. Chairman, we have long supported automation; but we do not take every new idea at face value. This is, after all, our environment, the medium in which we conduct our livelihood. A misstep can drive us out of business. We have long insisted that conversion to a national remote release system must be carefully implemented. The process, especially remote filing, must be tested—thoroughly—and measured by objective criteria by non-participating evaluators. H.R. 5100 builds in many of the suggestions that we offered throughout the evolution of this legislation. The changes made by the House Committee went a long way towards responding to these concerns.

A central concern too was whether Customs would be able to find an alternative to the long-standing system of requiring filing and Customs processing of entries in the very location where the cargo was being physically unloaded and moved inland. There are many complexities in processing entries and moving cargo, not the least of which are the wide range of possibilities that emerge from an intricate chain of human decision making. A key issue for us has been how to merge the as-yet-unautomated actions of other federal regulatory agencies at the port with a fully automated remote filling system. After all, if an EPA representative must verify compliance with emissions regulations without the tools of automation, through the processing of paperwork at the port of arrival, how does a broker manage these transactions effectively two thousand miles away? We have come to agreement on this thorny issue through a rather delicate compromise. Until 1997, paper transactions—including that involving the other regulatory agencies—must be filed in the traditional manner at the port where the goods will be cleared by Customs. After that, when we have had the opportunity to automate these remaining paper transactions to the maximum extent possible, the importer and his broker will decide where they want to file their entry to suit the importer's convenience. And, we have

provided the legal framework for brokers to conduct business at that remote port, or alternatively to work with a local broker who serves as a "subagent."

A concern to many customs brokers has been the upheaval that this legislation will cause for their businesses and for their local ports. In fact, you will continue to hear from these members of our Association, who are free to voice their views independent of NCBFAA. The compromise on the handling of paper transactions, testing of the system, the use of subagents, and the continued emphasis on the role of a licensed customs broker every step of the way have addressed in some measure these concerns. But, this is a "compromise," which by its nature creates mixed feelings and cannot resolve each element to everyone's satisfaction.

Mr. Chairman, the fact that we support the legislation does not mean however that we will be silent. On areas outside of this core agreement, we think the bill can be strengthened in several ways. I will briefly mention three proposals for the Committee to consider at this time.

1. NCBFAA has strongly believed and strongly urges the committee to modify Section 484 by clarifying that only owners and purchasers may select a customs broker and that "nominal consignees" not be allowed to select a broker. It is fundamental to our notion of fairness that, when an importer has selected a broker to handle his Customs transactions, this decision should not be allowed to be overridden by a carrier simply to suit his convenience, reduce his costs or increase his profits.

2. We believe that all cases involving a civil penalty, demands for liquidated damages or the seizure of goods, where the amount involved exceeds $20,000, should be reviewed and decided upon by an impartial hearing official rather than a Customs official.

3. We also ask the Committee to amend the law to provide for review and adjudication of protests, involving less than $5000 by a Small Claims Tribunal. These "low-value" claims are often more costly to pursue than the money at stake merits. Changing the law in this manner would provide a speedy and inexpensive forum for the resolution of small disputes involving the assessment of duties, charges and exactions of less than this amount.

Senator Bentsen, this is a preliminary discussion of our position—our concerns about Customs' original proposal and the point at which we arrived in agreement. We have been candid with the Committee—and have not attempted to sugar-coat either this agreement or the presence of lingering opposition within our community. We do however compliment everyone concerned with this legislation. After a great deal of hard work, in which everyone conceded some ground, NCBFAA is now able to endorse the Customs Modernization portion of H.R. 5100 and I will be pleased to respond to your questions.

PREPARED STATEMENT OF AARON W. CROSS

THE CUSTOMS MODERNIZATION AND INFORMED COMPLIANCE ACT

The Joint Industry Group (the "Group") supports the provisions of Title II of H.R. 5100 and takes pride in having participated with the U.S. Customs Service and others in the formation of many of the key provisions. We address these and others in our comments below.

Subtitle A is aptly headed "Improvements in Customs Enforcement." Each of the fourteen sections in the Subtitle represents a step forward from where the law is today. Perhaps the most sweeping and significant change in existing enforcement practice will result from the amendments proposed to section 596(c) of the Tariff Act of 1930 (the "Act"). Although H.R. 2512, a measure incorporating the Group's original proposals for tariff reform and modernization, provided more severe limitations on the Customs Service's ability to seize merchandise which had been introduced into the United States contrary to law, considerable time and effort were devoted by representatives of both the Customs Service and the Group in crafting language that would meet the Customs Service's legitimate needs while, at the same time,

eliminating unwarranted practices occurring over the past years in which seizures for mismarkings, minimal quota violations and other commercial shortcomings were the order of the day. The revisions to section 596(c) of the Act, as set forth in section 224 of H.R. 5100, when coupled with provisions proposed in section 213 of the Bill dealing with detentions, which we also endorse, will give the Customs Service ample authority to insure that potentially trade-sensitive merchandise does not enter the United States, except lawfully so. By amending the law to state specifically the violations which can result in seizure of imported merchandise, and by limiting seizure to those situations where a vital interest of the United States is threatened, the provision strikes a proper balance between Customs' missions of enforcement and trade facilitation.

The Joint Industry Group also endorses the proposed changes to section 499 of the Act that formalize the accreditation of private testing laboratories. Through broadened use of accredited laboratories, better compliance should result. In recognition of this, the Customs Service has agreed to accept the results obtained from a duly accredited laboratory in the absence of testing results obtained from a Customs Service laboratory. Also, the new measure will make available to the importing public testing procedures and methodologies used by the Customs Service and, unless of a proprietary nature, information resulting from testing conducted by the Customs Service. This will prove especially beneficial in tariff classification disputes where the importer believes an incorrect result has been achieved. Under the new procedures, the importer will be able to determine what test was conducted and see the results and how they were obtained. This is a definite step forward.

Similarly, the Group endorses strongly the formalization of the regulatory audit procedures as set forth in section 215 of H.R. 5100. We are encouraged that the Customs Service, which was initially opposed to any statutory provisions dealing with regulatory audit, has come to recognize that a strong regulatory audit program can play a meaningful role in the pursuit of "informed compliance." In our discussions with Customs Service representatives, we have been assured that audit reports will be more informative in the future and contain less conjecture, especially in areas in which auditors are not necessarily the best party to be making the judgment call. While the House-passed measure and accompanying report stress that auditors are to make their findings known to the audited party as the audit unfolds, if there is any doubt, this can certainly be cleared up in the post-audit exit interview. Although we were not able to obtain agreement that notice be given that the audit was being conducted as part of a "formal investigation," we continue to feel that the Office of Regulatory Audit would obtain greater cooperation from the importing community if there were a defined line of demarkation between a "regulatory" audit and what has come to be referred to as an "investigative audit."

The amendments proposed in section 215 for establishment of a record keeping compliance program under section 509(f) of the Act is one manifestation of the success achieved in balancing the enforcement goals of the Customs Service and industry's interest in trade facilitation. Under the new era that will be ushered in when Title II of H.R. 5100 becomes law, in which paper will sooner or later become something used to verify or backup entries originally filed as "paperless," many records that are today routinely submitted at the time of entry will not have to be submitted in the future. Rather, they will have to be maintained by the importer of record and produced when demanded by the Customs Service, either as part of a routine investigation or otherwise. Rather than merely

establishing a series of penalties for failure to produce such records on demand, H.R. 5100 provides for the establishment of a record keeping compliance program tailored to the importer's size and nature of its business and the volume of imports. Through direct dealings with the Customs Service, the importer will understand the legal requirements for record keeping, have in place procedures to explain record keeping requirements to its employees, recognize the importance of being properly staffed, have a recognized record maintenance procedure and have in place a procedure for notifying Customs when problems with the record keeping program occur. Those so certified will not generally be subject to penalties otherwise able to be imposed by the Customs Service where records cannot be produced on demand. Repeated violations, however, can result in the de-certification of a party and the imposition of penalties. Those not certified can be subjected to the extremely severe penalties ranging as high as $100,000 for willful failures to produce or up to $10,000 for negligently failing to produce the demanded information. The Joint Industry Group anticipates that participation in the record keeping compliance program will be quite high, certainly among high-volume importers, with the resultant benefit that compliance with record keeping demands will prove to be quite satisfactory.

Section 217 provides for two meaningful changes to the review by the Customs Service of protests filed by importers against classification or valuation decisions. At present, an importer who files a protest may request, through an Application for Further Review, that the matter be reviewed by the Customs Service at its Headquarters level rather than by the District Director responsible for the initial determination. In many instances, Applications for Further Review are erroneously or improperly denied. Through proposed amendments to section 515(c) of the Act, the protesting party will be able to file a request with the Commissioner of Customs asking that the denial of the Application for Further Review be set aside. This will infuse further due process into the system, insuring that matters that could be resolved if reviewed at higher levels within the Customs Service will not clutter up the docket of the Court of International Trade simply because local Customs officials chose to deny the Application for Further Review, leaving the protesting party with no other recourse.

This section will also authorize the Customs Service, either on its own initiative or pursuant to a written request by a protesting party, to void the denial of a protest effected contrary to proper instructions. There are numerous instances in which protests are not supposed to be denied because both the Customs Service and the importer are awaiting the results of some other event, such as the issuance of a decision in a pending court case. At the present time, where these protests are inadvertently acted on, the hands of the Customs Service and the importer are tied; the only recourse is to file a summons to the Court of International Trade. This provision will give the Customs Service the authority to place such protests back in pending status.

Section 221 of H.R. 5100 provides for two meaningful changes to section 592 of the Act. Although not part of the formal changes to the statute itself, the Group believes that agreement with the Customs Service has also been reached on a third point and our comments below address this issue as well.

As to the first of the changes, if Title II is enacted into law, there will be specific acknowledgement that "the mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct for purposes of section 592." With the move to paperless entry, computer or other electronic systems will be playing a more

significant role than ever before in the Customs entry process. It is well within the spectrum of possibility that numbers (e.g., value of a product) will be entered, erroneously so, into the system and then repeated over and over again without human intervention or monitoring. The new law will provide that sheer repetition of this initial error will not give rise to a determination that this constitutes a pattern of negligent conduct. The same can be said for human error if made by entry level clerks or typist who, in following a model or format, transpose numbers in error and then proceed to follow the new model over and over again. As a balance to this, however, the Customs Service and the Group recognize that it is an importer's responsibility to check to see how both electronic or manual systems are working. Clerical errors, if repeated for more than six months, show that something is amiss in the system. A guideline has been developed, therefore, as reflected in the report of the House Committee on Ways and Means, that repetitive clerical errors, after a point in time, no longer enjoy the "safe haven" of not constituting a pattern of negligent conduct. Again, this is an area of "shared responsibility" in which the importing community will be given the benefit of the doubt, but not the benefit of laxness.

This section also contains a meaningful addition to section 592 in that, for purposes of the prior disclosure benefits under section 592(C)(4) of the Act, an investigation will be considered to be commenced on the date as recorded in writing by the Customs Service on which it had belief that a possible violation of section 592(a) exists. As a function of "shared responsibility," the Customs Service has come to recognize that, all too often, prior disclosure cases are treated as foot races in which a tie (and sometimes a win) does not go to the runner. Rather than fight every prior disclosure claim as if there were no benefit to be gained from the voluntariness from such conduct or to permit notations on scraps of paper to serve as "evidence" of the opening of a formal investigation, the parties recognize the need for the Customs Service needs to develop a transparent and totally objective program on which to base the commencement of a formal investigation. A standard form has to be developed setting forth the time and date on which such an investigation commenced. The facts on which "the possibility" of a violation are found to exist must be reduced to writing. Further, if the investigation results in the issuance of a Notice of Penalty, the date of commencement "reporting form" should be a part of the notice so as to resolve once and for all the date that the Customs Service asserts a formal investigation commenced. Through communication, the Group hopes that a more meaningful voluntary disclosure program will evolve. This lies at the heart of "informed" compliance.

Although definitions for fraud, gross negligence and negligence are not now provided for in section 592 of the Act, the Group is satisfied that the Customs Service has come to understand the legitimate concerns of the importing public that there be clear distinction between and among the three levels of potential culpability. This is especially significant given the potential for the blurring of the distinction between "fraud" and "gross negligence." In the current administration of penalty cases, the

Customs Service considers a fraudulent violation to have occurred if a material false statement or act was committed (or omitted) "knowingly, i.e., was done voluntarily and intentionally, with an intent to deceive, to mislead, or convey a false impression, as established by clear and convincing evidence." Key to the interpretation is intent to do something with a consequence contrasted with intent merely to file an entry. The Group urges the Senate Finance Committee to mandate the continued use of these definitions by the Customs Service and to request that they be made a formal part of the Customs Regulations. This will bring uniformity to the prosecution of civil actions under section 592 of the Act, be it administratively or through the judicial process.

Section 222 of H.R. 5100 provides for the first time for the imposition of penalties for persons filing false drawback claims. Again, there is balance between needs of the importing community and the enforcement goals of the Customs Service. It is not simply a one-way street. Although penalties are provided, there is also a drawback compliance program similar in content and effect to the record keeping compliance program discussed earlier. Also, under section 232 of the Bill, several amendments sought by the importing community will make drawback a more effective means to ensure American competitiveness in export markets. The Group strongly endorses these changes to the drawback laws.

Section 223 of the Bill provides for several significant changes to the dissemination of interpretative rulings and decisions as well as the establishment of procedures for modifying decisions already taken and on which the importing public relies. Section 625 of the Act will be amended to provide for the right of an appeal to an adverse interpretative ruling and any interpretation of any regulation prescribed to implement such ruling. This will be at a higher level of authority within the Customs Service and on the basis of *de novo* review. With equal import, a proposed interpretative ruling or decision which would modify or have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions must be published in the Customs Bulletin, giving interested parties at least a 30-day window in which to submit comments on the correctness of the proposed ruling or decision. This is "informed compliance" in its finest manifestation. Changes in interpretation are as likely as the appearance of the Sun each morning in the eastern sky. As long as the importing community is informed of the Custom Service's intentions and has an opportunity to furnish the Customs Service with contrasting and supportive views, the Group believes that the "shared responsibility" which lies at the heart of Commissioner Hallett's program will yield positive results.

The Joint Industry Group supports enthusiastically the provisions of Subtitle B, the "National Customs Automation Program." The Group strongly endorses the continuing effort of the Customs Service to automate its operations. A direct benefit of this effort is improvement in U.S. industries' competitiveness. To compete in today's international marketplace, every opportunity to enhance a company's efficiency must be taken. Through automation and the elimination of paper, by permitting periodic submissions of information and periodic payment of duties, major U.S. companies involved in global trade will be able to reduce the high administrative costs associated with importing.

In particular, the Group supports section 237 which contains many key amendments to current section 484 of the Tariff and would permit an importer to adapt to an automated Customs Service at its own pace. For the least sophisticated importers, the existing entry procedure which is heavily reliant on paper would be

available, but for the most sophisticated importers, a paperless system dependent on the electronic transmission of data would soon be a reality. We are pleased that section 237 contains provisions suggested by industry which would permit the submission of entry summary information periodically and in batch form under an "Import Activity Summary Statement" first proposed in H.R. 2512, and permit a "reconciliation," a new concept involving the submission to Customs of information and data necessary to complete classification or appraisement of imported merchandise long after entry.

The Group also endorses the new concept in section 242 which permits importers who are authorized to transmit Import Activity Summary Statements to deposit estimated duties associated with the importations covered by such statements before or at the time such statements are filed. Enactment of this provision in conjunction with section 237 has the potential of providing significant administrative savings to business.

Section 231 of H.R. 5100 sets forth an ambitious and necessary implementation and evaluation program for incorporating new and existing components of the National Customs Automation Program. The Group agrees that the Customs Service should be required to implement the components of automation effectively, with a minimum of disruption to the importing process. Industry could support nothing less.

Section 235 leaves the form and content of manifests to the discretion of the Secretary of the Treasury. Special recognition has been accorded to letter and document shipments in recognition that these forms of communications pose virtually no enforcement threat.

In general, the miscellaneous amendments to the Tariff Act of 1930, as set forth under subtitle C are those advanced by the Customs Service and do not impact on the Joint Industry Group or its members. There is one notable exception. Under section 266, a significant amendment will be made to section 621 of the Act. In particular, it will make it absolutely clear that the Customs Service can institute actions to collect duties, penalties or both in cases arising out of the negligence or gross negligence of an importer only if instituted within five years after the date of the alleged violation. In most instances, this will be the date of entry, however, in the case of draw back violations, the date will clearly be later. Even in this latter case, the Group expects that the five year period within which to commence a collection action will run from the date of the filing of the drawback entry or claim. The importing community needs to understand the ground rules, and the more objective they can be the better will be the compliance efforts.

In contrast, if fraud is alleged, the Customs Service will have five years from the date of "discovery" of the fraud to initiate actions for the collection of duties, penalties or both arising out of such alleged conduct. This will mean, therefore, for the overwhelming number of importers, who act responsibly and without intent to deceive, mislead or convey a false impression to the Customs Service, their files may be closed five years from the entry of merchandise. This will provide an adequate period for the Customs Service to enforce its laws and regulations and for importers to be able measure the success of their informed compliance program. By the same token, the law will reaffirm once and for all the intent of the Congress in 1978 that there must be certainty in order to implement an effective compliance program. There has to be an end to the day. Thus, it will only be the fraudulent who must live with concern that "discovery" may be just around the corner. For responsible importers, it is a five year window: no more, no less.

SUPPORTERS OF CUSTOMS MODERNIZATION AND INFORMED COMPLIANCE LEGISLATION

818 Connecticut Avenue, N.W.
12th Floor
Washington, D.C. 20006

202/466-5490
Fax 202/872-8696

July 28, 1992

Dear Senator:

The undersigned companies, associations and professional organizations, representing a broad cross section of the international trade community, urge you to support the Customs Modernization and Informed Compliance Act of 1992 (CMA).

The bill we are asking you to support is H.R. 3935, as modified in Title II and Section 304 of Title III of H.R. 5100. The focus of this letter is customs modernization. This letter is not intended to address other provisions contained in H.R. 5100.

CMA enjoys widespread support among the business community and is supported by the U.S. Customs Service as well. It represents the final product of many hundreds of hours of negotiations between the business community, Customs, and Congress. It is a unique balance of broad, diverse, and often competing interests.

If enacted, the Customs Modernization Act will bring Customs enforcement and facilitation of trade into the 21st century by amending the Tariff Act of 1930 in several important ways. First, the legislation offers procedural changes which give the Customs Service the flexibility to adapt to a new electronic environment, while at the same time, authorizes the full implementation of a National Customs Automation Program. Second, and equally important, the legislation requires Customs to communicate changes in the rules more effectively and promotes conformity of Customs practices and enforcement.

The emphasis on full implementation of automation and "informed compliance" are central to Customs modernization. Enactment can and will have a profound and positive impact on the competitiveness of U.S. industry in the global marketplace. We appreciate your attention to our concerns and we urge you to support this critical legislation.

Sincerely,

TRANSPORTATION
Air Courier Conference of America
Air Transport Association
American Trucking Association
Federal Express
Pacific Merchant Shipping Association
Sea-Land Service, Inc.
TNT Skypak, Inc.
United Parcel Service
U.S. Transportation Coalition for an Effective U.S. Customs Service

HIGH TECHNOLOGY
American Electronics Association
Apple Computer, Inc.
Collmer Semiconductor, Inc.
Compaq Computer Corporation
Computer & Business Equipment Manufacturers Association
Data General Corporation
Electronic Industries Association
Intel Corporation
International Business Machines Corporation
JVC Company of America
Motorola
National Semiconductor
Nova Corporation
Seagate Technology, Inc.
Tektronix
The 3M Company
Xerox Corporation

RETAIL
El & El Novelty
Hills Department Stores
Pier 1 Imports
Robin International, Inc.

MANUFACTURING
American Iron and Steel Institute
BMW of North America
British Aerospace
Chemical Manufacturers Association
Deere & Company
General Motors Corporation
Hyundai Motor America
ITT Corporation
Mattel, Inc.
Mazda Motor America
Melita International Corporation
Motor Vehicle Manufacturers Association
Porsche Cars North America, Inc.
The Procter & Gamble Dest. Company
Saab Cars USA
Samsonite Corporation
Varian Associates, Inc.
Volkswagen of America

TELECOMMUNICATIONS
A T & T
Northern Telecom, Inc.

APPAREL
Liz Claiborne
Scope Imports, Inc.
Warnaco, Inc.

SERVICES
Arent, Fox, Kintner, Plotkin & Kahn
Arthur Andersen & Company
Arthur Cherry Associates
Association of American Railroads
Association of International Automobile Manufacturers, Inc.
Ater Wynne
Baker & McKenzie
Barnes, Richardson & Colburn
Broker Power, Inc.
Cassidy & Associates
Customs Science Services, Inc.
Dorsey & Whitney
Foster International, Inc.
Freeman, Wasserman & Schneider
Graham & James
Hogan & Hartson
International Business-Government Counsellors, Inc.
Katten, Muchin, Zavis & Dombroff
McDermott, Will & Emery
Mudge, Rose, Guthrie, Alexander & Ferdon
The Myers Group, Inc.
Neville, Peterson & Williams
Nickerson & Stiner
Patton Boggs & Blow
Powell, Goldstein, Frazer & Murphy
Rode & Qualey
Ross & Hardies
Serko & Simon
Thompkins & Davidson
Trainum, Snowdon, Hyland & Deane, PC
UPS Custom House Brokerage
Washington International Insurance Company
Weil, Gotshal & Manges

TRADE ORGANIZATIONS
American Association of Exporters & Importers
ForTrade International
Pagoda Trading Company
U.S. Chamber of Commerce

PREPARED STATEMENT OF JAMESON FRENCH

Thank you very much, Mr. Chairman, for the opportunity to testify today on the need for improved market access for U.S. industry through the elimination of foreign trade barriers. Such access is critical if internationally competitive U.S. industries are to fulfill their export potential, and if the United States is to continue to fulfill its role as the leading advocate of trade liberalization.

My name is Jameson French; I am President of Northland Forest Products, Inc., and am here today representing the National Forest Products Association. NFPA is the national trade association representing the majority of the nation's production and sale of solid wood building materials.

The United States commitment to trade liberalization has been critical to post-war international prosperity. The American public cannot be expected to support this policy indefinitely unless we feel that other countries, notably Japan, the EC, Korea, and others, are playing the game by the same rules and opening their markets as much as the United States has.

Our industry has greatly benefitted from trade liberalization and our government efforts to support market access. My testimony details our industry's successful Wood Products Super 301 Agreement (which was concluded in 1990), and draws conclusions from that experience. The following points need to be emphasized:

1. In the case of wood products, Super 301 legislation helped achieve the goal of free and fair trade, which means improved market access for U.S. products, because:

- Cases initiated under Super 301 procedures seem to get more attention here and abroad. Mandated initiation, and retaliation if proven trade barriers are not removed, do seem to encourage results when carefully applied.

- Under normal 301 procedures, businesses which wish to take action against trade barriers are put in the extremely difficult position of having to sue their customers. If the U.S. government takes the lead by self-initiating 301 cases, industries do not face the same risk of offending their customers.

  This was the case with the wood products Super 301. The U.S. government took the lead in the negotiations and the implementation process, and the industry has been able to forge closer ties with Japanese customers through joint promotion projects, and so forth, a satisfactory, even gratifying, result.

- Legislation would insure an annual process for evaluating U.S. trade strategy based on the National Trade Estimate of Foreign Trade Barriers. This would give affected industries an easier, more accessible, and hopefully cheaper vehicle to address barriers.

- Only trade actions with clearly established procedures and deadlines tend to get completed in a timely manner.

2. On the other hand legislation which seeks to manage levels of trade, or in other ways distorts rather than opens markets, could have a deleterious effect on trade and even invite retaliation from our trading partners. Therefore:

- Super 301 should tend to be used when other alternatives have been exhausted, for specific unfair barriers that cannot be otherwise readily resolved.

- The need for Super 301 should be diminished, and atrophy through disuse, if ever a strong and reliable GATT dispute mechanism based on concrete rules of liberalization is implemented.

- In fact, Section 301 already requires utilization of GATT dispute resolution procedures in circumstances involving exclusively GATT rights. Super 301 should be used for trade practices which cannot be resolved through the GATT.

- Trade deficit percentage triggers, specified forms of retaliation, and so forth should be avoided.

3. Therefore any Super 301 legislation should be a simple extension of the legislation contained in the 1988 Trade Act.

- In addition, extending the time period between the National Trade Estimate Report and the Super 301 initiation deadline would make the process more workable, as the one month deadline is difficult for both industry and government.

- Allowing the Senate and House Trade Committees the opportunity to submit petitions would invigorate the process, although mandating that USTR accept committee petitions could overly politicize the process.

4. This industry favors a Super 301 approach that moves U.S. trade policy in the direction of fair and free trade, aggressively eliminating unfair foreign trade practices.

- o The proper role of government is to level the playing field for U.S. companies doing business overseas, not to carve up markets, or close U.S. markets to exports from abroad. We would want any approach to be market opening, and nothing that doesn't open markets.

5. In addition, this industry supports legislation -- such as the Trade Agreement Compliance Act -- or other action that encourages effective implementation and enforcement of trade agreements. Our experience under the U.S.-Japan Wood Products Super 301 Agreement, for example, demonstrates the necessity of constant monitoring and diligent enforcement by the Administration to ensure that agreements achieve their purposes. The Administration has been very watchful in enforcing the Wood Products Agreement; it has become clear from our experience that U.S. vigilance is necessary if such important agreements are to be signed but not forgotten.

Our industry is export oriented, internationally competitive, and has worked hard to promote our products overseas. Export sales of wood products have doubled to $6.4 billion since 1986, with a trade surplus of $1.32 billion in 1991, after having been a net importer for much of the 1980's.

Our exports would be far greater, with the potential to increase by at least several billion dollars, if foreign trade barriers were eliminated. Improved market access is extremely important to our industry for it would allow our industry's inherent competitiveness to operate to reduce the U.S. trade deficit.

Governments usually engage in trade distorting practices because it appears economically advantageous for their industries to do so. Trade concessions must be won against strong resistance resulting often from pressure on a foreign government from its own domestic industry. After trade agreements are signed, and the crises atmosphere has subsided, foreign governments tend to revert to the former trade distorting practices, or avoid implementation as they move on to other important business, or stubbornly refuse to implement if they think they can get away with it.

This is why an extension of the Super 301 legislation is so important. It sends a strong signal to our trading partners that the United States will continue an aggressive drive for free and fair trade. It also provides a vehicle to address distorting trade practices.

Our industry has been deeply involved in developing the Japanese market for value added wood products for over a decade. Combined with individual company marketing programs, the U.S.

wood products promotion effort in Japan has been enormous. Industry association promotion activities, in cooperation with USDA's Foreign Agricultural Service, have included trade shows, Japanese language publications, and demonstration projects, of which the Summit House, which coincided with the MOSS negotiations, is the most famous example. We now have a another project called Super House which will set a precedent for the provisions in the 1990 Wood Products Super 301 Agreement permitting broader use of wood. Industry representative offices in Japan, seminars, trade missions, and new involvement in Japanese technical committees, round out our efforts. As a result, U.S. lumber sales to Japan, for example, rose by over 200% since 1985.

Despite our industry's efforts and its competitiveness, however, it was estimated in the latter half of the 1980's that Japanese tariff and non-tariff barriers thwarted U.S. industry promotion efforts by several billion dollars in value added products annually. The inclusion of wood products as one of four sectors in the Market-Oriented, Sector-Specific (MOSS) talks in 1985 was designed to help overcome this problem. Even though the MOSS talks did make some progress, the Government of Japan did not live up to an agreement to continue the MOSS process after the first results were in, and in spite of two years of government requests, Japan refused to agree to even technical talks on building codes and Japan Agricultural Standards issues.

Thoroughly frustrated by Japanese intransigence, the wood products industry appealed to the U.S. Government for help, which resulted in wood products being named as one of three sectors to be addressed under Super 301.

The Wood Products Super 301 Agreement goes a long way towards making up the deficiencies of the MOSS agreement. Even though the Japanese wood products market remains protected in many areas, U.S. Government negotiators did an excellent job in achieving a package of measures that will eliminate many, but not all, trade barriers. More importantly, the industry and our negotiators insisted on a process whereby both governments would stay involved beyond the signing of the Agreement to insure implementation and continued negotiations for further opening of the Japanese market.

The commitment of USTR, Commerce, and USDA to full implementation is making the Wood Products Super 301 Agreement a success. Specifically, writing the U.S. Government into the Agreement, to be involved in implementation, monitoring, and enforcement action, brings certainty to a process that is sometimes stalled by confusion or lack of will in the interagency process, or by foreign government intransigence, either of which can result in a failure to successfully implement trade agreements.

We would like to point out that continued U.S. Government involvement after the Wood Products Super 301 Agreement was signed was deemed important because of the complexity of the Wood Products Agreement, which involves standards and technical barriers to trade. The continued involvement by USDA and the DOC which have chaired and supported frequent technical meetings, and the periodic involvement of USTR to monitor progress and provide a periodic injection of political will, has assured steady progress on implementation towards the deadlines stated in the Agreement. We are not implying that there are no problems, but we do believe that we will get there as long as the political fire is kept hot. If that heat were removed we fear that we would all be grey and cold before the markets open.

An extension of the Super 301 legislation, coupled with the Trade Agreement Compliance Act, will both stimulate more aggressive trade action against unfair trade barriers as well as allow the private sector to trigger monitoring and enforcement action. These two provisions, acting in tandem, provide the necessary vehicles to take action against trade barriers which have not yielded to industry efforts and government negotiations, but remain stalled by foreign governments, or by U.S. government agencies which do not want to push foreign governments to remove unfair barriers or live up to their agreements.

The Super 301 legislation allowed our industry to gain new markets in Japan that USTR has estimated will be worth $1 billion annually in value added wood products sales by 1995. The agreement also allows the industry's inherent competitiveness to operate to reduce the U.S. trade deficit. This is what has worked for us, and I am sure other sectors need it too. And, in the case of Japan, it is clear that foreign pressure works; the Japanese government needs this leverage too.

Don Phillips of the Office of the U.S. Trade Representative, Larry Blum of USDA's Foreign Agricultural Service, and Michael Hicks of the Department of Commerce, have been very involved in every step of the negotiation and implementation process. We mention them because they deserve to be commended for their strong efforts to obtain confirmation from Japan during each step of the process that deadlines will be kept.

In addition to the above, forest industry companies asked me to mention briefly two other international issues of vital importance to our industry: the North American Free Trade Agreement; and the USDA Foreign Agricultural Service Market Promotion Program.

North American Free Trade Agreement

The U.S. forest products industry has become extremely concerned as the NAFTA negotiations move rapidly to conclusion that Mexican protectionism will prevail in our sector.

The U.S. forest products industry would very much like to support a North American Free Trade Agreement (NAFTA). The objectives of our industry are consistent with the broad objectives of a NAFTA: creating a North American market free of access barriers. Our industry has been a strong supporter of NAFTA goals, and was an active member of the coalition that worked to achieve an extension of "fast track" so a NAFTA could be negotiated. As evidence of the U.S. wood products industry's strong free trade position, the industry was a leader in the formation of the U.S. "Zero Tariff Coalition" for the Uruguay Round.

As the negotiations currently stand, however, U.S. forest products are being denied market access to Mexico. Mexico has placed forest products on its C+ tariff list (tariff phase out up to 20 years) causing serious concern in our industry. This has been further aggravated by potentially discriminatory macquiladora practices, and proposed exemptions from the rules of origin.

Current practices could allow macquiladora companies to function not only as export platforms, but as suppliers to Mexico's domestic market at a severe disadvantage to U.S. companies.

Further, Mexico has proposed that the majority of major wood building products be exempt from the rules of origin. We believe that this is an attempt to capture the Mexican domestic wood products market for Mexican producers, and is not in the spirit of a free trade agreement.

Although our industry had hoped to be able to support an agreement, we fear that events may undermine our good intentions. If current Mexican protectionism in the forest products sector is allowed to predominate in a final agreement, the U.S. wood products industry will be left with no choice but to actively oppose a NAFTA.

Long phase out for wood products tariffs combined with discriminatory treatment for macquiladoras will virtually insure that important segments of our industry will relocate south of the border, hitting the U.S. industry with serious losses of manufacturing revenues and jobs. The following solutions are easy and will bring full U.S. industry support for a NAFTA:

- o immediate tariff elimination, or speedy phaseout (quick parity with U.S. tariffs, and then phase out over a maximum of five years);

- o provisions to prevent discriminatory macquiladora practices and strong surveillance and enforcement of macquiladora operations;

- o and conformity with the general rules of origin without exception.

We have discussed with Mexican trade authorities the ramifications of losing the backing of a large and diverse industry that has worked hard for an agreement. We have encouraged them to weigh carefully the benefits of our support against the illusory benefits of protectionism for the Mexican wood products sector.

We have coordinated closely with USTR and other government agencies, and they know our objectives well. USTR has worked hard, but as negotiations are drawing to a close we are troubled by lack of progress in our sector.

The U.S. wood products industry strongly desires to support a NAFTA, which we believe will be in the best economic interest of both countries. However, without resolution of these pending market access barriers, we would seriously question the usefulness of a NAFTA for our industry.

USDA Foreign Agricultural Service Market Promotion Program

My fellow forest industry companies and our trade associations have asked me to urge you in the strongest terms to support the continuation of full funding for USDA's Market Promotion Program (MPP). They want you to know that MPP has worked and continues to work for the forest products industry.

- o MPP has helped create 68,000 direct and indirect jobs in the solid wood sector alone.

- o MPP has helped hundreds of small mills, especially in the south and northeast, stay in business.

- o The MPP program is broad based and promotes the full range of U.S. value added wood products.

- o MPP helped this industry make a major contribution to increasing U.S. exports, aiding in the correction of the U.S. trade deficit. Since 1985, wood products exports have more than doubled from $3 to $6.4 billion.

- o MPP has established the foundation for significant future export gains.

MPP is not a giveaway program: the industry devotes enormous personnel and financial resources, energy, and time to the program. MPP is also cost effective: during the program's first five years, for every $1.00 of FAS funds spent, U.S. value added exports increased by $260.

That's 260 to 1.

MPP does not benefit individual companies directly, but rather creates demand overseas through generic promotion. This indirectly helps companies, especially small ones, that would otherwise not participate in export markets. Let me give two examples of how the program has helped American businesses.

Exports of value added hardwood products increased from $462 million in 1985 to $1.2 billion in 1991. As Chairman of the American Hardwood Export Council, and president of a small family business with operations in New Hampshire and Virginia, I know from personal experience, and from my friends and competitors, that without strong and growing export markets fueled by the MPP program, hundreds of hardwood producers across the country would have gone out of business.

None of these companies received MPP funds, but we greatly benefitted from the generic marketing programs that made manufacturers and customers around the world aware of the advantages of American hardwoods. Even the smallest producers from Vermont to Georgia, many of whom do not export directly, have benefitted from the price and consumption stability that is a direct result of strong export markets stimulated by MPP.

Mr. Chairman, large forest products companies have also been positively affected by MPP programs. I want to make it clear that no MPP funds have been used for branded forest products promotion. Georgia Pacific provides a good example of a large company that dramatically changed its marketing strategy because of the effectiveness of the MPP program. Ten years ago wood exports were not a high priority for GP. Recently however, the company allocated significant resources to international markets. GP's vice president for sales and marketing said that this decision was based upon the proven effectiveness of FAS generic marketing programs. He said that industry successes with FAS programs gave GP the evidence needed to push forward on their own.

Now let me give examples of what this program has accomplished in foreign markets:

In 1987, the American Hardwood Export Council began a program in the UK featuring seminars, trade shows, a mobile exhibit, articles, specifiers guides and other promotions. Between 1986 and 1990, U.S. hardwood exports to the U.K. increased 172%, from $33 million to $90 million. These gains have been especially beneficial to small companies in the south and northeast, pulling these companies through the tough times of the recession.

Programs combating extensive trade barriers to finished wood products have helped increase exports to Japan. Lumber exports alone rose 219% from $200 million in 1985 to $637 million in 1990. Promotion activities have included demonstration projects, of which the American Plywood Association's Summit House is the most famous. APA is now cooperating technically and sponsoring the construction of Super House, a multi-story multifamily structure. These and a multitude of other industry promotions have created a positive climate for change, and supported the successful resolution of the Wood Products Super 301, which USTR estimates will yield an additional $1 billion annually in U.S. wood products exports.

MPP enjoys tremendous support within the wood products industry as demonstrated by the over two dozen associations, representing virtually the entire industry, that have signed a letter of support for MPP.

In summary the MPP program has changed traditional overseas buying habits, helped overcome foreign trade barriers, and laid the foundation for future export gains in new markets for wood frame construction. MPP has united our industry to work together in a single export program, and made it an effective international competitor, creating enthusiasm and a level of commitment not seen before.

Why has all this happened? Because the program works. MPP is cost effective. It operates through a sophisticated management and control system which includes strategic planning and evaluation.

But most important, the FAS program is a model of how the best talents of government and the private sector can work together effectively to compete in the international environment. This program should be supported, expanded, and duplicated in other areas of government, and is not deserving of the criticism and negative press that today threaten to tarnish its image and undo its effectiveness.

Mr. Chairman, that concludes my remarks. Thank you very much for the opportunity to testify on the need for improved market access which has been, and will increasingly be, so important to our industry.

PREPARED STATEMENT OF R. MICHAEL GADBAW

Mr. Chairman, members of the Committee, I am Michael Gadbaw, Vice President and Senior Counsel for International Law and Policy at General Electric. I appear today on behalf of the National Association of Manufacturers. Let me say at the outset that both NAM and General Electric believe that these are important hearings. We commend you for holding them, and we are grateful for the opportunity to explain our views on some of the issues before this Committee.

It would be hard to overstate the importance of international trade and trading relationships to American manufacturers. The lion's share of traded goods are manufactured products. In 1991, manufactured goods accounted for 82% of U.S. exports and 81% of U.S. imports. It was a good year for American exports. The country shipped abroad $422 billion in American products. We still have a long way to go to eliminate the chronic U.S. trade deficit of the 1980s, but we are on the right path. An even more important consideration is that trade is no longer a drag on the economy but a source of growth. More than 40% of all real U.S. growth since 1987—and all the real growth over the past two years—can be attributed to U.S. exports. Nor can we ignore the employment consideration: if, as the Commerce Department has calculated, every billion dollars of exports generates roughly 24,000 American jobs, then well over 10 million American workers owe their earnings to international trade. The final general observation I would make is that when we talk about trade we are talking about a vast web of relationships among firms as well as among countries. This is true for American manufacturers as a whole, it is certainly true for General Electric.

General Electric has an increasingly vital stake in the growth of international markets and the openness of our international trade and investment relationships. In 1991, GE's revenues from international activities grew by 12% to $16 billion or 35% of total revenues. Our most important global markets are in Europe and Japan. In 1990, GE sold more to Japan than it purchased, with a net favorable trade balance of $1.4 billion.

COMMENTS ON H.R. 5100

Whatever this Committee decides to do on trade in the remaining days of this session, it is appropriate to look to what has been done in the House of Representatives. On July 8th the House approved by a vote of 280 to 145 legislation which is now before this Committee, "The Trade Expansion Act of 1992" (H.R. 5100). Prior to the vote, the National Association of Manufacturers sent to the House of Representatives a statement of its views on this legislation. In doing so, we said that there is no bad time for good ideas and that there are some good ideas in H.R. 5100. In one sense, H.R. 5100 is praiseworthy even for items we have not praised.

My point, Mr. Chairman, is that legislation serves many purposes. The NAM understands this. Legislative proposals are sometimes the mechanism for beginning debate on important subjects. It has been effectively used to convey ideas to America's trading partners together with a sense of the degree of importance the Congress attaches to them. Bills can also be a means for signaling congressional concerns to members of the Executive Branch.

For the most part, NAM's comments do not address these purposes of legislation. They relate solely to the question: Would we wish to see a particular provision become law?

NAM-SUPPORTED PROVISIONS

There are several elements of the Trade Expansion Act that we believe should be enacted as soon as possible. Among these are:

Trade Agreements Compliance. (Section 102 of H.R. 5100, previously considered as S. 388 and H.R. 1115.) NAM strongly supports this provision and we commend especially Senator Baucus for his insight and tenacity on behalf of this proposed amendment to U.S. trade law. As you know, it provides for a U.S. government review of foreign compliance with all but certain exempted trade agreements.

As we explained in testimony on this legislation last July, if U.S. manufacturers are to bear the burden of proof with respect to foreign barriers to American competitiveness, they are entitled to some assurance that agreements to reduce those barriers will be respected. They deserve to have written into law a clear petition process that guarantees that evidence of trade agreement violations will be reviewed and acted upon. The "Trade Agreements Compliance Act" gives American business that kind of process, and it does so in a way that is fully consistent with U.S. obligations under the General Agreement on Tariffs and Trade.

Customs Modernization. NAM supports the "Customs Modernization and Informed Compliance Act" (Tide II of H.R. 5100).

For some time, NAM has advocated legislation to modernize U.S. customs laws, and we have urged that this job be completed in the current 102nd Congress. Title II of H.R. 5100 meets NAM's goals for such legislation in the critical areas of automation and informed compliance and should be enacted.

Review of Foreign Trade Zone Operations in the Automotive Sector. NAM supports the proposal for a new report on these operations. The use of foreign trade zones by motor vehicle producers in the United States is now a significant facet of that very large industry. The requirement of the "Trade Expansion Act" (Section 112) that the Foreign Trade one Board undertake a new review of these operations in light of the standards of the Foreign Trade one Act is appropriate.

SUPER 301 EXTENSION

The proposal to authorize at this time a 5-year extension of the Super 301 authority of the 1988 Trade Act is, in some respects, the single most important provision of this bill. Our guess is that this provision, while controversial, nevertheless enjoys strong support in the Congress. Yet its inclusion in 1992 trade legislation would, we believe, be a mistake. The issue for us is not policy. Where there are market access problems, they can and should be addressed under the existing provisions of Section 301. The issues for us are attitude and timing. In its report on H.R. 5100, the Committee on Ways and Means offered the following observation:

> The Committee recognizes that some believe that the Congress should not be pursuing a trade bill at this time. They would prefer to have us wait until the Uruguay Round and a North American Free Trade Agreement are successfully negotiated. The Committee believes, however, that we cannot afford to wait for either of those negotiations to conclude. Deadline after deadline has passed in the Uruguay Round and the end is still not in sight.

To the contrary, we strongly expect to see the NAFTA negotiations effectively concluded very soon. (If that happens, Mr. Chairman, and, if as we hope, it is a good agreement, a great deal of the credit will belong to you. Without your steadfast support for the fast-track process and for the idea of a North American Free Trade Agreement, this would not be possible.)

We also believe that a conclusion to the Uruguay Round can be achieved by June of 1993. That is the truly meaningful deadline for the Uruguay Round. It is the deadline that the Congress itself established in the 1988 Trade Act.

Our concern is that rather than spur our trading partners to finish these important negotiations. extension of Super 301 at this time would have the opposite effect. It could goad them into scuffling the negotiations and placing the blame for the failure not on European intransigence, but on the Congress of the United States. Since 1988, Super 301 has become a symbol of abroad "heavy-handed American unilateralism." However unjustified this view may be, it is not limited to those countries that have been the targets of Super 301 investigations. Rather it is the strongly, often passionately, held view of all of America's trading partners.

Looking back, NAM did not offer a view on Super 301 prior to its inclusion in the 1988 Trade Act. Subsequently, however, we did testify before members of this Committee to the effect that Super 301 had been useful and had achieved constructive results.

It was also wisely limited in duration. Now we must consider the differences between the time in which it was originally enacted and today, when the question is on its renewal. Much of-the debate that led to the 1988 Act occurred in 1987. That was the year in which the United States ran its highest trade deficit ever ($152 billion). We were in deficit then with virtually every major trading partner: Japan—$56 billion; European Community—$21 billion; Canada—$11 billion; and Mexico—$6 billion. The situation today is dramatically different. The overall deficit has been cut to $66 billion, and while the large deficit with Japan is still a cause for concern, we enjoy strong surpluses with the European Community, nearly $20 billion, and Mexico, over $6 billion (projected 1992 surpluses). In such an environment, our trading partners will expect us to place a higher value on the markets we currently enjoy. More specifically, they are likely to be far less tolerant of Congressionally mandated 301 actions, with potentially harmful consequences for American exports.

MANDATED ADMINISTRATION ACTIONS

H.R. 5100 requires the Administration to engage in various negotiations on rice, automobiles, and other goods. In general, it is the view of the NAM that this is an area in which the Committee and the Congress should proceed with extreme cau-

tion. It is our understanding, for example, that in drafting the 1988 Trade Act consideration was given to statutorily enhancing the roles of the Finance Committee and Ways and Means Committee in 301 cases. If memory serves us correctly, there was an effort to amend Section 301 so as to enable these committees to make specific recommendations regarding cases that should be pursued. In the end, that idea was dropped; we think correctly.

American business has been well-served by the seriousness with which the Congress has pursued its responsibility to regulate international trade. We do not believe that American economic interests will be served by having Congress specifically recommend and/or prioritize trade investigations or negotiations. Accordingly, we would urge you to reject those elements of H.R. 5100 that make these kinds of decisions.

Two such requirements deserve special mention:

- The proposed 301 case (Section 111 of H.R. 5100) to open the Japanese market for motor vehicles and motor vehicle parts, and
- The proposed voluntary restraint agreement with Japan to limit the number of Japanese automobiles that may be exported to the United States (Mr. Gephardt's amendment to H.R. 5100).

NAM agrees that Japan's large bilateral trade surplus must be reduced. We agree that the arrangement between the EC and Japan is disturbing and should be watched closely. Further we support the efforts by the American Big Three automobile companies, traditional U.S. parts suppliers and the Administration to increase American access to the Japanese market for automobiles and automotive parts. We do not support the mandated 301 investigation or the required Voluntary Restraint Agreement negotiations for the reasons stated above.

National Treatment for Investors. In addition, NAM is concerned that the distinctions that the Gephardt amendment create between Big Three producers and Japanese transplants would violate the principle of national treatment for investors. If this kind of legislation were adopted by others, it could seriously hinder U.S. interests abroad.

CONCLUSION

Mr. Chairman, there are a number of other provisions in H.R. 5100 which affect the interests of American manufacturers. Some of these we take no position on. I shall not comment on the changes to the antidumping and countervailing duty laws. These amendments are important to virtually every manufacturer, but to date NAM has not forged a coherent, constructive consensus on these issues. There are other issues that concern us, however, the issues discussed above are, for us, the most critical.

As we said at the outset, there is no bad time for good ideas. I would note though, that important new undertakings affecting U.S. trade and competitiveness are being pursued at this time in three critical areas:

- the negotiations to create a new North American Free Trade Agreement and, indeed, a new North American market;
- the negotiations in the Uruguay Round to refurbish and reform the world trade rules generally; and
- the Freedom Support Act, now pending before the Congress, which, if properly drafted, could greatly strengthen the U.S. commercial effort in the CIS republics.

Each of these efforts is keyed to Congressional actions, both completed and pending, and success in each is essential to the long term international competitiveness of American firms.

Mr. Chairman, NAM and American industry generally are indebted to this Committee and Congress for the leadership you have shown over the last, very difficult decade. Today our plea is not so much that the Congress act forcefully but that it act deftly. There are ideas that should become law as soon as possible. Yet if their enactment is possible only in conjunction with poorly timed, high risk provisions, it should be postponed. Thank you.

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

Mr. Chairman, I will make my remarks brief. I am pleased with the efforts that the U.S. Customs Service has made recently in addressing the issue of modernizing its operations and simplifying its procedures. I am particularly impressed with the plans Customs has to operate in an electronic environment. In light of the techno-

logical advances in our society today, I believe that Customs and all U.S. importers will greatly benefit from a highly automated system. For example, the automation conversion proposed by Customs will reduce its administrative costs as well as increase the price competitiveness of American products in domestic and export markets.

However, more important I believe are the provisions relating to informed compliance. I have always been concerned with the way in which Customs determines fraud and gross negligence in its user community, and I have raised these concerns more directly with Commissioner Hallett before this committee on a previous occasion. I am confident that the informed compliance provisions in this legislation lay the groundwork for improving the way in which Customs deals with fraud and gross negligence.

By providing protections for importers through reforming Customs' seizure authority, establishing a new statute of limitations on duty violations, providing procedural safeguards for regulatory audits, allowing judicial review of detentions, and authorizing payment for damaged goods in noncommercial shipments, the U.S. Customs Service is providing for a broader dissemination of the rules and regulations for importing which I believe will lead to improved compliance with our customs laws.

Mr. Chairman, I support the Customs Modernization Act and strongly encourage this committee not to allow the passage of this important legislative measure to get bogged down by maintaining its attachment to undesirable trade vehicles such as the one that our colleagues in the House of Representatives passed recently.

PREPARED STATEMENT OF WALTER HUIZENGA

This statement, submitted on behalf of the American International Automobile Dealers Association (AIADA) by Walter E. Huizenga, AIADA President, analyzes and comments on trade legislation now pending before the Committee on Finance of the United States Senate. AIADA represents the 10,500 American small businesses and their 320,000 employees that sell international automobiles.

On July 8, the House of Representatives passed the "Trade Expansion Act of 1992" (H.R. 5100), which includes several automobile-related provisions. The bill would require negotiated quotas for Japanese motor vehicle exports to the U.S. and a domestic parts content requirement for Japanese-owned U.S. automobile manufacturers, which would be enforceable by retaliation.

The House will soon vote on the Miscellaneous Tariff Bill (H.R. 4318) which includes a provision to raise the tariff on imported minivans and four-door sport-utility vehicles from 2.5 percent to 25 percent. The "Job Fairness and Trade Equity Act of 1991" (S. 1646), introduced by Senator D'Amato (R-NY), includes a similar 25 percent tariff increase on these multipurpose passenger vehicles (MPVs).

H.R. 5100, which proposes to expand trade, would instead produce significant adverse effects on the U.S. economy and cost U.S. manufacturing, dealership and parts supplier jobs in the international automobile industry. American consumers would be adversely affected by this legislation in the form of higher automobile prices and a reduction of choice and quality in the marketplace. This legislation would threaten future and existing job-creating foreign investment in the U.S., threaten U.S. manufacturers' investments overseas and threaten U.S. exports. Finally, this legislation would harm the intended beneficiaries of the quotas, the Big Three U.S. automakers, by shielding them from competitive pressures.

The 25 percent tariff increase on MPVs in S. 1646 and H.R. 4318 would significantly harm the American small businesses that sell these imported vehicles and would force employee layoffs at those dealerships. American consumers would pay thousands of dollars in higher prices for both imported and domestic MPVs. Consumer choice and quality would suffer as competition in the marketplace is reduced. Finally, the tariff increase would violate U.S. obligations to the General Agreement on Tariffs and Trade (GATT), resulting in forced compensation of our trading partners or retaliation against U.S. exports.

For these reasons, as discussed below, AIADA respectfully urges the Senate Finance Committee to reject H.R. 5100 and S. 1646/H.R. 4318.

I. AUTOMOBILE QUOTAS

A. History Of U.S. Automobile Exports

Proponents of stricter limits on Japanese automobile exports to the U.S. often compare the level of those exports with the level of U.S. exports to Japan. However, the Big Three automakers have never built automobiles in the U.S. for export in

significant numbers to overseas country. The Big Three have chosen, instead, to build vehicles in the foreign market. In 1986, the General Motors and Ford together exported just 46,000; Chrysler exported virtually none. (source: Wall Street Journal, November 8, 1991) For 1991, that figure is expected to climb to approximately 250,000, according to the Department of Commerce.

Taking these export figures into account, Japan is a relatively open market for U.S. automobile exports. In fact, Department of Commerce figures show that Japan is the number two market in dollar figures for U.S. automobile exports. The top five are Canada, Japan, Taiwan, Germany and Saudi Arabia. In terms of volume, Japan is number four behind Canada, Taiwan and Saudi Arabia. (source: Motor Vehicle Manufacturers Association) Moreover, exports to Japan from England and Germany are very much in line with their exports to the United States.

B. Impact Of H.R. 5100

H.R. 5100 would require a dramatic reduction in Japanese motor vehicle exports to the U.S. Earlier this year, the Japanese Government agreed to reduce the Voluntary Restraint Agreement (VRA) on cars to 1.65 million units, cutting 80,000 units from 1991 recessionary levels. H.R. 5100 would require an even further reduction. The bill would require the U.S. Trade Representative to negotiate a quota on motor vehicles, including trucks, for as long as the agreement between the European Community (E.C.) and Japan on motor vehicles is in effect. This would be a reduction of approximately 425,000 units, or 20 percent, below 1991 recessionary levels and would remain in effect at least until 1999.

The impact of the quotas for many dealers would be a severe restriction in the supply of imported vehicles. Japanese manufacturers may be forced to eliminate certain models to meet the strict limitations on volume. Many dealers and their employees—already hard-pressed by the recession—may not be able to survive a dramatic drop in sales volume or elimination of models. This would result in a loss of American jobs. In fact, many dealers of the Big Three automakers may not be able to survive without the sales and profits of their captive imports.

C. The Cost Of Quotas

The U.S. experience with the 11 year old VRA is clear. During the 1980s, the quotas, in combination with changes in the yen-dollar exchange rate, forced Japanese automobile manufacturers to raise prices on their vehicles. Instead of seizing the opportunity to increase marketshare, the Big Three automakers raised prices and gained record profits. In 1984, Big Three profits hit a record high of $9.8 billion. In 1987, their profits totaled $9.5 billion. Consumers paid for these prices increases with their pocketbooks.

A Brookings Institution study estimated the consumer cost of the VRA at more than $12 billion for the first four years, assuming it added more than $1,000 to the cost of any imported car and $750 to the cost of a domestic vehicle. A study done for the International Monetary Fund credited the VRA with a $1,700 per unit price increase in Japanese cars and an increase of $1,185 per unit in domestic vehicles. Some economists argue that the 1980s VRAs did not increase U.S. vehicle production and employment because U.S. vehicle prices were so substantially increased relative to price levels before the VRAs. American consumers were simply forced out of the market by "sticker-shock."

In reality, the automobile quotas to be negotiated under H.R. 5100 would be an enormous tax on American consumers, which could total in the tens of billions of dollars.

II. DOMESTIC PARTS CONTENT REQUIREMENT

A. Discrimination Against American Workers

H.R. 5100 would discriminate against Americans working in Japanese-owned automobile and automobile parts factories in the U.S. The bill would require each Japanese-owned automobile manufacturer in the U.S. to meet a 70 percent parts content level or face retaliation under Section 301 on their imports of motor vehicles or motor vehicle parts.

However, only parts manufactured by "United States manufacturers" would count towards meeting the domestic parts content requirement. H.R. 5100 defines "United States manufacturer" as "other than those that are Japanese owned or controlled." In effect, the work of 32,000 Americans employed in Japanese-owned factories in the U.S. and the parts they make in-house would be considered "un-American." And the work of many more thousands of employees at U.S. auto parts factories with Japanese equity would be considered "un-American." This would be discriminatory, unfair and divisive, pitting the job of one American worker against another.

It is also worth noting that none of the labor of these Americans working at factories with Japanese equity would count toward the 70 percent content requirement of H.R. 5100, unlike the content formulas used for corporate average fuel economy (CAFE) purposes or the U.S.-Canada Free Trade Agreement (CFTA).

Moreover, the current domestic content requirements for CAFE and the CFTA, and almost certainly for the North American Free Trade Agreement, are lower than the 70 percent parts content requirement of H.R. 5100. These formulas also include parts made in-house, American labor and costs of production. This legislation would have the perverse effect of moving American manufacturing jobs to Canada or Mexico, where the content requirement is lower.

B. Retaliation Would Harm Dealers

In January 1992, Japanese automakers announced voluntary goals for their U.S. subsidiaries to increase their U.S. procurement from about $9 billion in FY 1990 to about $19 billion in 1994. H.R. 5100 transforms this voluntary undertaking by Japanese automakers to increase local procurement to about 70 percent of total U.S. parts and material purchases into a *mandatory* requirement for each Japanese-owned U.S. manufacturer to meet a 70 percent U.S. *parts* content requirement—enforceable by retaliation.

The parts content requirement, as stated above, would exclude parts made in-house and those made at U.S. parts factories with Japanese ownership or control. By excluding these parts, the bill will establish an unattainable requirement Japanese-owned automobile factories and subject them to retaliation, threatening the 32,000 jobs at those factories. The bill requires automatic retaliation against the parent Japanese company of each U.S. automobile subsidiary that fails to meet the content requirement, through prohibitive tariffs on imports of parts or motor vehicles. In either case, the significant investments of dealers of Japanese nameplate automobiles would be threatened if imported or U.S.-made automobiles are not available for sale.

C. Disincentive For Foreign Investment In The U.S.

H.R. 5100 would establish the practice of discriminating against certain investment on the basis of its nationality. It focuses on the source of the investment rather than on its contribution to the U.S. economy and jobs. This practice would clearly inhibit future job-creating foreign investment in the U.S., an important element in the health of the U.S. economy.

H.R. 5100 is blatantly unfair to the Japanese-owned U.S. manufacturers who have invested billions of dollars in the U.S. and created 32,000 American jobs, only to have this investment and these jobs treated in the same discriminatory manner as Japanese exports. What is the incentive for any foreign manufacturer to invest in the U.S. if this legislation is enacted?

D. U.S. Exports And Investment Abroad Would Be Threatened

Discrimination against automobile manufacturers on the basis of foreign ownership runs directly contrary to the principle of "national treatment," a principle that the U.S. has championed for American investment all over the world. This principle ensures that all companies, regardless of ownership, will be treated the same in a domestic market. H.R. 5100 would destroy U.S. efforts to protect U.S. exports and investment abroad from similar discriminatory practices.

Furthermore, H.R. 5100 would establish a precedent by which the actions of a domestic subsidiary automatically trigger retaliation against its foreign parent company. This precedent could be used by other countries to force U.S. overseas subsidiaries to increase local procurement under the threat of retaliation against the parent U.S. company.

As the world's largest overseas investor and exporter, the U.S. much more to lose from this treatment than it could gain. To protect investments abroad as well as stimulate the U.S. economy and create jobs, the U.S. must maintain an open door, non-discriminatory policy toward foreign investment.

III. 25 PERCENT TARIFF ON MPVS

In 1963, President Johnson imposed, by executive order, a 25 percent tariff on imported trucks in retaliation for West German tariffs on U.S. poultry products. At the time, there was no other manufacturer other than Germany's Volkswagen with significant sales of small trucks in the U.S. After 1963, these vehicles were effectively eliminated from the U.S. market.

Under headings 8703 and 8704 of the Harmonized Tariff Schedule, the U.S.—as well as most other countries—distinguishes between "motor cars and other motor vehicles principally designed for the transport of persons (other than those of head-

ing 8702), including station wagons and racing cars" [Emphasis added] (i.e., passenger vehicles) and "motor vehicles for the transport of goods" (i.e., trucks).

In 1989, the Treasury Department issued the ruling that currently determines the classification of MPVs. (The Treasury ruling followed a Customs Service press release indicating that Customs intended to classify all minivans and sport-utility vehicles as trucks.) Currently, two-door sport-utility vehicles are classified as trucks, subject to the 25 percent duty, while minivans and four-door sport-utility vehicles are classified as passenger vehicles, subject to the 2.5 percent duty.

S. 1646 and H.R. 4318 would apply the 25 percent truck duty to imported minivans and four-door sport-utility vehicles.

A. 1,000 Percent Tax Increase On Middle Class American Consumers

There appears to be tremendous interest in Congress in improving fairness in the federal tax system by reducing the tax burden on middle class Americans. However, this tariff increase would be, in effect, a 1,000 percent tax increase on the middle class consumers who purchase these vehicles—the 1990's version of the station wagon. This enormous increase would allow domestic companies to raise prices. Americans would then pay more for imported (if they are not eliminated from the U.S. market) and domestic MPVs as a result. The consumer group, Citizens for a Sound Economy estimates that the average prices of MPVs could increase by up to $3,700 for imports and $1,300 for domestic models if the 25 percent tariff is imposed.

B. Harm To Thousands Of American Dealerships And Their Employees

The enormous price increases that would result from the duty increase would severely restrict, if not totally eliminate, these MPVs from the U.S. market. The thousands of small businesses that sell these imported vehicles would suffer greatly, due to the fact that this is an important market segment for dealers that continues to grow. In addition to the threat to investments of thousands of small business automobile dealers, dealers would be forced to lay off employees if these vehicles are eliminated from the market.

C. Protection Of Big Three Marketshare Unwarranted

There is no basis for protecting either minivan or sport-utility vehicle marketshare for the Big Three U.S. automakers. In the first six months of calendar year 1992, the Big Three held a combined minivan marketshare of 92 percent and a combined sport-utility vehicle marketshare of 83 percent. And during this period, the marketshare of the Big Three has increased significantly versus their import competition. This tariff increase will provide unwarranted protection for the Big Three automakers, guaranteeing them a monopoly marketshare in the MPV market.

Furthermore, many of the competing Big Three MPVs are built in Canada. For example, in the first six months of calendar year 1992, Chrysler produced 164,000 minivans in Canada versus 200,000 minivans in the U.S. The net effect of this legislation would be to jeopardize American jobs and force American consumers to pay higher prices to protect Canadian jobs.

D. Uruguay Round Will Be Undermined By This Flagrant Violation Of GATT

This unilateral tariff increase would be a flagrant violation of the GATT and undermine U.S. efforts to reach a successful conclusion of the Uruguay Round.

The tariff increase would violate the GATT in two ways. First, the 2.5 percent duty applied to passenger vehicles is a "bound" rate under the GATT. In fact, the European Community stated in that same letter that enactment of this provision would constitute "an outright violation of the United States' obligations under Article R of the GATT . . . " Under GATT rules, the U.S. would be obliged to offer compensation to the adversely affected parties or face the prospect of retaliation.

The House Ways and Means Committee Report on H.R. 4318 states that the Office of Management and Budget estimates that compensation in the range of $500 million could be owed by the U.S. Ironically, Japan, the primary target of S. 1646 and the sole target of H.R. 4318, is currently the largest importer of U.S. poultry products in the world.

Second, and even more ironic, products of the only two European manufacturers (including Volkswagen, the original target of the tariff) have been exempted from the tariff increase. All current and future models from Japan and future models from all other countries including the U.K. and Germany would be subject to the tariff. This exemption, clearly intended to protect Big Three auto exports to the E. C. from E. C. retaliation, would be a blatant violation of the "most-favored-nation" principle, under which GATT signatories must treat all other signatories equally.

The European Community has strenuously objected to this tariff increase on their vehicle exports to the U.S. In a letter to Senator Baucus (D-MT), E.C. Ambassador van Agt stated:

> "Looking at the wider aspects of the reclassification proposal for the multilateral trade negotiations in the Uruguay Round, your trading partners are bound to ask themselves what is the purpose of spending years of effort in trying to reach agreement on a package of tariff cuts if one partner reserves the right to unilaterally raise the tariff on certain imports whenever it deems appropriate. If other countries followed this lead the multilateral trading system would quickly unravel." (February 27, 1992, letter to Senator Baucus)

E. Regulatory Consistency Argument Baseless

Classification of these imported sport-utility vehicles and minivans for tariff purposes is based on vehicle design and intended use, and has nothing to do with other regulations for safety, fuel economy, emissions or tax purposes. The inconsistencies in the definitions of car and truck for various regulations are a reflection of the fact that these regulations have different purposes.

For example, while the propohents of this legislation claim that these import vehicles should be treated as trucks for tariff purposes because they are trucks for safety purposes, they ignore the fact that these MPVs will be required to meet basic National Highway Traffic Safety Administration (NHTSA) passenger car safety standards beginning in 1993. This is a recognition by NHTSA that these vehicles are primarily designed and used for transporting people. Even Congress recognized this fact when it passed stricter vehicle safety standards as part of the 1991 highway bill.

Furthermore, the Big Three's argument for regulatory consistency is total undermined by the exemption for European manufacturers in H.R. 4318. Under that bill, only Japanese minivans and sport-utility vehicles would be "consistent." This exemption reveals the true nature of the Big Three's legislative objective: blatant protectionism aimed at eliminating Japanese competition in the growing and profitable minivan and sport-utility vehicle market.

F. U.S. Currently Violating International Customs Ruling

This legislation, if enacted, would cause friction between the U.S. and its trading partners in the context of U.S. membership in the Customs Cooperation Council (C.C.C.). At present the U.S. is under criticism for maintaining its current position classifying two-door sport-utility vehicles as trucks. The C.C.C. has ruled that the U.S. position is incorrect, but the U.S. has taken no action to come into conformity with that ruling.

However, the U.S. Government strongly opposes classifying four-door sport-utility vehicles and minivans as trucks. In testimony before the House Energy and Commerce Committee, Commerce Subcommittee, on April 8, Department of Commerce Under Secretary Farren stated that reclassifying these vehicles "could place the U.S. tariff classification at significant variance with that employed by all other countries . . and could significantly diminish our ability to influence the proper classification of products by other countries."

G. Revenue Loss

The revenue analysis for 25 percent tariff increase on MPVs included H.R. 4318, as prepared by the Congressional Budget Office, was overly simplistic and inaccurate. The estimate of a $215 million annual revenue gain does not adequately examine the severe reduction in demand for these vehicles that will result from a *1,000* percent increase in the duty. Nor does the analysis fully take into account the revenue impact of eliminating or severely reducing sales of these vehicles at the thousands of dealerships that currently sell them or the revenue impact of employee layoffs.

IV. CONCLUSION

H.R. 5100 would be damaging to the U.S. economy and cost U.S. manufacturing, parts supplier and dealership jobs. It would also threaten foreign investment in the U.S., U.S. investment abroad and U.S. exports. American consumers would pay thousands more in higher automobile prices. In the end, the Big Three automakers would harmed, because they would be shielded from competitive pressures.

S. 1646/H.R. 4318 would also cost American dealership jobs and force American consumers to pay thousands of dollars in higher MPV prices. Consumer choice and competition would be reduced as vehicles are eliminated from the U.S. market. Fi-

nally, this tariff increase would violate GATT, resulting in forced compensation of our trading partners or retaliation against U.S. exports.

For these reasons, as discussed above, AIADA urges the Senate Finance Committee to reject H.R. 5100 and S. 1646/H. R.4318.

PREPARED STATEMENT OF LEE KADRICH

Mr. Chairman and Members of the Committee: APAA is pleased to discuss how we might shape trade legislation that provides the policy tools needed to build trade opportunities for worldclass parts makers and their workers into the next century.

The continued strength of the American-owned parts industry hinges on the dismantling of Japan's anticompetitive auto maker/supplier families, or keiretsus, that generally exclude outside competition. These OEM/supplier families form the core of huge industrial/financial combines, interwoven with cross-shareholding and interlocking directors, that resemble 19th century American trusts. With a car maker at the top, each keiretsu includes the family suppliers and everything it needs to be self-sufficient, from the family bank's ready capital to all capital goods needs.

Robert Kearns' book, *Zaibatsu America* includes this observation:

> . . . you have to remember an American firm is not competing against a Japanese company as an individual but against a company as a member of a group.

Notwithstanding these odds, U.S. parts firms still have a demonstrated 18 percent cost advantage over Japanese competitors. Yet, USTR reported in 1989, as "nonfamily" suppliers, "U.S. parts makers are precluded from both the original equipment and replacement (aftermarket) auto parts markets for Japanese vehicles." Failure to end Japan's unfair trade practices could destroy 50 percent of U.S. industry's 600,000 jobs by the year 2000.

The replication of these exclusionary, keiretsu-like practices in the U.S. by Japanese transplant car assemblers and more than 400 related Japanese suppliers (to date) are displacing American nameplate vehicle sales, dislocating original equipment (OE) parts sales, and diminishing markets for U.S. replacement, or aftermarket, parts makers. Both transplant car makers and parts makers rely heavily on Japanese value-added. The bilateral parts trade deficit exploded from $1 billion in 1980 to $10 billion in 1990. Given current Japanese sourcing practices, the University of Michigan in 1991 forecast a doubling of the deficit to $22 billion by 1994, as transplant assembly output grows.

Mr. Chairman, our response to unfair Japanese practices tends to be passive while our trading partners policies are aggressive. The European Community (EC) limits on Japanese nameplate sales is a case in point. Last year, the EC negotiated an understanding with the Government of Japan that freezes Japanese imports into the EC at the 1990 level of 1.23 million units until 1999. In addition, it is our understanding that Japan and the EC have a "gentleman's agreement" limiting the sales by Japanese transplant assemblers in the EC to 1.2 million units per year.

The combined effort is to limit Japanese vehicle imports and transplant sales to a 16% share of the EC market, compared to 11% in 1990. The EC's decision to protect its native auto industry from the Japanese encroachment is likely to divert even more Japanese cars and parts to the U.S., thereby accelerating the erosion of our market where Japanese nameplate sales already exceed 30% market share.

As for the effectiveness of America's response to Japan's targeted displacement of America's vehicle and supplier industries, some 90 House Members put it best in their July 17, 1991 letter to the President:

> All of the U.S. initiatives to open the Japanese automotive sector over the past ten years, including the MOSS and SII talks, have been frustrated by this bedrock reality of systematic exclusion of outsiders.

The Members also explained that "The essence of the auto parts problem is that the large Japanese manufacturers discriminate against U.S. parts makers and in favor of traditional Japanese suppliers, many of which are affiliated to their own keiretsu."

APAA AND THE INDUSTRY WE SERVE

APAA members make and sell the entire spectrum of automotive parts, accessories, tools, equipment, chemicals and supplies. APAA's 800 U.S.-based manufacturing members represent a very significant share of the universe of firms cited by USDOC as being engaged primarily or solely in automotive parts and accessories production for both OE and aftermarket consumption.

Thus, when I speak of APAA as industry's representative, the term refers to this vast number of firms. It does not imply that APAA speaks for every firm in the industry universe nor that APAA is the only group representing the large, diverse U.S. parts industry.

My statement will address APAA's policy objectives and support for a results-oriented trade policy. I also will discuss our industry's competitiveness, Japan's dismal market opening track record, the continued threat to American suppliers' sales, jobs and profits, and negative impact on aftermarket sellers and American consumers. Finally, I will state the case for fundamental change in our trade policy and offer APAA's recommendations for stronger future parts trade policy.

APAA'S POLICY PRESCRIPTION

Mr. Chairman, APAA has never desired closed U.S. markets. Rather, we have argued since 1980 that the answer to our problems rests in opening Japanese parts procurement and distribution systems to accord American firms and workers the same fair commercial consideration Japanese firms receive here.

A similar theme was struck by APAC's interim report in terms of APAC's "overriding goal—to attain the same free and fair access to Japanese auto parts markets that Japanese suppliers enjoy in the United States market."

APAA and other representatives of industry labor and management are working closely with government through the Auto Parts Advisory Committee (APAC), created by the 1988 trade act to advise the Commerce Secretary on programs to increase sales of U.S. made auto parts and accessories to Japanese OEMs worldwide. APAA fully supports APAC's policy recommendations, especially those asking the Administration to begin preparation of self-initiated actions under our Section 301 and antidumping trade remedy laws.

Concerning its Section 301 recommendation, APAC based its recommendation on "the failure of the Japanese Government to enforce actions to open its markets, to stop anticompetitive actions in auto parts trade, and to promptly comply with its commitments under the Structural Impediments Initiative (SII) and the Market-Oriented Sector Specific (MOSS) agreements which affect auto parts trade." (Emphasis added) In calling for the preparation of a self-initiated antidumping action, APAC said that *"Based upon information available to APAC members and price surveys, we believe that Japanese dumping of auto parts is rampant."* (Emphasis added) It is essential that we topple these twin pillars of discrimination and predation that support keiretsu. The President's Export Council and more than 90 Members of Congress have urged the President to heed the recommendations.

INDUSTRY COMPETITIVENESS

American parts makers consistently produced global parts trade surpluses right up until 1982, when the widening U.S.-Japan parts trade imbalance plunged our industry into a succession of trade deficits that continue today. In 1991, the U.S. had a $9.2 billion parts trade deficit with Japan, and discriminatory Japanese sourcing practices deprived the U.S. of what otherwise would have been a $3.7 billion global parts trade surplus.

A new study published by the Canadian research group of Fuss, Murphy and Waverman underscores our firms' competitiveness. APAC Chairman J.P. Reilly testified recently before the House Trade Subcommittee that the study examined factors affecting productivity in the Japanese and U.S. automotive markets. According to Mr. Reilly:

> Their data shows that at 1988 capacity utilization and exchange rates *U.S. parts are 18% lower in cost than parts produced in Japan. With this type of advantage, we would expect a surplus, not a deficit, with Japan.*
>
> *The conclusion is clear: The American automotive parts industry is cost and quality competitive with anyone on a global basis.* (Emphasis added.)

According to the Economic Strategy Institute's report, The Future of The Auto Industry, "the U.S. parts and components industry is by a wide margin the low-cost producer." ESI estimated that the current U.S. parts and materials advantage per small car assembled is $3,389 versus $4,124 in Japanese-brand parts needed.

Concerning keiretsu discrimination that precludes and excludes our firms from cracking Japanese auto parts markets in the U.S. and Japan, University of Michigan expert Dr. Sean McAlinden put it best in his March testimony before the House Trade Subcommittee.

In addition to citing new studies indicating a "25–30% cost advantage for U.S. parts producers compared to Japanese firms operating in Japan," Dr. McAlinden concluded:

Japanese vehicle producers have claimed that traditional U.S. parts firms cannot yet provide "sufficient quality or cost" to merit sourcing contracts in large volumes to the Japanese vehicle markets in the United States or Japan. The statements on cost differences are now known to be certainly false. The statements regarding comparative quality are made despite the incontrovertible fact that not one scrap of public evidence exists to support this position. In fact, the Japanese vehicle producers have barely tested the capabilities of our domestic parts industry since they have sourced to less than 300 traditional U.S. parts makers out of a total of 4,000. Our parts producers are clearly victims of severe economic discrimination, in violation of most of our country's most basis laws regulating competition. Why does the U.S. government not act?

JAPAN'S DISMAL MARKET OPENING RECORD

The 1989 USTR trade barriers report captured the magnitude of the problem, explaining that as "nonfamily" suppliers U.S. parts makers are "precluded from both the original equipment and replacement (aftermarket) auto parts markets for Japanese vehicles." USTR adds that "The United States is trying to persuade Japanese vehicle manufacturers to increase their purchases of competitive, high quality U.S. auto parts."

That vote of confidence in our industry was seconded by former Commerce Secretary Mosbacher, who in a June 1991 statement said: "We have world class auto parts manufacturers. They deserve the opportunity to compete toe to toe with the Japanese industry on a level playing field. Trade is a two way street."

We know our industry's strengths, as do the Japanese, but U.S. suppliers must make immediate and sustained strides in winning sales in Japanese parts markets, if they are to offset the staggering losses in their Big Three customer base. Thousands more U.S. firms' futures and payrolls, in turn, are tied to the fortunes of their American supplier customers' success.

That is why we applauded President Bush when he raised parts market opening to the highest level of discussion in his January mission to Japan. Since the President's trip, Japanese OEMs have intensified contacts with quality U.S. suppliers concerning future model development. If given fair commercial consideration, we think America's traditional suppliers could surpass the $19 billion goal, especially since transplant assemblers have set a 70% local sourcing goal for their 1994 production of 2.27 million vehicles.

Industry survey data relevant to this recent activity was presented by APAC Chairman J.P. Reilly, in his May testimony before the House Trade Subcommittee. Mr. Reilly testified that "It is our feeling that industry must know if progress is being made before 1994 arrives. If it is, then we can keep moving in the direction begun in January. If it isn't, then we need to evaluate options available to us."

To satisfy industry's need for such data, Mr. Reilly said that a survey of the Motor and Equipment Manufacturers Association was conducted in March, with responses from a good cross section of firms, all of which are traditional U.S. companies. According to Mr. Reilly:

> The survey findings reveal that most companies have been seeking Japanese business for at least five years. The findings also indicate that *few companies have any substantial business. 60% of the reporting companies have less than $5 million in annual sales to the Japanese.* (Emphasis added.)
>
> Importantly, the data indicates an increase in activity on the part of the Japanese car makers.
>
> —25% of the current suppliers report increased interest from existing customers.
>
> —25% report initial customer contact.
>
> —13% say ongoing discussions accelerated.
>
> —13% were invited to participate in "design-in."
>
> —But, only 4% have received new purchase orders.
>
> —Overall, the results appear to be quite positive; however, this activity must be converted to sales.

APAA agrees fully, and believes that meaningful sales activity commensurate with our industry's enormous competitive capabilities will only be attained when concerted U.S. policies press to remove Japan's anticompetitive export barriers and reject the keiretsu system's replication here.

Japan's 1994 goals of course are the product of trade crisis management. History shows similar spurts of sales activity accompanied the auto parts trade initiatives

of Presidents Carter and Reagan. Unfortunately, once the crisis was defused, Japan's structural barriers remained firmly in place.

It is helpful to provide some market opening historical context to support our calls for a new, results-oriented trade policy, in which progress is weighed in terms of new sales opportunities for non-Japanese owned U.S. parts firms. As far back as 1980, APAA already was focusing government leaders on closed Japanese auto parts markets and the impact on the U.S. aftermarket. In 1980 Japanese car imports almost took a record 30% share of the new car market. A few had leather seats made from American hides, but that was about the extent of U.S. content.

Convinced that the continued competitive strength of American original equipment (OE) and replacement parts suppliers hinged on gaining access to the Japanese OEMs taking unprecedented new car market shares, the Carter Administration's USTR negotiated a program to overcome any impediments to trade between competitive U.S. suppliers and Japanese vehicle makers. The results-oriented plan featured a Japanese government sponsored parts buying mission, purchasing goals, timetables, and monitoring. It had all the elements needed to begin breaking through the impediments posed by the closed Japanese auto maker/supplier "family" or keiretsu structure. In fact, at the only follow-up meeting in February 1981, MITI committed Japan to a $300 million parts import goal in 1981. That would have cut the deficit 20% the first year, and substantial subsequent improvements were promised.

Mr. Chairman, this promising plan was abandoned for the VRA, and it took the VRA's expiration in 1985 for our industry to fight its way back from policy exile. Administration officials at that time agreed that improved parts market access held the key to reducing automotive products trade deficits and auto parts issues became hot again. Vastly increased 1985 vehicle import levels added to the sharply rising transplant output. American frustration with the poor domestic sourcing record of transplant assemblers soon was noted by the bipartisan leaders of the Senate and Senate Finance Committee in their July 1987 letter to Prime Minister Nakasone. The Senators contended that transplant assemblers in 1985 and 1986 had assembled 240,000 and 460,000 passenger vehicles respectively using "knock down kits with virtually all components made in Japan."

The Senators noted that the U.S. "assumed that as Japanese companies increased their automobile production capacity in the U.S., exports from Japan would decline in some corresponding way." Rather, they contend "total automotive exports are continuing to increase at a rapid pace." That pace has greatly quickened since then. In the worst type of "coals to Newcastle" trade, Japan used the falling dollar not to buy more U.S. parts, but rather to build a new Japanese supplier base next door to the vast underutilized base of qualified traditional American suppliers. These transplanted parts makers, like their Japanese OEM customers, also bypass qualified second-tier American suppliers of subcomponents and materials. According to ESI, they rely instead on Japanese suppliers for two-thirds of their content.

The mad land rush by Japanese suppliers in 1986–87 coincided with the year long auto parts MOSS talks, the high-level market opening negotiations we so actively sought. Japan's supplier invasion stood as a repudiation of the so-called market forces which both nations agreed should guide parts procurement and which, if followed, certainly would have favored greater procurement from existing U.S. suppliers. By 1991 the increased vehicle market share held by Japanese imports and transplant production, as well as Japanese controlled third-country production, had brought Japan's auto makers/suppliers near, and perhaps past, the point of controlling the majority of the content of all new cars sold in America.

MOSS failed in its primary goals of reforming Japanese sourcing practices in large part because of the control the U.S. allowed Japan to exert over the agenda itself. Sidestepping America's primary MOSS objectives, Japan cherrypicked lesser items such as trade promotion and sales monitoring from our negotiators' list of objectives. Five of seven negotiating sessions were mired down by the issue of how Japan would self-monitor post-MOSS progress. Rather than crafting a system that measures the genuine successes of traditionally excluded U.S. firms, the agreement our government endorsed allowed Japan credit for purchasing from their transplanted traditional suppliers now locating in the U.S. This means our government effectively has been rewarding Japanese OEM's for keeping the same tight bonds that the negotiations were intended to loosen.

The Structural Impediments Initiative (SII) like MOSS has failed to end Japan's systematic exclusion of outside competitors.

APAA wishes to underscore the House Members' warning to President Bush that "Time is running out for the U.S. auto parts industry," and their call for the President to "initiate a concerted campaign to stop the erosion of the traditional domestic supply base of the U.S. auto parts industry." Upon presenting their policy rec-

ommendations to Congress last June, the Auto Parts Advisory Committee (APAC) affirmed the need for action, concluding: "The APAC Interim Report and numerous private studies document the unjustifiable and unacceptable imbalances in auto parts trade with Japan and sales to Japanese automotive companies."

KEIRETSU'S TOLL ON AMERICAN SALES, EMPLOYMENT, PROFITS

Last year, American auto parts production declined for the fourth straight year. In recession as well as recovery, Japan's game plan for winning American car and parts market share is to put U.S. industry under the duress of extreme overcapacity.

Toleration of keiretsu's discriminatory sourcing and predatory practices in our markets is draining the life and livelihoods from our nation's economy. APAC's 1991 annual report concludes:

> *Taking into consideration all contributions and losses on a national basis, there have been two jobs and two dollars lost in the U.S. economy for every job and dollar added by Japanese transplants.* (Emphasis added)

Supplier industry employment data provided by the USDOC's *1992 U.S. Industrial Outlook* shows total employment falling from 638,000 in 1987 to an estimated 565,000 jobs in 1991, for a decline of 73,000 jobs. DOC's forecast for 1992 show the loss of another 30,000 industry jobs. Even though some 70,000 jobs have been provided by the U.S. network of Japanese affiliated parts operations that largely have come on line since 1986, the net industry job loss to date has been 73,000 jobs through 1991 and will exceed 100,000 lost jobs by year's end.

Without a concerted attack on unfair trade, we stand to lose 50 percent of our $100 billion traditional domestic supplier base by the year 2000, and risk enormous job losses among industry's 600,000 workers. Some 80% of America's 4,000 plus primary suppliers are small and mid sized businesses many of which are privately held. That ratio applies as well to the tens of thousands of second and third tier suppliers who support this enormous column, with everything from forgings to fasteners.

That prompt resolute action is required is underscored by the 1990 APAC report's call for increased sales access:

> Issues of access to Japanese original equipment (OE) and replacement parts markets never have been more critical than today. The continued strength of competitive American OE producers and the future for competitive U.S. replacement parts, or aftermarket, suppliers depend on sales access to the growing Japanese nameplate share of the U.S. vehicle market being assembled in Japan, the U.S., and third markets.

Yet, APAC's 1991 report cited a Michigan study done for APAC that "shows traditional domestic suppliers to be significantly underrepresented in the three major vehicle systems: engine, transmission, and body structure, which represent 33 percent of the vehicle's total value. The most significant inroads by domestic suppliers, such as hardware, glass, brakes/wheels/tires and interior trim—represent about 14 percent of the value."

While APAA is pleased with the success of commodity type suppliers in securing sales with the transplants, we must note that with the exception of tires and batteries, none of the commodity or stock items lends itself to replacement parts sales, although it is the aftermarket which yields our industry's greatest volume and profits. Of course, the long track record of American firms' sales of these nonfunctioning auto products and low-value added commodities to transplant assemblers—and the occasional sale of advanced U.S. products that have no direct Japanese competitor—have not been enough to curb the explosive growth of Japan's auto parts trade surplus with the U.S., which jumped from $1 billion in 1980 to $9.2 billion in 1991. The parts trade deficit will more than double to $22 billion by 1994 according to the University of Michigan projections.

Of particular concern is the fact that even those traditional U.S. suppliers currently producing commodity, bulky, energy-intensive, and other items for Japanese transplant assembly could find themselves increasingly displaced by Japanese owned suppliers' new U.S. plants. According to the 1991 APAC report, Japanese auto parts industry investments in the U.S. are concentrated in areas such as tires, steel, plastic, glass, stampings, seating, air conditioning and audio equipment.

Indeed, the gravest threat to our industry's future is the importation of the keiretsu system to the United States, described as follows by the July 17, 1991 Congressional letter:

> Now more than 300 Japanese suppliers have followed Japan's vehicle makers to North America, reproducing the exclusionary relationships established in their homeland. Japanese transplant manufacturers claim large increases in their purchases of U.S.-made parts, but these turn out to consist largely of increased purchases from their transplanted Japanese suppliers.

On the issue of supplier displacement, APAC's 1990 report cites auto analyst Maryann Keller's very apt assessment that "The U.S. is not served very well by Japanese parts companies displacing fully competitive American parts manufacturers simply because of ties between Japanese auto companies and their parts manufacturers."

APAA contends that this point holds true whether the exclusionary ties span an ocean or a short hop on the interstate. American jobs without American equity is not enough. We urge the Committee's consideration of the APAC conclusion that "Unless U.S.-owned auto parts suppliers obtain increased sales to the Japanese market, the U.S. current account balance with Japan for auto parts profits—like the auto parts trade segment—will be overwhelmingly one way—to the benefit of Japan and detriment of the U.S."

The University of Michigan projections of the skyrocketing parts trade deficit and the conclusions about traditional American suppliers' meager access to transplant assemblers have contributed greatly to America's trade data base. The numbers cut through the smoke of post-MOSS JAMA data to show that the billions of dollars in reported American parts sales are not so much new business breakthroughs for historically excluded U.S. firms, but merely a replication of keiretsu ties in the U.S.

IMPACT ON AFTERMARKET SELLERS AND CONSUMERS

The harmful effects of Japanese parts trade practices extend as well to American parts sellers and consumers. The pathetically limited mix of products and services offered by Japan's independent aftermarket reveals how keiretsu threatens U.S. independent parts retailers and installers, and tens of millions of American consumers who depend on them.

Keiretsu-controlled parts makers supply original equipment (OE) parts and generally are compelled to sell their replacement parts through car dealer networks and other controlled outlets. Independent outlets are excluded from distribution. Japan's OEM/supplier keiretsus dominate 75 percent of Japan's aftermarket, a reverse of the U.S. system where thousands of independent outlets offer a wide array of choice to consumers.

Japan's car maker-dominated aftermarket—and its victimization of consumers—has become the focus of U.S. negotiators who use it to prove Japanese markets are not competitive and to explain how monopoly profits extracted at home subsidize aggressive pricing in the U.S. Releasing the findings of a DOC/MITI parts price survey last June former Commerce Secretary Mosbacher said:

> The price differences borne out by this study paint a picture of a non-competitive auto parts market in Japan, one which imposes a burden on foreign manufacturers in their efforts to overcome impediments to market access.

Surveyed prices of identical or comparable uninstalled parts averaging 340 percent more in Japan than in the U.S., with uninstalled parts priced 198 percent higher in Japan. Obviously, if Japan was an open market some enterprising Americans would be able to buy up that product and resell it in Japan at huge profits.

TOTALITY OF KEIRETSU

The need for a tough market opening policy is even more urgent when we consider the totality of keiretsu. The keiretsu linkage between car maker parents and supplier families is but one part of the keiretsu family circle. These car company-headed financial/industrial groupings include banks, trading companies, capital goods producers, materials suppliers, construction firms, insurers, and so on. These self-sufficient families continue to follow Japanese investors, bypassing existing, qualified American firms. Japanese bankers will finance the new plants and Japanese construction firms will build them; Japanese capital goods will equip them; and they will rely on Japanese materials. Japanese investment, like trade, means keeping the money in the family.

FISCAL CONCERNS

The negative economic impact of Japanese automotive investment discussed above is exacerbated in its detrimental consequences for the U.S. Treasury. Keiretsu-related trade and investment practices take a tremendous toll on our nation's fiscal condition: (1) sharply reducing corporate tax receipts from displaced U.S. vehicle and parts makers, (2) massive loss of vehicle and supplier employees' income tax payments, (3) increased transfer payments for unemployed workers, and (4) the displacement of a tax paying supplier base by firms unlikely to produce taxable income for many years.

These net negative effects are magnified throughout the communities affected by dislocated firms and workers and in municipalities and states that also suffer reduced revenues.

To make matters worse, the Foreign Trade Zones Board has effectively unilaterally reduced all original equipment parts tariffs from a 4% to 11% range down to the 2.5% tariff rate applied to finished cars. The Japanese transplant assemblers are the heaviest importers and thus reap the preponderance of total tariff concessions. These Treasury-financed savings help each transplant car maker sustain the tight family links that exclude our firms' sales. In effect, by adding more black ink to their bottom lines, the current FTZ program operation is pushing America's budget and trade deficits further into the red.

FUNDAMENTAL CHANGE NEEDED

Mr. Mosbacher's June 1991 statement that "Unless there is fundamental change in the Japanese market, U.S. suppliers will not be successful selling parts directly to Japanese auto and truck manufacturers," should be a policy wake up call. Despite twelve years of high level market opening initiatives by three Administrations, Congress and industry, fundamental Japanese change has eluded us. U.S. firms still have less than one percent of Japan's parts market; hold a meager 20 percent share of Japan's U.S.-based assembly operations; and face a projected $22 billion parts trade deficit with Japan by 1994.

Most significantly, the anticompetitive keiretsu system has been exported to the U.S. If allowed, discriminatory Japanese sourcing practices will continue displacing otherwise competitive American-owned parts makers; keiretsu controlled distribution practices will bypass independent aftermarket retailers; and American-owned independent parts makers and sellers will find themselves outside the loop.

Mr. Chairman, our industry is competitive today, and if given free markets should be successful competitors in the 21st century. But, they can not compete against predatory 19th century trust-style capitalism. Nor must U.S. consumers be victimized by keiretsu-monopoly control over production and sale of replacement parts.

The 1988 trade act's expansion of Section 301 empowered our negotiators to go after foreign government toleration of anticompetitive systems. We think it helped win keiretsu major billing on the SII agenda. Unfortunately, as was the case with the MOSS process, keiretsu's systematic exclusion of outsiders stands out as the huge unfinished agenda item. This is why APAA can not gamble that the big ticket parts purchase goals presented to President Bush in Tokyo will be realized unless the system changes.

APAA POLICY RECOMMENDATIONS

To carry forward President Bush's excellent market opening initiative, APAA underscores the need for a strong trade policy and results-oriented negotiations.

Trade legislation incorporating four elements can help make this initiative different:

(1) We need a pro-competition mandated Section 301 negotiation and Japanese agreement to eliminate anticompetitive practices. The U.S. should set goals and timetables and progress should be measured in terms of new sales by historically excluded, non-Japanese owned U.S. parts makers.

(2) Once the first concrete Japanese parts market opening agreement is secured, we need new trade agreements compliance act provisions and a restored Super 301 as vital, long-term enforcement tools. APAA favors provision for Congressional-initiated Super 301.

(3) We seek extension—and enhancement—of the Fair Trade in Auto Parts Act, now set to expire at the end of 1993. The Act's significance is that its Japanese parts market opening mandate is defined to include both the U.S. and Japan OE and service parts markets for Japanese nameplates. The Act's extension would complement Section 301 market opening in Japan and direct crucial market opening efforts in the U.S. market.

APAA supports the Act's extension through calendar year 1998, provided two important enhancements are included:

(i) Since this is a market opening initiative, the Act should define the intended beneficiaries—and measure their sales progress—in terms of those U.S.-based manufacturers that are not Japanese-owned.

(ii) The Act should include an interagency role, whereby Commerce as the lead agency would be required to coordinate U.S. policies on trade, trusts and taxes with USTR, Justice and Treasury. Such concerted, consistent policy making is needed to underscore U.S. intolerance for unfair practices here or abroad. For starters, APAA seeks Treasury curbs on transfer price abusers and urges Commerce to begin preparing a self-initiated anti-dumping case as APAC recommended.

(4) Finally, negotiations should be directed to stamp out government-tolerated anticompetitive practices globally.

APAA also believes that steps should be taken to stop unilateral concessions to foreign parts import and the importation of procurement systems closed to U.S. suppliers.

(1) Vigorous Department of Commerce enforcement of the new rules reforming the Foreign-Trade Zone program is needed.

(2) In negotiating a NAFTA agreement, APAA believes that in addition to removing all tariff and non-tariff barriers to automotive products trade under a tight, tough rule of origin, the U.S. and its partners should pursue common competition and investment policies. In particular, it is imperative that NAFTA partners have a common policy approach to unfair trade practices and a shared commitment not to induce the transplanting of the closed keiretsu-like procurement system to North America. Also, for an industry choking on excess car and parts capacity, the last thing we need is for a NAFTA partner to sell itself to non-NAFTA auto makers and suppliers as a duty-free launch pad to the U.S.

(3) Finally, federal leadership is needed to encourage state use of funds to promote the export sales and global competitiveness of state suppliers. Legislation may be needed to bar state use of federal grants to assist foreign investment that dislocates U.S. production. A similar ban already applies to interstate dislocations.

CONCLUSION

In closing, let me reiterate that all APAA policy recommendations are pro-competitive and seek solely to gain traditional U.S. suppliers their fair shake at supplying all global parts markets. If allowed to compete, we know these firms' sales will increase.

For years, the U.S. has sent Japan high-powered signals, and Japan has responded with symbols, but nothing fundamental has changed. For President Bush's excellent initiative to succeed, we must secure and maintain lasting access. Through prompt enactment of these APAA-backed results-oriented provisions, our industry, nation and the world will enjoy the trade expanding benefits that free market competition alone can afford.

PREPARED STATEMENT OF SENATOR CARL M. LEVIN

Thank you Mr. Chairman and members of the Finance Committee for giving me the opportunity to testify at today's hearing. Market access is critical. We can have the best-educated, best-trained work force in the world, and we'll still lose critical industries and jobs if we don't have the same access to foreign markets as other countries have here. It's as simple as that.

American manufacturers and farmers are ready, eager, and able to compete, but it is up to our government to ensure that they have access to foreign markets. If foreign governments erect barriers to American products, that is their decision. But if we tolerate them, that is our decision.

We ought to stop begging and stop pleading and place equivalent restrictions on foreign products until they remove the restrictions on our products.

We've lost hundreds of thousands of well-paying jobs to unfair trade practices, and it's got to stop. There is no shortage of trade barriers which should be the subject of negotiations. Japanese barriers to auto parts and agricultural products and European Community barriers to U.S. meat exports top a long list.

Equivalent restrictions is not a radical concept. It's what we do every day to defend our diplomats from unreasonable and costly restrictions, and it's what we should be doing to defend our jobs. There's an office in the State Department called

the Office of Foreign Missions. Its role is to get rid of costly restrictions on U.S. diplomats abroad. It does this by placing equivalent restrictions on the foreign diplomats in the U.S. It doesn't beg and it doesn't plead—it simply sets a deadline and then places equivalent restrictions on the other country's diplomats here.

For instance, when the Netherlands applied its value-added tax to the U.S. mission there, we responded by applying our sales tax to their mission here. As a result, the Netherlands has agreed to reimburse us for their tax.

This policy has not started a diplomatic war, it has eliminated restrictions.

For the last twenty years, we've had a voodoo trade policy. Past administrations, for the most part, have believed the best way to open foreign markets was by setting a good example here at home while our trade negotiators pleaded and prodded abroad. But after 20 years of this approach, we still can't sell rice in Japan and auto imports account for less than 3% of the Japanese auto market.

Despite the failure of this approach, this administration has maintained it, except when forced to act by Congress.

Auto parts is a case in point. Our auto parts compete internationally in both quality and price, yet we have less than 2% of the Japanese auto parts market because of their discriminatory practices. Last year, we had almost a $4 billion trade *surplus* in auto parts trade, excluding Japan. That's because we had access to countries other than Japan—we had freedom to compete. But with Japan, we had a $9 billion auto parts trade *deficit.*

Last year, the administration's own Auto Parts Advisory Committee called on the administration to prepare to self-initiate Section 301 action against Japan's barriers to American auto parts exports. In other words, the auto parts industry asked the administration to prepare for negotiations under strict deadlines and the threat of retaliation. But over a year later, the administration has not acted, and has promised to veto the legislation that was just passed overwhelmingly by the House to initiate Section 301 action on auto parts.

The administration says it's making progress, yet it's spent the last year negotiating the terms of a study of the Japanese auto companies' parts sourcing. It hasn't even begun the study. And this is just a study. No action is involved. While this data would be useful, it's too little, too late.

This administration, like those before it, says it's making progress on trade, but the results have rarely matched the rhetoric.

Back in 1970, President Nixon said after meeting with Prime Minister Sato that Japan intended "to accelerate the reduction and removal of its restrictions on trade."

In 1974, President Ford said Japan will negotiate "to reduce tariff and other trade distortions."

In 1984, President Reagan said "Japan has made considerable progress in opening its markets further to American products, and we are confident we'll see more progress in the months ahead."

The Super 301 law tried to require action, and produced some results when it was used, but it was abandoned in practice in 1990, the second and final year it was in effect. The U.S. Trade Representative's 1990 Report on Foreign Trade Barriers included 20 pages of Japanese trade barriers, 12 pages of Canadian barriers, and another 12 pages of EC barriers, yet only India was identified in 1990 for continued negotiations under Super 301. And when no agreement was reached with India, no action was taken as a result.

We don't need to re-create the wheel, but we do need to improve it. Super 301 is the basis of a good idea, but without strengthening, it's more often than not a toothless tiger. It is not enough to simply renew it. By the way, Governor Clinton's economic plan acknowledges this and calls for passage of a "stronger, sharper Super 301." We must strengthen our negotiators' hands and increase our chances of success in opening closed markets by requiring action when fundamental trade fairness demands it.

Senator Daschle and I have introduced legislation which takes us in that direction. It extends the old Super 301, but strengthens it in some key respects. It provides criteria to ensure that the law is used each year there are major barriers to our products, and it requires equivalent restrictions should the negotiations fail to eliminate the identified barriers. The restrictions could be waived only with the approval of Congress.

Our legislation is not intended to bash any country. It's intended to boost America. The time is long past for our government to defend American jobs the way every other government defends its jobs.

American families need their government fighting on their side. That's why we have government. We must act to control our own economic destiny. We won the

cold war by being strong—we won't win the current economic contest ahead by being weak.

PREPARED STATEMENT OF ROBERT L. MCNEILL

I am pleased to be here today to comment on behalf of the Emergency Committee for American Trade on market access and other trade issues before the Congress.

Market Access

American business's paramount hope for improved foreign market access rests on successful conclusion of the Uruguay Round and the North American Free Trade Area (NAFTA) negotiations.

If successful, the Uruguay Round offers the promise not only of enhanced market access but also of rules and procedures designed to ensure that market access accords once agreed to are adhered to. Effective and timely dispute settlement rules and procedures will be among the most important results of the Uruguay Round.

The Uruguay Round is important to us not only for reasons of market access but also for reasons of anticipated GATT agreements for the protection and enhancement of intellectual property rights, foreign investment, and services. Much has been said about the critical importance of GATT and other agreements in these so-called new areas, I would only reiterate that importance here today.

Failure of the Uruguay Round would profoundly work against U.S. export interests. While the GATT and its existing rules would continue in effect, the rules likely would be somewhat ignored, and perhaps even dismissed, as guardians of market access, thus putting U.S. exports of goods and services at considerable risk. Because such a result would very much work against U.S. economic interests, we commend our government for continuing its efforts to bring the Uruguay Round to a successful conclusion.

Similarly with the NAFTA negotiations, we are looking forward to their successful conclusion. An open North American market will enrich the participants and improve their respective competitive abilities in world markets. While we would hope for minimal economic dislocations, we would expect the United States to provide an effective adjustment program for any whose livelihood might adversely be affected.

H.R. 5100, THE HOUSE-PASSED "TRADE EXPANSION ACT OF 1992"

While H.R. 5100 is not formally the subject of this hearing of the Senate Finance Committee, I would like to comment on some of its provisions.

Before commenting on them, I am reminded of the 1988 Vice Presidential debate when Senator Bentsen remarked that his Vice Presidential opponent was "no John F. Kennedy." I am reminded of this because of the irony that the House-passed "Trade Expansion Act of 1992" shares the same title as President John F. Kennedy's "Trade Expansion Act of 1962." Any resemblance between the two bills ends there.

While President Kennedy's bill was used as a major instrument in opening foreign markets to U.S. exporters through the Kennedy Round of GATT trade negotiations, the 1992 version if enacted could well diminish U.S. exports, be costly to U.S. consumers, and undermine prospects for successful conclusion of the Uruguay Round and NAFTA negotiations.

H.R. 5100 appears unnecessary because many of its provisions deal with issues that most likely will be reviewed and considered by the Congress in 1993 as part of its consideration of implementing legislation for the Uruguay Round and NAFTA agreements.

Along with the Congress, we in the business community will be an interested and active participant in tile 1993 legislative process, just as we were in enactment of the Omnibus Trade and Competitiveness Act of 1988. In our judgment, next year would seem to be the appropriate time for the Congress to consider major trade legislation.

Nevertheless, the House has passed a trade bill and the Senate is on record as wanting to consider a limited range of foreign trade issues this year.

As earlier stated, I, therefore, would like very briefly to touch on some of the issues included in H.R. 5100.

Super 301

One of the H.R. 5100 issues is the renewal of Super 301 for a further period of 5 years. The original Super 301 provisions of the 1988 omnibus trade act essentially represented a Senate-House compromise on the Gephardt amendment, which was included in the House version of the bill. It was in that context that ECAT found the super 301 provision non-objectionable.

We in ECAT have not yet reviewed our position on Super 301, but shortly will do so. One consideration that we will want to take into account is how its renewal might affect the dispute resolution provisions that are under negotiation in both the Uruguay Round and the NAFTA. We do know on the one hand that a number of our trading partners have expressed concerns that the renewal of Super 301 could damage the prospects for improving the GATT dispute resolution mechanisms.

On the other hand, we are aware of broad support in the Congress for renewal of Super 301, and that obviously is a critical factor in developing our position on its renewal. If it is renewed, we feel it important that its provisions accord with our international obligations so that its use will not put us in the position of being subjected to legal foreign retaliation. As major U.S. exporters, this could be a significant factor in curtailing our access to foreign markets.

Mandatory Use of Section 301

The House-passed trade bill mandates Section 301 action against Japanese barriers to imports of rice and auto parts.

I want to note here that our ECAT members who are auto producers have developed and presented to the Congress their own positions on the auto provisions of H.R. 5100, so that I am not here necessarily representing their views.

We in principle are opposed to legislatively mandated uses of Section 301 both because we think that such mandates might prove to be counterproductive to U.S. market-opening efforts, and because we believe that interested industries have ready access to the Section 301 process if they believe their overseas business is subject to unwarranted restrictions. We also believe that the Administration has effectively and judiciously used Section 301 as a major instrument in opening foreign markets.

In the cases of rice and auto parts, Japanese rice import restrictions are under active negotiation, as also are auto parts. The prospect that Japan will liberalize its rice import restrictions in the Uruguay Round is a very good one, and Japanese firms already have agreed to purchase about $18 billion of U.S. auto parts by 1994 for use in both the United States and Japan—a near doubling of the 1990 level of about $9 billion.

Automobile Import Quotas

H.R. 5100 would transform the current voluntarily imposed auto export restraints administered by Japan into a U.S. legislated import quota. The import quota would be set at 1.65 million units, the same as the voluntary limit set by Japan for this year.

Although hardly conceivable that Japan would consider retaliation against these legislated import quotas, they most likely are GATT-illegal, and, therefore, formally subject to legal retaliation against U.S. trade.

In any event, this legislated import quota certainly represents a major aberration in, and a cost to, U.S. trade policy, which for years has fought against the use of such import quotas by our trading partners.

Since it is questionable that Japan would increase its current level of auto exports to the United States in the foreseeable future, the legislated quotas in H.R. 5100 seem to be of a quixotic nature.

Auto Parts

Similarly, as in the case of auto imports, H.R. 5100 also unilaterally transforms the Japanese agreement to increase their purchases of U.S. auto parts from a voluntary agreement into a trade agreement. The consequence of being treated as a trade agreement is that any violation of its terms is automatically subject to a Section 301 action.

According to H.R. 5100, Japan's agreement to increase its U.S. auto parts purchases from $9 billion to $18 billion would increase the U.S. content of autos manufactured by Japan in the United States to 70 percent. H.R. 5100 thus legislates at least a 70 percent U.S. content requirement for autos produced in the U.S. plants of Japanese auto manufacturers. If that content level is not met by each Japanese U.S. auto plant, then a Section 301 action would have to be initiated by the USTR.

Since no other auto plants in the United States are legislatively mandated to have at least a 70 percent U.S. content in vehicles made in the United States, this provision of H.R. 5100 is clearly discriminatory and thus violative of the U.S. international obligation to provide national treatment to foreign investors in this country. The national treatment obligation is found in numerous treaties signed by the United States as well as in the Articles of the GATT.

If enacted, this provision denying national treatment could severely impact the U.S. position in the GATT negotiations where we are seeking national treatment for U.S. financial and other service industries, as well as for other U.S. foreign inves-

tors. It could also lead to other countries violating their national treatment obligations much to the disadvantage of the economic interests of the United States.

Antidumping

Until recent years, the use of antidumping laws was pretty much limited to the United States, Canada, Australia, and the European Communities. Antidumping laws, however, are now being put in place by a number of countries, usually without the due process and transparency features of U.S. antidumping law and practice. Unfortunately for U.S. exporters, these foreign antidumping regimes often are used, and are threatened to be used, as a general device for providing import protection—sometimes without careful regard as to whether price discrimination and injury are evident.

As major U.S. manufacturers and exporters, we in ECAT are supportive of a fair and effective U.S. antidumping law and GATT antidumping code. Because what is fair is often in the eye of the beholder, there is thus some disagreement among segments of the U.S. business community on antidumping issues.

We would hope, however, that there could be agreement that the antidumping provisions of H.R. 5100 contain provisions that are clearly unfair.

The most egregious one is an anticircumvention provision that if an imported product contains a significant component that is subject to an antidumping duty, then the imported product itself is subject to payment of that duty. For example, should a basic chemical be subject to an antidumping duty, then any imported product incorporating that chemical would be subject to the antidumping duty—a frightening prospect and an administrative nightmare.

This provision represents a significant aberration from international antidumping law and practice which is predicated on antidumping actions being against like products, i.e., steel bars to steel bars or apples to apples.

If enacted, the antidumping provisions of H.R. 5100 would be disruptive of the way that U.S. companies do business as well as of the ongoing multilateral trade negotiations and would be expected to open the floodgates to similar foreign measures.

Customs Modernization

ECAT and the business community generally are strongly supportive of the provisions in H.R. 5100 that would modernize the U.S. customs system. These provisions are strongly desired.

Trade Agreements Compliance

Although ECAT does not have a position on the trade compliance provisions of H.R. 5100, they seem to be reasonable, although some question their need in light of current administration of U.S. trade laws.

That pretty much covers our comments on H.R. 5100. In summary, we question the need for such a bill at this time, and have serious problems with some of its' provisions, as just noted.

CHINA MFN

ECAT is supportive of MFN trade treatment for China because we believe it to be in the best interests of the United States and of the citizens of China.

Just as other American citizens, the business community supports the human rights and other objectives that many in the Congress believe could be achieved by cutting our economic relations with China. We strongly feel that so doing would lead to an opposite result. It is difficult to conceive how the absence of a U.S. business presence in China could further Chinese human rights.

In terms of economic potential, China is truly a slumbering giant, but one that clearly is awakening. Even among its historic and aged leaders, there is a growing recognition that China's economic welfare can better be advanced through economic competition than through China's traditional statism. A private sector is as a result slowly spreading throughout the provinces of China. As it does, an improved economic condition will bring with it an improved and freer human condition. Basic human rights can better be achieved through conditions of economic plenty than of economic scarcity.

The extension of MFN by the United States to China in 1980 has led to a gradual opening of China to the U.S. business community. Substantial economic relationships have been established and have prospered as bilateral trade has vastly increased.

The potential withdrawal of MFN for China that is contained in bills before the Congress would fundamentally alter the U.S. economic and political position in

China. There would be a very substantial diminution in bilateral trade and in existing and future U.S. investments in China.

Unfortunately for U.S. firms and their employees in this country and in China, the U.S. presence would quickly be substituted by the presence of others—our foreign competitors. Whether they would be as constructive forces for change in China as we are is conjectural. On balance, it is unlikely that they would be, so that human and other rights in China might not as well be advanced as with a continued U.S. presence. It should be noted that U.S. employers in China substantially contribute to the economic and social well-being of their employees and that the provinces of China where there is a U.S. and other foreign presence are the provinces where human rights and other reforms are the most advanced.

It will not be too many years before China becomes one of the few economic super powers of the world. To be on the sidelines of this developing economic drama could be terribly costly to the United States—a prospect that could be expected to follow the denial of MFN to China by the United States.

There is an intensifying scramble for markets throughout the world. The United States is in no position to ignore foreign market opportunities. No other government or foreign business community does. No other government is proposing to deny MFN trade status for China. It is difficult to contemplate any other government even considering doing so. They are rather heavily engaged in providing a variety of assists to the global competitiveness of their firms in the recognition that their countries otherwise might be relegated to a back seat in the emerging global economy.

Again thanks for having me here today.

PREPARED STATEMENT OF PETER J. PESTILLO

We are pleased that this Committee is examining the state of U.S. trade policy and considering what role Congress should take in pressing U.S. trade policy objectives.

A case could be made that existing trade laws are sufficient to resolve present trade imbalances and prevent unfair trading practices. However, we are convinced that the chronic trade imbalance with Japan represents a serious threat to the U.S. economy, and we are frustrated at the lack of progress in prying open the Japanese market.

While the total 1991 U.S. trade deficit improved by 35 percent over the previous year, the deficit with Japan actually worsened. Moreover, based on the latest trade data, Japan's worldwide trade surplus for the first six months of this year is more than 50 percent higher than the same period last year (Chart #1). Japan's surplus with the U.S. is up 17 percent, despite continuing Japanese promises to take actions to reduce the imbalance.

Automotive trade now accounts for about 75 percent of the total U S.-Japan trade deficit and has not budged for six years. There are two primary reasons. First, although vehicle imports from Japan have decreased slightly in recent years, Japanese transplants continue to use significant levels of high value-added Japanese components such as engines and transmissions.

Second, no auto company has made much progress in penetrating the Japanese market. Foreign producers account for 34 percent of the U.S. market and 15 percent of the European market, but all of the other auto manufacturers in the world together have not been able to capture even 3 percent of the Japanese market (Chart #2).

This home market sanctuary has enabled Japanese auto producers to earn an average of more than $9 billion annually in the latest four-year period available. These profits' allow them to subsidize their U.S. operations and increase their U.S. market share—injuring the U.S. auto industry and displacing tens of thousands of workers.

The prospects for meaningful improvement in the U.S.-Japan trade picture are not encouraging. Europe has successfully negotiated an agreement with Japan that limits Japanese market share in Europe through 1999—and they recently have reduced even further the level of allowable shipments because of Europe's recession. The European agreement could lead to the United States becoming the dumping ground for Japanese automakers. They already have the capacity to produce twice as many vehicles as they sell in Japan, and are expected to add enough capacity to produce another million transplant vehicles in the United States.

There's no question that the U.S. auto industry is very much threatened today and such a threat to U.S. manufacturing should be a major concern to all of us. Manufacturing provides higher quality, better paying jobs; is a critical customer of U.S. basic and high tech industries; and accounts for virtually all private sector R&D expenditures.

The auto industry alone has more impact on the U.S. economy than any other industry, with cars and truck sales accounting for about 4.5 percent of total GDP. Ford, GM and Chrysler directly provide 800,000 U.S. manufacturing jobs and an additional one million dealership jobs. Including suppliers, one in seven U.S. jobs is related to the auto industry.

We recognize that we have the major responsibility to ensure our competitive survival and believe we have made excellent progress to date.

- Eight of the ten most productive auto plants in North America—including the transplants—are Ford plants. One has even been rated the second most productive plant in the world.
- The Japanese did get a jump on us in quality in the 1970s, but the quality gap is no longer significant. Recent studies show a less than one-problem-per-car difference among the top 75 models sold in the United States—about half of which were domestic products.
- We've kept car price increases 12 percentage points below inflation and 32 points below the average Japanese increase since 1981. The 1992 Ford Escort is priced $1,100 below the high-volume Japanese products against which it competes.
- Ford spends two and a half percent of wages on worker retraining—more than $300 million last year.
- We make vehicles here in America that are judged good enough by two Japanese manufacturers to be badged and sold by them through their dealers.
- And we're making major efforts to compete in Japan. Ford established its own distribution network, which sells U.S.-built cars and Ford-badged vehicles built in Japan. Ford is the best-selling foreign nameplate in Japan. We relocated the headquarters of our Asia-Pacific Operations to Tokyo and hired a Japanese national as President of Ford of Japan. Next year, the Probe will become the first American-built, right-hand-drive Ford vehicle in recent history to be exported to Japan, and a right-hand-drive Taurus will be introduced in the mid-1990s.

We're confident of our ability to compete against anybody in the United States or anywhere in the world, provided we get fair and equitable treatment. But there are some fundamental externalities working against us.

Unlike the transplants:

- We cannot hire all-new, younger workers without casting out our present mix of older, racially-balanced employees—personnel to whom we've had pension obligations since 1949.
- We cannot build all new factories in rural areas that are subsidized heavily by the local communities and states without closing older, less-efficient plants in urban areas—which would put a lot of people, particularly minorities, on the unemployment roles in areas where jobs already are scarce.

Not only would these actions violate the moral and civic obligations that we have accepted over the years, but they would have serious impacts on the U.S. social fabric.

We support open, fair, and mutually beneficial world trade. Our position on Japan and the discussions we've had with their auto companies are not about protectionism, but about greater trade liberalization. But given the lack of progress, we support legislation along the lines of the House-passed trade bill to put pressure on the Japanese to do what they need to do to correct trade inequities.

For example, it is clear that the 1988 Super 301 provision got Japan's attention and resulted in progress in several sectors. We support its extension. We support a 301 investigation of Japanese policies and practices which have a harmful effect on the ability of U.S. auto and parts makers to enter the Japanese market, such as the Japanese distribution system, the Keiretsu system, and various Japanese government regulations and testing requirements. We support subsequent 301 negotiations that address the need to offset any detrimental impact from the EC-Japan auto agreement and to formalize the Japanese commitments made in Tokyo in January.

And we believe there is room for improvement in the anti-dumping laws. We find it inconceivable that after the U.S. Department of Commerce found clear evidence of Japanese dumping of minivans—at an average of more than $1,500 per vehicle—the International Trade Commission found no injury to the U.S. industry.

Legislation also is needed to correct a particularly anti-competitive regulatory inconsistency. Presently, multipurpose vehicles, or MPVs, are classified as trucks for emissions, fuel economy, VRA, gas guzzler and luxury tax purposes, but as cars for tariff purposes (Chart # 3). This inconsistency gives importers the opportunity to manipulate U.S. regulations to get the most favorable treatment in all cases—and,

not incidentally, dodge the payment of about $300 million a year in tariff duties. We hope the House will soon pass a provision correcting this inconsistency as part of a tariff bill and we hope the Senate will act promptly on this as well.

In summary, it is clear that the U.S. government cannot afford a "hands off" competitive and trade policy. While we prefer negotiation to legislation, it is clear that Japan needs to be put on notice that the U.S. government will not tolerate the slow pace of progress. We recommend that the Committee promptly approve legislation that would help ensure progress in reducing the U.S.-Japan trade imbalance, correct inequities in U.S. tariff classifications and help to open foreign markets for more U.S.-made goods and services.

We prefer to see Japan accept willingly the responsibilities of international economic leadership. However, the chronic, unacceptably large deficit Japan has run with the U.S. suggests that such responsibility may have to be imposed by legislation. While we might all wish otherwise, we hope that the Congress will grow as impatient as we are.

Chart #1

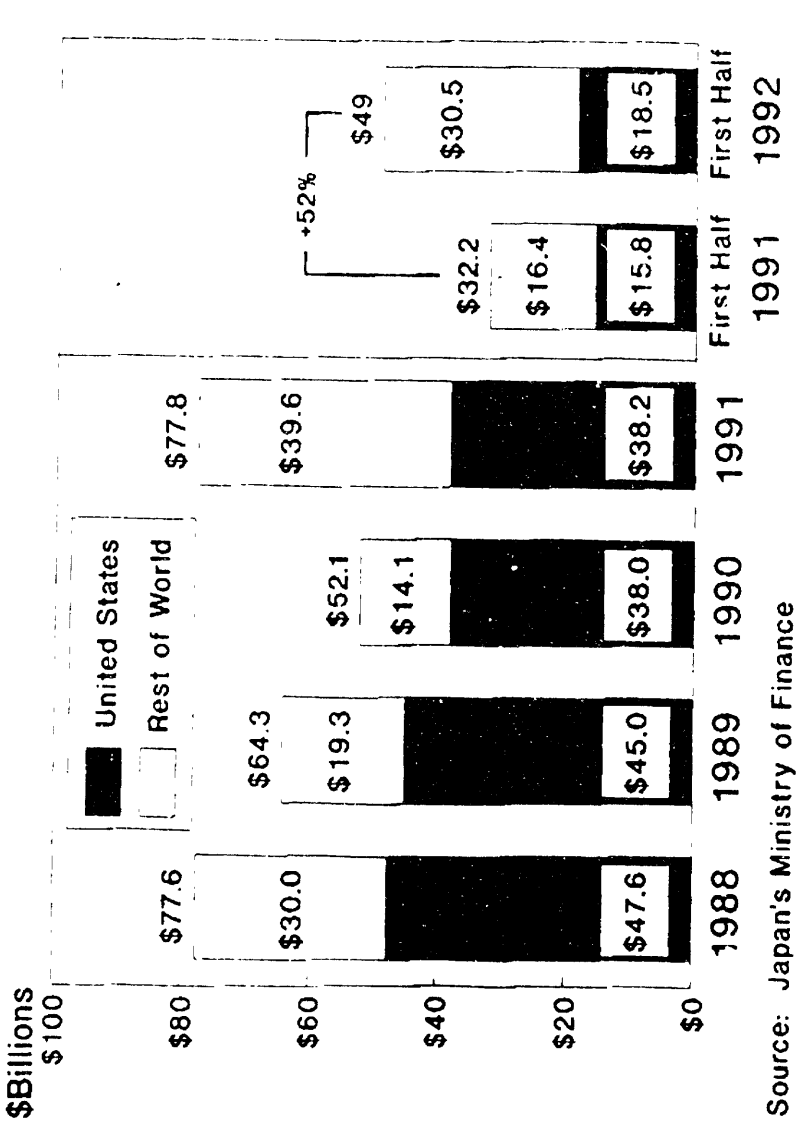
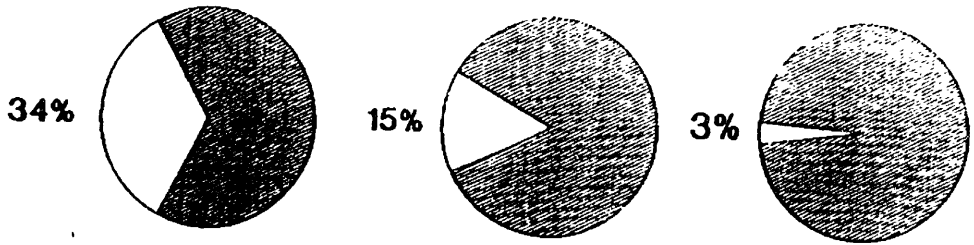


Chart #2

FOREIGN PENETRATION
1991
Selected Car and Truck Markets



Memo: Japanese share

29%	12%	97%

Chart #3

INCONSISTENCY OF MPV CLASSIFICATIONS

	Minivans		Sport Utilities	
	Rear Side Windows, Rear Doors, Rear Seats	Other	4-Door	2-Door
Emissions	Truck	Truck	Truck	Truck
Fuel Economy	Truck	Truck	Truck	Truck
VRA	Truck	Truck	Truck	Truck
Gas Guzzler Tax	Truck	Truck	Truck	Truck
Luxury Tax	Truck	Truck	Truck	Truck
Tariff	Car	Truck	Car	Truck

- Truck emissions and fuel economy requirements are not as stringent as for cars
- Gas guzzler and luxury taxes are not applicable to trucks

PREPARED STATEMENT OF SENATOR JOHN D. ROCKEFELLER IV

This hearing is an important continuation of those begun in May on the major trade issues facing our country. The question of market access is a particularly timely one in view of the May trade deficit figures released last week.

That data affirmed the trend of the last several months—that the trade deficit, which had declined significantly in 1991, has begun another climb upwards. If present trends continue, the 1992 deficit will be bigger than last year's.

That is particularly disturbing because it appears to be due to declining exports, even in the face of a declining dollar which should be making us more competitive, rather than less.

There are two appropriate responses to this development, and both of them can be found in the National Economic Leadership Strategy the Majority Leader announced on July 1. Several members of this Committee participated in the development of that strategy.

The first is more attention to export promotion and finance. Our nation's small and medium-sized businesses represent a major source of export potential that we are presently ignoring. Our export promotion resources are divided among 16 different agencies, leaving aspiring exporters frustrated and confused.

Even worse, our priorities are badly skewed. Agriculture accounts for 1% of our employment and only 10% of our exports, yet receives 74% of our export promotion funds. Manufacturing exports are far more essential to our long term competitiveness, but they are being badly shortchanged by the government.

Last month, the Banking Committee approved legislation which incorporated a number of my proposals to reorganize our export promotion priorities and improve Eximbank financing. I look forward to floor action on it shortly.

The second response is to make sure our competitive products can penetrate foreign markets. That means renewing Super 301—an effective, established means of making sure U.S. access rights are obtained.

Research done on the effects of Super 301 when it was previously in effect suggests clearly positive results—the opening of markets to U.S. products without significant costs to our economy. Proposals to renew it in essentially the same form have broad support in the Congress and have already passed the House. I hope we will move promptly to take similar action in the Senate.

PREPARED STATEMENT OF GEORGE M. SCALISE

The Semiconductor Industry Association is pleased to have the opportunity to testify at this hearing on trade legislation to improve U.S. access to foreign markets. My name is George Scalise. I am the Senior Vice-President and Chief Administrative Officer for National Semiconductor Corporation, and the Chairman of SIA's Public Policy Committee.

The Semiconductor Industry Association, which represents U.S.-based semiconductor manufacturers, was created in 1977 to address the public policy issues confronting the industry. SIA member firms represent over 90 percent of the American semiconductor industry. SIA concentrates its energies on those issues which affect the ability of the industry to remain internationally competitive, such as access to foreign markets, enforcement of our trade laws against unfair trade practices, and technology policy.

SIA POSITION ON TRADE LAW REFORM

In my testimony today, I would like to explain why SIA supports several reforms in U.S. trade law. In particular, SIA strongly supports:

—Extension of "Super 301" authority for 5 years;
—Passage of the Trade Agreements Compliance Act;
—Customs modernization;
—A clear direction from the Congress that the President should not enter into any agreement which weakens the U.S. antidumping law; and
—An exemption of semiconductors from the country of origin marking requirement.

SIA's support for trade law reform does not indicate a lack of support for the Uruguay Round. For that reason, SIA believes that any trade bill must be consistent with our international obligations. The semiconductor industry has a strong stake in a healthy and growing international trading system. Foreign sales account for nearly half of the total sales of U.S. semiconductor companies. SIA would benefit significantly from a Uruguay Round agreement which strengthened international

disciplines against dumping, eliminated the European Community and Korean tariffs on semiconductors, computer parts and other electronic goods, and provided for global protection of intellectual property rights.

SIA believes that the United States must adopt multilateral and bilateral strategies for opening foreign markets and responding to foreign unfair trade practices. These strategies are often complementary. For example, countries were more willing to negotiate an international agreement on intellectual property after the United States made it clear that it was prepared to respond to foreign piracy using "Special 301." Furthermore, even the comprehensive agenda of the Uruguay Round will not deal with all of our trade problems, particularly the structural barriers U.S. companies face in Japan.

THE TRADE AGREEMENT COMPLIANCE ACT

SIA strongly supports passage of the Trade Agreement Compliance Act. The premise of this bill can be summarized in five words—"A deal is a deal." The United States has a broad range of agreements with its trading partners, both bilateral and multilateral. These agreements involve commitments to lower tariffs, open markets, award government contracts on a non-discriminatory basis, stop export subsidies, and so on. These trade accords are meaningless unless they are lived up to. Currently, there is no provision in U.S. trade law which allows U.S. industry to seek a review of foreign government compliance with these trade agreements.

What is needed, in short, is oversight. Because Congress and the Administration must tackle so many problems, there is a natural and understandable inclination to pass legislation or sign an agreement, breath a sigh of relief, and then move on to the next problem. Unfortunately, signing a trade agreement is only the first step. Some of our trading partners will do only what is necessary to diffuse U.S. pressure regarding their trade performance. Unless they are convinced that we will take a look over our shoulder every once and a while, all the marathon negotiating sessions that went into signing the agreement in question will not have been well-spent.

The Trade Agreement Compliance Act provides a straight-forward oversight mechanism. Once a year, or prior to the end of an agreement, an interested party can ask USTR to determine whether a foreign government is complying with a bilateral trade agreement. If it is not, this noncompliance is treated as an "unjustifiable" unfair trade practice under Section 301. At that point, USTR could attempt to bring the country into compliance with the agreement in question, or, failing that, take other appropriate action, including the imposition of sanctions.

WHY IS ACCESS TO FOREIGN MARKETS SO IMPORTANT?

For the semiconductor industry, access to foreign markets, especially the Japanese market, can help determine whether we are world-class or second-rate:

- Japan is now the world's largest semiconductor market. In 1991, Japan accounted for 38 percent of the global market for semiconductors, while the U.S. accounted for 28 percent.
- High technology industries must amortize large investments in R&D and plant and equipment over a short product life cycle. If U.S. firms do not have access to foreign markets, they will not generate the funds they need to invest in the next generation of semiconductors.
- Semiconductor costs traditionally follow a "learning curve"—where cost reductions of approximately 30 percent are achieved for every doubling of cumulative output. For that reason, the continued cost competitiveness of the U.S. industry depends on access to the Japanese market.
- A closed home market gives foreign firms a sanctuary, which reduces the uncertainty associated with investment in new capacity. This, in turn, has often triggered over-capacity and below-cost sales.

HISTORY OF ACCESS TO THE JAPANESE MARKET

I can think of no better way to document the need for the enforcement of existing trade agreements than to briefly describe efforts by the U.S. industry and government to open the Japanese semiconductor market. For the past twenty years, the United States has engaged in a seemingly endless series of negotiations to accomplish this objective. Yet despite increased U.S. industry effort, countless liberalization packages, tariff reductions, and appreciations of the yen—the United States has essentially remained a residual supplier. Only recently has the U.S. share of the Japanese market exceeded 10 percent.

Prior to the 1970s, the Japanese semiconductor market was protected by a wide range of formal and informal barriers. Imports were restricted by prior approval re-

quirements and quotas. Investment in semiconductors was restricted by placing the industry on the so-called "negative list." This meant that foreign majority ownership in such industries was not permitted without prior government approval, which was almost never granted. Those U.S. firms which were allowed to establish subsidiaries in Japan were often forced to agree to production limits and license their technology to their Japanese competitors.

These restrictions were reinforced by other measures. The Japan Electronic Computer Company (JECC), a government-funded company which bought Japanese-made computers and leased them on favorable terms to users, was required by MITI to accept only computers which satisfied a local content requirement, which was progressively tightened from 80 to 95 percent.

In 1971, the Nixon Administration mounted a major effort to induce Japan to liberalize imports of computers and semiconductors. The Japanese government initially resisted U.S. pressure, but eventually agreed to liberalize after the United States threatened to lodge a complaint under the General Agreement on Tariffs and Trade. Liberalization of semiconductor imports was phased in from 1971 to 1974, with the least complex products liberalized first. Investment restrictions were liberalized from 1974 to 1975.

However, at the same time the Japanese government agreed to eliminate these formal restrictions, it was also developing a series of "liberalization countermeasures" to offset the impact of liberalization. These countermeasures included subsidies, government sponsorship of joint R&D projects, continued administrative guidance to buy Japanese, the creation of horizontal links between Japanese producers, an organized division of product markets, and encouragement of tight relationships between Japanese producers and consumers of semiconductors. As a result of these steps, the U.S. share of the Japanese market in the post-liberalization period remained virtually the same (generally around 10–11 percent) as the U.S. share during the period of formal protection. In specific product areas, U.S. companies encountered a recurring phenomenon. They could achieve sales in Japan with a given device as long as sufficient quantities of a competing Japanese product were not available. As soon as Japanese firms could supply the product (at times a copy of the U.S. device), U.S. firms' sales fell dramatically, sometimes to zero. The U.S. share began declining in 1980, and, in 1982, was lower than the U.S. share in 1974, the last year the market was protected by quotas.

In 1982, the U.S. and Japanese governments began a series of bilateral discussions to address trade friction in semiconductors in the "High Technology Working Group." The Japanese government agreed to eliminate barriers to market access in high technology, and, in 1983, MITI began to encourage Japanese companies to increase their purchases of U.S. semiconductors. Although initial signs were encouraging, increased U.S. penetration of the Japanese market lasted only as long as the world-wide boom in demand for semiconductors. In late 1984, as semiconductor demand started to decline, U.S. companies once more began to lose market share in Japan. U.S. companies in Japan reported that MITI was no longer encouraging Japanese firms to purchase U.S. chips, and Japanese firms showed little or no interest in forming long-term relationships.

Japan's violation of its 1983 commitments drove SIA to file its Section 301 case in 1985. To settle this case, the two governments signed the U.S.-Japan Semiconductor Trade Arrangement in 1986. Under the agreement, Japanese semiconductor producers agreed to stop dumping in all world markets. In addition, the Japanese government recognized the expectation of the U.S. industry that the foreign company share of Japan's semiconductor market would "grow to at least slightly above 20 percent" by 1991.

Once again, however, Japanese compliance with the agreement was not forthcoming. Because the foreign share of the Japanese market remained stagnant, and Japanese dumping in third country markets continued, President Reagan imposed sanctions of million against Japanese goods in April 1987.

Japan eventually stopped dumping semiconductors. Furthermore, the foreign share of the Japanese market began to increase significantly between 1988 and 1990. For that reason, SIA decided to support the negotiation of a new agreement. In June 1991, the U.S. and Japan signed another semiconductor trade agreement. This agreement called for foreign share of the Japanese market to reach 20 percent by the end of 1992.

CURRENT STATUS OF U.S.-JAPAN AGREEMENT

Unfortunately, no real improvements have occurred since the agreement was signed in June 1991. Foreign market share in Japan reached 14.6 percent in the first quarter of 1992, up only three-tenths of one percent since the third quarter of

1991. This is far short of the goals of the 1991 agreement, which stipulates that foreign market share in Japan should reach at least 20 percent by the end of 1992.

In June 1992, the Electronics Industry Association of Japan and the Semiconductor Industry Association agreed to a series of "emergency measures" in an effort to jump-start the agreement. The top ten largest Japanese consumers of chips agreed to distribute "inquiry lists" to U.S. and other foreign companies, detailing their needs for semiconductors over the next six months. Based on the evidence that we have to date, however, these "inquiry lists" will not result in the kind of additional sales needed for full implementation of the 1991 agreement.

The painfully slow improvement in U.S. access to the Japanese market can not be attributed to lack of industry effort or competitive products. Since the signing of the 1986 Semiconductor Trade Agreement, U.S. semiconductor firms have opened one facility per month: 36 sales offices, 17 design centers, 6 quality test centers, 4 failure analysis centers, and 2 manufacturing facilities. U.S. semiconductors are also highly competitive in third-markets. In 1991, U.S. firms accounted for 45 percent of the European market, compared to 15 percent for Japanese firms. Our share of Japan's market for many semiconductors is a small fraction of our share outside the Japanese market.

Currently, a U.S. Government inter-agency group is reviewing whether Japan is fully implementing the agreement. We think that the answer must be a resounding "NO." If we continue to let Japan off the hook and look for excuses to do nothing, we will seriously undermine the credibility of American trade policy. Our trading partners will have no incentive to comply with trade agreements they have entered into if there is no cost associated with violating them.

I do not want to imply that nothing has improved as a result of the trade agreement. U.S. sales in Japan are at least $1 billion higher than they would be in the absence of the agreement. A great deal of effort has gone in to implementing the agreement:

- The Senate Finance Committee has helped keep the spotlight on this issue with its letter to Ambassador Hills signed by all 21 members of the Committee.
- President Bush expressed concern about the agreement to Prime Minister Miyazawa earlier this month.
- U.S. Trade Representative Carla Hills and Deputy USTR Michael Moskow have repeatedly raised this issue with Japanese government officials and industry executives. Ambassador Hills recently asked for a review of Japan's implementation of the agreement, which is scheduled to be completed by August 1.
- MITI has responded by meeting with the top 226 users of semiconductors, urging them to increase their purchases of competitive foreign semiconductors. Some Japanese companies have responded by developing and implementing detailed action plans designed to increase their procurement of foreign semiconductors.

Despite this level of activity, Japan's degree of compliance with the terms of the semiconductor agreement is simply unsatisfactory. The Administration and Congress must tell the Japanese in clear and convincing terms that anything short of full compliance in totally unacceptable. Passage of the Trade Agreements Compliance would help send that message.

MAINTAINING U.S. ANTIDUMPING LAWS

SIA also supports a "sense of the Congress" resolution, a provision of H.R. 5100, which calls for the President to reject any international agreement that would weaken U.S. antidumping laws. As an industry which has been devastated by dumping in the past, the semiconductor industry believes that maintaining effective antidumping laws is essential.

Between 1985 and 1986, Japanese dumping of DRAMs drove six out of eight U.S. DRAM producers from the market. The Japanese industry maintained high rates of capital spending during this period even though the demand for semiconductors dropped sharply. The result was predictable: massive overcapacity and Japanese sales at a fraction of costs. In EPROMs, for example, the Commerce Department found dumping margins of over 180 percent. Japanese companies have been willing and able to sustain large losses in pursuit of market share. Between 1985 and 1986, Japanese semiconductor manufacturers lost $4 billion while U.S. firms lost $2 billion. Because Japanese semiconductor producers are large, vertically-integrated electronics companies, they have a much greater ability to absorb these kind of looses. Six Japanese firms produce 85 percent of Japanese semiconductors, 80 percent of Japanese telecommunications equipment, 80 percent of Japanese computers, and 60 percent of Japanese consumer electronics.

Although the 1991 Semiconductor Trade Agreement contains provisions to deter Japanese dumping of semiconductors, the effectiveness of these provisions will be greatly diminished if the U.S. agrees to a GATT agreement which weakens the U.S. antidumping law. Unfortunately, the Dunkel text has a number of potentially devastating provisions that would permit sales below cost, make it more difficult to prove injury, and make it easier for GATT panels to overturn antidumping orders. SIA hopes that this Committee will continue to exercise close oversight over these negotiations.

EXEMPTION OF SEMICONDUCTORS FROM MARKING REQUIREMENTS

SIA supports a provision of H.R. 5100 which exempts semiconductors from the country of origin marking requirements. The elimination of the U.S. marking requirement will largely remove the problems associated with the different methods for determining country of origin for semiconductors by the United States and the European Community. The United States determines a semiconductor's origin based on the country of final assembly while the EC looks to the country where the diffusion process takes place. SIA members that ship to both markets may violate EC law when shipping a semiconductor to the EC that is marked according to U.S. standards. The reason is that EC member states, while not requiring marking, do require that a product not be mislabeled. To avoid violating EC member state law, the producer would have to remove the U.S.-required marking before export from the United States, which is a possible violation of U.S. law. SIA believes that the elimination of the U.S. marking requirement is a simple way to solve this problem.

Further, this provision will eliminate the cost and difficulty associated with country of origin marking requirements. Because of their small size, it is difficult to legibly mark semiconductors with the statutory marking and the producer identification, grade, quality, electrical values, and other symbols or numbers that may be required by the users.

CONCLUSION

The lion's share of the responsibility for increasing America's competitiveness lies with the private sector. To remain competitive, U.S. firms must invest in plant and equipment and R&D, continuously improve their quality, and shorten the time required to bring new products to the marketplace. There are many things, however, that U.S. companies cannot do. We cannot eliminate formal and informal barriers to trade. We cannot stop predatory pricing that drives U.S. firms from important markets. SIA believes that the government has an important role to play in opening foreign markets to competitive markets and responding to unfair foreign trading practices. SIA believes that trade law reform, particularly the Trade Agreement Compliance Act and the extension of Super 301, would help reduce foreign barriers to competitive U.S. products.

SIA believes access to foreign markets is an important element of a national strategy for economic leadership. For the semiconductor industry, the other elements would include continued government and industry investment in SEMATECH and passage of the Semiconductor Investment Act.

SIA believes that the public policies the United States has adopted, and the improvements that firms have made in quality and in reducing time-to-market, have made a difference. The world-wide market share of the U.S. semiconductor industry is higher now than it was in 1988, and I think that is partly the result of public policies such as the semiconductor trade agreement. In 1991, the U.S. gained market share in semiconductor manufacturing equipment for the first time in ten years. Clearly, SEMATECH has played a role in making that happen. If we make it a national priority, I have no doubt that America can regain its industrial and technological leadership.

PREPARED STATEMENT OF ROBERT M. TOBIAS

Mr. Chairman and Members of the Committee: I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of more than 150,000 Federal workers, including all bargaining unit employees of the U.S. Customs Service worldwide. I am pleased to appear today to give our views on H.R. 5100, Title II, The Customs Modernization and Informed Compliance Act.

I am pleased to come before you and announce our support for this legislation. When the legislation was initially introduced NTEU was strongly opposed to it. After serious negotiations with the U.S. Customs Service and the Ways and Means

Committee, NTEU is able to support Title II of H.R. 5100. NTEU has always supported Customs modernization efforts, including use of automation and electronic data entry to accomplish Customs' twin missions of enforcing the trade laws while facilitating entry of passengers and cargo. As a result of our negotiations with the Customs Service and the Ways and Means Committee, NTEU received adequate assurances through statutory and report language that all efforts would be made to strike an appropriate balance between facilitation and enforcement while modernizing the Customs Service. However, NTEU and the Customs Service were unable to reach an agreement on one extremely important issue which we believe vitally effects the ability of the U.S. Customs Service to carry out its mission. I am here today to ask this Committee to amend H.R. 5100, Title II, to include a provision which requires that all foreign vessels are met by a U.S. Customs Inspector. This amendment is consistent with current law.

Under current law at 19 USC 1448(a) the authority and obligation of Customs officers to board vessels is clearly stated. Under this provision, unlading may begin when the master of a vessel makes a preliminary entry and delivers the manifest to the "Customs officer who boards such vessel." The master must produce the crew list, ship's register, clearance and bill of health from other ports, and the manifest to the Inspector. If a vessel carrying merchandise arrives in a port and does not intend to unlade (or unlade that particular merchandise there), no entry of the vessel is required. Ships entry, formal or preliminary, is only required at the specific port at which the vessel seeks to unlade. Section 257 of Title II, H.R. 5100, provides for vessel entry and clearance electronically, at locations other than a port of entry, but makes no reference to Inspectors' boarding. We believe that this is a serious mistake with serious consequences on the ability of the Customs Service to carry out its enforcement role.

Today, contraband arrives in many forms that affect our national well-being, not simply drugs but merchandise entering in violation of our trade laws. This contraband is being carried on, and discharged from, vessels arriving at our ports. Customs must have someone on the spot observing and inspecting, using manifest and other electronic entry data as key intelligence for enforcement checks.

While we come before you today to express our support for this bill, we remain painfully aware of the shortcomings of the Automated Commercial System. Inspectors who board vessels prior to—entry provide the very important human contact which supplements computers. Earl Walter, Assistant Director of Federal Management Issues of the General Accounting Office, stated in testimony before the Subcommittee on Oversight, Committee on Ways and Means, that Inspectors hit rate for initiating inspections is almost double that of the Automated Commercial System. GAO stated in testimony that Customs needed to rely more on the intuition of the Inspector and less on the computer. Discontinuing boardings runs counter to the recommendation made by GAO before the Oversight Subcommittee of the- Ways and Means Committee to increase the direct participation of the U.S. Inspector in enforcement matters.

We understand that the U.S. Customs Service is opposed to Customs Inspectors boarding vessels because they do not believe it has a deterrent effect. Of course, deterrence is difficult to measure as one can not assess how many more people would commit violations if there were not boardings. However, Customs Inspectors throughout the Nation continue to tell us of incidents where drugs would have entered the country if a boarding had not occurred, of trade law violations that would have resulted and, of large duties would have gone uncollected.

One of the basic aspects of Customs adequately performing its mission is the accurate documentation of what persons, goods and equipment are entering the United States. With the advent of containerization and the explosion of international trade volume that basic function has become excruciatingly difficult. Indeed, the volume and demand for immediate expediting of cargo movement has led to many of the provisions of the bill before this Committee. However, it is a complete fabrication to maintain that boarding of vessels hinders the rapid movement of cargo or that it can not provide relevant information to regulate and enforce our trade laws. We have all seen the large cargo vessels that transport freight throughout our global market. I ask the Committee to imagine such a vessel approaching the Verrazanno Bridge in New York or heading toward the Mississippi River in Louisiana. On board are dozens of foreign Nationals, many times from diverse backgrounds, nationalities and experiences in the shipping industry. Some may be making their initial voyage. Laden on the ship are tons and tons of foreign made goods intended to be deposited directly into our fragile domestic economy. If boardings by Inspectors are not statutorily mandated, there is absolutely nothing preventing these ships from proceeding to dock, and unlading their cargo completely unchecked to make its way in to communities adjacent to New York City or New Orleans. Customs will maintain that

it will selectively choose high risk vessels for thorough searches. That is an excellent ideal—when, and if, their intelligence and computer systems allow such accurate designation. It is not near there today as documented by GAO's latest finding that the ACS only detects 16% of the trade law violations.

It is important to understand what a boarding Inspector actually does.

Today, ships heading towards the port areas of New York or New Orleans may be met by a harbor vessel with a boarding Inspector or team of Inspectors on board. The vessel will be stationed at an anchorage just outside the port. The Customs Inspector will climb a jacobs ladder and meet the captain. He will receive the documentation, interview the crew and walk about the vessel randomly checking the personal belongings and storage areas of the crew. He will visually inspect the mechanical holds and other places of the vessel's public space. He will survey the cargo holds and randomly checks the weights and markings of the freight against the provided manifest. At any time that he becomes suspicious he can radio for a team to be prepared dockside. The U.S. Customs Inspector is the only law enforcement presence, indeed the only representative of the U.S. government, at this vital point before foreign goods and Nationals enter our country. His presence, an obvious deterrent and impediment to freewheeling smuggling, does not impede the vessel which is en route to port or in a staging mode for docking. If the proposed legislation before You today is enacted, these vital functions of the U.S. Customs Inspector will be eliminated.

With all the emphasis and efforts this Committee has made to protect our domestic industries and jobs; and the growing awareness of other nations taking advantage of the United State through unfair trade practices; I find it difficult to imagine that the American taxpayer would accept having foreign Nationals and goods enter our country without even the unobtrusive presence of a boarding Inspector. Are we to enforce trade laws or assume compliance? What about narcotics? Across the country narcotics seizures, seizures of illegal importations and prevention of entrance of dangerous goods occurs because of boardings.

In the spring of 1991, an Inspector at the New York Seaport made a routine boarding of the vessel Bright Eagle. This ship had not been designated for any type of enforcement exam and the Inspectors examination was anticipated to be cursory. During the course of his inspection, the officer found discrepancies that aroused his suspicion and led him to believe that there might be stowaways and unmanifested merchandise aboard the vessel. He notified the captain that the ship must remain at anchorage rather than proceeding to its dock for unlading and then notified the Special Contraband Enforcement Team (CET). A more extensive search revealed 385 pounds of cocaine under the care of two stowaways. Had the vessel not been boarded, the cocaine and the two individuals who accompanied it would have entered the United States.

This is only one of many seizures made through boardings in the New York area. On October 28, 1991, 5.3 ounces of cocaine was seized during a boarding on the *Merchant Prince.* On November 12, 1991, 106 pounds of cocaine was seized during a boarding on the *Merraa.* On November 13, 1991, 35 pounds of cocaine was seized during a boarding on the *Atlantic Ocean.* On December 20, 1991, 3.7 pounds of cocaine was seized during a boarding on *M.E.I.* On April 15, 1992, 11 pounds of cocaine was seized during a boarding on the *Atlantic Ocean.* On April 25, 1992, 72 pounds of cocaine was seized during a boarding on the *Chioz.* Finally, on April 29, 1992, ten pounds of cocaine was seized during a boarding on the *Atlantic Ocean.*

Inspectors in Texas have many stories to share with us. An Inspector from Houston, Texas was told by a Captain that he had found cocaine on board his ship. When the Inspector asked the Captain what he would have done if the ship had not been boarded; he replied: "I would have thrown the cocaine overboard and not told anyone." Upon searching the vessel, the Inspector found more cocaine.

Talking to the crew not only leads to drug seizures but also may lead to extra duties being collected. An Inspector boarded a vessel, *M/V Rambam,* in Houston, Texas and was informed by the crew that the Captain had not declared vessel repairs which were done aboard. The crew chose to speak with the Inspector because they were angry with the Captain for not being paid overtime for the repairs. This alerted the Inspector to also examine the sister vessel. These boardings resulted in Customs seizing both vessels and collecting over $100,000 in duties.

Although the Customs Service may not believe that boardings are a deterrence, the vessel owners appear to think differently. Recently, an Inspector was boarding a vessel in Houston and an owner's agent explained to him that he was looking forward to the change in the law whereby Inspectors would no longer be boarding vessels. Specifically, the vessel agent stated: " We can get away with anything because the Customs Inspector will not be boarding the vessel."

In other areas around the U.S., boardings prevented varying amounts of drugs from entering the country. In Astoria, Oregon an Inspector was boarding the *F/V George Allen* and discovered marijuana in the cabin of a crewman on board the vessel. The marijuana was seized and the crewman was arrested. In Jacksonville, Florida, upon boarding the vessel *Topsail,* an Inspector was informed by the Captain that a suspicious substance was discovered when he and his officers had conducted a search of the vessel. Upon examining the substance, the Inspector called the Jacksonville CET Team and the Office of Enforcement for back up. The substance tested positive for cocaine.

A major challenge Customs faces in enforcing the trade laws is—detection of transshipment to evade country of origin requirements and circumvent Anti-Dumping and Countervailing Duty (AD/CVD) orders. With today's flexible transportation systems, transshipment can occur with little effort. For example, wearing apparel is laden in China, with no country of origin marking. The vessel proceeds to Macau where it is unladened. Thereafter, a new bill of lading will be made for them. The goods are labeled as made in Macau. They are ladened again in Macau and head for the U.S. The manifest received in the U.S. only indicates that goods were ladened in Macau and came to the U.S. It does not indicate about any goods from China to Macau. Transshipment to evade country of origin requirements may be detected by correlating information obtained from physical inspection of the vessel with the manifest and other documents which may only be received by boardings.

Under current law the Master must provide the Inspector with the manifest upon boarding the vessel. This allows the Inspector to certify that the declared manifest of goods on board is in concert with the cargo on board. The Inspector can check a few pieces and compare them to the bill of lading. If he finds a discrepancy, he can order an examination or seek more information from the captain or purser. In addition, when the Inspector receives the manifest from the Master he is able to ensure that the goods are not prohibited, dangerous or otherwise inadmissable. Although the Modernization Act calls for an automated manifest system, this is not currently in effect nationwide and there is no guarantee that unlading will not have already been completed at the time the Inspector receives the electronic manifest and discovers illegal goods. To use the manifest as an enforcement tool, a Customs Inspector must have access to the document and be able to board the vessel.

While on board the Inspector can visually examine the vessel itself and the vessel log. The log states where the ship has traveled. This can be compared with the manifest. If there is a discrepancy, it may indicate that further enforcement action is required. If the ship stopped in a drug source country, the Inspector would again be alerted to possible additional interdiction efforts that might be necessary.

Boardings also enable the Customs Inspector to receive and validate authentic documentation from the Master. During boarding the Inspector will ask to see the registry. This must be the original registry—it would be impossible to verify its authenticity through a computer system. This document makes the Captain legally liable for all documentation, records, logs and marked cargo. If the registry indicates a specific weight, the Inspector will also ask to see the water pollution certificate. The Coast Guard requires this document for all vessels over 300 tons. It indicates that the vessel is underwritten in case of spillage. Without such insurance. the vessel is prohibited from sailing. Again, unless there is a boarding there is no way to ensure that the document has not been fabricated or altered.

Often a Master will want to have vessel equipment taken off the vessel for repairs to be returned later. The only way that this can be done is by checking the serial number on the back of the equipment and checking it against that manifest on the back of the form 5171.

Although deterrence is impossible to measure, the Customs Service does have some experience record when they have eliminated boardings under specific situations. In 1984, the Customs Service engaged in an experiment titled the "Alternate Vessel Entry Procedure" in New Orleans whereby 50% of the vessels were not boarded upon arrival. Instead, the vessel captain radioed in the time and date of arrival. An Inspector was assigned the task of monitoring whether these vessels were providing accurate information. The study found 40% discrepancies in information provided by the vessels.

In 1990 the U.S. Customs Service implemented a new policy termed Coastwide Advanced Preliminary Entry (CAPE). Under this program the Agency eliminated all boardings of coastwise vessels throughout the Southeast Region.

Under the CAPE procedure, vessel agents employed by the shipping companies performed the functions previously performed by Customs Officers. The vessel agents made application for advanced preliminary entry prior to the entry of the vessel into the port. Customs approved this application and issued the vessel a CAPE permit. The vessel agent boarded the vessel and verified the accuracy of the

manifest and the other required documents. When that was accomplished, the vessel was free to "unlade" cargo. The vessel then made "formal entry" at the Customs House within twenty-four hours. This procedure resulted in the people the Customs Service were trying to regulate, regulating themselves. If boarding is eliminated altogether, will the owner's agent also assume all of the responsibilities of the Inspectors? Clearly, we can not sit by and watch this happen.

Finally, I would like to answer some of the concerns that we have heard others express about boardings. It is simply incorrect that Inspectors would rather not board because of the safety hazards involved. Although it is a hazardous duty, our people believe it to be a major duty in their efforts to protect our borders. I have spoken to each chapter leader in a major port and each has told me that they have not heard complaints concerning the safety of boardings. In the past, there was some concern raised about mid river boardings, but this is definitely the exception and not the rule. If an Inspector is not comfortable boarding because of a safety hazard he/she need not engage in the activity. In addition, the Customs Service has the authority to delay the boarding until conditions permit safe boarding. Finally, our collective bargaining agreement provides for health and safety committees which address these problems.

Others may assert that Customs could perform boarding in the course of other functions or on a risk assessment basis. We have two problems with this scenario. First, the whole idea of boarding is to help to make risk assessment determinations. If it is determined through other sources that the vessel is a high risk, boarding is less meaningful. A high risk vessel would mean that the cargo would be examined. Boardings are especially important in situations where the vessel is a low risk and the information which is learned alerts the Customs Service that a more extensive exam is necessary. Secondly, if we eliminate the function from the statute, with the increased workload of the Inspector, the duty is likely to be gradually eroded away.

Finally, although much material previously provided may now be received through the automated systems, criminal importation information is not voluntarily provided by vessel operators or importers. Boarding, as stated earlier, provides the Inspector an opportunity to judge the authenticity of the documents. Moreover, receiving the documentation is only one of the many vital functions which boarding serves.

NTEU understands that the Modernization Bill has become a part of a larger piece of trade legislation. We applaud the Committee's efforts to try to make stronger trade laws. However, we caution the Committee to be wary that they don't eliminate the functions which make it possible for Custom's employees to enforce these laws. NTEU strongly recommends that the Committee adopt language which would:

- Require Customs Inspectors to meet and board all arriving commercial vessels, including coastwise vessels, that are carrying foreign cargo or have had interaction with a vessel or port. (This is not be construed that a full inspection or examination of any vessel must occur.)
- Requires Masters of arriving vessels to provide to the boarding official a certified manifest of all goods laden on board as well as a general declaration of all crew personnel and passengers.
- Ensure that Customs will conduct enough inspections and examinations of arriving vessels to secure carrier compliance with laws, rules and regulations.

Mr. Chairman, this concludes my statement. My staff and I are prepared to meet with you to answer any questions and to further discuss our recommendations.

PREPARED STATEMENT OF JACK VALENTI

Dr. Samuel Johnson, a wise, grizzly bear of a philosopher, put it this way: "When a man is about to be hanged it does tend to concentrate the mind wonderfully."

Which is why this hearing is aptly timed. In the world of trade, our mind had better damn sure be concentrated, because if it isn't we will approach the trade gallows much like a fellow bleeding from a dozen wounds, stumbling, lurching, and still unsure of how the rope got around his neck.

Here we are at a time when the face of the American dollar is drawn and emaciated. We are at 122 Japanese yen and falling fast . . . at 1.4 DMarks and fading . . . losing to the British pound at $1.95. It is the merrily irrelevant conventional wisdom which says that when the dollar is weak, exports must be strong. The latest trade results, bleaker than an obituary report, confirm that in May the trade deficit ballooned to $7.38 billion. Not only is the number bad, but the trend is worse. The

last three months show we are sliding downward like unhinged boulders. So much for conventional wisdom.

We are caught in a vise. Exports shrinking, relentless competition from other nations, but most of all, from the standpoint of the U.S. film/television/home video industry, too many countries are tilting their marketplace to their advantage, to our disadvantage, obliterating competition in visual entertainment. We want the trade bubble in the center of the level, not out of kilter. Need I remind this panel that American films, television programs, home video material are hospitably welcomed by audiences on every continent? Unhappily, not by governments. Need I remind this panel that the U.S. movie industry is one of America's few great trade prizes?

Let me cite to you the dismal catalogue of discrimination, lack of national treatment, abandonment of protection of our intellectual property, and the casual neglect of concern about keeping competition alive.

In the European Community we are assaulted by Television Quotas which are the enemies of competition and whose long term objective is to force American producers to make their films and TV programs in Europe. If we give in, then it means job loss in the U.S.A. Yet if we don't give in, we will find ourselves exiled from TV and cinema screens throughout the twelve nation states bound together in the European Community.

In a stream of Directives emerging from Brussels, Directives on Rental Rights, Satellites, Broadcast Quotas, our contractual rights are being mauled, the global concept of National Treatment is being abused, and new barriers parading under the concept of Reciprocity are crawling out of the shadows.

In Thailand, in Greece, in Italy, in Poland, in Russia, in Taiwan, in Venezuela, in Turkey, in the Dominican Republic—the list is long, the list is dreary—our movies are being systematically stolen by pirates. The governments in these countries are either unable, unwilling or uninterested to stop the thievery.

The negotiations in GATT and the North American Free Trade Treaty bear heavily on our future. If either accord, signed by our government, inserts or leaves in place anti-competitive trappings, we are undone.

I could go on, but I would have to gulp down a bucket-full of Advil to stay the course. My recent testimony before your committee in March lays out the obstacles in more detail, as does the testimony of Eric Smith, Executive Director of the International Intellectual Property Alliance, before the House Ways and Means Committee earlier this year. I have attached copies of both submissions as appendices to my testimony today.

So I conclude by saying we don't want to quarrel or fight with anybody. We don't want to confront anyone. All we want is the right to compete without artificial parliamentary hedge rows planted in our path. All we want is for our valuable property to be protected, and not stand by helplessly to watch our movies, our home video material methodically stolen by thieves.

Our persuasions, pleadings, legalities, civilities have failed. We have put our grievances to paper, and we have raised our voices to speak them. But too many parliaments, bureaucracies and ministers will not read and do not hear.

Which is precisely why Section 301, and the Special 301, are the only weapons we possess which have any force.

What is now required is the will and the resolve of the Congress and the Administration to use these weapons when all else fails, else we will slowly, remorselessly, surely be cut down in too many markets in too much of the world. All we ask is that we be accorded in foreign markets the same freedom and protection that foreign businessmen find so alluring in ours.

THE INDISPENSABLE TRADE WEAPON: 301/SPECIAL 301

[A commentary and appraisal by Jack Valenti, March 6, 1992]

This Committee asks: What is the worth of the 301 and the Special 301? The answer: Plenty.

THE GLOBAL SCENE TODAY

The Cold War is over. But whether we know it or not another war has begun: A new World War of Trade. It is a clash between exports and imports, where the troops deployed are products, services and manufactured goods.

In the far East, Japan, Korea, Taiwan, Singapore, Hong Kong are fastening their hold on exports and relentlessly appropriating market share from what in years past were American preserves.

In Europe, twelve nation states have bound themselves in a seamless web of unity, with seven other European countries connected to their periphery. The Euro-

pean Community's combined marketplace economic weight is mightier than anyone a decade would have dreamed, larger in population and GNP than the USA.

Almost in every domestic economic arena where we once were both superior ad dominant, we are stretched to the snapping edge, our malls and stores invaded by foreign goods and services. Beyond our shores what we make ad market collides with an ever rising avalanche of competition, in quality, cost, and design.

THE USA'S MOST WANTED EXPORT

Yet there is one American product which is supreme on every continent in the world. It is the USA's most wanted export. Though it is not protected by patent nor secret formula nor subsidy, its popularity grows. It is greeted in every country with affection and patronage. Up to now, it has not been cloned nor duplicated by any of the Asian and European Goliaths of electronics, communications, manufacturing or services.

What American product, creative or manufactured, other than passenger aircraft, captures more than 40% of the Japanese marketplace? What American product is usually number one wherever it is available in western Europe? What segment of America has more recognizable figures, known and applauded, in every hamlet of the world?

Of course, it is the American movie ad TV program. America-created movies and TV programs return to this country over $3.5 billion in SURPLUS balance of trade.

THE AMERICAN MOVIE/TV PROGRAM IS UNDER ASSAULT FROM QUOTAS, RESTRICTIONS, TRADE BARRIERS

No wonder then that some foreign governments are keen to shrink the American visual presence. To achieve this aim, these countries have invented ingenious non-tariff trade barriers, all kind of hedge rows, trade spikes, restrictions in varying lethal dimensions. And if that wasn't enough, too many countries are languid in their protection of our creative material from theft by "pirates." It is one thing for a country to say, "we have no restrictions, come right on in," but quite another if when we get there we find that every movie we import is promptly stolen, illegally duplicated, flooding that territory with counterfeit copies, rendering worthless all that we own while that government stands aside, unable or unwilling to safeguard our Intellectual property. It's a double whammy.

The U.S. filth industry confronts the European Community in a controversy over "contract rights," whether or not contractual agreements made in the United States will be recognized in the European Community. The throat of the issue is who controls the copyright of a movie. The U.S. has one view. Europe has an opposite view. But Europe has the trumps because the European Community will deal the trade cards. What cannot be argued is that the American movie industry Is the healthiest in the world. Possibly the U.S. view of contract rifts might be one reason. But if the European Community exiles our concept of contract rights, we are in for painful times.

The trade barriers most fashionable in the European Community and other world areas are Screen Quotas and Television Quotas. The Quota carves out a percentage of "screen time" in movie theaters and "air time" on television stations, usually over 50% or more in television, and reserves that time for that which is the native creative product. Thus the Quota inhospitably informs us that there is an impenetrable wail beyond which American visual entertainment cannot go. Passageway through the wall is available only to those of specified origins, but not American.

PIRACY RAMPANT

In too many countries laws protecting intellectual property are either non-existent, or so loose fibered they are a national joke, or lay out penalties so mild as to make a slap on the wrist seem cruel and unusual punishment. Or, the laws are adequate but there is no government resolve to enforce the law, which Is same as not having a law at all. In all instances video pirates and signal thieves run amok.

THE TRADE WAR IS IN FULL GALLOP

Which is why for the American movies program, the trade war has not only begun, it is in full thunderclap gallop.

The trade talks on the General Agreement on Trade and Tariffs (GATT) now being negotiated in Geneva, and the North American Free Trade Agreement (NAFTA) now being discussed by Mexico, Canada, and the U.S. are the most visible battlefields but not the only ones.

If the final results in any of these negotiations sanctify Quotas as a way of trade life, bars us from "national treatment" and Ignores our contractual rights, America's most valuable trade asset will have been wounded. In time, the wound will widen. In time, the one American-created global enchantment, so fragile it flies on gossamer wings, so alluring It is irresistible to moviegoers on every continent, will have been enfeebled—not because its creative zest decayed, not at all, but because a good many countries and a good many people in those countries discovered that the only way to defeat the American movie's attraction is to cage it, exile it, bar it or steal it.

In the American movie we have a world winner. But we must protect it from thievery. We must preserve its ability to move unhobbled around the world. If we allow other nations to restrict us, to put us under harness, to we-en our ability to compete fairly, if we allow them to passively observe the massive theft of our intellectual property with neither parliamentary zest to bar that theft nor the national commitment to enforce the laws, then a great American export trade prize will have been crippled.

THE 301 AND THE SPECIAL 301 ARE OUR INDISPENSABLE DEFENSE WEAPONS

On April 8, 1987, I testified before this Committee on behalf of the International Intellectual Property Alliance. On that day I, and many others, urged the adoption of new ways to battle old foes. The Congress in its bi-partisan wisdom obliged.

The Trade Act of 1988 confirmed the resolve of the 301 and buckled to it the Special 301, with enlarged powers and swifter remedies, girding the U.S. Trade Representative with the weaponry it needs to go after pirates in whatever part of the world they ply their illegal trade, as well as to collapse market barriers. The American movie industry and all other U.S. enterprises which depend on the uncrackable shield of copyright for global sustenance are every day vigilant because, like virtue, we are everywhere besieged.

STORMY WEATHER IN TOO MANY COUNTRIES, IN PIRACY, QUOTAS, MARKET ACCESS

Let me illuminate some areas where we are encountering heavy trade weather. We are urging the USTR to move quickly, sternly in all these places.

A 301 filed against THAILAND by the IIPA and the American movie and record industries in 1990 has been stonewalled by the Thais. At this moment, Thailand may be accurately described as the worst "piracy" arena anywhere. This was terrible disappointment to us. We urged USA to order retaliation—but hold it in abeyance to see if the Thais put the pirates behind bars. The sad part is, the Thais now believe they're home tee, without putting a single thief behind bars. Either USTR takes the gloves off with Thailand, or the 301 will have been severely blunted.

ITALY's copyright laws are as porous as a wicker basket. The IIPA estimates losses of almost $600 million in that one country alone. The Walt Disney Company has been stung with the most audacious, and up to now, unpunished theft of FANTASIA and SNOW WHITE, with the government powerless to intervene. What is being visited on Disney is an outrage grazing the meaner edges of absurdity.

In POLAND and GREECE piracy is unbridled, though the Greek government has pledged an overhaul of its copyright law and tepid piracy penalties.

In what was formerly known as the SOVIET UNION, It's Dodge City deja vu. As of this writing, there is no sign saying "guns will be checked at the door." Piracy is literally 100% throughout the territory. Which is why I announced some months ago that no more films from MPAA companies would be licensed to that part of the world until there are in place copyright laws solidly linked to enforcement."

CYRUS has been a great export center for video thieves. Prodded by being listed on the Special 301 Watch List, the Cypriot government reports it is working to eradicate this intolerable nest of pirates.

In TAIWAN and EGYPT conditions for the protection of our property are rapidly sliding downhill. In GUATEMALA, video and cable theft are without boundaries. In VENEZUELA, reform of the copyright laws cries out for swift renovative action.

In INDONESIA, our noses are pressed against the windowpane of their border. We cannot open offices there, cannot conduct our business for ourselves, and must channel all our films through government appointed monopolists.

In the EUROPEAN COMMUNITY we are challenged by television quotas which exile us from more than a majority of air time.

NEEDFUL THINGS TO MAKE 301 AND THE SPECIAL 301 MORE EFFECTIVE

301 and Special 301 truly work only when USTR makes it painfully clear to those who restrict us and have feckless attitudes about protecting our property that the U.S. is dead serious. No new legislation is required.

I cannot laud Ambassador Carla Hills too highly. In a global nest of complexities, she has been a mostly triumphant captain. She has been thoroughly supportive of MPAA's and the International Intellectual Property Alliance's objectives. Her staff is absolutely first class, a matchless group unsurpassed in energy and ability by any in the government.

But in resources USTR is thinly clad. It has a tiny band of professionals, not enough to man all the barricades. Trade negotiations consume time, great chunks of time. These negotiations are riddled with complicated, obscure issues which resist quick solutions. Even the very best of staff professionals is hard pressed to challenge so many tangled details on so many barricades and bring them to close, on schedule.

MPAA believes USTR needs more support staff. It is my judgment that the return on this expenditure in high caliber staff would be one of the worthiest investments the Congress could make. MPAA also believes that one of the flaws in the current process is that it takes too long. Thailand is a prime example of how delay or hesitation can be devastating.

To sum up, the 301 and Special 301, used sparingly, with precision, is literally the only counter-rebuttal available to American intellectual property. It has to be admired, valued and sustained by the Congress which gave it birth. Without 301, American intellectual property is undone.

AN ADDENDUM—SOME HISTORY AND ACTIONS: 301/SPECIAL 301

Enactment of Section 301

- In October of 1984, Section 301 of the Tariff and Trade Act of 1984 was amended to specify that failure to provide "adequate and effective protection" for intellectual property is an "unfair trade practice." The amendment also allowed USTR to "self-initiate" a 301 action.
- The same legislation also renewed the expiring Generalized System of Preferences (GSP) program to set "adequate and effective protection" as a criterion for maintaining GSP benefits. These benefits permit less-developed countries to import certain products duty-free into the U.S.
- First Actions Under Section 301

Korea

In August 1985, the International Intellectual Property Alliance ("IIPA"), representing the motion picture, music recording, music publishing, book publishing and computer software industries, filed its first comprehensive report on "Piracy of U.S. Copyrighted Works in Ten Selected Countries." The report was filed in response to USTR request for comments under Section 301 and GSP.

Among the countries listed was *Korea,* which was cited for losses of almost $150 million due to piracy (audiovisual cassettes—$16 million; record piracy—$40 million; book piracy of $70 million and computer software piracy of $20 million) IIPA also complained of market access barriers (direct distribution of films, for example, was prohibited) and an inadequate copyright law, under which foreign works received no protection.

In the fall of 1985, *USTR self-initiated a 301 against Korea* for failure to provide "adequate and effective" copyright and patent and trademark protection. As a result, Korea "settled" the 301 action in 1986 by agreeing to pass a new copyright law, which was effective July 1, 1987, and to join the Universal Copyright Convention effective October 1 1987. It also promised to enforce these new rules and to apply "administrative guidance" against pirates.

Also in 1985, MPEAA filed a Section 301 complaint against Korea for its failure to allow U.S. motion picture companies to distribute their product directly in Korea. In 1986, Korea agreed to allow direct distribution. But the last barriers were not eliminated until 1988, following a second 301 complaint

Taiwan

Because the GSP program was amended in 1985 to require beneficiary countries to provide adequate and effective protection for intellectual property, Taiwan was fearful of losing its GSP benefits because of massive piracy. (The Alliance's August 1985 report cited Taiwan for massive piracy of books, video cassettes, records and tapes and software, with losses estimated at $76 million internally and $110 million for exports. The videocassette market was estimated to be 100% pirate, audiocassettes 70%.) In July 1985, Taiwan adopted a new copyright law.

Singapore

Singapore was listed in the IIPA 1985 report as the "capital of world piracy," affecting virtually all types of U.S. copyrighted works. Losses were estimated at $358 million. Singapore, like Taiwan afraid of losing its GSP benefits, in 1987 amended

its copyright law to specifically provide protection for foreign works and to toughen penalties. Better yet, the government immediately began enforcing the new law, which has helped to eradicate much of the piracy in Singapore.

Malaysia

In response to bilateral trade talks with the U.S., Malaysia in 1987 adopted a strong new copyright law. U.S. works were not protected until 1989, however, through Special 301 leverage. In 1985, pirate sound and video cassettes dominated the Malaysian market, with up to 80% of the market pirate. Since then, record and tape piracy has been reduced significantly, and videocassette piracy is slowly being reduced.

THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988: THE NEW SPECIAL 301 MECHANISM

What Did It Do

The new Special 301 mechanism added to Section 301 (see above) a specific remedy and time table for "market access" barriers:

a. It "institutionalized" USTR's 301 authority by asking USTR to review "problem" countries on an annual basis, not an ad hoc basis as in the past. Thus it recognized the importance of intellectual property protection to U.S. industries and U.S. trade.

b. it shortened the time period for USTR action from one year to six months (with a possible, but maximum, 3-month extension), in recognition of the fragility of intellectual property products

Has it worked

YES:

—It kept the pressure on countries to adopt good laws and enforce them, in the face of an annual U.S. review of trade problems.

—It focused the Executive Branch's attention and resources to solve this debilitating trade problem.

How Has It Worked

1. In 1989, MPAA and IIPA asked USTR to target 12 countries under Special 301. All 12 were named by USTR to Priority Watch and Watch lists, including:

Thailand—Cited for lack of protection for U.S. works under its copyright law and the resulting rampant piracy, with losses estimated at $61 million in 1988. (This includes cable piracy, videocassette piracy and unauthorized public performance.)

China—Does not have a copyright law. Book and computer software piracy, in particularly, have been enormous.

Korea—Cited for failure to enforce its new copyright law and penalties. Book piracy continued openly, as did videocassette, audiocassette and software piracy.

Taiwan—Book piracy was reduced markedly in Taiwan, but despite the new copyright law, illegal public performance of movies in so-called "MTV'S," or video parlors, continued unabated, as did videocassette, software and record piracy, because of lack of enforcement.

Saudi Arabia—Home video piracy and record and cassette piracy were estimated at 100%, while Ashton-Tate and Microsoft products were 98% pirate. Trade losses were estimated at $189 million.

Egypt—Virtually no progress was made in stemming losses from piracy between 1984 and 1989. Estimated losses increased from $23 million to $66 million, including videocassettes, audiocassettes, books and software.

What has happened from 1989 to 1992

China passed a copyright law in 1990 and in 1992, under threat of trade Sanctions after being designated a Special 301 priority country by USTR, agreed to join the Berne Convention.

Saudi Arabia passed a copyright law in 1990 for the first time, and may join Berne soon. This would set a precedent for the Middle East. The Saudis must make some changes in their law and improvement enforcement.

Korea began enforcing its new copyright law in 1989–90. Video piracy has declined from virtually 100% of the market to about 28%. Despite initial local opposition, Korea also opened its market to outside distributors following the MPEAA's 301 petition.

Malaysia joined Berne in 1989 and began enforcing its law, thus reducing piracy.

India has just agreed (1992) to adopt copyright reforms and to abolish market access restrictions on the film industry.

Indonesia signed a bilateral agreement in 1989 protecting U.S. copyrights and cracked down on audio and video piracy. They agreed in 1991 to liberalize market barriers to the motion picture industry.

Taiwan has introduced, but has delayed adopting, a new copyright law. *Major* enforcement problems remain in Taiwan.

However, major problems remain. USTR must tackle them this year

1. *Thailand:* A 301 filed against Thailand by MPEAA. IIPA and the Recording Industry Association of America in November, 1990, did not result in the problem being solved. USTR must get tough or Thailand will probably remain the "worst" pirate country. Thailand must commit to punish piracy if it is to be stopped.

2. Piracy levels remain high in:

Greece—Rampant TV and video piracy are destroying any legitimate market for films and TV programs. Greece's copyright law is outdated and it has failed to regulate pirate TV stations. Trade losses on film, recording and music piracy are estimated at $56 million. However, in response to complaints under Special 301, the Greek government has promised to amend its copyright law to provide greater protection for copyright and sterner penalties for pirates.

Italy—Widespread piracy has resulted in estimated trade losses for all copyright industries of $575 million. Lack of an adequate copyright law and enforcement is the root of the problem. Software piracy is estimated at 80% of the market, The Walt Disney Company has been stung with the most audacious, and up to now, unpunished theft of FANTASIA and SNOW WHITE, with the government powerless to intervene. What is being visited on Disney is an outrage grazing the meaner edges of absurdity.

Poland—Video and audio piracy, as well as software piracy, are rampant. An estimated 70% of Poland's video market is pirate and pirate audiocassettes are exported throughout Eastern Europe and as far south as Greece. The Polish copyright law is seriously deficient. Trade losses are estimated at $140 million.

Former USSR—None of the former USSR states have adopted copyright laws to date. Piracy is virtually 100% in all categories. MPEAA members have ceased sending films to those countries because of piracy problems. Trade losses due to piracy of motion pictures have been very conservatively estimated at $40 million.

Cyprus—Cyprus has been an export center for piracy. In response to being placed on the Special 301 Watch List, it is working to reduce piracy by enacting a new copyright law and instituting enforcement mechanisms.

Egypt—Trade losses have consistently increased, to their present estimated level of $70 million. Egypt has drafted two copyright laws and one draft audiovisual law, but those drafts fail to contain adequate protection for copyrighted works.

Taiwan—The situation has deteriorated rapidly since April 1991, as the Taiwan government refuses to make a serious commitment to genuine enforcement of copyright protection. Trade losses have ballooned to an estimated $370 million. An estimated 86% of video rental shops carry pirate tapes.

Guatemala—Cable and video piracy remain unchecked without adequate copyright or cable laws or any sort of enforcement.

Venezuela—Reform of the copyright law is urgently needed. Illegal retransmission of satellite signals and pirate videocassettes are increasing, with losses estimated at more than $12 million.

3. Market access barriers persist in Indonesia. Despite promises, the Indonesian government, distribution must be channeled through government-sanctioned monopolies.

4. Broadcast quotas are still in place in the EC.

A complete list of IIPA's recommendations for 1992 under Special 301 is being submitted separately for the record.

Attachment.

Testimony
of

Eric H. Smith
Executive Director and General Counsel
International Intellectual Property Alliance

Representing

The International Intellectual Property Alliance

Before

The Subcommittee on Trade
of
The Committee on Ways & Means
United States House of Representatives

January 23, 1992

Mr. Chairman and Members of the Committee:

I am Eric Smith. I am Executive Director and General Counsel of the International Intellectual Property Alliance. IIPA is comprised of eight trade associations that collectively represent the U.S. copyright based industries -- the motion picture, music and recording, publishing and computer software industries. Member associations are:

American Film Marketing Association (AFMA);
Association of American Publishers (AAP);
Business Software Alliance (BSA);
Computer and Business Equipment Manufacturers Association (CBEMA);
Information Technology Association of America (ITAA);
Motion Picture Association of America (MPAA);
National Music Publishers' Association (NMPA); and
Recording Industry Association of America (RIAA).

These industries represent the leading edge of the world's high-technology, entertainment and publishing industries. The copyright industries are one of the largest and fastest growing segments of the U.S. economy and contribute positively to the U.S. trade balance. The core copyright industries accounted in 1989 for over $173 billion in revenues from their copyright-related activities, or 3.3% of the U.S. GNP. According to a report prepared for the IIPA by Economists, Inc. entitled "The Copyright Industries in the U.S. Economy," these industries grew at more than twice the rate of the economy as whole between 1977 and 1989 (6.9% vs. 2.9%), and employed new workers at a greater rate -- 5% between 1977-1989 -- than any other comparable sized sector of the U.S. economy. These industries delivered over $22 billion in export earnings to this country in 1989. Appendix A further describes IIPA's member trade associations.

As this Committee so well knows, the ability of the over 1500 companies represented in the IIPA to continue to contribute to U.S. exports and to generate new jobs in this country is critically dependent on a world-wide infrastructure of high levels of copyright protection and enforcement. Without protection for our intellectual property, we cannot sell our products. Piracy is our principle market access barrier. Open markets and fair and free trade cannot co-exist with piracy.

The U.S. copyright industries have argued vigorously for the establishment of high levels of protection and enforcement both bilaterally and in the multilateral context through the GATT. We have been one of the prime beneficiaries of the historic amendments to the Trade Act -- both in 1984 and again in 1988 -- which

established that the lack of adequate intellectual property protection was an unfair trade practice. Two Administrations have fought hard, and very successfully, to open many of the markets which were closed to our companies as the result of piracy. As you know, Ambassador Hills recently negotiated an historic agreement with the People's Republic of China which, when and if fully implemented, will ensure that our intellectual property will be protected in the world's largest potential market. These bilateral successes over the last six years are due to the legislative foresight of the U.S. Congress and the unflagging commitment, most recently by Ambassador Hills and her able staff, joined by the State and Commerce Departments, as well as the U.S. Copyright Office, to pry open markets in countries which continue to condone high levels of piracy. At the same time, we have sought to solidify and extend these bilateral results through the negotiation of a TRIPS agreement providing high levels of protection.

Mr. Chairman, we are now at a critical juncture in the multilateral phase of this two-pronged trade strategy. A strong TRIPS agreement in the GATT would secure the realistic potential of achieving a worldwide infrastructure of protection in 108 GATT member countries as well as in many non-GATT countries, such as China, the Commonwealth of Independent States, many countries in Central and Eastern Europe and in the Middle East. A strong TRIPS agreement, with the possibility of multilateral retaliation against countries whose intellectual property regimes are inadequate, would be a powerful impetus to raising the worldwide level of protection and greatly benefit U.S. exports.

Unfortunately, while the text released by GATT Director-General Dunkel in December does move the process forward in some respects, it has a number of fatal flaws that either bolster an inadequate status quo or take us backwards.

An inadequate TRIPS agreement, if it becomes a reality, will nevertheless establish <u>the</u> international standard of protection. While the U.S. can continue to seek improvements bilaterally, such changes are likely to be strongly resisted. For this reason, it is essential that a final TRIPS agreement establish a high level of protection, a level not yet incorporated into the Dunkel text. As a result, that text cannot be accepted by the IIPA without further change. However, with the changes we note below, we can enthusiastically support an agreement.

On the positive side, the Dunkel text:

- incorporates the high levels of protection in the Berne Convention
- covers many of the critical issues faced by our industries as a result of recent changes in technology such as
  - protection for computer programs as literary works
  - protection for electronic databases
  - fifty years protection for sound recordings
  - provision for the exclusive right to control the rental of both computer programs and sound recordings, which if uncontrolled in the digital age will devastate these two industries. As discussed further below, however, the Dunkel text contains an exception which threatens to swallow this rule.

- establishes mandatory disciplines with respect to enforcement including what is most critical for our industries -- effective border controls and levels of criminal penalties for piracy which will effectively deter those activities within a country.

- significantly revises the currently ineffective GATT dispute settlement machinery. We believe the timetables and the automaticity provisions are acceptable in a multilateral context.

Unfortunately, however, the Dunkel text is unacceptable in the following three areas:

First, the Dunkel text makes certain exceptions to the principle of national treatment, exceptions which if maintained in the text would authorize continued discrimination against American motion picture, recording and publishing companies. This discrimination would extend to allowing countries to adopt rules in certain areas which would undercut the existing and future contractual relationships between U.S. copyright owners and those who contribute creative services to a work.

The IIPA and the U.S. government have sought the incorporation of a national treatment/contractual rights provision in the TRIPS agreement which would end the unfair treatment which countries, particularly in the EC, have afforded to U.S. motion picture and record companies. A good example of the discrimination to which U.S. companies are subject is the French Video Levy. At present, video levy schemes are in place in only two of the twelve EC member states. Such schemes are intended to compensate copyright owners for the home taping of their programs through adding a small royalty to the cost of blank videotape and to the cost of VCRs. This money is then placed into four separate funds, a "cultural fund," an "authors' fund," a "videogram producers' fund," and a "performers' fund," and distributed to the beneficiaries of each. U.S. motion picture companies should be collecting their pro-rata share (based on estimates of copying) from the three latter funds -- they are not. With respect to the "authors' fund," the French authorities define an "author" of a motion picture differently from the U.S., although at the moment they have permitted U.S. companies to collect from this fund. However, even this distribution remains in legal jeopardy. U.S. producers receive nothing from either the "producers'" or the "performers'" fund, even though French producers and performers receive their full share. U.S. film producers have the right under their individual contracts and collective bargaining agreements with performers and other program participants to collect all these shares, but French law denies "national treatment" to all U.S. producers.

The French Audio Levy works in the same discriminatory way to deny "national treatment" to U.S. record companies. In this system, there are again four funds: a "cultural fund," an "authors' fund," a "phonogram producers' fund," and a "performers' fund." Because French law (and the law of most EC member states) -- and the proposed Dunkel text -- permits an exception to "national treatment" for record producers (and for the "performers" share"), our record companies receive nothing from this levy scheme.

In summary, as a result of the discriminatory operation of these levy systems in France, U.S. motion picture companies, with respect to video levies, receive only a small fraction of what they should be receiving from these funds, and U.S. recording companies, with respect to audio levies, receive nothing in France. The same story is essentially the case in Germany. Appendix B provides in greater detail the sad story of how U.S. film producers are now treated and, more importantly, how they will continue to be treated under the Dunkel text.

Without a TRIPS rule in this area, all GATT members could be free to discriminate in a similar fashion, not only for these levies but in connection with their rental and public performance regimes as well. Potential losses to U.S. companies and the U.S. economy would be in the hundreds of millions of dollars annually by the end of this decade. Perhaps more fundamentally, this discriminatory approach results in our legal arrangements for the creation and distribution of copyrighted works being made subject to the myriad legal regimes in effect in other countries. We are merely asking that our contractual arrangements and the legitimate expectations of all the parties to these arrangements be given effect. The U.S. itself abides fully by the cardinal rule of international trade in the copyright area, that is, "national treatment." We only ask the same of our trading partners.

Second, the Dunkel text, while establishing the correct rule that producers of sound recordings must have the right to authorize or prohibit the rental of their works, sought to "grandfather" the one country in the world -- Japan -- which has already in place a regime which permits the rental of sound recordings under certain circumstances. Under U.S. law, record companies have an absolute right to prohibit the commercial rental of their works and the proposed TRIPS rule is clearly th right one. U.S. record companies, despite their objections to a "grandfather" of Japan's system, recognize the practical political objectives which underlie this decision. Unfortunately, the Dunkel text's "grandfather" provision is written in such a way that other countries could take advantage of it and create additional exceptions to the TRIPS rule. The U.S. recording industry is unalterably opposed to additional countries evading the general rule. We seek a tightening of the language of this grandfather provision.

Also in connection with protection afforded U.S. record companies, the Dunkel text adopts a rule from the Rome Convention to which the United States is not, and is unlikely to become, a party because of its inadequate protection. This rule permits all signatories to the TRIPS agreement to define "personal use" of a sound recording as non-infringing regardless of the commercial impact of such use on the legitimate interests of the sound recording producer. This problem is easily corrected by application of an agreed-upon rule of the Berne Convention, Article 9(2), to sound recordings which would only permit limitations which do not conflict with the normal exploitation of the sound recording or prejudice the legitimate interests of the producer.

The third flaw is the Dunkel text's choice of a five-year transition period before which developing countries need bring their copyright regimes into compliance with the TRIPS agreement. We view this period as unnecessarily long. Virtually all LDCs are members of the Berne Convention and their laws are already close to being compatible with their TRIPS obligations. A five-year period, if adopted, threatens to undo much of what has already been accomplished in bilateral negotiations now pending -- by giving these countries an additional grace period which they do not need and which merely prolongs the period of piracy losses which U.S. companies must endure. We consider a three-year period (vs. a two-year period for developed countries) to be more than generous with respect to copyright protection.

These three deficiencies must be corrected if U.S. industry is to support a TRIPS agreement.

The Motion Picture Association of America's (MPAA) support for a GATT agreement is also dependent upon an acceptable result in the Services area of the negotiations. To date, the Administration has been successful in making sure that "cultural industries" are not exempted from the GATT Services Agreement. USTR worked tirelessly to see that the Services "framework" did not contain a cultural exemption. Yet to come in the negotiations are the specific "commitments" on market access in the Services area. The GATT

Secretariat has asked that these negotiations be completed by April 15. USTR must not permit "derogations" to be taken during this "commitment" process which would sanction any quotas or barriers such as the European Broadcast Directive or any other restriction to the broadcast of U.S. programs. At a minimum, the "commitment" with each individual country must mandate the phasing out of any broadcast quotas over a number of years. Without such phase-out, MPAA cannot support a Services Agreement.

The Recording Industry Association of America (RIAA) and the Association of American Publishers (AAP) are also keenly interested in ensuring that "cultural industries" are not discriminated against in a Services Agreement and that "culture" is not used as a convenient but thinly veiled disguise for economic protectionism.

We have worked very closely with the Office of the U.S. Trade Representative and applaud Ambassador Hills and her staff for achieving the many positive elements currently embodied in the Dunkel text. The next stage of negotiations will focus on a much narrower set of issues, and we are grateful that the Administration agrees with us in defining the existing deficiencies in the Dunkel text. Our industries remain very supportive of the GATT process but, as we have stated in the past to the Congress, no agreement is preferable to a bad agreement. We thank you, Mr. Chairman and members of the Committee, for your continuing effort to open foreign markets and to secure a level playing field for U.S. companies within the world trading system.

APPENDIX A

The International Intellectual Property Alliance is an organization formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted works. It is comprised of eight trade associations, each representing a significant segment of the U.S. copyright community. Together Alliance members represent more than 1500 U.S. companies and account for over 5% of the U.S. GNP.

Alliance members are:

The Association of American Publishers (AAP)

AAP is the trade association of the U.S. book publishing industry. It has approximately 225 member firms that publish the majority of printed materials sold to American schools, colleges, libraries, bookstores, businesses and industry. AAP members also publish journals, computer software, and a range of educational materials. AAP's primary functions are to promote the status of publishing around the world, to assist in protecting its members' copyrights at home and abroad, and to oppose all forms of censorship.

The American Film Marketing Association (AFMA)

AFMA is a non-profit organization whose members, large and small, produce and license the international rights to independent English-language films.

Comprised of 117 members, AFMA estimates that its members generated total international revenues in excess of $1.1 billion in 1990. A major portion of those sales are registered at the American Film Market, which is the largest and most important international motion picture trade market in the industry. Sponsored and owned by AFMA, the American Film Market provides the majority of the budget and enables the association to fund its growing agenda, which includes, among other things, the American Film Export Association, an international arbitration tribunal, ongoing discussions with U.S. and foreign governments and agencies, and a motion picture registry that provides a library of vital licensing information on more than 10,000 films.

The Business Software Alliance (BSA)

The Business Software Alliance was organized in the fall of 1988 by six of the world's foremost business software companies: Aldus, Ashton-Tate, Autodesk, Lotus Development, Microsoft, and WordPerfect. In 1990, 1991 and 1992, BSA added Digital Research, Novell and Apple Computer, respectively, to its roster.

The BSA is an affiliate of the Software Publishers Association with responsibilities for international anti-piracy and public policy activities. The mission of the BSA is to advance free and open world trade in legitimate business software by: 1) acting against unauthorized software copying in all forms; 2) advancing strong intellectual property protection for software; and 3) working to remove all other barriers to international market access.

The Computer and Business Equipment Manufacturers Association (CBEMA)

CBEMA represents the leading edge of the world's high technology companies in computers, business equipment, and telecommunications. CBEMA's 26 members are the world's largest developers and vendors of software, and in 1990, had combined estimated sales of more than $262 billion, of which $170 billion, or about 3.5% of the U.S. GNP, were from computer hardware and software related sales. The companies employ about 1.2 million people in the U.S. and about 1.6 million worldwide. CBEMA members are responsible for approximately 21% of all industry funded research and development.

The Information Technology Association of America (ITAA)
(formerly ADAPSO, The Computer Software and Services Industry Association

With over 650 members, ITAA is the largest association for the computer software and services industry. It represents firms that market personal, mid-range, and mainframe software products, as well as information technology services, information systems integration services, network-based services and value-added remarketing services. ITAA's members, and the industry as a whole, provide these services on a global basis.

The Motion Picture Association of America (MPAA)

The Motion Picture Association of America acts domestically as the voice and advocate of the eight major American motion picture and television companies. MPAA's counterpart, the Motion Picture Export Association of America (MPEAA), serves the same purpose on an international basis.

Founded in 1922 as the trade association for the American film industry, the MPAA has broadened its mandate over the years to reflect the diversity of the expanding motion picture industry. Today, these associations represent not only the world of the theatrical film, but also major producers and distributors of entertainment programming for television, cable, and home video, and looking into the future, for delivery systems not yet imagined.

Among its principle missions, the MPAA directs an anti-piracy program to protect, through copyright and other laws, U.S. films in fifty-four countries throughout the world. The MPAA also works to eliminate unfair and restrictive trade regulations and practices and non-tariff trade barriers to allow free competition in the international marketplace.

The National Music Publishers Association (NMPA)

NMPA is a trade association representing over 400 U.S. businesses that own, protect, and administer copyrights in musical works. For more than seven decades, NMPA has served
-- in the national and international arenas -- as the eyes, ears, and voice of the American music publishing association.

NMPA's wholly-owned subsidiary, the Harry Fox Agency, Inc. (HFA), acts as agent for more than 8000 U.S. publishers in connection with the issuance of mechanical licenses, covering the majority of musical compositions contained in U.S. records, tapes, compact discs, and imported phonorecords. HFA also collects and distributes royalties for licenses it issues and audits them to ensure the accuracy of licensees' accountings. Through reciprocal representation agreements with similar collecting societies throughout the world, HFA provides these services to its publisher principals on a global basis. In addition, HFA often licenses on a worldwide basis on behalf of its publisher principals for use in films, commercials, television programs and other types of audio visual media.

Through its involvement in various international organizations including BIEM, an umbrella group of trade associations operating in 81 countries, NMPA/HFA plays an active role throughout the world in protecting copyright interests of the U.S. music publishing industry.

The Recording Industry Association of America (RIAA)

RIAA is the major trade association representing the interests of the U.S. record companies, which, collectively, generated sales in excess of $11 billion in 1990. RIAA member companies account for approximately 50% of the

world's annual trade and 95% of all legitimate recordings sold in the United States. The U.S. recording industry employs hundreds of thousands of workers at a variety of levels and produces a foreign trade surplus. Nearly forty percent of all sales of U.S. recordings occur in overseas markets, and this percentage is increasing steadily.

RIAA maintains a large legal and investigative staff to fight against all forms of music piracy and is associated with local recording industry groups around the world to extend this fight. One of its principle missions is to ensure that copyright legislation remains adequate in light of a rapidly changing technological environment, and that appropriate conditions exist to foster creativity in music through increased investment, production, and distribution.

APPENDIX B

Video Levies

Approximate 1990 Collections

France:	$ 50 million
Germany:	$ 70 million
Total:	$120 million

FRANCE

Estimated Distribution for 1990

Cultural Fund[1]	$12.5 million (25%)
Total Authors Share	$12.5 million (25%)
Total Producers (Videogram) Share	$12.5 million (25%)
Total Performers Share	$12.5 million (25%)

These percentage shares are established by law.

MCA reports that, according to SACEM, approximately 25% of copying in France is attributable to U.S. films and TV programs.

Therefore, U.S. motion picture companies now receive:

25% of the Authors Share[2]	= $3.1 million
0% of the Producers Share[3]	= 0
0% of the Performers Share[4]	= 0
Total:	= $3.1 million

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[1] We do not accept that France has the right to divert funds of this magnitude for non-IP purposes, nor do we accept that it is lawful under the relevant international conventions and agreements, including TRIPS, though we are not expressly challenging the practice in our proposals.

[2] So far, at least, MPEAA companies have been able to collect the "authors" share because they "own" this right as author-at-law or it has been "transferred" by the individual authors. However, collection of this share was dependent upon SACEM being assured that an agreement had been reached giving U.S. writers and directors a portion of the amount collected.

[3] U.S. film companies are refused any participation in the Producers Share because France refuses to accord national treatment to American interests in this share (unless the original images are first fixed in France). U.S. motion picture companies formally applied for participation in this share but their formal claims were rejected both by the relevant collection society (PROCIREP) and the Minister of Culture.

[4] U.S. film companies are refused any participation in the Performers Share because France refuses to accord national treatment to American interests in this share (unless the original images are first fixed in France).

Under TRIPS, U.S. owners should receive no less than:

25% of Authors Share	= $3.1 million
25% of Producers Share[5]	= $3.1 million
25% of Performers Share[5]	= $3.1 million
Total:	= $9.3 million

The MPEAA companies estimate, however, the 25% share considered attributable to copying of U.S. films and programs is much too low. Being forced into a position of inherent weakness by exclusion from a full 2/3 of the pot, they have not yet been able to effectively press French authorities to adjust the U.S. share. If this figure were increased to a fair level, it is estimated that it would be 35% to 50%.

At 35%:

U.S. portion of Authors Share	= $4.38 million
U.S. portion of Producers Share	= $4.38 million
U.S. portion of Performers Share	= $4.38 million
Total	= $13.125 million from 1990 collections.

At 50%:

U.S. portion of Authors Share	= $6.25 million
U.S. portion of Producers Share	= $6.25 million
U.S. portion of Performers Share	= $6.25 million
Total	= $18.75 million from 1990 collections.

Conclusion:

- U.S. companies now collect $3.1 million.
- If TRIPS were in effect, U.S. companies would collect at least $9.3 million, an additional $6.2 million.
- If TRIPS were in effect and shares were fairly allocated to actual use, then the U.S. share could be $13.125 million (at 35% share), or an additional $10 million, or $18.75 million (at 50% share), or an additional $15.6 million.

GERMANY

Estimated Distribution for 1990

21% authors/publishers of musical works (GEMA)	= $14.7 million
13.4% performers (GVL)	= $ 9.4 million
7.6% producers of phonograms (GVL)[6]	= $ 5.3 million
8% authors of underlying literary works (VG Wort)	= $ 5.6 million
50% film and video authors and producers[7]	= $35.0 million

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[5] We should note, however, that since each of these funds is separately administered, the share for U.S. motion pictures could be different for each fund. We believe 25% is the bare minimum.

[6] Apparently this is for music videos only and we do not believe that any portion is paid to the U.S. record company owner.

[7] This share includes allocations with respect to both producers and to director and screenwriter "authors." For U.S. films, an agreement between MPEAA and the U.S. guilds allocated

Total[8]	=	$[illegible] million

U.S. motion picture companies now get approximately:

8% of the 21% music share[9] (as transferee or work for hire)	=	$1.18 million
0% of 13.4% performers share	=	0
0% of 7.6% phonogram producers share	=	0
0% of authors of underlying literary works	=	0
11% of the 50% film and video authors/producers share[10]	=	$3.85 million
Total:		$5.03 million

These percentages and the "U.S. share" are all established through private negotiations (which did not originally include MPEAA) under the authority of the German Patent Office. U.S. motion picture companies have been unable to effectively renegotiate a fairer share of these funds because of an apparent refusal to give full national treatment to U.S. film companies' interests as employers and assignees of the various contributors to their products. We cannot determine exactly what the U.S. share would be after TRIPS since we have not yet ascertained what the U.S. share would be in each of these categories. Assuming it would be, at a minimum, 10% to 11% (the current share in the musical works category), then the U.S. receipts would increase at least as follows:

10% of 13.4% performers share	=	$ 940,000
10% of 8% share for authors of underlying literary works	=	$ 560,000
10% of 7.6% for U.S. music videos	=	$ 530,000
Total		$2,030,000

MPEAA companies believe, however, that if TRIPS is in effect and the shares are more accurately determined, they should receive from 35% to 50% of the available funds.

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levy distributions on an 85%/15% basis. It is the U.S. industry position that such an agreement was unnecessary to permit distribution of these funds to the U.S. producer/author of the film.

[8] We understand that the initial collection society, ZPU, takes 5% or about $3.5 million "off the top" for an administrative fee which would result in a reduction of 5% of all these amounts. For present purposes, we have assumed no deduction. Of course, there are also such administrative costs and "social funds" taken off each individual share, further reducing the amount available to U.S. owners.

[9] This payment was negotiated in October 1991 and will be retroactive to July 1, 1989. The amount estimated is based on representations made by GEMA, the music society, during the recent negotiation. MPEAA companies view this figure as low.

[10] Of this amount, 15% or $578,000 is payable to the U.S. Guilds again because of the failure of Germany to recognize either U.S. contracts or corporate authorship. MPEAA also considers the 11% figure to be too low.

COMMUNICATIONS

STATEMENT OF THE AIR COURIER CONFERENCE OF AMERICA

GENERAL COMMENTS

On behalf of the Air Courier Conference of America ("ACCA"), a trade association representing the interests of the international integrated express carrier industry, we hereby submit this written statement for inclusion in the Committee's record of its hearing on proposals to modernize the operations of the U.S. Customs Service. ACCA members include United Parcel Service, Federal Express, DHL, TNT, and 100 other express companies. ACCA is a member of the Joint Industry Group. It is also a member of the Transportation Coalition, a group consisting of shipping, airlines, trucking, and railroad industries in support of customs modernization.

Express carriers comprise a relatively new and rapidly expanding industry, which has evolved during the past two decades in response to the needs of international commerce for expedited, integrated, door-to-door delivery of documents and packages worldwide. The Association's members specialize in the door-to-door transportation and clearance of millions of urgent, time-sensitive shipments, and are currently responsible for up to 10,000 customs entries per day, and as many as 3 million entries per year. The industry expects shipment volumes to increase significantly over the next several years. It is the fastest growing segment in international trade.

In order to provide this high quality of service on this scale, the industry has, as a whole, developed and implemented costly state-of-the-art international import and export systems. The industry's technology and business practices have been carefully formulated in cooperation with the Customs Service in order to improve business and regulatory performance. It also has had an excellent history of working with the Customs Service on enforcement issues and has developed and tailored many of its operating procedures to accommodate the Customs Service, making the industry as a whole low risk from a customs enforcement standpoint.

ACCA views customs modernization legislation as critical to the future of the international operations of its members. During the early 1980's, the express carrier industry began to meet the growing needs of international commerce by expanding its services to include time critical goods as well as time critical documents. The use of automation by the Customs Service is largely responsible for this development in the industry. The industry requires expedited customs clearance and entry procedures to meet the tight windows of time necessary to provide international express service for packages. Without automated customs entry procedures, the cost of providing this critical component of modern day logistics and commerce would be astronomical and would greatly inhibit the growth and participation of U.S. companies in this, the fastest growing segment of international trade. The public would be denied the express service that it has come to depend on.

Consequently, the industry has worked closely with the Customs Service to develop automated entry procedures and in drafting the Customs Modernization and Informed Compliance Act contained in H.R. 5100. We are confident that the Senate will also recognize that customs modernization legislation is long overdue and that it may be necessary to separate the virtually non-controversial technical customs provisions from the controversial trade measures proposed in H.R. 5100 if they bog down. Enactment of essential customs modernization legislation should not be jeopardized by such events. The enormous efforts of the business community, the Customs Service and Congress to carefully piece together the many compromises that now comprise the customs portion of H.R. 5100 should not be wasted.

SPECIFIC COMMENTS

ACCA has worked closely with both the Customs Service and the Congress in drafting the Customs Modernization and Informed Compliance Act. In addition to automated entry procedures, such as national entry processing and remote filing contained in the bill, the industry has particular interest in the following:

I. Right to Make Entry

During the course of hearings on July 29, 1992, before the Trade Subcommittee of the Senate Finance Committee on customs modernization proposals, Mr. Harold Brauner, President of the National Customs Brokers and Freight Forwarders Association of America, asked the Committee to amend 19 U.S.C. §1484 to allow only the importer or ultimate purchaser of the goods to make entry or designate a customs broker. Current law, which has been upheld by the Court of International Trade and by the U.S. District Court for the Eastern District of New York in two separate lawsuits,[1] allows express carriers as "nominal consignees" to designate brokers to make entry. This permits express carriers to provide an integrated, door-to-door delivery service, the very business of express couriers. In order to maintain control of shipments and to facilitate entry and clearance of shipments from hundreds of flights that enter and leave the United States daily, express carriers designate licensed customhouse brokers to make entry.

In its markup of H.R. 5100, the House Ways and Means Trade Subcommittee considered an amendment offered by Rep. McGrath on behalf of certain segments of the broker industry to restrict the express industry's right to make entry on behalf of its customers. The Subcommittee overwhelmingly rejected this amendment on a show of hands vote with only the sponsor voting for the amendment. It is thus disingenuous of the brokers to state that they support the core agreements reflected in H.R. 5100 when they are again raising an issue that was considered and rejected in the consideration of H.R. 5100 by the House.

This restrictive amendment was rejected for good reason. The right of the nominal consignee to designate a broker to make entry is indispensable to providing integrated express service. In this kind of service, information about the shipments is transmitted electronically while the merchandise is in flight prior to arrival in the United States. This information is given to the U.S. Customs Service so that they may apply their selectivity criteria to choose the shipments for examination before arrival. This allows very rapid clearance and prompt delivery to the consignee. Any legislative attempt to deny the express carrier the right to designate the broker should be seen for what it is, an anticompetitive measure restricting favorable shipping options currently available to the public.

Moreover, such an amendment would harm other groups in addition to express carriers. Thousands of shipments a day enter the United States from Canada and Mexico. The impact on traffic at essential truck border crossings would be devastating as trucking companies attempt to identify, locate and obtain a power of attorney from the ultimate consignees.

Accordingly, we urge you to reject any proposal to restrict our industry's right to designate a licensed broker to make entry on behalf of our customers. The ability of the ultimate consignee to designate a particular broker is not impaired by current law. Thus, there is no reason for this restrictive amendment.

II. Manifesting of Letters and Documents

The industry strongly supports section 235 of H.R. 5100, which would exempt letter and document shipments from detailed individual manifesting. The Customs Regulations currently requires that to receive express treatment, such nondutiable intangibles have to be manifested in the same manner as dutiable commercial goods, requiring complete shipper and consignee name and address.

After extensive discussions and careful analysis, the Customs Service agrees that letter and document shipments do not require the same detailed and expensive manifesting required of other shipments since such communications pose virtually no enforcement risk and the costs to the industry are extraordinary. For example, the costs of the unnecessary key entry of data, shipment processing and data transmission costs related to full manifesting of letters and documents is estimated as adding as much as $1.00 per shipment. One major express carrier has reported that it spent $1 million to manifest 1 million letters and documents over one year.

Recognizing these facts, the Customs Service has agreed that these intangibles should be exempted from the detailed manifesting required of commercial dutiable

[1] *National Customs Brokers and Forwarders Association* v. *United States*, 731 F. Supp. 1076 (Ct. Int'l Trade 1990) and *J F K. Customs Broker* v *United States*, 745 F. Supp. 113 (E.D.N.Y 1990)

shipments, as provided in section 235 of H.R. 5100. Instead, letters and documents will be accounted for by summary manifesting (by country of origin, total pieces and weight). Customs may also require segregation of such shipments by country of origin, if it deems necessary. Additionally, standard letter and document packs would be required to be separated from larger document packages for enforcement purposes.

The elimination of these unnecessary and burdensome procedures will save the industry millions of dollars annually. At the same time, the summary manifesting procedures will enable Customs to achieve its enforcement mission. The industry is proud of its track record of working with the Customs Service to prevent the importation of illegal contraband. We commend the Customs Service for recognizing the waste of millions of dollars on efforts that are unnecessary and for supporting this legislative reform providing for summary manifesting of letter and document shipments.

III. Return Shipments.

Section 281 of H R. 5100 corrects a technical problem for shipments that are exported but returned as undeliverable in the destination country, refused by the consignee, or found inadmissible by the foreign country. Customs currently views these return shipments as new importations subject to entry and duty. This places an unreasonable burden on express carriers and wastes valuable Customs' resources by requiring Customs to process unnecessary entries. These shipments are in effect incomplete exportations.

Customs agrees that return shipments should not be treated as importations. It is only because of Customs' technical reading of the law that it feels compelled to treat such shipments as new importations. Consequently, Customs supports section 281 in H.R. 5100, which would exempt from entry and duty articles exported from the U.S., which are returned as undeliverable within 45 days and have not left the custody of the carrier or the foreign customs service

IV. Administrative Exemptions.

Section 251 in H.R. 5100 revises the de minimis administrative exemption from the payment of duties contained in 19 U.S.C. §1321. This change is long overdue since the law was last adjusted in 1983. The current dollar amounts are simply outdated and are not set at levels necessary to achieve the statutory goal of minimizing the cost and inconvenience to the public and the Customs Service. Therefore, the industry wholeheartedly supports section 251 of H.R. 5100 which appropriately sets floor amounts of $100 for gifts and $200 for all other merchandise, leaving any necessary increases to the judgment of the Secretary of the Treasury.

V. Informal Entry Procedures.

Informal entry procedures are of great importance to this industry, which transports a large volume of low value shipments. (This provision would increase the current maximum statutory amount from $1,250 to $2,500 for informal entry processing). The costs savings of the simplified procedures for informals are substantial for both the industry and the Customs Service. Thus, industry and the Customs Service supports the increased dollar amounts for informal entries, set forth in section 262 of H.R. 5100.

VI. Daytime Reimbursable Staffing.

Section 304, which is contained along with the customs authorization in Title III of H.R. 5100, corrects another technical problem. Customs and the Comptroller General's Office has taken the position that Customs is precluded by 19 U.S.C. §58c from providing daytime reimbursable inspectional services at carrier hubs while it is free to provide such services at express consignment carrier facilities ("ECCF's"). Carrier hubs are single user facilities that are authorized for entry filing, examination and release of merchandise. ECCF's are usually facilities shared by more than one carrier and only authorized for examination and release of merchandise. Thus, the only differences between the two types of facilities are that hubs are operated by one company and authorized for entry filing.

It is readily apparent that Congress did not intend to deny carrier hubs daytime reimbursable inspectional services when it amended the law in 1990 to provide reimbursement to Customs for inspectional services at centralized hubs, ECCF's and user fee airports. For that reason, Customs supports this corrective technical amendment.

This amendment is extremely important to the industry, which increasingly requires round-the-clock inspectional services to provide its customers with the very service that is its business—express delivery

In closing, ACCA is pleased that the Finance Committee has chosen to consider customs modernization legislation at this time. We are confident that the Senate will also recognize that it is imperative to the competitiveness of the U.S. business community and the operations of the U.S. Customs Service that the U.S. Customs' laws be brought up-to-date to allow the use of the state-of-the-art technology. That is why enactment now is crucial. The carefully crafted Customs Modernization and Informed Compliance Act represents years of cooperative efforts by government and industry and deserves enactment this year.

Thank you for your consideration.

STATEMENT OF THE AIR FREIGHT ASSOCIATION

The Air Freight Association is a nationwide coalition of air cargo interests including all-cargo airlines, air freight forwarders and businesses who promote the use of air freight. A current Association membership list is attached hereto as Appendix A. Our members operate international air freight services 24 hours a day, providing expedited service to shippers throughout the world. As these business opportunities continue to expand, it becomes increasingly important that the United States Customs Service be in a position to expedite the flow of goods, while at the same time fulfilling its obligation to prevent illegal importing and exporting activities. Therefore, we strongly support passage of legislation to bring the Customs Service into a new era of modernization which will permit an adequate response to the needs of the international business community.

GENERAL COMMENTS

Customs reform legislation in this session of Congress is absolutely necessary to enable the Customs Service to meet the challenges of the 1990s and beyond. Such legislation should authorize the procedural changes necessary for adaptation to an electronic environment and should permit the full implementation of automation and the filing of entry information with the Customs Service from remote locations—irrespective of the port of arrival or final destination of the merchandise.

Moreover, by insuring greater communication between the Customs Service and the trade community, Customs modernization would promote uniformity, certainty and predictability of Customs practices and would encourage compliance by insuring that all penalties imposed are rational and based on a uniform set of criteria.

These goals are set forth in the modernization legislation endorsed by the Joint Industry Group, a comprehensive organization consisting of businesses, trade associations and professional firms involved in international trade, and the Air Freight Association fully supports this effort. At the same time, there are several specific items of interest to our members which require specific comment. These subjects are more fully detailed below.

Finally, it is important to emphasize that prompt Senate action on the issue of Customs Service modernization is absolutely essential. The industry, the Customs Service, the Administration and the House Committee on Ways and Means have all worked hard to reach the current position. With the end of the legislative session fast approaching, it would be almost tragic to see these efforts die.

SPECIFIC COMMENTS

In addition to the general concept of Customs modernization, the members of the Air Freight Association endorse the following specific provisions:

1. Informal Entry Ceiling—At present, the limit for so-called informal entries is $1,250.00. (see 19 U.S.C. 1498(a)). The Association urges that this provision be modified to provide a minimum entry limit for informals of $2,500.00, with discretion in the Secretary of the Treasury in increase this limit further. Such action will simply bring the informal entry limit into line with inflation and modern business realities. A similar provision is contained in H.R. 5100, sec. 262, but this provision contains a $2,500 ceiling, rather than the floor proposed by the Association. (See Appendix B).

2. Customs Staffing at Centralized Cargo Hubs—Although the modern air cargo business is a 24 hour per day operation, the Customs Service has taken the position that it may not legally provide staffing at centralized cargo hub facilities during daytime hours—even though such staffing would be on a 100% reimbursable basis. This opinion was based on an interpretation of the Customs and Trade Act of 1990 (Pub. Law 101–382) read in conjunction with 31 U.S.C. 9701, an opinion recently supported by the Controller of the Currency. For the Committee's convenience, attached hereto are the Association's original letter to Commissioner Hallett

detailing the problem (Appendix C) and the final Controller of the Currency letter rejecting the Association position (Appendix D). As you will note, the ultimate bureaucratic rejection of our position took almost 18 months from the time the issue was raised. Members of the air cargo community have now reached the end of the regulatory line on this issue and swift Congressional action is therefore necessary. As daytime business continues to expand, the absence of Customs inspectors becomes an ever more serious problem. Therefore, we urge that existing law be changed to clarify that Customs can provide daytime staffing at centralized cargo hubs on a reimbursable basis by amending Title 19, Section 58(c)(9)(A)(i) and (ii) as follows:

1. Delete the phrase "centralized hub facility or" from (9)(A)(i);
2. Delete the phrase "section 9701 of Title 31, United States Code or" from (9)(A)(i)(1); and
3. Insert the phrase "a centralized hub facility" between the phrases "In the case of" and "express consignment carrier facility" in (9)(A)(2).

These relatively minor adjustments will insure that members of the international air cargo community are able to remain competitive on a worldwide basis by offering expedited service on a 24 hour a day basis. H.R. 5100, sec. 304, contains similar language which also would be endorsed by the Association. A copy of this section is attached as Appendix E.

The Association appreciates the opportunity to present these Comments. If the Committee needs any further information from our industry, please do not hesitate to contact us.

APPENDIX A

AIR FREIGHT ASSOCIATION

COMPANY	CITY, STATE
Air Cargo Management Group	Seattle, WA
Air Courier Conference of America (ACCA)	Washington, D.C.
Airborne Express	Seattle, WA
AIT Freight Systems, Inc.	Elk Grove, IL
Alaska International Airport System	Anchorage, AK
American Cargo Handling Equipment	Denver, CO
American International Airways	Ypsilanti, MI
AMR Combs-Denver	Denver, CO
Arrow Airways, Inc.	Miami, FL
British Aerospace	Washington, D.C.
Burlington Air Express	Irvine, CA
Colography Group	Marietta, GA
Emery Worldwide, A CF Company	Palo Alto, CA
Evergreen International Airlines	McMinnville, OR
Express One International	Dallas, TX
Federal Express Corporation	Memphis, TN
FIDC/Fairbanks International Airport	Fairbanks, AK
Leeper, Cambridge & Campbell	Alexandria, VA
McDonnell Douglas	Long Beach, CA
Mid Pacific Air Corp.	West Lafayette, IN
Northern Air Cargo	Anchorage, AK
Ryan International Airlines, Inc.	Wichita, KS
Southern Air Transport	Miami, FL
United Parcel Service	Louisville, KY

July 28, 1992

APPENDIX B

(3) by striking out "such customs officer" and inserting "the Customs Service".

SEC. 262. ENTRY UNDER REGULATIONS.

Section 498(a) (19 U.S.C. 1498(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Merchandise, when—

"(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or

"(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;"; and

(2) by striking out "$10,000" in paragraph (2) and inserting "such amounts as the Secretary may prescribe".

SEC. 263. AMERICAN TRADEMARKS.

Section 526(e)(3) (19 U.S.C. 1526(e)(3)) is amended—

(1) by striking out "1 year" and inserting "90 days"; and

(2) by striking out "appropriate customs officers" and inserting "the Customs Service".

SEC. 264. SEIZURE.

Section 612 (19 U.S.C. 1612) is amended—

(1) by amending subsection (a)—

(A) by striking out "the appropriate customs officer", "such officer" and "the customs officer" wherever they appear and inserting "the Customs Service", and

(B) by striking out "the appraiser's return and his" and inserting "its"; and

(2) by amending subsection (b) to read as follows:

"(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.".

SEC. 265. CUSTOMS FORFEITURE FUND.

Section 613A (19 U.S.C. 1613b) is amended—

(1) by redesignating subparagraphs (E) and (F) of subsection (a)(3) as subparagraphs (G) and (H), respectively;

(2) by inserting after subparagraph (D) of subsection (a)(3) the following new subparagraphs:

APPENDIX C

Air Freight Association

1716 Rhode Island Avenue, N.W., 2nd Floor
Washington, DC 20036 (202) 293-1030

January 3, 1991

The Honorable Carol B. Hallett
Commissioner
United States Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Re: Reimbursable Staffing at Express Consignment Hubs

Dear Commissioner Hallett:

The Air Freight Association ("AFA" or "the Association") is a nationwide trade organization representing, among others, all-cargo airlines and air freight forwarders providing express delivery cargo. (A current Association membership list is attached.) On behalf of these express carrier AFA members, I am writing to ask the Customs Service to reverse its current position that the Agency lacks the authority to provide reimbursable staffing at express consignment hubs during regular business hours.

Responding to the needs of the international business community, AFA's express carrier members have developed highly efficient hub systems for the expedited and integrated movement of cargo and small packages into the United States from abroad. Express carriers currently operate on a highly time-sensitive, 24-hour a day basis, with revenues and shipment volume expected to increase exponentially over the next decade.[1] The special and unique needs of the express carrier industry were recognized by the Customs Service in 1989 when it adopted Part 128 of the Customs regulations. As Customs recognized then, "[t]he overwhelming growth of this industry requires customs to provide more expedited clearance procedures." 54 Fed. Reg. 19561 (May 8, 1989). The international business and competitive environment in which express carriers operate demands expedited and effective Customs clearance of entries during daytime as well as night-time hours. Failure of Customs to provide sufficient staffing at express carrier facilities to meet this demand will make it impossible for U.S. express carriers to compete

[1] For example, one express carrier member projects an annual growth in volume of entries from 1 million in 1990 to 7 million in the year 2000.

on a level playing field internationally. Furthermore, the provision of disparate staff resources to different segments of the air express industry would wreak competitive havoc within the industry and would be inconsistent with the Agency's stated goal of promoting "uniform, fair and consistent treatment of the various courier and express air services." Id.

The current statutory framework provides an adequate – albeit outdated – mechanism for allowing Customs to provide virtually round-the-clock staffing requirements for special use importers like express carriers which require dedicated personnel at their hub facilities. The applicable statutes (19 U.S.C. sec. 1451 and 1542, and 31 U.S.C. sec. 9701) and case law interpreting those statutes permit Customs to provide staffing at express carrier hubs during regular, as well as so-called "overtime", hours.

Despite the clear regulatory basis for providing daytime services at hubs and the need for those services, the Assistant Commissioner advised operators of hub facilities, in a letter dated September 27, 1990, that the Customs and Trade Act of 1990 (Pub. Law No. 101-382) (the Act) read in conjunction with the 31 U.S.C. sec. 9701 somehow prohibits Customs from providing reimbursable daytime services at hubs to handle an anticipated increase in shipments. Curiously, the Assistant Commissioner concluded that the Act does not similarly circumscribe Customs' ability to provide daytime services to the express consignment facilities (ECCFs) which compete with hubs. Because, in our opinion, Customs' refusal to provide daytime services at hub facilities is legally unsupportable and will have adverse competitive affects, the Association urges the agency to reverse the position taken in the September 27, letter and to work with AFA members to develop a mutually satisfactory staffing approach that will meet the needs of the shipping public.

The disparate treatment of hubs and ECCFs proposed in the Assistant Commissioner's September 27 letter rests on an erroneous interpretation of the user fee provisions in the Act. On page 2 of his letter, the Assistant Commissioner states that reimbursable services can be provided to ECCF's "without regard to the time of day" because "the law" – apparently referring to Section III(b)(9)(A) of the Act and/or 19 U.S.C. sec. 1524 – "makes no reference to hours of service." With respect to hub facilities, the Assistant Commissioner states that "the law" – again, apparently referring to Section IL(b)(9)(A) of the Act – "specifically limits reimbursement to that required under section 9701 of Title 31, United States Code", which limits reimbursement to those services provided outside of normal business hours or outside the port limits".

Customs' reading of the Act and 31 U.S.C. sec. 9701 as preventing Customs from providing daytime reimbursable services to centralized hub facilities comes as a surprise to the express carrier representatives and, we understand, to the congressional staff who

were involved in drafting the language contained in Section 9(A) of the Act. Contrary to the Assistant Commissioner's statement, the language of 31 U.S.C. sec. 9701 and the Act contains no such prohibition. Further, the congressional staff who worked on the user fee legislation have confirmed that there was no intent to restrict Customs' ability to provide daytime services at hubs.

Conversations between various individual Association members and the agency's lawyers reveal that the decision by Customs not to provide daytime services at hub facilities may reflect Custom's longstanding view that 31 U.S.C. sec. 9701 does not authorize the agency to provide reimbursable daytime staffing to dedicated use facilities like express carrier hubs. Customs lawyers tell us that a 1980 Comptroller General decision (59 Comp. Gen. 294, March 10, 1980), compels the conclusion that services may only be provided outside of normal business hours or outside port limits.

The AFA believes that Customs' reliance on the 1980 Comptroller General decision is misplaced. A careful reading of 31 U.S.C. sec. 9701 and several Comptroller General decisions, including the 1980 case, makes it clear that Customs has full authority – and indeed, an affirmative duty – to provide daytime reimbursable staffing to express carrier hub facilities.

Section 9701 of Title 31 (formerly 31 U.S.C. sec. 483a) was enacted to "allow federal agencies to recoup costs from identifiable 'special beneficiaries' where the services rendered inured to the benefit of special recipients not the general public." New England General Power Co. v Federal Power Commission, 467 F. 2d 425, at 428 (D.C. Cir. 1972) (emphasis added), aff'd, 415 U.S. 345 (1974). In contrast, and "[i]n the absence of a clear Congressional mandate to the contrary ... monies for the administration of programs beneficial to the general public should come from the general fund of the treasury." Id., 467 F. 2d at 429.

Section 9701 of Title 31 is silent as to the times and manner in which reimbursable services are to be provided to such special beneficiaries. The statute provides only that "each service ... of value provided by an agency ... to a person ... is to be self sustaining to the full extent possible," and that the amounts charged to such service shall be "fair", based on the cost to the government, the value of the service, public policy and other relevant facts. 31 U.S.C. sec. 9701.

Express carrier hub facilities are defined in 19 C.F.R. sec. 128.1(d) as "separate, unique, single purpose facilit[ies] normally operating outside the Customs operating hours approved by the district director for entry filing, examination and release of express

consignment shipments". (Emphasis added)[2] Thus, there can be no doubt that express consignment hubs are identifiable "special beneficiaries", as contemplated by 31 U.S.C. sec. 9701. The services which Customs renders to these facilities clearly inure solely to their benefit and that of their customer's rather than to the general public. Therefore, express carrier hubs meet the threshold eligibility criteria for obtaining and paying for reimbursable Customs staffing.

The March 10, 1980, Comptroller General decision cited to us by Customs lawyers (59 Comp. Gen. 294) confirms the view that daytime reimbursable services are fully available to special beneficiaries such as express carrier hubs. In that decision, the Comptroller General held that Customs could not collect funds from the Miami Airport for "clearance services performed during regular business hours on behalf of the general public", as this "would constitute an augmentation of the appropriations made by Congress for performing such services" in violation of the intent of 19 U.S.C. sec. 1451 and that such service must be paid for out of the general fund. 59 Comp. Gen. at 296. Put another way, regular services provided during regular daytime hours to the general public must be paid for out of the general fund.

In dicta, however, the Comptroller General went on to explain that services provided at night or on Sundays and holidays (i.e. overtime services), are reimbursable under 19 U.S.C. Sec. 1451.[3] It follows that services may be provided to importers other than the general public (e.g., "special beneficiaries" like express hubs) during regular hours as long as they inure solely to the benefit of such beneficiaries. Accord 48 Comp. Gen. 262 (1968) (additional costs incurred by Customs to extend the hours of service at Customs ports of entry and stations along the Canadian and Mexican borders that do not maintain 24-hour service are recoverable under 31 U.S.C. sec. 483a).

Based on the foregoing, AFA urges the Customs Service to reconsider its position on the provision of daytime reimbursable services to express hubs. Without question, reversal of the position taken in the September 27 letter is in the best interests of Customs, the air freight industry and the international shipping public. As shown above, the existing statutory authority and case law compel the conclusion that special

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[2]Due to the demands of the international business community, express carrier facilities (and Customs) are increasingly required to operate on a 24-hour a day basis. Customs may want to amend the definition in 19 C.F.R. sec. 128.1(d) to reflect this development.

[3]59 Comp. Gen. at 296. Nothing in 19 U.S.C. sec. 1451 precludes the provision of reimbursable services, daytime or otherwise, to "special beneficiaries."

beneficiaries such as express hubs are entitled to obtain and reimburse Customs for staffing during all hours of the day through the combined mechanisms of 31 U.S.C. sec. 9701 and 19 U.S.C. sec. 1451 and 1524.[4] If additional statutory or regulatory authority is required to implement these provisions, AFA members stand ready to work with the Customs Service to achieve it.

The Association looks forward to a prompt resolution of this issue. In the interim, please feel free to contact me if you have any questions or require further information.

Sincerely yours,

Stephen A. Alterman
Executive Vice President and
General Counsel

cc: Deborah Lamb
Michael Lane
Rolf Lundberg
Frank Phifer
Christopher Smith
Charles Winwood

[4] See, United States v. Myers, 320 U.S. 561, _____ (1944) (in enacting sec. 1451, Congress intended to allow extra compensation only when there are "overtime services" in the sense of work hours in addition to the regular daily tour of duty, without regard to the period within the 14 hours when the regular daily tour is performed).

APPENDIX D

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Customs Service Reimbursement For Clearance Of Express Air Shipments During Regular Business Hours

File: B-244345

Date: June 23, 1992

DIGEST

The Customs Service may not assess express air freight carriers its cost of providing daytime clearance services at the carriers' centralized hub facilities. The Customs and Trade Act of 1990, Pub. L. No. 101-302, envisions that such facilities will only be staffed on a reimbursable basis outside of normal business hours. 19 U.S.C. § 58c(e)(6), (b)(9).

DECISION

The Commissioner of Customs asks whether the Customs Service may provide staff, on a reimbursable basis, to air freight carriers to perform clearance functions at the carriers' centralized hub facilities during regular business hours. We conclude that Customs may not seek reimbursement of its costs.

BACKGROUND

Customs personnel currently provide, during non-regular hours of operation (5:00 p.m. to 8:00 a.m.), expedited processing for express shipments by air freight carriers at centralized hub facilities located on the carriers' premises. Customs regulations define a hub as a "separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the district director for entry filing, examination, and release of express consignment shipments." 19 C.F.R. § 128.1 (d).

Under the Customs and Trade Act of 1990, Customs charges the carrier a fee for this service. The fee includes costs otherwise recoverable under 31 U.S.C. § 9701 (the user charge statute), which permits agencies to collect the costs to the government of providing special services to identifiable beneficiaries, and an annual payment, constituting an entry fee, in an amount equal to costs assessed under section 9701. 19 U.S.C. § 58c(b)(9)(A)(i).

The carriers have asked Customs to provide dedicated expedited services, on a reimbursable basis, at each carrier's hub facilities during Customs' regular port hours from 8:00 a.m. to 5:00 p.m. Customs questions whether it has the authority to charge for informal entries submitted during regular port hours at a hub facility. Customs argues that the relevant statutes do not provide for any clearance fees for informal entries at hubs other than those set forth in 19 U.S.C. § 58c(b)(9)(A).

DISCUSSION

Whether Customs can charge a fee for this service is governed by section 58c.[1] Section 58c(a) provides that Customs shall charge and collect specified fees for a variety of Customs services. Section 58c(a)(10) provides specified fees for the processing of merchandise that is informally entered or released other than at a centralized hub facility, an express consignment carrier facility, and certain small airports or other facilities. With respect to the informal entry or release of merchandise at the excepted facilities, section 58c(a)(10) says to "see subsection (b)(9)."

Thus, subsection (a) does not authorize the collection of a fee for the service requested by the air freight carriers. Subsection (b)(9), however, does provide for the collection of fees for the processing of merchandise at centralized hub facilities. Subsection (b)(9) establishes a formula for calculating fees for servicing centralized hubs. However, it incorporates by reference the definition of "centralized hub facility" in Customs' regulations, that is, a facility "normally operating outside of Customs operating hours." 19 U.S.C. § 58c(b)(9)(B)(i), incorporating by reference 19 C.F.R. § 128.1(d) "as in effect on July 30, 1990." In so doing, subsection (b)(9) generally limits the authority to assess fees to the provision of clearance services outside of regular operating hours.

In addition to the provisions of subsection (a) and (b), section 58c(e)(6) further limits Customs authority to charge a fee for the requested service. Paragraph (6) prohibits Customs from charging fees for any "cargo inspection,

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[1]There is no dispute that Customs has the authority to provide clearance services to air freight carriers at carrier facilities during regular operating hours if Customs determines, as a policy and programmatic matter, that it has the resources to carry out the service and that there is a need for the service. 19 U.S.C. § 58c(e)(4)(A), (C); (5)(E).

clearance, or other customs activity, expense, or service," or for any customs personnel provided in connection with the arrival or departure of any commercial aircraft or its cargo, "during any period when fees are authorized under subsection (a) of this section." The effect of paragraph (6) is to limit Customs' ability to collect fees and other charges to those authorized by subsection (a) and (b).

See also 31 U.S.C. § 9701(c)(2), which precludes agencies from assessing user charges when other law specifically prohibits the assessment of a fee.

Accordingly, the Customs Service may not assess express air freight carriers its cost of providing daytime clearance services at the carriers centralized hub facilities since, by virtue of subsections (a)(10), (b)(9), and (e)(6), Customs may only charge fees for services provided at centralized hub facilities outside normal operating hours. In order to permit the Customs Service to assess and collect fees during regular operating hours at centralized hub facilities, Congress should amend the Customs and Trade Act's definition of a centralized hub facility to eliminate the reference to Customs regulations "as in effect on July 30, 1990" and should specifically authorize the collection of fees at such facilities during regular operating hours.

Wilton L. Gorsuch

for Comptroller General
of the United States

APPENDIX E

(A) by striking out "facility—" and inserting "facility or centralized hub facility—",

(B) by striking out "customs inspectional" in subclause (I), and

(C) by striking out "at" in subclause (I) and inserting "for".

SEC. 305. CUSTOMS PERSONNEL AIRPORT WORK SHIFT REGULATION.

Section 13031(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(g)) is amended—

(1) by striking out "In addition to the regulations required under paragraph (2), the" and inserting "The";

(2) by striking out paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

TITLE IV—OTHER TRADE PROVISIONS

Subtitle A—Nontariff Provisions

CHAPTER 1—MISCELLANEOUS NONTARIFF PROVISIONS

SEC. 401. MARKET DISRUPTION.

Section 406 of the Trade Act of 1974 (19 U.S.C. 2436) is amended as follows:

SEC. 302. CUSTOMS FORFEITURE FUND.

Section 613A(f)(2)(B) of the Tariff Act of 1930 (relating to certain authorized expenditure from the Customs Forfeiture Fund) is amended to read as follows:

"(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following shall be available to carry out the purposes set forth in subsection (a)(2):

"(i) $15,000,000 for fiscal year 1993.

"(ii) $15,450,000 for fiscal year 1994.".

SEC. 303. REPEAL OF EAST-WEST TRADE STATISTICS MONITORING SYSTEM.

(a) REPEAL.—Section 410 of the Trade Act of 1974 (19 U.S.C. 2440) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for such Act of 1974 is amended by striking out the following:

"Sec. 410. East-West Trade Statistics Monitoring System.".

SEC. 304. FEES FOR CERTAIN CUSTOMS SERVICES.

Section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)) is amended—

(1) by striking out "centralized hub facility or" in clause (i); and

(2) by amending clause (ii)—

STATEMENT OF THE AIR TRANSPORT ASSOCIATION

The Air Transport Association (ATA) represents 18 scheduled airlines of the United States and Canada, which together carry over half of the volume of international air cargo which is transported into and out of the United States. Cargo transportation is a vital sector of our business, contributing a disproportionately high return relative to revenue. Accordingly, the industry has over the years worked vigorously with U.S. Customs to develop programs to facilitate inspection formalities and shorten cargo delivery times. We appreciate this opportunity to express our industry's views on the Customs Modernization and Informed Compliance Act, which appears as Title II of H.R. 5100.

We agree with the U.S. Customs Service, the Joint Industry Group, and the other representatives of the trade community, that the Modernization Act is a highly desirable piece of legislation. By bringing the Customs laws up to date, passage of this legislation will make it possible for us to work together on further development of the most efficient and effective trade facilitation and enforcement system in the world. And like the other industry sectors, airlines have much to gain from the legislative improvements contained in the bill passed by the House, particularly the "informed compliance" measures and the clearer definitions of responsibilities, which will enhance the overall efficiency of import operations. The following stand out as particular reasons why air carriers need this legislation—and urge its enactment this year.

- **Cargo Examination:** The concept of Cargo Selectivity—whereby Customs intensively examines a small percentage of cargo shipments, rather than cursorily examining every shipment as contemplated in the law—has been employed by Customs for the past 10 years as a "test," with great success for both facilitation and enforcement. At large airports with high cargo volumes, it has become a management necessity; Customs and airlines simply could not adequately handle present-day traffic volumes if Customs had to revert to traditional cargo clearance procedures. Section 213 of Title II will permit the Customs Service to retain the Cargo Selectivity program so that we can keep the high level of service now provided by government and the industry. Specifically, the section removes language that would otherwise require Customs to inspect 10% of each shipment, as a minimum. This change will permit the Customs Service to continue to design its own inspection management systems by regulations and to ensure the greatest effectiveness in cargo inspection enforcement programs.
- **Customs Automation:** Within the next 2–3 years, virtually all of the major airlines will be processing their import cargo in the Automated Manifest system—a highly successful program which has proven so reliable that Customs and the airlines can now accept each other's electronic records without validating them against paper documents. Yet, under the current statutes, paper documents are specifically required. To comply with the paper requirement, air carriers have to maintain dual systems. This costly duplication is eliminated by Sections 231 and 235 of the bill.
- **Cargo Manifests:** Participation in the Automated Manifest System will be more cost-effective when:

- Carriers no longer have to file a paper manifest.
- Indirect carriers can share the data entry burden by transmitting their consolidations directly to Customs.
- Express carriers can use simplified procedures for manifesting letters and documents.

Section 235 of Title II specifically permits all of these productivity gains, by statute.

- **Boarding officers:** There currently exists an implied requirement that a Customs officer must board every arriving vessel—or meet every arriving flight to examine the cargo manifest, a paper document. Title II eliminates the requirement—air carriers will no longer be required to physically deliver a paper manifest to the Boarding Officer, but will permit them to transmit the manifest electronically. We support this provision. Airlines have invested substantial sums in the Automated Manifest System, which enables Customs at the arrival port to receive the cargo manifest electronically and review it for enforcement purposes, well in advance of the flight's arrival.
- **Drawback:** Several carriers currently use the Customs duty drawback program to obtain a 99% refund of previously-paid duties upon reexport of company equipment and supplies, when eligible. Under the revisions in Section 232, more carriers will be encouraged to use the program to reduce the costs of supporting their international operations.

POSSIBLE AMENDMENT TO TITLE II

• **Right to make entry:** Air carriers are opposed to any provision which would prevent nominal consignees from selecting their own customs broker. An amendment was offered and defeated in the Ways and Means Committee, because it would severely restrict the ability of express carriers to make their own customs brokerage arrangements to clear commercial cargo. In so limiting the choice of the express carrier, the effect is to slow down the ability to quickly process the shipment, which is the primary attribute of the express shipment. In defeating the amendment, the overwhelming majority of the subcommittee believed that the consignee should be free to chose the broker (hence the name, right to make entry). Moreover, such a provision would run counter to the objectives of the Modernization Act by making express cargo clearance less efficient than it is today, to the detriment—and expense—of the importing public. In fact, if an importer of an express shipment desires to select his own broker, the statute as currently written does not preclude him from doing so.

AIR TRANSPORT ASSOCIATION'S PROPOSED AMENDMENTS TO TITLE II

Amendments to Tariff Act Sec. 309 regarding the use of Fuel on International Airline Flights:

Bonded Fuel, Foreign Trade Zone Fuel and Duty Drawback on Domestic Fuel.

We urge the Committee to amend Section 309 of the Tariff Act of 1930, to simplify the use and accounting of bonded aviation fuel and fuel produced in a foreign trade zone, and to facilitate the duty drawback procedures when domestic fuel is used for international operations. These changes are essential to the airlines' ability to use bonded or foreign trade zone fuel on qualifying flights, or alternatively, to facilitate the use of duty drawback procedures when domestic fuel is used on international flights, thereby controlling carriers' fuel costs and maintaining competitive positions in the international marketplace.

The use of bonded fuel, or foreign trade zone fuel, on which duty has not been paid, is permitted on international flights by Section 309 of the Tariff Act. The use of bonded or foreign trade zone fuel by airlines on qualifying flights represents a significant cost saving benefit, and where available, the airlines prefer to use it. International carriers are, by treaty, also permitted to use bonded or foreign trade zone fuel on international flights.

However, recent Customs rulings may have jeopardized the airlines' (both domestic and international) ability to use bonded fuel because of an interpretation that the use of such fuel must be accounted for, reconciled and the duty paid on amounts of fuel withdrawn but not used, on a daily basis. Moreover, the Customs Service has taken the position that bonded fuel may not be commingled with other fungible fuel, in a single hydrant airport fueling system.

Finally, Customs statutes and regulations pertaining to duty drawback are currently so cumbersome that they often can't be physically complied with, and hence the carriers are deprived the ability to seek the recovery of duty paid on domestic fuel that is used on international flights. Specifically, Customs requires that the carriers claiming the duty drawback must identify the manufacturer and the refinery where the exported fuel was produced. Since jet fuel, as a fungible product, is transported via an intricate system of pipelines and manufactured by numerous refiners, it is not economically possible to make the identifications required by the Customs Service. We propose that those statutes be modified to facilitate the use of duty drawback for qualifying flights.

Unfortunately, because of existing fueling systems at most large airports, bonded fuel stored in bonded tanks, or foreign trade zone fuel stored in tanks approved for such purpose by the Customs Service must be commingled in pipelines with domestic fuel after being withdrawn from a tank, prior to being pumped into the wing of the aircraft.

The commingling of fungible bonded fuel and foreign trade zone fuel and domestic fuel on which duty drawback will be claimed, with other domestic fuel, is necessary because fuel must be transported from the port of entry or refinery, by means of a common carrier pipeline to the terminal or storage facilities. Any other method of getting the fuel to the airport without commingling it with other fungible fuels, would require costly segregation and accounting procedures to identify each lot of imported or foreign trade zone fuel. Because of the configuration of pipeline and terminal operations, it would be impossible to do this.

Customs has previously issued a series of letter rulings concerning the handling and accounting for jet fuel withdrawn from airport storage tanks for delivery into aircraft. In order to utilize this fuel, whether bonded or foreign trade zone fuel, the

airlines must withdraw the exact amount of fuel estimated for international operations each day, and then account for the fuel used on international flights within a 24-hour period.

Since the exact amounts of fuel actually used on the foreign flights varies as compared to amounts estimated to be used on those flights, it is impossible to accurately estimate the quantity needed in any given 24-hour period. The amounts of fuel used in a 24-hour period may vary from the estimate because of such external factors as the headwinds aloft, the weight of the aircraft, or whether there were cancellations or departure time changes on flights. Thus, the requirement that the amount actually used be reconciled against the estimate, and the duty paid, within a 24-hour period, is an administrative burden that simply cannot be satisfied.

In addition, the Customs Service currently requires the payment of duty on any daily withdrawal in excess of the amounts used on international flights, but does not allow a credit to the airlines for the reverse, i.e., where the international fuelings exceed the amounts withdrawn from the bonded or foreign trade zone tanks.

The first proposed amendment to Section 309 provides that a withdrawal of any fuel from an "airport fueling system" for loading onto aircraft for qualified flights constitutes a duty-free withdrawal of the bonded or foreign trade zone fuel within that system, provided that the monthly inventory records demonstrate sufficient quantities of bonded or foreign trade zone fuel were actually withdrawn. The withdrawal would have to be by or for the account of the same person or entity that owns the fuel in the system.

The second proposed change to Section 309 provide a definition of the term "airport fueling system" to mean airport fuel storage and pipeline delivery systems that store and deliver fuel to aircraft. The system may include bonded and foreign trade zone tanks as well as tanks to hold other (domestic or duty-paid) fuel. The definition would recognize that at many airports the fuel storage capacities are limited and therefore would include bonded and foreign trade zone tanks at off-site terminals connected to the airport by pipeline

The third proposed change to Section 309 would provide that bonded fuel or foreign trade zone fuel will not be considered withdrawn or entered for consumption (i.e., lose its bonded or foreign trade zone status) by reason of commingling with other fuel during transportation, storage and delivery, unless an appropriate withdrawal or entry for consumption is filed. This provision is necessary to avoid Custom's interpretation that bonded or foreign trade zone fuel must be considered to have been imported, and hence the duty due, when withdrawn from a bonded tank and injected into a hydrant pipeline. This provision would also recognize the commercial reality of the commingling that occurs during the pipeline movement and terminal storage and through-put of jet fuel.

Finally, the fourth proposed change deals with the duty drawback identification procedures on jet fuel used on international flights. The proposal would establish a method for identifying the source of jet fuel in order to facilitate the drawback.

The airlines consider these legislative changes essential to the continued availability of bonded or foreign trade zone fuel in the U. S. market. Absent such fuel, the price of jet fuel to the airlines, and the price of travel to consumers, would necessarily rise.

FREE ENTRY OF PREVIOUSLY IMPORTED AIRCRAFT PARTS

We understand U.S. Customs supports a revision of the Harmonized Tariff Schedule to permit aircraft parts which were previously imported and on which duty was paid, to be imported a second time free of duty. Air carriers also support such a change because of the manner in which aircraft maintenance operations are conducted.

It is not unusual for aircraft parts to frequently cross international boundaries. Inventories can be positioned overseas for repair of aircraft overseas. When such parts may be subsequently removed from that aircraft and returned to inventory at the main base in the United States, the aircraft part that has already had the duty paid on it, is assessed duty a second time, since there is no specific exemption for the free entry of previously imported aircraft parts. Thus, the airline industry urges the Committee to adopt a change to the Harmonized Tariff system permitting the admission, duty-free, of aircraft parts that have already been duty paid. This change would eliminate the double payment of duty on previously imported aircraft parts.

SUMMARY

The Air Transport Association appreciates the opportunity to present our written statement for the record, of our views on the Customs Modernization Act, which is included as Title II of the Trade Bill, H.R. 5100. To summarize our remarks:

- Air carriers support the cargo examination sections which permit the cargo selectivity procedures which have been used by the Customs Service for the last 10 years.
- Air carriers support the customs automation initiatives included in the bill, which would eliminate the airlines' need to maintain duplicate paper documents for the automated manifest system.
- Air carriers also support the drawback provisions of the bill which would encourage more carriers to use to drawback program to obtain refunds of previously paid duties on company equipment and supplies.
- We oppose any provisions to amend the bill to require Customs Officers to board aircraft to examine cargo manifests (since Title II would permit carriers to transmit manifests electronically).
- We oppose any attempts to curtail the rights of the consignees to select their own brokers since any such changes would slow down the express shipment clearance times.
- We urge the Committee to consider the adoption of statutory changes to the use of bonded and foreign trade zone fuel for international operations, to clarify and simplify the procedures governing the use of such fuel, and to permit streamlined procedures for the duty drawback on domestic fuel used on international operations.

STATEMENT OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

The American Association of Exporters and Importers (AAEI), an association of more than 1,000 members active in international commerce whose members were responsible for more than $100 billion in U.S. exports in 1991, appreciate this opportunity to put before the Senate Finance Committee some of our concerns with the so-called trade expansion bills now before Congress. U.S.T.R. Carla Hills told the House, even before the Gephardt/Levin auto provisions were added, that H.R. 5100 was a trade contraction bill rather than a trade expansion bill and would meet with a presidential veto. We agree with Ambassador Hill evaluation of H.R. 5100, and note that the same would have to be said of S. 3019, Sen. Arlen Spector's equally mis-labelled "Trade Expansion and Enforcement Act of 1992." We are especially concerned that the nation will lose a valuable, even a necessary measure which was folded into both H.R. 5100 and S. 3019. We refer to H.R. 3935, the Customs Modernization and Informed Compliance Act.

AAEI has played an active role in the development of H.R. 3935, the Customs Modernization Bill. From the very start, our overriding objective has been the expeditious passage of a bill to modernize and simplify customs procedures and lead the Customs Service into the 21st century. We and others involved in the negotiation went to great lengths to assure that the final product was a non-controversial bill, and in this spirit many compromises were struck. To cite one of particular importance to our membership, although we objected strongly to H.R. 3935's 300-percent drawback fraud penalties, and still do, AAEI chose not to oppose them in the interest of obtaining quick congressional action on customs modernization bill.

It is therefore with great disappointment that we now find H.R. 3935 incorporated into this comprehensive trade package, and thereby embroiled unnecessarily in what is likely to become an extended election-year debate over the bill's more controversial provisions. AAEI believes that passage of this important customs modernization legislation this year is imperative. H.R. 3935 we believe, should be separated from controversial trade bills and allowed to run the independent, non-controversial course anticipated by its authors.

We would like to point out that the timing of such legislation as H.R. 5100 and S. 3019 is particularly inappropriate. Such Acts threaten to throw a very large monkey wrench into the works of the on-going Uruguay Round negotiation, which we believe offer American exporters potentially enormous benefits. Although the GATT talks have been long, protracted and often frustrating, the United States stands to gain a great deal from the Uruguay Round's successful resolution. Among other things, a GATT agreement will likely facilitate American agricultural exports, foster U.S. competitiveness in the international services sector, and provide more robust and greatly needed intellectual property protections for American products sold abroad.

The prospect that such gains will be achieved would be diminished by the passage of an H.R. 5100. U.S. credibility at the GATT talks will be seriously damaged if not destroyed by the passage of legislation with such a decidedly unilateral, confrontational and protectionist flavor. The United States' eager pursuit of unilateral trade remedies beyond the scope of the GATT has long been an issue of contention with our trading partners; to press down that road with even greater force at this sensitive juncture in the Uruguay Round talks, and to unilaterally increase the restrictiveness of the very U.S. laws which are the subject of negotiation would be a particularly egregious affront to our trading partners.

Economically, these trade restriction would come at a uniquely inopportune moment. What growth we have seen it the American economy in the last four years is in large part attributable to exports: since 1988, 70-percent of the nation's economic growth has been export led, leading to the creation of almost 2 million new jobs. The U.S. is now the world's largest exporter, with over $420 billion in annual exports. Our exports performance, Mr. Chairman, indicates that in so many respects, and in so many sectors, this country's manufacturers and their products are indeed competitive. To threaten this success, and ultimately the viability of the economic recovery, by enacting trade legislation that, however will-intentioned, is likely to reduce rather than increase U.S. export opportunities and exacerbate relations with our trade partners, is in AAEI's view both ill-timed and misguided.

Finally, and perhaps most importantly for the future of U.S. exports, an H.R. 5100 sends the wrong message to the countries of the developing world and of eastern Europe and the former Soviet Union who, following America's victory in the Cold War, look increasingly to us for guidance in restructuring their laws and economies. In the trade area, many of these countries are likely to follow the lead of the United States. If we adopt trade restrictive measures, so will they.

The process of opening formerly closed or restricted foreign markets has tremendous promise for the future of U.S. exports, but it also means that we must be prepared to reap abroad what we sow at home. Increasingly, we believe our members will find that the import barriers, antidumping amendments and retaliatory mechanisms that we erect to protect our troubled industries at home will be reproduced elsewhere, to the serious disadvantage of U.S. exporters. More antidumping actions are now filed against U.S. exporters worldwide then companies of any other country, with the possible exception of Japan, which ought to make us very careful about the precedents we set.

AAEI COMMENTS ON THE SPECIFICS OF ANY OMNIBUS TRADE LEGISLATION

A. Super 301 Reauthorization

AAEI believes that the application of Section 301 has wandered far afield from its original appropriate function. Section 301 is properly invoked in those cases where there has been a violation of an international trade agreement. That was how it was used exclusively until recent years. It has, however, been applied in considerably more expansive fashion since the mid-80s to those cases where 'the actions of our trading partners have not violated international rules or agreements but were otherwise considered "unreasonable" by U.S. petitioners and the agencies of the executive branch. Unilateral action of this sort patently undermines the multilateral trading system. and violates those international trading rules which the United States has long championed and benefited from. It is simply incompatible with our commitment to the GATT, and an affront to the sovereignty of the countries concerned, for the United States to impose restrictions on trade absent any finding of a violation of a trade agreement.

Any reauthorization of Super 301 promises to again institutionalize these violations and efforts by compelling U.S.T.R. to generate an annual hit list of "priority" countries irrespective of their compliance with the agreements that circumscribe our trading relationships. And it promises to do this at the precise moment that the United states battles for important trading concessions in Geneva.

There is simply no good reason to reauthorize Super 301. U.S.T.R.'s mandate under Section 301 is, and ought to be, to use its discretion in those cases where it is appropriate to do so to pursue optimal market-opening results for U.S. exporters. This discretion as to which cases to pursue, in what manner, for what length of time, and when to press a reluctant trading partner—is an integral part of the Section 301 process. Super 301, by contrast, has the discretion and sensitivity of the proverbial bull in the China shop, forcing the Administration to engage in an awkward process of yearly public condemnation without regard for the nature of our economic and political relations with named countries and the most productive method of resolving trade disputes in the individual case.

Nor, in our experience, is Super 301's implicit assumption that U.S.T.R. has somehow been remiss in exercising its Section 301 authority ill-founded. In fact, as Ambassador Hills has shown in her testimony, the existing Section 301 has proven to be a very effective tool in U.S.T.R.'s hands. AAEI supports use of existing 301 authority in appropriate cases—that is where international trade agreements have been found to be violated and retaliation is selective and used only as a last resort; we simply see no need for a new Super 301 law. To the contrary, we believe that Super 301's inflexibility would deprive U.S.T.R. of the discretion essential to such bilateral negotiations. Increasing either the reality or the threat of retaliation under Super 301 if often counterproductive, and invites retaliatory actions against the U.S., as not every country takes being named under Super 301 as an invitation to negotiate. Foreign country resistance in turn invites retaliation by the United States. The result: higher prices for American consumers and industrial users of foreign country imports subject to Section 301 sanctions, without any coordinate market access benefit accruing to U.S. exporters.

It is also mistaken, in our view, to focus on our bilateral trade balances with particular countries; the U.S.'s overall balance of trade with the world as a whole is more properly the issue. Further, to the extent that merchandise trade deficits are evidence of a problem the initiation of Super 301 investigations is most certainly not the answer. If this Committee wishes to tackle the real problems underlying our trade imbalance, then it should address those macroeconomic factors which are its contributing causes—our abysmal savings rate, failure to develop a comprehensive energy policy, and overwhelming budget deficit, and our educational infrastructure short comings. Championing Super 301 as the answer—even a partial answer—to our macroeconomic problems is simply misguided, and diverts attention from issues which need to be addressed if we are to solve the structural problems affecting our economy.

The Super 301 resolution also wrongly equates fair trade with balanced trade. The United States, as the Committee knows, runs trade surpluses with many countries and with Europe as a whole; surely this fact should not somehow constitute the predicate for Section 301-style finding against the United States by a foreign country bent on retaliation. The more the U.S. moves over the long term toward an overall trade surplus position, the more likely it is that this problematic yardstick will come back to haunt us and injure the competitive position of U.S. exports.

B. Auto Sector Measures

We also ask that the Levin/Gephardt amendment to H.R. 5100 and its counterpart section of Sen. Arlen Specter's S. 3019 Trade Act receive the particular attention of the Senate Finance Committee. While these acts state that "Nothing in this Act may be constructed to have the effect of (1) terminating or limiting to any extent the production of motor vehicles by transplant vehicle manufacturers; or (2) limiting or reducing jobs of United States workers at such facilities," the definitions used in the Acts dictate that motor vehicle parts made in the U.S.A. at "transplant" factories do not count toward the 70% U.S. content the Act requires by 1994 in motor vehicles manufactured here in plants owned or controlled by Japanese parent companies. This restriction would doom such auto parts makers and render jobless their American employees. Further, as the Japanese owned or controlled vehicle manufacturers here could not economically conform to the required 70% U.S. content level without counting their own parts production and that of Japanese owned or controlled part manufacturers here. As a result, the U.S.T.R. would be required to penalize the Japanese parent corporation reducing its access to the U.S. market.

The Levin/Gephardt amendment tries to draw legitimacy from the January, 1992 auto agreement between the U.S. and Japan, which contained " a pledge to increase the domestic content of autos produced in Japanese-owned plants in the United States." (The quote is from U.S.T.R. Carla Hill's testimony on H.R. 5100). That pledge included parts made in the U.S. by Japanese-owned or controlled factories, and referred to automobiles, not to "motor vehicles." The H.R. 5100/S. 3109 term which covers both autos and trucks reduces the auto quota from 1.65 million to 1.25 million cars, should truck imports continue at the 400,000 level. (Note also that companies producing motor vehicle parts here which are owned or controlled by non-Japanese foreign parent corporations are honorary U.S. manufacturers for the purposes of this Act). Among motor vehicle parts 'manufacturers here, only Japanese owned or controlled companies, their employees and suppliers are attacked. Should affiliates of U.S. corporations, manufacturing abroad, be so treated by their foreign host countries, our U.S. protectionists would be the first to complain against such GATT illegal discriminatory policies! Singling out Japanese owned or controlled auto and auto parts manufacturers and their workers here must surely be at least unfair discrimination against U.S. workers, a violation of the equal protection clause and

national treatment provision of the U.S.-Japan FCN Treaty and at least the spirit of GATT Article I mandating most favored nation treatment.

It is no secret that the problem with the American auto industry is that it is not competitive. This is not a Japanese problem; it is an American one. Given the nature of the problem, AAEI thus believes H.R. 5100 type Acts are not a solution; they provided an inappropriate, unsatisfactory crutch that will hurt U.S. consumers and create a precedent for our trading partners.

H.R. 5100's auto provisions seek restraint and protection, not competitiveness. This not the proper prescription for our economy at this critical juncture.

When the auto VRA was first implemented in 1980, the common wisdom was that it would afford the domestic industry "breathing room" to get back on its feet. In the last ten years, this theory has been squarely refuted. Whatever little breathing room existed was largely squandered, as most objective observers predicted; the Japanese moved into the more lucrative higher-priced luxury auto market; overall Japanese market share in the domestic auto market increased through investment in the U.S.; and skyrocketing Japanese profits were plowed back into Japanese automotive R&D. In the process, of course, American consumers paid an immense price, as the sticker prices on American cars rose on average by $1200 and on Japanese cars on average by $1700, according to Ambassador Hills. The comprehensive VRA contemplated an H.R. 5100 will likely cause prices to climb even higher.

First, negotiations with the Japanese government pursuant to a Section 301 investigation will in large part only duplicate already ongoing discussions between the U.S. and Japan under the auspices of the Structural Impediments Initiative ("SII") and the Market Oriented Sector Selective ("MOSS") talks. There is no reason to believe that a self-initiated Section 301 investigation would improve significantly on the notable progress of these talks. The threat of retaliation under Section 301 has long lurked beneath the surface of the MOSS talks; making this threat more explicit will do little more than derail the MOSS process and the important auto parts studies recently launched under its auspices.

Second, the directive to self-initiate a Section 301 investigation threaten to jeopardize the very significant multi-billion dollar auto part import commitments made by Japan in the wake of the President's trip last January. It is not implausible that Such an investigation will affect the willingness of the Japanese government to follow through on the commitments made by the Japanese Big Five automakers earlier this year.

C. Trade Agreements Compliance

AAEI also opposes incorporation into any trade bill of provisions of H.R. 1115, the "Trade Agreements Compliance Act" ("TACA"). The TACA provision, in our view, is redundant and burdensome. Existing law provides an entirely adequate process for reviewing compliance with bilateral trade agreements. TACA would simply create yet another duplicative, unnecessary web of bureaucracy and would further burden U.S.T.R.'s scarce resources were devoted to market-opening negotiations than to such a paper chase.

D. Antidumping/Countervailing Duty Provisions

AAEI is deeply troubled by a number of the antidumping and countervailing duty provisions in Acts H.R. 5100 and S. 3019. We fear in particular that these provisions—many of which would either have on practical effect or would violate our international agreements—will invite retaliation from the trading partners, threatening the export engine that has been driving our economy, and will further expand the reach of a statute which, as presently administered, is economically irrational, and wholly unfair to those ensnared in its Byzantine procedures.

1. Anticircumvention Provisions (Section 425)

The radical expansion of existing anticircumvention standards proposed in H.R. 5100, Section 425 is the most troubling of H.R. 5100's antidumping and countervailing duty ("AD/CVD") provisions.

This is a complex amendment in an arcane area of law with broad implications for American industry. This proposal, without Administration support, is now moving on a fast-track with little meaningful opportunity for examination by this Committee and the private sector. We think this undue speed is unwarranted, and dangerous; if the proposal can stand on its merits, let it do so in the full light of day and with due opportunity for consideration and comment by all who may be affected.

As we understand this provision, it could effectively prevent U.S. companies from staying competitive by switching to other sources of supply when a foreign component on which they rely is made subject to and existing antidumping or countervailing duty order. Although the precise effects of this broad and vague provision are

really impossible to know, it clearly would discriminate against U.S. companies that use a global sourcing network, as increasing numbers of U.S. companies do. The provision is not aimed narrowly at true circumvention of antidumping and countervailing duty orders, but rather is a shotgun blast that would penalize honest companies who in fact seek to comply with the antidumping and countervailing duty laws. It confuses the natural and economically healthy attempt by corporation to *avoid* taxation by shifting supply sources, with the *evasion* of duties by fraudulent or illicit activity. Current U.S. anticircumvention law is already too restrictive, but at least is limited to cases where the foreign-made part or component is made in the country against which a dumping or CVD order has been issued. H.R. 5100's anticircumvention provision would subject products that contain *third country components* to antidumping and countervailing duty orders—even where no antidumping or countervailing orders covering the third country has been issued.

In addition to ensnaring components that are made in third countries, H.R. 5100's anticircumvention provision would remove the current requirement that the value-added during U.S. or third country production must be "small" in order to subject the foreign-made component to an antidumping or countervailing duty order. Under H.R. 5100, a part or component made in *any country*, and assembled in *any country*, could be made subject to an existing antidumping or countervailing duty order if the Department of Commerce determines that there has been a "pattern of circumvention" of the original order. Notably, the provision does not define "pattern of circumvention," making it potentially applicable in almost any situation. Further, even if no such "pattern of circumvention" is found, the product may still be made subject to an original antidumping or countervailing duty order—regardless of where it is made or assembled—if the product is supplied by the same parties who supplied the original product and if the value of the imported component is "significant" even if the U.S. value-added is the greatest part of the finished product.

To see how this provision could work in actual operation, let's take a U.S. computer manufacturer which makes a computer in the U.S. using Japanese computer screen that is not produced anywhere in the United States, but is made by the U.S. company's Japanese affiliate. All of the other components of the computer are fully U.S.-made. Say the Department of Commerce issues and antidumping duty order against the Japanese computer screens, and sets the dumping duties at so high a rate that the U.S. company can no longer afford to import the Japanese screens into the U.S. The company now has no choice but to stop making its computers, or change the source of its supply of the screens. There is no U.S. antidumping duty order against Taiwanese computer screens, and our U.S. company decides to purchase computer screens made in Taiwan by an unrelated company. Under H.R. 5100's anticircumvention provision, the Taiwanese screens could be made subject to the U.S. antidumping duty order against Japanese screens if the U.S. company merely purchases them from its Japanese subsidiary and the Commerce Department determines that the screens are a "significant" part of the computer's value—even though the screens are not made in Japan and the U.S. components of the computer make up the greatest part of the computer's value.

If Commerce concludes that there has been a "pattern of circumvention" of the antidumping duty order, based on virtually any facts, it could make the Taiwanese computer screens subject to the order *regardless* of the value of the Taiwanese component—even if the U.S. value of the finished computer is 99.9%, and even if none of the Taiwanese screens are being sold at less than fair value. As is easy to see, this provision could effectively cut off this U.S. company from all of its alternative sources of supply, even forcing it to shut down its production altogether.

Section 425's clear violation of the GATT and the GATT antidumping code would be inconsistent with the international obligations of the United States, and expose American companies abroad to the very real prospect of retaliation and possible mirror image legislation. Section 425's extension of AD/CVD orders to like products made by unrelated companies in third countries constitutes a shattering of the restraints the international community has agreed to in order to prevent these procedures from becoming nothing but a vehicle of unbridled protectionism. Our most efficient industries, those that source world-wide to remain competitive, would suffer most. U.S. producers and importers who seek to switch to third countries for sources of supply would suffer, and as prime targets of AD/CVD actions broad, American exporters would pay an especially heavy price.

2. International Trade Agreements

H.R. 5100 Sections 425 and 429 of H.R. 5100, which respectively take aim at the Executive Branch's authority to negotiate trade liberalizing agreements on antidumping and air industry subsidizes, appear to lose sight of the forest for the trees. The objective of these negotiations is to liberalize international trading rules, not

to preserve the status quo of each nation's trade laws. While we would agree to improvements in U.S. law, which are far from perfect, and are viewed by many as outright protectionist, in return for such concessions. Without such authority, no realistic negotiations can occur.

3. Dual Pricing of Imports (H.R. 5100 Section 423)

Section 423 reflects a fundamental misunderstanding of how U.S. and other duty drawback provisions work. It is common practice for importing companies to receive a reimbursement, or "duty drawback," on customs duties paid on imported components used in products for alter export. The reasons for this well-established practice are two-fold: to avoid subjecting companies to double duties; and to keep assembly and down-stream export-related operations at home.

Section 423 would bar the Commerce Department from recognizing such duty drawbacks in calculating fair market value. If adopted, the provision would unfairly distort Commerce dumping calculations, resulting in artificial or artificially high margins. It would also violate the GATT and GATT code and expose U.S. exporters to reciprocal treatment abroad, possibly forcing U.S.-based production and assembly offshore—thereby undermining the job creation purpose of our own duty drawback policy.

4. Administrative Review Deadline (Section 421)

Section 421, which would require the Commerce Department to complete administrative reviews within 270 days, ignores the real problem at Commerce—the Department's shortage of resources. Under current law, Commerce is supposed to complete reviews within a year, but it very often misses this deadline. Simply imposing a tighter deadline would be illusory. If Commerce is to do its job in a timely fashion, whether under a new 9-month or the current 12-month deadline, Congress and the Administration will have to agree to appropriate the necessary resources for it to do so.

5. AD/CVD Simplification H.R. 5100 (Section 416)

We wholeheartedly support the simplification of countervailing and antidumping duty proceedings, but see no justification for limiting a study on simplifying the process to reducing petitioners' cost to initiate petitions. Rather, if a simplification review is to be undertaken, its scope should extend to the entire AD/CVD process and should seek a process that is fair and objective to all parties and results in economically and commercially rational determinations.

6. Section 435 of S. 3019

The AAEI objects strenuously to Section 435 of S. 3019 for the following reasons.

This provision would amend the Antidumping Act of 1916 (15 USC Section 72) by creating a private right of action to sue for "economic damages" or to enjoin the further importation into, or sale or distribution within the United States of any merchandise which has been subject to an antidumping duty order or countervailing duty order. To the extent that this provision would expose foreign manufacturers' exporters or United States' importers to punitive and retroactive damages, it is contrary to the United States obligations under the International Antidumping Code and Subsidies Code. These codes contemplate that antidumping and countervailing duties are remedial, not penal, measures and the codes prohibit retroactive impact except under limited circumstances and for a period not to exceed 90 days prior to the date of application of provisional measurers.

To the extent that this legislation would permit injunctions against further importations, sale or distribution, it violates the International Code requirements that antidumping or countervailing duty proceedings shall not hinder the procedures of Customs clearance.

Finally, to the extent that this provision contemplates antitrust relief comparable to the 1916 Dumping Act, it does so without requiring the element of intent incorporated in all United States antitrust legislation, namely a requirement that the acts complained of, to be done with the intent of destroying and injuring an industry in the United States or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade or commerce in such articles in the United States.

It is a position of the AAEI that such legislation is not only illegal, but poorly conceived since its enactment would cast a chill over United States trade and invite retaliation to the detriment of United States export interests.

E. Other Miscellaneous Provisions

1. Machine Tool VRA and Specialty Steel

For many of the reasons discussed above in the context of the auto sector VRA, AAEI also opposes any extension of the machine tool VRA and specialty steel VRA's.

2. Tariff Provisions

AAEI opposes any changes in tariff levels which would violate GATT bindings.

3. FSU GSP

AAEI supports removal of the prohibition on eligibility of the former U.S.S.R. for beneficiary status under the GSP program.

STATEMENT OF

THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

DUTY DRAWBACK COMMITTEE

ON SECTION 232 OF TITLE II IN H.R. 5100

Section 232 of Title II in H.R. 5100 contains language governing a long-standing Customs procedure known as duty drawback, which allows the refund of certain import duties on imported products which are either exported or used in the manufacture of products which are subsequently exported. Duty drawback was established by Congress in 1789 as a mechanism to enhance and promote both U.S. exports and domestic manufacturing by facilitating a level playing field for U.S. exporters. This is more crucial today than ever. The American Association of Exporters and Importers (AAEI) Duty Drawback Committee, constituting the largest advocacy group in the U.S. on duty drawback, is made up of a broad range of over 120 U.S. companies and meets bi-monthly in various locations around the nation.

This Committee is in complete agreement regarding the need for clear, concise language from Congress detailing provisions for duty drawback claims. After much negotiation and compromise, the language contained in Section 232 goes far in achieving this goal. AAEI's Duty Drawback Committee is in agreement with the language in this section regarding duty drawback.

However, there are several areas in which AAEI believes opportunities exist to assure that the laws governing drawback are not applied in a restrictive manner. These areas concern the ability to perfect a drawback claim and the establishment of deadlines for the liquidation by Customs of duty drawback claims.

AAEI's Duty Drawback Committee recommends that the right to perfect a claim should be incorporated into the language of Section 232. This would enable the claimant to make amendments and/or clarifications of clerical errors, mistakes of fact and inadvertances, not resulting from a pattern of negligent conduct, and resolve disagreements between Customs and a drawback claimant concerning the legal sufficiency of a claim at any time up to the liquidation of a claim. This becomes particularly important where a claim was amended to conform with what Customs held to be legally necessary prior to the Court of International Trade decisions in the Central Soya and B.F. Goodrich cases and the enactment of this legislation. Amendments and/or clarifications to add exportations not originally included in a drawback claim, now permitted if filed with Customs within three years after the exportation, should also be permitted to be filed thereafter if it is established that a Customs officer was responsible for the untimely filing.

With the right to perfect claims as provided above, the claimant would not be placed at a sharp disadvantage in having the claim either denied, or approved in part only, at the time of liquidation, when liquidation takes place more than three years after the claim is filed, at which point the claimant can no longer amend the claim under Customs present interpretation.

This Committee also recommends that a statutory time limit of three years be established for the liquidation of drawback claims. Without such a time limit, the drawback claimant is required to maintain substantial records supporting its claim. In addition, the claimant is exposed to potential audits and liabilities on its accounting books for an indefinite period of time. The increased efficiencies resulting from the automation should enable Customs to liquidate drawback claims within the three year period, as is currently the case with consumption entries, which are deemed liquidated after one year, with the possibility of three one-year extensions.

STATEMENT OF AMERICAN HONDA MOTOR CO., INC., HONDA OF AMERICA MFG., INC., AND HONDA NORTH AMERICA, INC.

American Honda Motor Co., Inc., Honda of America Mfg., Inc and Honda North America, Inc. (collectively referred to herein as "Honda") submit this statement in connection with the Senate Finance Committee hearings on United States trade policy and trade legislation. These companies manufacture, import and distribute Honda products in the United States.

This statement focuses solely on the Gephardt/Levin amendment to H.R. 5100, the Trade Expansion Act of 1992. However, there are several other proposals before the Committee that establish equally egregious quotas on vehicles manufactured in the United States by Japanese-owned manufacturing facilities. All of these proposals threaten the jobs of the Americans who make these vehicles, limit consumer choice and raise prices, stifle future foreign investment and reduce exports.

Honda opposes H.R. 5100 for four principal reasons:

1. H.R. 5100 discriminates against American workers based on the nationality of their employer. It pits some American workers against other American workers based not on the nature of their manufacturing activities but solely on whether the company for which they work is "Japanese owned or controlled."

2. H.R. 5100 sets a 70 percent United States parts mandate for Japanese-owned U.S. auto plants, but makes it impossible to satisfy by excluding all parts from United States manufacturers and suppliers that are "Japanese-owned or controlled," again without regard to how extensive their manufacturing activities are.

3. H.R. 5100 triggers automatic retaliation under Section 301 if a Japanese owned American auto plant fails to meet the unfairly defined 70 percent U.S. parts requirement.

4. H.R. 5100 expands the existing voluntary export restraint (VER) on automobiles to cover all "vehicles" for a minimum of 7 years. Its inevitable result will be to increase consumer costs and limit vehicle choice. This will reduce the vehicles available to American dealers and consumers by 425,000 units annually.

HONDA IN AMERICA

Honda has made an enormous commitment to the United States, particularly to manufacturing in this country. The United States is Honda's largest market. Over the past ten years, Honda has paid over $2.1 billion in Federal income tax. Honda directly employs more than 14,000 Americans, and its 1,300 independent U.S. auto dealers employ 55,000 additional Americans. Honda has invested $2.6 billion in motor vehicle manufacturing facilities in the United States. Honda currently has four manufacturing plants in Ohio, employing over ten thousand Americans. At present over half of the automobiles American Honda sells are manufactured in the United States, including the Accord sedan, the Accord Coupe, Accord Station Wagon, and the Civic sedan.

In 1982 Honda's Marysville Auto Plant began production. The plant now has the capacity to manufacture 360,000 cars each year. In 1985 the Anna Engine Plant began production. It now has the capacity to produce 500,000 engines a year. Honda's East Liberty Ohio Auto Plant began production in 1989 and now has the capacity to produce 150,000 cars per year.

Honda stamps the major body panels in its Ohio plants from American steel. Honda molds the major plastic parts—instrument panels and bumpers—in its Ohio plants from American plastic. Honda manufactures engines from American iron and American aluminum in its foundry and die casting facilities at its Anna, Ohio en-

gine plant. In addition to engines, Honda also manufactures transmissions, driveshafts, suspension and brake components at the Anna Plant.

Honda is a major United States purchaser of original equipment parts and materials from United States suppliers. In Honda's fiscal year ending March 31, 1992, Honda purchased for its Ohio automobile operations more than $2.8 billion of automotive original equipment parts and materials from 196 United States suppliers.

Honda also has established and expanded both its research and development and its production engineering in the United States. The Accord Station Wagon introduced in 1991 was designed and tested in the United States.

Honda's U.S. overseas automobile exports began in 1987, with exports to Japan beginning in 1988. This year Honda expects to export more than 40,000 automobiles to seventeen overseas countries.

Honda is an American success story. Honda's concern is the threat to its United States operations posed by legislation such as H.R. 5100.

H.R. 5100

H.R. 5100 is ostensibly designed to open foreign markets to United States producers. It would, however, have the opposite effect. It would discriminate against one class of American workers, it would restrict consumer choice and it would raise prices for American consumers. Additionally, it may undermine the NAFTA by setting the type of investment barriers in the United States that we are trying to dismantle in Mexico. It also jeopardizes American exports.

1. H.R. 5100 discriminates against certain American workers based on the nationality of their employer's investors

During the July 8, 1992 floor debate on the automobile provisions of H.R. 5100, Congressman Levin of Michigan, a sponsor of these provisions, said that " . . . there is no discrimination between Japanese companies and American or hybrids, none." But this is hot the case. H.R. 5100 expressly and unambiguously discriminates against "Japanese-owned or controlled" companies manufacturing automobiles and automotive parts in the United States, and jeopardizes the jobs of the tens of thousands of American workers employed by these companies.

H.R. 5100 contains two levels of discrimination. First, H.R. 5100 establishes a domestic parts content requirement only for United States automobile manufacturing plants that are "Japanese-owned or controlled." These requirements do not apply either to the Big Three or to other foreign-owned manufacturers, such as BMW's recently announced plant in South Carolina. Such discrimination is in plain violation of the principle of national treatment, which requires that companies not be treated differently solely because of their ownership. Since United States companies account for the largest volume of overseas investments, the United States has an economic as well as a philosophical reason to support the principle of fair, "national" treatment for companies with foreign investments. H.R. 5100 is absolutely contrary to this principle.

The second form of discrimination in H.R. 5100 is reflected in its definition of the "United States manufacturers" whose parts and materials could satisfy the domestic parts requirement of the bill. Section 111 (a) of H.R. 5100 defines "United States manufacturers" as "manufacturers, other than those that are Japanese owned or controlled." This definition is based not on where the economic activity takes place but on the source of the manufacturer's equity.

2. H.R. 5100 sets an unachievable 70 percent United States parts mandate for Japanese-owned U.S. auto plants

Under the nonsensical definition of "United States manufacturers," none of the engines, transmissions, suspensions, and other parts manufactured in Honda's Ohio facilities using American materials and American workers would count as American. Similarly none of the parts that Honda purchases from American companies and joint ventures with Japanese investment would count as American, even if all of the workers and all of the materials they use to manufacture the parts in the United States are American. Perversely, if a company in the United States without Japanese ownership or control makes a part from *foreign* materials, that part will count as domestic.

The "United States parts" requirement contained in H.R. 5100 is not a reasonable measure of domestic content since it wholly excludes the value-added by American labor and materials at any Japanese owned or controlled plant. The labor of Americans who pay American mortgages, whose children attend American schools, who buy their groceries in local markets, and who pay American taxes should count as American.

The 70 percent requirement is a misrepresentation of the voluntary purchasing plans of the individual companies announced in Tokyo in January 1992. Honda announced a voluntary "target of $4.94 billion in purchases of *U.S. made parts and materials* in fiscal year of 1994." Emphasis added (Honda Press Release, January 8, 1992.)

3. H.R. 5100 triggers automatic retaliation under Section 301 if a Japanese-owned American auto plant fails to meet the U.S. parts requirement

By establishing an unachievable standard against which "Japanese-owned or controlled" manufacturing facilities in the United States are to be measured, H.R. 5100 will trigger automatic retaliation under Section 301. Japanese companies that invested in the United States have to meet U.S. investment and content requirements that are in violation of "national treatment." Instead of being rewarded for their investment, they are penalized. Foreign companies that only import vehicles are the clear winner. What signal does this send for future foreign investment in the U.S.?

The retaliation in the form of punitive tariffs and quotas against the foreign company in reality hurts not only sales but also manufacturing operations in the United States. Automobile dealers will be denied the availability of both a full product line and a sufficient number of vehicles to remain in business. If dealerships close, thousands of Americans will lose their jobs and demand for the U.S. produced models will inevitably decline: U.S'. manufacturing operations will be further threatened by the absence of or prohibitive cost of necessary parts. More U.S. jobs will be lost. The punishment will hurt the U.S., not Japan.

By applying Section 301 of U.S. trade law to the domestic conduct of companies in the United States, H.R. 5100 perverts a law that was intended to redress the unfair activities of foreign companies or governments. Section 301 has never before been applied to the domestic conduct of American companies. This approach would jeopardize American investments abroad if other governments adopt mirror legislation. No country has more to lose than the United States under this approach.

4. H.R. 5100 expands the existing voluntary restraints on automobiles by including all "vehicles" for a minimum of 7 years

H.R. 5100 calls on the United States Trade Representative to negotiate a quota of 1.65 million "vehicles" with the government of Japan, with this quota to last until the end of this decade or for as long as the agreement between the European Community and Japan remains in effect.

Supporters in the House of Representatives claimed that this quota simply confirms the Japanese government's current voluntary restraints on automobile exports from Japan. Not so. The current voluntary export level of 1.65 million includes cars only. Expanding the scope of the quota will reduce vehicles available to dealers and consumers by 425,000 units for 7 years from this year's *recessionary* level.

The inevitable result would be an increase in the cost to the American consumer. Since 1981, Japanese automobile exports to the United States have been subject to a "voluntary" restraint. According to a study by the Brookings Institution, during the mid-1980's American consumers paid an average of $2,400 extra for an imported car and $1,000 to $1,200 more for a domestic car. The price of Japanese imports rose because of a supply curtailment, and the Big Three raised their prices. The American consumer was the loser. By comparison the reduction resulting from H.R. 5100 would be much greater than the reduction that occurred in the mid 1980's and, therefore, the cost to the American consumer will be higher.

H.R. 5100 also improperly cedes United States sovereignty to the European Community and Japan. H.R. 5100 extends the 1.65 million car and truck quota through 1999, or longer if the EC-Japan is extended. This result is fundamentally inconsistent with the sovereignty of the United States. Further, it is no answer to say that H.R. 5100 would simply follow the European Community's lead in restricting Japanese imports. This is an inaccurate characterization of the EC-Japan agreement. In fact the EC-Japan agreement replaces the more restrictive quotas established by individual European countries with an EC-wide limit as part of the transition to an open market for motor vehicles by the end of the century. The EC-Japan agreement reflects trade liberalization, H.R. 5100 is protectionism.

HONDA OPPOSES H.R. 5100

Legislation such as H.R. 5100 is unnecessary and counterproductive. Japanese-owned manufacturers have increased automobile production in the United States by 250 percent since 1986. Imports of automobiles from Japan are down by 40 percent over the last six years. The United States' motor vehicle trade deficit with Japan is down 18 percent over the same period. Indeed, the United States auto parts trade deficit with Japan is down by 20 percent since 1986.

H.R. 5100 would jeopardize this important process. The approach of H.R. 5100 is fundamentally and unfairly discriminatory. It discriminates against investment in the United States based on nationality. It discriminates against American workers based on the nationality of the ownership of their employer. It discriminates against the American consumer by limiting consumer choice and raising prices.

STATEMENT OF THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

The Association of International Automobile Manufacturers ("AIAM") is a trade association that represents international manufacturers of passenger cars and trucks. AIAM represents multinational companies which employ thousands of Americans in manufacturing, research and development, transportation, and distribution operations. The international automobile industry, including dealers, suppliers and port workers in the United States, provides jobs to more than 350,000 Americans.

U.S. policy on international trade in automobiles is of vital interest to AIAM's members. When Congress is considering changes in that policy, we believe there are certain points which all concerned should keep in mind.

FUNDAMENTAL PRINCIPLES

First, import restrictions on automobiles, including voluntary export restraints, are self-defeating. They increase the cost to consumers of all cars—both import and domestic. Import restrictions chill competition, which is so vital to the public in terms of price, quality, and technical innovation. The record of the Japanese restraints confirms these severe disadvantages.

Second, the automobile industry is internationally integrated. It has become a global melting pot, bringing together the best ingredients, the most efficient manufacturing methods and the latest technology from around the world. Internationalization benefits the public and our American economy. It gives consumers a greater variety of vehicles to meet a broader spectrum of needs. It leads to innovations that increase the safety of cars, reduce pollutants, and improve fuel economy.

Third, automobile factories built in the United States by companies based in other countries bring many benefits to the U.S. economy. They provide new jobs and promote the growth of local communities. They draw increasingly on parts made by U.S. firms. They introduce new, state-of-the-art technology. They demonstrate alternative ways of increasing manufacturing efficiency and productivity. And, they contribute to the U.S. trade balance by displacing imports with U.S. manufactured vehicles.

Finally, the U.S. is in the midst of an export-led recovery. In recent years, over two-thirds of our economic growth has come from exports. This is no time for Congress to enact protectionist legislation and put on the brakes to slow economic recovery and growth.

PENDING LEGISLATION

Many bills have been introduced in Congress which would affect the international automobile industry. While well-intentioned, most of these proposals go in the wrong direction for the American economy--jeopardizing the benefits of a free marketplace, the discipline of vigorous competition, and the opportunities of free consumer choice.

H.R. 5100

H.R. 5100, which passed the House on July 8th and has been referred to this Committee, is a defeatist proposal. It says America cannot compete internationally. It invites other nations to adopt ill-conceived trade policy. It tells U.S. exporters the U.S. does not care for your contribution to the American economy. It says America should shut the door on investment which builds factories and creates jobs for American workers. It says that Congress will choose some Americans to benefit and other Americans to suffer. It says that certain jobs in Michigan, Missouri and other states are to be protected but other jobs don't matter: jobs at factories in Ohio, Illinois, Kentucky, Tennessee, Indiana, California, and Michigan; jobs at ports on the East Coast, West Coast, and the Gulf; jobs at parts suppliers and service providers and at dealerships in every state—over 350,000 Americans who work in the international automobile industry. By setting an impossible domestic content requirement for transplant factories and by setting a long-term quota at a low, recessionary level, the bill passed by the House is a direct attack on the jobs of those Americans.

Quotas—With the Gephardt/Levin amendment (section 111), which was adopted on the floor of the House, H.R. 5100 calls upon the U.S. Trade Representative to

negotiate a seven-year quota on Japanese vehicle exports to the United States. The quota would remain at the level of 1.65 million imports for as long as the automobile trade agreement between the European Community and Japan is in effect—apparently for the rest of this decade.

One of the flaws in this approach is its failure to recognize that the EC-Japan agreement represents a significant liberalization of the restrictive quotas previously imposed by individual member states of the EC as a transition to an open market for automobiles by 1999. The so-called "voluntary restraint arrangement" in H.R. 5100, in contrast, moves toward greater protectionism, not liberalization.

As various economic studies have shown, restraints like these impose billions of dollars in costs on American consumers. According to a study by the International Monetary Fund, the voluntary export restraints on Japanese automobile exports to the United States caused average prices to go up on all cars in 1983 by $1,250 per vehicle. A Brookings Institution study estimated the consumer cost during the first four years of the VRA to be more than $12 billion, assuming it added more than $1,000 to the cost of an imported car and $750 to the cost of a domestic vehicle. The restraint level proposed in the present legislation could be particularly costly because it is set at a recessionary level of 1.65 million vehicles, down from the 2.3 million level under the voluntary restraints which applied from 1985 through 1991.

Misuse of Section 301—This legislation would, for the first time, apply Section 301 to the conduct of American companies, even though that strong and controversial tool was designed and intended to apply to trade barriers in foreign countries. A 301 investigation would be triggered by what is done at factories in the United States employing American managers and American workers.

The bill's provision to extend Super 301 is unnecessary. Eighteen Section 301 investigations have been initiated in the past three and one-half years. Every 301 petition filed by industry has been accepted by the U.S. Trade Representative. The Big Three could have filed a Section 301 petition, but they have chosen not to do so.

Discriminatory Domestic Content Requirement—The bill would legislate a 70% domestic content requirement for U.S. auto plants that are owned or controlled by Japanese auto makers (presumably including joint ventures) which would not be imposed on auto factories owned by the Big Three. This approach would directly contradict current U.S. objectives in international negotiations. It would violate the principle of national treatment and the most-favored-nation principle of non-discrimination among our trading partners.

H.R. 5100 defines "United States manufacturers" specifically to exclude any "Japanese owned or controlled" company. The engines, transmissions, suspensions and other components made at the U.S. automobile factories built with Japanese investment would be treated as foreign and thus not count toward the 70% mandate, one of several reasons that the threshold is unachievable.

Misunderstanding of the January Japanese Announcement on Parts—Contrary to its sponsors' claims, the Gephardt/Levin amendment, which is now a part of H.R. 5100, does not codify the undertakings made by some Japanese manufacturers in January of this year. Instead, it seeks to impose substantial new obligations on transplants, beyond what was anncunced voluntarily. Those companies announced voluntary goals for their U.S. subsidiaries to increase U.S. procurement from about $7 billion in fiscal year 1990 to about $15 billion in fiscal year 1994. The announcement said that American companies were expected to supply 70% of procurement by the transplants by FY 1994, while only about 30% of parts and materials purchases would be imports. It is important to be aware, however, that these figures are to include aftermarket replacement parts as well as original equipment—something far different from "United States parts content" of new cars. Moreover, that increase was explicitly premised on a 50% expansion of U.S. production by Japanese transplants from FY 1990 to FY 1994, as well as the expectation that U.S. parts suppliers will continue to make their "best efforts."

An Intentionally Unattainable Threshold—Since it refers only to parts and does not include labor, the domestic content test of the House bill completely disregards the work of 32,000 Americans employed in these U.S. factories. By excluding labor, the bill takes a far stricter approach to domestic content than either the Corporate Average Fuel Economy formula or the U.S. Canada Free Trade Agreement formula. For this reason, and by misstating the voluntary U.S. procurement goal, the House bill seeks to set up a series of requirements that are not attainable, in order to trigger retaliation against Japanese motor vehicles, parts and possibly other products. The prohibitive duties which could be applied in such retaliatory action could cost the jobs of thousands of Americans at transplant factories, dealerships, ports, railroads, trucking firms and elsewhere.

Preoccupation With Bilateral, Sector-Specific Policymaking—The House bill which has been sent to your Committee places far too much emphasis on bilateral trade

balances. It makes much more economic sense to think in multilateral terms—that is, to consider how the United States is performing in the context of the whole world economy. For Congress to make trade policy country by country and product by product is a serious mistake and would invite other countries with whom the U.S. has a favorable trade balance to retaliate against U.S. exports.

Attack on Transplants and Their American Workers—Not many years ago, some people concerned about rising auto imports said that foreign manufacturers could not be successful if they had to make cars in this country. "If you want to sell here, build here," it was said. This was echoed by the United Auto Workers, by Senators, Congressmen, Governors, and Mayors. Several international companies accepted that challenge and made huge investment commitments to manufacture in America. These plants have been welcomed—especially by American workers in need of good jobs. The new plants are good members of their communities. These factories reduce imports. Many people do not realize that U.S. automobile imports from Japan are actually down more than 30% since 1986—a decline of 800,000 imported vehicles—to a great extent because of the new factories which have been built here and which are employing American workers. In fact, last year 86,000 vehicles from these new factories were exported to other countries. This number is expected to increase in future years.

For decades, American companies have built factories all over the world. Americans have led the way in the international manufacturing and distribution of quality products, including motor vehicles. The concept of manufacturing in foreign markets is not new, and it benefits greatly the country where the investment takes place. Foreign investment here has meant increased U.S. employment and an increase in U.S. exports.

International auto manufacturing facilities in the United States are part of the American industrial base. AIAM strongly rejects any characterization of these plants as "foreign." They have American management, employ American workers, produce products with significant and growing levels of U.S. content, and are making a valuable contribution to their American communities. Moreover, their strategic business decisions are dictated by basic corporate economics.

Many thousands of additional jobs beyond the factories are stimulated by the basic manufacturing activity. These include jobs with parts suppliers, suppliers of other goods, and providers of services. The plants also pay taxes at the federal, state, and local levels.

Some have charged that new auto plant investment from abroad has the effect of "eroding the U.S. industrial base." This phrase typically has been used to refer to the loss of U.S. manufacturing jobs to plants in other countries. It is ironic and illogical in this instance to use the well-worn phrase to apply to huge investments in eight American states to build some of the most advanced and efficient factories in the world. Those factories are not going anywhere. What they really represent is a transfer into the United States of improved manufacturing technology, expansion of American employment, and a contribution to the U.S. tax base.

Moreover, it would seem difficult to say, for example, to a UAW member at the Mazda plant in Flat Rock, Michigan, that his work erodes the U.S. industrial base. In addition to providing manufacturing jobs, international automobile companies are also employing increasing numbers of American engineers to improve the technology of products themselves as well as the technology of the manufacturing process.

The Japanese Market—It is often said that the Japanese automobile market is closed and that our country has the most open market in the world. However, Japan has no duty on imported cars, unlike the United States; Japan has no quota on imported cars, unlike the "voluntary" export restraints which operate to protect the U.S. market; and Japan's safety and emissions rules are the same for imported and domestically produced cars. The real issue is whether a manufacturer will design a car for the Japanese market, like the Japanese companies have for the U.S. market, and take the necessary steps to sell its vehicles there. With that level of commitment, a company can be competitive. Without it, sales of such vehicles may never be strong, no matter what country they are entering. This has been clearly exemplified by the experience of the Big Three operating in Europe as well as other countries.

Tariff Reclassification of Minivans and Sport Utility Vehicles.—S. 1646 proposes to reclassify imported minivans, such as the Toyota Previa, and sport-utility vehicles, such as the Nissan Pathfinder, on the Harmonized Tariff Schedule (HTS) so that they would face a duty rate of 25% rather than the present 2.5%. This proposal passed the Senate earlier this year in the tax bill which was vetoed. The House Ways and Means Committee has included a different version of it in H.R. 4318, the Miscellaneous Tariff Bill.

The vehicle reclassification provision has been promoted as a way to pay for other tariff provisions. However, the notion that it will produce revenue is an illusion. Who will buy cars that carry a 25% tariff in today's competitive automotive market? In reality, the sales of imports will dry up, so that even the present 2.5% tariff revenue will disappear.

The legislation would help Chrysler, Ford and General Motors increase prices on their minivans, such as the Dodge Caravan, and sport utility vehicles, such as the Ford Explorer—models which are already profitable. This is a highly controversial measure which, in truth, is just a tax increase on middle class families who want to buy these cars—the station wagons of the 1990's. It should be called "The Family Car Tax of 1992."

A new study by Citizens for a Sound Economy concludes that this change would raise the average price of imported and domestic models by as much as $3,739 and $1,331 respectively. Similar studies by the Brookings Institution and the Institute for International Economics concur that increases in import prices are accompanied by price increases by the Big Three. Since more than half of Chrysler's minivans are made in Canada, consumers in the United States are being asked to pay much higher prices in substantial part to protect *Canadian jobs.*

Proponents of this legislation have made much of the question, "What is a car and what is a truck?" The real issue, however, is whether a vehicle is intended to carry passengers or to carry cargo. This comes from the language of the HTS, which the United States and the other industrialized nations of the world have adopted. At a committee meeting of the Customs Cooperation Council in Brussels, all members except the United States agreed that even 2-door sport utility vehicles belong in the passenger category with a 2.5% rate of duty.

There is no question that minivans and sport utility vehicles sold today are "principally designed for the transport of persons," as the language of the HTS reads. The companies' own advertising portrays them as family vehicles, citing such features as built-in infant seats. In a recent nationwide poll, consumers overwhelmingly identified minivans (79% to 9%) and sport utility vehicles (74% to 16%) as being primarily passenger vehicles.

The Big Three claim that "regulatory consistency" calls for a change in the tariff on these vehicles because the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) apply their own definitions for safety and emissions purposes. The truth is that Congress has acted to toughen both safety and emissions requirements on these products, recognizing their role as passenger vehicles. This occurred, respectively, in the NHTSA reauthorization provisions of the highway bill, Public Law 102–240, enacted in December, 1991, and in the Clean Air Act Amendments of 1990. Every major country that imports these vehicles treats them as passenger cars for tariff purposes, regardless of how they may be treated under other regulatory regimes. Moreover, the House itself finally abandoned the notion of "regulatory consistency" by passing the tariff reclassification in a revised form which no longer refers to EPA and NHTSA regulations and which exempts certain vehicles from the higher tariff.

The Big Three already control the vast share of the market in these vehicles: over 90% of the minivan market and nearly 83% of the sport utility vehicle market. They want to eliminate the competition that has resulted in better quality vehicles and greater choices for American consumers.

Enactment of S. 1646 or another version of the tariff reclassification would represent a blatant violation of America's international obligations and invite retaliation from our trading partners which could harm U.S. exports of agricultural, aerospace, and other products. The 25% rate of duty now applying to light trucks is an anachronism left over from a 1965 dispute concerning American poultry exports to Germany. Today, over 95% of U.S. imports come in at a lower tariff level—for example, heavy trucks at 8.5% and automotive parts at from 2.2 to 4.0%. Applying the light truck rate of 25% to a whole new class of popular vehicles would be a serious step backwards.

CONCLUSION

The Customs Modernization Bill is a positive step which should be enacted as separate legislation. Other than that, there simply is no need for the Congress to pass trade legislation this year, let alone legislation that would be as harmful as H.R. 5100 and H.R. 4318. The arsenal of U.S. trade statutes is more than adequate for those who want to use them. The economy is in a fragile state, struggling to recover from recession. January brings a new Congress and a new Presidential term. The

Uruguay Round and NAFTA remain in negotiations. We believe the Senate would be wise to forbear and leave U.S. trade policy unchanged at this sensitive time.

STATEMENT OF THE AMERICAN IRON AND STEEL INSTITUTE

This statement is on behalf of the domestic member companies of the American Iron and Steel Institute (AISI), who together account for approximately 75 percent of the raw steel produced in the United States.

AISI urges prompt Senate passage of trade legislation based on the House-passed "Trade Expansion Act of 1992" (H.R. 5100). In Ways and Means Committee testimony earlier this year, we stated that "most of H.R. 5100 represents sound trade policy, which we support."

First, we think it essential to send a strong signal to our trading partners that, in regard to the GATT Uruguay Round, Congress (1) favors strengthened international disciplines against unfair trade, (2) does not accept any weakening of current antidumping (AD) and countervailing duty (CVD) laws, and (3) therefore opposes the trade law proposals of the "Dunkel Draft" in such critical areas as cumulation, dispute settlement procedures and subsidy "greenlighting." AISI appreciates the deep concern that Chairman Bentsen and other Committee members have repeatedly expressed over the weakening trade law proposals of the "Dunkel Draft."

Second, GATT-consistent AD/CVD amendments are urgently needed to help make U.S. laws less costly, more accessible and more effective. H.R. 5100 has a number of useful provisions, and we support in particular the bill's anti-circumvention provision, which is also included in S. 3046 introduced by Senator Rockefeller. However, much more could be done to improve U.S. trade laws and, in this regard, we urge the Committee to do two things: (1) adopt the provision long-sponsored by Senator Specter, which would create a private right of action—and a real deterrent—against the dumping of products in the U.S. market; and (2) support the additional trade law reforms contained in Senator Rockefeller's bill.

This issue of strengthening U.S. AD/CVD laws—and making sure that these laws are not weakened in any way—is of paramount importance to the domestic steel industry, especially now that the steel VRA program has expired and the Multilateral Steel Agreement (MSA) negotiations have been adjourned. The U.S. steel industry has used the AD/CVD laws more than any other domestic industry. And as far as we are concerned, these laws are essential to *genuine* free trade and to maintaining U.S. competitiveness.

Today, it is the *U.S.* steel industry that is the high quality, low cost producer for the U.S. market. In the past decade, we have spent more than $22.5 billion to modernize, and our labor productivity has more than doubled. But during this same period, foreign steel producers have continued to ship dumped and subsidized steel into the United States. Foreign governments have subsidized their steel companies by more than $100 billion—and they continue with massive subsidies today. This is why domestic steel producers have recently filed scores of unfair trade cases against foreign suppliers.

Therefore, it is extremely important to AISI's domestic member companies that the Committee (1) send such a strong signal on the GATT Uruguay Round against any trade law weakening and (2) pass additional, strengthening AD/CVD amendments.

Third, and on another key trade law issue, we support in principle renewal of "Super 301" authority. While Super 301 has not done all that its supporters hoped it would, it nevertheless has proved useful in helping to pry open closed foreign markets.

Fourth, AISI—and virtually the entire U.S. business community—support "The Trade Agreements Compliance Act (TACA)," so we urge Senate passage of TACA.

Fifth, AISI's domestic member companies strongly support "The Customs Modernization and Informed Compliance Act." Its enactment is urgently needed to improve the efficiency of Customs' commercial operations and to enhance Customs' ability to enforce U.S. laws—including our trade laws.

Sixth, we support a requirement that the Commerce Department's Foreign Trade Zones (FTZ) Board conduct a review to ensure that FTZ auto-related operations have a "net positive economic effect" on the United States. In fact, we would support such a review not just for automotive-related FTZs but for all FTZs.

Seventh, we support greater efforts by our government to ensure that restrictive kereitsu practices and foreign cartel behavior are ended once and for all. Our position here is that, despite progress achieved under the Structural Impediments Initiative, private anti-competitive practices by foreign companies continue to be a major problem.

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Eighth, we support the concept that the U.S.-Japan trade imbalance cannot be corrected by a "business as usual" approach. The U.S.-Japan trade imbalance is materially injuring America's manufacturing base. Something must be done about it. And the sooner the better. On U.S.-Japan auto trade, we do not presume to have the answer to that complex issue and leave it to our customers in that business to develop an appropriate solution.

Ninth, we support enactment of three important miscellaneous tariff provisions. They are: (1) the House (H.R. 4318) provision to address the inexplicable situation in which Japanese minivans qualify as trucks for CAFE and EPA purposes but as cars (if they have four doors) for import duty purposes—similar bills have been introduced by Senators D'Amato and Riegle; (2) Senator Rockefeller's bill S. 2994, which calls for a three year extension of the existing duty suspension on metallurgical fluorspar; and (3) S. 703, introduced by Senators Heinz and Rockefeller, which corrects the anomaly of inverted tariffs on steel pipe and tube.

And last, we support a more assertive U.S. trade policy, a greater Congressional role in trade policy formulation and continued trilateral (NAFTA) and multilateral (Uruguay Round/MSA) negotiations to liberalize trade. Four final points are these: (1) AISI continues to support strongly a resumption of MSA negotiations leading to an effective "trade laws plus" MSA; (2) we were a supporter of extending fast-track authority to conclude the GATT Uruguay Round and to negotiate a North American Free Trade Agreement; (3) passage of omnibus trade legislation along the lines of H.R. 5100 would not, in our view, impair the stalled Uruguay Round negotiations—it could actually strengthen the U.S. negotiating hand and reduce the danger of negotiating a bad deal; and (4) enactment of such legislation would not delay the conclusion of a NAFTA—the negotiations on which AISI strongly supports.

STATEMENT OF THE AMERICAN SURETY ASSOCIATION

I. INTRODUCTION

The American Surety Association ("TASA") is a national trade association of surety bond underwriters headquartered in Washington, D.C. TASA members provide approximately 75% of all customs bonds placed throughout the Customs territory of the United States. Accordingly, they have a direct and demonstrable interest in any action taken as a result of the July 29, 1992 hearing and any legislation which ultimately evolves from the findings and recommendations of the Committee on Finance. TASA's Customs Committee Bond members were actively involved in the trade legislation which was recently passed by the House of Representatives.

Title II of H.R. 5100, the Customs Modernization and Informed Compliance Act, originated in H.R. 3935, a bill intended "to modernize and simplify the administration of the Customs laws." Title II of H.R. 3935 proposed the establishment of the National Customs Automation Program (NCAP), an automated and electronic system for processing commercial importations. NCAP would include "components" which presently exist under Customs' Automated Commercial System (ACS), and various planned components, including "[t]he electronic filing of bonds. " H.R. 3935, Sec. 201. The stated "goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—(1) *is uniform and consistent;* (2) is as minimally intrusive upon the normal flow of business activity as practicable; and (3) improves compliance." *Id.* Sec. 412. H.R. 5100, Act Print, p. 77–78, LL. 23–25 and p. 78 LL. 1–6. (Emphasis added).

In commenting upon this proposed legislation, Intercargo Insurance Company, a TASA member, observed that "[c]ontrary to these goals, H.R. 3935 does not always provide uniform and consistent treatment to sureties, who are jointly and severally liable on import transactions. Some of these inequities are undoubtedly attributable to drafting oversights. However, others have evolved from omissions in or misinterpretations of The Customs Procedural Reform and Simplification Act, P.L. 95–410, 95th Cong. 1st Sess., which was 'designed to allow Customs to institute up-to-date

business methods and adapt financial practices in conjunction with computerized techniques to the processing of importations.' *Id.*, H.R. Rep. No. 95–621, p.2. If, as Congressman Gibbons has stated, 'the objective of [H.R. 3935] is to modernize customs procedures in a way that will respond to the demands of the twenty-first century,' these inequities must now be corrected. Extending uniform and consistent treatment to sureties will improve underwriting, claims handling, speed collections by Customs and thus improve compliance." Staff of House Comm. on Ways and Means, Subcomm. on Trade, 102d Cong. 2d Sess., Written Comments on H.R. 3935 (Comm. Print, February 12, 1992), p. 184.

Intercargo's Statement contained various proposals regarding H.R. 3935 which were subsequently adopted by TASA. Three of these four proposals were ultimately incorporated into H.R. 5100. The attached Addendum describes these three proposals and TASA urges the Finance Committee to adopt them as part of any legislation emerging from the hearing. Unfortunately, the fourth proposal was incorporated into H.R. 5100 in a version which varied from Intercargo's original proposal. TASA cannot presently support this modified proposal, which now provides:

> **Fourth (TASA) Proposal:** *19 U.S.C. §61621, Limitation on Actions*—"No suit or action to recover **any duty under Section 592(d), 593(A)(d), or any** pecuniary penalty or forfeiture of property accruing under the Customs' laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was **discovered; except that—"(1) in the case of— alleged violation of section 592 or 593A, no suit or action may be instituted unless commenced within 5 years after the date of the alleged violation or, if Such violation arises out of fraud, within 5 years after the date of discovery of fraud."** H.R. 5100, Act Print, pp. 7–19. (New statutory language in bold).
>
> **Legislative History:** "Section 266 of the bill, as amended, amends 19 U.S.C. 1621 by creating a statute of limitations for the recovery of lawful duties of which the United States was deprived as a result of a violation of 19 U.S.C. 1592 or 1593A. Section 266 is intended to provide importers with certainty regarding the extent of their liability for lawful duties by requiring that the Government initiate suit promptly or be foreclosed from recovering the duties." Hse. Rpt. p. 137.
>
> **Comment:** Upon reviewing the text of the Act as reported by the Ways & Means Committee, and now passed by the House of Representatives, TASA discovered a post-mark-up deletion of 15 words which it believes dramatically and adversely changes the effect of 19 U.S.C. §1621, the statute of limitations applicable to violations of the customs laws. The deletion occurs in Section 266, at p. 138 of the bill as passed by the House.
>
> TASA believes that the deletion of these 15 words was the result of a good faith effort by the Trade Subcommittee Staff to eliminate redundant language in the Act, under the usual "drafting authority" the Committee granted after approving the Act on a conceptual basis. Since the Staff mistakenly concluded that a redundancy existed in this section, the restoration of the deleted language is necessary for the Act to reflect unequivocally both Congressional intent and the consensus reached during the legislative process on the House side.

A. Background

The deleted language impacts upon the interpretation of the statute of limitations applicable to duty claims arising under two Customs enforcement provisions. The first, 19 U.S.C. §1592 is Customs' chief penalty provision. The second, 19 U.S.C. §1593A (Sec. 222, Penalties For False Drawback Claims), is a new provision introduced in the early stages of this legislative process under H.R. 3935, which is patterned almost verbatim after 19 U.S.C. §1592. Under the Customs Procedural Reform and Simplification Act of 1978, P.L. 95–410, Congress amended §1592 by adding a Subsection (d), to ensure that any lawful duties of which the United States was deprived as a result of a penalty under Subsection (a), would be restored. The brief legislative history of §1592(d) indicated its intent was "to codify the existing administrative practice of mitigating claims for forfeiture value on condition that any loss of revenue is deposited with the United States. This covers cases where Customs may not wish to assess a penalty (e.g., with petty or technical violations), but nevertheless, wishes to recover lost revenue." Thus, the statute was intended to assist Customs in "mitigating claims for forfeiture value." Indeed, it explicitly stated that Customs shall require the restoration of lawful duties, if the United States has been deprived of such duties "as a result of as a result of a violation of [Section 1592(a)]." Thus, claims under §1592(d) are derivative. Although they constitute an independent cause of action, *U.S.* v. *Blum. et al.*, 858 F.2d 1566(1988), they do not constitute an independent violation of §1592.

Since 1978, Customs has actively attempted to transform this seemingly innocuous provision into a hybrid collection device, immune from strictures of due process. Customs also immediately began interpreting §1592(d) as exempt from any statute of limitations. Happily, the courts did not agree with Customs' interpretation. *See, U.S.* v. *Appendages. Inc.,* 560 F. Supp. 50,55 (CIT, 1983); *U.S.* v. *RCA Corp.. Consumer Electronics Division,* 5 ITRD 1807, 1810 (S.D. Ind., 1983); *U.S.* v. *Blum,* 660 F. Supp. 975,980 (CIT, 1987), rev'd on other grounds, 858 F. 2d 1566 (Fed. Cir., 1988); *U.S.* v. *Menard. Inc.,* Slip Op. 92–81 (5/21/92). *See also, TIE Communications, Inc.* v. *U.S.,* USCIT No. 91–04–00300 (unpublished preliminary injunction entered May 15,1991 found that Plaintiff "is likely to prevail on the merits"). Section 318 of H.R. 3935 was intended to codify this existing case law by amending the statute of limitations contained in 19 U.S.C. §1621 to include claims for duty under §1592(d). As previously indicated, proposed §1593A(d) was patterned verbatim after §1592(d).

B. A Consensus Objective: The Same Statute Of Limitations Should Apply to Duty Claims as to The Underlying Penalty Claims

During the legislative process on the House side, a solid consensus was developed among the Trade Subcommittee Staff, Customs, the Joint Industry Group, and the surety industry, that the same statute of limitations under §1621 should apply to claims under §§1592(d) and 1593A(d) as applies to the underlying claims under §§1592(a) and 1593A(a). This consensus culminated in the language contained in H.R. 5100 introduced, dated May 7, 1992. The relevant provision containing an exception to the basic statute of limitations stated:

SEC. 317. LIMITATION ON ACTIONS

Section 621 (19 U.S.C. 1621) is amended—

* * * * *

"discovered; except that—

"(1) in the case of an alleged violation of section 592 or 593A, no suit or action *(including a suit or action for the restoration of lawful duties under subsection (d) thereof),* may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud," H.R. 5100, as introduced, pp. 131–32. (Emphasis added).

C. The Deletion Occurred Because of a Mistaken Belief That The Language Was Redundant

In the reported version of H.R. 5100, dated June 23, 1992, 15 critical words were deleted from §1621: "(Including a suit or action for the restoration of lawful duties under subsection (d) thereof)." According to the Trade Subcommittee Staff, and as confirmed in a conversation with counsel for the JIG, the deletion resulted from the mistaken belief that the parenthetical expression "suit or action," arose from "an alleged violation of §592 or §593A" under the first exception clause contained in the proposed amendment to the statute. The problem is not remedied by the legislative history in the House Report, because it merely states that the proposed amendment to §1621 creates "a statute of limitations for the recovery of lawful duties of which the United States was deprived as a result of a violation of 19 U.S.C. 1592 or 1593A. . . Section 266 is intended to provide importers with certainty regarding the extent of their liability for lawful duties by requiring that the Government initiate suit promptly or be foreclosed from recovering the duties." Hse. Rpt. p. 137.

Contrary to this intent, the proposed amendment to §1621 will not provide certainty, but rather, will engender contusion and litigation. Notwithstanding the uniform consensus regarding the objectives of §1621, it is still subject to conflicting interpretations. For example, the Trade Subcommittee Staff and the JIG interpret the first exception clause as covering actions to recover duty under §1592(d) and §1593A(d). The sureties strenuously disagree with this interpretation; it is probable that the Justice Department will adopt the sureties' interpretation because it would be adverse to sureties and importers. In conclusion, TASA believes the deletion of these 15 critical words will:

(1) result in a statute of limitations as described in the general rule contained in §1621's introduction (i.e., in all instances, five years from the date of discovery), rather than its first exception clause;

(2) overturn previous judicial precedent interpreting the statute of limitations applicable toe duty claims under section §1592; and,

(3) impair the protection sureties have long enjoyed under the general statute of limitations contained in 28 U.S.C. §2415(a), governing actions instituted by the gov-

ernment upon a contract, such as a customs bond. Under that statute, a claim by the government is barred unless a complaint is filed within six years from the date its right of action accrues—in this case, the date of entry. However, if the deletion from the proposed amendment to §1621 stands, the government will have five years from the date of **discovery** of a violation to institute an action to recover duties under §§1592(d) and 1593A(d). Thus, contrary to the articulated legislative history of §1621, the "certainty" sureties presently enjoy under §2415(a) will be lost and the control of the statute of limitations will be wrongfully placed in the hands of the government.

D. The Deleted Language Should Be Restored

In discussing the deleted language, TASA's attorneys received repeated assurances that the Trade Subcommittee Staff, the JIG, and Customs, all agreed with its objective of equal limitations on claims for duty and penalties under §§1592 and 1593A. While TASA took some consolation in learning that the deletion was innocent, it categorically rejects the suggestion that the problem created by the deletion will be solved through regulations and/or the government's goodwill. Although TASA does not wish, particularly during a new era of cooperation under Customs Commissioner Hallett, to resurrect the broken promises and unpleasant experiences of the past, history has demonstrated that statutory language is the only assurance that the rights of sureties will be preserved and protected. Accordingly, while the intent of all involved parties is still clear, TASA urges the Finance Committee to memorialize the consensus forged on the House side during the past few months, by restoring the 15 words to §1621 in any legislation evolving from these hearings.

ADDENDUM TO STATEMENT OF THE AMERICAN SURETY ASSOCIATION

First TASA Proposal: *19 U.S.C. §61484. Entry of Merchandise*—"Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe." H.R. 5100, Act Print, p. 104, LL. 16–18.

Legislative History: "Importers that elect to use the reconciliation procedures will be required to post a bond or security unless the bond or security filed at the time of entry also covers reconciliation statements." Hse. Rpt. p. 120.

Comment: The sureties strongly opposed the concept of "reconciliation" presented in Sections 204 and 207 of H.R. 3935, asserting that it would unnecessarily prolong the process of finalizing a series of import transactions, thus potentially jeopardizing the revenue and exposing sureties to unnecessary risks. They advanced various proposals to drastically limit its scope. The proposal contained in H.R. 5100 is consistent with the agreement the sureties reached with Customs (which was subsequently ratified by the Joint Industry Group) to withdraw their various objections in exchange for a separate bonding requirement to cover this new and somewhat undefinable risk.

Second TASA Proposal: *19 U.S.C. §1623, Bonds and Other Security*—"Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed." H.R. 5100, Act Print, p. 117, LL. 11–16.

Legislative History: "Section 247 of the bill, as amended, amends 19 U.S.C. 1623 to permit the Secretary of the Treasury to authorize the electronic transmittal of bonds to Customs, and to clarify that any bond electronically transmitted shall be binding on the parties thereto and have the same force and effect as if it were manually executed, signed and filed. Section 247 is necessary to confirm that the electronic transmission to Customs will bind both the principal and surety. Section 247 is intended to eliminate potential defenses to claims raised by the principals or sureties based solely upon the contention that the bond was not valid because it was not physically signed. This will also avoid the situation which can arise with written bonds, where the principal may not be bound due to the improper execution or nonexecution of the bond, while a surety, who properly signed the bond, finds itself solely liable on the obligation." Hse. Rpt. p. 127–8.

Comment: The legislative history reports virtually verbatim, language proposed by TASA.

Third TASA Proposal: *19 U.S.C. §1504(b), Limitation on Liquidation*—"The Secretary shall give notice of an extension under the subsection to the importer of record id the surety of such importer of record." H.R. 5100, Act Print, p. 110, LL. 3–5.

Legislative History: "With regard to notification of sureties, the bill corrects an omission in existing law and codifies existing administrative practice. Presently, Customs is only required to provide notice of an extension of liquidation of an entry

to sureties when the liquidation is suspended by statute or court order. The statute does not require notice to be sent to the surety when liquidation is extended because Customs requires more information o. when the importer requests an extension. The bill will now require notification of sureties in all three instances." Hse. Rpt. p. 125.

Comment: Sureties will now receive equal notice when liquidations are extended. The Subcommittee also rejected an effort by Customs to amend 19 U.S.C. §1504(c) to make the notice of suspension of liquidation directory, rather than mandatory. (*See,* H.R. 5100, Act Print p. 110, L. 3 and Hse. Rpt. p. 124).

STATEMENT OF THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

The Association of International Automobile Manufacturers ("AIAM") is a trade association that represents international manufacturers of passenger cars and trucks. AIAM represents multinational companies which employ thousands of Americans in manufacturing, research and development, transportation, and distribution operations. The international automobile industry, including dealers, suppliers and port workers in the United States, provides jobs to more than 3,000 Americans.

U.S. policy on international trade in automobiles is of vital interest to AIAM's members. When Congress is considering changes in that policy, we believe there are certain points which all concerned should keep in mind.

FUNDAMENTAL PRINCIPLES

First, import restrictions on automobiles, including voluntary export restraints, are self-defeating. They increase the cost to consumers of all cars—both import and domestic. Import restrictions chill competition, which is so vital to the public in terms of price; quality, and technical innovation. The record of the Japanese restraints confirms these severe disadvantages.

Second, the automobile industry is internationally integrated. It has become a global melting pot, bringing together the best ingredients, the most efficient manufacturing methods and the latest technology from around the world. Internationalization benefits the public and our American economy. It gives consumers a greater variety of vehicles to meet a broader spectrum of needs. It leads to innovations that increase the safety of cars, reduce pollutants, and improve fuel economy.

Third, automobile factories built in the United States by companies based in other countries bring many benefits to the U.S. economy. They provide new jobs and promote the growth of local communities. They draw increasingly on parts made by U.S. firms. They introduce new, state-of-the-art technology. They demonstrate alternative ways of increasing manufacturing efficiency and productivity. And, they contribute to the U.S. trade balance by displacing imports with U.S. manufactured vehicles.

Finally, the U.S. is in the midst of an export-led recovery. In recent years, over two-thirds of our economic growth has come from exports. This is no time for Congress to enact protectionist legislation and put on the brakes to slow economic recovery and growth.

PENDING LEGISLATION

Many bills have been introduced in Congress which would affect the international automobile industry. While well-intentioned, most of these proposals go in the wrong direction for the American economy—jeopardizing the benefits of a free marketplace, the discipline of vigorous competition, and the opportunities of free consumer choice.

H.R. 5100

H.R. 5100, which passed the House on July 8th and has been referred to this Committee, is a defeatist proposal. It says America cannot compete internationally. It invites other nations to adopt ill-conceived trade policy. It tells U.S. exporters the U.S. does not care for your contribution to the American economy. It says America should shut the door on investment which builds factories and creates jobs for American workers. it says that Congress will choose some Americans to benefit and other Americans to suffer. It says that certain jobs in Michigan, Missouri and other states are to be protected but other jobs don't matter: jobs at factories in Ohio, Illinois, Kentucky, Tennessee, Indiana, California, and Michigan; jobs at ports on the East Coast, West Coast, and the Gulf; jobs at parts suppliers and service providers and at dealerships in every state—over 3,000 Americans who work in the international automobile industry. By setting an impossible domestic content require-

ment for transplant factories and by setting a long-term quota at a low, recessionary level, the bill passed by the House is a direct attack on the jobs of those Americans.

Quotas—With the Gephardt/Levin amendment (section 111), which was adopted on the floor of the House, H.R. 5100 calls upon the U.S. Trade Representative to negotiate a seven-year quota on Japanese vehicle exports to the United States. The quota would remain at the level of 1.65 million imports for as long as the automobile trade agreement between the European Community and Japan is in effect--apparently for the rest of this decade.

One of the flaws in this approach is its failure to recognize that the EC-Japan agreement represents a significant liberalization of the restrictive quotas previously imposed by individual member states of the EC as a transition to an open market for automobiles by 1999. The so-called "voluntary restraint arrangement" in H.R. 5100, in contrast, moves toward greater protectionism, not liberalization.

As various economic studies have shown, restraints like these impose billions of dollars in costs on American consumers. According to a study by the international Monetary Fund, the voluntary export restraints on Japanese automobile exports to the United States caused average prices to go up on all cars in 1983 by $1,250 per vehicle. A Brookings Institution study estimated the consumer cost during the first four years of the VRA to be more than $12 billion, assuming it added more than $1,000 to the cost of an imported car and $750 to the cost of a domestic vehicle. The restraint level proposed in the present legislation could be particularly costly because it is set at a recessionary level of 1.65 million vehicles, down from the 2.3 million level under the voluntary restraints which applied from 1985 through 1991.

Misuse of Section 301—This legislation would, for the first time, apply Section 301 to the conduct of American companies, even though that strong and controversial tool was designed and intended to apply to trade barriers in foreign countries. A 301 investigation would be triggered by what is done at factories in the United States employing American managers and American workers.

The bill's provision to extend Super 301 is unnecessary. Eighteen Section 301 investigations have been initiated in the past three and one-half years. Every 301 petition filed by industry has been accepted by the U.S. Trade Representative. The Big Three could have filed a Section 301 petition, but they have chosen not to do so.

Discriminatory Domestic Content Requirement—The bill would legislate a 70% domestic content requirement for U.S. auto plants that are owned or controlled by Japanese auto makers (presumably including joint ventures) which would not be imposed on auto factories owned by the Big Three. This approach would directly contradict current U.S. objectives in international negotiations. It would violate the principle of national treatment and the most-favored-nation principle of non-discrimination among our trading partners.

H.R. 5100 defines "United States manufacturers" specifically to exclude any "Japanese owned or controlled" company. The engines, transmissions, suspensions and other components made at the U.S. automobile factories built with Japanese investment would be treated as foreign and thus not count toward the 70% mandate, one of several reasons that the threshold is unachievable.

Misunderstanding of the January Japanese Announcement on Parts—Contrary to its sponsors' claims, the Gephardt/Levin amendment, which is now a part of H.R. 5100, does not codify the undertakings made by some Japanese manufacturers in January of this year. Instead, it seeks to impose substantial new obligations on transplants, beyond what was announced voluntarily. Those companies announced voluntary for their U.S. subsidiaries to increase U.S. procurement from about $7 billion in fiscal year 1990 to about $15 billion in fiscal year 1994. The announcement said that American companies were expected to supply 70% of procurement by the transplants by FY 1994, while only about 30% of parts and materials purchases would be imports. It is important to be aware, however, that these figures are to include aftermarket replacement parts as well as original equipment—something far different from "United States parts content" of new cars. Moreover, that increase was explicitly premised on a 50% expansion of U.S. production by Japanese transplants from 1990 to 1994, as well as the expectation that U.S. parts suppliers will continue to make their "best efforts."

An Intentionally Unattainable Threshold—Since it refers only to parts and does not include labor, the domestic content test of the House bill completely disregards the work of 32,000 Americans employed in these U.S. factories. By excluding labor, the bill takes a far stricter approach to domestic content than either the Corporate Average Fuel Economy formula or the U.S. Canada Free Trade Agreement formula. For this reason, and by misstating the voluntary U.S. procurement goal, the House bill seeks to set up a series of requirements that are not attainable, in order to trigger retaliation against Japanese motor vehicles, parts and possibly other products. The prohibitive duties which could be applied in such retaliatory action could cost

the jobs of thousands of Americans at transplant factories, dealerships, ports, railroads, trucking firms and elsewhere.

Preoccupation With Bilateral, Sector-Specific Policymaking—The House bill which has been sent to your Committee places far too much emphasis on bilateral trade balances. It makes much more economic sense to think in multilateral terms—that is, to consider how the United States is performing in the context of the whole world economy. For Congress to make trade policy country by country and product by product is a serious mistake and would invite other countries with whom the U.S. has a favorable trade balance to retaliate against U.S. exports.

Attack on Transplants and Their American Workers—Not many years ago, some people concerned about rising auto imports said that foreign manufacturers could not be successful if they had to make cars in this country. "if you want to sell here, build here," it was said. This was echoed by the United Auto Workers, by Senators, Congressmen, Governors, and Mayors. Several international companies accepted that challenge and made huge investment commitments to manufacture in America. These plants have been welcomed—especially by American workers in need of good jobs. The new plants are good members of their communities. These factories reduce imports. Many people do not realize that U.S. automobile imports from Japan are actually more than 300A since 1986—a decline of 800,000 imported vehicles—to a great extent because of the new factories which have been built here and which are employing American workers. In fact, last year 86,000 vehicles from these new factories were exported to other countries. This number is expected to increase in future years.

For decades, American companies have built factories all over the world. Americans have led the way in the international manufacturing and distribution of quality products, including motor vehicles. The concept of manufacturing in foreign markets is not new, and it benefits greatly the country where the investment takes place Foreign investment here has meant increased U.S. employment and an increase in U.S. exports.

International auto manufacturing facilities in the United States are part of the American industrial base. AIAM strongly rejects any characterization of these plants as "foreign." They have American management, employ American workers, produce products with significant and growing levels of U.S. content, and are making a valuable contribution to their American communities. Moreover, their strategic business decisions are dictated by basic corporate economics.

Many thousands of additional jobs beyond the factories are stimulated by the basic manufacturing activity. These include jobs with parts suppliers, suppliers of other goods, and providers of services. The plants also pay taxes at the federal, state, and local levels.

Some have charged that new auto plant investment from abroad has the effect of "eroding the U.S. industrial base." This phrase typically has been used to refer to the loss of U.S. manufacturing jobs to plants in other countries. It is ironic and illogical in this instance to use the well-worn phrase to apply to huge investments in eight American states to build some of the most advanced and efficient factories in the world. Those factories are not going anywhere. What they really represent is a transfer into the United States of improved manufacturing technology, expansion of American employment, and a contribution to the U.S. tax base.

Moreover, it would seem difficult to say, for example, to a UAW member at the Mazda plant in Rat Rock, Michigan, that his work erodes the U.S. industrial base. In addition to providing manufacturing jobs, international automobile companies are also employing increasing numbers of American engineers to improve the technology of products themselves as well as the technology of the manufacturing process.

The Japanese Market—It is often said that the Japanese automobile market is closed and that our country has the most open market in the world. However, Japan has no duty on imported cars, unlike the United States; Japan has no quota on imported cars, unlike the "voluntary" export restraints which operate to protect the U.S. market; and Japan's safety and emissions rules are the same for imported and domestically produced cars. The real issue is whether a manufacturer will design a car for the Japanese market, like the Japanese companies have for the U.S. market, and take the necessary steps to sell its vehicles there. With that level of commitment, a company can be competitive. Without it, sales of such vehicles may never be strong, no matter what country they are entering. This has been clearly exemplified by the experience of the Big Three operating in Europe as well as other countries.

Tariff Reclassification of Minivans and Sport Utility Vehicles

S. 1646 proposes to reclassify imported minivans, such as the Toyota Previa, and sport-utility vehicles, such as the Nissan Pathfinder, on the Harmonized Tariff

Schedule (HTS) so that they would face a duty rate of 25% rather than the present 2.5%. This proposal passed the Senate earlier this year in the tax bill which was vetoed. The House Ways and Means Committee has included a different version of it in H.R. 4318, the Miscellaneous Tariff Bill.

The vehicle reclassification provision has been promoted as a way to pay for other tariff provisions. However, the notion that it will produce revenue is an illusion. Who will buy cars that carry a 25% tariff in today's competitive automotive market? In reality, the sales of imports will dry up, so that even the present 2.5% tariff revenue will disappear.

The legislation would help Chrysler, Ford and General Motors increase prices on their minivans, such as the Dodge Caravan, and sport utility vehicles, such as the Ford Explorer—models which are already profitable. This is a highly controversial measure which, in truth, is just a tax increase on middle class families who want to buy these cars—the station wagons of the 1990's. It should be called "The Family Car Tax of 1992."

A new study by Citizens for a Sound Economy concludes that this change would raise the average price of imported and domestic models by as much as $3,739 and $1,331 respectively. Similar studies by the Brookings institution and the institute for International Economics concur that increases in import prices are accompanied by price increases by the Big Three. Since more than half of Chrysler's minivans are made in Canada, consumers in the United States are being asked to pay much higher prices in substantial part to protect *Canadian jobs.*

Proponents of this legislation have made much of the question, "What is a car and what is a truck?" The real issue, however, is whether a vehicle is intended to carry passengers or to carry cargo. This comes from the language of the HTS, which the United States and the other industrialized nations of the world have adopted. At a committee meeting of the Customs Cooperation Council in Brussels, all members except the United States agreed that even 2-door sport utility vehicles belong in the passenger category with a 2.5% rate of duty.

There is no question that minivans and sport utility vehicles sold today are "principally designed for the transport of persons," as the language of the HTS reads. The companies' own advertising portrays them as family vehicles, citing such features as built-in infant seats. In a recent nationwide poll, consumers overwhelmingly identified minivans (79% to 9%) and sport utility vehicles (74% to 16%) as being primarily passenger vehicles.

The Big Three claim that "regulatory consistency" calls for a change in the tariff on these vehicles because the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) apply their own definitions for safety and emissions purposes. The truth is that Congress has acted to toughen both safety and emissions requirements on these products, recognizing their role as passenger vehicles. This occurred, respectively, in the NHTSA reauthorization provisions of the highway bill, Public Law 102–240, enacted in December, 1991, and in the Clean Air Act Amendments of 1990. Every major country that imports these vehicles treats them as passenger cars for tariff purposes, regardless of how they may be treated under other regulatory regimes. Moreover, the House itself finally abandoned the notion of "regulatory consistency" by passing the tariff reclassification in a revised form which no longer refers to EPA and NHTSA regulations and which exempts certain vehicles from the higher tariff.

The Big Three already control the vast share of the market in these vehicles: over 90% of the minivan market and nearly 83% of the sport utility vehicle market. They want to eliminate the competition that has resulted in better quality vehicles and greater choices for American consumers.

Enactment of S. 1646 or another version of the tariff reclassification would represent a blatant violation of America's international obligations and invite retaliation from our trading partners which could harm U.S. exports of agricultural, aerospace, and other products. The 25% rate of duty now applying to light trucks is an anachronism left over from a 1965 dispute concerning American poultry exports to Germany. Today, over 95% of U.S. imports come in at a lower tariff level—for example, heavy trucks at 8.5% and automotive parts at from 2.2 to 4.0%. Applying the light truck rate of 25% to a whole new class of popular vehicles would be a serious step backwards.

CONCLUSION

The Customs Modernization Bill is a positive step which should be enacted as separate legislation. Other than that, there simply is no need for the Congress to pass trade legislation this year, let alone legislation that would be as harmful as H.R. 5100 and H.R. 4318. The arsenal of U.S. trade statutes is more than adequate for

those who want to use them. The economy is in a fragile state, struggling to recover from recession. January brings a new Congress and a new Presidential term. The Uruguay Round and NASA remain in negotiations. We believe the Senate would be wise to forbear and leave U.S. trade policy unchanged at this sensitive time.

STATEMENT OF C.J. HOLT & CO., INC.

The legislation now being considered before the Senate, H.R. 5100—The Trade Expansion Act of 1992—is a comprehensive trade bill which includes a host of trade-related items, including the provision known as the "Customs Modernization and Informed Compliance Act" (hereinafter referred to as the Customs Mod Act or simply, the Mod Act). The Customs Mod Act is the result of the significant efforts of the House Ways and Means Trade Subcommittee members and staff, representatives of the U.S. Customs Service, individual business concerns, and various industry groups such as the Joint Industry Group, NCITD—The International Trade Facilitation Council, the National Customs Brokers and Forwarders Association of America, and the American Association of Exporters and Importers. President Bush has indicated his support for the Customs Mod Act, but has indicated that he would veto The Trade Expansion Act if it were to be passed by the Senate in its present form. It is therefore recommended that the Customs Mod Act be stripped from H.R. 5100 and be passed by the Senate as independent non-controversial legislation. The following comments are confined to the Customs Mod Act, in particular to the provisions therein on duty drawback.

No one involved in international trade can contest the need for legislation to permit and encourage the modernization of this country's Customs laws, regulations, and procedures. The increase in the number of international transactions in the last few years has been staggering, and all projections point to even greater growth in the future. The current Customs laws and procedures, designed for transactions based upon "paper" documentation, are not adequate to address the rapid evolution to paperless electronic transactions.

Even though the need for changes is evident, not all parties have been in agreement as to what to change and how. Fortunately, through the diligent efforts of all concerned, compromises have been reached, and the Customs Mod Act is ready to move forward. The archaic statutory provisions requiring paper documentation will be removed, authority for the automation of all Customs-related transactions will be granted, the means for improving compliance will be set in place, and the little known yet vital provision for duty drawback will be modernized so that it will be less difficult to administrate, and easier for the trade community to use.

The duty drawback provision is as old as this country's tariff system. First enacted on July 4, 1789 as part of the second law passed by the First Congress, it is an integral component of our international trade practices. The current drawback provision allows for the refund of import duties paid on imported merchandise which is subsequently exported or used to produce articles that are exported. The intent of this provision has always been to remove the import duty penalty from the cost of articles exported from this country, thereby stimulating domestic industry and promoting exports. The first Congress established this provision, and the wisdom of this policy has been reaffirmed through subsequent amendments which expanded the original drawback provision to its current state.

In 1989, Customs initiated a year-long evaluation of this nation's drawback program. That evaluation, first made public in February 1990 as the Drawback Revitalization Study, was highly critical of Customs' failure to adequately fulfill the intent and goals of the drawback statute. The Study recommended the automation of procedures wherever possible and the issuing of national directives to create more consistent practices. It recognized the need and desire for Customs to work more closely with the drawback community. Since that time, a tremendous amount of time and effort has been expended by Customs and the drawback community to review regulations and procedures, propose changes and improvements, and to negotiate compromises where necessary. Customs and the drawback community are now in agreement on virtually every issue, but legislative changes are required to allow implementation.

The stated purpose of the Customs Mod Act is "to modernize and simplify the administration of the Customs laws." The administration of the drawback provisions of these same Customs laws is also in dire need of modernization and simplification. Through the industrious efforts of Customs, industry, and House Ways and Means staff, the drawback provisions have been worked out and have been made part of the Mod Act as it now stands. The details of these important new provisions for duty drawback are discussed below.

I. Comments regarding duty drawback, referencing both the existing statute as found in 19 U.S. Code Section 1313, as well as the amendments to that statute as currently found in the Mod Act legislation.

A. 1313(a)

The Mod Act amends subsection (a) of 19 U.S. Code 1313 by including a provision which would allow articles which are manufactured in the United States to be destroyed under Customs supervision. Although this provision is not likely to be used frequently (since companies do not normally manufacture an article in order to destroy it) it would nevertheless be relevant in a situation in which a company might manufacture to stock, and then, because of lack of orders or obsolescence, e.g., have no market or use for that article. In such a situation, the company could destroy the article under Customs supervision and collect a refund of the duty paid on its imported components. There has long been the understanding that an article which is manufactured in the United States may not be put to its intended use prior to exportation from the United States, and still retain eligibility under 1313(a). The same provision is intended here: any article which has been manufactured in the United States and then destroyed under Customs supervision may be eligible under 1313(a) only if the article has not been put to its intended use prior to such destruction.

The addition of this provision brings subsection 1313(a) in line with existing 1313(j), which allows the destruction, under Customs supervision, of merchandise which has not been used in the United States prior to such destruction. As in 1313(j), the amendment would allow the destruction of articles under Customs supervision in lieu of their exportation.

The other change to 1313(a) modernizes the statute by removing the antiquated reference to "June 17, 1930" while retaining the essence of the requirement regarding imported wheat.

B. 1313(b)

The Mod Act removes the existing words "duty-free or domestic merchandise" and replaces them with the words "any other merchandise (whether imported or domestic)." The reasons for this amendment are as follows:

1. Treasury Decision 84-95 states that "the mandatory use of duty-free or domestic merchandise under section 1313(b) is no longer required because it is viewed as contradicting the underlying intent of the law;" and
2. the proposed wording will bring 1313(b) into conformity with existing 1313(j)(2) in terms of describing merchandise which may be substituted or imported duty-paid merchandise.

The proposal further amends 1313(b) by providing for drawback on articles which are manufactured under the substitution provision and then destroyed under Customs supervision in lieu of exportation. This amendment parallels that described above under subsection 1313(a).

C. 1313(c)

1313(c) is amended in three ways. First, the current 1313(c) provides for drawback on merchandise which does not conform to sample or to specifications, or is shipped without the consent of the consignee. While these two categories comprise most of the merchandise claimable under this subsection, they do not cover merchandise which the consignee has ordered and which is subsequently received in a defective condition but for which no sample or specifications have been provided. The defective condition of such merchandise might be evident upon its receipt, or the defect might be latent in the merchandise but not immediately observable, in which case the defect might not be able to be discovered until after the merchandise has been put to use. These situations are taken into account by the addition of the words "or determined to be defective as of the time of importation."

Second, the current law requires that such merchandise be returned to Customs custody within 90 days after its release from Customs custody. The Mod Act changes this time requirement to 3 years, thereby not only eliminating a requirement which is no longer necessary administratively, but also bringing it more in line with the similar time frame in 1313(j).

Third, the option for the destruction of merchandise in lieu of exportation is added, in conjunction with the similar changes already described in the comments regarding 1313(a) and (b) above.

D. 1313(j)

Currently, 19 U.S.C. 1313(j) is written to describe Same Condition Drawback. The Mod Act amends this section to deal with the same type of drawback under

the heading and description of "Unused Merchandise Drawback." The reasons for such a change are listed below.

1. House Report No. 96–1109, dated June 19, 1980, discussed the background of the current 1313(j). Although the term "same condition" is used one time in the report, it is clear that the intention of the original same condition law was that such merchandise not be used for manufacture or production. The report states that under present drawback provisions (prior to the enactment of 1313(j)), "if a firm imports merchandise for anything other than manufacture or production, and wants to export the merchandise without absorbing the duty cost," it must resort to certain procedures. The report states that 1313(j) "would give U.S. firms more flexibility in meeting customer demands, without having to pay non-refundable duties on merchandise that is not used in the United States. Thus, exporters would receive drawback in those instances in which the merchandise imported was not used and they were unable to anticipate the need to export." The original 1313(j) "would allow for a refund of duties only if the merchandise was never used in the United States." Incidental operations "would not be considered a use."

2. Senate Report No. 96–999, dated September 26, 1980, also addressed the background of 1313(j). Much of the report is similar to the House Report. In the section entitled "Reason for the provision," the report states that the law "would give U.S. firms more flexibility in meeting customer demands, without having to pay non-refundable duties on merchandise that is not used in the United States." "Importers would receive drawback in those instances in which the merchandise imported was not used." The report goes on to talk about the return of unused merchandise to make sales in foreign markets. The then new drawback provision "would allow for a refund of duties only if the merchandise was never used in the United States." Incidental operations "would not be considered a use." By the same token, "such incidental operations would not disqualify a product from being considered as exported in the same condition as when imported in order to qualify for drawback." This last sentence is indicative of the fact that an incidental operation could cause a product not to be in the same condition upon exportation as it was upon importation, but that the product would still be considered as being in the same condition. By this very language, therefore, it is shown that the "same condition" requirement is not absolute. However, throughout the report, the one qualification that is unchanging and absolute is that the merchandise not be used in the United States.

3. A Number of Customs Service Decisions written after the enactment of the original 1313(j) discuss situations in which the same condition requirement is not deemed to be absolute; however, the requirement that the merchandise be unused is absolute.

A. CSD 83–2 states that the "same condition drawback law, 19 U.S.C. 1313(j), does not require that imported merchandise be exported in every case in absolutely the same condition as imported. The imported merchandise may undergo certain incidental operations specifically allowed by that law which do change the condition of the merchandise." The ruling goes on to explain that the operation in question "does not amount to a manufacture under the drawback law and is therefore allowable under same condition drawback."

B. CSD 83–26 states the same condition principle "with the exception of some change due to allowable incidental operations."

C. CSD 84–79 states that the "same condition drawback law allows imported merchandise to be changed in condition by certain incidental operations."

D. CSD 81–179 says that the "performance of incidental operations on the article such as testing, cleaning, repacking and inspecting it, is not considered to be a use. The allowable limit for an operation is that it may not amount to a manufacture or production for drawback purposes." This ruling also refers to the Senate Report mentioned above in stating that a major purpose of 1313(j) was to make imports eligible for drawback where the imported merchandise was not used.

These decisions show that the absolute requirement for merchandise claimed under this law is that it not be used in the United States. It is stated directly that the merchandise may be changed in condition. To continue employing the heading and requirements for merchandise to be in the same condition when that is not the essential qualification at all is confusing not only in terms of basic understanding of the law, but also in terms of Customs' administration of the law. In administering an "unused merchandise" statute, Customs needs to ask only one question: "Was the merchandise used?"

4. The change to "unused merchandise" ties in very logically to proposed 1313(j)(3) [existing 1313(j)(4)] which states that "any operation or combination of operations . . . not amounting to manufacture or production . . . *shall not be treated as a use of that merchandise.*" The intention is to have two and only two types of drawback on the same continuum, namely, merchandise that is used for manufacture or production, and merchandise which is not used. Since that is the intention, it should be stated as simply as possible.

Several other amendments are being made to 1313(j) by the Mod Act. One is that the criterion for determining the substitution of merchandise under 1313(j)(2) be changed from that of fungible to commercially interchangeable.

Another change is the clarification of the concept of possession of merchandise. The additional wording in 1313(j)(2)(C)(ii) is intended to provide for situations in which Company A, which might otherwise physically possess certain merchandise at its own manufacturing or storage facility, finds it necessary, for whatever reason, to have Company B physically maintain or handle that merchandise on their behalf. In essence, it is similar to the longstanding policy under manufacturing drawback whereby an agent might perform certain operations on behalf of a principal, while the principal at all times retains operational control of the merchandise, dictating to the agent the use to which the merchandise is to be put. The difference between the proposed clause mentioned above and the principal-agent situation just described, of course, is that there is to be no usage of the merchandise under 1313(j). However, the "agent" envisioned under 1313(j) would be tasked by the "principal" to hold or process the merchandise in a way which maintains its non-use for drawback purposes. In each such situation, it is the "principal" which has operational control of the merchandise in such a way that the "agent" may not store, ship, package, or otherwise handle the merchandise entrusted to it by the "principal" apart from the specific direction of the "principal." In the preceding illustrations, Company A, as "principal," is deemed to be the possessor of the merchandise. What this provision seeks to rule out is the possibility of drawback being claimed by an arbitrager, or any other entity which merely handles, owns, or otherwise deals in commercial paper as opposed to merchandise itself. Such an entity, under the scope of this provision, does not satisfy the possession requirement of the law, and as such cannot claim eligibility to drawback under 1313(j)(2)(C)(ii).

An additional change to 1313(j)(2)(C)(ii) is the insertion of a clause after the words "the party claiming drawback under this paragraph." The new clause, pursuant in part to the ruling of the Court of International Trade in the case of The *B.F. Goodrich Company* v. *United States,* refers to the eligibility of drawback for the claimant who possesses commercially interchangeable merchandise "if that party paid the duty, tax, or fee on the imported merchandise (established by means of either an entry summary of a certificate of delivery)." This new clause provides the linkage between the possessor of substituted merchandise and the imported merchandise to be designated, a linkage which does not exist in the current law and whose absence has been the source of contention between industry and Customs.

Existing 1313(j)(4) is being renumbered as 1313(j)(3) and wording is being changed for the purpose of completely closing the gap that currently exists between manufacturing drawback and 1313(j). For this purpose, the words "incidental operations" are being removed, and the inclusive language of "any operation or combination of operations" is being inserted. For this purpose also, the existing list of operations is being expanded from the current "testing, cleaning, repacking, and inspecting" to a list which illustrates, in the form of examples, the inclusive nature of the new provision for "Unused Merchandise." In brief, it is intended both here and in the previously referred to portions of 1313(j) that any imported merchandise which does not meet the qualifications of being used for the purpose of the manufacturing drawback laws (namely, 1313(a) and (b)), will thereby qualify under 1313(j) by virtue of that merchandise being deemed as unused for drawback purposes. This would be true even if the imported merchandise deteriorates after importation, as long as that merchandise was never put to use. The effect of these new provisions should be that manufacturing drawback and unused merchandise drawback become truly complementary and contiguous provisions of law.

E. 1313(q)

The Mod Act adds this new section to update what is currently covered under 1313(j)(3) concerning packaging material. The current provision restricts eligibility of drawback on packaging material to 1313(j)(1). This new subsection will bring subsections 1313(a), (b), (c), and (j)(2) into conformity with 1313(j)(1) in terms of eligibility of packaging material. It is intended that a claim for drawback on packaging material will be made part of a claim for the packaged merchandise itself. In effect, a claim for packaging material would be "tacked on"

to the claim for the merchandise under the provision for which the merchandise itself is being claimed. For example, if merchandise is being claimed under 1313(c) because of a defect in the merchandise, the packaging material for that merchandise would be claimed on the same drawback entry under 1313(c), even though the packaging material itself might not be defective.

F. 1313(r)

The Act adds this new subsection to cover certain aspects of filing drawback claims. The wording in paragraph (1) is currently found in Part 191.61 of the Customs Regulations. The intention here is simply to elevate this provision to the statutory level in order to more firmly protect the time limit of 3 years within which a drawback claim may be filed after the date of exportation of the articles to be claimed.

Paragraph (2) is added in order to improve administrative efficiency. Situations similar to those envisioned here have been covered in Customs Service Decisions 84–19 and 84–100. For instance, if a claim is filed under 1313(a) when it more appropriately belongs under 1313(j)(1), Customs would merely accept that claim as valid and process it under the provisions of 1313(j)(1), rather than requiring the claimant to resubmit the claim under 1313(j)(1). This principle would now become valid for any completed claim, filed under any provision of the drawback law, which Customs believes should have been filed under a different provision. As Customs itself has stated in CSD 84–19, "For that (Customs) office to require, as a result, that the claim be resubmitted under the other provision would be productive of an unnecessary expenditure of time, effort and resources, both on the part of the drawback public as well as Customs itself. This clearly would not accord with Customs policy to simplify and streamline drawback procedures where possible."

G. 1313(s)

The Act adds this new subsection to deal with the subject of corporate mergers, consolidations, acquisitions, or other duly authorized legal successions, which have become commonplace in business. The current drawback law dates back to the Tariff Act of 1930. In the business climate of that era, such mergers, consolidations, acquisitions, and successions, if they occurred, were relatively rare. No consideration was given to such situations in the drawback law at that time. However, because of the significant changes that have taken place more recently in corporate America, it is essential that the drawback law be updated to appropriately address this situation.

Paragraph (1) of this new subsection addresses the topic of succession as it relates to 1313(b). For purposes of that subsection, a drawback successor would be allowed to designate imported duty-paid merchandise which was used in manufacturing by the predecessor before the date of succession, as the basis for drawback on articles which the drawback successor manufactured after the date of succession (for subsequent exportation by the drawback successor or someone else).

Paragraph (2) of this new subsection addresses the topic of succession as it relates to 1313(j)(2). For purposes of that subsection, a drawback successor would be allowed to designate imported merchandise upon which the predecessor, (as discussed above under 1313(j)(2)(C)(ii)) before the date of succession, paid the duty, tax, or fee related to the importation of the merchandise as the basis for drawback on merchandise which the drawback successor possessed after the date of succession (for subsequent exportation by the drawback successor or someone else).

Paragraph (3) of this new subsection defines the terms "drawback successor" and "predecessor." It should be noted here that what is in view in this subsection is a duly authorized legal succession which has been brought about by means of the merger or consolidation of two previously existing entities, by means of the acquisition of one entity by another, or by some other similarly authorized legal transaction. The right by the drawback successor to claim drawback is predicated upon such a legal transaction having taken place. What is not intended by this subsection, and to which we now wish to state our opposition, is the indiscriminate selling or transferring of "drawback rights" between two entities who have no duly authorized legal connections such as those described above or in the proposed statute. Such transactions would merely attempt to create a climate for drawback where none existed, and would not serve to promote the longstanding purposes of the drawback law.

H. Paragraph (4) of Subsection (s), as well as new Subsections (t), (u), and (v) are also added for reasons of recordkeeping, eligibility of merchandise, and prohibitions against double-claiming.

II. Comments regarding the establishment of a civil penalty provision under 19 U.S.C. Section 1593 (proposed)

The 1990 Drawback Revitalization Study recommended the creation of civil penalty provisions for fraudulent and negligent drawback claims. in a manner similar to the civil penalty provisions for import violations (19 U.S.C. Section 1592), this proposed section 1593 sets forth maximum penalties for fraud and negligence, addresses the issue of prior disclosure, and provides for an exception for clerical errors or mistakes of fact.

All penalties under the proposed section 1593 are in the form of multiples or percentages of the loss of revenue through the improper receipt of drawback refunds. The penalties are not determined by the value of the imported merchandise, substituted merchandise, or exported articles. Where there is no actual loss of revenue, no penalties apply. The proposed penalties are to be considered maximum penalties which may be mitigated upon petition.

Certain situations are not intended to be considered violations under this proposed provision. These situations, such as the failure of a claimant to be considered eligible or to qualify for drawback, disagreements between Customs and the claimant with respect to the substitution of merchandise, questions regarding the qualifying of production and manufacturing operations, and other such questions of law and fact, are often resolved subsequent to the filing of drawback claims. Such claims should not be considered fraudulent or negligent.

In conclusion, C.J. Holt & Co., Inc. is a licensed Customs Broker specializing in Duty Drawback since 1856. We act as agents for several hundred U.S. corporations in the recovery of duty drawback refunds. The passage of the Customs Mod Act is essential for the modernization of the duty drawback provision. It is our recommendation that the Mod Act be separated from H.R. 5100 and be passed as independent non-controversial legislation.

STATEMENT OF THE CHEMICAL MANUFACTURERS ASSOCIATION

I. INTRODUCTION

The Chemical Manufacturers Association appreciates this opportunity to comment on the state of trade policy in the United States, in the context of pending legislation (H.R. 5100) and in the context of greater access to foreign markets for U.S. producers. As the Committee is aware, CMA has long supported a comprehensive U.S. trade policy aimed at reducing and where possible, eliminating foreign barriers to trade and investment.

CMA is a non-profit trade association whose member companies represent 90 percent of the productive capacity for basic industrial chemicals in the United States. CMA and its member companies have been very active in promoting both domestic and multilateral solutions to market access problems, notably through our involvement in the Uruguay Round of Multilateral Trade Negotiations and the North American Free Trade Agreement talks. Throughout this effort, CMA's goal has been to ensure free, open access to the markets that will be the strength of our industry's continued economic performance.

The U.S. chemical industry is a consistently strong exporter. Our industry returned a $18.8 billion trade surplus in 1991, on the strength of $ 43.0 billion in total exports. This figure was supplemented by another important industry export: our intellectual property. Royalties for our industry's products—such as process and product patents—totalled another $2 billion in 1991.

The chemical industry is often termed a "basic" industry because most of its products are essential inputs to the production processes of other industries such as automobiles, textiles, various high technology and service industries, and agriculture. The indispensable role of chemicals in modern production processes makes a strong chemical industry essential to an internationally competitive U.S. economy. The chemical industry is a keystone of the U.S. economy in output and performance. On a value-added basis, it is about 8 percent of U.S. manufacturing and produces about 1.7 percent of U.S. GDP. Chemicals shipments—$288 billion—set a new record in 1991—increasing a modest 0.8 percent—even as total manufacturing shipments declined by some 1.9 percent.

Unlike much of U.S. manufacturing, the chemical industry has consistently been a strong performer in international trade. Exports in 1991 were over $43 billion,

yielding a surplus of $18.8 billion, more than U.S. agriculture's exports of about $39 billion and its $17 billion trade surplus. Since 1980, the U.S. chemical industry has rung up trade surpluses totalling $141 billion. The chemical industry's contributions to U.S. international balances, however, go beyond its trade surpluses. The industry's international investments annually provide net income from the earnings of foreign subsidiaries and from the licensing of U.S. technology to those subsidiaries. Chemical industry net international investment income and earnings from royalties, license fees and other services were $2.8 billion in 1990 and $4.1 billion in 1991, and totalled $25.6 billion from 1985 through 1991.

The U.S. chemical industry's international competitiveness stems partly from the fact that it has consistently been one of the nation's largest investors in research and development—$13.3 billion in 1991 alone. New products and processes are the driving force behind the industry's continued international competitiveness. The chemical industry employs about 80,000 chemists, scientists, engineers, and technicians. Prior to World War I, only three patents out of every 100 issued by the U.S. Patent Office were in the field of chemicals. In the 1980's, chemical patents accounted for about 15% of each year's total.

Strong investment in plants and equipment that implement new technologies and processes is another important factor behind the industry's international competitiveness. From 1987 to 1991 chemical industry investment growth—excluding inflation—averaged 9.3 percent annually. This resulted in a 15.1 percent increase in capacity by 1991.

The chemical industry's international competitiveness was an important factor leading to the 51,000 jobs created in the chemical industry since 1986. The industry provides about 5.8 percent of all manufacturing jobs. Roughly 54 percent of the 1.1 million chemical industry employees are production workers.

Our industry's continued economic success, in this time of increasing globalization, will depend in large measure on a U.S. trade policy that actively seeks to open foreign markets. In general, legislation like H.R. 5100 will encourage a comprehensive trade policy geared to the reality of world commerce.

II. MARKET ACCESS—THE OVERRIDING INDUSTRY OBJECTIVE

CMA has long supported improved market access worldwide. In order to achieve this level of access, new international disciplines on the ability of national governments to close their markets is required. For this reason, CMA has worked closely with both the Office of the U.S. Trade Representative and the Congress as the GATT Uruguay Round of Trade Negotiations continues, and as the North American Free Trade Agreement was negotiated.

In CMA's view, the objective of improved market access should be achieved primarily through the progressive elimination of both tariff and non-tariff measures. As for non-tariff measures, governments should agree to limit restrictive investment measures. In addition, governments should also provide stronger protection for intellectual property rights. Further, effective access to dispute settlement procedures should help achieve effective market access in those cases where national laws create barriers to trade.

In addition to direct disciplines for intellectual property, tariffs are an important potential barrier to market access. For this reason, CMA and the trade associations representing the European, Canadian, Japanese and Australian chemical industries have agreed on a tariff harmonization proposal to submit to our respective GATT negotiators. CMA is pleased to note that the negotiators have apparently adopted the industry proposal, and the negotiations are now progressing. CMA is also pleased that some progress is being made with respect to the negotiations on trade related investment measures and believes the investment area should be the subject of future negotiations as well.

CMA anticipates improved and equivalent access to the entire North American market through the NAFTA. The U.S. industry should particularly benefit from the staged reduction and elimination of Mexican tariffs, particularly since there will generally be little trade consequence from removing the already low U.S. tariff rates applicable to our products.

More significant is the Mexican agreement in NAFTA to substantially liberalize foreign direct investment. With respect to the petrochemical industry, investment in all but a handful of petrochemical products will be allowed and the distorting trade impact of Mexico's prior reservation of production rights and limits on foreign equity ownership will be removed.

CMA also expects that both the NAFTA and Uruguay Round will represent significant progress toward international disciplines on intellectual property protection.

As noted earlier, the industry's intellectual property is an important factor in our competitive position.

H.R. 5100 should help assure that market access remains a domestic policy priority. This is particularly true in the bill's recognition of Section 301 as a potential tool in opening foreign markets to U.S. producers.

A. Section 301

Section 301 of the Trade Act of 1984 provides for the enforcement of U.S. rights under international trade agreements, and for relief from the unfair practices of foreign governments which are "unjustifiable, unreasonable, or discriminatory," or which burden or restrict U.S. commerce. The unreasonable acts included in the scope of Section 301 are those that violate or are inconsistent with the international legal rights of the United States, or which deny fair and equitable market access, opportunities to establish an enterprise, or the provision of adequate and effective intellectual property rights.

Although Section 301 has traditionally been used to enforce U.S. rights under negotiated trade agreements, it applies without regard to the actual existence of a trade agreement. Consequently, Section 301 potentially applies to every U.S. trading partner. Unlike the anti-dumping and countervailing duty laws, which protect importers from unfair trade, Section 301 investigations primarily protect the rights of U.S. exporters.

In short, our industry depends on market access, and it depends on the ability of the United States to assure that those markets remain open. CMA commends the Committee for its present inquiry into the steps necessary to ensure that trade policy and market access remain domestic priorities.

III. THE NEED FOR A COMPREHENSIVE TRADE—POLICY

A. Adverse Effects of the Application of U.S. Trade Remedy Laws

H.R. 5100's great potential is to ensure consistency in and a high priority for trade policy. In fact, these two goals—consistency and priority—are especially manifest in the application of remedies to correct unfair trade. CMA urges the Committee to give due consideration to the need to better coordinate trade policy and remedies.

CMA strongly supports existing U.S. trade laws, and has no desire to see any lessening of the ability of the U.S. chemical industry to protect itself against unfair international competition. The enforcement of trade remedy laws is not without its consequences, however. Often these consequences manifest themselves as impediments to the U.S. chemical industry, even when our industry was not a party to the particular trade dispute.

Such was the case in a Section 201 case against specialty steel exports to the United States from Europe. [47 Fed. Reg. 56218 (December 15, 1982)]. As compensation for the settlement of that case, the EC placed import quotas or duty surcharges on a variety of U.S. exports to Europe. The list of products contain a number of chemicals, including methanol, styrene monomer, vinyl acetate monomer and low and high density polyethylene.

Likewise, in the case of a U.S. Section 301 action against Brazil in 1988 [53 Fed. Reg. 41551 (October 24, 1988)], more than $100 million of chemical exports from Brazil to the United States were scheduled for retaliatory action. Many of these products were integral parts of domestic chemical manufacturing processes and, had the two nations not settled the dispute, the continued viability of the finished products which relied on the Brazil-sourced intermediate products could have been jeopardized.

CMA cites these examples only to illustrate how the effects of maintaining international competitiveness are dependent on a multitude of factors. Because the U.S. market is far more open than those of our competitors, it has frequently been necessary for the United States to vigorously enforce its trade remedy laws to protect one manufacturing segment against unfair competition, even though this action placed another sector at a competitive disadvantage. CMA believes that stronger international disciplines on trade are a much better solution than the unilateral actions the United States has historically been forced to take. A successful outcome of the Uruguay Round—and the success we anticipate with NAFTA—will help to provide such a solution.

IV. H.R. 5100 CAN HELP SPUR GREATER INTERNATIONAL HARMONIZATION

Greater international harmonization will increase the benefits that can be derived from trade and trade-related policies. More importantly, comparability stands to enhance regulatory efficiency and minimize potential trade disruptions, both at home

and abroad. Absent comparable regulatory systems and trade disciplines, U.S. manufacturers must devote resources to understanding diverse national and international systems. Harmonization is a significant tool in facilitating international trade by removing the very real barriers that limit access to the global market. H.R. 5100 can promote improved harmonization as a fundamental principle of U.S. trade policy.

Harmonization of international trade and related policies will have a number of direct benefits. Products marketable in one country will generally be assured access to other markets. Technical innovation should be advanced as manufacturers strive to develop new products meeting the harmonized policy requirements. Manufacturing and distribution efficiencies will be realized as conformance with harmonized policies and regulations become a possibility. The costs of duplicative regulatory compliance will be minimized. Most importantly, essential environmental, safety and health policies will be more fully implemented throughout the global market.

It is extremely important to understand that in this context, harmonization does not mean the adoption of identical standards or policies in every country. Rather, comparability standards and procedures ensure "national treatment" for foreign producers, equivalent to the protections enjoyed by domestic industries.

Harmonization is not without potential pitfalls, however. It is entirely possible that harmonized trade disciplines and trade-related regulations will be inappropriately expanded to new areas. The potential for inadvertent or intended discrimination must be protected against. The effort to achieve comparability should neither weaken existing legal protections nor make unwarranted additions to the body of domestic and international regulation.

In general, the initiatives contained in H.R. 5100 should help open foreign markets to U.S. exporters, and represent an important opportunity for Congress to direct the future development of trade policy in a manner that promotes the international competitiveness of U.S. industry.

V. CONCLUSION

The existing trade policy and regulations of the United States provide both incentives and disincentives to industry sectors wishing to engage in international trade. While the chemical industry has been able to react favorably to many adversities in order to maintain its international strength, our industry faces greater competition from abroad. CMA urges the Committee to examine all of the effects upon the competitiveness of the nation's manufacturing sector in its consideration of H.R. 5100. We welcome a continuing dialogue with the Committee in its efforts to maintain the high priority U.S. trade policy deserves.

STATEMENT OF THE COMMITTEE ON PIPE AND TUBE IMPORTS

These comments are filed on behalf of the Committee on Pipe and Tube Imports (CPTI), trade association comprised of nineteen U.S. pipe and tube producers. We are pleased to offer our comments on issues regarding trade and competitiveness to the Committee on Finance. These comments will address the CPTI's views on matters relating to the U.S. trade laws and a general view on the status of pending trade legislation in the Congress.

First, with regard to the U.S. trade laws, the CPTI is committed to work to insure that our current U.S. unfair trade laws are preserved. Over the course of the current GATT Uruguay Round, we have witnessed the numerous attempts by our foreign trading partners to weaken our laws. Our producers have supported the position that we must aggressively resist these weakening changes and work within the Congress to insure that U.S. manufacturers are given every opportunity to compete in a global economy on a fair and level playing field. The U.S. pipe and tube industry has a long history associated with the U.S. trade laws. Over the years, it has had to utilize the unfair trade laws in order to remain in business. Since 1984, U.S. pipe and tube producers have filed over sixty unfair trade cases. Today there are currently ten active antidumping and countervailing duty investigations as to pipe and tube products. There are also numerous orders and administrative reviews covering pipe and tube products.

The U.S. pipe and tube industry must compete with foreign manufacturers who receive government subsidies and who are able to dump in the U.S. market because of home markets protected from outside competition. Serious weakening of the unfair trade laws will result if the Dunkel draft text is adopted into U.S. law. This could signal death knell of the remainder of the pipe and tube industry. The same could apply to the basic steel industry which supplies the pipe and tube industry with its feedstock and to many other basic U.S. manufacturing industries.

The CPTI has been active since its inception in working with Congress and the Administration on strengthening and streamlining the unfair trade laws. The organization worked in an industry effort to support provisions of the 1988 Omnibus Trade and Competitiveness Act. In Section 1101(b)(8)(A) the Congress stated that the principal negotiating objective of the United States with respect to unfair trade practices are, "to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices."

The current draft Uruguay Round proposal clearly does not accomplish any of Congress' objectives for negotiations in the unfair trade practices area as cited in the 1988 Act. In fact just the antithesis has occurred with the Dunkel draft which was released in late 1991. The Dunkel draft weakens subsidies disciplines by making previously countervailable subsidies non-countervailable. It fails to expand the list of prohibited subsidies. The addition of a bright amber category is of little significance to industries that would normally use the countervailing duty laws to redress injurious subsidies and is diminished by the fact that it is based on cost to foundation for reforms in U.S. trade policy. The broad based legislation contains a number of provisions we are in support of. Under Title I, market access of goods from the U.S. is strengthened and the provisions for reauthorization of the Super 301 authority are provided. The provisions in Title II which include reforms in Customs Modernization including a new definition of goods qualifying for duty drawbacks. It also contains language which we believe will enhance the ability and effectiveness of the U.S. Customs Service. Also included in this legislation are improvements to the current U.S. trade statutes. The CPTI strongly supports the "dual pricing" provision which would codify changes in practice at the Department of Commerce. The provision will assist those petitioners involved in trade cases by precluding any adjustments in determination of foreign market value under the antidumping law for difference in input costs that are based on whether the end product made from the input is sold in the home market or exported.

We would strongly recommend that the Committee on Finance look at these provisions as they consider future trade legislation.

Finally, we have learned of the trade legislation introduced by Senator Jay Rockefeller which provides reforms to the trade laws. We believe this legislation is fair and well balanced. Most importantly it addresses areas of reform in the trade laws which will allow U.S. manufacturers to compete in the global market. The CPTI has a strong interest in upstream subsidy provisions which are included in the Rockefeller bill. We believe that the provisions would ensure that the Department of Commerce carry out Congress' intent to measure the competitive benefit on the basis of what the producer would pay an unsubsidized seller in an arms-length transaction. We also strongly support the changes to the ITC injury determination practice. We view the Rockefeller legislation as a critical component in the trade policy debate and urge the Committee to adopt these provisions.

The CPTI urges the Committee to consider the interests of domestic companies like our industry as they move forward with trade legislation. Our leaders in Congress must work to ensure that U.S. jobs are maintained and that U.S. manufacturers are provided fair opportunities to sell goods in a truly open market.

COMMITTEE ON PIPE AND TUBE IMPORTS

Allied Tube & Conduit
Harvey, Illinois
Philadelphia, Pennsylvania
Houston, Texas
Liberty, Texas

Alpha Tube
Toledo, Ohio

Century Tube Corporation
Pinebluff, Arkansas

Hannibal Industries
Los Angeles, California

Laclede Steel Company
St. Louis, Missouri
Alton, Illinois
Benwood, West Virginia

Maruichi American Corporation
Sante Fe Springs, California

Pittsburgh Tube Company
Fairbury, Illinois
(Pittsburgh International)
Chicago, Illinois
(General Tube)
Monaca, Pennsylvania
(Monaca Tube Division)
Darlington Pennsylvania
(Darlington Tube Division)
Jane Lew, West Virginia
(Jane Lew Tube Division)
Richmond, Indiana
(Tec-Fab)
Monroe, New York
(Monroe, Tube Division)

American Tube Company, Inc.
Phoenix, Arizona
Kokomo, Indiana

Armco, Inc.
Sharon, Pennsylvania (Sawhill)
Houston, Texas (Tex-Tube)
Piqua, Ohio (Miami Industries)
Warren, Ohio (Sawhill)

IPSCO Steel, Inc.
Camanche, Iowa

LTV Tubular Products Company
Youngstown, Ohio
Counce, Tennessee
Cleveland, Ohio
Elyria, Ohio
Ferndale, Michigan
Cedar Springs, Georgia
(Georgia Tubing Corporation)

Maverick Tube Corporation
Hickman, Arkansas
Chesterfield, Missouri
Union, Missouri
Conroe, Texas

Searing Industries
Rancho Cucamonga, California

Sharon Tube Company
Sharon, Pennsylvania

Vest, Inc.
Los Angeles, California

Western Tube & Conduit Corporation
Long Beach, California

Bitrek Corporation
Waynesboro, Pennsylvania
Greencastle, Pennsylvania
Texarkana, Texas

Quanex Corporation
Houston, Texas
Livonia, Michigan
(Quanex Tube Group)
Rosenberg, Texas
(Gulf States Tube)
Bellville, Texas
(Bellville Tube)
South Lyon, Michigan
(Michigan Seamless Tube)
Huntington, Indiana
(Heat Treating Division)

Wheatland Tube Corporation
Collingswood, New Jersey
Wheatland, Pennsylvania
Chicago, Illinois
Little Rock, Arkansas
(Maneely-Illinois)
Miami, Florida
(Seminole Tubular Products)
Cambridge, Ohio
(Seminole, Tubular Products)
Houston, Texas
(Seminole Tubular Products)

Welded Tube Company of America
Chicago, Illinois

STATEMENT OF THE CONE MILLS CORP.

I. BACKGROUND AND TRADE CONCERNS

Cone Mills Corporation, founded in 1891, is a major textile manufacturer and producer with headquarters in Greensboro, North Carolina. Cone Mills has over 7,000 employees with plants located in North Carolina, South Carolina, and Mississippi. Cone Mills is the largest producer of denim fabrics in the world and is the largest printer of home furnishings fabrics in the United States. Net sales were $633 million in 1991. It operates in two business segments: apparel fabrics and home furnishings products, representing 72% and 28%, respectively, of 1991 sales. All manufacturing is performed in the United States, with sales and marketing activities conducted through a worldwide distribution network. It is the largest domestic exporter of denims and is a major exporter of printed home furnishings fabrics, with total 1991 export sales of $92 million.

Cone Mills services the home furnishings markets through three divisions: Carlisle Finishing Company, John Wolf Decorative Fabrics and Olympic Products Company. Carlisle is the largest commission printer of home furnishings fabrics in the United States and provides custom printing services to leading home furnishings stylists and distributors. John Wolf is one of the country's leading designers and marketers of printed and solid woven fabrics for use in upholstery, draperies and bedspreads. Olympic is a diversified producer of polyurethane foam and related products used in upholstered furniture, mattresses, quilted bedspreads and carpet padding.

Cone's business strategy is to utilize its styling and development expertise and management depth and experience, in combination with its versatile manufacturing facilities and technical capabilities, to compete effectively in its worldwide markets.

Cone Mills has made significant capital investments to be competitive internationally. Its financial strategy is to enhance and accelerate programs in denim and home furnishings to take advantage of domestic and international growth opportunities.

Cone's printed home-furnishing fabric patterns are the result of extensive artistic and creative effort, manufacturing technology, and product marketing and development. Cone receives input from its worldwide sales organization with regard to new ideas and products that will be successful in various international markets.

A print fabric design represents more than a simple piece of cloth with colors interspersed. It has value and represents many man hours of effort and a significant capital investment. It is an item of value just as is an automobile or any other finished product. Its value increases if the print design is successful and is in demand in the international marketplace.

To protect the print design, it is routinely copyrighted. Any duplication is prohibited without an express license or royalty. The copyright laws work reasonably well in the United States. Their value is recognized and legal action can be taken to enforce rights to a product.

This is not the case in the international marketplace. Outright thievery of unique products is rampant. If a print design becomes popular, it is copied and duplicated on cheaper fabric and sold for a lower price.

The thief has no overhead cost of capital investment and time in producing the product. All that is required is to copy the design and print it on the fabric. In the trade, this is called a "knock-off" of an original design. The "knock-off" of the original design is just as much an act of larceny as theft of an automobile or piece of personal property. But the rules to enforce intellectual property rights internationally are weak if nonexistent. If laws do exist, the penalties are often mild. Where the laws are adequate, there is no government resolve to enforce the law, which is the same as not having a law at all.

To enforce print design copyrights, textile manufacturers must go into the country of sale and sue the marketer. This is a long, tedious and expensive process which is undertaken to prevent future theft rather than in hopes of any monetary recovery. However, this process attacks only the symptom, not the cause of the problem. The cause is countries which have no respect for property rights and subsidize and encourage domestic manufacturers to steal the product in the first place. U.S. manufacturers have no access in these countries to stamp out the problem.

Of special concern to Cone Mills is the country of Pakistan and its behavior in encouraging the theft of original print designs produced in the United States. The United States has become a major importer of Pakistan's textiles. According to U.S. Department of Commerce official data, in the year ending June, 1992, U.S. textile imports from Pakistan amounted to $582 million. This is an increase of almost $168 million (or 41%) over the previous years and is a continuation of the trend of increasing imports from Pakistan. In 1985–1986, for example, U.S. imports of textiles from Pakistan were only $205 million.

While the United States is a major importer of Pakistani textiles, the Pakistanis have engaged in a systematic pattern of international wrongdoing.

In its relationships with the United States, Pakistan has consistently violated quota arrangements, and is now the subject of chargeback actions. The chargebacks are a result of transshipment of Pakistani textiles through other countries to avoid quota restrictions on direct imports from Pakistan. The U.S. Customs Service has said agency investigators found that more than 1.15 million bed-sheet sets were improperly identified as having been manufactured in several other countries, including Sri Lanka, Bangladesh, and the United Arab Emirates. The value of the transshipments is more than $16 million. Pakistan earlier had its quota for cotton-towel exports to the United States reduced in response to its illegal transshipments of those goods.

These alleged violations of quotas come at a time in which the United States and Pakistan have just completed a new two-year textile-apparel bilateral agreement. The agreement provides for an annual six to seven percent growth rate for U.S. import quotas during 1992 and again in 1993. In addition, the categories for the types of exports have been merged to provide more flexibility for Pakistani shipments.

The activity of Pakistan in terms of its subsidy of the textile industry and its exports to the United States only adds insult to injury with regard to its protection of intellectual property rights. Many of the print designs which are copied illegally are done in Pakistan. There is no remedy for a non-Pakistani textile company. While the government may give lip service toward protecting U.S. and other intellectual property rights, in actuality there is no mechanism to enforce property rights and prevent designs from being stolen and then exported throughout the world in direct competition to the original design. If we are to protect our markets and encourage our industry to grow and compete internationally, this behavior must be halted.

In summary, the U.S. has opened its market to Pakistan. At the same time, however, its market remains tightly closed. Their manufacturers are copying copyrighted U.S. textile designs and illegally undercutting our products through the sale of cheaper imitations.

II. PROPOSED SOLUTION

The U.S. Congress is to be commended for its interest in strengthening our trade laws. Super 301 and Special 301 are important innovations in working to ensure that there are rules of conduct which are observed in the international marketplace. Special 301 provides the U.S. Trade Representative with enlarged powers and swifter remedies to go after pirates in whatever part of the world they ply their illegal trade. While the tools are there, we urge the USTR to intervene aggressively in whatever way possible to halt the illegal theft of U.S. property. We urge the USTR to initiate a review of the practices of Pakistan and to target it under Special 301. We also urge that the USTR initiate a Section 301 investigation of Pakistan for its failure to provide "adequate and effective" protection for intellectual property. This should be considered as an "unfair trade practice."

As part of the GATT negotiations, reform in intellectual property has been a major issue. Intense negotiations have already been conducted on intellectual property rights. However, there is no specific language establishing that illegal duplication of a textile print design is an unfair trade practice. As part of the GATT negotiations, the agreement on intellectual property rights should specify that copying a textile print design is an unfair practice and establish international remedies to enforce intellectual property rights.

There should be no exception to the basic rule of international trade—national treatment. An exception to this rule would permit countries to discriminate against U.S. companies. We seek a provision that would accord full national treatment in the areas of textile print designs. The final GATT agreement should have provisions for multilateral retaliation against countries whose intellectual property regimes are inadequate. This would greatly benefit U.S. exports and raise the level of worldwide recognition of intellectual property rights.

The need for administrative action by the USTR under 301 and Special 301 and the need to strengthen our negotiators at the GATT is clearly evident. However, immediate action with regard to Pakistan is needed. Pakistan will not change its trade practices unless forced to do so.

Since the United States is a major importer of Pakistani products, the Congress has the power to send a strong message to Pakistan that it will not tolerate Pakistani thievery. To the extent that Pakistan fails to provide means of enforcing intellectual property rights, trade sanctions should be imposed against Pakistan. These sanctions should go to the heart of the problem. Punitive duties on Pakistani imports should be levied if it is demonstrated that textile designs are being copied in contradiction of trademark and copyright laws. These duties would be placed on imports of Pakistani products in an amount equal to the loss of business suffered by U.S. manufacturers. This would send a strong message that the United States and the Congress will not tolerate international thievery.

III. CONCLUSION

In conclusion, Cone Mills is competitive internationally. Its designs are recognized worldwide for their innovation and excellence. International protection of intellectual property rights needs to be strengthened. Pakistan is a prime offender in the theft of textile print designs, and trade sanctions should be imposed to halt current practices of Pakistani exporters.

STATEMENT OF THE COPPER & BRASS FABRICATORS COUNCIL, THE MUNICIPAL CASTINGS FAIR TRADE COUNCIL, THE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES, AND THE SPECIALTY TUBING GROUP

This statement is made by the Copper & Brass Fabricators Council ("CBFC"), the Municipal Castings Fair Trade Council ("MCFTC"), the Specialty Steel Industry of the United States ("SSIUS"), and the Specialty Tubing Group ("STG") in conjunction with the Senate Finance Committee's examination of pending trade bills and series of hearings scheduled for July 22, July 29, and August 5, 1992, regarding the state of United States trade policy. Lists of the members of these groups are appended.

Over the years these companies have participated as domestic industry petitioners in a large number of antidumping and countervailing duty proceedings. Based upon this experience, they believe that enforcement of antidumping and countervailing duty orders is an area that has not received as much attention as it should. It makes little sense, practically speaking, for the United States Commerce Department and International Trade Commission to expend their resources in conducting investigations and administrative reviews if the resultant antidumping and countervailing duties are not promptly, fully, and properly paid by the importer in the United States.

Recent studies by the General Accounting Office, the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs, and the Subcommittee on Oversight of the House Ways and Means Committee have all detailed extensive problems with the enforcement of antidumping and countervailing duty orders. The gist of these reports has been that the United States Commerce Department and Customs Service are unable to assure United States domestic industry that antidumping and countervailing duties are being collected as they should.

CBFC, MCFTC, SSIUS, and STG are among the many petitioners who have been frustrated by this inability of the agencies. Attempts to learn whether the duties have been deposited and collected in a timely fashion have repeatedly been unsuccessful, thwarted by the present, inadequate system that the Commerce Department

and Customs Service have themselves acknowledged is in need of overhaul. Even were it possible for these agencies to ascertain from their records whether and what amounts of antidumping and countervailing duties have been paid, domestic industry petitioners are considered by the agencies to be precluded from access to enforcement data that are business proprietary in nature.

To their credit, the Commerce Department and Customs Service have begun to focus upon improving their enforcement of antidumping and countervailing duty orders and upon working in tandem toward this end, particularly in the last two years, but much remains to be done. At the most basic level, it is still problematic at best whether an accurate accounting of duties deposited or assessed and collected in any given case can be compiled. At the same time, restrictions imposed by the agencies continue to block petitioning domestic industry from access through their counsel to any data on enforcement that are considered to be business proprietary.

It is against this background that two provisions in S. 3019, the Trade Expansion and Enforcement Act of 1992, and H.R. 5100, the Trade Expansion Act of 1992, are most welcome. These provisions (a) require the Customs Service to prepare and transmit to the Commerce Department an annual report setting forth the amount of duties collected during the preceding calendar year under each antidumping and countervailing duty order and (b) direct the Commerce Department to make available to petitioners under administrative protective order the data regarding the payment of duties under the antidumping or countervailing duty order.

CBFC, MCFTC, SSIUS, and STG wholeheartedly support these amendments to the Tariff Act of 1930. As important as the antidumping and countervailing duty laws are, it is appropriate that there be an annual report on duties collected in each case and that domestic industry petitioners be allowed to review the data regarding the payment of duties under administrative protective order.

In this connection, two points should be clarified. First, the annual report should also tally bonds and cash deposits of estimated antidumping and countervailing duties, not just the duties finally assessed and collected. Bonds and cash deposits play a vital role in ensuring the effectiveness of antidumping and countervailing duty orders, especially given that years typically pass before the ultimate antidumping and countervailing duty liability is known as the result of administrative and judicial proceedings.

Second, it will be helpful to emphasize that a broad disclosure of payment data under administrative protective order is intended. As the administering authority, the Commerce Department should be able to secure from the Customs Service and provide to petitioners' counsel under administrative protective order not only the business proprietary version of the annual report once it has been published, but also the data underlying the report as they are being compiled during the course of the year. Such timely and on-going availability of payment data will serve as an invaluable enforcement mechanism.

As helpful as these provisions in the Senate and House bills are, there are at least two other statutory modifications that are not included and that should be. Each would further strengthen enforcement of antidumping and countervailing duty orders.

First, there is currently no section of the antidumping and countervailing duty laws that permits domestic industry petitioners to petition for writs of mandamus to compel liquidation delayed beyond the normal statutory deadlines with whatever antidumping and countervailing duties, including interest on underpayments, have been finally determined. As a result, under 19 U.S.C. §1504(d) as it is presently constituted, recent judicial decisions have variously made more difficult or totally precluded assessment and collection of antidumping and countervailing duties.

In circumstances in which administrative oversight or laxness leads to a failure by the Customs Service to liquidate within the period statutorily allotted, that failure should not mean that antidumping and countervailing duties are foregone at the expense of the petitioning domestic industry that is entitled to relief from injurious, dumped or subsidized imports. A mandamus clause as outlined would avoid this anomalous inequity.

Second, and lastly, just as it is central to the working of the statute that antidumping and countervailing duties be paid in full when due, so these laws' remedial purpose is eroded when the corrective duty is not paid by the first unrelated buyer of the imports in the United States. Who pays the duties is as important as what duties are paid and when they are paid. To the extent that antidumping and countervailing duties are reimbursed or absorbed by the foreign exporter or its related importer in the United States, the first unrelated purchaser in the United States is shielded from payment of these extraordinary duties, continues to enjoy the competitive advantage of the unfair pricing, and therefore has no incentive to cease buying the dumped and subsidized merchandise.

Current law is not explicit either in requiring the first unrelated purchaser in the United States to pay the antidumping and countervailing duties or in barring reimbursement and absorption of these duties by the foreign exporter or its related importer in the United States. At the administrative level, 19 C.F.R. §353.26 prescribes a deduction from United States price, ordinarily on a one-time basis only, in the amount of any antidumping duty that the foreign producer or reseller pays directly on behalf of the importer or reimburses to the importer. At the time of liquidation, the importer of record is required to file a certificate as to whether the manufacturer, producer, seller, or exporter has absorbed or reimbursed the antidumping duties owed. There is no counterpart regulation on the absorption or reimbursement of countervailing duties.

The topic of who pays and who should pay antidumping and countervailing duties deserves scrutiny. Absorption and reimbursement by foreign exporters and their subsidiaries in the United States are a tremendous loophole. The current regulations, as interpreted by the Commerce Department, are of minimal utility. Certification by the importer of record is no real guarantee against absorption and reimbursement without vigorous investigative follow-on by the agencies. Moreover, it appears that the Commerce Department and Customs Service accept payment of antidumping and countervailing duties by related-party importers. This practice is extraordinarily destructive of the fabric of the statute and enables the first unrelated buyers in the United States to continue to receive the same dumped or subsidized prices as before the antidumping or countervailing duty order went into force. CBFC, for one, has witnessed this evasive technique. The practical impact is the prolonging of depressed prices in the United States at the expense of the domestic industry.

An amendment to both the antidumping and countervailing duty laws, by which bonds and cash deposits as well as payments of final antidumping and countervailing duties would be the responsibility of the first unrelated buyer in the United States, would be extremely beneficial. Otherwise, import-related injury is simply perpetuated by means of absorption and reimbursement of the antidumping and countervailing duties by foreign exporters and their related importers in the United States.

In conclusion, a sound trade policy and effective enforcement of antidumping and countervailing duty orders go hand in hand. The provisions in the pending trade legislation concerning annual reports on duty collection and access under administrative protective order for petitioners' counsel to the data regarding payment of the duties are positive measures. Along with these changes, the amendments discussed above to authorize writs of mandamus and to require payment by the first unrelated U.S. buyers should markedly enhance enforcement of antidumping and countervailing duty orders.

STATEMENT OF THE CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

This submission is made on behalf of the Customs and International Trade Bar Association ("CITBA") in response to the Committee on Finance's invitation to comment on the Trade Expansion Act of 1992, H.R. 5100, which was recently approved by the House of Representatives. CITBA is a national organization of over 400 attorneys who specialize in Customs, international trade, and related matters affecting international business. CITBA was organized in 1919 by attorneys interested in what had evolved into a discrete body of jurisprudence as well as practice before courts and agencies related to tariff and customs issues. CITBA has regularly participated in formulating tariff legislation by testifying before Congress and conferring with federal agencies.

In January 1992, CITBA submitted written comments on H.R. 3935, The Customs Modernization and Informed Compliance Act, which had been introduced in the House of Representatives on November 26, 1991. Subcommittee on Trade of the House Committee on Ways and Means, Written Comments on H.R. 3935, 102d Cong., 2d Sess. 150–159 (Comm. Print 1992). CITBA thereafter testified on the salient provisions of H.R. 3935 before the Subcommittee on Trade on March 10, 1992. Much of that bill has been incorporated in the pending H.R. 5100 as Title II Customs Modernization. Although H.R. 5100 is more extensive than H.R. 3935 and includes provisions involving market access and various nontariff provisions, these comments, prepared by the CITBA Customs and Tariffs Committee, focus on the core elements of Title II affecting due process safeguards, penalty proliferation, and administrative automation which have been of abiding interest to practitioners in the field.

I. AUTOMATION AND ADMINISTRATIVE PROCEDURES

The thrust of the procedural reform provisions is to allow Customs to continue automating the administrative process as it moves towards the goal of creating a paperless environment. CITBA endorses the statutory amendments which would remove barriers to automation, and generally supports Customs' efforts to process a greater volume of transactions and to deploy its resources more efficiently. However, CITBA is concerned that private parties not lose substantive rights or be deprived of due process of law. Also, CITBA is concerned that parties could be forced to automate against their will or to be otherwise prejudiced by inability or difficulty in accommodating their longstanding business practices to extensive, confusing, and constantly changing technology. Parties who are unable or who choose not to automate should be allowed full access to the electronically stored information, notice of Customs actions affecting their interests, and equal opportunity for judicial review. So too, Congress should require Customs to promulgate regulations ensuring the integrity and confidentiality of electronic data while facilitating authorized access.

A. *Customs Testing*—Section 213 would require Customs to accredit independent laboratories and to disclose its testing procedures so as to regularize the proper examination and identification of imported merchandise and to facilitate trade. However, the bill would allow Customs to withhold certain information concerning testing procedures and methodologies if they are proprietary to the holder of a copyright or patent or developed by Customs for enforcement purposes. The latter restriction did not appear in H.R. 3935.

CITBA supports the requirement that Customs make available its testing procedures and methodologies so that its tests may be replicated by another laboratory. However, CITBA questions why a party with an interest in detained merchandise which is being tested under proprietary procedures and methodologies is to be denied similar access. CITBA contends that parties should have the right to be able effectively to respond to adverse determinations. CITBA submits that proprietary or enforcement related procedures or methodologies be made available to accredited private laboratories under restrictions which will preserve their confidentiality, thereby protecting the rights of all parties. CITBA approves the specific provision for judicial review of an adverse laboratory accreditation decision.

B. *Recordkeeping*—Section 214 would expand the recordkeeping requirements of 19 U.S.C. section 1508 to parties other than owners, importers, consignees, or agents, for example, to bonded carriers and drawback claimants. The House Report accompanying the bill states that the purpose of the change is to close loopholes, but emphasizes that the amendments do not authorize Customs to embark on "fishing expeditions" during audits. H. Rep. No. 102–607, 102d Cong., 2d Sess. 99–100. (hereinafter, "House Report") Section 215 of the bill codifies and thereby requires Customs to follow certain audit procedures which reflect the usual, but not universal, existing administrative practice. For example, the bill would amend 19 U.S.C. section 1509 to require Customs to hold both entry and exit conferences, to inform the party to be audited of the estimated time for the audit, and to furnish that party with an audit report unless the audit has resulted in an enforcement investigation. This section would also establish a recordkeeping compliance program under which Customs would certify that a party's record retention procedures comply with the provision. A certified party charged with a violation of the provision would be entitled to a warning notice in lieu of a penalty for a first offense. This innovation was not in H.R. 3935.

CITBA recognizes the need for greater specificity in recordkeeping requirements so that parties will have fair notice of their obligations. The proposed amendments appear to accomplish this purpose if faithfully implemented by Customs. CITBA sees no reason not to provide an audit report and an exit conference in all circumstances. The report would be subject to Freedom of Information Act exemption deletions. An importer should be notified of a perceived problem in order to have the opportunity to consider corrective measures or to submit clarifying information.

C. *Protest Review*—Section 245 would amend 19 U.S.C. section 1514 to permit the Secretary by regulation to add requirements for the content of protests other than the statements statutorily required.

CITBA opposes this amendment. The courts have consistently interpreted section 1514 to require Customs to accept protests which provide reasonable notice of the claim. There is no need to change the existing rule. The amendment would allow Customs to deny protests for technical omissions. CITBA contends that this action would be contrary to the very purpose of the protest procedure and would be particularly harmful to small importers and brokers.

Because of the court's decision in *San Francisco Newspaper Printing Co.* v. *United States*, 9 CIT 517, 620 F. Supp. 738 (1985), Customs has assumed that it is without

authority to rescind the unwarranted denial of a protest. The court decision was based on the erroneous notion that denial as such invokes the court's jurisdiction, when, in fact, that has not been so since before the Customs Courts Act of 1970. Section 217 of the bill would rectify the matter by allowing Customs to rescind denials. CITBA strongly endorses this change, but submits that the proviso, "but is denied contrary to proper instructions" should be deleted as ambiguous and susceptible to narrow interpretation. Improper denials sometimes result from a local Customs official's being unaware of a Headquarters policy or, for example, the status of an application for further review of a protest on a related issue. Therefore, the better approach is not to constrict Customs' authority.

Section 217 also would provide for administrative review of a denial of an application for further review of a protest. CITBA supports the procedure but urges that the implementing regulations provide a time limit for action upon an application.

D. *Entry Process and Reconciliation*—Section 237 would amend 19 U.S.C. section 1484 to permit the filing of entry summary information for all entries made during a calendar month in a single submission to be known as the "import activity summary statement." Conceptually, the procedure would be comparable to a procedural "privilege" in drawback practice known as the "Exporter's Summary Statement," by which a single filing may cover multiple export transactions. 19 C.F.R. section 191.53. Also, the amendment would formalize the submission of information necessary to appraise or classify an entry, but not available when the entry or entry summary is due. This submission, to be known as the "reconciliation," would be filed, after notice to Customs at entry, within 15 months from the filing of the entry summary or the import activity summary statement, as the case may be.

Although the language in the bill is not completely clear on the point, the House Report states that Customs may liquidate an entry which will be final as to all issues except those specifically covered by a reconciliation. House Report at 121. This interpretation would appear to be in harmony with 19 U.S.C. section 1514, as amended by section 245 of the bill, which would make reconciliation decisions protestable and distinguished from matters bound up in the liquidation. Section 234, which defines reconciliation, states that it would be treated as an entry for purposes of liquidation, reliquidation, and protest.

CITBA endorses the introduction of the import activity summary statement. However, CITBA questions whether the reconciliation concept is necessary inasmuch as liquidations may be extended in appropriate circumstances. Indeed, nothing in the bill would limit Customs' power to extend liquidations as currently provided by 19 U.S.C. section 1504. The reconciliation concept might be useful to segregate those entries for which further information is required from those which might otherwise be put on "bypass" rather than being liquidated upon formal review. Nevertheless, introducing reconciliation as an exception to liquidation could create confusion and unnecessary administrative complexity. CITBA submits that if the liquidation concept is to be retained, it should continue to constitute the final administrative determination concerning all issues that otherwise could have been included in Customs' final decision on an entry. Bifurcating the process is a regressive step reminiscent of the era when appraisement was segregated from tariff classification. To promote efficiency, Congress consolidated the process in the Customs Courts Act of 1970. Therefore, the bill should be amended accordingly.

E. *Payment of Duties and Interest*—Except as noted below, CITBA endorses Section 242 which would amend 19 U.S.C. section 1505 to eliminate anomalies and confusion in the law. Presently, Customs is required to pay interest on a duty overpayment only if the overpayment was assessed at liquidation and subsequently refunded upon reliquidation. However, if the amount deposited at entry was excessive, and the entry liquidated unchanged, interest would not be due even if the entry were eventually reliquidated with a duty refund. This scheme does not reflect any sound policy. It is basically unfair and inconsistent. On the other hand, current law does not authorize Customs to assess interest on duty underpayments, that is, the difference between the deposit and any higher amount assessed in liquidation. Section 242 also would allow Customs to assess interest in such circumstances.

CITBA supports the amendment because it creates an equitable balance between an importer's rights and obligations as to interest on duty overpayments and underpayments. CITBA objects only to the accrual of interest from the first date of the month the import activity summary statement is due to the date duties are deposited. The statement would cover all entries made during a particular calendar month and would be filed with the duty deposit not later than the twentieth day of the following calendar month. It is difficult to determine whether there would be a material difference between the current deposit requirements (10 working days from release of the merchandise) and that proposed in section 242. However, the accrued interest would be onerous to calculate and to track. In effect, the bill would

increase the complexity of a procedure although the purpose of the bill is simplification. Therefore, this proposal should not be included in the bill unless Customs can demonstrate that the benefit outweighs any hindrance to trade facilitation.

PENALTIES AND ENFORCEMENT

H.R. 5100 contains a proliferation of new penalty provisions, most of which neither relate to Customs automation nor incorporate the due process protections of the general civil penalty provision, section 592 of the Tariff Act of 1930, 19 U.S.C. section 1592. CITBA does not object to extending the coverage of existing enforcement provisions to an automated electronic environment or to circumstances where Customs' enforcement capabilities are demonstrably inadequate. CITBA acknowledges that enforcement capability is important if Customs is to maintain its selectivity policy in reviewing what will be automated transactions. CITBA contends that the casual introduction of new penalties throughout the bill is irrational. CITBA is also concerned that, as with any new enforcement mechanism, there is potential for abuse. Customs, the private sector including CITBA, and Congress expended substantial time and thought in reforming section 1592. The results have been salutary. CITBA believes that a comparable endeavor would be appropriate to determine the propriety of creating new substantive violations, and if so, the appropriate enforcement response and due process safeguards. In any event, there are several particular areas of concern regarding the bill which CITBA will address.

A. *Detention*—Apart from creating new testing provisions, section 213 would amend 19 U.S.C. section 1499 to require Customs to give importers notice of detention and to expedite administrative and judicial review. Also, the amendment would clarify when a detention would ripen into an exclusion protestable under 19 U.S.C. section 1514. Specifically, the bill would require Customs to give notice of detention within five days of entry. Customs' failure to make an admissibility determination within 30 days after the merchandise had been presented for Customs' examination would constitute a protestable exclusion. Also, if Customs does not act on a protest against an exclusion within 30 days of filing, the protest would be treated as having been denied on the 30th day for purposes of judicial review. In court, Customs would be required to show good cause by a preponderance of the evidence why an admissibility decision has not been reached. However, the protestant otherwise would have the burden of proof in accordance with 28 U.S.C. section 2639. House Report at 98.

In general, CITBA endorses the amendment. However, CITBA maintains that a detention decision, which Customs must make within 5 days of entry, or a failure to decide within that time what is to be deemed a detention, should be protestable under section 1514. The bill should then state that such protests shall be deemed denied if Customs has not acted on them within 30 days, thereby allowing the importer to seek immediate judicial review. Equally important, the bill should make clear that, independent of this section, a litigant in an emergency situation who is able to make the requisite showing of the likelihood of irreparable harm may, at any time, seek to invoke the jurisdiction of the CIT.

CITBA further maintains that the detention notice requirement should be clarified to oblige Customs to provide actual notice by electronic means, expedited mail service, or a comparable method. A mere endeavor to provide notice by first-class mail should be insufficient.

CITBA opposes Customs' limited burden to show good cause only for an untimely admissibility decision. Currently, judicial review of such decisions is *de novo*. The bill would lower Customs' burden of proof and thus the standard of care required in making admissibility decisions which affect a party's property rights. In many cases, the issue would no longer be whether the merchandise, in fact, is admissible, but whether there was a reasonable basis for Customs' initial decision. The House Report states that good cause for a detention and delay in a decision could be predicated upon another agency's involvement in the admissibility determination, but that the court should set a reasonable date for a decision. House Report at 98, 99. CITBA sees no justification for protracting a detention because another agency must respond. If Customs must act promptly, there is no reason why FDA, DOT, or EPA should not be required to act with similar dispatch. Therefore, for purposes of Customs' burden of proof, there should be no distinction between cause for detention and cause for delay in an admissibility decision once the issue is within the court's jurisdiction.

B. *Recordkeeping Penalties*—Section 215 would amend 19 U.S.C. section 1509 to create monetary penalties for failures to maintain and produce required documents upon Customs' demand. Although there are exceptions, for example, in cases of impossibility of compliance, the penalties are extremely severe ranging from the lesser of 75% *ad valorem* of the involved merchandise, or $100,000, for a willful failure,

or 40% or $10,000 in the case of negligence. In addition, if the entry had been liquidated as qualified for a duty preference, Customs would be authorized to reliquidate at the general column 1 rate of duty in disregard of the preference. The penalties are not exclusive and are unrelated to violations otherwise cognizable under 19 U.S.C. section 1592.

CITBA is opposed to this provision. The penalties created by this section are draconian and virtually unrestrained by due process requirements. Also, there is serious question whether Customs needs any enforcement authority beyond that currently prescribed under section 1592. Most importantly, this section creates penalty levels which are grossly out of proportion with the nature of the offense. CITBA is concerned about the potential for uneven enforcement among the Customs districts and misunderstandings as to the type of notice required to create an obligation to produce records. Under current law, Customs has judicial remedies to enforce its right of access to an importer's books and records. When records are not produced in response to a subpoena, Customs can move for a contempt citation and impose administrative sanctions which include refusal to release imported merchandise or an order prohibiting an importer from further engaging in import transactions. 19 U.S.C. section 1510. Such sanctions are sufficient to induce compliance.

In the case of an actual Customs violation, 19 U.S.C. section 1592 authorizes Customs to impose severe monetary penalties for both revenue and nonrevenue violations. For example, a grossly negligent quota violation could result in an assessment of up to 40% *ad valorem*. Under proposed section 215, a negligent failure to maintain or retrieve a demanded document could subject an importer to a similar penalty of 40% *ad valorem*. There is no justification for such massive penalties for a negligent recordkeeping infraction. Although the bill provides for mitigation proceedings under 19 U.S.C. section 1618 as in the case of section 1592, no standards for the exercise of Customs' discretion are provided. Despite cautionary language in the House Report, this provision invites potential abuse. House Report at 103. Therefore, CITBA strongly urges Congress to delete or substantially modify section 215.

I11C. *Seizures*—Customs is authorized to seize merchandise imported contrary to law. 19 U.S.C. section 1595a(c). This subsection was introduced by Congress to enhance Customs' narcotics interdiction capability. However, Customs has cast the net wide, as it were, for example, by seizing textiles or apparel imported under a visa for the wrong quota category or because of a country-of-origin marking discrepancy. Section 224 would amend the provision by delineating those circumstances in which Customs is authorized to seize merchandise.

The amendment is beneficial in that it distinguishes those instances in which seizure rather than detention is appropriate. CITBA endorses the purposes of the amendment. However, new 19 U.S.C. section 1595(a)(c)(4) refers to merchandise "imported or introduced contrary to a provision of law which governs the classification or value of merchandise . . . ." The statement is ambiguous and erroneously suggests that disputes involving classification or value involve violations of law. Also, CITBA notes that there are carefully designed federal and state statutory schemes regarding intellectual property rights. Several of these areas, particularly patents, trademarks, copyrights, and mask works, also have significant bodies of case law. Similarly, there is extensive judicial precedent involving questions of trade secrets and trade dress. Any significant expansion of intellectual property remedies should not be undertaken without considering its propriety within these existing bodies of law.

D. *Section 1592 Amendments*—Section 221 of the bill would amend 19 U.S.C. section 1592 by redefining when a Customs investigation is deemed to have commenced for purposes of the prior disclosure provision by eliminating the existing objective test and substituting a subjective and imprecise time when any Customs official obtained information which caused him or her to "believe" in a "possibility" that a violation occurred. Currently, the event is defined in the Customs regulations. 19 C.F.R. section 162.74(d)–(e). This definition was the result of extensive public debate and avoids unnecessary ambiguities such as those that would result from the proposed amendment. The new definition would make the determination subjective and could discourage affected parties from making prior disclosures and voluntary tenders, a circumstance which would have a negative effect on the revenue. CITBA maintains that the current regulation is appropriate and is as reasonably specific as possible in the circumstances. CITBA opposes any effort to vitiate this regulatory provision, and therefore opposes the redefinition in section 221.

The statute of limitations for claims under 19 U.S.C. section 1592 is set forth in 19 U.S.C. section 1621. The courts have interpreted 19 U.S.C. section 1592(d) to give Customs a cause of action for unpaid duties which resulted from a violation, despite the finality of liquidation. Customs' position has been that claims for duty under this section are unrestrained by the same statute of limitations that applies

to attendant penalty claims. Section 266 of the bill would make clear that where duty and penalty liability are linked, they are subject to the same statute of limitations. The House Committee expressed its intent that this provision provide importers with certainty regarding liability for duties in this context by requiring Customs to initiate suit promptly or be foreclosed from recovery. House Report at 137. CITBA supports the amendment but contends that it is merely a clarification expressing the current state of the law. One court has properly held that claims for duty arising out of section 1592(d) are limited by 19 U.S.C. section 1621. *United States* v. *RCA Corp., Consumer Electronics Division,* 5 ITRD 1807 (S.D. Ind. 1983). CITBA asks the Senate Committee to recognize this authority in its report.

Section 1592 does not define fraud, and there is no pertinent amendment in H.R. 5100. Nevertheless, the House Report comments on section 221 expressed the Committee's expectation that importers discharge their obligations with "reasonable care." Further, the Report recites the current Customs' guidelines defining the levels of culpability under section 1592, that is, negligence, gross negligence, and fraud. 19 C.F.R. section 171 App. B. The Committee endorsed these definitions and *obiter dicta* from *United States* v. *Thorson Chemical Corp.,* Slip. Op. 92–84 (May 28, 1992), in which the court stated that it is guided by the case law and Customs' regulations in construing these terms. House Report at 106–109. CITBA is dismayed by this expression by the House Committee, and urges the Senate Committee to reject the interpretation and to adopt a definition for fraud which makes clear that it requires specific intent.

The private sector and CITBA have consistently disagreed with Customs concerning the definition of fraud in section 1592. Customs' definition would make fraud a general intent offense requiring "knowledge" plus the deliberate acting or failing to act as required by law. The "knowledge" required entails only an awareness of the inaccuracy of a statement without any sense that the false statement or omission could have a material effect on duty assessment, admissibility, or a law enforced by Customs. CITBA has maintained that fraud is a specific intent violation. Also, apart from the *dicta* in *Thorson Chemical,* the courts have recognized that section 1592 is a specific intent statute. For example, in *United States* v. *Daewoo International (America) Corp. et al.,* 12 CIT 889, 696 F.Supp. 1534 (1989), the court, in distinguishing section 1592 from 18 U.S.C. section 1001 (false statements to government officials), stated that the latter may not embrace the requisite *mens rea* to establish an intent to defraud under section 1592 so as to support Customs' claim for partial summary judgment under section 1592 in the civil case based on collateral estoppel arising out of a guilty plea. 12 CIT 896.

CITBA submitted extensive comments to Customs in response to the proposed regulatory reinterpretation of the fraud provision. 54 Fed. Reg. 36960 (Sept. 6, 1989). Upon request, CITBA will submit to the Senate Committee a copy of its analysis. Because of the House Report's discussion, CITBA believes it important for H.R. 5100 to contain a definition of fraud for purposes of section 1592 which reflects what had been Customs' regulatory definition prior to 1986, that is, acts or omissions "deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States." Such a definition would make clear that 19 U.S.C. section 1592 is a specific intent provision.

E. *Drawback Penalties*—Section 1592 does not cover duty drawback claims. However, it is a crime to deliberately file false drawback claims, 18 U.S.C. section 550, and a knowing violation, equivalent to gross negligence, could create civil liability under the False Claims Act, 31 U.S.C. section 3729 *et seq.* Nevertheless, Customs believes that it needs additional enforcement powers to discourage fraudulent drawback claims if it is to automate the process and selectively review claims.

To achieve this purpose, section 222 of the bill would create a new section 593A of the Tariff Act of 1930, 19 U.S.C. section 1593A. Section 1593A largely tracks section 1592. Since section 1593A contains the due process protections for which CITBA and private industry strived in the Customs Procedural Reform and Simplification Act of 1978, CITBA does not oppose the provision in principle. Also, section 1593A would provide the exclusive civil drawback penalty, thus eliminating civil claims under any other provision of law. This too is an important safeguard which would alleviate multiple liability for the same offense.

Unlike section 1592, section 1593A has no provision for gross negligence. However, section 1593A would introduce a separate penalty for what are characterized as repetitive violations. However, the circumstances which constitute repeat violations are left ambiguous, and the House Report does not clarify the point as to section 1593A although repetition as a pattern of negligent conduct is addressed as to section 1592. House Report at 108. Drawback claimants tend to model subsequent claims on the first claim which they file on the reasonable assumption that if their first claim qualified, it must have been done correctly. If a claimant were negligent

in the initial filing, Customs could deem the second and subsequent claims to be repetitive and subject the claimant to greater penalties than those that would apply for ordinary negligence. CITBA believes that the sense of Congress is that a repeat offense does not occur until after Customs has notified a party that a prior filing is incorrect in a material fashion. Any other interpretation would do violence to the informed compliance policy of the bill. In the section 1592 context, Customs sometimes deems repeated negligent conduct to constitute gross negligence, and CITBA knows of no instances in which this interpretation has been abused. Therefore, to avoid ambiguity and potential abuses in the application of section 1593A, CITBA recommends that the repetitive violation provision be either clarified, or more appropriately, deleted and replaced with a gross negligence provision to parallel that of section 1592.

Section 222 creates a drawback compliance program comparable to the record-keeping compliance program created in section 214 of the bill. The contemplated certification program reflects a policy to foster compliance with drawback procedures. In effect, it would replace a penalty claim with a warning notice as to an initial negligent act or omission. CITBA views this program as an enlightened alternative to what could become excessive penalty claims for otherwise minor discrepancies.

III. DRAWBACK

By closing gaps in the law, section 232 of the bill would encourage the utilization of drawback. These provisions reflect a concurrence between Customs and several trade associations that have had an abiding interest in the drawback law.

Generally, CITBA endorses the amendments with the following observation. In modifying the same condition drawback provision to cover what will be known as "unused merchandise," the substitution standard has been changed from "fungible" to "commercially interchangeable." The House Report explains that this change is to permit substitution of merchandise which is not necessarily "commercially identical" as defined by Customs. House Report at 116, 117. The Customs regulations presently define fungible as not only "identical" but "interchangeable in all situations." 19 C.F.R. section 191.2(l). Therefore, it is not clear that the term commercially interchangeable is substantively different from "fungible."

CITBA believes that the substitution standard should be defined with greater clarity. The House Committee discussed criteria for determining commercial interchangeability which reflect those to which Customs has resorted in determining whether merchandise is of the "same kind and quality" for purposes of section 1313(b) substitution manufacturing drawback. However, the House Report did not specifically acknowledge this connection. House Report at 117. Perhaps that term should be adopted. On the other hand, Congress might define "commercially interchangeable" with greater particularity to avoid uncertainty. CITBA suggests that the term reflect the critical properties of the substituted materials for most commercially recognized uses, rather than subjective preferences or suitability for various fugitive uses. In other words, substituted merchandise need not be interchangeable in all situations or have identical values. A suitable definition could appear in the statute. Alternatively, the Senate Committee might urge Customs to promulgate a definition which expresses these criteria.

STATEMENT OF THE DEPARTMENT OF THE TREASURY

Mr. Chairman and Members of the Senate Finance Committee:

On behalf of the Department of the Treasury, it is my pleasure to advise yo[illegible]f our strong support for the Customs Modernization and Inf[illegible]ed Compliance Act, as now contained in Title II of H.R. 5100, the Trade Expansion Act of 1992.

In view of the recommendation of the President's senior advisors that he veto H.R. 5100, we urge this Committee to take steps to ensure that the passage of Title II of H.R. 5100 be separated so that it may be considered and passed as independent legislation.

My office and the Customs Service have been involved in discussions with the Joint Industry Group, other segments of the trade community and members of Congress and their staff in developing Customs modernization legislation. After a hearing and several mark-up sessions by the House Subcommittee on Trade of the House Ways and Means Committee, I am pleased to announce Treasury's support for the Customs modernization provisions of H.R. 5100 that the Committee approved.

Working toward a consensus Customs modernization bill has not been an easy process, but it has been a process that has worked. This legislation has the support of virtually every member of the trade community. Even those groups that categorically opposed the Customs modernization legislation when it was first proposed have now formally indicated their support for this measure in its current form. The opportunity to act on this spirit of cooperation must not be wasted.

Consensus has been reached among disparate groups with competing interests, in large part, because this legislation is critical. Simply put, current Customs law has become, in many respects, outdated. Technology, in the form of automation and electronic processing, has developed in ways that the drafter the current Customs statutes could not have foreseen. The measure before you will allow Customs to utilize new tech which will aid in enforcement and update business pract' name just a few benefits.

Archaic procedures waste our resources and, r waste industry's time. The benefits to our economy modernization would bring, taken by itself, merits passage of this legislation. Its enactment will provide the Customs Service with the tools to be more responsive, efficient and effective. These steps, in turn, will enable our trade community to become more competitive.

The time for action is now. Last year a trillion dollars worth of goods passed through our borders; by the end of the decade, it is expected to be two trillion. In 10 years, we expect nearly 65 million passengers to come through our ports -- twice as many as today.

For the past two hundred years, the Customs Service has been at the forefront of tariff issues a[illegible]d on the front of trade law compliance. Enactment of this ne[illegible]egislation is crucial if the Customs Service is to continue to carry out its mission and fulfill its responsibilities.

In light of the recommendation of the President's senior advisors that he veto H.R. 5100, I strongly encourage you to enact this Customs modernization legislation, separate and independent from H.R. 5100. The Department will provide you with whatever support is required to ensure that this legislation is enacted before the end of this Congress.

STATEMENT OF NISSAN NORTH AMERICA, INC.

INTRODUCTION

Nissan North America, Inc. is a wholly-owned subsidiary of Nissan Motor Company, Ltd. of Japan, the world's fifth largest producer of motor vehicles. We submit this statement for the hearing record for ourselves and on behalf of three other Nissan companies (hereafter "Nissan") doing business in the United States: Nissan Motor Manufacturing Corporation U.S.A., Nissan Motor Corporation in U.S.A., and Nissan Research and Development, Inc.

Nissan Motor Manufacturing Corporation U.S.A. (NMMC), located in Smyrna, Tennessee, builds Nissan passenger cars and pick-up trucks for customers in the United States and Canada. NMMC has just completed a major expansion of production capacity and has begun building the company's third U.S.-made model, the Altima, a family-size sedan that compliments the compact Sentra passenger cars and Nissan pick-up trucks the company already produces. Also this year, NMMC will begin supplying stampings and engines to Ford Motor Company for the Nissan-designed compact family van Ford will assemble and that both Nissan (the QUEST) and Ford (the VILLAGER) will sell. This expansion will bring NMMC's total production capacity to 450,000 units and its employment to almost 6,000 people. Capital investment in NMMC's Tennessee manufacturing operations now stands at $1.2 billion.

Nissan Motor Corporation in U.S.A. (NMC), located in Carson, California, is the distributor of new Nissan motor vehicles in the continental United States. NMC employs 2,400 Americans in its operations. The approximately 1,200 dealers who sell Nissan vehicles, 60 percent of which will be made in the United States once NMMC's production of the Altima reaches expected volumes, throughout the United States employ over 47,000 more people.

Nissan Research & Development (NRD) of Farmington Hills, Michigan is Nissan's American engineering arm. NRD last year opened an $80 million technical center whose mission is to design Nissan vehicles for the North American market and to work with American suppliers of automotive parts to bring them into Nissan's product development system. NRD is now staffing a binational engineering team some 400 strong, two-thirds American and one-third Japanese, to fulfill this mission.

This profile is clear evidence that Nissan is committed to making itself into a fully integrated American motor vehicle manufacturer and that we are well on our way to achieving that objective. Through our closely integrated design, R&D, manufacturing, importing, marketing and sales operations, Nissan is making a significant contribution to the U.S. economy that will only grow larger over time -- unless Congress enacts legislation that contains the protectionist provisions of H.R. 5100 (passed by the House on July 8) aimed at the motor vehicle sector.

This statement addresses four topics:

I. The domestic content requirements mandated by H.R. 5100.

II. The motor vehicle import quota mandated by H.R. 5100.

III. The proposal to increase the tariff on Multi-purpose Passenger Vehicles (MPVs) from 2.5% to 25%.

IV. Certain issues raised by witnesses testifying before the Committee at its hearing on July 30, 1992.

I. The Automotive Domestic Content Mandates of H.R. 5100 Would Drive U.S. Trade and Economic Policy Down a Dead-End Road.

In the name of ensuring Japanese automotive companies achieve the parts purchasing goals they announced at the time of President Bush's visit to Japan in January, H.R. 5100 would establish discriminatory domestic content requirements for Japanese-owned auto manufacturers in the United States.

The bill would accomplish this by: (a) mandating U.S. Government monitoring of the business operations of (exclusively) Japanese-owned automotive manufacturers in the United States; (b) measuring their purchases from *non-Japanese-owned* American parts supplier companies; (c) deeming the failure of any Japanese-owned automotive manufacturer to achieve an automotive parts content ratio of 70 percent from non-Japanese-owned supplier firms a violation of section 301; and (d) trigger retaliation against products made by the violating firm's parent corporation.

This stunningly bad idea was added to H.R. 5100 when the measure was being debated on the House floor. In fact, the amendment was made public only days before the debate on H.R. 5100 took place and thus it did not receive the sort of scrutiny that should be given to a provision of such consequence. The Finance Committee does have an opportunity to thoroughly examine this provision and, following its review, should reject it.

1. Domestic content laws constitute terrible public policy.

There are good reasons why eliminating domestic content requirements, a type of investment performance requirement, has been among the top U.S. objectives vis-a-vis Mexico in the NAFTA and vis-a-vis other countries in the Uruguay Round negotiations. Domestic content requirements distort purchasing decisions that would otherwise be driven by market forces. In the process they threaten to compromise the competitiveness of both the producers at which they are aimed and the producers they are intended to help, setting in motion a process that will inevitably lead, as it has in every country that embraces performance requirements, to demands for higher levels of trade protection.

Nissan Motor Manufacturing Corporation, U.S.A. (NMMC) in Smyrna, Tennessee produces vehicles that are sold in the most competitive U.S. market segments, compact and mid-size passenger cars and light trucks. To succeed, NMMC must source the most competitive parts and components available to it and it identifies these parts and components by applying four stringent sourcing criteria: quality, price, timeliness of delivery, and suppliers' product development capabilities. Were NMMC forced by law to compromise these criteria to achieve an arbitrary domestic content threshold established by Congress, NMMC's competitiveness would be jeopardized. So also would the competitiveness of non-Japanese-owned U.S. supplier firms who would understand that they would not have to be the world's best in order to win business.

2. The domestic content requirement in H.R. 5100 is highly discriminatory, making it doubly objectionable.

This provision -- including the monitoring of business operations, the content requirement, and the sanctions -- would apply *only* to Japanese-owned U.S. auto

manufacturers. It would not apply to the Big Three. It would not apply to BMW that recently announced plans to build U.S. manufacturing facilities. Compounding these elements of discrimination, the bill counts only parts made by *non-Japanese-owned* U.S. auto parts suppliers as qualifying toward the 70 domestic parts content. (H.R. 5100 requires that parts made by "U.S. manufacturers" account for at least 70 percent of the content of vehicles produced by Japanese-owned automakers in the U.S. U.S. manufacturers are defined as "manufacturers other than those that are Japanese-owned or controlled.")

This kind of blatant discrimination overturns decades of U.S. policy of national treatment and non-discrimination among foreign investors. It would violate U.S. international obligations to extend national treatment to all foreign investors. It would discourage future foreign investment from all sources and jeopardize the fair treatment of U.S. investment abroad. Finally, and most importantly, it would clearly harm some Americans -- those employed by Japanese-owned or controlled automotive supplier firms -- to benefit other Americans -- those employed by U.S.-owned and other foreign-owned automotive supplier firms.

3. The sanctions applied for failure to meet the domestic content requirement would distort severely section 301, establish a dangerous precedent, and jeopardize the jobs of Americans.

Section 301 is designed to identify and obtain the elimination of *foreign* government barriers to U.S. *exports*. This provision would apply Section 301 to the conduct of *American* firms *in the United States*: the failure of Japanese-owned U.S. automotive manufacturers to meet a domestic parts content requirement. Its effect would be to restrict trade, not expand it.

This is an unprecedented and dangerous principle which, when emulated by foreign governments as it almost certainly would be, would do great harm to U.S.-based multinational companies.

As we interpret this provision, the sanction for a U.S. company's failure to meet the bill's domestic parts content requirement is retaliation against the products of that company's foreign parent corporation. In other words, if NMMC failed to achieve the 70 percent threshold, exports from Nissan in Japan would be restricted, most likely by the imposition of prohibitive (100%) tariffs. If that retaliation were to be targeted at parts and components NMMC buys from Nissan in Japan, it could disrupt severely NMMC's production. Some of the parts NMMC imports are purchased in quantities that require much larger production runs than NMMC purchases to be cost-competitive. As a result, these parts could not be sourced in the United States except at a huge cost penalty. In addition, virtually *all* parts would require several years lead time to resource. If the retaliation were to be targeted at imports of Nissan vehicles, NMMC's operations would also be put at risk because the Nissan dealers who are the sales outlet for NMMC's production depend upon access to a full range of models for their survival. Nissan dealers could not survive selling only the three models NMMC produces.

4. The provision does not in fact merely "codify" goals set by Japanese auto companies in January but rather distorts and expands them.

The automotive provisions of H.R. 5100 create all this mischief in the name of ensuring implementation of the commitments in Japan's Action Plan announced in January 1992, including the voluntary parts purchasing goals set by Japanese auto companies. H.R. 5100 does not faithfully represent those goals, however. Rather it distorts and expands them.

In January, 1992, Japanese automakers announced *voluntary* goals for their U.S. subsidiaries to increase U.S. procurement from about $7 billion in FY 1990 to about $15 billion in FY 1994. The announcement said that American companies were expected to supply 70% of procurement by the U.S. affiliates by FY 1994, while only about 30% of parts purchases would be imports. The announcement was premised explicitly on a 50% expansion of U.S. production by Japanese-owned U.S. auto companies from FY 1990 to FY 1994 and upon the expectation that U.S. parts suppliers would continue to make their "best efforts" to meet the stringent purchasing criteria of Japanese-owned companies.

H.R. 5100 would transform these voluntary goals into mandates, imposed by the U.S. Government and enforceable by retaliation, that the "United States parts content" of vehicles produced by Japanese-owned auto manufacturers in the United States will be at least 70% by the end of FY 1994. This transformation is an unwise distortion of the January undertakings for several reasons:

- *First*, there is a huge difference between a voluntary goal based on a business plan and an arbitrary domestic content law. Transforming *voluntary* goals of private companies into a *mandatory obligation* enforceable by retaliation is a powerful *disincentive* for companies to set voluntary goals in the future.

- *Second*, the goals are different. Seventy percent of procurement from American suppliers is not the same as a requirement of 70% "United States parts content" for vehicles produced as defined in the legislation. The bill includes a definition of American suppliers that excludes *Japanese-owned* American suppliers. Moreover, auto companies buy parts from outside suppliers not only for inclusion in new cars that they build but also for aftermarket service parts.

- *Third*, the mandate disregards totally the conditions set forth in the January goals, particularly that U.S. production would increase by 50 percent.

- *Fourth*, the legislation would impose a formula for measuring compliance -- the formula for determining the North American content of automotive products under the NAFTA -- that does not yet even exist. Thus there is no way of determining exactly what the 70% mandate in the bill would mean as a practical matter and whether it is consistent with the voluntary goals of the Japanese companies.

II. The Imposition of Severe Automotive Import Restrictions Makes No Sense.

The architects of the mandate in H.R. 5100 that USTR negotiate formal restrictions on imports of Japanese motor vehicles claim their *intent* is to "freeze" Japan's current automobile VRA at the level set in 1992 by the Government of Japan -- 1.65 million units -- for so long as the European Community restricts imports and sales of Japanese vehicles. Whatever the authors' intent, their legislation mandates the negotiation of a 1.65 million unit limit upon "motor *vehicles*," which by common interpretation includes trucks as well as the passenger cars (including, of course, Multi-purpose Passenger Vehicles) covered by Japan's VRA.

In 1991, Japan exported to the United States 1.763 million passenger cars and .312 million light trucks for a total of 2.075 million vehicles. An overall limit of 1.65 million vehicles would constitute a reduction in exports from 1991 of 425,000 units, or 20 percent. By any yardstick this constitutes a dramatic cut-back that would have severe ramifications for the U.S. automotive market and American consumers.

If we have learned anything from our experience during the 1980s about the consequences of quantitative limits on automotive imports, we learned they are counterproductive and that they lead to higher prices and reduced consumer choice. The Finance Committee should reject any attempt to impose such restrictions.

III. There Is No Legitimate Basis to Increase the Tariff on Minivans and Sport Utility Vehicles to 25%.

The Committee should reject the pleading of the Big Three U.S. auto- makers to raise the tariff on Multi-purpose Passenger Vehicles (MPVs) -- minivans and sport utility vehicles -- from 2.5% to 25% by misclassifying them as "trucks" rather than as "cars."

We recently addressed this issue in a statement submitted to the Committee July 31, 1992 in conjunction with its consideration of miscellaneous tariff legislation. In summary:

1. The Big Three's call for "regulatory uniformity" is both nonsensical and hypocritical. Different government agencies classify these vehicles differently because they have different purposes and apply different criteria. Imposing a definitional straight jacket would make no sense. Moreover, if the Big Three were sincere in the demand for "uniformity," they would not have championed legislation in the House that exempted MPVs produced by non-Japanese companies (Volkswagen and Range Rover) from reclassification.

2. Significant adverse trade policy consequences would follow from misclassifying and raising the tariffs on MPVs. There is a strong international consensus that MPVs are properly classified as passenger cars; flaunting this consensus would threaten the interests all U.S. exporters have in the proper classification of traded goods. Reclassification also would constitute an outright violation of U.S. international obligations and subject the United States to claims for compensation or subject U.S. exports to retaliation. Finally, reclassification would hinder U.S. efforts to conclude successfully the Uruguay Round.

3. Consumers will pay a high price for this additional protection for the Big Three. Raising the tariff on MPVs from 2.5% to 25% would increase the price of imported MPVs, depending upon the model, from $2,000 to $6,000. Depending upon how high the Big Three in turn raise their own prices, the 25% tariff could severely restrict, if not totally eliminate, imports from this market segment. Consumers will pay a double penalty: fewer choices and higher prices.

IV. At its July 30 hearing, the Committee on Finance was subjected to a litany of fictitious propositions advanced by Ford Motor Company, The Chrysler Corporation, the United Auto Workers, and the Automotive Parts and Accessories Association which warrant at least some comment.

Proposition 1: Because the United States has a large bilateral trade imbalance with Japan and because a large part of that imbalance is accounted for by automotive products, trade policy actions aimed at automotive products are justified.

It is a time-honored tradition: protectionists trying to justify unjustifiable trade policy actions in the name of protecting the balance of trade. But pretensions of high-minded purpose are too thin a disguise to hide protectionist pleadings. Though time-honored, the tradition is a thoroughly discredited one.

The United States has an external deficit because of the imbalance between savings and investment (a savings deficit) in our domestic economy. That imbalance is reflected in a trade imbalance with Japan because (a) Japan has a domestic imbalance between savings and investment (a savings surplus) that is the mirror-image of our own and (b) Japan is a highly competitive producer of products in high demand by American consumers (relative to products of other countries), especially including motor vehicles. Our global external deficit is a legitimate concern but one we can only fundamentally address by domestic macroeconomic adjustments. Bilateral, sectoral imbalances have no relevance for economic or trade policy.

Trade policy actions can change the composition of our external imbalance but not its size. That, of course, would be quite acceptable to Ford, Chrysler, the UAW, and APAA. But trade restrictions come at a high price to the rest of the U.S. economy, something that should be totally unacceptable to Congress.

Proposition 2: Because Europe restricts imports of Japanese vehicles, the United States must also lest it, the world's "only open market," become the "dumping ground" for all Japan's millions of units of "excess production capacity."

Visions of the United States being overrun by millions of additional Japanese-made cars and trucks pouring out from Japanese factories run amok and turned away from closed European borders is certainly a frightening prospect. There is only one thing wrong with this picture: it is as realistic a prospect as Godzilla sacking Detroit.

In the first place and most important, the volume of sales of Japanese cars in the United States is determined not by supply but by demand. It is particularly ironic that Ford, Chrysler, and the UAW are seeking this kind of protection at a time when the Big Three are gaining market share and their executives are publicly predicting that this trend will continue. In the long run, market restrictions will do nothing to help the Big Three improve their competitiveness. The only way to stay competitive is to build products that consumers, and in this case American consumers, *want* to buy.

Also important, the consistent trend in exports of Japanese vehicles to the United States for the past six years has been consistently *down* not up, from 2.30 million units in 1986 to 1.76 million units in 1991. The reason, of course, is that Japanese companies have transferred production from Japan to the United States. Nissan exports, for example, have fallen from 578,000 in 1982 to 340,000 in 1991. The 238,000 vehicles Nissan no longer exports from Japan to the United States are being built in Tennessee. NMMC-built sales in 1991 totalled 243,000. VRA or not, there is no reason to expect this trend will change.

Proposition 3: The net economic impact of Japanese-owned automotive plants in the United States is to destroy two jobs for every one job they create and to reduce GDP by $2 for every $1 they add.

This is Detroit's version of "new math" for which no evidence exists outside the fertile minds of Big Three and APAA lobbyists. What few footnote references for these claims exist in other Big Three/APAA documents ultimately trace back to a Chrysler lobbying pamphlet that simply asserts their validity while providing no evidence whatsoever.

In considering this issue, it is important to recall that its larger context: *declining* automotive industry employment *independent of* foreign investment in "new entrant" manufacturing facilities. Employment in the U.S. auto industry has been in a downward secular trend since the late 1970s. The industry in 1990 employed 212,500 fewer people

than in 1978. Three explanations for this trend have been offered by analysts: gains in productivity and increased outsourcing by "traditional" domestic manufacturers (both a reflection of the "traditional" industry's efforts to become competitive) and rising imports of vehicles until they peaked in 1986. Whether "new entrant" automotive manufacturers constitute a fourth factor contributing to this secular trend in declining employment, or *whether they are ameliorating it,* is a matter of debate.

The only "independent" analyses of the employment effects of "new entrant" automotive manufacturers of which we are aware are a series of studies undertaken by the General Accounting Office (See: GAO/NSIAD-88-111 of March, 1988; GAO letter to Senator Lloyd Bentsen of June 27, 189; and GAO/NSIAD-91-52 of October, 1990). The GAO pointed out that new entrant manufacturers are more efficient than traditional manufacturers and therefore provide fewer assembly jobs and that the new entrant companies use more imported components and therefore support fewer supplier jobs in the United States. The *key point* the GAO emphasized in each of its studies is that "whether the Japanese-affiliate operations lead to net job losses or gains is highly dependent on the extent to which their production displaces the production of other U.S. automakers instead of imports, **a factor that cannot be empirically projected.** (emphasis supplied) The GAO also notes that with respect to this displacement ratio "Opinions range from nearly 100 percent displacement to almost none." In its original study in 1988, the GAO concluded:

> Using a relatively high rate of 85 percent (that is, assuming 85 percent of the production of "new entrant" manufacturers displaces sales by "traditional" U.S. manufacturers rather than imports) yield an estimate of about 45,000 jobs lost. At lower displacement rates, potential net job losses are reduced until, **at about 60 percent, the Japanese affiliated automakers' operations create more jobs than are lost. If no displacement occurs, there would be a net gain of about 112,000.** (See GAO/NSIAD 88-111 page 4.) (emphasis supplied)

By the time the GAO undertook its review of the situation in 1990, it had modified its calculation, saying that "at 80 percent displacement, the job loss would be 24,000," a substantial reduction from the 45,000 job loss the GAO associated with an 85 percent displacement ratio in 1988. They key factor explaining the change from 1988, said the GAO, was the increase in parts purchasing by Japanese-owned automotive manufacturers in the United States.

While it is not possible, since it depends upon assumptions that cannot be empirically defended, to say conclusively that the net employment and GDP impact of Japanese automotive companies is positive, several conclusions are indisputable. The first is that the replacement of imports from Japan by production in the United States, even at domestic content levels somewhat below those of the Big Three, is an unqualified net plus. The second, and the GAO has empirically demonstrated this, is that the economic impact of Japanese-owned automotive companies has been growing over time. And the third is that substantial non-quantifiable economic benefits are accruing to the U.S. economy from Japanese automotive investment that include the transfer of technology as well as the transfer of management skills and production organization know-how to the Big Three who are *unquestionably* benefitting in their quest to become competitive producers.

CONCLUSION

Three broad principles underlie the automotive provisions of H.R. 5100: The first is that the key to creating competitive industries in the United States is to shield them from competition. The second is that discriminating against foreign investors will better serve U.S. interests than a policy of national treatment. And the third principle is that U.S. interests will best be served by abandoning reliance upon the market in determining trade

outcomes and instead substitute the wisdom of government officials. Each of these principles is exactly the mirror image of a principle that ***should*** guide U.S. policy.

It is certainly appropriate and understandable that Congress is concerned about the automotive industry. The industry has a large and undeniable impact on the overall economy. And while the task of making structural adjustments to achieve competitiveness is difficult under any circumstances, it is especially difficult during a recession. H.R. 5100 cannot make that adjustment easier, however. In fact, while it may seem counterintuitive to some and frustrating to others, the most constructive action Congress can taken in the trade policy arena is to take no action at all.

STATEMENT OF THE ORGANIZATION FOR INTERNATIONAL INVESTMENT

I am writing on behalf of the Organization for International Investment (OFII), a non-profit association representing nearly 50 U.S. subsidiaries of foreign owned companies. Our members represent many of the largest foreign investors in the United States employing thousands of workers across the country. Many of our members' assets or annual revenues (or both) from their U.S. operations exceed billions of dollars. OFII's primary aim is to support and defend longstanding U.S. policies that favor an open international investment system.

The Senate Committee on Finance recently held hearings on U.S. trade policy and the merits of pending trade legislation, including measures designed to open foreign markets to U.S. exporters, such as Super 301, Special 301 and sectoral trade proposals. We wish to submit this written statement for inclusion in the hearing record. Our comments are directed to a pending legislative initiative, H.R. 5100 including the so-called Gephardt-Levin Amendment, which the House of Representatives approved on July 8, 1992.

Trade Policy

OFII objects to H.R. 5100 as a matter of trade policy. Among its principal provisions, the bill extends and expands the authority of the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974 to retaliate against other countries' trade practices. The bill's purpose is to open foreign markets to U.S. exports. We believe retaliation will have the opposite effect. Moreover, threatening retaliation while the Uruguay Round negotiations are still in progress risks jeopardizing measures that hold out vastly greater prospects for more liberal trading practices and more open markets for U.S. exports.

Investment Policy

As a matter of investment policy, also, the Gephardt-Levin Amendment is strongly objectionable. In addition to imposing quotas on automobile imports, the Gephardt-Levin

Amendment requires that automobiles manufactured at U.S. based facilities of Japanese owned companies contain at least 70% parts produced by United States manufacturers by the close of Japanese fiscal year 1994. The term "United States manufacturers" is defined to include manufacturers located in the United States other than those that are Japanese owned or controlled. The Gephardt-Levin Amendment discriminates between U.S. automobile manufacturers and Japanese transplants, as well as Japanese and other U.S. or foreign owned parts manufacturers in the United States. It ignores the principle of national treatment and in effect imposes a performance requirement on these Japanese owned enterprises in the United States.

National Treatment

National treatment is the cornerstone of U.S. international investment policy and the foundation of investment relations between the United States and other industrialized nations. The principle requires the United States to accord foreign owned enterprises operating in the United States treatment under U.S. laws no less favorable than that accorded in like situations to domestically owned enterprises. The principle is embodied in the National Treatment Instrument of the 1976 Declaration on International Investment and Multinational Enterprises adopted by the Organization for Economic Cooperation and Development (OECD). The United States has entered into Treaties of Friendship, Commerce and Navigation with a number of OECD countries that specifically require the United States to accord national treatment with respect to commercial, industrial, financial and other business activities of foreign owned enterprises within the United States.

National treatment is a principle that the United States has actively sought to include in other agreements relating to international investment relations, such as the U.S.-Canada Free Trade Agreement and various bilateral investment treaties the United States has negotiated, and is in the process of concluding, with countries throughout the world. The United States has sought to make the principle the basis of the investment chapter of the North American Free Trade Agreement (NAFTA) and, along with other industrialized nations, has supported the principle in the text of the agreement on Trade-Related Aspects of Investment Measures (TRIM's) in the Dunkel draft of the Uruguay Round negotiations.

Performance Requirements

The United States has also actively sought to prohibit other countries from imposing performance requirements such as local content restrictions on U.S. investment abroad. Bilateral investment treaties, the draft NAFTA investment chapter and the Dunkel draft on TRIM's all contain provisions prohibiting performance requirements. The United States has also proposed including prohibitions on trade distorting performance requirements in a wider OECD investment instrument. More frequently imposed by lesser developed countries in a misguided effort to spur local production,

performance requirements have tended to drive away investment. Instead of promoting growth and development, they make production uneconomical, so that companies choose to locate their facilities elsewhere. Indeed, by setting the required percentage of U.S. produced parts higher than the rule of origin provision in the U.S.- Canada Free Trade Agreement and higher than the percentages generally discussed in the context of the draft NAFTA automobile chapter, the Gephardt-Levin Amendment could well encourage Japanese companies to move manufacturing jobs that are now in the United States to Canada or Mexico.

International Investment Principles

It is important to emphasize that these international investment principles do not just protect foreign investment in the United States. The U.S. Government has argued so vigorously in support of these principles because U.S. companies have benefited so much from them. It is also important to emphasize that the investment policy implications of the Gephardt-Levin Amendment are not related exclusively to the automobile sector or to Japan. They affect all foreign owned enterprises in the United States, including those in other sectors and those whose share ownership is from other countries. The Gephardt-Levin Amendment's derogation from national treatment and the imposition of performance requirements invite other countries to take similar actions against U.S. companies' investments abroad.

The Gephardt-Levin Amendment threatens the jobs of the thousands of Americans working at Japanese owned automobile facilities and parts manufacturers in the United States. Moreover, if enacted, the Gephardt-Levin Amendment would be a very real deterrent to future foreign investment in the United States. Violating the United States' national treatment obligations, it would cast a cloud of uncertainty over the United States' treatment of all foreign-owned enterprises. It would undercut U.S. arguments to advance the principle of national treatment, as well as arguments against the imposition of performance requirements, in all the organizations addressing international investment issues in which the United States takes part.

We urge the Senate to reject the Gephardt-Levin Amendment when the Senate takes up consideration of H.R. 5100 or any similar trade legislation that may be introduced.

Very truly yours,

James A. Palmer
Chairman
Investment Committee

STATEMENT OF THE PACIFIC MERCHANT SHIPPING ASSOCIATION

The Pacific Merchant Shipping Association (PMSA) is a regional association which represents 41 carriers doing business in Pacific Rim countries. PMSA is also a member of the United States Transportation Coalition for an Effective U.S. Customs Service. We are asking your help in separating Title II from The Trade Expansion Act of 1992. This portion, also called the Customs Modernization Act (CMA), should be considered separately on its own merits since it deals with international trade processes not trade policy issues.

U.S. Customs and the business community have worked hard to reach a consensus bill which now has broad support. Passage of the CMA is particularly important to ocean carriers. CMA is needed to legalize the automated systems now widely in use. Carriers as well as U.S. Customs have spent millions of dollars to develop automated systems. These automated systems are currently in use on a "test" basis. As a result carriers are still required to maintain dual systems—paper and electronic—which is costly and burdensome for our industry. For example, carriers must produce a paper manifest, which for a typical vessel averages 2000 pages. They are required to give U.S. Customs two copies (4000 pages) of this document every time a vessel arrives at a U.S. port because it is "the law."

That this document is not widely used is illustrated by the following U.S. Customs figures:

- 80% of foreign tonnage arriving in the U.S. is currently processed using the Automated Manifest System (AMS).
- 92% of entry summaries filed by Customhouse brokers are processed through the Automated Broker Interface (ABI).
- 50% of the duty tax collected is processed through the electronic payment system.

All of these transactions are currently accomplished on "test" systems. The electronic processes handling this many transactions should be legitimized without delay by the changes to current law contained in the Customs Modernization Act.

Electronic trade processes are important to the entire transportation industry as well as the American consumer. These processes:

- Promote American trade competitiveness.
- Eliminate geographic and administrative barriers to trade.
- Support "just in time" merchandising concepts widely in use today.
- Promote predictability of Customs practices.
- Allow Customs to target specific shipments for inspection while the remainder move efficiently and quickly through international gateways to the market place.
- Do not eliminate jobs, but allow people to focus on customer needs and quality service.

This legislation also:

- Removes the archaic statutory language which impedes operational flexibility as business needs change.
- Ensures greater communication between the Customs Service and the trade community in areas where Customs has the authority to change practices, procedures or rulings.
- Encourages compliance through the dissemination of information and the use of Customs penalties in a manner which fosters rather than restricts normal trade.

Please give your support to the passage of this important legislation. The transportation industry has been doing electronic business under "test" systems since the mid 1980's. This legislation is not about trade policy; it deals with the trade process. It is now time to change the law.

STATEMENT OF TOYOTA MOTOR SALES, U.S.A., INC.

I. INTRODUCTION

Toyota Motor Sales, USA, Inc. ("TMS"), the U.S. distributor of both imported and domestically produced Toyota vehicles, appreciates this opportunity to present written testimony to the Senate Finance Committee regarding certain trade-related legislative proposals now before Congress. In particular, TMS would like to share with the Committee its perspectives and concerns regarding provisions of H.R. 5100, the "Trade Expansion Act of 1992," and H.R. 4318, the "Miscellaneous Tariff Act of 1992."

To set the backdrop for TMS's comments on H.R. 5100 and H.R. 4318, this testimony will describe briefly (1) the shift by Japanese automakers to U.S. production, (2) Toyota's operations in North America (particularly its production and purchasing activities), and (3) Toyota's goals for the future.

II. BACKGROUND

A. U.S. imports of Japanese vehicles have fallen steadily as U.S. investment by Japanese automakers has increased.

Japanese auto exports to the U.S. have declined every single year since FY 1986. Total vehicle exports from Japan to the United States in FY 1991 were down 40% from FY 1986 to a little over 2 million units. Furthermore, one of every twelve passenger cars imported from Japan and sold in the United States last year was sold under a Big Three nameplate.

Along with the sharp decline in exports of vehicles from Japan to the United States, the trade deficit in vehicles has dropped as well. Despite the yen/dollar revaluation, inflation and the introduction of Japanese luxury cars, the vehicle deficit last year was 18% below the 1986 level.

In addition to the declines in annual export volumes and the vehicle trade deficit, the Japanese government recently announced that it will cut the VER level to 1.65 million passenger cars for the fiscal year starting April 1, which is over 100,000 cars below recession-level imports last year. The clear prognosis is that overall Japanese vehicle exports to the United States will continue to drop in the future, even as the United States emerges from the recession.

The decline in Japanese vehicle exports to the United States has been paralleled by substantial Japanese automaker investments in the U.S. market. Over the last decade, Japanese automakers have invested over $6 billion in U.S. plants and equipment, which represents one of the largest shifts of manufacturing and production technology in history. Some 32,000 Americans working in these plants built 1.5 million cars and trucks last year, 16% of which were sold by the Big Three.

With hard work and a firm commitment to local sourcing, a shift of R&D and design activities to the United States and major model changes, U.S. sourcing of parts, materials and equipment by Toyota and others has increased dramatically over the past few years. From $1.7 billion in FY 1985, Japanese automaker purchases of U.S. parts and materials

increased to $9 billion in FY 1990 and will grow to $19 billion in FY 1994 -- a $10 billion increase over four years. In 1990, the auto parts deficit with Japan fell nearly 8% to $9.8 billion. Last year, it dropped another 6% to $9.2 billion.

B. Toyota has made a substantial contribution to the U.S. economy.

Over the past seven years, Toyota has made a major commitment to automotive production, procurement, engineering and design in the United States. In 1986, nearly all of the Toyota cars and trucks sold in the U.S. were manufactured in Japan. In 1991, some 45% of the Toyota and Lexus brand cars sold in the U.S. were built in North America, including about 72% of Toyota's Corolla and Camry sales. Facilities to build 100,000 light trucks in the United States were completed in the latter part of 1991. Today, Toyota has seven manufacturing plants in North America: three vehicle manufacturing plants, three vehicle parts plants, and a fork-lift plant.

Toyota's three major vehicle manufacturing plants are the NUMMI joint venture with General Motors; Toyota Motor Manufacturing, USA; and Toyota Motor Manufacturing Canada:

- New United Motor Manufacturing, Inc. (NUMMI), which was established in 1984 as a joint venture between Toyota and General Motors, was Toyota's first step towards becoming a major vehicle manufacturer in the United States. Located in a once-boarded-up GM plant in Fremont, California, NUMMI has the capacity to produce 240,000 Toyota Corolla and Geo Prizm models. Toyota and GM initially invested $700 million in NUMMI, employing some 3,000 workers, many of whom had been laid off when the GM plant closed. Last August, NUMMI completed a $340-million plant expansion, adding capacity to produce 100,000 light trucks and raising total employment to about 3,850 workers. Recently, NUMMI announced an additional $339-million investment to upgrade the Corolla/Prizm line for new model production this fall.

- Toyota Motor Manufacturing, USA (TMM) currently employs some 4,000 workers at its Georgetown, Kentucky, plant -- with capacity to produce 240,000 Camrys and 300,000 four-cylinder engines a year. Construction is now underway at TMM on a project which will expand production capacity by an additional 200,000 vehicles. This project, scheduled for completion in late 1993, will bring total investment to over $2 billion and is expected to raise the level of employment to nearly 6,000 American workers. More recently, on January 28, 1992, TMM announced a $90-million expansion of its power train plant to produce up to 200,000 V-6 engines -- currently being imported from Japan -- and to increase axle production to some 420,000 units.

- Toyota Motor Manufacturing Canada, Inc. (TMMC) is the third major Toyota vehicle manufacturing plant in North America. TMMC is a $400-million (Cdn.) investment located in Cambridge, Ontario. TMMC has the capacity to produce 65,000 Corolla passenger cars, over 70% of which are exported to the United States.

C. Toyota intends to expand steadily its U.S. production, investment and procurement.

1. Toyota will increase the ratio of local production to sales.

Toyota's goal is for over 50% of its U.S. vehicle sales (cars and trucks) to be manufactured in North America by the mid-1990's. Toyota expects its North American production capacity to rise from roughly 100,000 units in 1987 to about 660,000 units by the end of 1994.

2. Toyota will increase its exports of U.S.-made vehicles and engines.

In addition to building for the U.S. market, Toyota intends to expand exports of U.S.-made Toyota vehicles and engines. On February 7, 1992, Toyota announced plans to export some 45,000 U.S.-built Camry and Corolla vehicles in 1992. Toyota is now exporting left- and right-hand-drive Camry station wagons from its Kentucky plant to several world markets, including Europe and Canada, and will begin exporting right-hand-drive station wagons to Japan in late August 1992. These wagons will account for about 40% of Toyota's total U.S. vehicle exports. In addition, TMM/Kentucky recently started exporting vehicle engines to Japan, with an anticipated volume of 100,000 units per year.

3. Toyota will expand its U.S. research and design efforts.

To facilitate local production, procurement and other operations, Toyota is involved in a $220-million expansion of U.S. R&D, vehicle design and testing facilities. One project, part of a recently completed $41-million expansion of technical facilities in Ann Arbor, Michigan, is a laboratory for testing and evaluating U.S. auto parts and materials. The specific purpose of this laboratory is to facilitate the participation of U.S. suppliers at the early, "design-in" phase of our future models.

4. Toyota will greatly expand its purchases of U.S. parts and materials.

Any suggestion that Japanese automakers buy only from a limited number of "related" parts suppliers (so-called "keiretsu" companies) is belied by the facts regarding Toyota's procurement practices. Total Toyota purchases of U.S. parts and materials for export to Japan and for U.S. production have increased from $1.1 billion in FY 1988 to $3.14 billion in FY 1991, and the amount is targeted to reach as high as $5.2 billion in FY 1994. Of the amount projected for FY 1994, some $3.8 billion in parts and materials will be purchased for our U.S. vehicle manufacturing plants, and $1.4 billion worth will be exported to Japan.

In March 1989, the number of U.S. suppliers to Toyota entities in Japan and in the United States totaled 129. In September 1991, total U.S. supplier relationships had more than doubled to 303, some 249 of which were U.S.-owned suppliers or joint ventures in which one partner was a U.S.-owned company.

At TMM/Kentucky, the expansion in U.S. purchasing of parts and materials has been dramatic. At production start-up in 1988, TMM sourced 550 parts from 92 U.S. suppliers. For the new 1992 model Camry, TMM is sourcing 1,350 parts from a total of 174 U.S. suppliers and now purchases over 80% of its steel in the United States. Domestic content (EPA formula) at TMM is currently about 75% for the 1992 Camry, compared with 60% at production start-up in 1988.

Although Toyota does not believe that nationality of ownership of a U.S. supplier employing American workers should be relevant, Toyota's U.S. suppliers are overwhelmingly U.S.-owned. Of TMM's 174 U.S. suppliers:

114 - are U.S.-owned companies, with a few Canadian companies;

29 - are U.S./Japanese joint ventures;

7 - are U.S./Japanese M&A (Companies which were U.S.-owned when TMM formed a supplier relationship and were later acquired by a Japanese firm. Example: Firestone);

18 - are Japanese "transplant" suppliers; and

6 - are Toyota group companies (Companies which are included in the consolidated financial statement of Toyota Motor Corporation/Japan. Example: Nippondenso).

Based on owner demographics, 82% of the TMM supply base consists of U.S-owned companies and joint ventures where one of the partners is a U.S.-owned firm. Nearly two-thirds, 65%, of TMM's suppliers are wholly U.S.-owned.

* * *

In summary, Toyota is committed to servicing the U.S. market with high-quality products increasingly produced here in the United States. This commitment is demonstrated by the fact that, in little more than five years, Toyota has invested over $3 billion in the United States, 45% of its car production for the U.S. market has been shifted to North America, and relationships have been built with more than 300 American suppliers. Continued progress, however, as well as Toyota's production and procurement goals for the future, are seriously threatened by H.R. 5100 and H.R. 4318.

III. THE TRADE EXPANSION ACT OF 1992

The "Trade Expansion Act of 1992" (H.R. 5100), which was passed by the House of Representatives on July 8, 1992, contains an array of what its sponsors call "market opening" trade measures. In truth, however, H.R. 5100 will contract trade, not expand it.

Most significantly, the bill would require the Administration to negotiate a "voluntary" restraint agreement (VRA) with the government of Japan to restrict Japanese vehicle imports (not only passenger cars as under the current VRA, but also trucks) to 1.65 million. This level would be more than 20% below 1991 recession levels -- resulting in the elimination of more than 425,000 Japanese vehicles from the U.S. market -- and would be frozen for the rest of the decade.

In addition, the bill would discriminate against hundreds of American companies, and tens of thousands of their American workers, simply because they have Japanese ownership. It would impose on U.S. auto factories with Japanese ownership (and presumably U.S.-Japan joint ventures) a domestic content requirement not imposed on factories owned by the Big Three. Moreover, the only parts that would count in meeting that domestic content requirement would be those made by "U.S. manufacturers," specifically defined by H.R. 5100 to exclude parts made by American workers in the transplant factories, parts made by American workers in U.S.-Japan joint venture companies and parts made by U.S. manufacturers with Japanese ownership.

A. H.R. 5100 would victimize American consumers.

Japanese auto imports were subjected to "voluntary" export restraints during the 1980s. American consumers ended up paying, on average, an extra $1500 per car ($13 billion in 1984 alone), as U.S. manufacturers took advantage of artificially limited supply to raise prices. If imports are rolled back below 1991 levels and frozen for the rest of the decade, the "protectionist premium" that consumers will pay as the ecoromy emerges from recession will be far higher, totalling many tens of billions of dollars. Moreover, competition and consumer choice will be severely restricted.

B. H.R. 5100 discriminates against some American auto companies and their American workers based solely on nationality of ownership.

H.R. 5100 would legislate a 70% domestic content requirement for U.S. auto plants owned or controlled by Japanese automakers (presumably including joint ventures) not imposed on auto factories owned by the Big Three or BMW's newly announced plant in South Carolina. Such mandatory domestic content requirements are precisely the kind of barriers to U.S. trade and investment that the United States is seeking to eliminate in international negotiations.

Indeed, the domestic content requirement imposed upon transplant automakers by H.R. 5100 is a triple threat: (1) it is, in effect, a "Buy America" provision legislating the procurement practices of private U.S. companies; (2) it covers some U.S. companies and not others based solely upon their ownership, violating the principle of "national treatment" which the United States promotes around the world; and (3) it singles out one country for these restrictions, i.e., Japan, thereby violating the "most favored nation" principle of non-discrimination among our trading partners.

C. H.R. 5100 does not simply "codify" undertakings made by Japanese auto companies in January, as its sponsors claim; it mischaracterizes and substantially expands those undertakings.

In January 1992, Japanese automakers announced voluntary goals for their U.S. subsidiaries to increase their U.S. procurement from about $7 billion in FY 1990 to about $15 billion in FY 1994. The announcement was premised explicitly on a 50% expansion of U.S. production by Japanese transplants from FY 1990 to FY 1994 and on U.S. suppliers making their "best efforts."

H.R. 5100 transforms a voluntary undertaking by the Japanese auto industry -- to double the amount of U.S. parts and materials purchases by Japanese transplant facilities in the United States and to increase local procurement to about 70% of total parts and materials purchases -- into a mandatory requirement, imposed by the U.S. government and enforceable by retaliation, that the "United States parts content" of transplant vehicles will be at least 70% by the end of FY 1994. This is an unwise, unworkable and unfair distortion of the January 1992 undertakings. Transfor ng a voluntary undertaking by private companies into a mandatory obligation enforceable by retaliation from the U.S. government is a powerful disincentive for companies to undertake such voluntary action plans in the future.

D. H.R. 5100 treats thousands of American workers as not "American" for purposes of meeting its content test.

Only parts purchased from "United States manufacturers" would count toward meeting H.R. 5100's domestic content

requirement. But H.R. 5100 defines United States manufacturers to exclude those that are Japanese owned or controlled, even if they are located in the United States. As a result:

- The work of 32,000 Americans employed by transplant factories across the United States, including the parts they make in-house, would not count as American.
- Materials such as steel, purchased from American manufacturers and fabricated into parts in the factory, would not count as American.
- Parts manufactured by American workers in hundreds of U.S.-Japan joint ventures in the U.S. would not count as American.
- Parts purchased from companies like Firestone, which has operated in the United States since the turn of the century and employs 29,000 American workers, would not count as American -- because Firestone is now owned by Bridgestone, a Japanese company.

This element of H.R. 5100 pits some Americans against other Americans. It is blatantly unfair to Americans employed by U.S. automakers and to parts suppliers that have Japanese equity, and it is destructive to the communities which have been revitalized by such investments.

E. The 70% U.S. "parts content" is a far stricter test than a 70% overall U.S. content for these vehicles.

This is true under either the CAFE formula or the U.S.-Canadian Free Trade Agreement formula. Those formulas include the labor of workers in the transplant factories as well as other costs of production, such as American steel and other materials fabricated and assembled in-house. These American inputs do not count toward the 70% parts content requirement under H.R. 5100.

F. The 70% parts content test provided in H.R. 5100 is unmeetable and therefore, will result in retaliation.

Despite the fact that most transplant auto manufacturers in the United States are producing vehicles with an overall U.S. content at or over 70%, the 70% "U.S. parts content" formula defined in H.R. 5100 is impossible to meet; more than 30% of the parts content of vehicles consists of parts made in-house (e.g., engines) and parts purchased from American companies with Japanese ownership or control. Therefore, H.R. 5100 will result in automatic retaliation, threatening the jobs of the thousands of Americans employed in these companies.

Under H.R. 5100, if the content requirements are not met, the U.S. government must take action against imports produced by the parent corporations of the transplant vehicle manufacturers not in compliance. If such retaliation is directed against imported parts, it would jeopardize the continued full-scale operation of transplant factories in the United States for which the parts are intended. If it is against Japanese vehicle imports, the prohibitive tariffs imposed under section 301 retaliation (100% duties) also could result in the downsizing of transplant manufacturing in the United States, because the auto dealers that are the sales outlets for both transplant and imported vehicles would be denied the full range of models essential to their economic survival.

G. For the first time, H.R. 5100 would apply Section 301 -- designed and intended to address foreign government barriers to U.S. market access -- to the American conduct of American companies.

Failure of U.S. transplants to meet the domestic content obligations imposed by H.R. 5100 would trigger retaliation against their foreign parents. This is an unprecedented and dangerous principle, which could be applied by other governments to restrict exports from the United States if U.S. subsidiaries in those countries do not purchase enough from local suppliers. The effect of this approach is to restrict trade, not expand it, since it retaliates against a foreign company's exports if its local subsidiaries do not achieve the prescribed local sourcing levels. As the world's largest international investor and exporter, the U.S. has more to lose than to gain from this approach.

H. H.R. 5100 would harm the U.S. auto parts industry.

The U.S. operations of Japanese automakers are the most promising new market for U.S. auto parts manufacturers. Japanese automakers recently announced plans to increase their overall procurement of U.S. parts from $9 billion in FY 1990 to $19 billion (for U.S. production and export to Japan) in FY 1994. This goal, however, can only be achieved if Japanese automakers are able to proceed with their U.S. expansion plans. If transplant production is restricted as a result of the inability to achieve unmeetable content requirements, these U.S. procurement goals cannot be realized. Moreover, H.R. 5100 pits some U.S. suppliers against others, based upon the source of their equity.

I. H.R. 5100 would be emulated by our trading partners, to the detriment of U.S. exporters.

The United States, as the world's largest overseas investor and exporter, has a strong interest in promoting and preserving the principle of national treatment around the globe. That principle would be turned on its head if H.R. 5100, which discriminates against some U.S. manufacturers solely on the basis of nationality of ownership, becomes law. The U.S. could hardly complain if our trading partners emulated our trade policy and discriminated against U.S. investments abroad for the purpose of giving their domestic industries "breathing space."

* * *

While purporting to give relief to the Big Three, H.R. 5100 would cause tremendous harm to American consumers, workers and suppliers, as well as threaten U.S. exports and investment abroad. It would demonstrate that the U.S. is not committed to either free or fair trade. In the long run, it would prove detrimental to the Big Three as well, which have made leaps in quality, efficiency and price-competitiveness -- from competition, not protectionism.

IV. THE MISCELLANEOUS TARIFF ACT OF 1992

The "Miscellaneous Tariff Act of 1992" (H.R. 4318), which was approved by the House of Representatives on July 31, 1992, contains a very detrimental provision: Section 2121B, which would raise the tariff on imported Japanese minivans and sports utility vehicles from the current 2.5% to a prohibitive 25%. This provision, if it becomes law, will cost American consumers billions of dollars, blatantly violate U.S. obligations under the GATT and thereby subject other American industries to authorized retaliation, and virtually eliminate from the U.S. market some of the safest family vehicles.

A. The 25% tariff is a tax on American consumers.

Imposing a 25% tariff on these popular family vehicles -- ten times the current tariff, which the United States adopted in international negotiations -- would result in price increases of up to $3,739 for imports and $1,331 for domestic models, according to a recent study by Citizens for a Sound Economy. Such staggering price increases would virtually price these vehicles out of the U.S. market.

Among the family-oriented vehicles that would be affected by this 25% tariff are minivans such as the Toyota Previa and the Mazda MPV and sports utility vehicles such as the Nissan Pathfinder, Toyota 4-Runner, Isuzu Trooper and Mitsubishi Montero. Most buyers of these vehicles are middle-class families. The minivan, for example, generally has replaced the station wagon as primary family transportation.

Considering that the Big Three presently have almost 90% of the U.S. minivan market, such added protection for Detroit would give the Big Three a virtual monopoly for these vehicles, allowing them to raise prices on their models as they have done before under the umbrella of import protection. According to USA Today, U.S. automakers responded to earlier auto quotas on Japanese vehicles by "rais[ing] the average price of a U.S. car from 33% of median household income in the '70s to 50% last year" (Feb. 20, 1992). When this 25% tariff proposal was considered in 1989, Chrysler Chairman Lee Iacocca sent a telegram to all his dealers: "This means that the Suzuki Samurai, the Mazda MPV [multipurpose vehicle] and all other MPVs will be faced with the 25% duty, which to you translates to a $2,000 per truck cost penalty to your competitors." The price increases possible on domestic models today would be even greater because base prices have risen.

B. The 25% tariff would produce little, if any, new government revenue.

Exorbitant 25% tariffs on these imported vehicles virtually would eliminate them from the U.S. market, resulting in a loss of revenue to the U.S. Treasury, not a gain. The imposition of a 25% tariff on two-door sport utility vehicles in 1989 resulted in their virtual disappearance from the U.S. market. In 1991, roughly 29,000 imported two-door sports utility vehicles were registered in the United States, down from approximately 130,000 in 1988. In the case of Toyota, zero two-door 4-Runners will be imported into the United States in the 1993 model year. This is down from sales of over 28,000 such vehicles in 1988. As these models disappear from the U.S. market, duty revenue will be lost, not gained.

C. The objective of the 25% tariff is not uniformity of regulation but elimination of competition.

Proponents assert that this provision merely is intended to treat these vehicles as trucks for tariff purposes because they are classified as trucks for safety and emissions purposes. However, as the New York Times noted in a recent editorial (March 4, 1992), "the two laws have different purposes."

Under the Harmonized Tariff Schedule (HTS), to which the United States and every other major trading country adheres, minivans and sports utility vehicles are classified as "motor vehicles principally designed for the transport of persons," dutiable at 2.5%. Any owner of a Dodge Caravan or Toyota Previa knows that they are intended to carry people, not cargo. The Big Three, tellingly enough, have consistently advertised their minivans and sports utility vehicles as

passenger transport. Every other major auto-producing nation classifies these models as passenger vehicles and none impose tariffs approaching 25%. (The tariff on these vehicles in Japan is zero.) Indeed, even the current U.S. treatment of two-door sports utility vehicles as trucks has been rejected by our trading partners as inconsistent with the HTS.

Although these vehicles are designed principally to carry passengers, safety and environmental regulations take account of the fact that they have greater load, passenger carrying and towing capabilities and, therefore, impose different safety and emission standards for both domestic and imported models. In fact, the regulatory trend for safety has been increasingly toward treating these vehicles as cars. The recently enacted NHTSA Authorization Act of 1991 calls for multipurpose vehicles to meet passenger car side impact protection, rollover and airbag requirements. NHTSA is in the process of requiring all sports utility vehicles and vans to meet passenger car safety standards. The recently passed Clean Air Act amendments require light trucks under 3,750 pounds to meet the same emission standards as passenger cars. Thus, while the safety and emissions regulatory trends are in the direction of treating these vehicles as cars, these legislative proposals would move tariff treatment in exactly the opposite direction.

Among the minivans currently on the market that meet all federally mandated new car safety standards is the Toyota Previa. This amendment would have the perverse effect of pricing one of the industry safety leaders out of the market.

D. The 25% tariff explicitly discriminates against Japan.

Totally undermining the regulatory uniformity argument is the fact that H.R. 4318 would carve out an exception from the 25% tariff for vehicle lines that either (1) were entered into the United States before December 1963 and every year between 1963 and 1992, or (2) were entered during 1992 and are the product of a "small supplier country" (defined as a country that sold less than 10,000 minivans and sport utility vehicles in the United States during 1988). The only conceivable purpose of such a carve-out is to ensure that the weight of the tariff reclassification falls solely on Japan. European automakers will qualify for the carve-out.

Not only is such targeting of Japan for punishment illegal under the GATT (as discussed below) and under the U.S.-Japan Treaty on Friendship, Commerce and Navigation, it lays bare the true intent of this provision: not "regulatory uniformity" but protection from Japanese import competition.

E. The 25% tariff is GATT-illegal and could lead to GATT-authorized retaliation, costing thousands of Americans their jobs.

The United States has made a commitment to abide by its obligations under the General Agreement on Tariffs and Trade (the "GATT"). Strict adherence to the GATT is especially critical at this time, when the United States is engaged in the difficult Uruguay Round of GATT negotiations. The United States hardly can expect its trading partners to respond to its demands that they liberalize their trade policies if the United States ignores its clear GATT commitments.

The 25% tariff provision of H.R. 4318 clearly violates the GATT in at least two respects. First, the tariff would constitute the withdrawal of the current "bound" tariff of 2.5%, which is not permissible under the GATT unless the United States offers equivalent concessions. The context and timing of the tariff now in effect, as well as the history of the current classification, remove any doubt that sport utility vehicles and passenger vans were intended to be classified at the 2.5% rate.

Second, by clearly discriminating against Japan, the tariff reclassification would blatantly violate the most-favored-nation principle of the GATT, under which GATT signatories must treat all other signatories equally. Such discrimination based upon nationality would severely undermine the foundations of the GATT and almost certainly would result in GATT-authorized retaliation.

Under the GATT, the United States would be required either to lower tariffs on other imports from Japan in an equivalent amount, or face retaliation against American exports, which have been the strongest element of the U.S. economy in recent months. This could cost thousands of American jobs in the most competitive sectors of our economy.

F. The job impact of the 25% tariff in the U.S. auto sector itself could be negative.

While increased prices on domestic models might enhance Big Three profits, experience with past import protection clearly has demonstrated that higher prices dampen overall demand, producing few, if any, U.S. jobs. Indeed, over one-half of Chrysler's popular minivans are produced, not in the United States, but in Canada and would be exempt from the 25% tariff increase. In addition, elimination of these model lines would jeopardize the 4,000 U.S. dealers of imported multipurpose vehicles and the jobs of their 140,000 U.S. employees.

G. The 25% tariff will doom an otherwise worthwhile bill.

Except for Section 2121B, H.R. 4318 has much to recommend it. The bill primarily is designed to lower or suspend tariffs on goods generally not produced in the U.S. and thereby lower costs for U.S. producers and consumers. With the 25% tariff provision, however, H.R. 4318 faces an almost certain Presidential veto, even assuming that Congress ignores the serious problems raised by that provision and passes the bill. H.R. 4318 should stand on its own merits and not be used as a vehicle for protectionist, discriminatory legislation.

V. CONCLUSION

TMS commends the Committee for holding these hearings on the future direction of U.S. trade policy and legislation. It is clear, however, that H.R. 5100, and the provision of H.R. 4318 that would impose a 25% tariff on Japanese minivans and sports utility vehicles, point in the wrong direction. These bills would take the United States down the slippery slope of protectionism and discrimination based upon nationality of ownership. They would encourage retaliation by our trading partners and put Americans out of work. TMS urges the Committee not to lend its support to this kind of ill-conceived legislation.

STATEMENT OF THE U.S. BUSINESS & INDUSTRIAL COUNCIL

Thank you for the opportunity to address the critical issues of our trade policy and competitiveness. I serve as president of the U. S. Business and Industrial Council, a national conservative business advocacy organization supported by 1,500 business leaders from predominantly medium-size, American-owned manufacturing firms. Our mission is to help preserve American economic pre-eminence--not as an end in and of itself--but in order to guarantee our nation's values and security. Since this addresses itself more to the broad strokes of policy than to the specific provisions of any bill, my remarks will be largely conceptual. However, I reserve the right to address one very important issue — Most-Favored Nation trading status for the People's Republic of China -- specifically, later in this statement.

We are a solidly conservative organization and have been since we were founded to oppose the New Deal's National Recovery Act in 1933. Curiously, however, we have been viewed as apostates for some time now by our brethren on the right -- and, indeed, by many in the business community -- for questioning free trade orthodoxy, for perhaps being too concerned with the national interest in matters economic -- which, of course, gets in the way of the world according to classical free trade theory.

I am not calling for a return to old-fashioned protectionism, certainly. However, it is my contention that the Republican Party and American conservatives should be in the vanguard, leading the charge in defending America's economic security interests and advancing our economic interests internationally--in much the same vein that American conservatives helped restore our military supremacy during the height of the cold war. As economic power becomes more prominent in the overall geopolitical calculation, as economic security becomes indistinguishable from overall national security, inaction--throwing up a wall of theory and ignoring the challenges and threats--is tantamount to words and concepts that have always been repugnant to conservatives--words like "appeasement" and "disarmament."

To claim that "free trade" is the ideal and therefore, to unilaterally abide by its precepts will win out in the end, is simply not good enough--it is an unsatisfactory and unacceptable response.

Recently, I addressed the issue of competitiveness before a group of Washington interns. Joining me on the dais was a leading libertarian, someone whose intellect and principled convictions I very much respect. But he took issue with me when I criticized a prominent American CEO, who, a few years ago, told a congressional committee that "competitiveness" didn't mean anything to his company, because his was a global company that just happened to be headquartered in Ohio. I stated that every company in the world today must be competitive in terms of global standards of production and quality. Moreover, I remarked that it's important to attach the adjective, "American" to the term competitiveness, that we need to think in terms of American competitiveness.

My libertarian friend derided me for looking at economic competition as an Olympic competition--an oft-cited analogy. He said that competitiveness should not be thought of in terms of winning--that our goal shouldn't be to be first around the track; that we should look to increase the overall track speed so that all runners will run faster, so all people around the world will do well.

Well, that's all very noble and progressive. But imagine if, back in 1961, President Kennedy dispensed with his moving, dramatic speech declaring that America would be the first country to land a man on the moon, and that we would do this before the end of the decade was over. Suppose, instead, that JFK exhorted us to help all countries build a space program, and that it didn't really matter who was first, second or third on the moon! Even if we got to the moon first, I doubt that the latter speech would be as famous as the one Kennedy really delivered.

This is the kind of thinking, however, that is pervasive in both liberal and conservative circles on international economic challenges. It is reflected in the now infamous rebuke that CEA Chairman, Michael Boskin gave to American semiconductor leaders, when he said, in essence, that it didn't mater if America was number one in computer chips or number one in potato chips; that $100 of one is equal to $100 of another. In abstract terms, of course, he's right. But I don't want America to be a potato chip economy; I don't want her to be a banana republic. I want her to be a technological and military superpower which recognizes the fact that our military technology doesn't run on potato chips, chocolate chips or buffalo chips. It runs on microchips.

The central mistake made by those who revel in this brave new global era in which economic borders are rendered meaningless, where trade between the U. S. and Japan is no different than trade between Maine and California, is that it overlooks the fact that people still reside within societies--and that societies exist within the confines of national borders When those on the political right fall for the global mirage, they are forsaking a concept that has always been dear to conservatives and Republicans--sovereignty--in order to embrace what we use to mock as "globaloney."

I earlier drew an analogy between the economic competition we face today and the superpower competition during the cold war. I do not wish to make too much of the comparison. But the fact is that many smart people in America today--right, left, centrist--make a mistake with respect to international economic competition that is analogous to the mistake that those on the Right accused liberals of making during the cold war. How so?

Conservatives used to say that liberal State Department-types made a fundamental error in dealing with the Soviets. That error was in viewing the USSR as a member of the nation-state community, when, in fact, as Marxists-Leninists, the Kremlin rejected this concept. Consequently, the State department-types seemed repeatedly surprised when the Soviets broke treaties, engaged in perfidy and generally misbehaved.

Today, in conceptual terms, many leaders and opinion makers in America are committing a similarly fundamental mistake in viewing the world economy. They think that free markets and capitalism mean the same things to different countries. They do not. They fail to grasp that, having prevailed in the titanic struggle between capitalism and socialism, America today is in another kind of struggle that pits American-style entrepreneurial capitalism against **keiretsu** capitalism in Japan, Germany's financial-industrial combines, state-owned firms in France, the capitalist-developmental economies in East Asia, and so on.

Pat Choate, who has written on these different economic structures, explains it more eloquently than I can. However, let me just cite a few examples that vividly portray these differences. Such examples argue, in my opinion, for the crafting of a new American foreign economic policy--one that rejects knee-jerk free trade for the adoption of an enlightened trade policy which accepts other national economic structures as they are, not as we want them to be.

Take the case of Japan. The traditional disciplines of American-style capitalism which allow for true competition between economic enterprises (i.e., enforcement of antitrust laws, the requirement to earn profits and compete in open markets, the sanctioning of bankruptcy or takeovers, the ability of suppliers to extract fair prices), these disciplines simply do not apply to the large Japanese industrial concerns.

Thus, the president of Toshiba can announce that he is prepared to lose money for ten years in order to establish his company's dominance in flat-panel displays--what will become a multi-billion dollar industry--developed by American firms--and a key link in the high-tech food chain. Or Toyota can flood the world market with cars at a time of incredible world auto glut and the worst recession in automobiles ever. An executive with a Japanese electronics megafirm, one that makes TVs and will likely make flat panel displays--told a colleague of mine recently, "You know, we are still losing money on televisions that we sell in America. But we do so because we want the shelf space in your department stores so that we can sell our camcorders, and VCRs and CD players." (In short, the high value-added goods.)

Is this American-style capitalism? If that is the way Japan wants to structure its economy, fine. Let's not preach to them that our system is superior. But, likewise, let's not fall back on free trade as the response. It's not good enough.

Example Two: Is the more than 30 percent world market share that Airbus Industry today enjoys in the sale of certain commercial aircraft a result of practicing American-style capitalism? No one would contend such inasmuch as the four European governments behind the consortium have sunk $25 billion in subsidies into Airbus. As one analyst observed, Airbus has manufactured something like 600 planes, and they haven't made a profit on a single one. He went on to joke that Airbus could make more money if it opened an ice cream stand outside its headquarters. But I don't think the powers behind Airbus see a world with no economic winners, no economic Olympiad. Something tells me that Airbus is going for the gold--and Boeing and McDonnell-Douglas know it.

Example Three: Right now, Congress is once again debating whether or not to extend MFN status to the People's Republic of China. One of the aims in awarding this privilege to a non-GATT nation is to encourage its fledgling pockets of capitalism. But instead of us exporting our democratic values to China along with our goods, the Chinese are systematically closing their market to our goods while their exports to America surge. It looks to me like their aim is to run big trade surpluses with us so that they can get much-needed hard currency. So instead of us exporting our values to China, in effect, China is exporting the fruits of its system to America--one of which is the fruit of slave labor. In this sense, we don't have a foreign trade policy with the PRC, we have a foreign aid policy--that this year will ship about $12-$15 billion to the PRC in the form of a trade surplus. The foreign aid is being financed (again, in effect) by a jobs tax, that has put textile workers in South Carolina and shoe factory workers in New Hampshire in the unemployment line.

In 1980, Ronald Reagan asked the voters, "Are you better off today than you were four years ago?" It was a rhetorical question, and the voters answered it by defeating President Carter. This year, all other things being equal, that candidate who can best answer the following: ""How can you and your children have the good life enjoyed by prior generations of Americans?" will win the election. It's what I call the 1992 A.D. question--the American Dream question. It illustrates Americans' concern for the long-term, and implicit is this anxiety about the erosion of our economic sovereignty and our economic pre-eminence.

STATEMENT OF THE UNITED STATES TRANSPORTATION COALITION FOR AN EFFECTIVE U.S. CUSTOMS SERVICE

My name is Gary S. Taylor, and I am writing on behalf of the United States Transportation Coalition for an Effective U.S. Customs Service, as Secretariat to the Coalition.

USTC is a coalition of transportation associations consisting of (1) the Air Courier Conference of America, (2) Association of American Railroads, (3) Air Transport Association, (4) American Trucking Associations, and (5) the Pacific Merchant Shipping Association (representing 47 ocean carriers).

For the first time in transportation history, all modes of transportation (air, ocean, rail and truck) have formed a coalition to support a bill in Congress.

Mr. Chairman, committee members, and staff, we cannot over-emphasize the importance of this historic coming together of all modes of transportation in support of Title II in H.R. 5100, the "Customs Modernization and Informed Compliance Act."

The coalition supports modernization of the United States Customs Service, which is operating under an antiquated, transaction-based, as well as manual and paper-driven, system called the Tariff Act of 1930.

The need has never been greater to not only modernize the U.S. Customs Service, but to proceed even further and develop a new, periodic approach to importation, which promotes the efficient and effective-movement of goods into and out of the country, for the benefit of our ultimate customers, the people of the United States. Today, transportation services (not including warehousing, distribution, transportation manufacturing activities, etc.) represents 3.3%[1] of the total non-agricultural employment and 6.4%[2] of the total Gross National Product (GNP). We believe these numbers will continue to grow at an expeditious rate due to the globalization of companies and economies, the implementation of a North America Free Trade Agreement and other free trade agreements, as well as new concepts being developed and refined such as just-in-time manufacturing and retailing.

A "new order of things" is an eventuality—it will come about. Trade will become easier. As a result, U.S. business opportunities within the global marketplace will be unlimited. To help ensure the success of not only American business, but also the U.S. government in maintaining the role of leadership and innovation historically associated with the American "way of life." we request your support of Title II in H.R. 5100 as soon as possible.

USTC applauds the work that has been accomplished to date by Industry, the U.S. Customs Service, as well as the House and Senate Committees and their staffs. We strongly support the ideas in Title II in H.R. 5100, as it removes tactical issues for carriers from the law, which provides greater flexibility on the part of industry and government in responding to the constant changes occurring within international trade.

In closing, there has been much publicity and public comment on the question of America's ability to compete. The transportation industry, however, believes that if we continue to work together as a team, both industry and government, we have only begun to realize America's potential in the area of International Trade accomplishments.

STATEMENT OF THE GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

The Government of the United States Virgin Islands is pleased to have this opportunity to bring to the attention of the Finance Committee a problem that impairs the competitiveness of U.S. companies, workers and products.

Under a 36 year old determination by the United States Customs service ("Customs Service"), most products of the United States Virgin Islands cannot be marked with the "Made in the U.S.A." designation. This is the case even though these products are made in a U.S. territory, by American companies and American workers subject to the protections of federal wage, hour and safety laws. This restriction (which does not apply to Puerto Rico) robs the American-made products of the Virgin Islands of an important competitive advantage over foreign-made products. Indeed, there are recent instances in which U.S. companies have decided not to establish plants in the Virgin Islands based on the inability to use the "Made in the U.S.A." mark for Virgin Islands products.

The current restriction is based on a narrow and technical reading of the law. The Customs service has exempted Virgin Islands products from the affirmative country

[1] Statistics as per U.S. Commerce Department—1992.
[2] "Transportation in America" 1991.

of origin labeling requirements that apply to foreign products. However, Virgin Islands products that are marked with a country of origin cannot be labeled "Made in the U.S.A." This restriction is based on the fact that the Virgin Islands is technically outside of the U.S. customs territory, even though it is part of the United States for virtually all other purposes.

The Customs Service marking regulations are also inconsistent with the thrust of federal labeling statutes applicable to the textile, wool and fur industries. These statutes and the regulations which implement them permit (and in the case of textiles and wool require) that products in these industries that are made in the Virgin Islands be labeled "Made in the U.S.A." (or with similar language). The Federal Trade Commission ("FTC") enforces these industry-specific regulations.

The Government of the United States Virgin Islands urges the Committee to rationalize and clarify current law to permit all Virgin Islands products to bear the "Made in the U.S.A." mark. This important step will help improve U.S competitiveness and stem the loss of U.S. jobs to foreign jurisdictions.

CURRENT RESTRICTIONS ARE INCONSISTENT AND UNDULY NARROW

The use of the "Made in the U.S.A." designation for Virgin Islands products is governed by a patchwork of inconsistent laws and regulations, administered by different agencies.

The Customs service and the FTC share jurisdiction for regulating country of origin markings, such as "Made in the U.S.A." The Customs Service enforces marking restrictions imposed by the Tariff Act of 1930 (as amended), the Lanham Act, and the Virgin Islands Organic Act. The FTC regulates the use of "Made in USA" claims in product marking and advertising under the FTC Act for most industries, and under certain industry-specific statutes.

Customs service regulations provide that, unless excepted, every article of "foreign origin" imported into the United States shall be marked with the country of origin of the article. The Customs Service defines the Virgin Islands as a separate country for tariff purposes because it is outside of the customs territory of the United States. Because the Virgin Islands is a possession of the United States, however, Virgin Islands products are specifically excepted from the country of origin marking requirements. The exception does not apply, however, where Virgin Islands products are affirmatively marked to indicate that their country of origin is the United States. In a 1956 determination, the Customs Service ruled that Virgin Islands products that are marked "Made in the U.S.A." without indicating that their country of origin is the Virgin Islands may be banned from importation under the Lanham Act. This determination was based on the narrow, technical ground that the Virgin Islands is deemed a foreign country for tariff purposes because it is outside of U.S. customs territory.

The FTC applies different standards to country of origin labeling questions. Section 5 of the FTC Act, which is applicable to most industries, empowers the FTC to challenge "unfair or deceptive acts or practices" on a case-by-case basis. The Commission has applied its Section 5 powers to the issue of country of origin disclosure in numerous advisory opinions and a few litigated decisions during the post-World War II era.

The FTC has not definitively addressed whether Virgin Islands products may be advertised as "Made in U.S.A." The Commission's prior advisory opinions on country of origin matters, however, suggest that it is neither unfair nor deceptive to mark or advertise a product made in the Virgin Islands as "Made in the U.S.A." In addition, the more rigorous standards that the Commission uses today for evaluating whether a given trade practice is "unfair" or "deceptive" make it even less likely that the Commission would condemn Virgin Islands manufacturers that mark or advertise their products as "Made in the U.S.A."

The FTC has also published product-specific country of origin regulations under the Textile Fiber Products Identification Act ("TFPIA"), the Wool products Labeling Act ("WPLA"), and the Fur Products Labeling Act. These statutes protect producers and consumers from misbranding and false advertising in the specified industries. *See Bigelow-Sanford Co.* v. *F.T.C.*, 294 F2d 715, 719 (1961). Regulations under each of these statutes define the United States to include its possessions. The regulations adopted under both TFPIA and WLA appear to require domestic manufacturers to label their products with their country of origin. As a result, Virgin Islands textile and wool products must be labelled with "Made in the U.S.A." or similar language. These statutes and regulations confirm that it is not deceptive or unfair for Virgin Islands manufacturers to label their products "Made in the U.S.A."

The inconsistencies between the country of origin treatment of Virgin Islands manufacturers in different industries under the FTC and Customs Service regulations underscore the need for regulatory or legislative reform.

THE "MADE IN THE U.S.A." MARK PROVIDES A COMPETITIVE ADVANTAGE FOR U.S. PRODUCTS

The country of origin marking requirements were intended by Congress to provide an important competitive advantage for American-made goods over foreign products. *United States* v. *Ury, 106 F2d 28,29 (2d Cir. 1939). The "Made in the U.S.A." mark promotes the purchase of American-made goods by consumers who prefer products made in the United States. Id.*

Surveys show that the "Made in the U.S.A." mark influences the purchasing decisions of many American consumers. Last year, *Advertising Age* reported that 60 percent of consumers surveyed preferred goods "Made in the U.S.A." to foreign goods. Indeed, there is evidence that consumers today may attach more importance to the "Made in the U.S.A." label than they did only a few years ago. For example, survey results published in *U.S.A. Today* demonstrate that the number of consumers who stated that they had recently refused to purchase a product because it was foreign-made increased an astounding 85 percent between 1985 and 1989.

An ever increasing number of U.S. companies use the "Made in the U.S.A." mark to sell their products. "Made in the U.S.A." figures prominently in many advertising campaigns, including recent ads for Wal-Mart and the longstanding "Made in the U.S.A." campaign for apparel and home fabrics.

The "Made in the U.S.A" designation is also a significant factor for stateside companies exploring the possibility of establishing manufacturing plants in the Virgin Islands. The Virgin Islands Government has received inquiries concerning the "Made in the U.S.A." issue from U.S. companies interested in locating in the Virgin Islands. Indeed, the Government is aware of cases in which U.S. companies have decided not to establish plants in the Virgin Islands after learning that they could not use the "Made in the U.S.A." designation for products produced in the Virgin Islands.

VIRGIN ISLANDS PRODUCTS ARE 'MADE IN THE U.S.A."

The Customs Service's narrow, technical reading of the law does not promote the Congressional goal of providing a competitive advantage to American-made goods. Although the Virgin Islands is outside of U.S. customs territory, it is part of the United States in virtually all other respects. products manufactured in the Virgin Islands are produced in the United States by American workers subject to federal health, safety and welfare standards and protections.

As an unincorporated territory, the United States Virgin Islands is a part of the U.S.A. Its citizens are citizens of the United States and are entitled to vote. Its Governor and high officials must be U.S. citizens. The Virgin Islands has a Bill of Rights similar to that under the U.S. Constitution and certain provisions of the Constitution have been extended, by statute, to the Virgin Islands. Citizens and workers in the Virgin Islands are protected by federal regulatory statutes and standards—federal wage and hour laws, Occupational Health and Safety Act standards, environmental laws and other federal protections have generally been extended to the Virgin Islands by Congress.

Based on these many factors, it is neither unfair nor deceptive to label Virgin Islands products as "Made in the U.S.A."

CURRENT LAW SHOULD BE RATIONALIZED AND CLARIFIED

The Government of the Virgin Islands believes that the current restrictions against the use of the "Made in the U.S.A." designation are unfair and outdated and should be eliminated. The law should be clarified to permit all Virgin Island products to bear the "Made in the U.S.A." mark.

The current restrictions unfairly discriminate against American manufacturers and workers who happen to reside in the Virgin Islands. Stateside manufacturers and manufacturers in Puerto Rico may employ the "Made in the U.S.A." designation and avail themselves of the competitive advantage that this mark provides. Manufacturers in the Virgin Islands, however, generally are prohibited from using this designation. Because Virgin Islands manufacturers are generally subject to the same federal wage, hour and safety laws as their stateside counterparts, they have no undue advantage over other American producers. Thus, there is no good reason for continuing this distinction among American manufacturers.

The existing rules also unfairly discriminate against certain American products. As noted above, sector-specific labeling laws would permit the use of the "Made in

the U.S.A." designation for wool, textiles and fur produced in the Virgin Islands. Other Virgin Islands products, however, cannot bear the "Made in the U.S.A." designation. This distinction appears to result from an unintended gap in the laws; it has no basis in either logic or policy.

The current restrictions are also inconsistent with federal territorial policy. It is federal policy to encourage the economic integration of the economies of the Virgin Islands and the mainland. The Customs Service's narrow, technical reading of the country of origin requirements discourages such integration.

The Customs Service approach also fails to reflect the realities of the modern trade environment. At the time the Customs Service developed its current approach, federal agencies had concluded that a substantial segment of the buying public believed that a product that bore no country of origin label was made in the United States. This assumption may well be incorrect in today's world, given the massive penetration of imports into entire segments of the U.S. economy over the past three decades.

Finally, and perhaps most significantly, the current restrictions hamper the competitiveness of American companies, workers and products in the U.S. and world economies. permitting Virgin Islands products to bear the "Made in the U.S.A." label will help American products made by American workers (many of whom belong to U.S. unions) to compete against foreign goods. In addition, this change will provide the Virgin Islands with an important advantage in attracting Stateside firms seeking to establish new manufacturing plants—firms that might otherwise set up shop in low-cost foreign jurisdictions.

At the Committee's hearings of July 22, Chairman Bentsen repeatedly expressed his concern about the export of U.S. jobs by American companies. The increasing use of foreign workers by U.S. companies is a complex issue that will require detailed and comprehensive solutions. In its search for broad solutions to this issue, however, Congress should not loose sight of the many, seemingly small steps that it could take to reverse the alarming loss of American jobs to foreign workers. Removal of the current technical bar to the use of the "Made in the U.S.A." designation for Virgin Islands products is one such small but important step in stemming the loss of U.S. jobs.

The Government of the Virgin Islands appreciates the opportunity to comment on this important issue and looks forward to the working with the Committee to eliminate this impediment to the competitiveness of U.S. companies, workers and products.

RON DE LUGO
DELEGATE, VIRGIN ISLANDS

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

CHAIRMAN, SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

COMMITTEE ON EDUCATION AND LABOR

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

Congress of the United States

House of Representatives

Washington, DC 20515

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July 28, 1992

The Honorable Lloyd Bentsen
Chairman
Committee on Finance
204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On July 29, 1992, your committee will hold a hearing on proposed legislation to modernize the operations of the U.S. Customs Service. I would to like to request that no increases in the duty-free tourists purchases be included, and to recount for you and your committee how this issue was treated in the House of Representatives.

H.R. 3935, the Customs Modernization and Informed Compliance Act became the subject of hearings before the Subcommittee on Trade of the Ways and Means Committee on March 10, 1992. I strongly opposed Section 401 which would have increased the amount of duty-free purchases a U.S. resident returning from abroad or from Caribbean Basin Initiative countries could make by 250%. The ceiling for the U.S. Virgin Islands and the Pacific territories would have been increased by two-thirds.

I opposed these provisions because the average tourist already spends substantially less than the current duty-free allowances, and because the proposed increases violated the two to one territorial advantage in real terms, and in practical terms would make any difference meaningless. Raising the ceilings so far in excess of what the average tourist spends merges the three-tiered system into one, nullifying the economic incentives Congress has established for the U.S. insular areas and the CBI countries. Available data suggest that the current duty-free allowances are already high enough to exempt all but a small percentage of tourists from any duty at all on their personal purchases.

Studies conducted by the Virgin Islands Government indicate the average tourist spends less than $200 in the Virgin Islands, and that less than 3% of all visitors spend more than $600. U.S. tourists returning from CBI countries appear to have comparable spending patterns. Thus, any increase in the two ceilings would blur the current distinctions and effectively eliminate the duty-free incentives to travel and shop in the insular areas. Tourism accounts for more than 60% of the $1.5 billion economy of the U.S. Virgin Islands and generates more than 40% of its total employment. The erosion of competitive edge by duty-free ceiling increases would have a serious impact on the economy.

Since only a very small percentage of the travelling public would be in a position to take advantage of the proposed 250% increase in the personal allowances, it also raises the issue of fairness to the American taxpayer who is struggling to make ends meet in a time of severe recession. The wealthiest travellers would in effect be encouraged to spend even greater amounts on foreign luxury items, further exacerbating our trade imbalence.

Most importantly, Congress addressed the policy issues inherent in duty-free allowances barely two years ago in its reauthorization of the CBI. In a carefully balanced compromise, Congress established a third duty-free "tier" to encourage economic activity in the CBI countries, while adjusting the insular allowances to maintain their relative preference. Any increase in the ceilings would violate that compromise by setting the limits so high as to make it meaningless.

For these reasons, the Virgin Islands Government, the St. Thomas-St.John Chamber of Commerce and I opposed Section 401 of H.R. 3935. I also had several discussions with Trade SubcommitteeChairman Sam Gibbons to express my concern that insular policy issues were being inappropriately raised in what was supposed to be primarily a housekeeping measure to modernize customs administrative procedures. Chairman Gibons shared my concern, and the subcommittee agreed not to incorporate any changes in the duty-free ceilings. Nor were any ceiling increases adopted by the full committee or the House in its subsequent deliberations and passage of the legislation.

Mr. Chairman, I would respectfully urge you and your committee not to increase the duty-free ceilings, and I would request that this correspondence be made a part of the official record of your July 29 hearing on customs modernization.

I thank you for your kind consideration.

Sincerely,

Ron de Lugo
Chairman
Subcommittee on Insular
and International Affairs

RDL:smr

STATEMENT OF ZENITH ELECTRONICS CORP.

Pursuant to the Committee's Press Release #11–38 issued June 29, 1992, Zenith Electronics Corporation hereby submits formal comments in support of Senate action on a trade bill which will help open foreign markets and strengthen existing trade laws. In particular, we would like to direct the Committee's attention to the "Trade Expansion Act of 1992," recently reported out of the House Ways and Means Committee as H.R. 5100. The House bill has key provisions which, finally, promise to correct serious flaws in the administration of trade laws long accepted as a fixture of an orderly system of trade among nations. We believe it is of the utmost importance that the Senate act to adopt companion provisions in its trade bill.

I

Barely more than twenty years ago, color television was in its infancy. With most of the basic technology having been invented in the U.S.A., the industry was characterized by a sizable number of vigorous American companies competing energetically for business in the largest market in the world. Spurred by this competition, there was rapid technological progress and performance improvement, and prices quickly reached the level of affordability for the average American consumer. Indeed, the color television industry, led by such names as Zenith, RCA, GE, Motorola, Magnavox, Sylvania and Philco, was virtually an economist's model of industrial competition in sophisticated, high tech products.

Then began the flood of extremely low-priced imports, first from huge Japanese companies which completely controlled a significant home market and which, with substantial Japanese government support, were determined to maximize export production at virtually any cost. Armed with prices as low as one-half the home market price and far below competitively-determined prevailing prices in the U.S. market, and with inter-company coordination to assure risk-sharing, most of these Japanese companies accumulated market share not through product superiority, unique product innovation or marketing acumen, or even through low-wage or manufacturing efficiency advantages, but through aggressive, systematic international price discrimination—dumping. Soon other Asian companies, also with government support designed to jump-start a national industry, copied the dumping strategies of the Japanese companies. Prices in the U.S. market declined to unprofitable levels and, one by one, U.S. producers left the business or were bought out by their foreign competitors. Today Zenith is the only remaining U.S.-owned manufacturer of color tele-

visions. All the major players in the world color television and related industries are either Japanese, Korean or European-owned.

II

Zenith and others in our industry have, time and time again throughout this dismal period, tried to obtain relief under the U.S. antidumping laws to combat the unfair price competition that has thrown tens of thousands—potentially hundreds of thousands if foregone investments in other consumer electronics technologies are counted—out of work. However, despite a long history of clear-cut, indisputable findings and numerous apparent victories, those successes recorded by the domestic industry have been largely illusory: we keep winning battles and losing the war because of defects in the antidumping law and its administration.

Every time an antidumping duty order has been issued, the Far East TV producers have found a quick way to get around it. Our industry successfully prosecuted antidumping cases against producers of color television receivers located in Japan, Korea and Taiwan. However, the effectiveness of the antidumping orders was completely undermined when companies subject to the orders set up snap-together operations in the United States to assemble color TVs with imported components outside the scope of the orders.

These components included the single most expensive component, the color picture tube. In an effort to make the color TV antidumping findings more effective, unions representing workers in domestic picture tube plants, with the support of major U.S. tube producers, filed antidumping cases against Far East picture tube producers importing tubes from Japan, Korea, Singapore and Canada. Again, the cases resulted in the issuance of antidumping duty orders against color picture tube producers in all four countries.

On their face, the cases were successful. Color picture tube imports from the four countries plummeted, falling from their all-time high of more than 2.3 million units in 1986 to less than 165,000 units in 1991. Nevertheless, these apparently favorable trends proved meaningless because almost immediately after the picture tube antidumping orders went into effect, the Far East manufacturers began to divert millions of tubes to new color TV final assembly operations in Mexico where the tubes were placed in color Tva destined for the United States market. In 1991, exports of color picture tubes and TV kits containing picture tubes from Japan, Korea, Singapore and Canada to Mexico reached 2,785,000 units. Television sets with these tubes entered the United States without the payment of any antidumping duty on either the tube or the finished TV set.

III

In 1988, Congress tried to prevent this kind of evasion by including a new anti-circumvention/diversion provision as Section 781(b) of the Omnibus Trade and Competitiveness Act. Our industry tried to make this provision work. Unions representing workers in the domestic tube industry filed a petition under new Section 781(b), asking Commerce to declare that picture tubes diverted to Mexico for assembly into finished TVs sent to the United States were within the scope of the color picture tube antidumping orders.

Despite the overwhelming evidence of diversion of picture tubes through Mexico, Commerce denied the union's petition in December, 1990. Commerce ruled that the unions were not entitled to relief because tubes were not the "same class or kind" of merchandise as TV sets, and that the Mexican value added in final TV assembly was not "small," as those terms were used in Section 781, even though the tubes comprise between 35 and 50 percent of the value of the color TVs. (The ruling is now on appeal to the Court of International Trade.)

IV

Given Commerce's constricted interpretation of Section 781, it is apparent that a substantially strengthened anti-circumvention provision is essential if the original goals of the 1988 Trade Act are to be realized. Under the proposed amendment embodied in Section 415 of H.R. 5100, imported merchandise need not be of the same class or kind as the dumped input it contains so long as the dumped input constitutes an essential component of the imported merchandise. Further, the value-added provision of the amendment would clarify current law so that the dumped input incorporated into the imported merchandise may be covered if its value is significant in relation to the total value of all parts or components in the imported merchandise.

H.R. 5100 would also add a new subparagraph to Section 781 to establish unequivocally that Commerce has the inherent authority to structure its orders to cut off anticipated avenues of circumvention or diversion and to otherwise protect the integrity of its orders. Thus, commerce would be free to formulate anti-circumvention and anti-diversion provisions in individual cases based on the facts of each case. We believe that Commerce already has this authority, but for reasons never made entirely clear has been reluctant to exercise it.

That reluctance was evident back in 1988 when Zenith filed a formal petition with Commerce asking the Department to self-initiate antidumping cases on color TVs from countries in Southeast Asia and Mexico because the TV companies in Japan and Korea were making a mockery of Commerce's TV antidumping orders by shifting final assembly to these developing nations. After monitoring Mexico and Malaysia for a year, Commerce turned down our request by saying it did not meet their self-imposed "strict standards for self-initiation" of an antidumping case. Commerce did not even bother to monitor imports from Singapore, Hong Kong, the PRC and Thailand—countries that were included in our request.

Today, everything Zenith told Commerce about the evasion and circumvention of the color TV antidumping orders has come true. During 1991, the countries Zenith named in its request shipped 7.7 million color TVs to the United States, most with foreign picture tubes. This amounts to 4.8 times the shipment of the 1.6 million color TVs from Japan, Korea and Taiwan combined. It is important to realize that these shipments are not being made by new, indigenous third-world companies; they are being exported from satellite operations of the Japanese and other TV giants covered by the antidumping orders issued by the Commerce Department.

Malaysia, for example, where Sharp and Matsushita are located, accounted for 900,000 color TVs in 1991. In Thailand in 1988, when Zenith made its request, there were no picture tube plants and set exports were low. Today there are picture tube plants in production or under construction (with capital costs of about $2 billion) that will have more capacity than the total U.S. industry. It is a foregone conclusion that a very large number of these tubes are going to end up in color TVs shipped to the United States without application of the normal 15% picture tube duty, any picture tube antidumping duty, or any antidumping duty on finished TVs. Thailand TV set exports to the U.S. in 1991 totalled 741,000 units and made it a larger exporter than either Taiwan or Japan.

In the TV and other industries which have been subjected to dumping, the problem is an artificial competitive environment that is fundamentally devoid of profit opportunities. The persistent dumping assault on the United States has meant severe price erosion, way in excess of industry's ability to cut costs. Today, televisions are indexed at 72.7 on the 1982–1984 Consumer Price Index. In Zenith's case, the cumulative effect of lower selling prices has cost us more than a half billion dollars right off the bottom line over just the last five years.

V

While the diversion and circumvention of the antidumping orders on color picture tubes and color TVs have been a very large problem, there have been many other problems in antidumping administration of equal importance that persist to the present day and that have a devastating impact on enforcement. Here are a few examples:

1. Producers move to new countries and thereby avoid antidumping orders. U.S. parties must then bring new dumping actions and must prove injury based on shipments from the new countries only. With the action most prominently identified by the name of the country of export (e.g., "color television picture tubes from Japan"), even though it is a specific business entity offending the law, such actions are often highly politically charged and emotionalized more than they might otherwise be.

2. Commerce flatly refuses to follow the antidumping law in adjusting for excise taxes that are rebated on export transactions and to measure the tax actually passed through in the home market. The Court of International Trade has repeatedly called Commerce to account for its improper calculations. *Zenith* v. *United States*, 633 F. Supp. 1382 (CIT 1986); *Zenith* v. *United States*, 770 F. Supp. 649 (CIT 1991); *Daewoo Electronics* v. *United States*, F. Supp. 200 (CIT 1991). Commerce refuses to change its way.

3. Another problem is what is sometimes called "domesticating the transaction." A U.S. purchaser negotiates the real price for a dumped product with a foreign vendor but never appears as the importer of record when the product enters the United States. Rather, the foreign manufacturer "sells" the product to its related U.S. sales subsidiary and the transfer price is above the real price to minimize antidumping

duty exposure. If antidumping duties are assessed, the real U.S. purchaser avoids payment because they are absorbed by the related subsidiary.

As reported in the press recently, the pricing problems resulting from persistent dumping are forcing Zenith to consolidate most of its TV assembly operations in Mexico to further reduce costs. While Zenith continues to have a strong U.S. employment base in other areas, including manufacturing of color picture tubes and in research and engineering, including R&D in high-definition display and HDTV technologies, these remaining U.S. operations could very well be in jeopardy if our government persists in following its old policies and refuses to stop the continued circumvention and evasion of existing antidumping orders, refuses to self-initiate new antidumping cases where warranted, or refuses to calculate dumping margins in the manner required by law.

VI

The failure of our trade laws to prevent blatantly unfair trading practices, and the resulting decline of once vibrant U.S. industries, has been, we believe, a significant element in the public's lack of confidence in the future which has so pervaded this election year. As the U.S. manufacturing base erodes, so does the market for unskilled, semi-skilled and even highly-skilled labor, increasing the perception that current high unemployment and low personal incomes in the lower tiers of employment are structural in nature, not just temporary blips in the march of progress. And with so many former trade officials later working for foreign-based interests--and often then proclaiming antidumping activity as "protectionist"—a very corrosive public impression arises that government personnel are not even trying to enforce the laws but are spiritually or even materially in league with those who want to undermine them. An antidote to such symptoms of decline is a law which works the way it is supposed to work.

We are not unmindful of the thrust of Senator Bentsen's stated objectives in a trade bill to encourage further opening of foreign markets without jeopardizing either NAFTA or Uruguay Round negotiations. We categorically reject, however, as should the Senate, the notion routinely put forward by those with their own axes to grind that strong antidumping enforcement is inconsistent with the objectives of those negotiations or, in more general terms, with liberalized international trade.

The bugaboo most often used to score points against strengthened enforcement is the fear of retaliatory actions by other countries. But this is a false fear indeed because we can be absolutely assured that any country which agrees to eliminate or reduce truly protectionist barriers to foreign products will not tolerate any form of dumping. Market-opening initiatives will themselves, proportional to their success, generate heightened sensitivity to dumping in the subject country, but we are all better off if transparent principles of law replace arbitrary or hidden barriers.

In a world of nation-states, dumping is pernicious precisely because it creates hostility among peoples and erodes the mutual trust that must underlie a healthy system of trade. If the U.S. antidumping statute is to become an effective trade law, a complete and systematic effort must be made to fix the many loopholes that have evolved in antidumping administration over the last twenty years. The House has taken its first step in this direction and we believe it is imperative that the Senate do so as well.

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